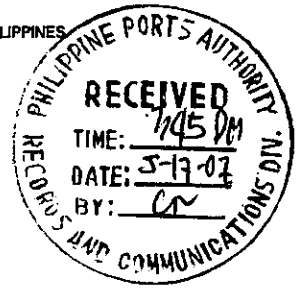




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MAY 17 2007

PPA MEMORANDUM ORDER
NO. 20 2007

SUBJECT : PPA ADMINISTRATIVE DISCIPLINARY RULES ON SEXUAL HARASSMENT CASES

Pursuant to Civil Service Commission Resolution Nos. 01-0940 dated May 21, 2001 and 040579 dated May 24, 2004 and CSC Memorandum Circular 17, s. 2001 dated July 23, 2001, the Philippine Ports Authority hereby promulgates the herein rules and procedures in the administrative investigation, prosecution and resolution of sexual harassment cases.

I. POLICY STATEMENT AND OBJECTIVE

It is the policy of the Philippine Ports Authority to afford protection; preserve the dignity of employees and their right to humane, just and safe work environment, ensure equal work opportunities with the end-in-view of promoting high morale and efficiency in the workplace. In this pursuit, the PPA Administrative Disciplinary Rules on Sexual Harassment Cases aims to:

1. provide a responsive and impartial mechanism defining the administrative offense of sexual harassment, establish an effective complaint or grievance process and prescribing the standard procedure for its administrative investigation, prosecution and resolution;
2. create a lead entity/unit mandated to provide necessary assistance and protection to victims of sexual harassment; the litigation of their cases and recovery;
3. actively encourage victims of sexual harassment to report any incidence thereof and assure the victims of a speedy, impartial and confidential resolution of their cases; and
4. serve as a preemptive measure to prevent the occurrence of sexual harassment in the workplace.

II. COVERAGE

These rules shall apply to all PPA officials and employees, whether permanent, presidential appointee, temporary, co-terminous, casual or contractual.

III. DEFINITION

Sexual Harassment – is an act, or series of acts, involving any unwelcome sexual advance, request or demand for sexual favor, or other verbal or physical behavior of a sexual nature, committed by a PPA official or employee in a work-related environment of the person complained of.

VISION

By 2010, PPA shall have met the international standards in port facilities and services in at least ten (10) ports in support of national development.

MISSION

We commit to provide reliable and responsive services in our ports, sustain development of our port communities and the environment, and be a model corporate agency of the government.

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IV. WORK-RELATED SEXUAL HARASSMENT IS COMMITTED UNDER THE FOLLOWING CIRCUMSTANCES:

1. submission to or rejection of the act or series of acts 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 any other personnel actions) affecting the applicant/employee; or
2. the act or series of acts which have the purpose or effect of interfering with the complainant's work performance, or creating an intimidating, hostile or offensive environment of the complainant; or
3. the act or series of acts which 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.

Sexual harassment may take place:

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

V. FORMS OF SEXUAL HARASSMENT

A. Physical

1. Malicious touching
2. Overt sexual advances
3. Gestures with lewd insinuation

B. Verbal, such as, but not limited to, requests or demands for sexual favors, and lurid remarks

C. Use of objects, pictures or graphics, letters or written notes with sexual underpinnings

D. Other forms analogous to the foregoing.

VI. PERSONS LIABLE FOR SEXUAL HARASSMENT

Any PPA official or employee, regardless of sex, is liable for sexual harassment when he/she:

1. directly participates in the execution of any act of sexual harassment as defined by these Rules;
2. induces or directs another or others to commit sexual harassment as defined by these Rules;
3. cooperates in the commission of sexual harassment by another through an act without which the sexual harassment would not have been accomplished;

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VII. COMMITTEE ON DECORUM AND INVESTIGATION

A. COMPOSITION

A Committee on Decorum and Investigation (CODI) is hereby created in the Head Office, Port District Offices (PDOs) and Port Management Offices (PMOs) to be composed of the following:

HEAD OFFICE CODI

- | | | |
|------------------|---|---|
| Chairperson | - | Manager, Human Resource Management Department |
| Vice-Chairperson | - | Vice Chairperson, PPA GAD Focal Point |
| Members | - | Manager, Investigation and Litigation Division, LSD |
| | - | Acting Superintendent, Port Police Department |
| | - | PANTALAN First Level Employee Representative |
| | - | PANTALAN Second Level Employee Representative |
| Secretariat | - | Personnel Relations Section, Personnel Div., HRMD |

PDO CODI

- | | | |
|------------------|---|---|
| Chairperson | - | Port District Manager |
| Vice-Chairperson | - | Manager, Legal Affairs Division |
| Members | - | Manager, Technical Services Division |
| | - | Chairperson, PDO GAD Focal Point |
| | - | PANTALAN First Level Employee Representative |
| | - | PANTALAN Second Level Employee Representative |
| Secretariat | - | Administrative Section, RMD |

PMO CODI

- | | | |
|------------------|---|---|
| Chairperson | - | Port Manager |
| Vice Chairperson | - | Chief Corporate Attorney, Legal Staff |
| Members | - | Manager, Resource Management Division |
| | - | PMO GAD Focal Point Member |
| | - | PANTALAN Second Level Employee Representative |
| | - | PANTALAN First Level Employee Representative |
| Secretariat | - | Administrative Section, RMD |

The PANTALAN first level representative shall participate only in the resolution of sexual harassment complaints of first level employees while the PANTALAN second level representative shall participate in the resolution of sexual harassment complaints of the second level employees.

