



**LEGAL SERVICE  
GENERAL ADMINISTRATION AND SUPPORT  
SERVICES GROUP**

DSWD-GF-002 | REV 04 | 04 FEB 2025

DRN: LS-MLTPL-MEM-25-03-012723

**MEMORANDUM**

**FOR : MARI-FLOR A. DOLLAGA-LIBANG**  
Regional Director, Field Office – CARAGA

**FROM : ASSISTANT SECRETARY FOR GASSG, AND CONCURRENT OFFICER – IN – CHARGE, LEGAL SERVICE**

**SUBJECT : LEGAL OPINION AND CLARIFICATION IN HANDLING ADMINISTRATIVE CASES**

This refers to your Memorandum dated 24 July 2024 requesting the Legal Service (LS) for legal opinion and clarification on which authority has proper jurisdiction over cases involving violation of the 2017 Rules on Administrative Cases in the Civil Service (2017 RACCS) and the applicability of Memorandum Circular (MC) No. 08, s. 2009 and Civil Service Commission (CSC) MC No. 11, series of 2021 on sexual harassment cases.

Specifically, you are seeking for guidance on the following queries:

1. *Whether the Grievance Machinery has jurisdiction to pass upon cases for violation of 2017 RACCS.*
2. *Whether the Legal Unit of the different DSWD Field Offices have jurisdiction and authority to investigate cases for violation of the 2017 RACCS.*
3. *Whether the Investigation in all the previous cases prior to the assumption undersigned conducted by the Grievance Machinery is void ab initio.*
4. *Whether MC No. 08s2009 is still valid and can be applied administratively in cases of violation of RA 11313 and gender-based sexual harassment, as the case may be.*
5. *Whether CSC MC No. 11, series of 2021 or Revised Administrative Disciplinary Rules on Sexual Harassment Cases (Amendment to the Sexual Harassment in the 2017 Revises Rules on Administrative Cases in the Civil Service) be applied suppletorily.*
6. *Clarification as to the detailed specific functions of the Legal Officer (LO) in representing the Field Office (FO)."*

*Our Opinion*

1. The **first** query pertains to whether the Grievance Machinery has jurisdiction to pass upon cases for violation of the 2017 RACCS.

No, the Grievance Machinery does not have jurisdiction to pass upon cases for violation of the 2017 RACCS pursuant to the DSWD Administrative Order (AO) No. 06, Series of 2021<sup>1</sup>.

<sup>1</sup> DSWD Administrative Order No. 06, Series of 2021 with subject "Enhanced DSWD Grievance Machinery"



Grievance Machinery is a system or method of determining and finding the best way to address specific cause or causes of grievance by seeking the fairest and amicable settlement to all parties concerned towards better public service<sup>2</sup>.

Item VII, Paragraph 2 of AO No. 06, Series of 2021 explicitly provides:

*"2. The following cases **shall not** be acted upon through the Grievance Machinery:*

- a. **Disciplinary and Administrative cases which shall be resolved pursuant to the 2017 RACCS;***
- b. **Sexual Harassment Cases as provided for in 2017 RACCS and Implementing Rules and Regulations of Republic Act No. 11313 or the Safe Spaces Act;***
- c. **Protest on appointments per CSC Memorandum Circular No. 4, s. 2020, or the Revised Policies in the Resolution of Protest Cases,***
- d. **Union-related issues and concerns; and***
- e. **Other cases in violation of existing governing laws.***

In view of above cited provision, we answer in the negative. Disciplinary and Administrative Cases which shall fall under the purview of the 2017 RACCS are beyond the jurisdiction of Grievance Machinery.

2. The **second** query pertains to whether the Legal Unit of the different DSWD FOs has jurisdiction and authority to investigate cases for violation of the 2017 RACCS.

Before we discuss on the jurisdiction and authority of the Legal Unit, it may be prudent to discuss first the jurisdiction and authority of the Regional Directors.

**First level, casual and Seasonal employees**

For first level, casual, and seasonal employees, the DSWD FOs, through their Regional Directors, shall have jurisdiction to impose disciplinary actions over them pursuant to Executive Order No. 292 or the Administrative Code of 1987.

Section 27 (4), Chapter 5, Book IV of the Administrative Code of 1987 provides for the inherent function of the Regional Director to exercise disciplinary action over its employees in accordance with Civil Service Law, thus:

"Section 27. Duties of a Regional Director. The Regional Director shall:

x x x.

