

III. Prosecutor and Prosecuting attorney

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III. PROSECUTOR AND PROSECUTING ATTORNEY

A. The Department of Justice

The Department of Justice (DOJ) is mandated to carry out the declared policy of the State to provide the government with a principal law agency which shall be both its legal counsel and prosecution arm; administer the criminal justice system in accordance with the accepted processes thereof consisting in the investigation of the crimes, prosecution of offenders and administration of the correctional system; implement the laws on the admission and stay of aliens, citizenship, land titling system, and settlement of land problems involving small landowners and members of indigenous cultural minorities; and provide free legal services to indigent members of the society (Exec. Order No. 292, Rev. Adm. Code, Title III, secs. 1 and 2).

Consequently, the Department has the power to act as principal law agency of the government and as legal counsel and representative thereof, whenever so required; to investigate the commission of crimes, prosecute offenders and administer the probation and correction system; to extend free legal assistance/representation to indigents and poor litigants in criminal cases and non-commercial civil disputes; to preserve the integrity of land titles through proper registration; to investigate and arbitrate untitled land disputes involving small landowners and members of indigenous cultural communities; provide immigration and naturalization regulatory services and implement the laws governing citizenship and the admission and stay of aliens; provide legal services to the national government and its functionaries, including government-owned or controlled corporations and their subsidiaries; and perform such other functions as may be provided by law (Exec. Order No. 292, sec. 3).

The Department of Justice consists of the Department proper and several other constituent units. These units are the Office of the Government Corporate Counsel, the National Bureau of Investigation, the Public Attorney's Office, the Board of Pardons and Parole, the Parole and Probation Administration, the Bureau of Corrections, the

Land Registration Authority, the Bureau of Immigration, and the Commission on the Settlement of Land Problems (Exec. Order No. 292, sec. 4).

The Department Proper is composed of the Office of the Secretary and the Undersecretaries, Technical and Administrative Service, Financial Management Service, Legal Staff, and the Office of the Chief State Prosecutor (Exec. Order No. 292, sec. 10).

The Office of the Government Corporate Counsel acts as the principal law office of all government-owned or controlled corporations, their subsidiaries, other corporate offsprings and government-acquired asset corporations and shall exercise control and supervision over all legal departments or divisions maintained separately and such powers and functions as are now or may hereafter be provided by law. In the exercise of such control and supervision, the Government Corporate Counsel shall promulgate rules and regulations to effectively implement the objectives of the Office (Exec. Order No. 292, sec. 10).

The National Bureau of Investigation, originally called the Bureau of Investigation (It was renamed National Bureau of Investigation by virtue of Executive Order No. 94 issued on 4 October 1947), was created by virtue of Republic Act No. 157. It has the following functions: (1) investigate crimes and other offenses against the laws of the Philippines, upon its own initiative and as public interest may require; (2) assist, whenever properly requested, in the investigation or detection of crimes and other offenses; (3) act as a national clearing house of criminal and other information for the benefit and use of all prosecuting and law-enforcement entities of the Philippines, identification records of all persons without criminal convictions, records of identifying marks, characteristics, and ownership or possession of all firearms as well as of test bullets fired therefrom; (4) give technical aid to all prosecuting and law enforcement officers and entities in of the Government, as well as the courts that may request its services; (5) extend its services, whenever properly requested, in the investigation of cases of administrative or civil nature in which the Government is interested; (6) instruct and train a representative number of city and municipal peace officers at the request of their respective superiors along effective methods of crime investigation and detection in order to insure greater efficiency in the discharge of their duties (7) establish and maintain an up-to-date scientific crime laboratory and conduct research in furtherance of scientific knowledge in criminal investigation; and (8) perform such other related functions as the Secretary of Justice may assign from time to time (Rep. Act No. 157, sec. 1).

The Public Attorney's Office, formerly the Citizen's Legal Assistance Office, was created under Letter of Implementation No. 4, series of 1972, in pursuance of Presidential Decree No. 1 which provided for the reorganization of the Executive Branch of the National Government.