The PANTALAN First and Second Level Employee representatives shall not participate in the resolution of sexual harassment complaint of third level officials.

The term of office of the Chairman and members of HO/PDO/PMO CODI shall not be more than two (2) years, from the date of approval of the Civil Service Commission of this Memorandum Order. Thereafter, the HO/PDO/PMO shall reconstitute a new CODI.

Any member of the Committee shall not take part in any stage of the proceedings where his/her impartiality might reasonably be questioned. These cases include, but not limited to the following:

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1. When a member of the Committee is the complainant or the person complained of in a sexual harassment complaint;
2. When a member of the Committee is related by consanguinity or affinity to the complainant or the person complained of within the sixth (6th) degree or to the counsel of either parties within the fourth (4th) degree;
3. When a member is the immediate supervisor of the complainant or the person complained of; and
4. Other circumstances analogous to the foregoing.

B. DUTIES AND FUNCTIONS OF THE COMMITTEE ON DECORUM AND INVESTIGATION (CODI)

1. Leads in the conduct of discussions and broad information dissemination of relevant issues and concerns on sexual harassment within the Head Office, Port District Office and Port Management Office to increase understanding and prevent incidents of sexual harassment.
2. Receives and evaluates complaints of sexual harassment.
3. Resolves sexual harassment complaints in accordance with the prescribed procedure.
4. Submits report of its finding with the corresponding recommendation to the Manager Legal Services Department, for review and endorsement to the General Manager.
5. Coordinates with concerned government agencies and non-government organizations in developing programs and procedures to prevent and/or eliminate the incidents of sexual harassment.
6. Performs related functions as may be necessary to carry out its purpose or mandate.

Considering the serious nature of sexual harassment cases, proceedings before the CODI shall at all times be held with strict confidentiality.

For this purpose, the CODI shall ensure the privacy of the parties and shall at no time provide/divulge to other parties any document/ information relative to the complaint of sexual harassment except upon written request, subject to the approval of the General Manager.

VIII. JURISDICTION OF THE CIVIL SERVICE COMMISSION ON SEXUAL HARASSMENT COMPLAINTS

In case a complaint alleging acts constituting sexual harassment as defined herein is filed by a PPA employee directly with the Civil Service Commission, the same shall be remanded to PPA for appropriate action in accordance with the herein guidelines.

The Civil Service Commission may opt to take cognizance of complaints of sexual harassment only in the following instances:

1. When the PPA General Manager is the subject of complaint.
2. When a chairperson/vice-chairperson member of Head Office/PDO/PMO CODI is the subject of the complaint.

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3. When there is unreasonable delay by the CODI in complying with the periods provided in these Rules for the investigation and adjudication of a sexual harassment complaint.

For this purpose, there is unreasonable delay when any of the periods provided in this Rules lapsed for a period of more than thirty (30) days without justifiable reason.

IX. PROCEDURES IN THE DISPOSITION OF SEXUAL HARASSMENT CASES

Rule I – PRE-FILING STAGE

- Section 1.** The CODI shall provide assistance to an alleged victim of sexual harassment, which may include counseling, referral to an agency offering professional help, and advise options available before the filing of the complaint.

Rule II – FILING OF THE COMPLAINT

- Section 1.** All complaints of sexual harassment shall be filed at any time with the General Manager or directly with the CODI. Any complaint for sexual harassment received by the said (GM) official shall be immediately referred to the CODI, for appropriate action.

- Section 2.** The complaint must be in writing, signed and sworn to by the complainant / offended party and shall contain the following:

1. full name and address of the complainant;
2. the full name, address and position of the person complained of;
3. a brief statement of the relevant facts that constitute the act of sexual harassment;
4. evidence or supporting document (if any);
5. certification of non-forum shopping.

In the absence of any of the aforementioned requirements, the complaint shall be dismissed without prejudice to its re-filing. Where the complaint is not under oath, the complainant shall be summoned by the CODI to swear to the truth of the allegations in the complaint.

- Section 3.** Complaints sent by telegram, radiogram, electronic mail or similar means of communications shall be considered non-filed unless the complainant shall comply with the requirements provided in Section 2, Rule II within 10 days from receipt of the notice for compliance.

- Section 4.** Withdrawal of the complaint at any stage of the proceedings shall not preclude the Committee on Decorum and Investigation (CODI) from proceeding with the investigation where there is obvious truth or merit to the allegations in the complaint or where there is documentary or direct evidence that can prove the guilt of the person complained of.

