

## [ DBP CIRCULAR NO. 37, November 21, 2005 ]

### IMPLEMENTING GUIDELINES OF THE REVISED UNIFORM RULES ON ADMINISTRATIVE CASES

Pursuant to Executive Committee Resolution No. 0045 dated June 29, 2005, the following Revised Uniform Rules on Administrative Cases are hereby prescribed:

#### Rule 1- General Provisions

**SECTION 1. Title** - These Rules shall be known as the 2005 Revised Uniform Rules on Administrative Cases.

**SECTION 2. Initiation of Administrative Cases** -

- a. Administrative proceedings may be commenced against a subordinate employee by the disciplining authority or upon sworn, written complaint of any other person.
- b. Except when initiated by the disciplining authority, no complaint shall be given due course unless the same is in writing.

**SECTION 3. Nature of Proceedings** - The proceedings under these Rules shall be summary in nature and shall be conducted without necessarily adhering to the technical rules of procedure and evidence applicable to judicial trials.

**SECTION 4. Sexual Harassment Cases** - The handling and processing of sexual harassment cases shall be vested in the Committee provided under Republic Act 7877 as implemented under DBP Circular No. 21, s. 1997.

#### Rule II Definition of Terms

**SECTION 1. Disciplining Authority** - In accordance with Section 9 (f) and Section 10 (f) of the Revised Charter of the DBP (Exec. Order No. 81, series 1986 as amended by Rep. Act. No. 8523), the disciplining authority in the Bank shall be as follows:

- a. For disciplinary cases involving officers from Vice President or its equivalent, and other more senior officer positions, excluding the Chairman and Vice-Chairman, the disciplining authority shall be the Board of Directors. The Board of Directors may delegate its disciplining authority and power to the President/CEO.
- b. For disciplinary cases involving officers and/or employees below Vice President or its equivalent, the disciplining authority shall be the President and Chief Executive Officer (CEO) of the Bank. The President/CEO may delegate his disciplining authority and power to the Chief Operating Officer of the Bank.

**SECTION 2. Person Complained of** - the person who is the subject of an adverse report and/or anonymous complaint but who is not, as yet, formally charged by the disciplining authority.

**SECTION 3. Respondent** - the person who is formally charged by the disciplining authority, or who has been furnished a copy of a complaint filed by any person other than the disciplining authority, and has been directed to answer the same.

**SECTION 4. Party Adversely Affected** - the respondent against whom a decision in a disciplinary case has been rendered.

**SECTION 5. Forum-Shopping** - the filing of the same complaint involving the same set of facts and the same parties in one or more administrative bodies having concurrent jurisdiction.

**SECTION 6. Complaint** - a written complaint by any person other than the disciplining authority against a bank official or employee, under oath, upon which the disciplining authority may take appropriate action (e.g., dismissal if not sufficient in form and/or substance, referral for fact-finding/preliminary investigation, etc.)

**SECTION 7. Adverse Reports** - Audit reports and other management reports of irregularities in the institution.

**SECTION 8. Formal Charge** - a written specification of a charge or charges signed by the disciplining authority. It need not be subscribed or sworn by him.

**SECTION 9. Employees** - regular and casual employees of the Bank. As used herein, this term shall also apply to officials of the Bank.

**SECTION 10. Prima Facie Case** - evidence sufficient to form a belief that an administrative offense has been committed for which the person complained of is probably guilty and should be charged.

**SECTION 11. Contested Case** - A case is deemed a "contested case" when the respondent, in his answer to an administrative complaint, elects a formal investigation.

**SECTION 12. Parties** - include the person complained of/the respondent, the private offended party (if any), and the prosecutor/Administrative Investigation Unit (AIU) of the Office of the Legal Counsel (OLC).

**SECTION 13. Secretariat, Administrative Investigation Unit, Office of the Legal Counsel** - It shall act as the "Clerk of Court", custodian of the records and center of communications of administrative cases.

#### Rule III Action on Complaints

**SECTION 1. Complaints** - A complaint from a person other than the disciplining authority against a Bank official or employee shall not be given due course unless it is in writing, is subscribed and sworn to by the complainant, and satisfies the requirements provided in

Section 2 of this Rule.

*SECTION 2. Requisites for complaints* - The complaint should be written in a clear, simple and concise language and in a systematic manner as to apprise the employee or the person complained of the nature and cause of the accusation against him and to enable him to intelligently prepare his defense or answer.

The complaint shall contain the following:

- a. full name and address of the complainant;
- b. full name and address of the person complained of as well as his position and office of employment;
- c. a narration of the relevant and material facts which shows the acts or omissions allegedly committed by the employee or the person complained of;
- d. certified true copies of documentary evidence and affidavits of his witnesses, if any; and
- e. certification or statement of non-forum shopping.

