

REPUBLIKA NG PILIPINAS  
TANGGAPAN NG MANANANGGOL PAMBAYAN  
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**MEMORANDUM CIRCULAR**

No. 002  
Series of 2011

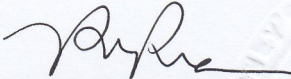

**SUBJECT : CLARIFICATION ON ASSISTANCE IN PREPARATION OF  
EXTRA-JUDICIAL CONFESSION AS PART OF INQUEST  
DUTIES.**

**DATE : APRIL 1, 2011**

In view of reports that some Public Attorneys are either hesitant or refuse to assist suspected criminals in the preparation and execution of their extra-judicial confessions, all Public Attorneys are hereby reminded that **the assistance, preparation and administration of oath, and waiver of counsel in writing**, relative to a voluntary extra-judicial confession of a criminal suspect are considered part of inquest duties in accordance with the provisions of Office Order No. 137, Series of 2010, otherwise known as PAO Operations Manual, particularly, Section 6.1 *Custodial Interrogation and Inquest Investigation*, under Article 10 (Non-judicial services) thereof.

All Public Attorneys are however reminded to ensure that the affiant is given the full opportunity to make an informed and voluntary decision, the consequences of executing an extra-judicial confession and that they are under no compulsion to sign the same by apprising them of their *Miranda* rights under the 1987 Constitution and pursuant to R.A. 7438 (April 27, 1992) otherwise known as "*An Act Defining Certain Rights of Person Arrested, Detained or under Custodial Investigation as well as the duties of the arresting, detaining and investigating officers, and providing penalties for violations thereof.*"

Please be guided accordingly.

  
**PERSIDA V. RUEDA-ACOSTA**  
Chief Public Attorney 

Cc: (Encl: R.A. 7438)

- All concerned

## Republic Act No. 7438

### AN ACT DEFINING CERTAIN RIGHTS OF PERSON ARRESTED, DETAINED OR UNDER CUSTODIAL INVESTIGATION AS WELL AS THE DUTIES OF THE ARRESTING, DETAINING AND INVESTIGATING OFFICERS, AND PROVIDING PENALTIES FOR VIOLATIONS THEREOF

*Be it enacted by the Senate and House of Representatives of the Philippines in Congress assembled::*

**Section 1. *Statement of Policy*** – It is the policy of the Senate to value the dignity of every human being and guarantee full respect for human rights.

**Section 2. *Rights of Persons Arrested, Detained or Under Custodial Investigation; Duties of Public Officers.*** –

(a) Any person arrested detained or under custodial investigation shall at all times be assisted by counsel.

(b) Any public officer or employee, or anyone acting under his order or his place, who arrests, detains or investigates any person for the commission of an offense shall inform the latter, in a language known to and understood by him, of his rights to remain silent and to have competent and independent counsel, preferably of his own choice, who shall at all times be allowed to confer privately with the person arrested, detained or under custodial investigation. If such person cannot afford the services of his own counsel, he must be provided with a competent and independent counsel by the investigating officer.

(c) The custodial investigation report shall be reduced to writing by the investigating officer, provided that before such report is signed, or thumb marked if the person arrested or detained does not know how to read and write, it shall be read and adequately explained to him by his counsel or by the assisting counsel provided by the investigating officer in the language or dialect known to such arrested or detained person, otherwise, such investigation report shall be null and void and of no effect whatsoever.

(d) Any extrajudicial confession made by a person arrested, detained or under custodial investigation shall be in writing and signed by such person in the presence of his counsel or in the latter's absence, upon a valid waiver, and in the presence of any of the parents, elder brothers and sisters, his spouse, the municipal mayor, the municipal judge, district school supervisor, or priest or minister of the gospel as chosen by him; otherwise, such extrajudicial confession shall be inadmissible as evidence in any proceeding.

(e) Any waiver by a person arrested or detained under the provisions of Article 125 of the Revised Penal Code, or under custodial investigation, shall be in writing and signed by such person in the presence of his counsel; otherwise the waiver shall be null and void and of no effect.

(f) Any person arrested or detained or under custodial investigation shall be allowed visits by or conferences with any member of his immediate family, or any medical doctor or priest or religious minister chosen by him or by any member of his immediate family or by his counsel, or by any national non-governmental organization duly accredited by the Commission on Human Rights or by any international non-governmental organization duly accredited by the Office of the President. The person's "immediate family" shall include his or her spouse, fiancé or fiancée, parent or child, brother or sister, grandparent or grandchild, uncle or aunt, nephew or niece, and guardian or ward.

As used in this Act, "custodial investigation" shall include the practice of issuing an "invitation" to a person who is investigated in connection with an offense he is suspected to have committed, without prejudice to the liability of the "inviting" officer for any violation of law.

**Section 3. *Assisting Counsel*** – Assisting counsel is any lawyer, except those directly affected by the case, those charged with conducting preliminary investigation or those charged with the prosecution of crimes.

The assisting counsel other than the government lawyers shall be entitled to the following fees;

- (a) The amount of One hundred fifty pesos (P150.00) if the suspected person is chargeable with light felonies;
- (b) The amount of Two hundred fifty pesos (P250.00) if the suspected person is chargeable with less grave or grave felonies;
- (c) The amount of Three hundred fifty pesos (P350.00) if the suspected person is chargeable with a capital offense.

The fee for the assisting counsel shall be paid by the city or municipality where the custodial investigation is conducted, provided that if the municipality or city cannot pay such fee, the province comprising such municipality or city shall pay the fee: Provided, That the Municipal or City Treasurer must certify that no funds are available to pay the fees of assisting counsel before the province pays said fees.

In the absence of any lawyer, no custodial investigation shall be conducted and the suspected person can only be detained by the investigating officer in accordance with the provisions of Article 125 of the Revised Penal Code.

**Section 4. *Penalty Clause.*** – (a) Any arresting public officer or employee, or any investigating officer, who fails to inform any person arrested, detained or under custodial investigation of his right to remain silent and to have competent and independent counsel preferably of his own choice, shall suffer a fine of Six thousand pesos (P6, 000.00) or a penalty of imprisonment of not less than eight (8) years but not more than ten (10) years, or both. The penalty of perpetual absolute disqualification shall also be imposed upon the investigating officer who has been previously convicted of a similar offense.

The same penalties shall be imposed upon a public officer or employee, or anyone acting upon orders of such investigating officer or in his place, who fails to provide a competent and independent counsel to a person arrested, detained or under custodial investigation for the commission of an offense if the latter cannot afford the services of his own counsel.

(b) Any person who obstructs, prevents or prohibits any lawyer, any member of the immediate family of a person arrested, detained or under custodial investigation, or any medical doctor or priest or religious minister chosen by him or by any member of his immediate family or by his counsel, from visiting and conferring privately with him, or from examining and treating him, or from ministering to his spiritual needs, at any hour of the day or, in urgent cases, of the night shall suffer the penalty of imprisonment of not less than four (4) years nor more than six (6) years, and a fine of four thousand pesos (P4,000.00).

The provisions of the above Section notwithstanding, any security officer with custodial responsibility over any detainee or prisoner may undertake such reasonable measures as may be necessary to secure his safety and prevent his escape.

**Section 5. *Repealing Clause*** – Republic Act No. No. 857, as amended, is hereby repealed. Other laws, presidential decrees, executive orders or rules and regulations, or parts thereof inconsistent with the provisions of this Act are repealed or modified accordingly.

**Section 6. *Effectivity*** – This Act shall take effect fifteen (15) days following its publication in the Official Gazette or in any daily newspapers of general circulation in the Philippines.

Approved: **April 27, 1992**