Rule III – ACTION ON THE COMPLAINT

- Section 1.** Upon receipt of a complaint that is sufficient in substance and form, the Committee on Decorum and Investigation (CODI) shall require the person complained of to submit a Counter-Affidavit/Comment under oath within three (3) working days from receipt of the notice furnishing a copy thereof to the complainant, otherwise the Counter-Affidavit/Comment shall be considered as not filed.

Rule IV – PRELIMINARY INVESTIGATION

Section 1. A preliminary investigation shall be conducted by the Committee on Decorum and Investigation. It involves the ex parte examination of records and documents submitted by the complainant and the person complained of, as well as documents readily available from other government offices. During the said investigation, the parties are given the opportunity to submit affidavits and counter-affidavits. Failure of the person complained of to submit his counter-affidavit shall be considered a waiver thereof.

Upon receipt of the counter-affidavit or comment under oath, the CODI, if necessary, may summon the parties to a conference to propound clarificatory and other relevant questions.

Section 2. The investigation shall commence not later than five (5) working days from receipt of the complaint by the CODI and shall be terminated within fifteen (15) working days.

Section 3. Within five (5) working days from the termination of the preliminary investigation, the CODI shall submit its Investigation Report and the complete records of the case to the Legal Services Department, for review and endorsement to the General Manager.

Section 4. If a prima facie case is established during the investigation, a formal charge shall be issued by the General Manager within three (3) working days from receipt of the Investigation Report. In the absence of a prima facie case, the complaint shall be dismissed.

Rule V – FORMAL CHARGE

Section 1. After finding of a prima facie case, the General Manager shall formally charge the person complained of. The formal charge shall contain the following:

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

Section 2. No Motion to Dismiss, request for clarification or bill of particulars which are obviously intended to delay the proceedings shall be allowed. If such pleading is received by the CODI the same shall be considered part of the answer which may be filed with the remaining period for filing the answer.

Section 3. The Answer, which must be in writing and under oath, shall be specific and shall contain material facts and applicable laws, if any, including documentary evidence, sworn statements covering testimonies of witnesses, if there be any, in support of respondent's case. It shall also include a statement indicating whether or not he/she elects a formal investigation.

Section 4. Refusal or failure of the respondent to file an answer to the formal charge within seventy-two (72) hours from receipt thereof, without justifiable cause, shall be considered a waiver of his/her right thereto, and the formal investigation may commence.

Rule VI – PREVENTIVE SUSPENSION

Section 1. Upon petition of the complainant or motu proprio upon the recommendation of the CODI, at any time after the service of the Formal Charge to the respondent, the General Manager may order the preventive suspension of the respondent during the formal investigation, if there are reasons to believe that he/she is probably guilty of the charges which would warrant his/her removal from the service.

An order of preventive suspension may be issued to temporarily remove the respondent from the scene of his/her misfeasance or malfeasance and to preclude the possibility of his/her exerting undue influence or pressure on the witnesses against him/her or tampering of documentary evidence on file with the Philippine Ports Authority.

Section 2. When the administrative case against the respondent under preventive suspension is not finally decided by the General Manager within the period of ninety (90) days after the date of his/her preventive suspension, unless otherwise provided by special law, he/she shall be automatically reinstated into the service; provided that when the delay in the disposition of the case is due to the fault, negligence or petition of the respondent, the period of delay should not be included in the counting of the ninety (90) calendar days period of preventive suspension. Provided further that should the respondent be on paternity/maternity leave, said preventive suspension shall be deferred or interrupted until such time that said leave has been fully enjoyed.

Section 3. The respondent may file a motion for reconsideration with the General Manager or may elevate the same to the Civil Service Commission by way of an appeal within fifteen (15) days from receipt thereof.

Rule VII – FORMAL INVESTIGATION

Section 1. Although the respondent does not request a formal investigation, one shall nevertheless be conducted by the CODI if it deems that such investigation is necessary to decide the case judiciously.

Section 2. The investigation shall be held not earlier than five (5) working days nor later than ten (10) working days from receipt of the respondent's answer. Said investigation shall be finished within thirty (30) working days from the issuance of the formal charge or the receipt of the answer unless the period is extended by the General Manager in meritorious cases.

Section 3. At the commencement of the formal investigation, the CODI may conduct a pre-hearing conference for the parties to appear, consider and agree on the following;

- a) stipulation of facts;
- b) simplification of issues;
- c) identification and marking of evidence of the parties;
- d) waiver of objections to admissibility of evidence;
- e) limiting the number of witnesses, and their names
- f) dates of subsequent hearings; and
- g) such other matters as may aid in the prompt and just resolution of the case.

The parties may submit position papers/memoranda and submit the case for resolution based on the result of the pre-hearing conference without any need for further hearing.

Section 4. Hearings shall be conducted on the hearing dates set by the CODI or as agreed upon during the pre-hearing conference.

