

# Fighting Sexual Harassment in the Bureaucracy

A Manual



Civil Service Commission

National Commission on the Role  
of Filipino Women



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**FIGHTING SEXUAL HARASSMENT  
IN THE BUREAUCRACY:**

**A MANUAL**

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IN THE BUREAUCRACY:  
A MANUAL**

Civil Service Commission  
National Commission on the Role of Filipino Women  
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## MESSAGE

As one of the most misunderstood and trivialized concepts of our time, sexual harassment is often dismissed as the product of an overwrought imagination, and excused as a harmless practical joke made in the spirit of camaraderie and clean fun. But there is nothing frivolous or amusing about sexual harassment, for it causes only indignity and pain to the victim, even as it enhances the perpetrator's sense of superiority over the latter.

Like other forms of oppression, sexual harassment is rooted in unequal power relationships. In the context of gender inequality, sexual harassment symbolizes the exercise of male dominance and the perpetuation of women's subordination in society. In the workplace, especially in an extremely hierarchical organization like the bureaucracy, sexual harassment underscores the unequal power relationship not only between men and women but also between management and rank-and-file, and between those occupying advantaged or dominant positions and others, including the people they are supposed to serve.

Many rules have been formulated to rid the bureaucracy of sexual harassment. Over the past years, the Civil Service Commission has confronted many cases where the gravity of sexual harassment can make us wonder how such abusive and criminal behavior could find refuge in an organization that is supposed to protect and serve others. But the irony of government is that it has become a power base for those who treat it as a source of enhanced stature and personal gratification rather than as a means to promote the public's welfare. In various ways and through different schemes, many of us at each level of the bureaucracy exercise power over those we are supposed to serve. Is it any wonder then that our own relationships with one another - as men and women, as superior and subordinate - are characterized by inequality and dominance?

In coming out with this manual, the Civil Service Commission is taking a determined step toward the elimination of sexual harassment in the bureaucracy. At the same time, I look at the campaign against sexual harassment as but one aspect of overall efforts at reforming the bureaucracy. For government to be truly responsive, the men and women who compose it must not only build their capacities and become more efficient, but they must also shed values and norms that tolerate abuse, perpetuate inequality and equate government employment with self-aggrandizement rather than public service.



KARINA CONSTANTINO-DAVID  
Chairperson

## MESSAGE

Sexual harassment is a serious human rights issue that violates a person's integrity and rights to be free from all forms of violence. In a work context, it impinges on a person's security and eventually affects her/his job performance and productivity. Sexual harassment are hostile acts that cause disempowerment and demoralization of its victims. Ultimately, it exacts a high cost to the organization, whether in government or the private sector.

It is in this context that the National Commission on the Role of Filipino Women (NCRFW) and the Civil Service Commission (CSC) forged a partnership to address the issue of sexual harassment holistically within the bureaucracy. "*Fighting Sexual Harassment in the Bureaucracy: A Manual*" is a result of conscientious work and years of extensive and intensive consultations organized by the two agencies.

The Manual presents in detail the legal bases of the anti-sexual harassment law and discusses the new administrative disciplinary rules on sexual harassment promulgated by the CSC. It provides the general principles to be followed when resolving such cases and presents a step-by-step procedure in handling complaints. Actual cases and illustrative cases are cited to show how procedures have been operationalized.

The Manual also emphasizes the accountability of the head of agency in monitoring and ensuring that sexual harassment cases are properly and decisively addressed. In this regard, the role of the Committee of Decorum and Investigation in the promulgation of cases is of great importance. The Manual correctly points out that the core issue underlying cases of sexual harassment has been the unequal power relations between the sexes.

Finally, let me extend my congratulations and appreciation to the people and institutions behind this exceptional undertaking: The Civil Service Commission-Office for Legal Affairs and Project Management Office; the National Commission on the Role of Filipino Women-Policy Analysis Division, Project Management Office and the SH Manual Review Team; Atty. Evalyn Ursua and Ms. Maricris R. Valte. We gratefully acknowledge the invaluable support of the Canadian International Development Agency (CIDA).



AURORA JAVATE-DE DIOS  
Chairperson

## ACKNOWLEDGMENT

This Manual was made possible through the joint effort of the Civil Service Commission (CSC) and the National Commission on the Role of Filipino Women (NCRFW), with technical and logistical support from the Canadian International Development Authority (CIDA).

Being more than just an output, the Manual is the culmination of painstaking labor, endless brainstorming and perseverance of the Gender Awareness and Development Team of the Office for Legal Affairs, Civil Service Commission that drafted it as well as the Administrative Disciplinary Rules on Sexual Harassment Cases. The team is composed of Assistant Commissioner Jesse J. Caberoy, Director IV Florencio P. Gabriel, Jr., Atty. Alma Flores-Foronda, Atty. Maricel C. Garcia-Mallari, Atty. Cherrie M. Sagana, Atty. Enrico Antonio M. Lusica, Atty. Ronald Agustin R. Estrada and Atty. Jose Ricuerdo P. Flores, under the leadership of CSC Chairperson Karina Constantino-David, and then - Chairperson Corazon Alma De Leon, Commissioner Jose F. Erestrain, Jr. and Commissioner J. Waldemar V. Valmores.

The team was guided by its consultant Atty. Evalyn Ursua who conducted trainings on gender awareness as well as gave advice on the drafting of the Manual.

Special thanks to the CSC GAD Project Management Office headed by Asst. Commissioner Mary Ann Z. Fernandez, Director Teresita G. Arceo, Director Clarita A. Jumalon, and particularly to Ms. Maria Adelaida Icatlo and Ms. Mary Joy Mantilla who contributed their ideas and provided morale and administrative support to the team. We also thank Ms. Joan Serrano who helped in research and data collation. Without them, the team would not have made it through the countless deadlines.

The NCRFW, through Chairperson Aurora Javate de Dios, OIC-Executive Director Emmeline L. Verzosa, Ms. Ermelita V. Valdeavilla as well as the Policy Analysis Division and Project Management Office, provided invaluable technical and administrative support. The comments of the NCRFW review team composed of Rica B. Alvis, Grace N. Mallorca-Bernabe, Marichu M. Buergo, Erminelda B. Carranza, Eufrosina O. Dumlao, Lolita E. Etrata, Arlene C. Estrebillo, Eduardo S. Layag, Roscel L. Mariano, Lorenza A. Umali, and Pepita T. Velasco, were very helpful.

Our gratitude also goes to the participants of the nationwide consultation meetings and dialogues with government agencies and to the CSC Regional Offices, for providing us with essential feedback and useful ideas in the drafting of the Administrative Disciplinary Rules on Sexual Harassment Cases discussed in this Manual.

Of course, this Manual would not be what it is now without the help of our editor, Maricris R. Valte, and the artistic skills of her creative group who endured with us through the seemingly daunting time constraints.

To the women and men who are victims of sexual harassment and to the people who spoke and have continually spoken against it, thank you for providing us the inspiration.



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and the  
National Commission on the Role of Filipino Women  
with the support of the  
Canadian International Development Agency (CIDA)

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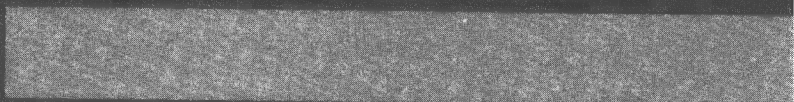
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## INTRODUCTION

As the country braces itself for the opportunities and challenges ushered in by the 21<sup>st</sup> century, it is ironic that we still find ourselves confronting many forms of inequality and prejudices that seem out of place in the Age of Information Technology. Gender inequality is one of them. For all the material and intellectual progress that humankind has achieved, women in many parts of the world still suffer discrimination and oppression that prevent them from exercising basic rights as citizens, and deny them opportunities to develop their full potentials as human beings. Many were shocked over how the former Taliban regime literally hid Afghanistan's women and girl-children from view, imposing the *burka* that covered the latter from head to toe, banning them from schools and workplaces, and having house windows painted so that the women inside would not tempt any male passerby. But while this and other extreme forms of women's oppression - genital mutilation, female infanticide, wife-burning - can stir rage for their sheer cruelty, they also tend to diminish the impact of insidious forms of gender discrimination which, in their everyday occurrence, are no less devastating.

*In Asia, while rapid economic growth in the early 1990s increased the chances of women to participate in the labor market, they were also the first casualties of recession that followed on the heels of the Asian currency crisis in 1997. As the International Labour Organization (ILO) reported in 1999<sup>1</sup>, poverty still wears a woman's face, with Asian women poorer than men and hit harder by globalization. Across South-east and East Asia, the regional financial crisis pushed women back into uncertain, exploitative and poorly paid work. Many had to fall back on the informal or agricultural sector, where income opportunities are much lower, or make do with part-time employment.*

<sup>1</sup> "Towards Gender Equality in the World of Work in Asia and the Pacific," Technical report for discussion at the Asian Regional Consultation on Follow-up to the Fourth World Conference on Women, Manila, 6-8 October 1999, International Labour Office, Regional Office for Asia and the Pacific, ISBN 92-2-111854-1, Bangkok, September 1999.

But even when women manage to hold on to paid employment, they continue to suffer various forms of gender inequality in terms of employment status and quality of jobs. Segregation or gender stereotyping of occupations also remains, with 'women's jobs' often assigned a lower value in terms of skills requirement and pay. The combination of social attitudes and gender inequality in education and training has largely contributed to occupation segregation, where women and men often end up in professions and trades whose requirements are usually associated with 'feminine' and 'masculine' qualities, respectively. Yet even in women-dominated professions such as education and health, men occupy the 'more responsible', 'more skilled' and consequently better-paid positions. And while many women professionals have advanced in the company hierarchy, globally they occupy no more than 20% of management positions, with the gender gap widening as more senior positions become involved.<sup>2</sup>

In the Philippines, women's conditions generally mirror the global situation. The 33.4 million-strong labor force shows marked gender disparity, with women making up 13.2 million (39.2%) and men 20.2 million (60.8%). And though employment rates between them hardly differed at 89.7% and 90.6% respectively, the much lower proportion of women in the labor force negates this parity such that the overall picture is still one of inadequate job opportunities for women. When they do find work, the jobs commonly available are those demanding so-called feminine traits that have been honed through socialization and the performance of domestic chores. Hence women constitute a larger proportion of the work force in private households (85.5%), education (74%), and health and social welfare (72%), while men are hardly threatened in traditional fields such as construction (98%), transportation and communication (95%), and fishing (93.7%).<sup>3</sup> The disparity between men and women is evident in the bureaucracy as well. A 1999 CSC survey showed that women made up 53% of the 1.45 million-strong workforce, but besides second-level positions where they accounted for 71.9%, women lagged behind the men in other levels but especially the third, which covers positions in the Career Executive Service, where they accounted for only 34.8%.<sup>4</sup>

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But gender inequality goes beyond differential access to economic and social opportunities, and extends to relationships between men and women. The subordination of women in the home, in the workplace and in the larger society has created a different type of problem - *violence against women* - that involves the exercise of male power toward controlling and abusing women. Wife-battering, sexual harassment, trafficking, rape - whatever the form, such violence is "anchored in attitudes and structures that demean women and confine them to a subordinate position in society. It impinges on their life and that of their family, and affects their access to work, earnings and livelihood."<sup>5</sup>

As a result of the relentless campaign of women's groups, public awareness especially of rape and domestic violence has grown over the years, and more women-victims have acquired sufficient courage to report to authorities. The Philippine National Police noted that in the first nine months of 2001, the most reported cases of violence against women were: physical injuries/wife battering, 55.1%; rape, 10.1%; and acts of lasciviousness, 6.9%. The Department of Social Welfare and Development, for its part, handled 5,504 cases involving mostly physical abuse/battering, sexual abuse and trafficking.<sup>6</sup> And while scarce data exist over the prevalence of sexual harassment, women have experienced it well before it became a publicly acknowledged problem. Known variously as "lie down or lay off," "road test," "kwarto o kwatro" and "tsansing," among others, women encounter sexual harassment under different situations, often involving not only male superiors but even male colleagues, and resulting in greater humiliation on top of their marginal position.

What has been government's response to the issues confronting women?

