

AVOIDING COA DISALLOWANCES: REMEDIES AND BEST PRACTICES

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Learning Objectives



- * Understand COA Disallowances and the grounds for its issuance
- * Understand liabilities attached to NDs/NCs
- * Learn remedies available

- * Concept of COA Disallowance
- * Persons Liable
- * Implications of ND/NC
- * Remedies for NDs/NCs



WHAT IS A COA DISALLOWANCE?

- * The disapproval in audit of a transaction, either in whole or in part. The term applies to the audit of **disbursements**
- * **Issued by the Audit Teams thru a Notice of Disallowance(ND)**
- * **Issued to the Head of the Agency**

(2009 RRSA; 2009 RRPC)

Nature of a Disallowance

- * Once final and executory, it becomes a receivable from the persons liable
- * Can be deducted from the salaries and all other claims of the person liable from the government
- * Civil liability

CONTENTS OF AN ND

- * Specifics of the transaction/disbursement audited
- * Reason for disallowance
- * Amount of disallowance
- * Persons liable and reasons for liability
- * Name and signature of ATL and SA

GROUNDS FOR DISALLOWANCE OF DISBURSEMENT S

Illegal Expenditures
Irregular Expenditures
Unnecessary Expenditures
Excessive expenses
Extravagant Expenditures
Unconscionable Expenditures
(IIUEEU)

*... So,
To AVOID
DISALLOWANCES, AVOID
DISBURSEMENTS THAT CAN BE
CONSIDERED AS IIUEEU...*



..But what are IIUEEUUs?

- *COA CIRCULAR - No.2012-003 dated October 29, 2012*
- *2009 RRSA*



ILLEGAL
EXPENDITURES



Expenditures
contrary to law

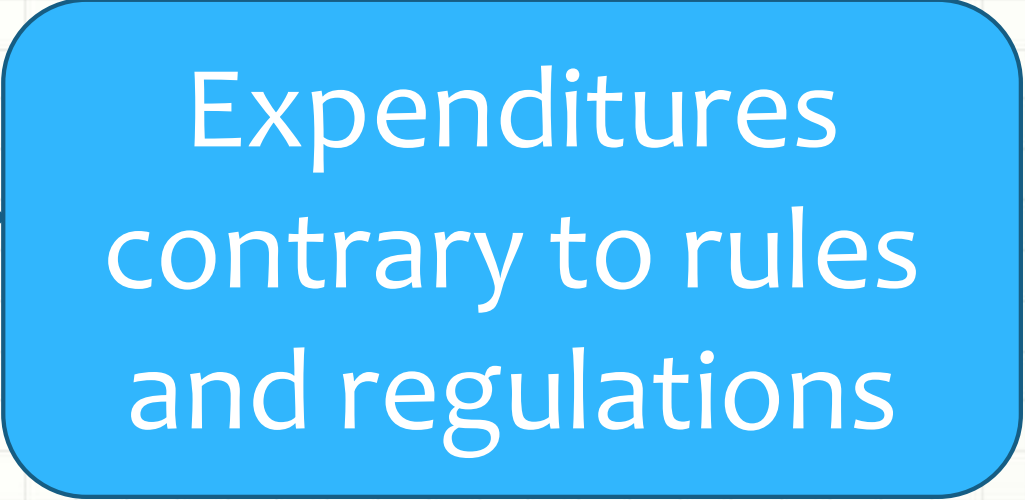
G.R. No. 249090 (Lapid, et al. v. Commission on Audit, July 11, 2023)

Disallowance of the payment of christmas decorations amounting to more than PhP2,000,000.000 by the Tourism Infrastructure and Enterprise Zone Authority (TIEZA) was sustained by the SC.

Disallowance is due to non-compliance by the concerned TIEZA officials with the RA 9184



IRREGULAR
EXPENDITURES



Expenditures
contrary to rules
and regulations

Examples

- ✓ Violation of rules and regulations issued by competent authorities such as DBM, COA, DOF, etc
- ✓ Violation of internal rules/policies



UNNECESSARY
EXPENDITURES

- ✓ Expenditures which could not pass the test of prudence or the diligence of a good father of a family, thereby denoting non-responsiveness to the exigencies of the service.
- ✓ **expenditure that is not essential or that which can be dispensed with without loss or damage to property is considered unnecessary**



EXCESSIVE EXPENSES

- ✓ unreasonable expense or expenses incurred at an immoderate quantity and exorbitant price.
- ✓ It also includes expenses which exceed what is usual or proper, as well as expenses which are unreasonably high and beyond just measure or amount.
- ✓ They also include expenses in excess of reasonable limits.