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Where no pre-hearing conference is conducted, the parties, their counsel and witnesses, if any, shall be given a notice of at least five (5) working days before the first scheduled hearing specifying the time, date and place of the said hearing and subsequent hearings. Thereafter, the schedule of hearings previously set shall be strictly followed without further notice. A party shall be granted three (3) postponements upon oral or written requests. Further postponement may be granted only upon written request and subject to the discretion of the CODI.

- Section 5.** If the respondent fails to appear during the scheduled hearings despite due notice, the investigation shall proceed **ex parte** and the respondent is deemed to have waived his right to be present and to submit evidence in his favor during those hearings.
- Section 6.** At the start of the hearing, the CODI shall note the appearances of the parties and shall proceed with the reception of evidence for the complainant.
- Section 7.** If the respondent appears without the aid of a counsel, he/she shall be deemed to have waived his/her right to counsel.
- Section 8.** Before taking the testimony of a witness, the CODI shall place him/her under oath and then take his/her name, address, civil status, age and place of employment.
- Section 9.** Any person representing any of the parties before any hearing or investigation shall manifest orally or in writing his/her appearance for either the respondent or complainant, stating his/her full name and exact address where he/she can be served with notices and other documents. Any pleading or appearance made without complying with the above stated requirement shall not be recognized.
- Section 10.** Unless the CODI directs otherwise, the order of hearing shall be as follows:
- a) The complainant shall present evidence in support of the charge;
 - b) The respondent shall offer evidence in support of his/her defense; and
 - c) The complainant may then offer rebuttal evidence, and the respondent, sur-rebuttal evidence.

Every witness may be examined in the following order:

- a) Direct examination by the proponent;
 - b) Cross-examination by the opponent;
 - c) Re-direct examination by the proponent; and
 - d) Re-cross examination by the opponent.
- Section 11.** A sworn statement of a witness, properly identified and affirmed by the witness before the CODI shall constitute his/her direct testimony.
- Section 12.** When the presentation of evidence has been concluded, the parties shall formally offer their evidence either orally or in writing and thereafter objections thereto may also be made either orally or in writing. Thereafter, both parties may be given time to submit their respective memorandum which in no case shall be beyond five (5) working days after the termination of the investigation. Failure to submit the memorandum within the given period shall be considered a waiver thereof.
- Section 13.** All objections raised during the hearing shall be resolved by the CODI. However, objections that cannot be ruled upon by CODI shall be noted with the information that the same shall be

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included in the memorandum of the concerned party to be ruled upon by the General Manager.

- Section 14.** The CODI shall accept all evidence deemed material and relevant to the case. In case of doubt, the CODI shall allow the admission of evidence subject to the objection interposed against its admission.
- Section 15.** All documentary evidence or exhibits shall be properly marked by letter (A, B, C, etc.) if presented by the complainant and by numbers (1, 2, 3, etc.) if presented by the respondent. These shall form part of the complete records of the case.
- Section 16.** If a party desires the attendance of a witness or the production of documents or things, he/she shall make a request for the issuance of the necessary subpoena at least three (3) working days before the scheduled hearing.
- Section 17.** The CODI may issue subpoena **ad testificandum** to compel the attendance of witnesses and subpoena **duces tecum** for the production of documents or objects.
- Section 18.** The proceedings of the formal investigation must be recorded either through shorthand or stenotype or by any other method.
- Section 19.** The pendency of any administrative case shall not disqualify the respondent for promotion or from claiming maternity/paternity benefits. For this purpose, an administrative case shall be construed as pending when the General Manager has issued a formal charge.
- Section 20.** Within fifteen (15) working days after 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 Legal Services Department, for review and endorsement to the General Manager. The complete records of the case shall be attached to the report of investigation.

The complete records shall be systematically and chronologically arranged, paged and securely bound to prevent loss. A table of contents shall be prepared. Whoever is in-charge of the transmittal of the complete records shall be held responsible for any loss or suppression of pages thereof.

Rule VIII - DECISION

- Section 1.** The General Manager shall render his decision on the case within thirty (30) working days from receipt of the Report of Investigation.
- Section 2.** A decision rendered by the General Manager where a penalty of suspension for not more than thirty (30) working days or a fine in an amount not exceeding thirty (30) working days' salary is imposed shall be final and executory. However, if the penalty imposed is suspension exceeding thirty (30) working days, or a fine in an amount exceeding thirty (30) working days' salary, the same shall be final and executory after the lapse of the reglementary period for filing of a motion for reconsideration or an appeal and no such pleading has been filed.

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Rule IX – MOTION FOR RECONSIDERATION

- Section 1.** The party adversely affected by the decision may file a motion for reconsideration with the General Manager who rendered the same within fifteen (15) working days from receipt of thereof.
- Section 2.** A motion for reconsideration shall be deemed filed on the date stamped on the official copy by the proper receiving authority, and in case it was sent by mail, on the date shown by the postmark on the envelop which shall be attached to the records of the case.
- Section 3.** The motion for reconsideration shall be based on any of the following:
- a) New evidence has been discovered which materially affects the decision rendered; or
 - b) The decision is not supported by the evidence on record; or
 - c) Errors of law or irregularities have been committed prejudicial to the interest of the movant.
- Section 4.** Only one motion for reconsideration shall be entertained.
- Section 5.** The filing of a motion for reconsideration within the reglementary period of fifteen (15) working days shall stay the execution of the decision sought to be reconsidered.