During the United Nations Decade of Women (1976-1985), the government ratified the Convention on the elimination of All Forms of Discrimination Against Women (CEDAW) in 1979, and committed itself to the Nairobi Forward-Looking Strategies for the Advancement of Women that came out the end of the Decade. The 1987 Constitution recognized the role of women

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The Civil Service Commission (CSC), for its part, has been a valuable partner in government’s efforts at mainstreaming gender in the bureaucracy. In issuing Memorandum Circular No. 14 (s. 1989), the CSC effectively recognized women’s multiple burdens by allowing government workers, majority of whom are women, to adopt flexible working hours. Early efforts at making women aware of gender issues in the bureaucracy include the formation of Women in Government Service (WINGS) as well as the Equality Advocates (EQUADS). And even before Republic Act 7877 or the Anti-Sexual Harassment Act of 1995 was enacted, the CSC had already come out with Memorandum Circular No. 19 (s. 1994) that laid down its policy on sexual harassment in the workplace. Several months after RA 7877 was signed into law, the Commission issued Resolution No. 95-6161, “Rules and Regulations Prescribing Procedures for the Resolution, Settlement or Presentation and Adjudication of Sexual Harassment Cases in the Commission.”

In putting out the Administrative Disciplinary Rules on Sexual Harassment Cases (CSC resolution No. 01-0940) as well as this manual, the CSC is being consistent in its promotion of gender equality in the bureaucracy. As shown by the preceding discussion, sexual harassment cannot be taken in isolation from the general problem of gender bias confronting most women. Hence, while applicable to men and women in either circumstance as harasser or victim, the new rules nonetheless proceed from the recognition that the large majority of sexual harassment victims are

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women. Considering that they make up more than half of the government workforce, it is only right that the Commission takes the necessary steps to create a work environment that allows women to work according to their full potentials, without the unnecessary stress brought about by sexual harassment.

This is the context within which this manual will hopefully be appreciated. Its objective is primarily to aid potential victims and survivors not only by providing sufficient information on what forms of redress are made available by these Rules, but by making a clear statement that sexual harassment will not be tolerated. At the same time, the manual is expected to assist members of the Committee on Decorum and Investigation (CODI) in the implementation of the Rules and in their overall conduct in handling cases of sexual harassment in their respective agencies.

## INTRODUCTION

As the country braces itself for the opportunities and challenges ushered in by the 21<sup>st</sup> century, it is ironic that we still find ourselves confronting many forms of inequality and prejudices that seem out of place in the Age of Information Technology. Gender inequality is one of them. For all the material and intellectual progress that humankind has achieved, women in many parts of the world still suffer discrimination and oppression that prevent them from exercising basic rights as citizens, and deny them opportunities to develop their full potentials as human beings. Many were shocked over how the former Taliban regime literally hid Afghanistan's women and girl-children from view, imposing the *burka* that covered the latter from head to toe, banning them from schools and workplaces, and having house windows painted so that the women inside would not tempt any male passerby. But while this and other extreme forms of women's oppression - genital mutilation, female infanticide, wife-burning - can stir rage for their sheer cruelty, they also tend to diminish the impact of insidious forms of gender discrimination which, in their everyday occurrence, are no less devastating.

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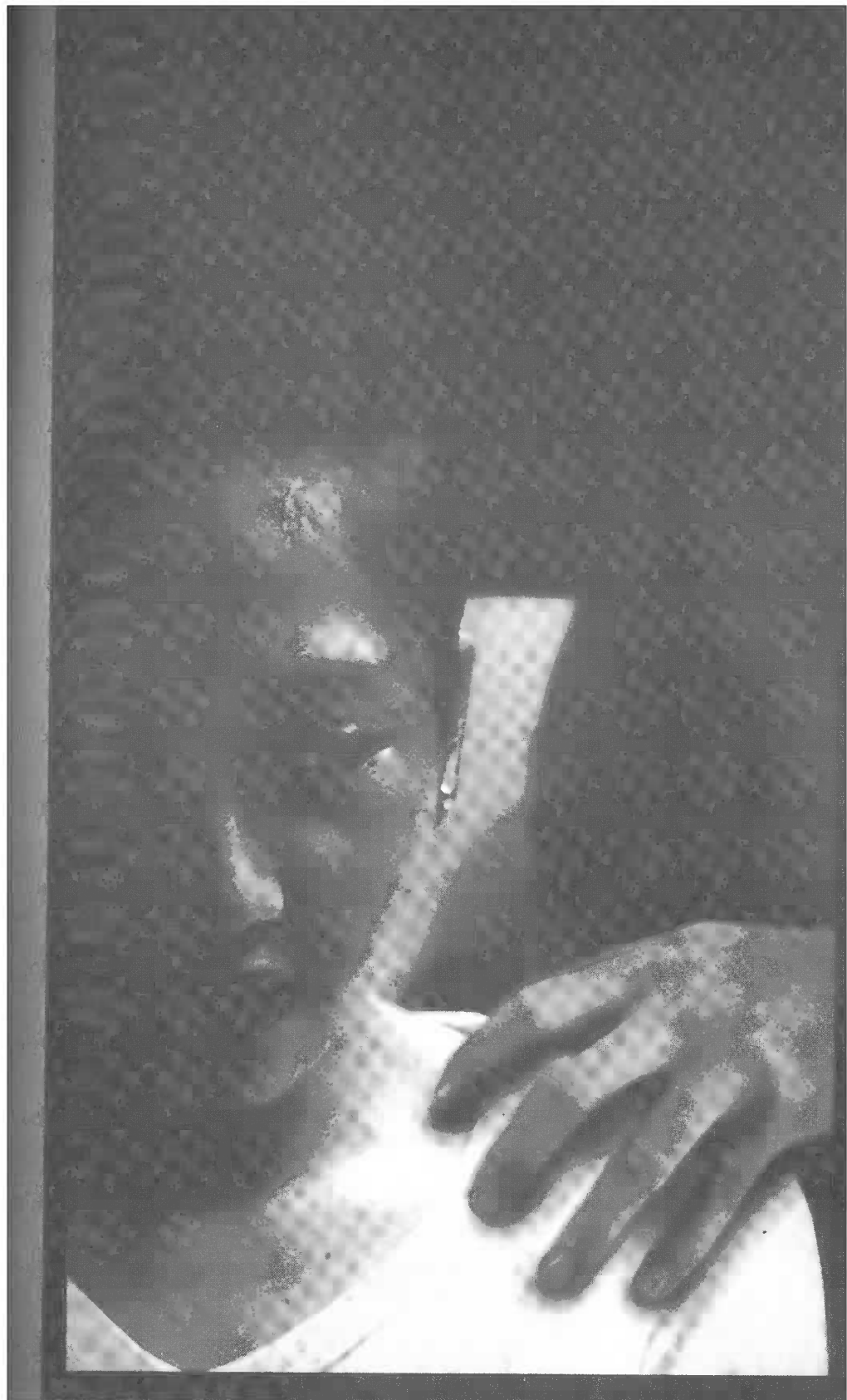
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## CHAPTER 1

Legal Foundations of the  
Anti-Sexual Harassment Law



## CHAPTER 1

### LEGAL FOUNDATIONS OF THE ANTI-SEXUAL HARASSMENT LAW

*Sexual harassment at the workplace is defined as any unwanted sexual attention that is explicitly or implicitly made a condition for favourable decisions affecting one's employment or that which creates an intimidating, hostile or offensive environment. It is a specific form of violence which occurs all over the world. At times regarded as harmless "flirting", it is increasingly recognized that whatever the intent of the perpetrator, it can demean and damage the victim. Women themselves demand to be allowed to pursue their working lives with dignity.*

*Sexual harassment violates a worker's right to job security and equal opportunity. It can create working conditions that are hazardous to the psychological and physical well-being of workers. It also creates a poisoned work atmosphere that can disempower and demoralize workers. When ignored, sexual harassment exacts a high cost to a company in term of loss of productivity, high absenteeism among affected employees, disruptions of work from long-term sick leaves, retraining of new personnel, low morale. . . .<sup>8</sup>*

The foregoing passages capture most succinctly the issues surrounding sexual harassment in the workplace and why it is imperative for both employers and employees to address the problem. But if sexual harassment is to be defined broadly as *"any unwanted, unwelcome sexual conduct, advances or attention, requests for sexual favor, or other physical, verbal or non-verbal conduct which is sexual in nature,"* then sexual harassment actually takes place anywhere and assumes many forms. These can range from the seemingly harmless green jokes, the hoots and leers one encounters in the streets, the posting of explicitly sexual materials or persistent demand for dates, to the more vicious acts like sexual assault and rape. Even when the acts of harassment fall short of exacting sexual favors in a *quid pro quo* arrangement, these can nonetheless create a hostile environ-

<sup>8</sup> International Labour Organization, "Violence in the World of Work," Geneva: International Labour Organization, 1999.

ment by causing annoyance, uneasiness and embarrassment for the object of the harassment.<sup>9</sup>

While sexual harassment often takes place within the context of an employer-employee relationship, it does happen in other types of relationships where one party enjoys a particularly advantaged position, such as between doctor and patient, hotel worker and guest, or stewardess and passenger. It also happens between peers, as experiences of many women show. Sexual harassment rests on unequal power relationships. Within the context of gender inequality, men are the wielders of power, and as with other forms of violence against women, sexual harassment is an affirmation of male superiority and domination. Women victims are often forced to suffer in silence for fear of exposing themselves to ridicule and of inviting reprisal from their aggressor.

The Philippine legal system has tried, over the years, not only to provide redress for victims of unwanted sexual attention, but to promote the protection and advancement of women in general. When the country ratified the CEDAW in 1981, it committed itself, and became legally bound, to undertake all measures to eliminate discrimination against women in all forms, and to report on its progress to the UN Committee on Elimination of All Forms of Discrimination against Women through the NCRFW.<sup>10</sup> The 1987 Constitution's explicit recognition of the "fundamental equality of women before the law" bolstered such commitment. The New Family Code of the Philippines, adopted several months later, was another step in the right direction with its elimination of the Civil Code of the Philippines' discriminatory provisions that were based on Spanish colonial law. Over the next several years, various laws were enacted to enhance the status of women, some of which are:

**R.A. 6725**, "An Act Strengthening the Prohibition on Discrimination Against Women," prohibits the payment of lesser compensation to women, including fringe benefits and other forms of remuneration, as well as the favoring of males over females with respect to promotion, training opportunities, study and scholarship grants solely on account of sex (enacted in 1989)

<sup>9</sup> "Sexual Harassment," *Pantas: Official Publication of SALIGAN Women's Unit*. Quezon City: Sentro ng Alternatibong Lingap Panlegal (SALIGAN), Special Edition, Issue No. 1, September 2000.

<sup>10</sup> National Commission on the Role of Filipino Women web site



## CHAPTER 1

### LEGAL FOUNDATIONS OF THE ANTI-SEXUAL HARASSMENT LAW

*Sexual harassment at the workplace is defined as any unwanted sexual attention that is explicitly or implicitly made a condition for favourable decisions affecting one's employment or that which creates an intimidating, hostile or offensive environment. It is a specific form of violence which occurs all over the world. At times regarded as harmless "flirting", it is increasingly recognized that whatever the intent of the perpetrator, it can demean and damage the victim. Women themselves demand to be allowed to pursue their working lives with dignity.*

*Sexual harassment violates a worker's right to job security and equal opportunity. It can create working conditions that are hazardous to the psychological and physical well-being of workers. It also creates a poisoned work atmosphere that can disempower and demoralize workers. When ignored, sexual harassment exacts a high cost to a company in term of loss of productivity, high absenteeism among affected employees, disruptions of work from long-term sick leaves, retraining of new personnel, low morale. . . .<sup>8</sup>*

The foregoing passages capture most succinctly the issues surrounding sexual harassment in the workplace and why it is imperative for both employers and employees to address the problem. But if sexual harassment is to be defined broadly as "*any unwanted, unwelcome sexual conduct, advances or attention, requests for sexual favor, or other physical, verbal or non-verbal conduct which is sexual in nature,*" then sexual harassment actually takes place anywhere and assumes many forms. These can range from the seemingly harmless green jokes, the hoots and leers one encounters in the streets, the posting of explicitly sexual materials or persistent demand for dates, to the more vicious acts like sexual assault and rape. Even when the acts of harassment fall short of exacting sexual favors in a *quid pro quo* arrangement, these can nonetheless create a hostile environ-

<sup>8</sup> International Labour Organization, "Violence in the World of Work," Geneva: International Labour Organization, 1999.

ment by causing annoyance, uneasiness and embarrassment for the object of the harassment.<sup>9</sup>

While sexual harassment often takes place within the context of an employer-employee relationship, it does happen in other types of relationships where one party enjoys a particularly advantaged position, such as between doctor and patient, hotel worker and guest, or stewardess and passenger. It also happens between peers, as experiences of many women show. Sexual harassment rests on unequal power relationships. Within the context of gender inequality, men are the wielders of power, and as with other forms of violence against women, sexual harassment is an affirmation of male superiority and domination. Women victims are often forced to suffer in silence for fear of exposing themselves to ridicule and of inviting reprisal from their aggressor.

