

**[DOST ADMINISTRATIVE ORDER NO. 005,
December 03, 2008]**

**RULES OF PROCEDURE FOR DISCIPLINARY CASES IN THE DOST
SYSTEM**

WHEREAS, Section 7 (3), Chapter II, Book IV of the Administrative Code of 1987 empowers the Secretary to promulgate rules and regulations necessary to carry out department objectives, policies, functions, plans, programs and projects;

WHEREAS, Section 7(4), Chapter II, Book IV of the Administrative Code of 1987 empowers the Secretary to promulgate administrative issuances necessary for the efficient administration of the offices under the Secretary and for proper execution of the laws relative thereto;

WHEREAS, there is an urgent need to rationalize and systematize the conduct of the proceedings to expedite the resolution of administrative complaints involving officials and employees of the Department of Science and Technology System;

NOW THEREFORE, I, the Secretary of the Department of Science and Technology, hereby resolve to promulgate and adopt the following Rules of Procedure.

**CHAPTER I
TITLE AND CONSTRUCTION**

Section 1. Title of the Rules. – These Rules shall be known as the Rules of Procedure for Disciplinary Cases in the DOST System.

Section 2. Definition of Terms. – The terms hereunder shall be construed as follows:

- a. DOST SYSTEM refers to the Department of Science and Technology including its Agencies Regional Offices and Attached Agencies without rules and regulations of their own as provided in their Charter;
- b. DEPARTMENT refers to DOST;
- c. AGENCY refers to all agencies of the Department of Science and Technology System regardless of whether they were created by a special law, including its Regional Offices;
- d. DOST ATTACHED AGENCIES refers to agencies of the DOST System organized or operating under a special charter, and vested by law with functions relating to specific constitutional policies or objectives;
- e. DISCIPLINING AUTHORITY refers to the person, tribunal or body duly authorized to suspend, dismiss or discipline officials and employees in the Department of Science and Technology including its attached agencies and regional offices;

- f. COMPLAINANT refers to the person who initiated or filed a complaint who may either be an individual or the disciplining authority;
- g. RESPONDENT refers to the person who is formally charged by the disciplining authority;
- h. ADVERSE PARTY refers to the person against whom a decision in a disciplinary case has been rendered;
- i. PERSON COMPLAINED OF refers to the person who is the subject of the complaint but who is not yet formally charged by the disciplining authority;
- j. FORUM-SHOPPING refers to the act of filing an administrative action or complaint before another agency or any tribunal against the same party involving the same acts or causes of action and relief;
- k. THIRD LEVEL refers to positions in the Career Executive Service (CES), which include Undersecretary, Assistant Secretary, Executive Director, Regional Director, Deputy Executive Director and other officers of equivalent rank.

Section 3. Construction – These Rules shall be liberally construed in order to effect an expeditious and just settlement of disputes.

Section 4. Technical Rules in Administrative Proceedings. – Administrative investigations shall be conducted without necessarily adhering to the technical rules of procedure applicable to judicial proceedings.

Section 5. Applicability of the Rules of Court. In the absence of any applicable provision in these Rules, the pertinent provisions of the Rules of Court, the Revised Uniform Rules in Administrative Cases in the Civil Service and Rules and Regulations as well as issuances of the Civil Service Commission and prevailing jurisprudence, in the interest of expeditious and just settlement of disputes, whenever practicable and convenient, may be applied suppletorily.

CHAPTER II ADMINISTRATIVE DISCIPLINARY CASES

Section 1. Administrative Disciplinary Case; Defined. – An Administrative Disciplinary Case is one wherein an official or employee of the government is prosecuted for an act or omission punishable as a non-penal offense as provided for in the Civil Service Law, Administrative Code, and other laws pertaining to Public Officers and Civil Service employees. Non-penal offenses are also known as administrative offenses.

Section 2. How Commenced. – An Administrative Disciplinary Case may be commenced either motu proprio by the Disciplining Authority of the DOST or at the instance of any person through an ordinary complaint filed with the Disciplining Authority. A complaint against a civil service official or employee shall not be given due course unless it is in writing, and subscribed and sworn to by the complainant. However, in cases initiated by the disciplining authority, the complaint need not be under oath.

Section 3. Disciplining Authority. – The Disciplining Authority (DA) in the DOST shall be the Secretary. The Executive Directors of Councils, the Directors of the agencies including Regional Offices and attached agencies and Regional Offices, shall act as the Disciplining Authority in their respective offices.

In chartered attached agencies however, the disciplining authority shall be its Board of Trustees or Governing Council as the case may be, if applicable.

The President is the Disciplining Authority for presidential appointees. The Secretary is duly authorized to discipline presidential appointees subject to the President 's confirmation.

Section 4. Form of the Complaint. – A complaint shall be in writing and under oath. It shall be written in a clear, simple and concise language and in a systematic manner as to apprise the civil servant concerned of the nature and cause of the accusation against him/ her and to enable him/her to prepare his/her defense.

Section 5. Contents of the Complaint. – A complaint shall contain the following:

- a. The full name(s) and address(es) of the complainant(s);
- b. The full name(s) and address(es) of the respondent(s), as well as his/her/their position(s) and officer(s) of employment;
- c. A narration of the relevant and material facts which shows the acts or omissions allegedly committed by the civil servant;
- d. Certified true copy(ies) of documentary evidence and affidavit(s) of his/her witness(es), if any; and
- e. A statement that no other administrative action or complaint against the same party involving the same acts or omissions and issues has been filed before another agency or administrative tribunal. (Certification or statement of non-forum shopping)

Section 6. Failure to comply with requirements. – In the absence of any requirements provided in the preceding section, the DA may dismiss the complaint due to technicality without prejudice to its refiling. However, when the investigating officer or committee issued a written order for the submission of the **lacking requirement/s** and the complainant failed to submit the same within the period prescribed in the order, the dismissal of the complaint shall be with prejudice.

