

DSWD OPINION NO. 72 S. 2024DRN: LS-L-LO-24-09-71962-C**MEMORANDUM**

FOR : JENNIFER M. RIZO
Director IV, Human Resource Management and Development Service

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

SUBJECT : LEGAL OPINION ON THE DESIGNATION OF DIRECTOR TRISTAN C. TELEN AS OFFICER-IN-CHARGE OF THE DSWD FIELD OFFICE CARAGA

DATE : 15 OCTOBER 2024

This refers to your MEMORANDUM¹ seeking legal opinion regarding the request of Field Office (FO) CARAGA for the issuance of Special Order for the designation and authority of Director Tristan C. Telen (ARD Telen), Director III, as Officer-in-Charge (OIC) for the periods of 10-30 August 2024 and 02 to 06 September 2024, in addition to his function as Assistant Regional Director for Administration (ARDA).

The request is in view of the medical leave of absence of Regional Director (RD) Mari-Flor A. Dollaga-Libang. FO CARAGA requested the issuance of an SO for the designation and authority of ARD Telen to exercise the following:

1. Sign and issue appointment for permanent positions below Division Chiefs and non-career positions of the office (except for the coterminous positions) for the first (1st) and second (2nd) level of the said FO and other CSC documents;
2. Approve recommendations for hiring of staff under Contract of Service (COS) to support processing of Memorandum of Agreement (MOA)/ contracts of the said FO based on the created positions approved by the Secretary; and
3. Sign MOA of COS and Job Order workers, and contracts such as Mutual Partnership Agreement, Sub-Project Agreement, Memorandum of Undertaking.

Pursuant to Executive Order No. 292 or the "Administrative Code of 1987", the Head of Agency may delegate his authority, to wit:

BOOK IV Chapter 2-Secretaries, Undersecretaries, and Assistant Secretaries

x x x

SECTION 7. Powers and Functions of the Secretary. —The Secretary shall: x x x

(8) Delegate authority to officers and employees under the Secretary's direction in accordance with this Code; and x x x

BOOK IV Chapter 8-Supervision and Control

¹ Annex "A" – Memorandum dated 04 September 2024.

X X X

SECTION 40. Delegation of Authority. —The Secretary or the head of an agency shall have authority over and responsibility for its operation. He shall delegate such authority to the bureau and regional directors as may be necessary for them to implement plans and programs adequately. Delegated authority shall be to the extent necessary for economical, efficient and effective implementation of national and local programs in accordance with policies and standards developed by each department or agency with the participation of the regional directors. The delegation shall be in writing; shall indicate to which officer or class of officers or employees the delegation is made; and shall vest sufficient authority to enable the delegate to discharge his assigned responsibility. x x x [Emphasis Supplied]

Under the same law, the Regional Directors as the head of Field Offices have the following duties:

SECTION 27. Duties of a Regional Director. —The Regional Director shall:

- (1) Implement laws, policies, rules and regulations within the responsibility of the agency;
- (2) Implement agency programs in the region;
- (3) Exercise the management functions of planning, organizing, directing and controlling;
- (4) Appoint personnel to positions in the first level and casual and seasonal employees; and exercise disciplinary actions over them in accordance with the Civil Service Law;
- (5) Approve sick, vacation and maternity leaves of absence with or without pay, for a period not beyond one year;
- (6) Prepare and submit budget proposals for the region to the central office, administer the budget of the regional office, authorize disbursement of funds pursuant to approved financial and work programs, and administer the budget control machinery in the region;
- (7) Approve requisition for supplies, materials and equipment, as well as books and periodicals, and other items for the region, in accordance with the approved supply procurement program;

- (8) Negotiate and enter into contracts for services or furnishing supplies, materials and equipment to the regional office involving an amount not exceeding fifty thousand pesos (P50,000.00) within a given quarter, provided that authority in excess of fifty thousand pesos (P50,000.00) may be further authorized by the proper department or agency head;
- (9) Approve claims for benefits under existing laws;
- (10) Approve requests for overtime services;
- (11) Promote coordination among the regional offices, and between his regional office and local government units in the region;
- (12) Provide housekeeping services for the regional office;
- (13) Approve application of personnel for permission to teach, exercise a profession, or engage in business outside of office hours in accordance with standards and guidelines of the Civil Service Commission;
- (14) Issue travel vouchers authorizing employees to travel on official business within the region for a period not exceeding thirty days;
- (15) Approve attendance of personnel in conferences, seminars, and non-degree training programs within the region;
- (16) Authorize the allocation of funds to provincial/district offices; and
- (17) Perform such other duties and functions as may be provided by law or further delegated by the head of agency or other proper authorities concerned.