In the absence of any one of the aforementioned requirements, the complaint shall be dismissed without prejudice to its re-filing with proper and complete requirements.

*SECTION 3. Where to file* - The complaint shall be filed with the Secretariat for proper docketing which shall, in turn, refer the same to the appropriate disciplining authority as defined in Rule II of these Rules.

*SECTION 4. Preliminary Investigation* - Upon receipt of the sworn complaint if sufficient in form and substance, the disciplining authority shall refer the matter to the Administrative Investigation Unit or a responsible official, panel or task force for preliminary investigation and evaluation to determine whether or not a prima facie case exists.

During the investigation, the parties are given the opportunity to submit affidavits and counter-affidavits with supporting documents. The AIU Investigator or responsible official, panel or task force may interview witnesses and shall examine relevant records and documents submitted by the parties.

After conducting the preliminary investigation, the evaluating authority shall submit its findings and recommendations to the proper disciplining authority for the latter's approval or disapproval.

*SECTION 5. Action of Disciplining Authority* -

a. Where the disciplining authority does not find that a prima facie case exists, he shall order its dismissal. Where the disciplining authority finds that a prima facie case exists, he shall notify the respondent in writing of the charges against the latter, to which shall be attached copies of the complaint, sworn statements and other documents submitted, and the respondent shall be allowed not less than seventy-two hours after receipt of the complaint to answer the charges.

b. *Prohibited Motions* -

1. No motion to dismiss or quash, and/or motion for bill of particulars shall be allowed in the cases covered by these Rules. Where grounds may exist for filing such motion/s, the same must be alleged and incorporated in the answer.
2. No dilatory motions shall be entertained.

*SECTION 6. Answer* - The answer must be in writing under oath, together with the supporting sworn statements and documents. The Respondent shall indicate in his answer whether or not he elects a formal investigation if his answer is not considered satisfactory.

The respondent, in his answer, shall specifically admit or deny all the charges specified in the formal charge, including the attachments. Failure of the respondent to deny or object under oath, to the documents attached thereto shall be deemed an admission of the genuineness and due execution of said documents.

- a. If the answer is found to be satisfactory, the disciplining authority shall dismiss the case.
- b. If the answer is not satisfactory, and the Respondent does not elect a formal investigation, the disciplining authority shall render a decision accordingly.
- c. If the answer is not satisfactory, and the Respondent elects a formal investigation, the disciplining authority shall determine whether the case should be heard by a hearing officer or hearing panel and shall designate who will hear the case, and if it is hearing panel, the presiding officer and members thereof.
- d. In the event that the respondent, despite due notice, fails to submit an answer within the prescribed period, the disciplining authority shall designate a Hearing Officer/Panel who shall resolve the complaint on the basis of the complainant and supporting evidence and submit its findings and recommendations to the disciplining authority for approval/disapproval.

#### Rule IV

##### Action on Adverse Reports and Anonymous Complaints

*SECTION 1. Where to file* - Adverse reports and anonymous complaints shall be filed with the Secretariat for proper docketing which, in turn, shall refer the same to the appropriate disciplining authority as defined in Rule II of these Rules.

*SECTION 2. Action of Disciplining authority* -

- a. Where the disciplining authority finds no merit in the adverse report, he shall take no further action on the matter.

Similarly, no anonymous complaint shall be entertained unless there is obvious truth or merit to the allegations therein or it is supported by documentary or direct evidence.

- b. Where the disciplining authority finds the adverse report or anonymous complaint to be meritorious, he shall take appropriate measures including but not limited to, designating a responsible official, panel or task force or the Administrative Investigation Unit of the Office of the Legal Counsel to undertake fact-finding (if necessary) and to conduct the preliminary investigation and evaluation.

*SECTION 3. Preliminary Investigation* - After conducting the preliminary investigation, the evaluating authority shall submit its written findings and recommendations to the proper disciplining authority for the latter's approval or disapproval.

*SECTION 4. Formal Charge* - Where the disciplining authority finds that a prima facie case exists, he shall issue the Formal Charge which 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 within five (5) days from receipt thereof by the respondent with the notice (i) for him to indicated in his answer whether or not he elects a formal investigation of the charge(s), and (ii) that he is entitled to be assisted by counsel of his choice.

#### Rule V Formal Investigation

*SECTION 1. Consolidation of Proceedings* - Where the complaint involves or implicates officials and/or employees above and below Vice President level, the Board and the President/CEO, as the respective disciplining authorities, may establish a single hearing panel to hear the case, and shall jointly designate the presiding officer and members thereof.

*SECTION 2. Prosecution* - The Administrative Investigation Unit (AIU) or the person or panel designated by the disciplining authority shall prosecute the case. The complainant may be assisted or represented by counsel, who may be deputized for such purpose, under the direction and control of the AIU.