Section 7. When and Where to File a Complaint – Except when otherwise provided by law, an administrative complaint may be filed anytime with the Secretary of the Department, proper heads of agencies attached agencies or regional offices.

Section 8. Withdrawal of the complaint. Desistance of the complainant. – The withdrawal of the complaint or the desistance of the private complainant does not automatically result in the outright dismissal of the case nor discharge the respondent from any administrative liability. The case may still be given due course when there is obvious truth or merit to the charges or where there is/are documentary evidence that would tend to prove **that there is prima facie case to continue with the complaint.**

Section 9. Anonymous complaint. – No anonymous complaint shall be entertained, unless there is obvious truth or merit to the allegations therein or supported by documentary or direct evidence; in which case the person complained of may be required to comment.

Section 10. Effect of criminal or civil cases. The administrative disciplinary case involving the same parties, the same acts or omissions and the same issues as the criminal or civil case shall proceed independently of the criminal or civil, case, if there be any. The dismissal of the criminal or civil case against the respondent shall not result in the automatic discharge or dismissal of the administrative case.

Section 11. Effect of filing of a similar administrative disciplinary case in other fora. - The filing of an administrative disciplinary case in the Civil Service Commission, Commission on Elections, or in the Office of the Ombudsman involving the same parties, same acts or omissions and same issues shall constitute forum shopping and shall cause the dismissal of the case in the DOST.

CHAPTER III DETERMINATION OF A PRIMA FACIE CASE

Section 1. Prima Facie Case defined. – A *prima facie* case exists when there is a sufficient ground to engender a well-founded belief that an administrative offense has been committed and that the respondent is probably guilty thereof and should be made subject of a Formal Charge.

Section 2. How prima facie is determined. – A *prima facie* case shall be determined through a fact-finding investigation or a preliminary investigation.

Section 3. When made. – The DA shall create a Fact-Finding Committee and the Fact Finding or Preliminary Investigation shall commence within five (5) days from receipt of the order issued by the DA and shall be terminated within thirty (30) days thereafter, unless a longer period is stated in the order issued by the disciplining authority.

Section 4. Fact-Finding Investigation. – Fact-finding investigation shall involve merely the *ex-parte* examination of records and documents submitted by the complainant, as well as documents readily available from other government offices.

Section 5. Preliminary Investigation. – Preliminary investigation is an inquiry or proceeding whereby the complainant and the respondent are given the opportunity to submit their affidavits and counter-affidavits, as well as those of their witnesses. Failure of the respondent to submit his or her counter-affidavit shall be construed as a waiver thereof.

During the inquiry or proceeding, the parties and their witnesses shall be asked to affirm their signatures on said documents and the truthfulness of the statement contained therein. Under no circumstances shall cross-examination of the witnesses be allowed but the investigating officer may propound clarificatory questions.

Section 6. Investigating Officer. – The Disciplinary Authority shall designate a competent officer(s) who shall conduct the fact-finding or preliminary investigation.

Section 7. Record of the Proceedings – During the preliminary investigation, the investigating officer shall record either by taping the question and answer or in his/her own handwriting his/her clarificatory questions to the parties and their

witnesses and the answers given thereto. Such record and other notes made by the investigating officer shall form part of the records of the case.

Section 8. Failure to Affirm Signature and the Contents of the Affidavit. – Failure of any of the parties or witnesses to affirm the signature on his/her affidavit and the contents thereof during the preliminary investigation shall render such affidavit without evidentiary value.

Section 9. Investigation Report. – Within five (5) days from the termination of the fact-finding preliminary investigation, the investigating officer/s shall submit his/her/their Report of Investigation and the complete records of the proceedings to the Disciplinary Authority.

Section 10. Resolution after the Investigation. – If a prima facie case exists after a fact-finding investigation, a Formal Charge shall be issued by the Disciplining Authority and creates the hearing committee. Otherwise, the Disciplining Authority either dismisses the complaint for lack of prima facie case or order the conduct of extensive preliminary investigation.

If a prima facie case exists after a preliminary investigation, a Formal Charge shall be issued by the Disciplining Authority. Otherwise, he/she shall dismiss the case.

Section 12. Remedy of the complainant after dismissal of the complaint. – If the complaint is dismissed due to lack of a *prima facie* case, the complainant may file **a Petition for Review** with the Secretary within fifteen (15) days from receipt of the order of Dismissal. The Resolution of the Secretary on the petition shall be final. This is without prejudice to the right of the complainant other than the Disciplining Authority to resort to other appropriate legal course after having exhausted the prescribed administrative remedies.

In the DOST attached Agencies however, the complainant may file an appeal with the concerned Board, if the complaint is dismissed by the Executive Director due to lack of a prima facie case.

CHAPTER IV FORMAL CHARGE

Section 1. When Made. – After the determination of a prima facie case, the Disciplining Authority shall formally charge the person complained of.

Section 2. Form and contents. – The Formal Charge shall be in writing and shall contain the following:

- a) The name of the complainant(s);
- b) The name of the respondent(s)
- c) The designation of the administrative offense(s) by the statute;
- d) A brief statement of material or relevant facts of the acts and omissions complained of as constituting the administrative offense(s);
- e) The approximate time of the commission of the administrative offense(s);
- f) The place wherein the administrative offense(s) was committed.
- g) The time for the respondent to submit his/her answer to the charges which shall not be later than five (5) days from receipt of the Formal Charge;
- h) A statement as to whether he/she prefers to have a Formal