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R.A. 7192, "Women in Development and Nation-Building Act," provides equal opportunities for women in all military schools of the Armed Forces of the Philippines and the Philippine National Police, provides equal rights in entering into contracts and loan agreements and in joining social and cultural clubs, allows household managers [aka housewives] to avail of social security through their working spouses, and ensures that a substantial portion of funds received through official development assistance be set aside by government agencies to support activities for women (enacted in 1991)

R.A. 7322, "An Act Increasing Maternity Benefits in Favor of Women Workers in the Private Sector"

R.A. 8353, "The Anti-Rape Law of 1997," expands the definition of rape, reclassifies it as a crime against person, and stipulates that marriage between rapist and victim shall not extinguish the crime of rape

R.A. 8505, "Rape Victim Assistance and Protection Act of 1998," mandates the establishment of a rape crisis center in every province and city, and authorizes the appropriation of funds therefore and other purposes

On the other hand, the country became State Party to various international conventions that called for the protection of the rights of women. Besides the CEDAW, these were the Convention on the Rights of the Child, the Declaration on the Elimination of Violence Against Women, and the Declaration on the Right to Development. These conventions and agreements not only found resonance in Philippine laws, but also rendered the country morally obligated to observe these commitments as an enlightened member of the international community.

Prior to the enactment of the Anti-Sexual Harassment Act of 1995, acts that are now constitutive of sexual harassment were considered under the Revised Penal Code as:

**Light Coercions:** "Any other coercions or unjust vexations shall be punished by *arresto menor* (imprisonment ranging from one to 30 days) or a fine ranging from five to 200 pesos, or both."<sup>11</sup>

<sup>11</sup> Revised Penal Code, art. 287 (2). Unjust vexation includes any human conduct which, although not productive of some physical or material harm would, however, unjustly annoy, vex, irritate, torment, distress or disturb the mind of an innocent person to whom it is directed. Violence and intimidation is not necessary. (L. Reyes, The Revised Penal Code. Book II. (1993). at 531)

**Acts of Lasciviousness:** "Any person who shall commit any act of lasciviousness upon the persons of either sex, under any of the circumstances mentioned in the preceding article, shall be punished by *prision correccional* [six months and one day, to four years and two months] in its minimum period, and two years, four months and one day up to six years, in its maximum period."<sup>12</sup>

**Slander by Deed:** "The penalty of *arresto mayor* [imprisonment from four months and one day to six months] in its minimum period or a fine ranging from 200 to 1000 pesos shall be imposed upon any person who shall perform any act included and punished in this title, which shall cast dishonor, discredit or contempt upon another person."<sup>13</sup>

### The Anti-Sexual Harassment Act of 1995

Republic Act No. 7877 or the Anti-Sexual Harassment Act is an attempt to penalize the crime of sexual harassment occurring *only* in the employment, educational and training environment in the public and private sectors. While the law does not define exactly what sexual harassment is, it enumerates the actions by which it can be said that sexual harassment was committed. It provides for the obligation of employers, head of office or educational institutions in addressing sexual harassment.<sup>14</sup>

#### Key Provisions

1. Section 3 identifies the potential offenders, namely, employer, employee, manager, supervisor, agent of the employer, teacher, instructor, professor, coach, trainer, or any other person having authority, influence or

<sup>12</sup> Revised Penal Code, art. 336. Most cases under this article involved the touching of breasts and private parts of the women, and kissing and embracing women. The presence or absence of lewd designs is inferred from the nature of the acts and the circumstances.

<sup>13</sup> Revised Penal Code, art. 359. The attendant circumstances in this crime are irritation and annoyance of the victim, and the attendant publicity and dishonor or contempt in the act. In one case, the Court of Appeals held that kissing a girl in public and touching her breast without lewd designs, committed by a rejected suitor *to cast dishonor* on the girl, was slander by deed and not acts of lasciviousness (L. Reyes, *The Revised Penal Code* (1993) at 876. citing *People v. Valencia*, CA-G.R. No. 4136-R, May 29, 1950.)

<sup>14</sup> Ursua, Evalyn G. "Sexual Harassment in Philippine Law: Issues and Problems," paper submitted to the Civil Service Commission as output for the gender and development project, August 2000, p. 4.

moral ascendancy over another in a work, training or education environment

2. Section 3 (a) provides that sexual harassment is committed in a work-related or employment environment when

- sexual favor is made as a condition in
  - the hiring or in the employment, re-employment or continued employment of said individual, or
  - granting said individual favorable compensation, terms, conditions, promotions or privileges, or
  - that the refusal to grant the sexual favor results in limiting, segregating, classifying the employee which in any way would discriminate, deprive or diminish employment opportunities or otherwise adversely affect said employee
- the above acts impair the employee's rights or privileges under existing labor laws
- the above acts would result in an intimidating, hostile or offensive environment for the employee

3. Section 3 (b) affirms that sexual harassment in an education or training environment is committed

- against one who is under the care, custody or supervision of the offender
- against one whose education, training, apprenticeship or tutorship is entrusted to the offender
- when the sexual favor is made as a condition to (i) the giving of a grade, (ii) the granting of honors and scholarships, (iii) the payment of a stipend, allowance or other benefits, privileges and considerations
- when the sexual advances result in an intimidating, hostile or offensive environment for the student, trainee or apprentice in an education/training related environment.

The law also requires the employer or head of office in a work-related, education or training environment to

- promulgate appropriate rules and regulations - including guidelines on proper decorum - in consultation with and jointly

approved by the employees or students or trainees, through their duly designated representatives, prescribing the procedures for the investigation of sexual harassment cases and administrative sanctions thereof

- create a Committee on Decorum and Investigation (CODI) to handle cases of sexual harassment as well as to conduct meetings with concerned persons and increase awareness, understanding and prevention of sexual harassment

Penalties under the law are imprisonment for one (1) month to six (6) months, a fine of P10,000 to P20,000 or both. A three-year prescriptive period is provided for filing of sexual harassment cases from the day the cause of action arose.

### Problems in Implementing the Law

Seven years after the passage of R.A 7877, efforts are underway to amend the law because of certain flaws that have made the prosecution of sexual harassment difficult. For one, it addresses only sexual harassment that is work-, education-, or training-related, and does not cover sexual harassment occurring elsewhere and under different circumstances.<sup>15</sup> Moreover, there is dispute on whether criminal intent must be present in the crime of sexual harassment.<sup>16</sup> The question arises because it goes into the question of proving elements of the crime. Some argue that RA 7877 is a special law, and as a rule, when a crime is punishable by special law, intent to commit the crime is not necessary. It is sufficient that the person had the intent to perpetrate the act prohibited by the special law or that he did it freely and consciously, that is, that the act did not happen by pure accident.<sup>17</sup> The act is itself the crime and hence, the absence of criminal intent and presence of good faith is not a defense in a criminal charge of sexual harassment. This is reflected in the deliberations in Congress, as espoused by the authors of the bill.<sup>18</sup> On the other hand, the alternative legal institution SALIGAN argues that “the absence of a definition of sexual harassment results in an incomplete reflection of the realities of the issue”; any amendment must contain a definition of the crime and a clear articu-

<sup>15</sup> *Ibid.*, p. 4.

<sup>16</sup> *Ibid.*, p. 5.

<sup>17</sup> *Ibid.*

<sup>18</sup> *Ibid.*

penalties being too light that it "makes a mockery of the emotional trauma experienced by the victim," and that there is a lack of specific agency mandated to monitor its provisions.<sup>19</sup>

The latter appears to contribute significantly to the law's weak enforcement, as borne out by two surveys undertaken to determine the progress made in the matter of compliance. One conducted by the Employer's Confederation of the Philippines (ECOP) a few years ago showed that 64% of companies in the country had yet to comply with the provision to set up guidelines for handling sexual harassment cases. A similar survey of the NCRFW indicated that, as of July 1998, only 35 out of 71 government agencies and institutions had complied with the law's requirements, although only 13 such agencies and institutions were found to have clear rules and regulations.<sup>20</sup> In a multi-sectoral consultation held in 2000 involving various departments and agencies, participants affirmed that many are unaware of the law. Another survey conducted among 334 unionized and non-unionized, private and public establishments in five provinces showed that only 21% or 70 establishments had implementing guidelines on sexual harassment. These establishments were typically non-unionized, from the financial and other business services industry, private and Filipino-owned, had a large employment size, and located in Metro Manila.<sup>21</sup>

The law has also experienced setback in the courts. An informal survey of various trial courts in six cities in Metro Manila revealed that most of the cases filed in the lower courts with RA 7877 as basis resulted in dismissal or the charging of a different offense, i.e. acts of lasciviousness. The various reasons that accounted for such include the "difficulty in proving and establishing the elements of crime as stated in the said law." And while the Supreme Court has decided on labor cases that involved sexual harass-

<sup>19</sup> "Sexual Harassment," *Pantas: Official Publication of SALIGAN Women's Unit*. Quezon City: Sentro ng Alternatibong Lingap Panlegal (SALIGAN), Special Edition, Issue No. 1, September 2000.

<sup>20</sup> As per the explanatory note of House Bill 8741, "An Act Redefining the Crime of Sexual Harassment and Expanding its Coverage, Providing Stiffer Penalties for Violators Thereof, Amending for the Purpose Republic Act Numbered Seventy-Eight Seventy-Seven Otherwise Known as Anti-Sexual Harassment Act and For Other Purposes," cited by SALIGAN, *ibid*.

<sup>21</sup> MAKALAYA. *The Anti-Sexual Harassment Law in Retrospect: Advancing or Retarding Women's Status?* Manila: Manggagawang Kababaihang Mithi ay Paglaya (MAKALAYA), Labor Education and Research Network, Inc. (LEARN) and Friedrich Ebert Stiftung (FES), 2000.

the Supreme Court has decided on labor cases that involved sexual harassment as a valid cause for dismissal from employment, it was not until recently that the high court took up the law itself by upholding the Sandiganbayan's conviction of a former health officer charged with violation of RA 7877.<sup>22</sup>

The bureaucracy, too, had its share of problems in implementing the law.

Even before the enactment of RA 7877, the Civil Service Commission had already come out with Memorandum Circular 19 (s. 1994) that defined sexual harassment and characterized it as an administrative offense of either Grave Misconduct, Conduct Prejudicial to the Best Interest of the Service or Simple Misconduct. It covered all government officials and employees, whether Career or Non-Career, permanent or temporary, and applied to national and local government, as well as government-owned and controlled corporations with original charter, state colleges and universities. The said Circular provided the legal basis for the CSC to punish acts of sexual harassment by government personnel.

Upon the passage of RA 7877, the CSC issued Circular 95-6161 for the guidance of Commission personnel. For its part, the Department of Labor and Employment (DOLE) came out with Administrative Order No. 250 (s. 1995) that covered its employees and officials. But the speedy response of the CSC and the DOLE to the law's requirements turned out to be exceptions to the general rule of non-compliance, as evidenced by the NCRFW's survey of government agencies cited above.

Where agencies promulgated rules and regulations prescribing the procedure for investigating sexual harassment cases and the provision of commensurate administrative sanctions, a common problem that ensued was the lack of uniformity in the rules and regulations promulgated by these agencies. There were differences in the definition of the administrative offense of sexual harassment, the corresponding sanctions, and the procedure for the investigation, prosecution and adjudication of the cases, as well as relief from judgment. This situation owed to conflicting provisions of Memorandum Circular 19 (s. 1994), CSC Res. 95-6161, R.A. 7877 and the general provisions of the Administrative Code of 1987.

<sup>22</sup> SALIGAN, *op.cit.*; Philippine Daily Inquirer, "SC upholds sexual harassment ruling," April 2, 2002.



To illustrate the difficulties encountered in implementing the law, below are two examples of cases where the ruling was marked by conflicting regulations between the agency and the Commission (CSC Res. No. 000563), and by a rather narrow definition of sexual harassment (Quedancor CODI).

**Ordena, Melquiades, Jr.**

**CSC Res. 000563**

**Sexual Harassment;**

**Conduct Unbecoming Of a Public Official**

**2/29/00**

Melquiades Ordena, Jr., Chief of Labor Standards and Enforcement Division of the DOLE-NCR, was found guilty of Sexual Harassment and Conduct unbecoming of a Public Official. He was alleged to have asked Anna Leah Morales, Information Officer III, to go out with him on a dinner date several times, which caused her to feel offended and violated.

The DOLE considered the act as constituting Sexual Harassment under R.A. 7877, since weight was given to the reaction of the victim than to the intent of the harasser. The actuation of Ordena offended and violated the sensibility of Morales; she claimed to have been shocked and flabbergasted. The fact that Morales belonged to another Division was not important. It is enough that there is reasonable connection between the particular activity performed by the employee in relation to the function of the respondent. Ordena's insistence of a "date" created a hostile, intimidating and offensive atmosphere in the workplace. Thus, the DOLE found him guilty and was meted with six (6) months suspension.