*SECTION 3. Preliminary Conference* -

a. Upon receipt of the records from the disciplining authority, the hearing officer/hearing panel shall set the case for preliminary conference for the parties to consider and agree on the admission or stipulation of facts and documents, simplification of issues, identification and marking of evidence and such other matters as may aid in the prompt and just resolution of the case. Except for good and justifiable reasons, any evidence not presented and marked during the preliminary conference shall not be admitted in subsequent proceedings.

b. In contested cases, the preliminary conference shall include the setting of advance dates of subsequent hearings within the 90-day period from the date of the conference, the limitation of the number of witnesses to exclude those whose testimonies will be merely corroborative.

c. In contested cases, the order setting the date of preliminary conference shall require each party to file and serve on the adverse party at least three (3) days before date of conference, his verified position paper which must include a brief statement of facts supporting the party's charge or defense; a summary of admitted facts and proposed stipulation of facts; a brief statement of the issues raised by the party; a brief discussion of the applicable jurisprudence, laws and issuances; and the available trial dates of party and counsel within a 90-day period from the date of the conference.

d. Hearings and Continuances - The schedule of hearings agreed upon during the preliminary conference shall be strictly followed and no further notice of such scheduled hearings need be served on the parties thereafter. Postponements shall not be allowed except in meritorious cases substantiated under oath and in no instance shall either party be granted more than one postponement nor shall a postponement cancel more than one scheduled hearing.

*SECTION 4. Minutes of Preliminary Conference* - After the preliminary conference, the Hearing Panel or Hearing Officer shall issue minutes of the preliminary conference through an Order stating therein the matters taken up, the scheduled dates of hearing agreed upon, and explicitly defining and limiting the issues to be tried.

*SECTION 5. Rules of Evidence* - In a contested case:

a. The Hearing Panel/Officer may admit and give probative value to evidence commonly accepted by reasonably prudent men in the conduct of their affairs.

b. Documentary evidence may be received in the form of copies or excerpts, if the original is not readily available. Upon request, the parties shall be given the opportunity to compare the copy with the original. If the original is in the official custody of a public officer, a duly certified copy thereof may be accepted.

c. Every party shall have the right to cross-examine witnesses presented against him and to submit rebuttal evidence.

d. The Hearing Panel/Officer may take notice of judicially cognizable facts and of generally cognizable technical or scientific facts within its specialized knowledge. The parties shall be notified and afforded an opportunity to contest the facts so noticed.

e. The Hearing Panel/Officer shall have the power to ask clarificatory questions; and

f. The Rules of Evidence contained in the Rules of Court, as amended, shall apply in a suppletory manner.

*SECTION 6. Subpoena* - Subject to prevailing law and jurisprudence on materiality, confidentiality and relevancy in any contested case, the Hearing Panel/Officer shall have the power to require the attendance of witnesses and/or the production of books, papers, documents and other pertinent data, upon request of any party before or during the hearing upon showing of general relevance. Unless, otherwise provided by law, the Hearing Panel/Officer may, in case of disobedience, invoke the aid of the Regional Trial Court within whose jurisdiction the contested case being heard falls under. The Court may punish the contumacy or refusal as contempt.

#### Rule VI Resolution of the Case

*SECTION 1. Contents and Period for Submission of Report* - Within thirty (30) days after the Hearing Panel or Hearing Officer has issued an Order declaring the case submitted for resolution, a report shall be submitted to the appropriate disciplining authority. The report of the Hearing Panel or Hearing Officer shall clearly and distinctly state its factual and legal basis. This report shall be confidential and may not be disclosed or divulged to any person without the express approval of the disciplining authority.

*SECTION 2. Decision* - Every decision rendered by the disciplining authority in a contested case shall be in writing and shall clearly and distinctly state its factual and legal basis. The disciplining authority shall decide each case within thirty (30) days following its submission. The parties shall be notified of the decision personally or by registered mail addressed to their counsel of record, if any, or to them.

*SECTION 3. Finality of Order* - The decision of the disciplining authority shall become final and executory fifteen (15) days after the receipt of a copy thereof by the party adversely affected unless within that period an administrative appeal or judicial review, if proper, has been perfected. One motion for reconsideration may be filed, which shall suspend the running of the said period.

*SECTION 4. Motion for Reconsideration* - A motion for reconsideration may only be entertained if filed within fifteen (15) days from receipt of the Resolution by the parties. The motion shall be resolved within five (5) days from receipt thereof. No second motion for reconsideration shall be allowed. The grounds for a motion for reconsideration shall be those provided by law.

#### Rule VII Penalties

*SECTION 1. Classification of Offenses* - Administrative offenses with corresponding penalties are classified into grave, less grave or light, depending on their gravity or depravity and effects on the government service.

