RULES OF PROCEDURE FOR DISCIPLINARY CASES IN THE DOST SYSTEM

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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 la w, 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);

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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 t o 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.

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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-findings 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

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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 Investigation or have the case decided on the records already a vailable if the Answer is not found satisfactory; and
i) A statement informing the respondent of his/her right to the assistance of a counsel of his/her choice.

Section 3. Attachments to the Formal Charge. Certified copies of the complaint, sworn statements of the witness/es, and other documents submitted shall be attached to the Formal Charge.

CHAPTER V
ANSWER

Section 1. When filed.- The Answer shall be filed with the Disciplining Authority within the period provided in the Formal Charge.

Section 2. Form and contents of the Answer. – The Answer shall be in writing and under oath. It shall contain the following:

a) The respondent’s answer to the charges and shall contain material facts and applicable law, if any, including documentary evidence, sworn statements covering testimonies of witnesses, if there be any, in support of his/her case; and

b) An indication by the respondent whether or not he/ she elects a Formal Investigation of the case.

Section 3. Prohibited pleadings after the Formal Charge. – The Disciplining Authority shall not entertain any request for clarification, bills of particulars or motions to dismiss which are obviously designed to delay the administrative proceedings. If the respondent interposes any of these pleadings, the same shall be considered as an answer and shall be evaluated as such.

Section 4. Evaluation of the answer. – If the answer is found satisfactory, the case shall be dismissed, otherwise, a Formal Investigation shall be held.

In case the respondent did not expressly request for a Formal Investigation, the case shall be decided based on the records available. Provided, however, that a Formal Investigation shall nevertheless be held if the case cannot be decided judiciously from the allegations in the complaint and the answer and their supporting documents.

Section 5. Failure to file an Answer - If respondent fails or refuses to file his/her answer within fifteen (15) days from receipt of the complaint, he/she shall be considered to have waived his/her right to file an answer to the charges and the case shall be decided based on the records available.

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A Formal Investigation may nevertheless be held if from the records available, the case cannot be decided judiciously from the allegations of the complaint and its supporting documents.

CHAPTER VI
FORMAL INVESTIGATION

Section 1. When held. – The holding of Formal Investigation may be held not earlier than five (5) days nor later than ten (10) days from receipt of respondent's or from receipt of complainant's reply to the answer which must be filed within ten (10) days from receipt of the answer, if any, or after the period for filing an answer has expired or when the hearing committee finds that the records on file are already complete, the formal investigation may start anytime after the hearing committee has convene.

Section 2. Hearing Committee. – The Formal Investigation shall commence after the Hearing Committee has been duly constituted. The Hearing Committee shall be composed of the following:

a) When the respondent is a rank and file employee:

a.1 Executive Director/Director of the agency or regional office or his/her duly authorized representative, where the rank and file employee belongs, as chairperson; provided, the authorized representative must be a Deputy Executive Director or its equivalent;

a.2 Any Division Chief or its equivalent rank, as member;

a.3 A representative from the Union or Association to which the respondent belongs, as member; in case the rank and file employee is not a member of any Union or Association, any rank and file employee as may be designated by the Secretary or Executive Director/Director as the case maybe.

A representative from the Personnel Section shall act as the secretariat and repository of the records of the agency.

b) When the respondent is a Director or Executive Director, Assistant Regional Director or Deputy Executive Director or its equivalent rank;

b.1 The Secretary or his/her duly authorized representative whose rank must not be lower than an Assistant Secretary, as chairperson;

b.2 A Director/Executive Director from another DOST agency or regional office as may be designated by the DOST Secretary, as member;

b.3 A rank and file employee as may be designated by the Secretary, as member.

A representative from the Personnel Section of DOST Central Office shall act as the secretariat and repository of the records of the case.

The hearing committee shall deliberate collectively and not individually.

Section 3. Appointment of a Special Prosecutor. – In motu proprio cases, the Secretary of DOST, the Disciplining authority of the attached agencies, the Regional Directors, as the case may be, shall appoint a special prosecutor who shall represent the Department, attached agencies, and its Regional Offices before the Hearing Committee.

In the absence of available special prosecutors in the attached agencies or regional offices, the Director/Executive Director may file a written request with the Secretary for the latter to appoint/designate a special prosecutor who may be from the central office or from other agencies.

Section 4. Pre-Hearing conference. – At the commencement of the Formal Investigation, the Hearing Committee, the exercise of its discretion, may direct the parties to appear for a pre-hearing conference to consider and agree

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on any of the following:

a) Dates of subsequent hearings;
b) Simplification of issues;
c) Stipulation of facts;
d) Limiting the number of witnesses, and their names;
e) Identification and marking of evidence of the parties;
f) Waiver of objections to admissibility of evidence; and
g) Such other matters as may aid in the prompt and just resolution of the case.

Section 5. Minutes of Pre-Hearing Conference. – After the pre-hearing conference, the Hearing Committee shall prepare the minutes, which shall contain a summary of the agreements of the parties, including the facts stipulated and issue an Order for the Pre-Hearing Conference. Both parties may file their respective comments/opposition to the Pre-Hearing Conference Order within five (5) days from receipt thereof.

