

MALACAÑAN PALACE
MANILAMEMORANDUM CIRCULAR NO. 108**GUIDELINES ON APPEARANCES OF DEPARTMENT HEADS AND OTHER OFFICIALS OF THE EXECUTIVE DEPARTMENT BEFORE CONGRESS**

WHEREAS, the principle of separation of powers between the Executive, Legislative and Judicial branches of government is enshrined in the Constitution;

WHEREAS, the Constitution establishes crucial safeguards regarding the power of inquiry of the Legislative branch of government to avoid possible abuse and to safeguard the rights of persons appearing before them as provided under the laws and the Constitution;

WHEREAS, Article VI, Section 21 of the Constitution provides that the Senate or the House of Representatives or any of its respective committees may conduct inquiries in aid of legislation in accordance with its duly published rules of procedures, and that the rights of persons appearing in or affected by such inquiries be respected;

WHEREAS, Article VI, Section 22 of the Constitution states that the heads of departments may, with the consent of the President, appear before either House of Congress on any matter pertaining to their departments and, when the security of the State or the public interest so requires and the President so states in writing, such appearance shall be conducted in executive session;

WHEREAS, there is a need to lay down guidelines for the appearance of department heads and other officials of the Executive department before either House of Congress to protect the rights of officials appearing therein, ensure the security of confidential information vital to national interest and uphold the Constitutional principle of separation of powers;

WHEREAS, the Supreme Court, in its Decision dated 20 April 2006 and Resolution dated 14 July 2006 in the case of *Senate of the Philippines, et al. vs. Eduardo Ermita, et al.*, G.R. No. 169777, has laid down certain rules and guidelines in respect thereof and, there is now a need to consolidate the same with existing policies and guidelines for the observance of all concerned;

WHEREAS, under the Constitution and the 1987 Administrative Code, the President shall have control of all government departments, bureaus and offices and shall ensure that all laws shall be faithfully executed;

In view of the foregoing, the following guidelines are hereby promulgated for the guidance of all officials and employees of the Executive Branch:

SECTION 1. Question Hour. - All heads of departments of the Executive branch of government shall secure the consent of the President prior to appearing at a question hour before either House of Congress.

When the security of the State or the public interest so requires and the President so states in writing, the appearance shall only be conducted in executive session.

SECTION 2. *Inquiries in Aid of Legislation.* -

A. Coverage. – This section shall apply to inquiries made in aid of legislation which may, however, cause disclosures on, or involve matters of, privilege or confidential information, including, but not limited to, the following:

- (1) Conversations and correspondence between the President and other persons on matters of privilege;
- (2) State secrets, including military, diplomatic and other national security matters which in the interest of national security should not be divulged;
- (3) Information between inter-government agencies prior to the conclusion of treaties and executive agreements;
- (4) Discussion in close-door Cabinet meetings, as well as internal deliberations of government officials comprising part of a process by which government decisions are made or policies are formulated; and
- (5) Matters affecting national security and public order.

B. Procedure.

- (1) Upon receipt of the request to appear before either House of Congress by any official, said official shall promptly request from Congress information, if it is not so provided in the invitation, regarding the possible needed statute which prompted the need for the inquiry, the subject matter of the inquiry and the questions relative to and in furtherance thereof;
- (2) The official, after obtaining such information, shall forward the request and all pertinent documents, together with a brief background and recommendation, to the President through the Executive Secretary;
- (3) The President shall consider whether the subject matter of the inquiry is in aid of legislation and/or falls within the scope of executive privilege;
- (4) To ensure that adequate information is obtained, and the President is given sufficient opportunity to discuss and/or consider the subject matter of the inquiry, the officials concerned shall, upon receipt of the request for appearance, request from Congress a reasonable period of time (e.g. fifteen (15) days) prior to any appearance before either House of Congress. Such request for a period shall not constitute a waiver or invocation of executive privilege and the request shall state such fact;
- (5) Upon a determination that the subject matter of the inquiry falls within the scope of executive privilege, the President or the Executive Secretary, acting "By order of the President", shall inform the Senate President or the Speaker of the House of Representatives, as the case may be, of the ground invoked

to justify it and the context in which it is made (e.g., whether the information demanded involves military or diplomatic secrets, closed-door Cabinet meetings, etc.);

- (6) During the appearance of the concerned official before either House of Congress, when the security of the State or the public interest so requires, the official shall request that the appearance be continued in executive session. If the same is denied, he shall request for a reasonable opportunity to secure the proper confirmation from the President; and
- (7) In appearing before either House of Congress, the official shall, at all times, be represented/accompanied by counsel.

SECTION 3. Officials appearing before Congress are reminded that the Rules of Procedure of the Senate and/or the House of Representatives provide rules on questions which may not be asked. Moreover, the Constitution and the ruling of the Supreme Court in the case of *Senate of the Philippines, et al. vs. Eduardo Ermita, et al., supra.*, state that the rights of persons appearing in or affected by legislative inquiries shall be respected. Thus, said officials have a right not to answer the following questions, among others:

- (1) Those which contain arguments;
- (2) Those which include offensive or unparliamentary language or expressions;
- (3) Those which pertain to matters *sub judice*;
- (4) Those which refer to the internal affairs of a foreign country or contain unwarranted discourtesy to it;
- (5) Those which seek an opinion on a question of law;
- (6) Those which relate to matters falling within the responsibility of another department head;
- (7) Those which repeat question/s previously asked and answered;
- (8) Those which violate the rights of officials as guaranteed under the laws and the Constitution; and
- (9) Those which are neither directly material nor pertinent to the subject matter of the inquiry or legislation.

SECTION 4. At all times during their appearance before Congress, officials shall strictly ensure the confidentiality of information covered by executive privilege. If necessary during the course of the inquiry, he shall request for a reasonable opportunity to inform the President that the matters being discussed may fall within the scope of executive privilege.

SECTION 5. *Repealing Clause.* – All executive issuances, orders, rules and regulations or parts thereof inconsistent with the provisions of this Memorandum Circular are hereby repealed or modified accordingly.

SECTION 6. *Separability Clause.* – If any section or provision of this Memorandum Circular shall be declared unconstitutional or invalid, the other sections or provisions not affected thereby shall remain in full force and effect.

SECTION 7. *Publication.* – This Memorandum Circular shall take effect fifteen (15) days following the completion of its publication in a newspaper of general circulation.

By authority of the President:



EDUARDO R. ERMITA
Executive Secretary

Manila, Philippines, 27 July 2006