Ordena appealed to the Civil Service Commission. He averred that he was scheduled to talk "on air" in the DOLE's radio program, and he needed to settle with a topic to discuss; that Morales was the employee assigned with the scheduling of speakers; that the "asking out" was within the context of office work; that it was an innocent question meant to determine whether they could discuss the topic over dinner, since the remaining office hours were not enough; and that the "date" would include the secretary of Ordena.

On the basis of the provisions of R.A. 7877, the Commission held that before any public official or employee may be held liable for sexual harassment in the workplace, the following conditions must con-

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On the basis of the provisions of R.A. 7877, the Commission held that before any public official or employee may be held liable for sexual harassment in the workplace, the following conditions must con-

cur:

- a. The respondent is either an employer, employee, manager, supervisor, or any other person;
- b. Said respondent exercises authority, influence or moral ascendancy over another in their work environment;
- c. Said respondent demands, requests, or otherwise requires any sexual favor from the other, regardless of whether the demand, request or requirement for submission is accepted;
- d. The sexual favor is made as a condition in the employment or employment privileges of the complainant or will impair the employee's rights or privileges under existing labor laws; or will result in an intimidating, hostile or offensive environment for the complainant.

The Civil Service Commission did not find any substantial proof that a superior-subordinate relationship existed between Ordena and Morales, which would have established proof of the existence of influence, authority or moral ascendancy of the former over the latter. That Ordena occupied a higher position does not peremptorily create the air of authority, influence or moral ascendancy over Morales.

Also, the finding of guilt is not solely dependent on what the victim felt, but also on whether the respondent made use of his authority, influence or moral ascendancy to effectuate the act. There must be clear and convincing proof that such influence, authority or moral ascendancy was used to facilitate the harassment.

Likewise, the alleged sexual favor was not made a condition that would affect the employment privileges of the complainant, or affect the employment opportunities of the victim or impair her rights and privileges under the labor law, or result in an intimidating, hostile or offensive environment for the employee.

Ordena was not found guilty of Sexual Harassment. However, he was adjudged guilty of Simple Misconduct, considering that he was a person of responsible and upright stature, he should not have uttered and reiterated the words to Morales which caused her to feel offended and violated. He was meted with a penalty of six (6) months suspension without pay.

**Annotation:**

*Respondent was actually meted with the same penalty in both cases. What was modified by the Civil Service Commission is merely the finding of Sexual Harassment. The Commission threshed out the elements as provided in the law, then weighed the case point by point.*

*On the point of "influence, authority or moral ascendancy," the Commission recognized that power relations did not mean having a higher rank per se. Respondent occupied a higher position than complainant, he being a Division Chief. He argued, however, that he did not have the power or command to exact obedience from complainant, since complainant belonged to another Division. His position may command respect and courtesy, but these do not translate into authority, influence or moral ascendancy.*

*On the issue of the sexual favor being made a "condition" or causing "impairment" of employment privileges, the Commission required evidence of such. The case did not allege nor try to prove that the sexual favors were condition of impairment of employment opportunities or privileges.*

*Also, the Commission was silent on the first two (2) points raised by respondent, i.e.,*

*1. The DOLE Administrative Order, under which the Special Investigations Committee was constituted, did not take into effect for lack of proof that it has been filed with the UP Law Center; and*

*2. The Special Investigations Committee is not the same as the Committee on Decorum and Investigation mandated by R.A. 7877.*

*The Commission, as of that time, had not yet issued a circular regarding the matter, except that in its primer on Sexual Harassment, it was stated that the existing grievance committees in the agencies may stand in the meantime.*

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**Duban, Divino**  
**Re: Sexual Harassment**

A complaint letter dated September 8, 1998 was sent by Ruby Lumongsod to the Chairman of the Civil Service Commission regarding her pending case against Divino Duban, Acting Chief of Motorpool, Quedancor, a corporation under the Department of Agriculture. She

complained of irregularities in the handling of her case, of the not-so-formal hearings conducted (because the CODI hoped for an amicable settlement) and the postponements. She appended a supposed resolution made but left unsigned. The resolution absolved respondent of the charge of Sexual Harassment, but indicted him for breach of conduct and ethical standards, violative of Quedancor Memo 097 and RA 6713 (Code of Conduct and Ethical Standards for Public Officials and Employees).

Specifically, Lumongsod alleged that on September 18, 1995, noontime, she went inside the office of the Vice-President for Client Services purposely to submit a Vehicle Requisition Slip. She found Duban, approached him and submitted the VRS to him. He approved the same, but before she was able to leave, he called her back, then in succession, held her hand, looked at her body indecently while at the same time uttered words praising her buttocks, then slapped and squeezed them.

In his counter-affidavit, Duban stated that he approved the request some place else and in the presence of another person; that Lumongsod went back to him with the same request, without a logical explanation; that he reached out his hand at that time, and complainant held it; that he told her she was getting sexier without any malicious intention whatsoever; that he inquired who could be the reason, and she replied "Wala" and swayed her hips, which he slapped; and that they exchanged some more pleasantries, and then she left.

The unsigned resolution found the act as not constituting Sexual Harassment since the request had already been granted at that time. Hence, it was not a sexual favor or request made as condition in granting any favorable action.

The Commission wrote to the President of Quedancor, who replied that the case has been remanded to the CODI, which had undergone changes due to resignations and reconstitutions. He promised to inform the Commission of the final resolution of the case.

*Annotation:*

*In this case, the complainant charged the respondent with acts of sexual harassment. However, due to the very restrictive application by the agency's Committee on Decorum and Investigation (CODI) of*

*Circular No. 048, series of 1995 defining the acts constituting sexual harassment, the respondent was found guilty instead of some other forms of misconduct embraced in another law (R.A. 6713) and rule (Quedancor Memorandum No. 097).*

*It is interesting to note that while the Agency's CODI found the respondent's acts offensive to the complainant, the idea that the same constituted sexual harassment was, nonetheless, discarded. The CODI reasoned out that the act was not a sexual favor or request made as a condition in granting any favorable action, hence, not within the definition of sexual harassment. Apparently, the definition being referred to is the definition under Section 3 (a) of Republic Act No. 7877.*

*The definition of Sexual Harassment under R.A. 7877 is indeed very restrictive. First, the sexual harassment committed must be (a) work or employment related or (b) must be committed in an education or training environment. Secondly, the offender in both cases must be somebody who has authority, influence or moral ascendancy over the complainant. In the case of work-related employment environment, the sexual favor must be made as a condition for a corresponding favor or privilege. In sexual harassment committed in an education or training environment, a condition (quid pro quo) may not necessarily be imposed by the offender.*

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### **The CSC's Role in Fighting Sexual Harassment**

As the Constitutionally designated body to act as the government's central personnel agency, the CSC is mandated to adopt various measures aimed at promoting, among others, morale, integrity, responsiveness and efficiency in the civil service. It is expected to "strengthen the merit and rewards system, integrate all human resource development programs for all levels and ranks, and institutionalize a management climate conducive to public accountability" and is empowered to hear cases.<sup>23</sup> Through the Commission *en banc*, it may formulate its own rules concerning the cases filed before it, so long as such rules do not "diminish, increase, or modify substantive rights."<sup>24</sup>

<sup>23</sup> 1987 Constitution, Art. IX-B, Sec. 3 and Sec. 7.

<sup>24</sup> Art IX-A, Sec. 6, *ibid*.

The CSC also derives authority to adopt positive measures for the observance of minimum substantive and procedural requirements under the Administrative Code of 1987 and Republic Act 6713, otherwise known as the "Code of Conduct and Ethical Standards for Public Officials and Employees." Specifically, the CSC has the power to:<sup>25</sup>

- prescribe, amend and enforce rules and regulations for carrying into effect the provisions of the Civil Service Law and other pertinent laws, and
- promulgate policies, standards and guidelines for the Civil Service and adopt plans and programs to promote economical, efficient and effective personnel administration in the government.

The CSC may likewise adopt positive measures to promote the observance of the standards of personal conduct of officials and employees in the civil service.<sup>26</sup>

Records of the CSC's Office for Legal Affairs show that, from 1994 to 2000, the CSC had received 62 cases of sexual harassment, 45 of which had been resolved, with 14 cases still up for investigation, and another three cases pending. The years in which these cases were filed and their respective status are shown below.

YEAR	RECEIVED	RESOLVED	FOR INVESTIGATION	PENDING ACTION
1994	12	8	3	1
1995	10	8	2	0
1996	13	8	5	0
1997	7	7	0	0
1998	12	9	1	2
1999	5	4	1	0
2000	3	1	2	0
<b>TOTAL</b>	<b>62</b>	<b>45</b>	<b>14</b>	<b>3</b>

<sup>25</sup> Administrative Code of 1987, Book V, Title I, Subtitle A, Chapter 3, section 12(2).

<sup>26</sup> Republic Act No. 6713, sec. 4(B).

Of the resolved cases, most of the decisions rendered were in favor of the complainant, although a significant number was also decided otherwise.

YEAR	IN FAVOR OF RESPONDENT/COMPLAINANT	FOR ACTION OF OTHER AGENCY
1994	4	0
1995	4	1
1996	3	0
1997	5	0
1998	3	1
1999	1	0
2000	0	1
TOTAL	20	3

Below is a summary of decisions rendered by the Commission during the same period.

PENALTY IMPOSED/ACTION DONE	# OF RESPONDENTS
Dismissal from Service	15
<i>Suspension of:</i>	
3 months	4
6 months	2
1 year	1
Acquitted	2
<i>Dismissal of case due to:</i>	
Lack of Prima Facie Case	3
Res Judicata	5
Desistance of Complainant	2
Forum Shopping	1
not "party adversely affected"	1
non-observance of Formal Requirements under the Uniform Rules	2
Case Remanded to Agency	2



The surprisingly few cases filed with the CSC raise the question of whether the administrative remedies available to victims are sufficiently known and understood by government personnel. Given the small number of agencies that have so far formulated their own rules and regulations, it appears that much remains to be done both in raising consciousness about sexual harassment, and in encouraging government workers to report its commission and to make use of existing regulations to obtain redress.

Just the same, the CSC enforced the rules where it found strong basis for doing so. The relatively high number of cases that resulted in dismissal of respondent not only spoke of the CSC's resolve but also, unfortunately, the tendency toward abusive and even criminal behavior among certain officials in the bureaucracy, as shown by two cases below. The first one involves an employee and her supervisor, and the second one a teacher and his student.

**Alegre, Armando**  
**Grave Misconduct (Sexual Harassment)**

**CSC Res. 95-3599**  
**6/15/95**

An employee of the Municipality of Makati Press and Public Affairs Office filed a complaint for Sexual Harassment against her immediate supervisor Armando Alegre. She alleged that on several occasions, Alegre would kiss her, caress and touch her, rub his crotch against her, and make verbal attacks consisting of asking her out, and of threats to accede to his demands, using vulgar street words. A co-employee of the complainant corroborated her testimony.

Alegre did not submit any initial comment or counter-affidavit to the complaint, nor did he file any answer when formally charged.

The Civil Service Commission found for complainant. She categorically narrated the various acts and incidents of sexual harassment committed by Alegre. The quality of decorum she displayed convinced the Commission that he was guilty of the offense charged.

Jurisprudence provides that: "As a rule, no ...Filipina of decent repute would publicly admit that she had been criminally abused and ravished unless that is true. It is her natural instinct to protect her honor" (People v. Ramil, G.R. 52230, 12/15/86). Filing charges for Sexual Harassment does not only affect the accused but also the complainant

herself. The reason is that the moment she filed the complaint, she is exposed instead to the mock and jeer of the public. Sleepless nights and mental anguish is what the victim has to suffer after courageously voicing out the transgression made upon her dignity and honor.

Moreover, despite the opportunities given to respondent to present evidence in his behalf, he failed to file his answer and to appear during the hearings. These indicate that he cannot present any evidence to exculpate him from liability. He was dismissed from the service with all its accessory penalties.

*Annotation:*

*The case is a classic example of a superior abusing his authority over his subordinate with the end in view of obtaining sexual favors from her.*

*Respondent was given sufficient opportunity to present his side but he failed to file his answer or attend the scheduled hearings, which the Commission construed as indicia of guilt.*

*Moreover, complainant presented two other witnesses, who, together with respondent's failure to answer, morally convinced the Commission that indeed, substantial evidence exists to prove that respondent is guilty of Grave Misconduct through sexual harassment.*

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**De Vera, Rogelio L.  
Grave Misconduct**

**CSC Res. 990406  
2/10/99**

Rogelio L. De Vera, Instructor at the Don Mariano Marcos Memorial State University, Southern La Union Campus, Agoo, La Union, was charged with Grave Misconduct, among others. It was alleged that on August 16, 1995, while conducting his class in Social Science 5 and while another student was reporting in front of the class, De Vera sat beside one of his male students, suddenly slid his hand into his thigh, and thereafter grabbed and mashed his private part. Two other students witnessed the incident.

