

**[DFA DEPARTMENT ORDER NO. 05-02, JANUARY
31, 2002, January 31, 2002]**

**RULES AND REGULATIONS ON ADMINISTRATIVE SEXUAL
HARASSMENT CASES**

EXPLANATORY NOTE

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

On 05 March 1995, Republic Act No. 7877, otherwise known as the "Anti-Sexual Harassment Act of 1995" took effect, declaring unlawful sexual harassment against women and men in the employment, education, and training environment. A person who violates the provisions of this law may be liable administratively, civilly, or criminally.

Section 4(a) of R.A. 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 administrative sanctions therefor. In compliance therewith, the Civil Service Commission issued CSC Resolution No. 01-0940 entitled "Administrative Disciplinary Rules on Sexual Administrative Cases." CSC Resolution No. 01-0940 set forth 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 as, distinguished from sexual harassment as a civil or criminal offense. The most important distinction is that in the administrative offense of sexual harassment, the requirement of authority, influence, or moral ascendancy of the offender found in Section 5 of R.A. No. 7877 is no longer necessary.

Under Section 58 of CSC Resolution No. 01-0940, all agencies of the government shall promulgate its rules and regulations in conformity with said Resolution, in consultation with its 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. In connection to this, Section 87 of the Philippine Foreign Service Act of 1991 empowers the Secretary of Foreign Affairs to issue such rules and regulations as may be necessary to implement the provisions of the Philippine Foreign Service Act as well as the provisions of acts, decrees, and orders which are not inconsistent with it.

Therefore, in view of the foregoing, the following are the 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 Department of Foreign Affairs.

RULE I

General Provisions

SECTION 1. Title. — These Rules shall be known as the Rules and Regulations on Administrative Sexual Harassment Cases.

SECTION 2. Coverage. — These Rules shall apply to all officers and employees of the Department of Foreign Affairs in the Home Office, the Regional Consular Offices (RCOs), and Foreign Service Posts (FSPs), whether in the Career or Non-Career service, and holding any level of position, or possessing permanent, temporary, casual, or contractual status, including consultants and detailed or seconded personnel. These Rules shall have suppletory application to the personnel of attached agencies of the Department of Foreign Affairs in the home office and personnel of attached services in the Foreign Service Posts.

The chiefs of mission who are commissioned by the President as ambassadors extraordinary and plenipotentiary shall not be investigated or separated from the Service unless there is an express written directive from the President.

SECTION 3. Definition of Terms — The terms hereunder shall be construed as follows:

- a. DEPARTMENT means the Department of Foreign Affairs.
- b. PRESIDENT means the President of the Philippines.
- c. SECRETARY means the Secretary of Foreign Affairs.
- d. BFSa means the Board of Foreign Service Administration.
- e.. CODI means the Committee on Decorum and Investigation.
- f. OPAS means the Office of Personnel and Administrative Services.
- g. GAD refers to Gender and Development.
- h. DISCIPLINING AUTHORITY refers to the President for all officers with the rank of Foreign Service Officer IV and higher; and to the Secretary for all other personnel referred into in Section 2, Rule I.
- i. RESPONDENT refers to the person who is formally charged by the BFSa.
- j. PERSON COMPLAINED OF refers to the person who is the subject of a complaint but who is not as yet formally charged by the BFSa.
- k. PARTY ADVERSELY AFFECTED refers to the respondent against whom a decision in a disciplinary case has been rendered.

l. FSO means Foreign Service Officer.

m. FSSO means Foreign Service Staff Officer.

n. FSSE means Foreign Service Staff Employee.

o. CSC means Civil Service Commission.

p. SERVICE means the Foreign Service of the Philippines which includes all personnel of the Department in the home office and the Foreign Service, including all persons covered under Section 2 of this Rule

q. RCOs refer to Regional Consular Offices.

r. FSPs refer to Foreign Service Posts.

SECTION 4. Filing.—Any affidavits, counter-affidavits, motions, petitions, appeals, or other pleadings required to be filed under this Department Order may be done so personally, by registered mail, or through the diplomatic pouch, if the person required to file is assigned abroad. The document or pleading shall be deemed filed on the date of receipt by the proper office stamped on the document or pleading, if filed personally; on the date of mailing, as shown by the post office stamp on the envelope or the registry receipt; and on the date submitted to the person in charge at Post for inclusion in the pouch list, if filed via diplomatic pouch.

SECTION 5. Computation of Time. — In computing any period of time prescribed or allowed by these Rules, or by order of the CODI, the BFSA, or the disciplining authority, the day of the act or event from which the designated period of time begins to run is to be excluded and the date of performance included. If the last day of the period, as thus computed, falls on a Saturday, a Sunday, or a legal holiday, the time shall not run until the next working day.

RULE II

Definition of Administrative Sexual Harassment

SECTION 6. For the purpose of these Rules, the offense of administrative 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 an officer or employee in a work related, training or education related environment of the person complained of.

(a) Work related administrative 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, local or foreign assignment, 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 administrative: 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 7. Administrative Sexual Harassment may take place:

1. in the Home Office, any of the RCOs, FSPs, or Honorary Consulates;

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 places enumerated in no. 1 above 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 III

Forms of Administrative Sexual Harassment

SECTION 8. The following are illustrative forms of administrative 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 lurid remarks

(c) Use of objects, pictures or graphics, letters or written notes with sexual underpinnings

(d) Other forms analogous to the foregoing.

RULE IV

Persons Liable for Administrative Sexual Harassment

SECTION 9. Any personnel of the Department under Section 2 of Rule I, regardless of sex, is liable for administrative sexual harassment when he/she:

(a) directly participates in the execution of any act of administrative sexual harassment as defined by these Rules;

(b) induces or directs another or others to commit administrative sexual harassment as defined by these Rules;

(c) cooperates in the commission of administrative sexual harassment by another through an act without which the administrative sexual harassment would not have been accomplished;

(d) cooperates in the commission of administrative sexual harassment by another through previous or simultaneous acts.

RULE V

Committee on Decorum and Investigation of Administrative Sexual Harassment Cases

SECTION 10. A Committee on Decorum and Investigation shall be created in the Home Office, in the RCOs, and wherever practicable, in the FSPs and Honorary Consulates.

The CODI shall perform the following functions:

(a) Receive complaints of administrative sexual harassment;

(b) Investigate administrative sexual harassment complaints in accordance with the prescribed procedure;

(c) Submit a report of its findings with the corresponding recommendation to the BFSa, which in turn shall submit its recommendation to the Secretary for decision. In cases involving officers with the rank of FSO IV and higher, the Secretary shall not decide on the case but shall submit his own recommendation to the President for decision;