

THE NEW ADMINISTRATIVE DISCIPLINARY RULES ON SEXUAL HARASSMENT CASES*

It has been stated that the Civil Service Commission has the power to issue rules and regulations pertaining to standards for the personal conduct of those in the government service. Hence, the Commission has exercised such prerogative and promulgated this New Administrative Disciplinary Rules defining the administrative offense of sexual harassment and prescribing the minimum procedure for the administrative investigation, prosecution and resolution of sexual harassment cases. The Rules stem from the CSC's recognition of the need for uniform rules and regulations concerning the issue, as well as from the conviction that sexual harassment affects the morale and undermines the principles of merit and professionalism of the bureaucracy. In coming out, with the said Rules, the CSC also hopes to encourage victims to speak out against sexual harassment, and to "send a strong signal" to would be offenders that their actions will not go unpunished.

But the success of the new Rules lies in the cooperation of the heads of national and local government agencies as well as state colleges and universities whose duty is to implement the Rules or modify existing ones in conformity with the new issuance. Failure to do so within six months of the Rules' effectivity also makes the head of agency liable for Neglect of Duty. Equally important, they are tasked to develop training

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programs for officials and employees alike so as to promote better understanding of sexual harassment, create the conditions that will discourage if not fully prevent its occurrence, and ensure proper investigation and prosecution of sexual harassment cases. Should the heads of agencies take this task seriously, they will make a significant contribution towards eliminating sexual harassment as well as fostering gender equality in the workplace.

On the other hand, women and men in the rank and file play an equally significant role in the promulgation of these Rules. They must not only be aware of their rights, but must fight for these as well. While the fear of being stigmatized or inviting retaliatory measures is understandable, suffering in silence can only cause greater pain and humiliation to oneself, while the perpetrator goes off to victimize others with impunity.

The Commission, the agencies and the employees are important stakeholders in making sexual harassment an unwelcome and unpardonable offense in the bureaucracy.

Coverage of the Administrative Disciplinary Rules

The Administrative Disciplinary Rules on Sexual Harassment Cases apply to all officials and employees in government, whether in the Career or Non-Career service and holding any level of position, including Presidential appointees and elective officials regardless of status, in the national or local government, state colleges and universities, including government-owned or controlled corporations, with original charters.

While consonant with the provisions of R.A. 7877 or the Anti-Sexual Harassment Act, the Rules nonetheless seek to remedy the weaknesses in the law by providing for, among others, a wider coverage in terms of subjects, for it concerns all public workplaces and educational and training institutions. It also

widens the definition of the “offender” in that the respondent need not have moral ascendancy over the complainant, thereby recognizing the commission of sexual harassment between peers or co-workers. As stated clearly by Section 3 of the Rules, sexual harassment can be “committed by a government employee or official in a work-related, training or education related environment.”

Defining Sexual Harassment

How to define sexual harassment has been the subject of intense debate since the promulgation of RA 7877. Besides limiting the situations from which the offense of sexual harassment would arise, the law mentions *authority, influence, and moral ascendancy* as element of the crime. It further elaborates that the perpetrator make a *demand, request or a requirement* for a *sexual favor*, regardless of whether such demand, request or requirement is accepted by the victim.

The problem arises in the interpretation of *demand, request or requirement*. It is observed that such is commonly interpreted as “verbal,” that is, words must be uttered, and uttered before the commission of the act being complained of. Moreover, how to construe the element of authority, influence or moral ascendancy is subject to intense debate. In one case promulgated as CSC Resolution 00-0563, the Commission construed said element strictly and ruled that the higher rank of respondent is not *per se* proof of authority, influence or moral ascendancy over the complainant. Hence, the Commission required “clear and convincing proof” that rank had been asserted to facilitate the sexual harassment. On the other hand, it is argued that while strict construction may be justified in criminal cases, a different standard ought to be set for administrative cases; moreover, the

hierarchical culture in the public sector is such that a higher rank categorically gives authority or power over the lower rank.

Sexual favor is another term subject to contention, with one argument saying that it is not equivalent to sexual advance," the latter being not constitutive of sexual harassment since it does not involve a prior demand, request or requirement, e.g., stealing a kiss. On the other hand, it has been strongly submitted that in such a case as stealing a kiss, the doer has in fact appropriated unto himself the power to decide on such demand, request or requirement without the benefit of asking the other person's permission. He has actually demanded by proceeding to obtain the sexual favor right away, with the victim not even getting a chance to accept or reject it. As eloquently put by one author—“(W)hat differentiates a “solicitation” from the execution of the act involved in the solicitation? Both are part of the continuum of sexually aggressive behavior that must be proscribed. To trivialize or ignore one gives license to the commission of the other.”