In his counter-affidavit, De Vera offered as evidence the Minutes of the Advisory Council Meeting he attended on the same day, together

with a Statement of his other activities for that day, to prove that he could not have been in class and (carried-out) the alleged act.

The student subsequently executed another affidavit correcting the date to August 23, 1995, also a Wednesday as August 16, and offered an explanation for the mistake (nervousness and fear while executing the original document). Such corrected date matched the testimony of his classmates who witnessed the incident. Thereafter, after a series of postponements, De Vera's right to present evidence was considered waived.

Based on the evidence on record, the Civil Service Commission found substantial evidence to hold De Vera guilty of Grave Misconduct thru Sexual Harassment. The change of date was dismissed as minor and trivial, as the alleged assault remained unrebutted. Minor inconsistencies do not affect the veracity of testimony of a witness; in fact, it strengthens his credibility, since these erase any suspicion of rehearsed testimony (People v. Padilla, 242 SCRA 642). The student's testimony was corroborated by eyewitnesses while respondent did not offer evidence to refute the alleged sexual assault.

De Vera was found guilty of Grave Misconduct thru Sexual Harassment, and was dismissed from the service with all its accessory penalties.

**Annotation:**

*The subsequent affidavit containing the correct date was executed three (3) months after the first. The affiant explained the mistake merely as due to his fear and nervousness at that time. This mistake could have been avoided if his counsel had been more vigilant concerning the date of the incident. Notice that two (2) corroborating affidavits were also executed by the witnesses, containing the correct date. In any case, it was good that the Commission took the mistake well, and gave more weight to the fact that there were eyewitnesses to the incident, and that the act itself was not contradicted by any evidence.*

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Even as the rules on sexual harassment proved useful in providing redress to victims and punishing perpetrators, it is also evident from the cases

handled by the CSC that many alleged victims were ignorant, to say the least, of procedures necessary in the filing of a complaint. The dismissal of many cases stemmed from the complainants' failure to comply with formal and other technical requirements, be it in filing a sworn complaint, or in filing the case before the proper body/agency. Below is an example of a case dismissed due to the CSC's lack of jurisdiction over the matter.

**Erguiza, Gerardo S. Sr**  
**Simple Misconduct (Sexual Harassment)**

**CSC Res. 973161**  
**6/27/97**

Gerardo Erguiza, Sr., former Division Schools Superintendent, DECS-Cabanatuan City, was charged by the Civil Service Commission for Simple Misconduct. It was alleged that on December 10, 1993, complainant Lilibeth Ramos, accompanied by Carlito Galang, then School Principal, went to the office of Erguiza to secure his signature for her appointment as substitute teacher. She claimed that Erguiza sent Galang to look for somebody, and when left alone with him, Erguiza started to ask her on hypothetical sexual relationships and about her sex life. Then he started to caress her thigh, utter green words and make sexual advances. On her way home, she allegedly related the incident to Galang.

Erguiza failed to file his answer nor appear in the scheduled hearings. He filed a Motion to Dismiss, on the ground that the case has already been taken cognizance by the DECS, and has already been dismissed for lack of factual basis. The DECS Resolution was submitted, which set forth the testimonies of witnesses for Erguiza, among whom was Galang, who attested to a different chronology of events, in effect negating the allegations of the complaint.

*Res judicata*, as a ground for dismissing complaint necessitates a previous final judgment in a case between the same parties involving the same subject matter and cause of action. The decision of Secretary Gloria dismissing the case on the merits has already become final, hence, should not be disturbed. Since DECS had jurisdiction over the subject matter and the parties involved, its decision on the matter is valid. Ramos was also the complainant in the DECS case against the same respondent Erguiza. It involved the same subject matter of Sexual Harassment and same cause of action which is the alleged injury to the person of Ramos. The Civil Service Commission can no longer act on

the present case.

Case dismissed.

*Annotation:*

*This case exemplifies the problem regarding concurrence of jurisdiction and multiplicity of remedies.*

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To settle differing interpretations of sexual harassment as an administrative offense, address the gaps within the law and facilitate the provision of administrative remedies, the Civil Service Commission issued CSC Resolution No. 01-0940, otherwise known as the **Administrative Disciplinary Rules on Sexual Harassment Cases**. This new resolution supercedes or repeals prior issuances of the CSC such as Memorandum Circular 19 (s. 1994) and CSC Res. 95-6161. Also, standing administrative orders of various departments, such as DOLE Administrative Order No. 250 (s. 1995), will have to be amended accordingly or replaced altogether, in consonance with the changes made in the new Rules.



## CHAPTER 2

The New Administrative  
Disciplinary Rules on  
Sexual Harassment Cases



## CHAPTER 2

### 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<sup>27</sup> 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 it 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 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

<sup>27</sup> See Annex for full text.



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.<sup>28</sup>

*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."<sup>29</sup>

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.

<sup>28</sup> Ursua, *op. cit.*

<sup>29</sup> *Ibid.*

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 frames 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/smuttery 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;
2. malicious leering or ogling;
3. the display of sexually offensive pictures, materials or graffiti;
4. unwelcome inquiries or comments about a person's sex life;

5. unwelcome sexual flirtation, advances, propositions;
6. making offensive hand or body gestures at a victim;
7. persistent unwanted attention with sexual overtones;
8. unwelcome phone calls with sexual overtones causing discomfort, embarrassment, offense or insult to the receiver; and
9. other analogous cases.

## Penalties

### For Light Offenses:

- |                         |   |   |
|-------------------------|---|---|
| 1 <sup>st</sup> offense | - | Reprimand   |
| 2 <sup>nd</sup> offense | - | Fine or suspension not exceeding thirty (30) days |
| 3 <sup>rd</sup> offense | - | Dismissal   |

### For Less Grave Offenses:

- |                         |   |  |
|-------------------------|---|--|
| 1 <sup>st</sup> offense | - | Fine or suspension not less than thirty (30) days and not exceeding six (6) months |
| 2 <sup>nd</sup> 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 implement-

ing 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).

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 Secreteray 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.

The general procedure for filing a case of sexual harassment is illustrated in the following flowchart.

Sexual Harassment victim files a **COMPLAINT** with CODI or Disciplining Authority (DA)



CODI recommends dismissal of the **COMPLAINT** due to technicality



dismisses **COMPLAINT** without prejudice to refile



CODI requires the person complained of to submit **COUNTER AFFIDAVIT/COMMENT**



CODI conducts **PRELIMINARY INVESTIGATION**



CODI submits **PRELIMINARY INVESTIGATION REPORT** to DA



DA dismisses **COMPLAINT** for lack of *prima facie* case



Complainant may file **PETITION FOR REVIEW** to CSC Proper



DA issues **FORMAL CHARGE** against the person complained of



DA may **PREVENTIVELY SUSPEND** Respondent



Respondent may file **MOTION FOR RECONSIDERATION** with the DA or elevate the same to the CSC by way of **APPEAL**



DA transmits case to CODI



Respondent files **ANSWER**



Respondent waives **FORMAL INVESTIGATION**



Respondent does not file **ANSWER**



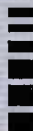
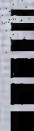
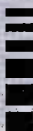
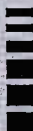
Respondent elects **FORMAL INVESTIGATION**



**FORMAL INVESTIGATION** conducted only When necessary



If **FORMAL INVESTIGATION** is not necessary



**CODI commences FORMAL INVESTIGATION**

CODI may conduct  
**PRE-HEARING  
CONFERENCE**

**HEARING PROPER**  
following basic  
order of hearing

Parties may submit  
**POSITION PAPERS/  
MEMORANDA**

**CODI submits REPORT OF INVESTIGATION**

DA renders  
**DECISION\***

Party adversely affected  
(PAA) by decision may file  
a **MOTION FOR  
RECONSIDERATION**

**CSC REMANDS** case to  
Agency for violation  
of *Due Process*

PAA may **APPEAL** to CSC Proper

CSC renders  
**DECISION\***

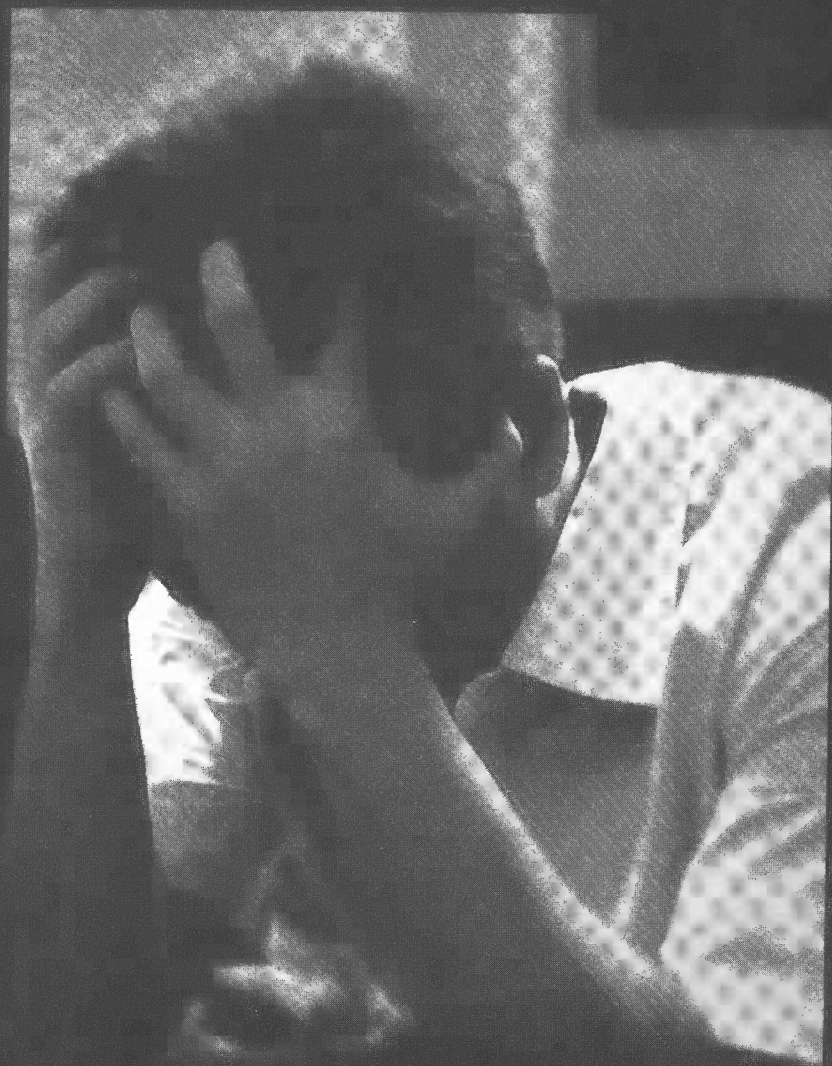
PAA may file  
**PETITION FOR REVIEW**  
to Court of Appeals  
under Rule 43\*

In any case, a party adversely affected by a Decision may file a *Petition for Certiorari* to the Supreme Court under Rule 65, to challenge the jurisdiction of the body or tribunal that rendered the Decision, or for grave abuse of discretion amounting to lack or excess of jurisdiction



## CHAPTER 3

Proposed Standard Operating  
Procedure (SOP) in  
Attending to Complaints





## CHAPTER 3

### PROPOSED STANDARD OPERATING PROCEDURE (SOP) IN ATTENDING TO COMPLAINANTS

The Civil Service Commission, being the central personnel agency of the government, has taken great strides in fulfilling its roles and responsibilities in mainstreaming and institutionalizing gender and development in the bureaucracy. Consonant with these roles and responsibilities, the CSC attempts to view sexual harassment cases from the standpoint of the harassed rather than the harasser. The reason lies primarily on the argument that, *"Whether an act is considered sexual harassment, is determined by a reasonable victim's point of view. Was it unwelcome on the victim's part and did she/he feel humiliated by it? If the victim felt she/he did, then it is sexual harassment."*<sup>31</sup>

But sensitivity to the victim's standpoint does not mean sacrificing fairness and due process. The Administrative Disciplinary Rules on Sexual Harassment Cases provide sufficient safeguards to ensure that the rights of the respondent are not violated and that the presumption of innocence until proven otherwise by substantial evidence is observed.