EXTRAVAGANT EXPENDITURES

- ✓ Those incurred without restraint, judiciousness and economy.
- ✓ Extravagant expenditures exceed the bounds of property.
- ✓ These expenditures are immoderate, prodigal, lavish, luxurious, grossly excessive, and injudicious.



UNCONSCIONABLE EXPENDITURES

- ✓ pertains to expenditures which are unreasonable and immoderate, and which no man in his right sense would make, nor a fair honest man would accept as reasonable, and those incurred in violation of ethical and moral standards.



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PERSONS LIABLE FOR DISALLOWANCES



Liability

➤ a personal obligation arising from an audit disallowance or charge which maybe satisfied through payment or restitution as determined by competent authority or by other modes of extinguishment of obligation as provided by law. (Section 4.17,RRSA)

PD 1445

- **Section 103. General liability for expenditures, or uses of government property in violation of law or regulations shall be a personal liability of the official or employee found to be directly responsible therefor.**

PD 1445

Section 105. Measure of liability of accountable officers,

(1) Every officer accountable for government property shall be liable for its money value in case of improper or unauthorized use or misapplication thereof, by himself or any person for whose acts he may be responsible. We shall likewise be liable for all losses, damages, or deterioration occasioned by negligence in the keeping or use of the property, whether or not it be at the time in his actual custody.

PD 1445

Section 105. Measure of liability of accountable officers,

(2) Every officer accountable for government funds shall be liable for all losses resulting from the unlawful deposit, use, or application thereof and for all losses attributable to negligence in the keeping of the funds.

PD 1445

Section 106. Liability for acts done by direction of superior officer.

No **accountable officer** shall be relieved from liability by reason of his having acted under the direction of a superior officer in paying out, applying, or disposing of the funds or property with which he is chargeable, unless prior to that act, **he notified the superior officer in writing of the illegality of the payment, application, or disposition.** The officer directing any illegal payment or disposition of the funds or property shall be primarily liable for the loss, while the accountable officer who fails to serve the required notice shall be secondarily liable.

Executive Order No. (E.O.) 292 or the Administrative Code of 1987

Section 43, Chapter 5, Book VI

Liability for Illegal Expenditures.—
Every expenditure or obligation
authorized or incurred in violation of
the provisions of this Code or of the
general and special provisions
contained in the annual General or
other Appropriations Act shall be
void.

Every payment made in violation of
said provisions shall be illegal and
every official or employee authorizing
or making such payment, or taking
part therein, and every person
receiving such payment shall be
jointly and severally liable to the
Government for the full amount so
paid or received.

Executive Order
No. (E.O.) 292 or
the Administrative
Code of 1987

Book V, Title 1,
Subtitle B,
Chapter 9,
SECTION 52.

General Liability for Unlawful Expenditures.— Expenditures of government funds or uses of government property in violation of law or regulations shall be a personal liability of the official or employee found to be directly responsible therefor.

Executive Order
No. (E.O.) 292 or
the
Administrative
Code of 1987

Book I, Chapter
9, SECTION 38.
Liability of
Superior
Officers.—

(1) A public officer shall not be civilly liable for acts done in the performance of his official duties, **unless there is a clear showing of bad faith, malice or gross negligence.**



No. (E.O.) 292 or
the
Administrative
Code of 1987


SECTION 38.
Liability of
Superior
Officers

(2) Any public officer who, without just cause, neglects to perform a duty within a period fixed by law or regulation, or within a reasonable period if none is fixed, shall be liable for damages to the private party concerned without prejudice to such other liability as may be prescribed by law.