(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;**

**Second level employees in the regional offices**

As to the second level employees, under the Administrative Code of 1987, the Department Secretary shall have the authority to exercise disciplinary action over them.

<sup>2</sup> Item V of DSWD AO No. 6, s. 2021

As a general rule, the Department Secretary has the power to appoint employees to positions in the second level in the regional offices of the Department pursuant to Section 7, paragraph 6, Chapter 2, Book IV of the Administrative Code of 1987, viz:

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

Xxx

(6) Appoint all officers and employees of the Department except those whose appointments are vested in the President or in some other appointing authority; Provided, However, that where the Department is regionalized on a department-wide basis, the Secretary shall **appoint employees to positions in the second level in the regional offices as defined in this Code;**

However, the Secretary may delegate to the Regional Director the investigation of administrative cases over second level employees pursuant to Section 47(2) and (3), Book V, Title I, Sub-title A, Chapter 7 of the Administrative Code, to wit:

***"SECTION 47. Disciplinary Jurisdiction.***

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(2) *The Secretaries and heads of agencies and instrumentalities, provinces, cities and municipalities shall have jurisdiction to investigate and decide matters involving disciplinary action against officers and employees under their jurisdiction. Their decisions shall be final in case the penalty imposed is suspension for not more than thirty days or fine in an amount not exceeding thirty days' salary. In case the decision rendered by a bureau or office head is appealable to the Commission, the same may be initially appealed to the department and finally to the Commission and pending appeal, the same shall be executory except when the penalty is removal, in which case the same shall be executory only after confirmation by the Secretary concerned.*

**(3) An investigation may be entrusted to regional director or similar officials who shall make the necessary report and recommendation to the chief of bureau or office or department within the period specified in Paragraph (4) of the following Section. (Emphasis supplied)**

Relatively, Paragraph 4 of the following Section as mentioned above pertains to Procedures in Administrative Cases Against Non-Presidential Appointees, it provides:

**"SECTION 48. Procedures in Administrative Cases Against Non-Presidential Appointees.—(1)** Administrative proceedings may be commenced against a subordinate officer or employee by the Secretary or head of office of equivalent rank, or head of local government, or chiefs of agencies, or regional directors, or upon sworn, written complaint of any other person.

xxx

(4) The investigation shall be held not earlier than five days nor later than ten days from the date of receipt of respondent's answer by the disciplining authority, and shall be finished within thirty days from the filing of the charges, unless the period is extended by the Commission in meritorious cases. The decision shall be rendered by the disciplining authority within thirty days from

the termination of the investigation or submission of the report of the investigator, which report shall be submitted within fifteen days from the conclusion of the investigation."

Based on the foregoing, we are of the view that the **Regional Director has inherent authority to exercise disciplinary actions over first level, casual and seasonal employees in accordance with the 2017 RACCS**. On the other hand, the **Regional Director has delegated authority to investigate administrative cases over second level employees** and shall make the necessary report and recommendation to the Department (Central Office) whether or not to file appropriate administrative charges against the erring employee.

**Jurisdiction and Authority of  
Legal Units to Investigate Cases  
For Violation of the 2017 RACCS**

Before dwelling to the issue at hand, it may be well to define first the meaning of jurisdiction, that is, the power to hear and determine a case<sup>3</sup>.

Relatively, DSWD AO No. 01, Series of 2018<sup>4</sup> provides for the responsibility of a legal unit, to wit:

"The legal unit is primarily responsible for providing technical assistance and legal support to Regional Director. It **assists the Regional Director in handling administrative cases involving Department personnel and certain litigated cases**, by providing the Department legal opinions and advice on matters involving its formal mandate and the exercise of its official powers and functions, and by rendering similar and related services." (Emphasis supplied)

As can be gleaned therefrom, the legal unit has no jurisdiction to hear and decide administrative case. Such power belongs to the Regional Director as discussed above. However, legal units shall provide technical assistance and legal support to the Regional Director in handling administrative cases involving Department personnel, both in the inherent authority of the Regional Director to exercise disciplinary actions over first level, casual and seasonal employees, and to the Regional Director's delegated authority to investigate administrative cases over second level employees

Relative hereto, the **sixth query** pertaining to the detailed specific functions of a Legal Officer may already be discussed herein.

