



MEMORANDUM CIRCULAR

No. 03
Series of 2007

Subject: **RULES ON INTERNAL WHISTLEBLOWING
AND REPORTING**

I. RATIONALE

The Department of Social Welfare and Department (DSWD) is committed to upholding the highest ethical standards among its officials and employees, and to promoting good governance at all levels of the Organization. Towards this end, the Department recognizes that an internal whistleblowing and reporting policy is necessary to encourage honest and excellent public service that will deter undesirable and corrupt practices. This involves the reporting of operational and management inefficiencies, ineffectiveness, commission of corrupt, illegal, or fraudulent acts, wrongdoings, misdeeds and/or irregularities that have an adverse or negative effect on the delivery of the Department's public service.

To establish an effective and efficient internal disclosure, or early warning system, it is necessary to formulate internal rules and standards that would impress upon employees and officials their bounden duties as law-abiding citizens and responsible public servants. This shall also encourage and protect whistleblowers from any form of retaliation or reprisal.

This Circular, therefore, provides policies and procedures to safeguard the whistleblower's rights and privileges, and shall likewise define the conditions for protected communications so as to deter frivolous and false disclosures.

II. SCOPE

These Rules shall apply to all officials and employees of the Department and personnel hired under Contract of Service, Memorandum of Agreement (MOA), Job Order and Consultancy Agreement.

III. LEGAL BASES

- a) **Art. IX, Section 3 of the Philippine Constitution** provides that public office is a public trust. Public officers and employees must at all times be accountable to the people, serve them with utmost responsibility, integrity, competence and efficiency, and act with patriotism and justice, and lead modest lives.

24

b) **Administrative Code of 1987**

- **Book IV, Chapter 2, Section 7(c)** provides that the Secretary shall exercise disciplinary powers over officers and employees under the Secretary in accordance with law, including their investigation and the designation of a committee or officer to conduct such investigation;
- **Book V, Rule IV, Section 32** provides that the Secretary shall have jurisdiction to investigate and decide on matters involving disciplinary action against officers and employees under their jurisdiction;

c) **Republic Act (RA) 6713** – An Act Establishing a Code of Conduct and Ethical Standards for Public Officials and Employees.

- **Section 2** – Declaration of Policies
- **Section 3** – Definition of Terms
- **Section 4** – Norms of Conduct of Public Officials and Employees

d) **RA 3019** – Anti-graft and Corrupt Practices Act

- **Section 1** – Statement of Policy
- **Section 3** – Corrupt Practices of Public Officers
- **Section 4** – Prohibition on Private Individuals
- **Section 7** – Statement of Assets and Liabilities
- **Section 8** – Prima Facie Evidence of and Dismissal due to Unexplained Wealth
- **Section 9** – Penalties for Violations
- **Section 12** – Termination of Office
- **Section 14** – Exception

IV. DEFINITION OF TERMS

- a) **“Employees”** for this purpose only, shall refer to any personnel currently engaged by the Department (*e.g. Regular, Contractual, Casual, Contract of Service, Memorandum of Agreement (MOA), Job Order and Consultancy Agreement*) regardless of position or rank.
- b) **“Protected disclosure”** refers to the protection of a deliberate and voluntary giving of information whether written or verbal by an employee of an actual, or suspected inefficiency, ineffectiveness, wrongdoing, misdeed and/or irregularity by any DSWD official, employee, group of DSWD officials and/or employees, or organizational unit, subject to the other conditions set forth in Section 6 of these Rules.
- c) **“Whistleblower”** refers to an employee or group of employees who makes protected disclosure/s to his/her/their immediate supervisor, the Integrity Development Committee or the Secretary and/or his/her duly authorized/designated representative.

- d) **“Retaliatory Action”** pertains to negative or obstructive responses or reactions to a disclosure of misconduct or wrongdoing taken against the whistleblower and/or those employees supporting him/her, or any of the whistleblower’s relatives within the fourth civil degree either by consanguinity or affinity. It includes, but is not limited to, civil, administrative or criminal proceedings commenced or pursued against the whistleblower and/or those officials and employees supporting him/her, or any of the whistleblower’s relatives within the fourth civil degree either by consanguinity or affinity, by reason of the disclosure made under these Rules. It also includes reprisals or threats against the whistleblower and/or those employees supporting him, or any of his relatives within the fourth civil degree either by consanguinity or affinity, such as forcing or attempting to force any of them to resign, to retire and/or transfer; negative performance appraisals; fault-finding; undue criticism; alienation; blacklisting; and other similar acts.

V. POLICIES AND RULES

Section 1. A whistleblower may report/complain about acts or omissions that are:

- a) Contrary to laws, rules or regulations and office policies;
- b) Unreasonable, unjust, unfair, oppressive or discriminatory; or
- c) Undue or improper exercise of powers and prerogatives.

Section 2. Rights of Whistleblowers:

- 2.1 **Protection Against Retaliatory Actions** – No administrative action shall be entertained against a whistleblower involving a protected disclosure.
- 2.2 **No Breach of Duty of Confidentiality** – A whistleblower that has an obligation by way of oath, rule or practice to maintain confidentiality of information shall not be deemed to have committed a breach of such duty if he/she/they make/s a protected disclosure of such information.

Section 3. Confidentiality – At all times during and after the protected disclosure, and throughout and after any proceeding taken thereon, the whistleblower, subject to the condition in Section 4 hereof shall be entitled to confidentiality as to his/her/their identity.

Section 4. Necessity for Testimony – Notwithstanding the provisions in the immediately preceding section, the whistleblower may be compelled to disclose his/her/their identity and testify if his/her/their testimony is necessary or indispensable to the successful prosecution of any charge arising from the protected disclosure.