Rule X - APPEAL

- Section 1.** The procedure on appeal under Civil Service Commission Resolution No. 01-0940 is hereby adopted and shall govern the procedure on appeals, copy of said Resolution is hereto attached hereto as Annex "A" and made an integral part hereof.

X. CLASSIFICATION OF ACTS OF SEXUAL HARASSMENT

Sexual harassment is classified as grave, less grave and light offenses.

A. 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 for sexual favor in exchange for employment, promotion, local or foreign travels, the granting of scholarship/training or grant of benefits or allowance, favorable working conditions or assignments; and
5. other analogous cases.

B. Less Grave Offenses shall include but 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 innuendos directed toward the members of one sex or one's sexual orientation or used to describe a person;

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2. pinching not falling under grave offenses;
3. derogatory or degrading remarks or innuendos directed toward the members of one sex or one's sexual orientation or used to describe a person;
4. verbal abuse or threats with sexual overtones; and
5. other analogous cases.

C. **Light Offenses** shall include but not limited to:

1. surreptitiously looking or stealing a look at a person's private part or worn undergarments;
2. telling sexist/smitty 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 by their nature they are clearly embarrassing, offensive and vulgar;
3. malicious leering or ogling;
4. 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 an employee;
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.

XI. ADMINISTRATIVE LIABILITIES

Any person who is found guilty of sexual harassment shall, after investigation, be meted the penalty corresponding to the gravity and seriousness of the offense.

The penalty for light, less grave and grave offenses are as follows:

A. **For light offenses:**

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

B. **For less grave offenses:**

- | | | |
|-------------|---|--|
| 1st Offense | - | Fine or suspension not less than thirty (30) days and not exceeding six (6) months |
|-------------|---|--|

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If the respondent is found guilty of two or more charges or counts, the penalty to be imposed should be that corresponding to the most serious charge or count and the rest shall be considered as aggravating circumstances.

XII. REPEALING CLAUSE

All PPA rules and regulations and other issuances or parts thereof inconsistent with the provisions this Memorandum Order are hereby repealed, superseded or modified accordingly.

XIII. EFFECTIVITY

This Memorandum Order takes effect upon approval of the Civil Service Commission.



ATTY. OSCAR M. SEVILLA
General Manager

HRMD/ACH/PD/RCP/mrdo

**APPROVED ON 18 APRIL 2007 BY ATTY. ANICIA MARASIGAN-DE LIMA,
ASSISTANT COMMISSIONER, CIVIL SERVICE COMMISSION, NCR**



Republic of the Philippines
CIVIL SERVICE COMMISSION
National Capital Region

March 7, 2007

ATTY. OSCAR M. SEVILLA
General Manager
Philippine Ports Authority
22 Muelle De San Francisco,
South Harbor, Port Area,
Manila 1018

PPA RECORDS/RECD BY.

APR 18 PM 3:28

Dear Atty. Sevilla:

This has reference to the Administrative Disciplinary Rules on Sexual Harassment of the Philippine Ports Authority (PPA) which was submitted to this Office for review and approval.

Please be informed that this Office finds the submitted Rules consistent with the basic standards/policies prescribed by the Commission in **CSC Resolution No. 01-0940 (Administrative Disciplinary Rules on Sexual Harassment Cases)**.

Accordingly, this Office hereby approves the said Rules pursuant to **item 1, paragraph 5 of CSC Memorandum Circular No. 19, s. 2002**.

We look forward to the faithful observance by your office of the approved Rules.

Very truly yours,

ATTY. ANICIA MARASIGAN-DE LIMA
Assistant Commissioner

LSD/A4/C3/PPA.SH

20070418135



Serbisyo Sibil: Isang Daang Taong Paglilingkod

M. C. No. 17 s. 2001

MEMORANDUM CIRCULAR

TO: ALL HEADS OF DEPARTMENTS, BUREAUS AND AGENCIES OF THE NATIONAL GOVERNMENT, LOCAL GOVERNMENT UNITS, INCLUDING GOVERNMENT-OWNED AND CONTROLLED CORPORATIONS WITH ORIGINAL CHARTERS, STATE UNIVERSITIES AND COLLEGES, AND ALL CIVIL SERVICE OFFICIALS AND EMPLOYEES

SUBJECT: ADMINISTRATIVE DISCIPLINARY RULES ON SEXUAL HARASSMENT CASES IN THE CIVIL SERVICE

The Commission in CSC Resolution No. 01-0940 dated May 21, 2001 promulgated the "Administrative Disciplinary Rules on Sexual Harassment Cases". It defines the administrative offense of sexual harassment and prescribes the standard procedure for the administrative investigation, prosecution and resolution of sexual harassment cases in the public sector.