Executive Order No.
(E.O.) 292 or the
Administrative Code
of 1987

Book I, Chapter
9 , SECTION 39.
**Liability of
Subordinate
Officers.**

No subordinate officer or employee shall be civilly liable for acts done by him in good faith in the performance of his duties. However, he shall be liable for willful or negligent acts done by him which are contrary to law, morals, public policy and good customs even if he acted under orders or instructions of his superiors.



Executive Order
No. (E.O.) 292 or
the Administrative
Code of 1987

**Book V, Title I,
Subtitle A, SEC. 66.
Liability of
Disbursing Officers.**

— Except as may otherwise be provided by law, it shall be unlawful for a treasurer or other fiscal officer to draw or retain from the salary due an officer or employee any amount for contribution or payment of obligations other than those due the government or its instrumentalities.

Determination of Persons Liable

2009 COA RRSA

BASES FOR INCLUSION AS PERSON LIABLE

Nature of Disallowance

Duties and responsibilities or obligations of officers/employees concerned

Extent of their participation in the disallowance/charge

Amount of damage or loss to the government



Custodians of
Government
Funds

✓ Liable for their failure to ensure that such funds are safely guarded against loss or damage; that they are expended, utilized, disposed of or transferred in accordance with law

Certifying officers

- As to necessity and legality
- As to availability of funds
- As to adequacy of documents

✓ Shall be liable according to their respective certifications



➤ **Approving
and
Authorizing
Officers**

Public officers who approved or authorize expenditures shall be liable for losses arising out of their negligence or failure to exercise the diligence of a good father of a family.

SC Decisions

G.R. No. 237835. February 07, 2023; [G.R. No. 237860; G.R. No. 237883; G.R. No. 237884

circumstances or badges for the determination of whether an authorizing officer exercised the diligence of a good father of a family:



For one to be absolved of liability the following requisites [may be considered]:

- (1) Certificates of Availability of Funds pursuant to Section 40 of the Administrative Code,
- (2) In-house or Department of Justice legal opinion,
- (3) (3) that there is no precedent disallowing a similar case in jurisprudence,
- (4) (4) that it is traditionally practiced within the agency and no prior disallowance has been issued, [or]
- (5) (5) with regard the question of law, that there is a reasonable textual interpretation on its legality.

GR No. 256373

Disallowance of various allowances and benefits amounting to P80,790,075.02

- Good faith cannot be appreciated in favor of PHIC and its approving authorities considering that they had knowledge of the irregularity of the benefits granted in favor of its officials and employees due to previous disallowances of the same nature
- Recipients bound to return due to the principle of solution *in debiti*
- Certifying officers – those whose participation only consisted of certifying and approving the availability of funds are free from liability as the same was done in the performance of ministerial duties



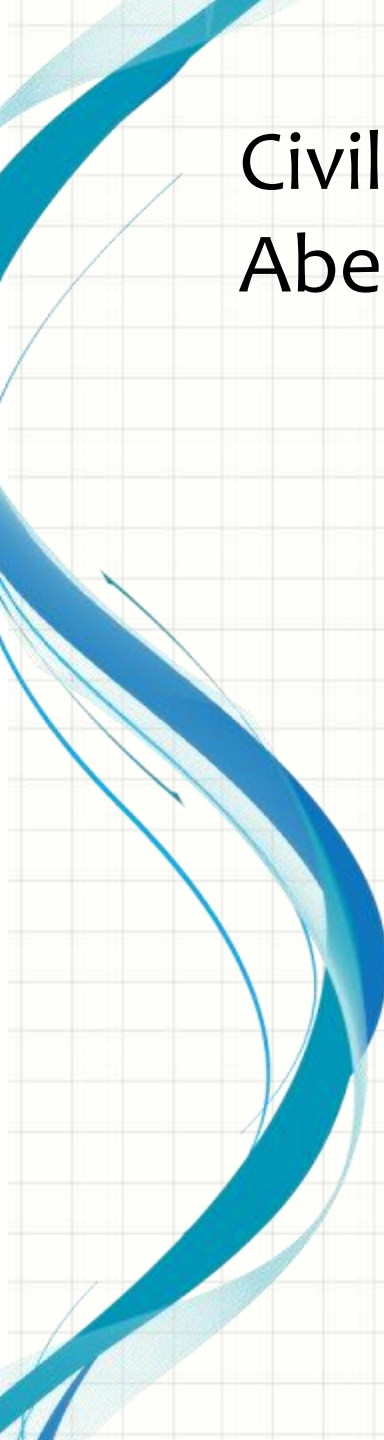
➤ Persons in Conspiracy

✓ Public officers and other persons who confederated or conspired in a transaction which is disadvantageous or prejudicial to the government shall be held liable jointly and severally with those who benefited therefrom.