To reiterate, the legal unit, headed by a Legal Officer shall be responsible for providing technical assistance and legal support to the Regional Director in handling administrative cases involving first-level employees, as well as casual and seasonal employees. Legal units shall also assist in conducting investigations concerning second-level employees, ensuring that all investigations are carried out in accordance with relevant laws, rules and regulations. These roles are crucial in ensuring compliance with the law and safeguarding the integrity of the Department's administrative processes.

Moreover, legal units also provide legal opinions, advice and services on matters involving the Department's official mandate and the performance of its authorized powers and functions, ensuring compliance with due process, and assisting in the preparation of legal documents.

<sup>3</sup> Radiowealth Finance Company, Inc. v. Alfonso Pineda, Jr., G.R. No. 227147, 30 July 2018

<sup>4</sup> "Functional Structure of the DSWD Field Offices"

3. The **third** query pertains to whether the investigation in all the previous cases conducted through the Grievance Machinery prior to the assumption of Atty. Joseph J.M. Malelang is void ab initio.

**On the assumption that the cases as mentioned in the query pertains to disciplinary and administrative cases that must be resolved pursuant to the 2017 RACCS, we answer in the affirmative.**

Grievance Machinery covers different scopes and objectives. Any investigation conducted through the Grievance Machinery should not become the basis for the disciplinary and administrative cases. On the other hand, the investigation conducted pursuant to the 2017 RACCS are administrative cases, which is separate and distinct from the Grievance Machinery.

The Supreme Court in the case of *Bilag, et. al. vs Ay – Ay, et. al.*<sup>5</sup> is instructive, thus:

*"Jurisprudence has consistently held that "[j]urisdiction is defined as the power and authority of a court to hear, try, and decide a case xxx*

*xxx*

*it is important that a court or tribunal should first determine whether or not it has jurisdiction over the subject matter presented before it, considering that any act that it performs without jurisdiction shall be null and void, and without any binding legal effects."*

Accordingly, the disciplinary and administrative cases that have been decided through grievance machinery shall be considered null and void as the Grievance Committee has no jurisdiction over disciplinary and administrative cases.

Meanwhile, in cases which do not involve administrative disciplinary actions, the investigation conducted by the Grievance Machinery shall remain valid.

4. The **fourth and fifth queries** pertains to whether DSWD Memorandum Circular (MC) No. 08, s. 2009<sup>6</sup> is still valid and can be applied in administrative cases for violation of RA 11313<sup>7</sup> and gender-based sexual harassment, as the case may be, and whether the CSC MC No. 11, s. 2021 or the Revised Administrative Disciplinary Rules on Sexual Harassment Cases (Amendment to the Sexual Harassment in the 2017 RACCS) may be applied suppletorily.

The DSWD MC No. 08, Series of 2009 was issued to promulgate the Rules and Regulations for handling administrative offenses of sexual harassment in the **Department of Social Welfare and and Development**. Later on, the 2017 RACCS was promulgated which included the rules on handling sexual harassment cases. In light of the enactment of RA No. 11313, CSC MC No. 11, series of 2021 was issued to ensure that the misconduct is addressed across a wider range of settings because RA No. 11313 has significantly broadened the scope of sexual harassment coverage by explicitly including public spaces and online environments.

DSWD MC No. 08, s. 2009 is expressly repealed by CSC MC No. 11, s. 2021 as the penultimate paragraph of CSC MC No. 11, s. 2021 provides that all rules, regulation and issuances which are inconsistent herewith are hereby modified and amended accordingly.

<sup>5</sup> G.R. No. 189950, 24 April 2017

<sup>6</sup> DSWD Memorandum Circular (MC) No. 08, Series of 2009 with subject "Administrative Disciplining Rules on Sexual Harassment Cases in the Department of Social Welfare and Development."

<sup>7</sup> Known as the "Safe Spaces Act"

Henceforth, based on the foregoing discussion, the CSC MC No.11, s. 2021 shall be the primary legal guidance in cases of sexual harassment and not a mere suppletory rule in view of its repeal of the DSWD MC No, 08, s. 2009.

Please be informed that the foregoing legal opinion is based solely on the information provided by your office, and may vary based on a different set of information or document/s or when the facts are changed or elaborated.

For your consideration.

Thank you.

  
**ATTY. GINA V. WENCESLAO**

RRAO

Approved by:

  
**ATTY. EDWARD JUSTINE R. ORDEN**

Undersecretary for GASSG

Date: 09 MAY 2025