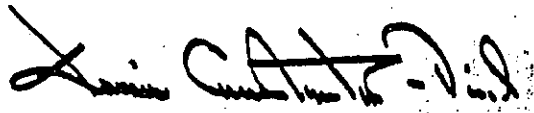
CSC Resolution No. 01-0940 was published on July 20, 2001 in the Philippine Daily Inquirer and pursuant to Section 68 of the Rules, it will take effect fifteen (15) days after its publication in a newspaper of general circulation, hence on August 5, 2001.

In connection therewith, all concerned are reminded that under Section 58 of the Rules, all agencies of the government shall promulgate or modify their rules and regulations in conformity with CSC Resolution No. 01-0940, in consultation with their employees, within six (6) months from the effectivity of said Resolution and those who fail to do so shall be charged with Neglect of Duty.

Further, all agencies of the government are also reminded of their duty to submit their rules and regulations on sexual harassment cases to the Commission within one (1) month from the date of their promulgation. However, in case there is a complaint alleging acts constituting sexual harassment during the period the agency is still in the process of promulgation or modifying its own rules and regulations, the case shall be administratively prosecuted, resolved and adjudicated based on Resolution No. 01-0940.

For strict compliance.

Quezon City, July 23, 2001.



KARINA CONSTANTINO-DAVID
Chairperson

July 23, 2001

OLA

FPG/esd

Administrative
Disciplinary Rules on
Sexual Harassment
Cases



Office for Legal Affairs

THE COMMITTEE

Assistant Commissioner Jesse J. Caberoy ✓

Director IV Florencio P. Gabriel, Jr. ✓

Ally. Alma L. Flores-Foronda

Ally. Ronald Agustin R. Estrada

Ally. Enrico Antonio M. Lusica

Ally. Maricel C. Garcia

Ally. Cherrle M. Sagana

Ally. Jose Ricuerdo P. Flores

FOREWORD

Sexual harassment is a serious matter.

It is an affront to human dignity which inevitably leaves lifelong scars on its victims—sometimes physical, often psychological. Sexual harassment is always destructive; it can destroy an individual's sense of self, career, and home life, among others.

Sexual harassment can take place anywhere—in school, at home, in churches and even the most public of places. The widespread availability of such devices as mobile phones, pagers, e-mail has, ironically, given sexual harassers additional tools to pursue their prey.

Sexual harassment most often occurs in the workplace and social scientists have long identified the causative factors: the long hours of enforced proximity among office staff; the tedium and boredom in the workplace; Philippine socio-cultural factors relative to gender, and most of all, the superior-subordinate relationships in organizations which can so easily be abused and misused.

Sexual harassment has been recognized as a serious problem such that numerous international covenants, the Philippine Constitution and Philippine laws specifically address the issue.

But despite these laws and rules, sexual harassment not only remains an unwelcome reality in the workplace: many, including victims themselves, are of the view that obtaining justice and redress is a painful, embarrassing, expensive and futile effort. Many victims are intimidated by the process involved while clever harassers and their counsels are quick to spot loopholes, technicalities and grey areas. Thus to this day, sexual harassment is still trivialized, jocularly treated as a petty and harmless prank.

This is the rationale behind these Rules: to set forth in crystal clear terms the procedural and substantive requirements to pursue cases involving sexual harassment, beginning with the basic issue of what acts constitute sexual harassment and under what specific circumstances. The focus is mainly on sexual harassment as an administrative offense in government offices and agencies. Since government is the single biggest employer in the country, I have high hopes

that these Rules will go a long way in encouraging victims to speak up and fight for their rights. I also hope that it will send a strong signal to harassers that there exist specific rules against sexual harassment for which there are specific penalties.

The Civil Service Commission, in its avowed role as sentinel and vanguard of professionalism and meritocracy in the Philippine bureaucracy, endeavors to contribute its humble share in the struggle to cleanse our workplace of the vestiges of sexual harassment and render it safe for all. Thus, this Administrative Disciplinary Rules on Sexual Harassment Cases, which was conceived and devised after rigorous researches and series of public consultations, will serve as our formidable weapon in the fight against this particular form of human rights violation.


KARINA CONSTANTINO-DAVID
Chairperson

May 2001

RESOLUTION NO. 01-0940

WHEREAS, Section 11, Article II of the 1987 Philippine Constitution provides that the State values the dignity of every human person and guarantees full respect for human rights;

WHEREAS, the Vienna Declaration and Programme of Action of the World Conference on Human Rights (June 1993) and the Beijing Declaration and Platform for Action of the Fourth World Conference on Women (September 1995) reaffirm the equal rights and inherent human dignity of women and men, and particularly the human rights of women as an inalienable, integral and indivisible part of all human rights and fundamental freedoms;