Section 10 of the Rules provides for a Pre-Filing Stage where the agency may adopt mechanisms to further assist alleged victims of sexual harassment. In identifying a pre-filing stage, the Rules recognize the difficulties that a victim of sexual harassment may face. In many instances, a woman who encounters sexual harassment often experiences self-doubt: *Am I right to feel offended by the action? Am I not being too sensitive? Did I "invite" the harasser to commit the offending act, perhaps through my own action or appearance? Would I risk public exposure by filing a complaint? Would I be able to endure the humiliation of being doubted by family or colleagues?*

<sup>31</sup> Civil Service Commission. *Primer on Sexual Harassment*. Quezon City: Civil Service Commission, n.d.

Under such circumstances, the victims do not immediately conclude that they should file a complaint. Instead, they look for someone to talk to who can help them sort out conflicting thoughts and feelings. Only when these have been settled do they decide on their next course of action.

Within this context, a Standard Operating Procedure in attending to victims of sexual harassment may serve the following purposes:

1. to solicit information on the incident partly as aid to the victim in clarifying the circumstances and nature of the offending act, as well as to gauge the merit of the case
2. to provide an immediate response to the victim's psychological or emotional needs that may result from the experience of sexual harassment
3. to assist the victim in preparing for the filing stage

The proposed standard operating procedure contained in this chapter assumes that the persons who may be tasked with its application include, but are not limited to lawyers, legal practitioners, or counselors.<sup>32</sup> The SOP is divided according to the Informal Procedure, which basically involves the pre-filing stage, and the Formal Procedure, which encompasses filing, investigation and disposition of the case. This is to aid the legal practitioner in assisting the complainant/victim, depending on which stage of the case the latter comes to solicit advice, counseling or legal opinion.

### **Informal Procedure**

Informal procedures do not involve a formal investigation of the sexual harassment complaint, but resolve the situation in less intrusive and official ways. However, the incidents will be documented to determine if patterns of harassment are present. No informal procedure will be initiated without the consent of the complainant.<sup>33</sup>

<sup>32</sup> For purposes of this SOP and for uniformity, they shall be referred to as "legal practitioner".

<sup>33</sup> Center for Women's Studies. *Primer on Sexual Harassment, 2<sup>nd</sup> ed.* Quezon City: University of the Philippines Center for Women's Studies, 2000.

**The Pre-filing Stage.** The pre-filing stage usually begins when the victim feels offended by an act of sexual harassment, but does not know how to go about the initial process. Should this occur and the supposed victim consults the legal practitioner within the agency's legal department (or the Human Resource Management Office, in the absence of a legal department) regarding her/his predicament, the following steps in addressing the issue at hand should be taken:

### 1. Counseling

Counseling, or advising the victim, is aimed primarily at listening to what the victim has to say, allowing the person to ventilate her/his anger, shock, fear or other emotions. Given the sensitivity of the issue, it is recommended that the counseling be carried out by a professional.

In order to get accurate data, the victim must be assured of the confidentiality of her/his name and other personal circumstances, as well as the information disclosed. She/He must be encouraged to state truthfully the specific acts committed or words used against her/him, qualifying the same to be sexual harassment. To this end, the following guide questions<sup>34</sup> may be adopted:

- a. Name of Complainant (at least first name, if the person wishes to remain anonymous)
- b. Position
- c. What happened?
  - *Who* harassed you? (No name is needed yet but the role of the person is an important element, for example, supervisor or fellow employee.)
  - *How* did the harassment take place? (Try to get a very explicit description of the alleged harassing action. This is sometimes very difficult because the victim is often embarrassed by the event.)
  - *Where* did it take place?
  - *When* did it take place? (Date and time, if possible)
  - If more than once, *how often*?

<sup>34</sup> New Hampshire Commission on the Status of Women, Sexual Harassment Task Force. *A Resource Manual on Sexual Harassment*. Connecticut: New Hampshire Commission on the Status of Women, Sexual Harassment Task Force, 1983.

- How did you *feel* about it? What was your *response*?
- In what way does the alleged harasser have *power* over the success (or other well-being) of the harassed?
- Was there any *witness*? If yes, *who*?
- Did you tell anyone about your experience after the incident?
- If some time has elapsed since the incident, have any *consequences* occurred? What? How?
- What would you like to have *done*?
  - for you?
  - for others?
  - with respect to the alleged harasser?

## 2. Obtaining Professional Help

It must be noted that these steps shall be undertaken when circumstances warrant, as when the offended is a victim of grave acts of sexual harassment, such as sexual assault, or when the victim is a minor, among others. The Women and Child Protection Units (WCPUs) existing in several government hospitals provide such assistance. Some examples of hospitals with WCPUs are:

Batac, Ilocos Norte

- Mariano Marcos Memorial Hospital and Medical Center

San Fernando, La Union

- Ilocos Regional Training and Teaching Hospital

Cabanatuan City

- Dr. Paulino J. Garcia Memorial Research and Medical Center

Batangas City

- Batangas Regional Hospital

Legaspi City

- Bicol Regional Training and Teaching Hospital

Iloilo City

- Western Visayas Medical Center

Cebu City

- Vicente Sotto Memorial Medical Center
- St. Anthony Mother and Child Hospital

Zamboanga City

- Zamboanga City Medical Center; Mindanao Central Sanitarium

Surigao City

- CARAGA Regional Hospital

Davao City

- Davao Medical Center

Manila

- Jose R. Reyes Memorial Medical Center
- Tondo Medical Center

Quezon City

- East Avenue Medical Center; Quirino Memorial Medical Center

In addition, specialty hospitals that have Women and Children Protection Units include the following:

Dr. Jose Fabella Memorial Hospital

- provides personalized, 24-hour quality medical services to pregnant women-victims and survivors of violence

National Children's Hospital

- for children victims and survivors of violence

Philippine Children's Medical Center

- for children and adolescent victims and survivors of violence

### 3. Offering Options Available

More often than not, when the victim comes to the legal practitioner during the pre-filing stage, she/he is not yet aware of the options available for her/him to take. As such, s/he must not be kept in the dark. The positive as well as the negative sides of filing and non-filing of a sexual harassment case must be given. Afterwards, the choice is up to her/him as to which course of action to pursue.

### **a. First Option: To File Case**

In laying down before the victim the first option, i.e. to file a case, she/he must be given a preview of the probable consequences of such choice.

Certain positive feelings are sure to surface, such as the feeling that whatever wrong has been done shall now be made right, previous offended feelings shall be appeased and somehow brought to rest, and most importantly, bringing the matter to the attention of the authorities shall, somehow, serve as deterrent to further acts to be committed by the same person or others having the same motive.

Not-so-positive eventualities must also be disclosed. These include the complexity of the proceedings involved in the filing of a case, and that the details of the act/s complained of will again be brought forth. There is also the possibility of a consequent hostile environment, which may include further harassment or threats by the supposed offender or persons acting under his/her directions. Finally, she/he must also be informed of the cost of filing a suit.

If the victim chooses to file a complaint, the legal practitioner must give a brief rundown of the initial steps to be taken. For example, if the victim wishes to file an administrative case, she/hè must be informed that the same must be filed before the agency where the respondent belongs. In case the complaint was filed before the Civil Service Commission, the CSC shall remand the case to the agency where the respondent belongs in accordance with the new Rules. Criminal as well as civil action is also available should s/he wish to avail of such remedies.

### **Requirements for filing a complaint**

As Section 12 of the Rules provides, a complaint may be filed anytime with the office or agency's CODI or disciplining authority. The latter, upon receipt of complaint, must immediately call for the creation of one in accordance with the law and rules, and transmit the complaint to the Committee.

The complaint must be in writing, signed and sworn by the complainant, and shall contain the following:

1. complaint's full name and address
2. respondent's full name, address and position
3. a brief statement of the relevant facts
4. evidence, in support of the complaint, if any
5. a certification of a non-forum shopping

The absence of any one of the above requirements shall result in the complaint's dismissal, without prejudice to re-filing.

Where the complaint is not under oath, the Committee shall summon the complainant to swear to the truth of the allegation. A complaint sent by telegram, radiogram, electronic mail or similar means of communication shall be considered non-filed until the complainant complies with the above requirements within ten (10) days from receipt of compliance.

The complaint's withdrawal at any stage of the proceedings does not prevent 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 respondent's guilt.

### **Procedure from filing to termination of case**

#### **1. Administrative**

Implementing Rules of the government agency based on the Administrative Disciplinary Rules on Sexual Harassment Cases

#### **2. Criminal**

Sexual Harassment under R.A. No. 7877

Acts of Lasciviousness

Rape

#### **3. Civil**

Action for Damages under R.A. No. 7877

Action for Damages under the New Civil Code

It must, however, be pointed out that the legal practitioner is not mandated to explain more than what is necessary regarding the criminal and civil actions the victim may choose to take.

### **b. Second Option: Not to File Case**

After weighing all the possible consequences of filing a case and the victim decides not to file one for whatever reason, her/his decision must be respected. The victim must never be forced to take a particular course of action.

It is significant to note, however, that the agency where the respondent belongs is not precluded from filing the case of sexual harassment against its erring employee, notwithstanding the disinterest, inaction or lack of cooperation by the complainant. This presupposes that certain material evidence exists to establish the culpability of the respondent, other than the complaint or testimony of the victim.

### **Formal Procedure**

The formal procedure commences when the victim chooses to file a complaint, and acts on it by bringing the same to the attention of the authority/ies concerned. During this stage, the legal practitioner's work should not interfere with the technical matters of procedure, and is limited instead to occasional reminders when appropriate, as follows:

1. If the victim is wavering in her/his statements, s/he must be reminded to stay calm and stick to the truth of her allegations, no matter how intimidating the questions propounded may be;
2. Advise the parent/s, spouse or nearest relative of the victim to be always supportive of the cause of the latter and, as much as possible, to be present during the proceedings.  
This is especially required when the victim is a minor, where the psychological impact of the harassment is stronger and lasting.

### **Disposition of the Case**

This stage occurs after final determination by a competent court or quasi-judicial body, as the case may be, that sexual harassment indeed occurred or the acts alleged to have been committed did not occur at all, i.e. no sexual harassment was committed against the person of the complainant.



Advocacy work during this stage of the proceeding may vary, depending on the outcome of the case. When the case is decided in favor of the complainant, thus finding that sexual harassment actually took place, the advocacy work with respect to that particular victim generally ends.

On the other hand, when the case is adverse to the complainant, advocacy work basically involves balancing whether certain limited remedies may still be available vis-à-vis the condition (financial, emotional, etc.) of the victim and the actual evidence presented during the formal investigation. In case there is good reason to support it, the complainant may be advised on the propriety of filing a Petition for Certiorari under Rule 65 of the Rules of Court, on the ground of Grave Abuse of Discretion.

*If you are a victim of sexual harassment. . .*

- *Hold your ground! Say NO! and put a stop to the harassment*
- *Immediately report the harassment to the concerned person or office within your place of work or institution (e.g., immediate superior, human resource department, guidance counselor)*
- *If possible, narrate the incident to a third person you can confide in*
- *File a complaint of sexual harassment under the appropriate rules and regulations of your department/agency/institution, under RA 7877 or other provisions of the Revised Penal Code. You may also seek remedies under the civil law provisions on damages.*
- *Do not believe the myth that sexual harassment is actually meant as a compliment*
- *Be actively engaged in developing an anti-sexual harassment policy in your workplace or institution*
- *Do not forget to seek counseling and to have your own support group*
- *Conduct an awareness program to inform others about sexual harassment*

Source: SALIGAN, 2000.



## CHAPTER 4

General Principles in Resolving  
Administrative Cases



## CHAPTER 4

### GENERAL PRINCIPLES IN RESOLVING ADMINISTRATIVE CASES

#### Substantiality of Evidence

In cases filed before administrative and quasi-judicial bodies, a fact may be deemed established if supported by substantial evidence, i.e., the amount of relevant evidence that a reasonable mind might accept as adequate to justify a conclusion.<sup>35</sup> The Supreme Court has ruled that findings of fact of administrative agencies must be respected as long as they are supported by substantial evidence, even if such evidence might not be overwhelming or even preponderant.<sup>36</sup>

#### Technical Rules of Procedure not Strictly Applied

Administrative procedure is not bound by the rigid requirements of the Rules of Court.<sup>37</sup> It shall be construed liberally in order to promote their object and assist the parties in claiming just, speedy and inexpensive determination of their claims and defenses.<sup>38</sup>

However, even if administrative tribunals exercising quasi-judicial powers are not strictly bound by procedural requirements, they are still bound by law and equity to observe the fundamental requirements of due process.<sup>39</sup> The essence of due process in administrative proceedings is the opportunity to explain one's side or a chance to seek reconsideration of the action or ruling complained of.<sup>40</sup>

<sup>35</sup> *Malonzo v. COMELEC*, 269 SCRA 380.