➤ Payees/
Recipients

✓ The payee of an expenditure shall be personally liable for a disallowance where the ground thereof is his failure to submit the required documents, and the Auditor is convinced that the disallowed transaction did not occur or has no basis in fact.



Civil liability of Payees/Recipients Abellanos versus COA

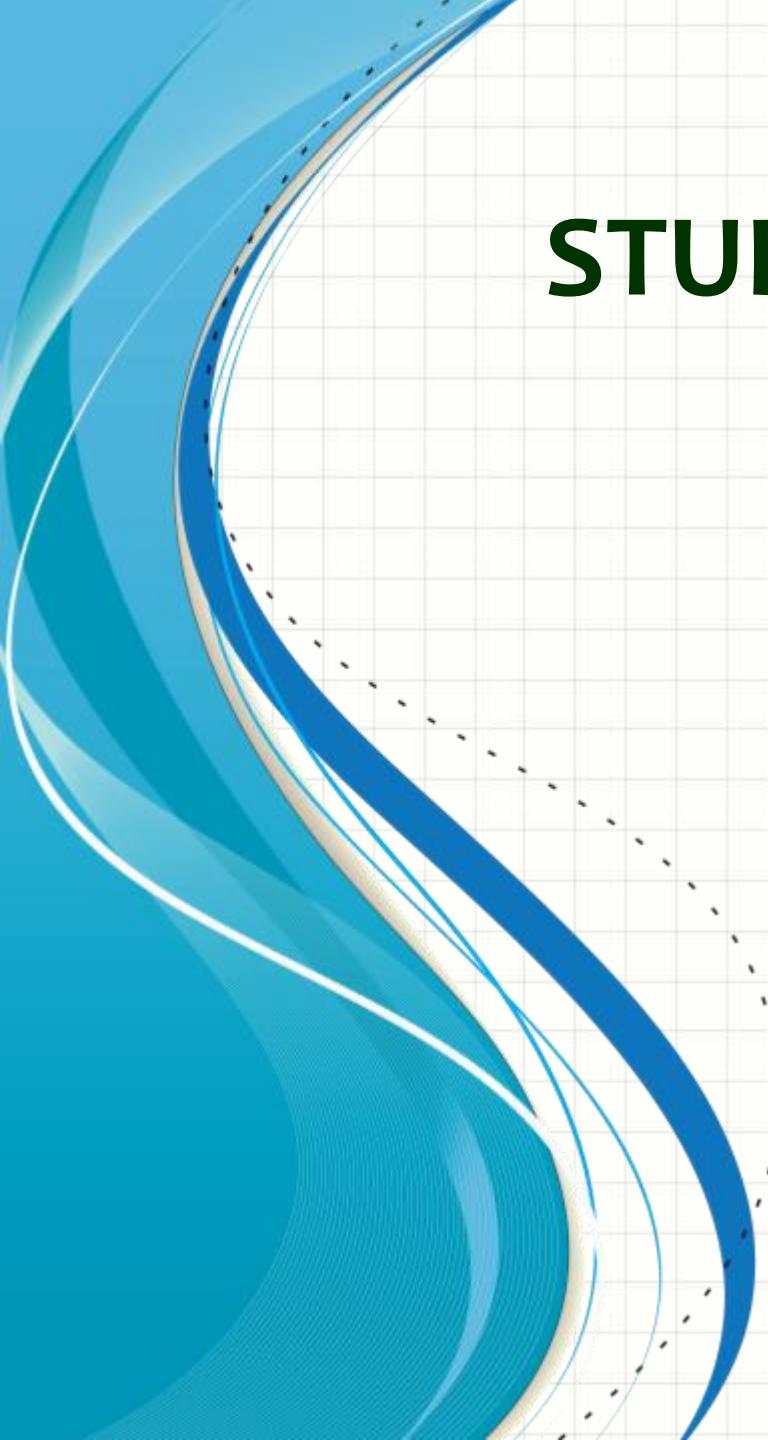
*Rule 2c - Recipients - whether approving or certifying officers or mere passive recipients - are liable to return the disallowed amounts respectively received by them, **unless they are able to show that the amounts they received were genuinely given in consideration of services rendered**