Section 6. Request for Subpoena. - If a party desires the attendance of a witness or the production of documents, he/she shall make a request in writing for the issuance of the necessary subpoena ad testificandum or subpoena duces tecum, at least three (3) days before the scheduled hearing.

In case of disobedience, the Hearing Committee may invoke the aid of the Regional Trial Court of competent jurisdiction. The Court may punish the contumacy or refusal as contempt, direct or indirect as the case may be.

Section 7. Continuous hearing until terminated; postponed. – Hearings shall be conducted on the hearing dates set by the Hearing Officer or as agreed upon during the pre-hearing conference. Postponements shall not be allowed except in meritorious cases, however, any motion for postponement must be filed three days before the scheduled hearing. Provided, however, that a party shall not be granted more than three (3) postponements upon oral or written requests. A fourth postponement may be granted only upon written request and subject to the discretion of the Hearing Committee.

The parties and their counsel and witnesses, if any, shall be given a notice of at least (5) days before the first scheduled hearing specifying the time, date and place of the said hearing and subsequent hearings. Thereafter, the schedule of hearings previously set shall be followed without further notice.

Except in meritorious cases as determined by the hearing committee, failure or refusal of the respondent to appear during the scheduled hearings despite due notice, would cause the investigation to proceed ex-parte and the respondent is deemed to have waived his/her right to be present and to submit evidence in his or her favor during those hearings.

Section 8. Preliminary matters. - At the start of the hearing, the Hearing Committee shall note the appearance of the parties and shall proceed with the reception of evidence for the prosecution.

If the respondent appears without the aid of a counsel, and without offering any justifiable reason, he or she shall be deemed to have waived his or her right thereto and the proceedings shall proceed.

Before taking the testimony of a witness, the Hearing Committee shall place him or her under oath and then take his or her name, address, civil status, age, and place of employment.

A sworn statement of a witness(es) properly identified and affirmed shall constitute his/her /their direct testimonies, copy furnished the other party.

The Hearing Committee may ask Clarificatory questions during or after the presentation of the witness.

Section 9. Appearance of Counsel. - Any counsel appearing before any hearing or investigation conducted by the

Hearing Committee or by any of its officers shall manifest orally or in writing his or her appearance for a party, stating his or her name and exact address at which he or she may be served with copies of decisions and other communications, privilege tax receipt number, IBP No., and MCLE number. Any pleading signed by him or her without complying with the above stated requirements shall not be recognized. Neither shall be or she allowed to prosecute or defend a case.

Section 10. Order of hearing. – Unless the Hearing Committee directs otherwise, the order of hearing shall be as follows;

a) The complainant shall produce his or her evidence subject to the pre-hearing agreement, direct examination;
b) Cross-examination by the party;
c) There may be re-direct and re-cross examination;
d) The respondent shall then offer evidence in support of his or her defense following the same order subject to the pre-hearing agreement;
e) Rebuttal or surrebuttal, if any;
f) When the presentation of evidence has been concluded, the parties shall formally offer their evidence either orally or in writing. After which, both parties may be given time to submit their respective memoranda, which in no case shall be beyond ten (10) days after the termination of the investigation. Failure to submit the same within the given period shall be considered a waiver thereof.

The Chairman or any of the members of the Hearing Committee may from time to time ask clarificatory questions during or even after the presentation of the witness.

Section 11. Rules of evidence. – During the Formal Investigation:

a) The Hearing Committee 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 opportunity to compare the copy with the original. If the original is in the official custody of a public officer, a certified copy thereof may be accepted;

c) The Hearing Committee 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.

d) A fact may be established, including the guilt of the respondent, when proven by substantial evidence. Substantial evidence means that amount of evidence that a reasonable mind might accept as adequate to justify a conclusion.

Section 12. Objections. - All objections raised during the hearing shall be resolved by the Hearing Committee. However, objections that cannot be ruled upon by the Hearing Committee shall be noted with the information that the same shall be included in the memorandum of the concerned party to be ruled upon by the proper disciplining authority.

The Hearing Committee shall accept all evidence deemed material and relevant to the case. In case of doubt, it should allow the admission of evidence subject to the objection interposed against its admission.

Section 13. Markings. - All documentary evidence or exhibits shall be properly marked by letters (A,B,C, etc...) if presented by the complainant and by the numbers (1,2,3, etc...) if presented by the respondent. These shall form part of the complete records of the case and shall be systematically and chronologically bound.

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Section 14. Testimonies and Records of Proceedings. – The sworn affidavits or statements of the parties or witnesses shall constitute their direct testimonies. Other evidence submitted shall form part of their direct evidence.

Section 15. Submission of Memorandum. – Parties may submit their respective memoranda within ten (10) days from termination of the hearing. Failure to submit the same within the given period shall be considered a waiver thereof.