<sup>36</sup> *Villaflor v. CA*, 280 SCRA 297.

<sup>37</sup> *Esquig v. CSC*, 188 SCRA 166.

<sup>38</sup> *Mangubat v. de Castro*, 163 SCRA 608.

<sup>39</sup> *NPC v. NLRC*, 272 SCRA 704.

<sup>40</sup> *Padilla v. NLRC*, 273 SCRA 457; *PLDT v. NLRC*, 276 SCRA 1.

The Supreme Court has also ruled that the right to due process in administrative proceedings is observed when:

- the petitioner is in fact heard on motion for reconsideration,<sup>41</sup> or
- respondent is given the opportunity to be heard either through oral arguments or pleadings,<sup>42</sup> or
- petitioner is afforded opportunity to present his explanation, but repeatedly fails to appear on the two scheduled hearings for the purpose.<sup>43</sup>

An actual hearing is not always an indispensable aspect of due process as long as the respondent is notified of the charges against him and is given an opportunity to defend his interest.<sup>44</sup>

### **Decisions must set forth legal and factual basis**

In disposition by quasi-judicial administrative bodies, decisions - however concisely written - must distinctly and clearly spell out the facts and the law upon which they are based.<sup>45</sup>

Due process also requires that the parties to litigation be informed of how it was decided, with an explanation of the factual findings and legal justifications that led to the conclusion of the court.<sup>46</sup>

### **Findings of Fact of Administrative Agencies Accorded Respect**

Findings of fact of administrative agencies and quasi-judicial bodies that have acquired expertise because their jurisdiction is confined to specific matters are generally accorded not only great respect but even finality.<sup>47</sup>

However, the Supreme Court may deviate from this standard rule when

<sup>41</sup> Cortenillo v. Executive Secretary, 276 SCRA 652

<sup>42</sup> Yap Say v. IAC, 159 SCRA 325.

<sup>43</sup> Dillena v. CA, 163 SCRA 630.

<sup>44</sup> Luniqued v. Exenea, 282 SCRA 125.

<sup>45</sup> Naguiat v. NLRC, 269 SCRA 564.

<sup>46</sup> People v. Bellaflor, 233 SCRA 196.

<sup>47</sup> Naguiat v. NLRC, 269 SCRA 564.

the administrative agency is found to have

- misappreciated the facts;<sup>48</sup>
- when it failed the test of arbitrariness;<sup>49</sup>
- when there is a showing of grave abuse of discretion;<sup>50</sup>
- when there is fraud or error of law;<sup>51</sup> or
- there is absolutely no evidence in support of such finding of fact or such evidence considered is clearly, manifestly and patently insubstantial.<sup>52</sup>

### Factors to be Considered in Sexual Harassment

In resolving cases of sexual harassment, several factors are usually given weight and which eventually tilt the scales in favor of the complainant or the respondent.

The *decorum of the complainant* during the hearing as well as *the manner in which a complainant testifies*, reveal whether the complainant is telling the truth or not.<sup>53</sup> In one case referred herein as CSC Res. No. 97-3277, the testimony of the complainant was found to be natural, straightforward, spontaneous and with details that are consistent with human nature and the ordinary course of things. In two other cases, the Commission had taken note of a complainant's testimony that was recounted without hesitation, and had ruled that minor inconsistencies do not affect the veracity of a complainant's testimony but strengthen her credibility.<sup>54</sup> Generally, a witness who consistently testifies in a categorical, straightforward, spontaneous and frank manner is a credible witness.<sup>55</sup>

Testimony of victims who are minors is usually given full faith and credence, as in the case of CSC Res. No. 97-1377. Such is based on the Supreme Court's ruling that it is highly improbable for a girl of tender age to fabricate a charge so humiliating to herself and her family had she not been

<sup>48</sup> Trendline Employees Association-Southern Philippines Federation of Labor vs. NLRC, 272 SCRA 172

<sup>49</sup> PAL v. NLRC, 279 SCRA 445.

<sup>50</sup> Evangelista v. NLRC, 195 SCRA 603.

<sup>51</sup> Apex Mining Co., Inc. vs. Garcia, 199 SCRA 278.

<sup>52</sup> Beautifont, Inc. v. CA, 157 SCRA 481.

<sup>53</sup> CSC Res. No. 95-3599.

<sup>54</sup> CSC Res. No. 98-0399 and CSC Res. No.99-0406, respectively.

<sup>55</sup> People v. Nuestro, 240 SCRA 221.

truly subjected to pain and harrowing experience of sexual abuse.<sup>56</sup>

Apart from the conduct of the complainant during the hearing, complainant's actions during and after the sexual harassment are also tell-tale signs of the veracity of the victim's allegations. In one case,<sup>57</sup> although there were no eyewitnesses, the sequence of events as established by credible testimonies revealed the contemporaneous and subsequent conduct of complainant which is material in the determination of whether sexual harassment was committed (i.e., complainant was uneasy and in a hurry to leave the place immediately after the harassment was committed, and had confided the incident to an employee on the same day that it happened.) However, evidence showing that complainant had made several phone calls to the respondent and that complainant had prior trysts in a hotel with the respondent were considered as acts showing consent, as the Commission ruled in CSC Res. No. 00-0947.

The fact that there are several complainants or victims of sexual harassment who corroborated one another should be given weight. Such was the Commission's response when 12 students complained that they were sexually harassed by their teacher.<sup>58</sup>

In several cases, the Commission considered the absence of motive on the part of complainant.<sup>59</sup> Specifically in CSC Res. No.97-3277, the Commission found the complainant to have no motive in contriving false accusations against the respondent when her request for transfer had already been granted by the respondent and hence, the only compelling reason for filing a case was to seek redress.

The fact that complainant reported the rape to the PNP or that a previous criminal case was filed<sup>60</sup> is also a factor worthy of consideration. The submission of a medical certificate, particularly in rape cases involving minors as victims, helps strengthen the allegation that rape was indeed committed, although it does not matter that the medical certificate, a

<sup>56</sup> People vs. Cabillan, 267 SCRA 259

<sup>57</sup> CSC Res. No. 97-3277

<sup>58</sup> CSC Res. No. 97-3689

<sup>59</sup> CSC Res. No. 98-0399; CSC Res. No.99-0354; CSC Res. No.99-0387; CSC Res. No.99-0436; and, CSC Res. No.99-0835

<sup>60</sup> CSC Res. No. 96-5558 and CSC Res. No. 99-1134

public document, was not attested to.<sup>61</sup>

On the other hand, flight on the part of respondent is an indication of guilt, as was the case in CSC Res. No. 99-1134. The fact that respondent did not answer or appear in the hearing is invariably taken against him.<sup>62</sup> In some cases, the witnesses for the respondent are discredited because they are beholden to the respondent in one way or another.<sup>63</sup> Affidavits of witnesses that are noticeably similar, give the impression that the affiants were coached.<sup>64</sup>

Finally, the fact that respondent did not present any evidence other than his bare allegations and in the face of the positive testimony of the complainant, is taken against him.<sup>65</sup> This is in consonance with the well-settled rule in evidence that positive and categorical assertions of prosecution witnesses prevail over the bare denial of the accused.<sup>66</sup>

### **Caveats and Misconceptions**

When evaluating a sexual harassment case, it is easy to fall into the trap of long-held notions and presumptions as to how a sexual harassment victim should behave before, during, and after the harassment. These presumptions are ultimately rooted in gender bias, wherein stereotyped notions of propriety concerning women's behavior, appearance and relations with the opposite sex influence the way we view and react to issues of sexual violence.

Because women are expected to be chaste, submissive and demure in conduct especially in relation to men, often a victim finds that the first casualty in reporting sexual harassment is her personal integrity: *What is her "track record" in dealing with men? Have there been occasions in the past when she conveyed openness to sexual relations not only with the harasser but even other men, such as by exchanging banter with sexual overtones or going out on dates? How was she dressed at the time of the*

<sup>61</sup> CSC Res. No.96-5558 and CSC Res. No.99-1134

<sup>62</sup> CSC Res. No. 99-1377 and CSC Res. No.95-3599

<sup>63</sup> CSC Res. No. 99-0835; CSC Res. No.97-3277; CSC Res. No. 99-0387

<sup>64</sup> CSC Res. No. 97-3277

<sup>65</sup> CSC Res. No. 98-0399

<sup>66</sup> People v. Cuyanán, 245 SCRA 66



*harassment? Did she communicate her rejection of the offending act, perhaps by struggling or calling for help? Why did she allow herself to be left alone with the supposed perpetrator?*

It also happens in many cases that the victim has to contend with the perpetrator's reputation or image, such that colleagues would find it difficult to believe that the person being complained of indeed committed sexual harassment: *Hindi 'yan magagawa ni Sir, ang bait-bait niya eh. Fatherly attention lang 'yon, hindi dapat binibigyan ng malisya.*

Men and women alike have been socialized into believing that both sexes - because of biological differences - are imbued with different roles and functions in society, and therefore accorded different standards of behavior. These biases manifest not only in gut reactions to acts of violence against women, but also in legal presumption that often influences the resolution of such cases.

Owing to the dearth of cases involving sexual harassment decided by the appellate courts, particularly the Supreme Court, there are few judicial standards at this point that can serve as guideposts for lower courts and administrative agencies in resolving cases of sexual harassment.<sup>67</sup> Understandably, even as doctrines in rape cases are not appropriate to sexual harassment, for purposes of illustrating the misconceptions, pronouncements on rape are reproduced and presented here.

In 1995, a study was published whereby presumptions relied upon by the Supreme Court in deciding 478 rape cases from 1961 to 1992 were reviewed.<sup>68</sup> The prevalent presumptions identified were as follows:

- rape happens only to young, pretty or desirable women
- rape is a crime of lust or passion;
- rape involves the loss of a woman's most prized possession, her "chastity";
- men can have sex freely with women deemed to be of loose morals because these women have nothing to lose;
- rape is committed by sex maniacs or perverts;
- rape happens in poorly lit secluded places;
- sexy clothes incite men to rape;

<sup>67</sup> Ursua, *op. cit.*

<sup>68</sup> Women's Legal Bureau. *Making Sense of Rape*. Quezon City: Women's Legal Bureau, 1995.

- when violated, a woman's first reaction is to tell her family, particularly her menfolk - father, brother, or husband - who must be informed of the assault upon the woman, and thus upon the family honor; and
- rape charges are fabricated by women seeking to avenge a slight or to extort money.

In general, there is a propensity to use presumptions on rape and to apply them to other forms of sexual harassment. In the study conducted of the cases brought to the Civil Service Commission involving sexual harassment, it was revealed that indeed, such misconceptions play a vital role in the appreciation and disposition of cases.

To illustrate, the notion that "No Filipina of decent repute would publicly cry rape unless that is the truth," perpetuates the misconception that a woman of ill repute cannot credibly complain that she has been raped or sexually harassed.<sup>69</sup> Thus, a complainant who is not of decent repute will certainly be fighting an uphill legal battle if she files a case for sexual harassment.

Another disturbing presumption is that a person being sexually assaulted "normally" struggles with the perpetrator, although in one case, the Commission debunked the presumption that a victim of sexual harassment must put up some kind of struggle when harassed. Thus, the Commission ruled that:

*...That the complainants did not shout, scream or effectively struggle against the onslaught on their bodies or immediately tell their parent of the incidents involving them and Lazona would not diminish their credibility either. It must be reiterated that the incidents happened inside the office/room of the respondent or whenever they were isolated or alone. And because they are children, they are easily cowed and intimidated. Moreover, they being young girls for that matter are naturally shy and embarrassed as regards sexuality...The respondent is someone "respected" and trusted by them, in fact the person harassing them is the District Supervisor of their school.<sup>70</sup>*

Although this pronouncement of the Commission is far from perfect, it has opened the door toward the elimination of the presumption of

<sup>69</sup> E. Ursua, *Ibid.*

<sup>70</sup> CSC Res. No. 99-0835

struggle. From merely referring to 'young girls,' this decision could be stretched to refer to victims in general, without distinction of age or status.

Most of the presumptions pertain to the question of whether there was consent on the part of the complainant or whether the sexual harassment was welcome or not. Ergo, if the complainant was dressed provocatively, the sexual advance must be welcome or if the complainant continued with her mundane tasks after a co-employee touched her leg, she must have consented to the act.

Generally speaking, the problem with presumptions is that they assume too much and are a convenient excuse not to consider other compelling factors. Because they are often used and relied upon in decisions and pleadings, they are sometimes deemed to be self-evident regardless of whether they have concrete basis or not.