Unlike RA 7877, the CSC's Memorandum Circular No. 19 (s. 1994) sought to define sexual harassment in the broader sense. It did not require authority, influence or moral ascendancy as an element of sexual harassment, and it simplified the conditions under which the offending act (sexual advance, request for sexual favor, or other verbal or physical conduct of sexual nature) is deemed committed. The Commission, through CSC Res. 95-6161, subsequently merged the two definitions contained in RA 7877 and Memorandum Circular No. 19.

Clear definition of a crime is crucial since it involves the elements that need to be proved, and thus, the kind and amount of defense the respondent may invoke. Eventually, this determines the facts upon which the decision will be based and whether the agency or the court arrived at a proper interpretation of law.

To this end, the new Administrative Disciplinary Rules seek to settle problematic and debatable terms by defining sexual harassment as follows:

The administrative offense of sexual harassment is an act, or a series of acts, involving any unwelcome sexual advance, request or demand for a sexual favor, or other verbal or physical behavior of sexual nature, committed by a government employee or official in a work-related, training or education-related environment of the person complained of.

(a) Work-related sexual harassment is committed under the following circumstances:

- submission to or rejection of the act or series of acts, is used as a basis for any employment decision (including but not limited to, matters related to hiring, promotion, raise in salary, job security, benefits and other personnel action) affecting the applicant/employee; or
- the act or series of acts have the purpose or effect of interfering with the complainant's work performance, or creating an intimidating, hostile or offensive work environment; or
- the act, or series of acts might reasonably be expected to cause discrimination, insecurity, discomfort, offense or humiliation to a complainant who may be a co-employee, applicant, customer, or ward of the person complained of.

(b) Education or Training related sexual harassment is committed against one who is under the actual or constructive care, custody or supervision of the offender, or against one whose education, training, apprenticeship, internship or tutorship is directly or constructively entrusted to, or is provided by, the offender, when:

- (1) submission to or rejection of the act or series of acts is used as a basis for any decision affecting the complainant, including, but not limited to, the giving of a grade, the granting of honors or a scholarship, the payment of a stipend or allowance, or the giving of any benefit, privilege or consideration;
- (2) the act or series of acts have the purpose or effect of interfering with the performance, or creating an intimidating, hostile or offensive academic environment of the complainant; or
- (3) the act or series of acts might reasonably be expected to cause discrimination, insecurity, discomfort, offense or humiliation to a complainant who may be a trainee, apprentice, intern, tutee or ward of the person complained of.

Sexual harassment may take place:

1. in the premises of the workplace or office or of the school or training institution;
2. in any place where the parties were found as a result of work or education or training responsibilities or relations;
3. at work or education or training related social functions;
4. while on official business outside the office or school or training institution or during work or school or training-related travel;
5. at official conferences, fora, symposia or training sessions; or
6. by telephone, cellular phone, fax machine, electronic mail.

Other Salient Features

To strengthen the campaign against sexual harassment, the Rules provide for the following:

- it is not necessary for the offender to have moral ascendancy influence or authority over the respondent (Sec. 3)
- that a request/demand for sexual favor should characterize the act of sexual harassment, is not necessary in all instances (Sec. 3)
- a case/complaint of sexual harassment may still be given due course even if the complainant desists, as long as there exists substantial evidence, apart from the testimony of the complainant, to further pursue the case (Sec. 12-d)
- confidentiality of the preliminary investigation is required (Sec. 14)
- time frame were provided for specific stages in the formal investigation to ensure that the investigation of cases would not be protracted (Sec. 16, Sec. 17, Sec. 24, Sec. 36, Sec. 37).

Classification of Acts of Sexual Harassment

Rule 10 of the Administrative Rules classify various forms of sexual harassment as grave, less grave and slight offenses, as spelled out below.

Grave Offenses shall include but are not limited to:

1. unwanted touching of private parts of the body (genitalia, buttocks, and breast);
2. sexual assault;
3. malicious touching;
4. requesting sexual favor in exchange for employment, promotion, local or foreign travels, favorable working conditions or assignments, a passing grade, the granting

- of honors or scholarship, or the grant of benefits or payment of a stipend or allowance; and,
5. other analogous cases (i.e. other acts of similar nature and gravity).

