

DSWD OPINION NO. 43 S. 2024
MEMORANDUMDRN: S-A-COMM-24-04-66248-C

FOR : COMMITTEE ON DECORUM AND INVESTIGATION
DSWD, Field Office IV-A

FROM : THE ASSISTANT SECRETARY FOR GASSG AND
CONCURRENT OFFICER-IN-CHARGE, LEGAL SERVICE

SUBJECT : RESPONSE TO THE CLARIFICATORY QUESTION IN RE:
JURISDICTION OVER THE SUBJECT MATTER

DATE : 23 APRIL 2024

This refers to the Memorandum dated 23 February 2024, seeking clarification on whether the CODI - Field Office has jurisdiction over Sexual Harassment Cases. In this regard, the Memorandum raises two (2) reliefs which will be addressed together.

- (i) If the CODI Field Office is correct in using Section 10, Rule 2 of the DSWD Administrative Order No. 17 in acquiring jurisdiction, then may we formally ask a Lawyer from DSWD CO – Legal Service who shall stand as a Hearing Officer; and
- (ii) If the CODI Field Office is incorrect in acquiring jurisdiction, then what remedies and legal basis should the CODI Field Office anchor to properly endorse the case to the DSWD Central Office – Legal Service.

On 23 February 2024, a case conference was held between the Legal Service and FO IV-A representatives at the DSWD Central Office. During the said meeting, it was disclosed that the CODI Field Office had already exercised jurisdiction over the Sexual Harassment Case pursuant to Administrative Order No. 17, series of 2022 and conducted preliminary investigation under the 2017 RACCS. As a result of the investigation, a prima facie case was established and the Regional Director then issued the Formal Charge and Preventive Suspension Order against the respondent. The respondent is a Division Chief and holding a second-level position.

Request for a Central Office Lawyer

On the FO IV-A's request of a Lawyer from the DSWD CO-Legal Service to act as a Hearing Officer, Section 10, Rule 2 of DSWD Administrative Order No. 17, series of 2022 is consistent with the third (3rd) paragraph, Section 17 of the 2017 Rules on Administrative Cases in the Civil Service (2017 RACCS):

"Localized CODI established in the original 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."

Based on the above-mentioned provision, the localized CODI of FO IV-A shall conduct its own investigation and submit its report, with its recommendation directly to the disciplining authority. Hence, it is advisable that the hearing officer must likewise come from the CODI of Field Office IV-A.

Propriety of the issuance of a Formal Charge and the Preventive Suspension by the Regional Director of Field Office IV-A

During the case conference held on 23 February 2024, it was discussed that the Regional Director issued the Formal Charge and the Preventive Suspension. For proper guidance, Section 23 and Section 29 of the 2017 RACCS provide:

Section 23, Rule 5 on Issuance of Formal Charge under the 2017 RACCS provides:

Section 23. Issuance of Formal Charge/Notice of Charge. After a finding of a prima facie case, the disciplining authority shall formally charge the person complained of, who shall now be called as respondent. The formal charge shall contain a specification of charge, a brief statement of material or relevant facts, which may be accompanied by certified true copies of the documentary evidence, sworn statements covering the testimony of witnesses, a directive to answer the charge in writing, under oath in not less than three (3) days but not more than ten (10) days from receipt thereof, an advice for the respondent to indicate in the answer whether or not a formal investigation is demanded, and a notice that respondent may opt to be assisted by a counsel. (Emphasis supplied)

Likewise, Section 29, Rule 7 under Preventive Suspension of the 2017 RACCS provides:

“Section 29. When issued; Grounds. The proper disciplining authority, upon motion or motu proprio, may issue an order of preventive suspension against the respondent upon issuance of the formal charge or notice of charge, or immediately thereafter, if:

A) The charge involves:

1. Dishonesty;
2. Oppression;
3. Grave Misconduct;
4. Neglect in the Performance of Duty;
5. Other offenses punishable by dismissal from the service; or
6. An administrative offense committed on its second or third instance and the penalty is dismissal from the service; and

B) The respondent is in a position to exert undue influence or pressure on the witnesses and/or tamper with evidence.

In order for a preventive suspension order to be valid, any of the conditions in Items A and B must be present. (Emphasis supplied)

With respect to CODI rules, CSC Resolution No. 2100064 dated 20 January 2021 resolved the promulgation of Memorandum Circular No. 11, series of 2021 or the Revised Administrative Disciplinary Rules on Sexual Harassment Cases (Amendment to the Sexual Harassment Provisions in the 2017 Revised Rules on Administrative Cases). Section 17 thereof provides for the following functions of the CODI, to wit:

"Section 17. Action on the Complaint. Upon receipt of a complaint which is sufficient in form and substance, the disciplining authority shall conduct a preliminary investigation to determine the existence of a prima facie case. The disciplining authority may create an investigating committee or designate an investigator for such purpose.

In sexual harassment cases, the CODI shall perform the following functions:

"1. Receive complaints of sexual harassment;

2. Investigate sexual harassment complaints including preliminary investigation in accordance with the prescribed procedure;

3. Within then (10) days from the termination of the conduct of the investigation, submit a report of its findings with the corresponding recommendation to the disciplining authority for decision;

4. Ensure the protection of the complainant from retaliation and guarantee confidentiality to the greatest extent possible as well as ensure that the respondent is given the opportunity to be properly notified of an respond to the charge/s and that parties are given information on the hearings and its outcomes.

5. Lead in the conduct of discussions about sexual harassment within the agency or institution to increase understanding and prevent incidents of sexual harassment;

Localized CODI 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.

The agency shall adopt mechanisms to provide assistance to the alleged victim of sexual harassment which may include counselling, referral to an agency offering professional help, and advise on options available before the filing of the complaint."

As defined under the 2017 RACCS, the Disciplining Authority refers to the person or body duly authorized by law to impose the penalty provided for by law or rules. On the other hand, under A.O. No. 17, series of 2022, the Disciplining Authority refers to the Secretary, or the Regional Directors in terms of disciplinary action for first-level employees in their respective FOs.

Based on the foregoing provisions, the Secretary as disciplining authority is authorized to issue the formal charge or the preventive suspension order.

Recommendations

1. The Local CODI shall continue to investigate sexual harassment cases. Relative thereto, the CODI is authorized to recommend what actions to be taken by the Head of the Agency or the authorized disciplining authority, as the case may be in sexual harassment cases.
2. The Local CODI shall request the issuance of a confirmation of the Formal Charge by the Secretary and Preventive Suspension Order issued by the Regional Director. Thereafter, pursuant to the 2017 RACCS, as amended, the localized CODI of FO IV-A should conduct the formal investigation and submit its report or

recommendation to the Secretary, as the proper disciplining authority of the respondent.


As a final note, this legal opinion is based solely on the information provided in the Memorandum dated 28 February 2024 and during the meeting held last 23 February 2024.

For your consideration.


ATTY. GINA V. WENCESLAO

CMUG/KAOD/10065

Approved by:


ATTY. EDWARD JUSTINE R. ORDEN
Undersecretary for GASSG