✓ On personnel benefits received

REMEDIES

-WHAT TO DO

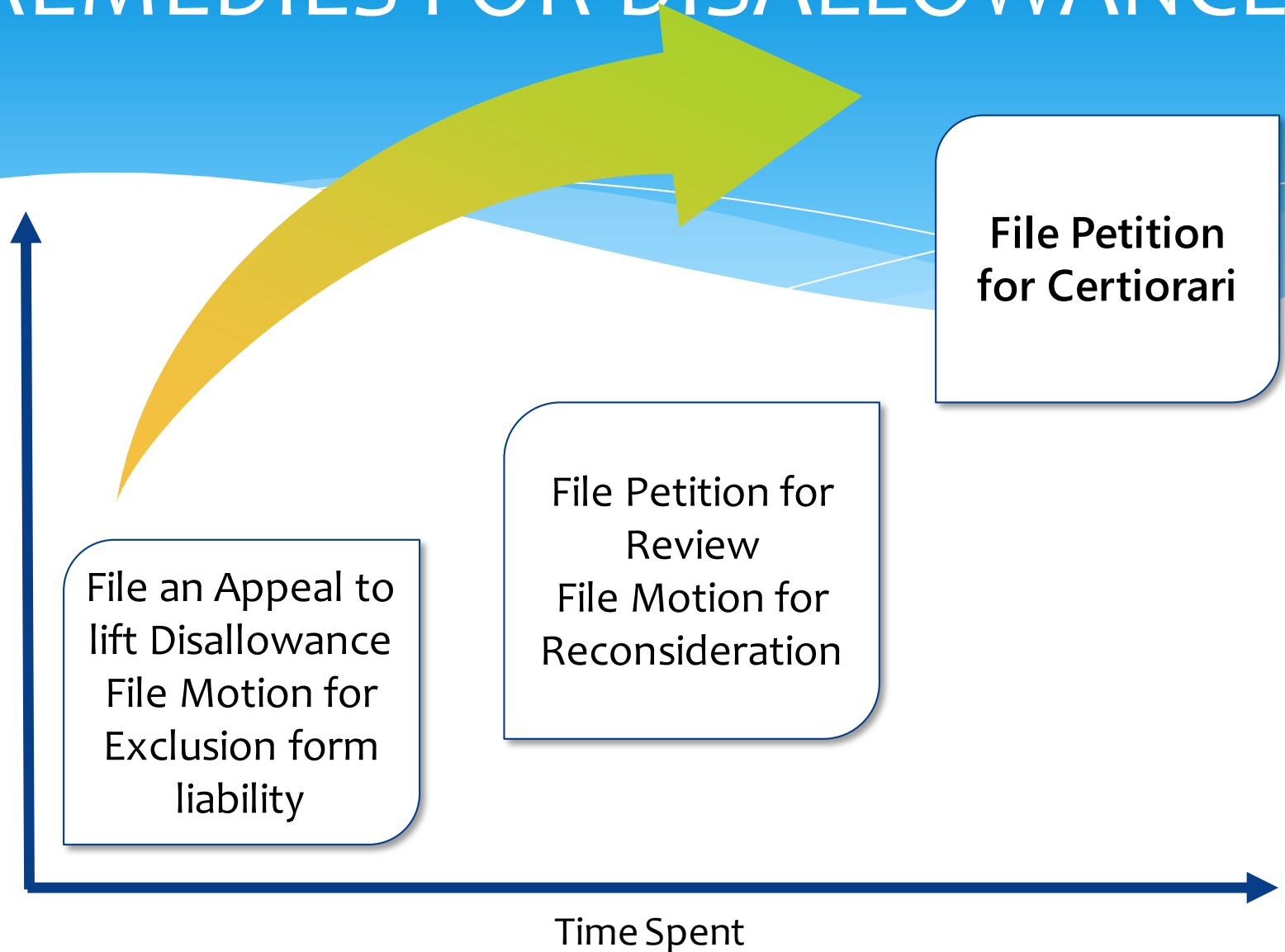




STUDY THE NOTICE OF DISALLOWANCE


- ✓ Analyze the reason for the disallowance
- ✓ Analyze participation

REMEDIES FOR DISALLOWANCES

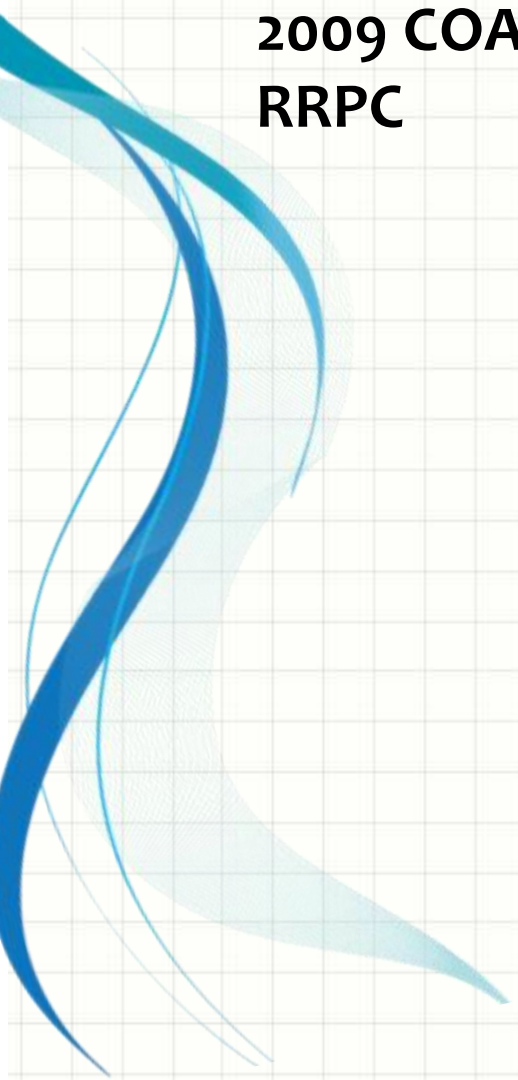


What happens if we fail to file an appeal from the ND within the six-month reglementary period?

- ✓ In the absence of an appeal filed within the six-month reglementary period, the decision of auditor shall become final and executory.
- ✓ A Notice of Finality of Decision (NFD) will be issued accordingly by the Audit Team Leader and Supervising Auditor.
- ✓ If the persons liable refuse or fail to settle their liability under the disallowance/charge after the same has become final and executory, a COA Order of Execution (COE) shall be issued by the Director to enforce settlement of the audit disallowance/charge.
- ✓ The agency cashier / treasurer / officer of the agency charged with the payment of salaries is authorized to withhold payment of salary and other money due to persons liable by virtue of the COE.



Appeal - the process of elevating to the Regional/Cluster Director or the Assistant Commissioner, or to the Commission Proper, as the case may be, any decision order or ruling of the Auditor or the Regional/Cluster Director, or the Assistant Commissioners to the Commission Proper



**Rule V,
Section 1,
2009 COA
RRPC**

- ✓ Who May Appeal. - An aggrieved party may appeal from the decision of the Auditor to the Director who has jurisdiction over the agency under audit.
- Appellant - the party who appeals the final order or decision of the Auditor, Regional/Cluster Director, or the Assistant Commissioner of the Local, Corporate or National Government Audit Sector


How Appeal Taken.

Rule V, Section 2

- ✓ Where to file? With the Regional Director having jurisdiction over the place where auditee is situated. (Item II.C of COA Circular No. 2019-002)

Rule IX, Section 3

- ✓ ***Mode of Filing.*** - The filing of pleadings, motions and other papers may be done either by personal delivery or by registered mail.
----if made thru registered mail, filing date is the date of mailing



Section 4. Other Modes of Filing. -
Pleadings, motions and other papers sent by ordinary mail, by private messengerial services, or by any mode other than personal delivery or registered mail, **shall be deemed filed only on the date and time they are actually received.**


Rule IX, 2009 COA RRPC

Rule V,
Section 2

✓ Proof of service of a copy to the Auditor shall be attached to the Appeal Memorandum.