Less Grave Offenses shall include but are not limited to:

1. unwanted touching or brushing against a victim's body;
2. pinching not falling under grave offenses;
3. derogatory or degrading remarks or innuendoes directed toward the members of one sex or one's sexual orientation or used to describe a person; verbal abuse or threats with sexual overtones; and other analogous cases.

The following shall be considered *Light Offenses*:

1. surreptitiously looking or stealing a look at a person's private part or worn undergarments;
2. telling sexist/smatty jokes or sending these through text, electronic mail or other similar means, causing embarrassment or offense and carried out after the offender has been advised that they are offensive or embarrassing or, even without such advice, when they are by their nature clearly embarrassing, offensive or vulgar;
3. malicious leering or ogling;
4. the display of sexually offensive pictures, materials or graffiti;
5. unwelcome inquiries or comments about a person's sex life;
6. unwelcome sexual flirtation, advances, propositions;
7. making offensive hand or body gestures at a victim;
8. persistent unwanted attention with sexual overtones;
9. unwelcome phone calls with sexual overtones causing discomfort, embarrassment, offense or insult to the receiver; and

10. other analogous cases.

Penalties

For Light Offenses:

- 1st offense — Reprimand
- 2nd offense — Fine or suspension not exceeding thirty (30) days
- 3rd offense — Dismissal

For Less Grave Offenses:

- 1st offense — Fine or suspension not less than thirty (30) days and not exceeding six (6) months
- 2nd offense — Dismissal

For Grave Offenses:

- Dismissal

Committee on Decorum and Investigation of Sexual Harassment Cases (CODI)

Section 17 of the Rules requires that a Committee on Decorum and Investigation (CODI) be created in all national or local agencies of the government, state colleges and universities, including government-owned or controlled corporations with original charter. The CODI shall perform the following functions:

- (a) Receive complaints of sexual harassment;
- (b) Investigate sexual harassment complaints in accordance with the prescribed procedure;
- (c) Submit a report of its findings with the corresponding recommendation to the disciplining authority for decision;

- (d) Lead in the conduct of discussions about sexual harassment within the agency or institution to increase understanding and prevent incidents of sexual harassment.

Localized CODIs established in the regional or field offices, as the case may be, of the agency or institution have the same functions as stated above and shall submit the *report of investigation* with its recommendation directly to the disciplining authority.

When a member of the CODI is the complainant or the person complained of in a sexual harassment case, he/she shall be *disqualified* from membership in said Committee.

Composition. In a *work-related environment*, the CODI shall be composed of at least one (1) representative each from the management, the accredited union, if any, the second level employees, and from the first level employees, duly selected by the concerned unit (i.e. union, first or second level of agency). In an *educational or training institution*, the CODI shall be composed of at least one (1) representative from the administration, the trainers, teachers, instructors, professors or coaches, and students or trainees, as the case may be, duly selected by the level concerned.

Rule Making Powers. The agency may formulate its own rules governing the term of office of its members, which should not be more than two (2) years, selection process, and other matters pertaining to the functions of the CODI not otherwise provided in these Rules.

When the Respondent is Head of Agency

For purposes of the manual, the first group of heads of agencies may be further categorized into (a) department

secretaries appointed by the President, (b) local government executives, and (c) presidents of state colleges and universities. There are also intermediate heads of agencies, including bureau heads and regional directors, whose appointing authorities are the department secretaries or the President. Mention must also be made of a third group composed of officials who are not heads of agencies but are presidential appointees regardless of whether they are career or non-career officials.

A distinction among the three groups mentioned above is helpful because, for each group, there is a need to clarify (a) which CODI would hear a case filed against an official belonging to that group, (b) where the CODI hearing the case submit their recommendation, and (c) what implementing rule on sexual harassment shall be followed.

Heads of Agencies. Referring to department secretaries appointed by the President, complaints against them may be filed with their respective CODI's or with the respective disciplining authority. If the latter is the one who received the complaint, he/she will forward it to the CODI for formal investigation. The CODI shall, in turn, submit its recommendation to the disciplining authority. Hence, if the person complained of is a department secretary, the recommendation of the department's CODI will be submitted to the President. The agency's rules on sexual harassment will be applied in resolving the complaint.

Local Government Executives. For elected officials, Section 61 of the Local Government Code shall apply:

SEC. 61. Form and Filing of Administrative Complaints.

A verified complaint against any erring local elective official shall be prepared as follows:

- A complaint against any elective official of a province, a highly urbanized city, an independent component city or

component city shall be filed before the Office of the President;

- A complaint against any elective official of a municipality shall be filed before the *Sangguniang Panlalawigan* whose decision may be appealed to the Office of the President; and,
- A complaint against any elective barangay official shall be filed before the Sangguniang Panlungsod or Sangguniang Bayan concerned whose decision shall be final and executory.

