

[DBP CIRCULAR NO. 24, October 08, 2013]

IMPLEMENTING GUIDELINES OF THE REVISED RULES ON ADMINISTRATIVE CASES (REVISED CIRCULAR NO. 12, SERIES OF 2008)

The following 2013 Implementing Guidelines on the Revised Rules on Administrative Cases^[1] are hereby prescribed:

RULE I. GENERAL PROVISIONS

Section 1. Title. These Guidelines shall be known as the 2013 Implementing Guidelines of the Revised Rules on Administrative Cases. (a)

Section 2. Coverage. These Guidelines shall apply to all disciplinary administrative cases brought before the Development Bank of the Philippines ("Bank") against its officials and employees.

Sexual harassment cases shall be primarily governed by the Administrative Rules on Sexual Harassment Cases (DBP Circular No. 3, dated 27 March 2007). These Guidelines shall apply suppletorily to said cases.

Section 3. Initiation of Administrative Cases. Administrative proceedings may be initiated by the Disciplining Authority *motu proprio* or upon complaint of any other person, natural or juridical.

Section 4. Nature of Proceedings. The proceedings under these Rules shall be summary in nature and shall be conducted without necessarily adhering to the technical rules of procedure and evidence applicable to judicial proceedings. Records of administrative proceedings, as well as reports and recommendations to the Disciplining Authority, are strictly confidential. Personnel assigned to handle or assist in the handling of administrative cases are deemed to be performing highly confidential functions.

Section 5. Construction. These Guidelines shall be liberally construed in order to promote their objective in obtaining just, speedy, and inexpensive disposition of administrative cases.

RULE II. DEFINITION OF TERMS

Section 1. Adverse Report. An adverse report includes audit reports and other management reports of irregularities that may serve as a basis for disciplinary action.

Section 2. Agency. Agency refers to any bureau, office, commission, administration, board, committee, institute, corporation with original charter, whether performing governmental or proprietary functions, or any other unit of the national government as well as provincial, city or municipal government.

Section 3. Bank. Bank refers to the Development Bank of the Philippines. (n)

Section 4. Civil Service. Civil Service is the generic term which refers to all men and women in all branches, subdivisions, instrumentalities and agencies of the Government, including government-owned or controlled corporations with original charters.

Section 5. Complaint. Complaint is a sworn written statement filed by any person, natural or juridical, other than the Disciplining Authority against a Bank official or employee. (a)

Section 6. Contested Case. A case is deemed a contested case when the respondent in his or her answer to a formal charge or complaint elects a formal investigation.

Section 7. Disciplinary Action. A proceeding by which a Bank official or employee is made answerable for an act or omission in relation to Civil Service and Bank policies, laws, rules and regulations, consistent with due process and the right to security of tenure.

Section 8. Disciplining Authority. Disciplining Authority refers to the person body duly authorized to impose the penalty provided for by law or rules.

For purposes of these Guidelines, in accordance with Section 9 (f) and Section 10 (f) of Executive Order No. 81 dated 3 December 1986, as amended by Republic Act No. 8523 dated 14 February 1998, otherwise known as the "Revised Charter of DBP", the Disciplining Authority in the Bank shall be as follows:

- a. For disciplinary cases involving officers from the rank of Vice President or its equivalent, and other more senior officer positions, the Disciplining Authority is the Board of Directors. By virtue of these Guidelines, this authority is hereby delegated to the President and Chief Executive Officer (CEO) of the Bank.
- b. For disciplinary cases involving officers and/or employees below the rank of Vice President or its equivalent, the Disciplining Authority is the President/ CEO of the Bank. The President/CEO may delegate this authority to a Committee to be composed of the Chief Financial Officer of the Bank as Chairperson, the next highest ranking Sector Head as Vice Chairperson, and the Chief Legal Counsel as Member. (a)

Section 9. Employee. Employee includes regular, temporary, coterminous, directly-hired, and casual rank and file employees and officers of the Bank, unless used in a more specific context. (a)

Section 10. Employee Complained of. An employee complained of refers to the employee who is the subject of an adverse report or complaint, including anonymous complaint, but who has not been formally charged or when the complaint has not been given due course by the Disciplining Authority through the issuance of Notice of Charge. (a)

Section 11. Formal Charge. A formal charge is a written specification of a charge or charges against an employee issued by the proper Disciplining Authority.

Section 12. Forum-Shopping. The term refers to the filing of several administrative actions or complaint either simultaneously or successively before another agency or any tribunal having jurisdiction over the case against the same

party involving the same essential facts, circumstances, acts, causes of action or relief, and all raising substantially the same issues either pending in, or already resolved adversely by, some other tribunal or agency.

Section 13. Handling Officer/Mediator. Handling Officer/Mediator refers to the person authorized to facilitate settlement or mediation of an administrative case. (n)

Section 14. Hearing Officer/Panel. Hearing Officer/Panel refers to the officer authorized to conduct hearings under Rule VIII of this Circular. (a)

Section 15. Notice of Charge. Notice of Charge refers to a written charge issued by the Disciplining Authority giving due course to the complaint against the person complained of when the charge/s against the latter originated from a complaint initiated by any person, natural or juridical, other than the Disciplining Authority. (n)

Section 16. Party Adversely Affected. Party Adversely Affected refers to the respondent against whom a decision in an administrative case has been rendered or to the disciplining authority in an appeal from a decision reversing or modifying the original decision.

Section 17. Prima Facie Case. A prima facie case exists when there is evidence sufficient to form a belief that an administrative offense has been committed and the employee complained of is probably guilty of it.