FILING FEE AND LEGAL RESEARCH FUND

- ✓ Pay filing fee and Legal Research Fund(LRF) with the Regional Cashier if appeal is filed personally
 - ✓ If appeal is filed thru registered mail, the filing fee and LRF should be paid thru a postal money order
 - ✓ Filing fee and LRF
 - ✓ $\frac{1}{10}$ of 1% of the amount involved; provided the total filing fee shall not exceed P20,000.00 (COA Res No. 2013-016)
 - ✓ LRF - 1% of the filing fee (COA Res No.
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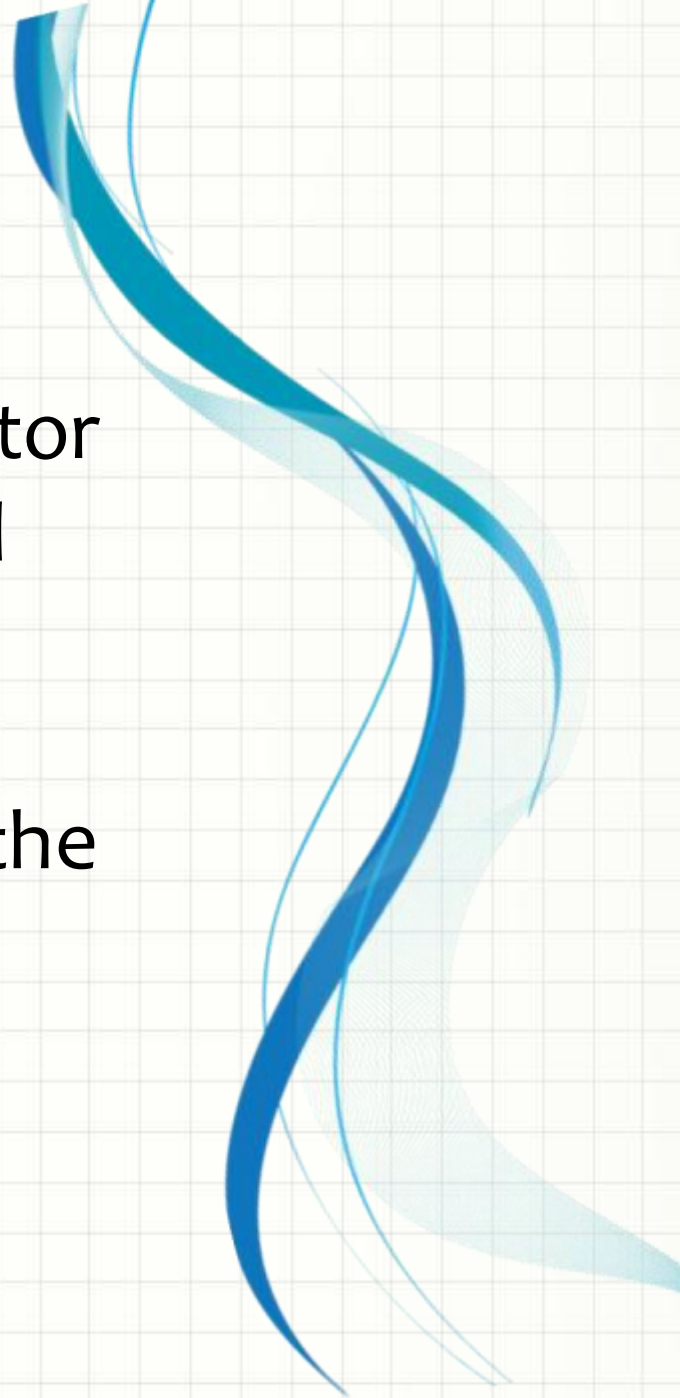
Rule V,
Section
4, 2009
COA
RRPC

When Appeal Taken - An Appeal must be filed within six (6) months after receipt of the decision appealed from.

6 MOS = 180 DAYS

Section 5. Interruption of Time to Appeal. - The receipt by the Director of the Appeal Memorandum shall stop the running of the period to appeal which shall resume to run upon receipt by the appellant of the Director's decision.