The section quoted above indicates the different disciplining authority for particular levels of elective officials. Thus, a case filed against a local government executive shall be heard formally by the CODI of his/her local government unit (LGU), applying the rules that the LGU has adopted. The complaint may also be filed with the CODI or with the respective disciplining authorities as indicated above. The CODI's recommendation shall be submitted to the appropriate disciplining authority.

Heads of State Universities and Colleges. The CODI of the college or university shall conduct the formal investigation, and shall submit its recommendation to the appointing authority (Board of Regents/Trustees). The rules of the state college or university on sexual harassment will apply.

Intermediate Heads of Agencies. For these persons such as bureau heads, the rules promulgated by the national agency or department where the bureau belongs, if applicable, shall govern. However, there is nothing in the law that prohibits regional offices or bureaus from formulating their own rules apart from that of the national agency or department where it belongs. It can also be inferred from Section 9 of the Rules that regional offices (and bureaus, by analogy) must have a localized CODI. In both cases, the recommendation of the CODI shall be

submitted to the disciplining authority (also the appointing authority) who may be the department secretary or the President.

Presidential Appointees (Career and Non-Career). The rules and the CODI of the agency where the official belongs shall be used. The recommendation of the CODI shall be forwarded to the President.

In all instances, the CODI's recommendations are ultimately subject to the decision of the disciplining authority.

Jurisdiction

As an administrative agency with its own personnel in the Commission proper and in its Regional Field Offices, the CSC has exclusive original jurisdiction over such personnel regarding cases of sexual harassment. The same is true with the other agencies covered by the Rules, which is composed of all national or local government agencies, including government-owned or controlled corporations with original charter, and state colleges and universities.

Complaints from other agencies that have been filed with the CSC, alleging acts constituting sexual harassment as defined in the new Rules, shall be remanded to the agency where the alleged offender is employed, for appropriate action, in accordance with their own rules and regulations on sexual harassment. Absent such, or pending the promulgation of such Rules, any such complaint shall be administratively prosecuted, resolved and adjudicated by the agency on the basis of the new Rules.

Decisions of heads of departments, agencies, provinces, cities, municipalities and other instrumentalities imposing a penalty exceeding thirty (30) days suspension or fine in an amount exceeding thirty days' salary, i.e., in cases of grave and less grave offenses, may be appealed with the CSC within fifteen (15) days from receipt of said decision.

The Court of Appeals may entertain petitions for review under Rule 43 of the Revised Rules of Court from a decision of the CSC.

Duties of Agencies

All the aforementioned agencies are directed to promulgate their own Rules and Regulations, in consultation with their employees, and in conformity with the Administrative Disciplinary Rules. These agencies are given six (6) months from the effectivity of the new Rules on August 5, 2001. Within a month from the date of promulgation of their own rules, these agencies shall submit an authenticated copy of such to the CSC for approval, and the list of members of the Committee on Decorum and Investigation.

All these agencies are likewise mandated to develop an education and training program for their officials and employees and the members of their Committee on Decorum and Investigation to increase understanding about sexual harassment, prevent its occurrence, and ensure proper investigation, prosecution and resolution of such cases.

Liabilities of Heads of Agencies

Failure to abide by these provisions will subject the head of the office or agency to a charge of Neglect of Duty. Under the Administrative Code of 1987, the offense of Gross Neglect of Duty is penalized with Dismissal on first offense. On the other hand, the offense of Simple Neglect of Duty is penalized with suspension for one month and one day to six months for the first offense, and dismissal upon commission of second offense. Since the Administrative Disciplinary Rules on Sexual Harassment do not specify when the head of agency shall be liable for

Gross Neglect or Simple Neglect of Duty, it may be surmised that the pertinent offense can fall under either category depending on the circumstances of the case. Gross Neglect of Duty has been defined as “wanton negligence and open disregard for one’s duties and functions” (CSC Res. No. 00-1543). Simple Neglect of Duty, on the other hand, implies a failure to give due attention especially to the performance of a task or duty (CSC Res. No. 97-3280).

Duty of the Commission

The CSC is mandated to render technical assistance to agencies in the formulation of their own rules and regulations on sexual harassment. The CSC shall monitor, through its Field Offices, the implementation of the directive as well as the conduct of the training programs by such agencies. The CSC shall also lead in the development and implementation of an intervention and prevention program on sexual harassment.