Section 5. Protection Against Retaliatory Actions – A whistleblower that has made a protected disclosure under these Rules shall not be liable to disciplinary action for making such disclosure. No retaliatory action shall be taken against a whistleblower such as, but not limited to, discriminatory action, including those made under the guise of policy and procedural determinations designed to avoid claims of victimization; reprimand; punitive transfer; undue poor performance reviews; obstruction of the investigation; withdrawal of essential resources; adverse reports; attachment of adverse notes in the personnel file; ostracism; questions and attacks on motives; accusations of disloyalty and dysfunction; public humiliation; and the denial of work necessary for promotion.

Any official or employee who refuses to follow orders to perform an act that would constitute a violation of this Section shall likewise be protected from retaliatory actions.

Section 6. Conditions for Protected Disclosure – Whistleblowers shall be entitled to protection and benefits under these Rules, provided that all the following requisites are fulfilled:

- a) The disclosure is made voluntarily, in writing and under oath;
- b) The disclosure pertains to a matter not yet the subject of a complaint already filed with, or investigated by the Department or by any other concerned office; unless, the disclosures are necessary for the effective and successful prosecutions, or essential for the acquisitions of material evidence not yet in its possession;
- c) The whistleblower assists and/or participates in proceedings commenced in connection with the subject matter of the disclosure;
- d) The whistleblower should have personal knowledge of facts and information covered by the disclosure; and
- e) The information given by the whistleblower contains sufficient particulars and, as much as possible, supported by other material evidence.

Section 7. Unprotected Disclosures – The following shall not be deemed protected disclosure under these Rules:

- a) Disclosure made by an official or employee in connection with a matter subject of his/her official investigation;
- b) Disclosures which later appear to be absolutely groundless or without basis. An investigation may be declined or discontinued if it is shown that the disclosure was made without reasonable grounds;
- c) Disclosures concerning merits of Office policy;
- d) False and misleading disclosures; and

- e) Disclosures that are later retracted by the whistleblower for any reason. Such "whistleblower" shall lose the right to claim benefit or protection under these Rules for the same disclosure and his/her retraction shall be considered in determining whether or not he/she will be admitted as a whistleblower with respect to future disclosures.

A person who makes a disclosure deemed unprotected shall not enjoy any immunity, or any other right or privilege accorded under these Rules.

Section 8. Disclosure made by a Party to a Misconduct – A disclosure made by a person who is himself/herself a party to the disclosed conduct constituting misconduct or wrongdoing, whether as principal, accomplice or accessory, is deemed a protected disclosure under these Rules and such person shall be entitled to the benefits of a whistleblower, provided that:

- a) The whistleblower complies with the conditions under Section 6 hereof;
- b) The whistleblower should not appear to be the most guilty;
- c) The whistleblower testifies in accordance with his/her disclosures.
- d) There is no other direct evidence available for the proper prosecution of the misconduct in relation to Section 6(b); and
- e) The whistleblower's testimony can be substantially corroborated on material points in conformity with Section 6(e).

Section 9. Procedure for Protected Disclosures – Immediately upon receipt of the disclosure, the Secretary, or his/her duly authorized representative, or the DSWD Resident Ombudsman shall:

- a) Evaluate the disclosure if the same qualifies as protected disclosure under **Section 1**, **Section 6**, and as may be applicable **Section 8** of these Rules;
- b) Should the disclosure qualify as such, to certify it as a protected report; and
- c) To conduct appropriate actions in accordance with Department Order No. 6, Series of 2001, as amended by Memorandum Circular No. 16, Series of 2003, and/or initiate proper actions at the Office of the Ombudsman or in any other forum, as may be deemed legally appropriate.

Provided, further, that the declaration as to whether or not a report shall be considered as a protected disclosure shall be made within a period not exceeding three (3) working days from the receipt thereof.

Section 10. Protection of Witnesses – Any employee who testifies in any proceedings arising from a protected disclosure shall be accorded the same protection against retaliatory actions as provided in **Section 5** hereof.

Section 11. Incentives for the Whistleblower – The Secretary may elect to accord a whistleblower an incentive he/she may deem appropriate, subject to existing rules and regulations governing such incentives, *e.g.* Civil Service Commission, Commission On Audit, Department of Budget and Management, etc.

VI. REMEDIES AND SANCTIONS

Section 12. Violations of Confidentiality – Any employee who violates the protection of confidentiality of a protected disclosure and of the confidentiality of proceedings shall be subject to disciplinary actions as may be provided under relevant Department issuances, Civil Services Commission issuances, the Administrative Code of 1987, RA 6713, RA 3019, and other relevant laws, rules and/or regulations.

Section 13. Retaliatory Actions – Any employee who does, causes or encourages retaliatory actions, as defined in these Rules, against a whistleblower and/or employees supporting him/her, or any of his/her relatives within the fourth civil degree by consanguinity or affinity, shall be immediately subjected to administrative and/or criminal proceedings, and in appropriate cases, immediately placed under preventive suspension.

Section 14. Perjurious Statements – False and misleading disclosures or statements shall be sufficient ground for the termination of benefits of whistleblowers under these Rules, including his immunity from administrative cases as well as disciplinary proceedings against the whistleblower(s) as may be appropriate.

VII. EFFECTIVITY

This Memorandum Circular shall take effect after fifteen (15) days from publication in the Official Gazette.

Signed this 23th day of **March 2007**, Quezon City.


Dr. ESPERANZA I. CABRAL
Secretary

DSWD – OSEC



0000000079