WHEREAS, the Philippines, with other States of the World, has reaffirmed, through the Vienna Declaration and Programme of Action and the Beijing Declaration and Platform for Action, its solemn commitment to fulfill its obligations to promote universal respect for, and observance and protection of all human rights and fundamental freedoms for all in accordance with the Charter of the United Nations, other instruments relating to human rights, and international law;

WHEREAS, the Vienna Declaration and Programme of Action stresses that all forms of sexual harassment are incompatible with the dignity and worth of the human person and must be eliminated by legal measures and through national action, while the Beijing Platform for Action specifically mandates Governments to "enact and/or reinforce penal, civil, labour and administrative sanctions in domestic legislation to punish and redress" violence against women including sexual harassment and "develop programmes and procedures to eliminate sexual harassment and other forms of violence against women in all educational institutions, workplaces and elsewhere;"

WHEREAS, the Philippine Congress enacted on February 14, 1995 Republic Act No. 7877, otherwise known as the "Anti-Sexual Harassment Act of 1995", which took effect on March 5, 1995 and declares unlawful sexual harassment against women and men in the employment, education and training environment;

WHEREAS, Section 4 (a) of Republic Act No. 7877 mandates every employer or head of agency in the public and private sectors to promulgate rules and regulations prescribing the procedure for the investigation of sexual harassment cases and the administrative sanctions therefor;

WHEREAS, there is a need to devise uniform rules and regulations particularly in the definition of the administrative offense of sexual harassment and the sanctions therefor, and the procedures for the administrative investigation, prosecution and adjudication of sexual harassment cases.

WHEREAS, Section 3, Article IX (B) of the 1987 Constitution, Section 1 and Section 12 (19), Subtitle A, Title I of Book V of the Administrative Code of 1987 (Executive Order No. 292) and Section 4 (B), Republic Act No. 6713, otherwise known as the "Code of Conduct and Ethical Standards for Public Officials and Employees," empower the Civil Service Commission, as the central personnel agency of the Government, to adopt positive measures for the observance of substantive and procedural administrative standards, including standards for the personal conduct of government officials and employees, in order to promote morale, efficiency, integrity, responsiveness and progressiveness in the entire government bureaucracy;

WHEREAS, Section 4 of Republic Act No. 6713 provides norms of personal conduct for public officials and employees to observe in the performance of official duties, and specifically directs that they shall act without discrimination against anyone, and shall at all times respect the rights of others and refrain from doing acts contrary to law, good morals, good customs, public policy, public order, public safety and public interest;

WHEREAS, sexual harassment violates the dignity of workers and their right to a humane, just and safe work environment, defeats and impairs morale and efficiency in the workplace, and violates the merit and fitness principle in the civil service.

NOW THEREFORE, this Commission hereby promulgates these Rules and Regulations defining the administrative offense of sexual harassment and prescribing the standard procedure for the administrative investigation, prosecution and resolution of sexual harassment cases in the public sector.

RULE I. TITLE

Section 1. These Rules shall be known as the Administrative Disciplinary Rules on Sexual Harassment Cases.

RULE II. COVERAGE

Section 2. These Rules shall 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.

RULE III. DEFINITION

Section 3. For the purpose of these Rules, 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 a 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:

- (1) 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 any other personnel action) affecting the applicant/employee; or
- (2) 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
- (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 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.

Section 4. 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 or electronic mail.

RULE IV. FORMS OF SEXUAL HARASSMENT

Section 5. The following are illustrative forms of sexual harassment:

(a) Physical

- i. Malicious Touching
- ii. Overt sexual advances
- iii. Gestures with lewd insinuation.

(b) Verbal, such as but not limited to, requests or demands for sexual favors, and lewd remarks

*terrible
humiliating*

- (c) Use of objects, pictures or graphics, letters or written notes with sexual underpinnings
- (d) Other forms analogous to the foregoing.

RULE V. PERSONS LIABLE FOR SEXUAL HARASSMENT

Section 6. Any government official or employee, regardless of sex, is liable for sexual harassment when he/she:

- (a) directly participates in the execution of any act of sexual harassment as defined by these Rules;
- (b) induces or directs another or others to commit sexual harassment as defined by these Rules;
- (c) cooperates in the commission of sexual harassment by another through an act without which the sexual harassment would not have been accomplished;
- (d) cooperates in the commission of sexual harassment by another through previous or simultaneous acts.

RULE VI. COMMITTEE ON DECORUM AND INVESTIGATION OF SEXUAL HARASSMENT CASES

Section 7. A Committee on Decorum and Investigation shall 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 Committee 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 Committees on Decorum and Investigation established in the regional or field offices, as the case may be, of the agency or institution shall 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 Committee is the complainant or the person complained of in a sexual harassment case, he/she shall be disqualified from being a member of the Committee.

Section 8. Composition. In a work-related environment, a Committee on Decorum and Investigation 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 unit concerned.

In an educational or training institution, the Committee 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.

Section 9. The agency may formulate its own rules governing the term of office of its members which should not be more than two years, and other matters pertaining to the functions of the Committee not otherwise provided in these Rules.