On the issue of sexual harassment, specifically, what the prevailing presumptions show is that legal remedies and procedure, no matter how consciously designed to uphold the 'fundamental equality of men and women before the law,' may end up even perpetuating discrimination against women. Unless we recognize that gender bias informs our ideas and perspectives about how men and women should act in the real world, and take the necessary steps to correct the situation, the legal system - which is a human construct - can never fully provide refuge to women who need its protection.

In the final analysis, addressing sexual harassment goes beyond the institutionalization of systems and procedures for its deterrence and punishment. Instead, it demands comprehensive action that will change prevailing norms, mitigate unequal relationships of power, and facilitate equal access to opportunities toward promoting gender equality and, in the bureaucracy's case, making the world of work a place for women and men alike to fully develop their potentials as human beings.

struggle. From merely referring to 'young girls,' this decision could be stretched to refer to victims in general, without distinction of age or status.

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# ANNEX



## Administrative Disciplinary Rules on Sexual Harassment Cases

### Office for Legal Affairs

#### 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 su-

pervision 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 lurid remarks
- (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 an 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 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.

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 this Office.

**Section 22. *Duration of Preventive Suspension.*** - When the administrative case against the respondent under preventive suspension is not finally decided by the disciplining authority 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 in 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 23. *Remedies from the Order of Prevention Suspension.*** - The respondent may file a motion for reconsideration with the disciplining authority or may elevate the same to the Civil Service Commission by way of an appeal within fifteen (15) days from receipt thereof.

**Section 24. *Conduct of Formal Investigation.*** - Although the respondent does not request a formal investigation, one shall nevertheless be conducted by the Committee on Decorum and Investigation if it deems such investigation necessary to decide the case judiciously.

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

**Section 25. *Pre-hearing Conference.*** - At the commencement of the formal investigation, the Committee on Decorum and Investigation may conduct a pre-hearing conference for the parties to appear, consider and agree on any of 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 paper/memoranda and submit the case for resolution based on the result of the pre-hearing conference without any need for further hearing.

**Section 26. *Continuous Hearing Until Terminated; Postponement.*** - Hearings shall be conducted on the hearing dates set by the Committee on Decorum and Investigation or as agreed upon during a pre-hearing conference.

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) 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 only three (3) postponements upon oral or written requests. A further postponement may be granted only upon written request and subject to the discretion of the Committee on Decorum and Investigation.

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 27. *Preliminary Matters.*** - At the start of the hearing, the Committee on Decorum and Investigation shall note the appearances of the parties and shall proceed with the reception of evidence for the complainant.

If the respondent appears without the aid of a counsel, he/she shall be deemed to have waived his/her right to counsel.

Before taking the testimony of a witness, the Committee on Decorum and Investigation shall place him/her under oath and then take his/her name, address, civil status, age, and place of employment.

**Section 28. *Appearance of Parties.*** - Any person representing any of the parties before any hearing or investigation shall mani-

fest 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 requirements shall not be recognized.

**Section 29. Order of Hearing.** - Unless the Committee on Decorum and Investigation 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 then offer evidence in support of his/her defense;
- 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;
- d. Re-cross examination by the opponent.

A sworn statement of a witness, properly identified and affirmed by the witness before the Committee on Decorum and Investigation shall constitute his/her direct testimony.

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) days after the termination of the investigation. Failure to submit the memorandum within the given period shall be considered a waiver thereof.

**Section 30. Objections.** - All objections raised during the hearing shall be resolved by the Committee on Decorum and Investigation. However, objections that cannot be ruled upon by the Committee shall be noted with the information that the same shall be included in the memorandum of the concerned party to be ruled upon by the proper disciplining authority.

The Committee on Decorum and Investigation shall accept all evidence deemed material and relevant to the case. In case of doubt, the Committee on Decorum and Investigation shall allow the admission of evidence subject to the objection interposed against its admission.

**Section 31.            *Markings.*** - All documentary evidence or exhibits shall be properly marked by letters (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 32.            *Request for Subpoena.*** - 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) days before the scheduled hearing.

**Section 33.            *Issuance of Subpoena.*** - The Committee on Decorum and Investigation may issue subpoena *ad testificandum* to compel the attendance of witnesses and subpoena *duces tecum* for the production of documents or objects.

**Section 34.            *Records of Proceedings.*** - The proceedings of the formal investigation must be recorded either through shorthand or stenotype or by any other method.

**Section 35.            *Effect of the Pendency of an Administrative Case.*** - 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 disciplining authority has issued a formal charge.

**Section 36.            *Formal Investigation Report.*** - 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 Committee on Decorum and Investigation to the disciplining authority. 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.

**Section 37. *When Case is Decided.*** - The disciplining authority shall render his decision on the case within thirty (30) days from receipt of the Report of Investigation.

**Section 38. *Finality of Decisions.*** - A decision rendered by heads of agencies 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, if the penalty imposed is suspension exceeding thirty (30) days or a fine exceeding thirty (30) days salary, the same shall be final and executory after the lapse of the reglementary period for filing a motion for reconsideration or an appeal and no such pleading has been filed.

#### **RULE IX. REMEDIES AFTER A DECISION**

**Section 39. *Filing of Motion for Reconsideration.*** - The party adversely affected by the decision may file a motion for reconsideration with the disciplining authority who rendered the decision within fifteen (15) days from receipt thereof.

**Section 40. *When Deemed Filed.*** - 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 envelope which shall be attached to the records of the case.

**Section 41. *Grounds for Motion for Reconsideration.***  
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 42. *Limitation.*** - Only one motion for reconsideration shall be entertained.

**Section 43. *Effect of Filing.*** - The filing of a motion for reconsideration within the reglementary period of fifteen (15) days shall stay the execution of the decision sought to be reconsidered.

**Section 44. *Filing of Appeals.*** - 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, may be appealed to the Commission Proper within a period of fifteen (15) days from receipt thereof.

In case the decision rendered by a bureau or office head is appealable to the Commission, the same may be initially appealed to the department head and finally to the Commission Proper. Pending appeal, the same shall be executory except where the penalty is removal, in which case the same shall be executory only after confirmation by the Secretary concerned.

A notice of appeal including the appeal memorandum shall be filed with the appellate authority, copy furnished the disciplining office. The latter shall submit the records of the case, which shall be systematically and chronologically arranged, paged and securely bound to prevent loss with its comment, within (15) days, to the appellate authority.

**Section 45. *When Deemed Filed.*** - An appeal sent by mail shall be deemed filed on the date shown by the postmark on the envelope which shall be attached to the records of the case and in case of personal delivery, the date stamped thereon by the proper office.

**Section 46. *Appeal Fee.*** - The appellant shall pay an appeal fee of Three Hundred Pesos (P300.00) and a copy of the receipt thereof shall be attached to the appeal.

**Section 47. *Perfection of an Appeal.*** - To perfect an appeal, the appellant shall within fifteen (15) days from receipt of the decision submit the following:

- a. Notice of appeal which shall specifically state the date of the decision appealed from and the date of receipt thereof;
- b. Three (3) copies of appeal memorandum containing the grounds relied upon for the appeal, together with the certified true copy of the decision, resolution or order appealed from, and certified copies of the documents or evidence;
- c. Proof of service of a copy of the appeal memorandum to the disciplining office;
- d. Proof of payment of the appeal fee; and
- e. A statement or certification of non-forum shopping.

Failure to comply with any of the above requirements within the reglementary period shall be construed as failure to perfect an appeal and shall cause its dismissal.

**Section 48. *Effect of Filing.*** - An appeal shall not stop the decision from being executory, and in case the penalty is suspension or removal, the respondent shall be considered as having been under preventive suspension during the pendency of the appeal, in the event he wins the appeal.

**Section 49. *When Case is Remanded for Violation of Respondent's Right to Due Process.*** - If the case on appeal with the Commission Proper is remanded to the proper disciplining authority for further investigation, the said disciplining authority through the Committee on Decorum and Investigation 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. The period of delay shall not be included in the computation of the prescribed period.

Within fifteen (15) days from the submission of the investigation report to the disciplining authority, the disciplining authority shall render its decision. If, at the end of said period, the disciplining authority fails to decide the case, the Commission Proper shall vacate and set aside the appealed decision and declare the person complained of exonerated of the charge. If the person complained of is under preventive suspension, he shall be immediately reinstated.

The Civil Service Regional Office or the Office for Legal Affairs of the Civil Service Commission shall evaluate requests for the extension of formal investigations and grant the same on meritorious grounds. In disposing the requests, said office shall be guided by the principles of justice and fair play, provided, that the extension shall not be for more than twenty (20) days.

For this purpose, the Regional Director shall monitor the implementation of the CSC Resolution remanding the case to the proper disciplining authority for further investigation and submit a report to the Commission Proper.



**Section 50. *Petition for Review.*** - A complainant may elevate the decision of the disciplining authority dismissing a complaint for lack of a prima facie case before the Commission Proper through a Petition for Review within fifteen (15) days from the receipt of said decision.

**Section 51. *Petition for Review with the Court of Appeals.***  
- A party may elevate a decision of the Commission before the Court of Appeals by way of Petition for Review under Rule 43 of the 1997 Revised Rules of Court.

**Section 52. *Petition for Certiorari.*** - 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 thereby may file a verified petition for certiorari in the proper court under Rule 65 of the Rules of Court.

## **RULE X. CLASSIFICATION OF ACTS OF SEXUAL HARASSMENT**

**Section 53.** 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, 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

B. 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

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

2nd offense - Dismissal

C. For grave offenses:

Dismissal .

**Section 57.** 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.

## **RULE XII. DUTY OF THE AGENCIES OF THE GOVERNMENT**

**Section 58.** All national and local government agencies, state colleges and universities, including government-owned or controlled corporations with original charter, shall promulgate or modify their own rules and regulations in conformity with these Rules, in consultation with their employees, within six (6) months from the effectivity of this Resolution.

**Section 59.** All agencies of government shall submit an authenticated copy of their rules and regulations on sexual harassment to the Commission for approval within one (1) month from the date of their promulgation. It shall likewise submit to the Commission a list of the members of their Committee on Decorum and Investigation immediately after its composition.

**Section 60.** All agencies of government shall 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 sexual harassment cases.

**Section 61.** The head of office who after six (6) months from the effectivity of this Resolution, fails to cause the promulgation or modi-

fication, of the agency's rules and regulations on sexual harassment in conformity with these Rules, shall be charged with Neglect of Duty.

### **RULE XIII. DUTY OF THE COMMISSION**

**Section 62.** The Commission, through its Field Offices, shall monitor the implementation of the directive to all government agencies to promulgate or modify, as the case may be, their rules and regulations on sexual harassment, as well as the conduct of the training programs as provided in Sections 59 and 60.

**Section 63.** In case a complaint alleging acts constituting sexual harassment as defined herein is filed with the Commission, the same 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.

**Section 64.** The Civil Service Commission shall render technical assistance to agencies in the formulation of their rules and regulations on sexual harassment and the development and implementation of an intervention and prevention program on sexual harassment.

### **RULE XIV. CASES DURING THE INTERVENING PERIOD**

**Section 65.** During the period when the agency is still in the process of promulgating or modifying its own rules and regulations on sexual harassment, a complaint alleging acts constituting sexual harassment shall be administratively prosecuted, resolved and adjudicated based on these Rules.

### **RULE XV. FORUM SHOPPING**

**Section 66.** Under the same set of ultimate facts, the filing of a complaint based on an agency's rules and regulations on sexual harassment shall preclude the filing of another administrative complaint under any other law.

**RULE XVI. REPEALING CLAUSE**

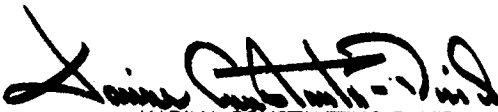
**Section 67.** Rules and regulations and other issuances or parts thereof inconsistent with the provisions of these Rules are hereby repealed or modified accordingly.

**RULE XVII. EFFECTIVITY CLAUSE**

**Section 68.** These Rules shall take effect fifteen (15) days after its publication in a newspaper of general circulation.

Quezon City, May 21, 2001.

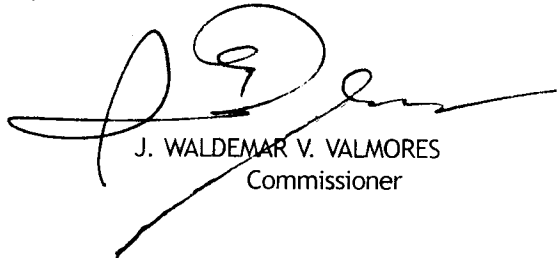
Signed.



KARINA CONSTANTINO-DAVID  
Chairperson



JOSÉ F. ERESTAIN, JR.  
Commissioner



J. WALDEMAR V. VALMORES  
Commissioner

Attested by:



ARIEL G. RONQUILLO  
Director III