Rule V, 2009 RRPC



Rule V,
Section 10

Section 10. Motion for Reconsideration Not Allowed. - The Director shall not entertain a motion for reconsideration of his decision and any such motion shall be returned to the movant without action and with the advise for him to file an appeal instead to the ASB or CP as the case may be, pursuant to Rule VI or Rule VII hereof.


NOT

ALLOWED

PETITION FOR REVIEW BEFORE THE COMMISSION PROPER (RULE VII)

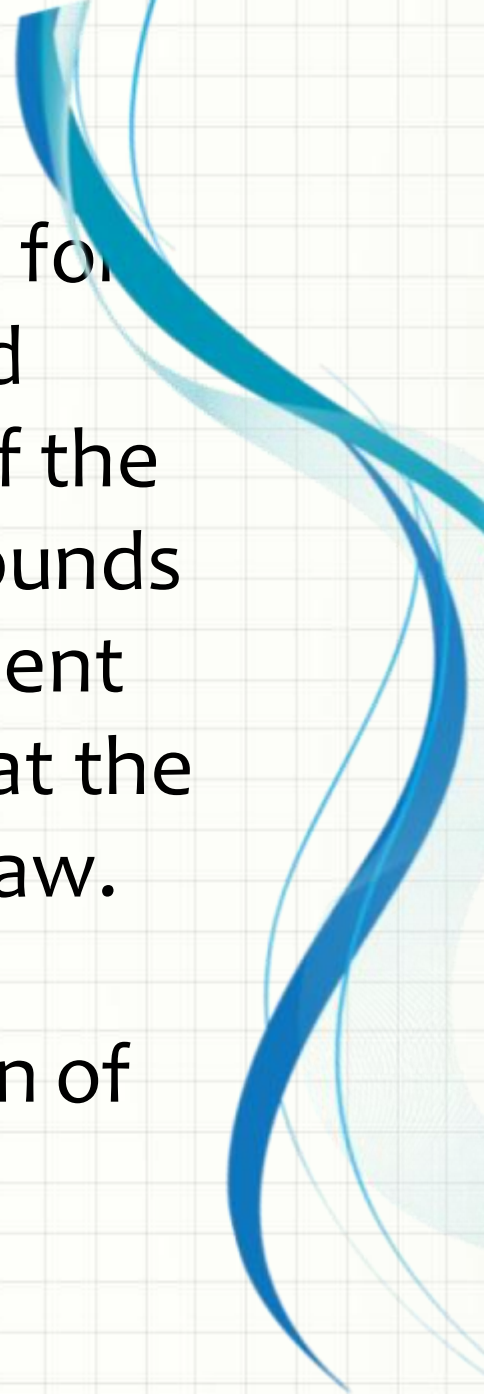
Who files? - The party aggrieved by a decision of the Director may appeal to the Commission Proper.

How to file? - by filing a Petition For Review(PFR) in five (5) legible copies, with the Commission Secretariat, a copy of which shall be served on the Director who rendered the decision. Proof of service thereof shall be attached to the petition together with the proof of payment of the filing fee prescribed under these Rules.

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- ✓ When to file PFR - shall be taken within the time remaining of the six (6) months period under Section 4, Rule V

Rule X

Section 10. Motion for Reconsideration. - A motion for reconsideration may be filed within the time remaining of the period to appeal, on the grounds that the evidence is insufficient to justify the decision; or that the said decision is contrary to law. Only one (1) motion for reconsideration of a decision of the Commission shall be entertained.



JUDICIAL REVIEW

RULE XII

Section 1. Petition for Certiorari. - Any decision, order or resolution of the Commission may be brought to the Supreme Court on certiorari by the aggrieved party within thirty (30) days from receipt of a copy thereof in the manner provided by law and the Rules of Court.

When the decision, order or resolution adversely affects the interest of any government agency, the appeal may be taken by the proper head of that agency.

Public office is a public trust. Public officers and employees must, at all times, be accountable to the people, serve them with utmost responsibility, integrity, loyalty, and efficiency; act with patriotism and justice, and lead modest lives.

Thank
you
so
much!