The 2017 Omnibus Rules on Appointments and Other HR Actions² (2017 ORAOHRA) identifies the human resource actions which will not require the issuance of an appointment but shall nevertheless require an Office Order issued by the appointing officer/authority and one of this is "Designation", thus:

SECTION 13. *Other Human Resource Actions.* — The following human resource actions which will not require the

² CSC Resolution No. 1800692

issuance of an appointment shall nevertheless require an Office Order issued by the appointing officer/authority:

X X X

c. **Designation** — movement that involves an imposition of additional and/or higher duties to be performed by a public official/employee which is temporary and can be terminated anytime at the pleasure of the appointing officer/authority. Designation may involve the performance of the duties of another position on a concurrent capacity or on full-time basis.

A designation in an acting capacity entails not only the exercise of the ministerial functions attached to the position but also the exercise of discretion since the person designated is deemed to be the incumbent of the position.

Officials designated as Officer-in-Charge (OIC) enjoy limited powers which are confined to functions of administration and ensuring that the office continues its usual activities. The OIC may not be deemed to possess the power to appoint employees as the same involves the exercise of discretion which is beyond the power of an OIC, unless the designation order issued by the proper appointing officer/authority expressly includes the power to issue appointment. [Emphasis Supplied]

In the same rule³ an Officer-in-Charge is further distinguished:

***Officer-in-Charge* is considered merely as a caretaker of the office while the regular incumbent is on leave of absence. An OIC does not possess the power to appoint, and if he does, such act is null and *void ab initio*. An Officer-in-Charge does not exercise powers involving discretion of the regular incumbent. The rights and privileges of the latter do not normally descend upon the former unless specifically indicated or stated in the designation.**

That is, the 2017 ORAOHRA clearly defined the difference between a designation under acting capacity and a designation as Officer-in-Charge. As a general rule, the OIC does not exercise powers of an incumbent, which includes the exercise of discretion. On the other hand, **designation in an acting capacity entails not only the exercise of the ministerial functions attached to the position but also the exercise**

³ Glossary of Terms of 2017 ORAOHRA

of discretion since the person designated is deemed to be the incumbent of the position.

Designation as OIC and designation in an acting capacity are further elaborated in the Civil Service Commission Resolution No. 000778⁴ which states:

“Clearly, the designation contemplated under the foregoing section pertains both to the designation in an acting capacity and designation as Officer-in-Charge (OIC). The kind of designation actually conferred on the incumbent is determined by the language used in the document effecting such designation.

It must be noted that a designation under acting capacity may be differentiated from a designation as Officer-in-Charge (OIC) in such a manner that an OIC enjoys limited powers which are confined to functions of administration and ensuring that the office continues its usual activities. The OIC may not be deemed to possess the power to appoint employees as the same involves the exercise of discretion which is beyond the power of an OIC. On the other hand, as aptly ruled by the Commission in the case of Amado S. Day, a designation in an acting capacity entails not only the exercise of the ministerial functions attached to the position but also the exercise of discretion. This is so considering that the person designated is deemed to be the incumbent of the position.”

In this case, the request for the designation and authority of ARD Telen is in view of RD Dollaga’s medical leave of absence that may be extended up to three (3) months, as may deemed necessary. For the purpose of ensuring unhampered of delivery of public service and effective and efficient delivery of programs and services to the clients, ARD Telen may be designated in an Acting Capacity by the Secretary.

A perusal of the Memorandum from RD Dollaga shows that the authority being requested in favor of ARD Telen involves functions that are not just limited to being a “signing authority” or a mere “caretaker of the Office”.

In fact, RD Dollaga expressly delegated other duties and functions of the RD including ministerial function and those that require the exercise of discretion. Guided by the foregoing CSC rules and jurisprudence, and in anticipation of RD Dollaga’s medical leave of absence, we are of the considered opinion that the designation of ARD Telen in an Acting Capacity may be judicious and advantageous, ensuring the continuity of public service by the Field Office of CARAGA.

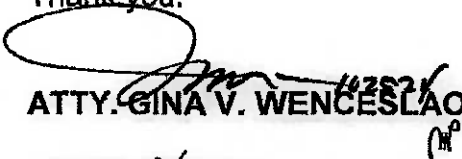
⁴ VITRIOLO, Julito D Re: Query; Position Title; Nomenclature Distinction between Acting and OIC

Please note that this is based solely on the facts available to the Legal Service and issued without prejudice to the application of other laws, rules and regulations, and DSWD issuances.

Kindly fill out the attached Customer Feedback Form and return the same to Legal Service.

For your information and guidance.

Thank you.


ATTY. GINA V. WENCESLAO

MCMUG/MTM/10065