RULE VII. PRE-FILING STANDARD OPERATING PROCEDURES IN ATTENDING TO VICTIMS OF SEXUAL HARASSMENT

Section 10. The Pre-filing Stage. - The agency may adopt mechanisms to provide assistance to an alleged victim of sexual harassment which may include counseling, referral to an agency offering professional help and advice on options available before the filing of the complaint.

RULE VIII. STANDARD PROCEDURAL REQUIREMENTS

Section 11. The procedural rules provided hereunder are the standard requirements in handling a sexual harassment case.

Section 12. Complaint.

- a. The complaint may be filed at any time with the disciplining authority of the office or agency, or with the Committee on Decorum and Investigation. Upon receipt of the complaint by the disciplining authority of the office or agency, the same shall be transmitted to the Committee on Decorum and Investigation, if there is any. In the absence of a Committee on Decorum and Investigation, the head of office or agency shall immediately cause the creation of a Committee on Decorum and Investigation in accordance with the law and rules, and transmit the complaint to the Committee.
- b. The complaint must be in writing, signed and sworn to by the complainant. It shall contain the following:
 1. the full name and address of the complainant;
 2. the full name, address, and position of the respondent;
 3. a brief statement of the relevant facts;
 4. evidence, in support of the complaint, if any;
 5. a certification of non-forum shopping.

In the absence of any one of the aforementioned requirements, the complaint shall be dismissed without prejudice to its refiling.

Where the complaint is not under oath, the complainant shall be summoned by the Committee to swear to the truth of the allegations in the complaint.

- c. Complaints sent by telegram, radiogram, electronic mail or similar means of communication shall be considered non-filed unless the complainant shall comply with the requirements provided in Section 12(b) within ten (10) days from receipt of the notice for compliance.
- d. Withdrawal of the complaint at any stage of the proceedings shall not preclude the Committee from proceeding with the investigation where there is obvious truth or merit to the allegations in the complaint or where there is documentary or direct evidence that can prove the guilt of the person complained of.

Section 13. Action on the Complaint. - Upon receipt of a complaint that is sufficient in form and substance, the Committee on Decorum and Investigation shall require the person complained of to submit a Counter-Affidavit/Comment under oath within three (3) days from receipt of the notice, furnishing a copy thereof to the complainant, otherwise the Counter-Affidavit/Comment shall be considered as not filed.

Section 14. Preliminary Investigation. - A preliminary investigation shall be conducted by the Committee on Decorum and Investigation. The investigation involves the *ex parte* examination of documents submitted by the complainant and the person complained of, as well as documents readily available from other government offices.

During the preliminary investigation, the parties may submit affidavits and counter-affidavits.

Upon receipt of the counter-affidavit or comment under oath, the Committee on Decorum and Investigation may now recommend whether a *prima facie* case exists to warrant the issuance of a formal charge.

During preliminary investigation, proceedings before the Committee on Decorum and Investigation shall be held under strict confidentiality.

Section 15. Duration of the investigation. - A preliminary investigation shall commence not later than five (5) days from receipt of the complaint by the Committee on Decorum and Investigation and shall be terminated within fifteen (15) working days thereafter.

Section 16. Investigation Report. - Within five (5) working days from the termination of the preliminary investigation, the Committee on Decorum and Investigation shall submit the Investigation Report and the complete records of the case to the disciplining authority.

Section 17. Decision or Resolution After Preliminary Investigation. - If a *prima facie* case is established during the investigation, 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.

Section 18. Formal Charge. - After finding a *prima facie* case, the disciplining authority shall formally charge the person complained of. 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 covering the testimony of witnesses, a directive to answer the charge(s) in writing under oath in not less than seventy-two hours from receipt thereof, an advice for the respondent to indicate in his/her answer whether or not he/she elects a formal investigation of the charge(s) and a notice that he/she is entitled to be assisted by a counsel of his/her choice.

If the respondent has submitted his/her comment and counter-affidavits during the preliminary investigation, he/she shall be given the opportunity to submit additional evidence.

The Committee on Decorum and Investigation shall not entertain requests for clarification, bills of particulars or motions to dismiss which are obviously designed to delay the administrative proceeding. If any of these pleadings is filed by the respondent, the same shall be considered as part of his/her answer which he/she may file within the remaining period for filing the answer.

Section 19. Answer. - The answer, which must be in writing and under oath, shall be specific and shall contain material facts and applicable laws, if any, including documentary evidence, sworn statements covering testimonies of witnesses, if there be any, in support of respondent's case. It shall also include a statement indicating whether he/she elects a formal investigation.

Section 20. Failure to File an Answer. - If the respondent fails to or refuses 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 right thereto and formal investigation may commence.

Section 21. Preventive Suspension. - Upon petition of the complainant or *motu proprio* upon the recommendation of the Committee on Decorum and Investigation, at any time after the service of the Formal Charge to the respondent, the proper disciplining authority may order the preventive suspension of the respondent during the formal investigation, if there are reasons to believe that he/she is probably guilty of the charges which would warrant his/her removal from the service.