A. The following are *grave offenses* with their corresponding penalties:

	First Offense	Second Offense	Third Offense
1. Dishonesty	Dismissal		
2. Gross Neglect of Duty	Dismissal		
3. Grave Misconduct	Dismissal		
4. Being Notoriously Undesirable	Dismissal		
5. Conviction of a Crime Involving Moral Turpitude	Dismissal		
6. Falsification of Official Document	Dismissal		
7. Physical or Mental Incapacity or Disability due to Immoral or Vicious Habits	Dismissal		
8. Engaging Directly or Indirectly in Partisan Political Activities by One Holding Non-Political Office	Dismissal		
9. Receiving for Personal use of a Fee, Gift or Other Valuable Thing in the Course of Official Duties or in Connection therewith when such Fee, Gift or Other Valuable Thing is Given by any Person in the Hope or Expectation of Receiving a Favor or Better Treatment than that Accorded to other Persons, or Committing Acts Punishable Under the Anti-Graft Laws	Dismissal		
10. Contracting Loans of Money or Other Property from Persons with Whom the Office of the Employee Has Business Relations	Dismissal		
11. Soliciting or Accepting Directly or Indirectly, Any Gift, Gratuity, Favor, Entertainment, Loan or Anything of Monetary Value which in the Course of His Official Duties or in Connection with Any Operation Being Regulated by, or Any Transaction which May be Affected by the Functions of His Office. The propriety or Impropriety of the Foregoing shall be determined by its Value, Kinship or Relationship between giver and receiver and the motivation. A thing of monetary value is one which is evidently or manifestly excessive by its very nature	Dismissal		
12. Nepotism	Dismissal		
13. Disloyalty to the Republic of the Philippines and to the Filipino People	Dismissal		
14. Oppression	Suspension 6 mos. 1 day to 1 year	Dismissal	
15. Disgraceful and Immoral Conduct	Suspension 6 mos. 1 day to 1 year	Dismissal	

16. Inefficiency and Incompetence in the in the performance of official duties	Suspension 6 mos. 1 day to 1 year	Dismissal
17. Frequent Unauthorized Absences or Tardiness in Reporting for Duty, Loafing or Frequent Unauthorized Absences from Duty During Regular Office Hours	Suspension 6 mos. 1 day to 1 year	Dismissal
18. Refusal to Perform Official Duty	Suspension 6 mos. 1 day to 1 year	Dismissal
19. Gross Insubordination	Suspension 6 mos. 1 day to 1 year	Dismissal
20. Conduct Prejudicial to the Best Interest of the Service	Suspension 6 mos. 1 day to 1 year	Dismissal
21. Directly or Indirectly Having Financial and Material Interest in Any Transaction Requiring the Approval of His Office. Financial and Material Interest is Defined as Pecuniary or Proprietary Interest by which a Person Will Gain or Lose Something	Suspension 6 mos. 1 day to 1 year	Dismissal
22. Owning, Controlling, Managing or Accepting Employment as Officer, Employee, Consultant, Counsel, Broker, Agent, Trustee, or Nominee in Any Private Enterprise Regulated, Supervised or Licensed by His Office, unless Expressly Allowed by Law	Suspension 6 mos. 1 day to 1 year	Dismissal
23. Disclosing or Misusing Confidential or Classified Information Officially known to Him by Reason of His Office and Not Made Available to the Public, to Further His Private Interests or Give Undue Advantage to Anyone, or to Prejudice the Public Interest	Suspension 6 mos. 1 day to 1 year	Dismissal
24. Obtaining or Using Any Statement Filed Under the Code of Conduct and Ethical Standards for Public Officials and Employees for Any Purpose Contrary to Morals or Public Policy or Any Commercial Purpose	Suspension 6 mos. 1 day to 1 year	Dismissal
25. Recommending Any Person to Any Position to Any Position in a Private Enterprise which Has a Regular or Pending Official Transaction with His Office, unless Such Recommendation or Referral is Mandated by (1) Law, or (2) International Agreements, Commitment and Obligation, or as Part of the Function of His Office.	Suspension 6 mos. 1 day to 1 year	Dismissal

B. The following are less grave offenses with the corresponding penalties:

	First Offense	Second Offense	Third Offense
1. Simple Neglect of Duty	Suspension 1 mo. 1 day to 6 mos.	Dismissal	
2. Simple Misconduct	Suspension 1 mo. 1 day to 6 mos.	Dismissal	
3. Gross Discourtesy in the course of official duties	Suspension 1 mo. 1 day to 6 mos.	Dismissal	
4. Violation of existing Civil Service Law and rules of serious nature	Suspension 1 mo. 1 day to 6 mos.	Dismissal	
5. Insubordination	Suspension 1 mo. 1 day to 6 mos.	Dismissal	
6. Habitual Drunkenness	Suspension 1 mo. 1 day to 6 mos.	Dismissal	