Procedure on Sexual Harassment Cases

The filing of a sexual harassment case commences with the filing of a complaint. Upon receipt of a complaint that is sufficient in form and substance, the CODI shall require the person complained of to submit a Counter-Affidavit/comment under oath within three (3) days from receipt of notice, furnishing a copy to the complainant.

Subsequently, a preliminary investigation shall be conducted to determine whether a prima facie case exists to warrant the issuance of a formal charge. A preliminary investigation involves the examination of documents submitted by the person complained of, as well as documents readily available from other government offices. These documents shall include the comment,

if one was submitted. Otherwise, the preliminary investigation will have to proceed with or without the comment. Its proceedings shall be confidential.

If a prima facie case is established, a formal charge shall be issued by the disciplining authority within three (3) working days from receipt of the Investigation Report. In the absence of a prima facie case, the complaint shall be dismissed within the same period.

The formal charge shall contain a specification of the charge(s), a brief statement of material or relevant facts, accompanied by certified true copies of the documentary evidence, if any sworn statements of witnesses, a directive to answer charge(s) in writing under oath in not less than seventy-two (72) hours from receipt thereof, an advice for the respondent to indicate in his/her answer whether or not he/she elects a formal investigation, and a notice that he/she is entitled to be assisted by a counsel of his/her choice.

If the respondent fails to file his/her answer to the formal charge within seventy-two (72) hours from receipt thereof without justifiable cause, he/she shall be considered to have waived his/her right thereto and formal investigation may commence.

Upon the complainant's petition or the CODI's recommendation, the disciplining authority, at any time after the respondent has been formally charged, may order the latter's preventive suspension if there are reasons to believe that he/she is probably guilty of the charges that would warrant his/her removal from the service. The preventive suspension is meant to preclude the possibility of undue influence or pressure on the witnesses or tampering of documentary evidence on file with the office.

Although the respondent does not request a formal investigation, the CODI shall nevertheless conduct one, if it deems such investigation as necessary to decide the case. It shall be finished within thirty (30) days from the issuance of the formal charge or the receipt of the answer unless the disciplining authority extends the period.

At the commencement of the formal investigation, the CODI may conduct a pre-hearing conference to agree on matters that would expedite the hearing. The hearing proper as well as the order of presentation of evidence is governed by Sections 26 to 35 of the Administrative Disciplinary Rules on Sexual Harassment Cases.

Within fifteen (15) days after the conclusion of the formal investigation, a report containing a narration of the material facts established during the investigation, the findings and the evidence supporting said findings, as well as the recommendations, shall be submitted by the CODI to the disciplining authority together with the complete records of the case. The disciplining authority shall render his decision on the case within thirty (30) days from receipt of the report.

A decision where a penalty of suspension for not more than thirty (30) days or a fine in an amount not exceeding thirty (30) days salary is imposed, shall be final and executory. However, a penalty of suspension exceeding thirty (30) days or a fine exceeding thirty (30) days salary shall be appealable to the Commission unless a motion for reconsideration is filed before the lapse of the reglementary period. An appeal shall not stop the decision from being executory except where the penalty is removal from service; in this case, the decision of the bureau of the office head shall be executory only after confirmation by the Secretary concerned.

The requirements for filing an appeal are found in Section 47 of the Administrative Disciplinary Rules on Sexual Harassment Cases.

If the case on appeal with the Commission Proper is remanded to the proper disciplining authority for further investigation due to violation of respondent's rights to due process, the disciplining authority shall finish the investigation within three (3) calendar months from the date of receipt of the records from the Commission unless the investigation is delayed due to the fault, negligence or petition of the person complained of, or an extension is granted by the Commission Proper in meritorious cases.

Modes of Review

A complainant may elevate the decision dismissing a complaint for lack of a prima facie case before the Commission Proper through a Petition for Review within fifteen (15) days from receipt of said decisions.

After the Commission has rendered a decision on appeal, a party may file an appeal before the Court of Appeals by way of a Petition for Review under Rule 43 of the 1997 Revised Rules of Court.

When the disciplining authority has acted without or in excess of jurisdiction, or with grave abuse of discretion amounting to lack or excess of jurisdiction and there is no appeal, nor any plain, speedy and adequate remedy in the ordinary course of law, a person aggrieved by the decision may file a verified petition for certiorari in the proper court under Rule 65 of the Rules of Court. While petition is being heard, the disciplining authority's decision will become executory, unless a temporary restraining order is issued.