

July 3, 2000

DEPARTMENT CIRCULAR NO. 70

SUBJECT : 2000 NPS RULE ON APPEAL

In the interest of expeditious and efficient administration of justice and in line with recent jurisprudence, the following Rule governing appeals from resolutions of prosecutors in the National Prosecution Service, to be known as the 2000 NPS Rule on Appeal, is hereby adopted.

SECTION 1. Scope. - This Rule shall apply to appeals from resolutions of the Chief State Prosecutor, Regional State Prosecutors and Provincial/City Prosecutors in cases subject of preliminary investigation/ reinvestigation.

SECTION 2. Where to appeal. An appeal may be brought to the Secretary of Justice within the period and in the manner herein provided.

SECTION 3. Period to appeal. The appeal shall be taken within fifteen (15) days from receipt of the resolution, or of the denial of the motion for reconsideration/reinvestigation if one has been filed within fifteen (15) days from receipt of the assailed resolution. Only one motion for reconsideration shall be allowed.

SECTION 4. How appeal taken. An aggrieved party may appeal by filing a verified petition for review with the Office of the Secretary, Department of Justice, and by furnishing copies thereof to the adverse party and the Prosecution Office issuing the appealed resolution.

SECTION 5. Contents of petition. - The petition shall contain or state: (a) the names and addresses of the parties; (b) the Investigation Slip number (I.S. No.) and criminal case number, if any, and title of the case, including the offense charged in the complaint; (c) the venue of the preliminary investigation; (d) the specific material dates showing that it was filed on time; (e) a clear and concise statement of the facts, the assignment of errors, and the reasons or arguments relied upon for the allowance of the appeal; and (f) proof of service of a copy of the petition to the adverse party and the Prosecution Office concerned.

The petition shall be accompanied by legible duplicate original or certified true copy of the resolution appealed from together with legible true copies of the complaint, affidavits/sworn statements and other evidence submitted by the parties during the preliminary investigation/ reinvestigation.

If an information has been filed in court pursuant to the appealed resolution, a copy of the motion to defer proceedings filed in court must also accompany the petition. The investigating/reviewing/approving prosecutor shall not be impleaded as party respondent in the petition. The party taking the appeal shall be referred to in the petition as either "Complainant-Appellant" or "Respondent- Appellant".

SECTION 6. Effect of failure to comply with requirements. The failure of the petitioner to comply with any of the foregoing requirements shall constitute sufficient ground for the dismissal of the petition.

SECTION 7. Action on the petition. The Secretary of Justice may dismiss the petition outright if he finds the same to be patently without merit or manifestly intended for delay, or when the issues raised therein are too unsubstantial to require consideration. If an information has been filed in court pursuant to the appealed resolution, the petition shall not be given due course if the accused had already been arraigned. Any arraignment made after the filing of

the petition shall not bar the Secretary of Justice from exercising his power of review.

SECTION 8. Comment. Within a non-extendible period of fifteen (15) days from receipt of a copy of the petition, the adverse party may file a verified comment, indicating therein the date of such receipt and submitting proof of service of his comment to the petitioner and the Prosecution Office concerned. Except when directed by the Secretary of Justice, the investigating/reviewing/approving prosecutor need not submit any comment.

If no comment is filed within the prescribed period, the appeal shall be resolved on the basis of the petition.

SECTION 9. Effect of the appeal. Unless the Secretary of Justice directs otherwise, the appeal shall not hold the filing of the corresponding information in court on the basis of the finding of probable cause in the appealed resolution.

The appellant and the trial prosecutor shall see to it that, pending resolution of the appeal, the proceedings in court are held in abeyance.

SECTION 10. Withdrawal of appeal. Notwithstanding the perfection of the appeal, the petitioner may withdraw the same at any time before it is finally resolved, in which case the appealed resolution shall stand as though no appeal has been taken.

SECTION 11. Reinvestigation. If the Secretary of Justice finds it necessary to reinvestigate the case, the reinvestigation shall be held by the investigating prosecutor, unless, for compelling reasons, another prosecutor is designated to conduct the same.

SECTION 12. Disposition of the appeal. The Secretary may reverse, affirm or modify the appealed resolution. He may, motu proprio or upon motion, dismiss the petition for review on any of the following grounds:

- That the petition was filed beyond the period prescribed in Section 3 hereof;
- That the procedure or any of the requirements herein provided has not been complied with;
- That there is no showing of any reversible error;
- That the appealed resolution is interlocutory in nature, except when it suspends the proceedings based on the alleged existence of a prejudicial question;
- That the accused had already been arraigned when the appeal was taken;
- That the offense has already prescribed; and
- That other legal or factual grounds exist to warrant a dismissal.

SECTION 13. Motion for reconsideration. The aggrieved party may file a motion for reconsideration within a non-extendible period of ten (10) days from receipt of the resolution on appeal, furnishing the adverse party and the Prosecution Office concerned with copies thereof and submitting proof of such service. No second or further motion for reconsideration shall be entertained.

SECTION 14. Repealing clause. This Circular supersedes Department Order No. 223 dated June 30, 1993 and all other Department issuances inconsistent herewith.

SECTION 15. Effectivity. This Circular shall be published once in two (2) newspapers of general circulation, after which it shall take effect on September 1, 2000.

(signed) **ARTEMIO G. TUQUERO**
Secretary of Justice