The Board of Pardons and Parole, created by virtue of Act No. 4103, has the following duties: (1) look into the physical, mental and moral record of the prisoners who shall be eligible for parole and determine the proper time of release of such prisoners; and (2) examine the records and status of prisoners who have met certain criteria and make recommendations in all such cases to the President with regard to the parole of these prisoners (Act No. 4103, sec. 5).

The Parole and Probation Administration was created under Presidential Decree No. 968. It has the following functions: (1) Administer the parole and probation system; (2) Exercise general supervision over all parolees and probationers; (3) Promote the corrections and rehabilitation of offenders; and (4) Such other functions as may be provided by law (Exec. Order No. 292, sec. 23).

The Bureau of Corrections is principally tasked with the rehabilitation of prisoners (Exec. Order No. 292, sec. 26).

The Land Registration Authority, formerly the Land Titles and Deeds Registration Authority is tasked with the administration of the registration of real property and the encumbrances thereon.

The Bureau of Immigration is principally responsible for the administration and enforcement of immigration, citizenship and alien admission and registration laws in accordance with the provisions of the Philippine Immigration Act of 1940 (Commonwealth Act No. 613), as amended (Exec. Order No. 292, sec. 31).

The Commission on the Settlement of Land Problems is responsible for the settlement of land problems involving small landowners and members of cultural minorities, and such other functions as may be provided by law (Exec. Order No. 292, sec. 32).

The Office of the Solicitor General (OSG) is an independent and autonomous office attached to the Department of Justice. It represents the government of the Philippines, its agencies and instrumentalities and its officials and agents in any litigation, proceeding, investigation or matter requiring the services of a lawyer. When authorized by the President or head of the office concerned, it shall also represent

government-owned or controlled corporations. In short, the OSG constitutes the law office of the Government which shall discharge duties requiring the services of a lawyer.

Specifically, the OSG has the following functions: (1) Represent the Government in the Supreme Court and the Court of Appeals in all criminal proceedings; represent the Government and its officers in the Supreme Court, the Court of Appeals, and all other courts or tribunals in all civil actions and special proceedings in which the Government or any officer thereof in his official capacity is a party; (2) Investigate, initiate court action, or in any manner proceed against any person, corporation or firm for the enforcement of any contract, bond, guarantee, mortgage, pledge or other collateral executed in favor of the Government. Where proceedings are to be conducted outside of the Philippines the Solicitor General may employ counsel to assist in the discharge of the aforementioned responsibilities; (3) Appear in any court in any action involving the validity of any treaty, law, executive order or proclamation, rule or regulation when in his judgment his intervention is necessary or when requested by the Court; (4) Appear in all proceedings involving the acquisition or loss of Philippine citizenship; (5) Represent the Government in all land registration and related proceedings. Institute actions for the reversion to the Government of lands of the public domain and improvements thereon, as well as lands held in violation of the Constitution; (6) Prepare, upon request of the President or other proper officer of the National Government, rules and guidelines for government entities governing the preparation of contracts, making of investments, undertaking of transactions, and drafting of forms or other writings needed for official use, with the end in view of facilitating their enforcement and insuring that they are entered into or prepared conformably with law and for the best interests of the public; (7) Deputize, whenever in the opinion of the Solicitor General the public interest requires, any provincial or city fiscal to assist him in the performance of any function or discharge of any duty incumbent upon him, within the jurisdiction of the aforesaid provincial or city fiscal. When so deputized, the fiscal shall be under the control and supervision of the Solicitor General with regard to the conduct of the proceedings assigned to the fiscal, and he may be required to render reports or furnish information regarding the assignment; (8) Deputize legal officers of government departments, bureaus, agencies and offices to assist the Solicitor General and appear or represent the Government in cases involving their respective offices, brought before the courts and exercise supervision and control over such legal officers with respect to such cases; (9) Call on any department, bureau,

office, agency or instrumentality of the Government for such service, assistance, and cooperation as may be necessary in fulfilling its functions and responsibilities and for this purpose enlist the services of any government official or employee in the pursuit of his tasks; (10) Represent, upon instructions of the President, the Republic of the Philippines in international litigations, negotiations or conferences where the legal position of the Republic must be defended or presented; (11) Act and represent the Republic and/or the people before any court, tribunal, body or commission in any matter, action or proceeding which, in his opinions, affects the welfare of the people as the ends of justice may require; and (12) Lastly, perform such other functions as may be provided by law (Exec. Order No. 292, sec. 35).