Section 18. Respondent. Respondent refers to the person against whom a notice of charge or formal charge has been issued by the Disciplining Authority. (a)

RULE III. ACTION ON COMPLAINT, ANONYMOUS COMPLAINT AND ADVERSE REPORT

Section 1. Requisites of a Valid Complaint. Except when initiated by the Disciplining Authority or his/her authorized representative, no complaint against an employee shall be given due course unless the same is in writing, subscribed and sworn to by the complainant. In cases initiated by the proper Disciplining Authority or his/her authorized representative, a show-cause order is sufficient.

No anonymous complaint shall be entertained unless the allegations therein are verifiable or there is merit to the allegations or supported by documentary or direct evidence, in which case the person complained of may be required to comment.

The complaint in triplicate copies shall be written in a clear, simple and concise language and in a systematic manner as to apprise the employee complained of, of the nature and cause of the accusation against him/her and to enable him/her to intelligently prepare his/her defense or answer/comment. However, should there be more than one employee complained of, the complainant is required to submit additional copies corresponding to the number of employees complained of.

The complaint shall contain the following:

- a. full name and address of the complainant;
- b. full name and address of the employee/s complained of as well as his/her position/s and office/s;
- c. a narration of the relevant and material facts which shows the acts or omissions allegedly committed;

- d. certified true copies of documentary evidence and affidavits of his/her witnesses, if any; and,
- e. certification or statement of non-forum shopping.

The absence of any of the aforementioned requirements may cause the dismissal of the complaint without prejudice to its refiling upon compliance with the above requirements.

Section 2. Docketing of Complaints, Adverse Reports, Formal Charges or Notice of Charges. Complaints, Adverse Reports, Formal Charges and Notice of Charges shall be forwarded to the Corporate Governance Office (CGO) for proper docketing, evaluation and appropriate action. (a)

Section 3. Withdrawal of the Complaint. The withdrawal of the complaint does not result in its outright dismissal nor discharge the employee complained of from any administrative liability. Where there are merits to the allegations in the complaint or the allegations are verifiable or where there is documentary evidence that would tend to prove the guilt of the employee/s complained of, the same shall be given due course.

Section 4. Action on the Complaint. Upon receipt of a complaint which is sufficient in form and substance, the Disciplining Authority shall require the employee/s complained of to submit a Counter-Affidavit/Comment under oath, within three (3) days from receipt of the order.

RULE IV. PRELIMINARY INVESTIGATION

Section 1. Preliminary Investigation; Definition. A Preliminary Investigation is a proceeding undertaken to determine whether a prima facie case exists to warrant the issuance of a formal charge or notice of charge. It involves a fact-finding investigation or an ex-parte examination of records and documents submitted by the complainant and the employee/s complained of, as well as documents readily available from other government offices.

Section 2. How conducted. Within five (5) days from receipt of the complaint sufficient in form and substance, the employee/s complained of shall be required to submit his/her counter-affidavit or comment. Where the complaint is initiated by the Disciplining Authority, the CGO Head shall issue a show-cause memorandum directing the employee/s complained of to explain why no administrative case should be filed against him/her. The latter's failure to submit the comment/counter-affidavit/explanation shall be considered a waiver thereof and the preliminary investigation may be completed even without his/her counteraffidavit/ comment.

If necessary, the parties may be summoned to a conference where the investigator may propound clarificatory and other relevant questions.

During the preliminary investigation, the parties may be given the opportunity to submit affidavits and counter-affidavits with supporting documents. CGO may interview witnesses and examine relevant records and documents submitted by the parties or supporting the adverse report. If the employee complained of has previously submitted comments or other documents in an earlier audit or investigation, the same may be considered in the evaluation of the adverse report or complaint. (a)

Section 3. Duration of the Investigation. Preliminary investigation shall commence not later than five (5) days from receipt of the complaint or adverse report by the CGO and shall be terminated within twenty (20) days thereafter.

Section 4. Investigation Report. Within five (5) days from the termination of the preliminary investigation, the CGO Head shall submit to the Disciplining Authority the Investigation Report together with the complete records of the case, which may recommend the closure of the report, dismissal of the complaint, issuance of formal charge or notice of charge against the employee complained of, or referral/indorsement of the case to appropriate quasi-judicial bodies or other agencies for proper disposition. (a)

Section 5. Decision or Resolution After Preliminary Investigation. The Disciplining Authority shall act on the Investigation Report, as follows:

- a. In case of adverse report or anonymous complaint, the Disciplining Authority shall issue a formal charge against the employee/s complained of where *prima facie* case exists, otherwise, the Disciplining Authority shall order the closure or dismissal of the same.
- b. In case of a complaint, the Disciplining Authority shall give due course to the complaint by issuing notice of charge/s against the employee complained of where *prima facie* case exists, otherwise, the Disciplining Authority shall dismiss the same.

The employee complained of shall be furnished with a copy of the complaint, together with the sworn statements of witnesses and other supporting documents, if available.

If the complaint is dismissed, the employee complained of shall also be notified in writing of the dismissal.

- c. In both cases, the Disciplining Authority may refer or indorse the case against the employee/s complained of to quasi-judicial bodies or other agencies for appropriate action. (a)

RULE V. FORMAL AND NOTICE OF CHARGE

Section 1. Issuance of Formal Charge; Contents. After a finding of a *prima facie* case, the Disciplining Authority shall formally charge the employee complained of, who shall now be called respondent.

The formal charge shall contain the following:

- a) specification of charge/s;
- b) brief statement of material or relevant facts accompanied by certified true copies of the documentary evidence, if any;
- c) sworn statements covering the testimony of witnesses;
- d) directive to answer the charge/s in writing and under oath within five (5) days from receipt thereof;
- e) advice for the respondent to indicate in his/her answer whether or not he/she elects a formal investigation of the charge/s, and to invoke or plead mitigating circumstances; and