B. The National Prosecution Service

The National Prosecution Service was created by virtue of Presidential Decree No. 1275. The same law also reorganized the Prosecution Staff of the DOJ and the offices of the Provincial and City Fiscals, and regionalized the Prosecution Service.

Then President Ferdinand E. Marcos created the National Prosecution Service to improve the quality of prosecution services, to reorganize and restructure the entire prosecution system, in line with the general reorganization of the executive branch of the government which is a priority measure of the Administration; to regionalize the prosecution service in line with the government policy of decentralization, to rationalize the allocation of prosecution positions and functions in accordance with the requirements of the service, and to upgrade the salaries of all prosecutors, and of provincial and city fiscals (Pres. Decree No. 1275, Whereas clause).

The National Prosecution Service is under the supervision and control of the Secretary of Justice. Specifically, it is composed of the Prosecution Staff in the Office of the Secretary of Justice, the Regional State Prosecution Offices, and Provincial and City Fiscal's Offices (Pres. Decree No. 1275, sec. 1). The Regional State Prosecution Offices, and Provincial and City Fiscal" Offices shall be primarily responsible for the investigation and prosecution of all cases involving violations of penal laws (Ibid.).

The power of supervision and control vested in the Secretary of Justice includes the authority to act directly on any matter within the jurisdiction of the Prosecution Staff, the Regional State Prosecution Office or the Office of the Provincial

or City Fiscal and to review, modify or revoke any decision or action of the Chief of said staff or office (Ibid.).

The Prosecution Staff in the Office of the Secretary of Justice is tasked to: (1) Investigate administrative charges against fiscals and other prosecution officers; (2) Conduct of investigation and prosecution of all crimes; (3) Prepare legal opinions on queries involving violations of the Revised Penal Code and special penal laws; and (4) Review of appeals from the resolutions of fiscals and other prosecuting offices in connection with criminal cases handled by them (Pres. Decree No. 1275, sec. 2).

The Regional State Prosecutor (RSP) is under the control of the Secretary of Justice (Pres. Decree No. 1275, sec. 8). In particular, the RSP's functions are: (1) Implement policies, plans, programs, memoranda, orders, circulars and rules and regulations of the Department of Justice relative to the investigation and prosecution of criminal cases in his region; (2) Exercise immediate administrative supervision over all provincial and city fiscals and other prosecuting officers of provinces and cities comprised within his or her region; (3) Prosecute any case arising within the region; and (4) Coordinate with regional offices of other departments, with bureaus/agencies under the Department of Justice, and with local governments and police units in the region (Pres. Decree No. 1275, sec. 8).

On the other hand, the provincial fiscal or the city fiscal shall: (1) Be the law officer of the province or city, as the case may be. He shall have charge of the prosecution of all crimes, misdemeanors and violations of city or municipal ordinances in the courts of such province or city and shall therein discharge all the duties incident to the institution of criminal prosecutions; (2) Investigate and/or cause to be investigated all charges of crimes, misdemeanors and violations of all penal laws and ordinances within their respective jurisdictions and have the necessary information or complaint prepared or made against the persons accused. In the conduct of such investigations he or his assistants shall receive the sworn statements or take oral evidence of witnesses summoned by subpoena for the purpose; (3) Investigate commissions of criminal acts and take an active part in the gathering of relevant evidence; (4) The provincial or city fiscal may, concurrently with the Municipal Attorney or with the Provincial Attorney/City Legal Officer, act as legal adviser of the municipal or city mayor and council or sanggunian of the various municipalities, and municipal districts of the province, or the provincial or city government and its officers or of the city; and (5) Assist the Solicitor General, when so deputized in the public

interest, in the performance of any function or in the discharge of any duty incumbent upon the latter, within the territorial jurisdiction of the former, in which cases, he shall be under the control and supervision of the Solicitor General with regard to the conduct of the proceedings assigned to him and render reports thereon (Pres. Decree No. 1275, sec. 11).