Section 16. Report of Investigation. Within fifteen (15) days after the conclusion of the Formal Investigation, a report containing a narration of the material facts established during the investigation as well as the recommendation, shall be submitted to the Disciplining Authority by the Hearing Committee. The complete records of the case shall also be attached to the Report of Investigation.

The complete records shall be systematically and chronologically arranged, paged and securely bound to prevent loss. A Table of Contents shall be prepared. Whoever is in charge of the transmittal of the complete records shall be held responsible for any loss or suppression of pages thereof.

CHAPTER VII
PREVENTIVE SUSPENSION

Section 1. When applicable. – The Disciplining Authority (DA) may preventively suspend the respondent pending Formal Investigation if the officer or employee is charged with:

a. Dishonesty;
b. Oppression;
c. Grave Misconduct;
d. Neglect in the performance of duty; or
e. If there are reasons to believe that the respondent is guilty of charges, which would warrant his or her removal from service.

However, in the exigency of service, the DA may transfer the respondent in other department/agency pending the conduct of the formal investigation but not to exceed one year.

Section 2. When issued; when effective. – The DA shall issue the Order of Preventive Suspension simultaneously or after the issuance of the Formal Charge. The Order shall take effect upon receipt of the respondent thereof.

Section 3. Duration of Preventive Suspension. – When the Administrative Disciplinary Case against the respondent under preventive suspension is not finally decided by the Disciplining Authority within the period of ninety (90) calendar days after the date of respondents' preventive suspension, unless otherwise provided by special law, he/she shall be automatically reinstated in the service. Provided, however, that when the delay in the disposition of the case is due to the fault, negligence or petition of the respondent, the period of delay should not be included in the counting of the ninety (90) calendar-say period of preventive suspension. Provided further that should the respondent be on maternity/Paternity leave, said preventive suspension should be deferred or interrupted until such time that such leave have been fully enjoyed.

Section 4. Simultaneous service. – When the respondent is subject of more than one Administrative Disciplinary Cases wherein more than one Order of Preventive Suspension has been issued, he/she shall simultaneously serve them if the cases arose from a single act or transaction or series of transactions.

Section 5. Nature. – Preventive suspension is not a punishment or penalty for misconduct in office but is considered to be a preventive measure.

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The period within which a public officer or employee charged is placed under preventive suspension shall not be considered part of the actual penalty of suspension imposed upon the respondent found guilty.

Section 6. Purpose. – The purpose of preventive suspension is to prevent the respondent from using his or her position and the powers and prerogative of his or her office to influence potential witnesses or tamper with records, which may be vital in the prosecution of the case against him or her.

Section 7. Remedies from the Order of Preventive Suspension. – The respondent may file a motion for reconsideration with the disciplining authority or may elevate the same to the Civil Service Commission by way of an appeal within fifteen (15) days from receipt hereof.

CHAPTER
VIII DECISION

Section 1. Decision, defined. – The term Decision means the adjudication by the Disciplining Authority that the respondent is guilty or not guilty of the Administrative Offense charged, and the imposition of the penalty provided for by law on him or her.

Section 2. Form and Content. – The Decision shall be in writing, personally and directly prepared by the Disciplining Authority and signed by him or her, and shall contain clearly and distinctly a statement of the facts proved and the la w, which the decision is based.

Section 3. When rendered. – The Disciplining Authority shall render the Decision within thirty (30) days from the submission of the report of the Formal Investigation.

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 4. Finality of decision. – The Decision shall become final and executory after fifteen (15) days following receipt of the copy of the decision by the parties without any appeal or motion for reconsideration having been perfected.

Section 5. When Decision of Director is final. – The Decision of the Executive Director/Director shall be final and executory when the penalty imposed is any of the following:

a) Reprimand;
b) Suspension without pay for not more than five (5) days; or
c) Fine equivalent to not more than five (5) days' salary.

In the DOST attached agencies, however, the Decision of the Executive Director shall become final and executory only upon ratification of the Board of Trustees/Governing Council.

When the penalty imposed is suspension for a period of more than five (5) days but not more than six (6) months or a fine equivalent to more than five (5) days salary, the Decision of the disciplining authority may be appealed further to the Secretary. In the case of the agencies attached to the DOST, the decision of the Executive Director/ Director upon ratification of the concerned board may be appealed to the Civil Service Commission.

Section 6. When the Decision of the Executive Director/Director is subject to confirmation by the Secretary. – The Decision of the Executive Director/Director shall not be final unless confirmed by the Secretary when penalty imposed is any of the following;

a) Suspension without pay for more than six (6) months
b) Demotion;

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c) Forced resignation; or
d) Dismissal,

In the case of the agencies attached to the DOST, the Decision of the Executive Director imposing any of the penalties, shall be subject to the confirmation of the concerned board. The same may be appealed directly to the Civil Service Commission.

Sections 7. When the Decision of the Secretary shall be final. - The Decision of the Secretary Shall be final and unappealable when the penalty imposed is any of the following:

a) Suspension for not more than thirty (30) days; or
b) Fine in an amount not exceeding the salary of thirty (30) days; or
c) Reprimand.

CHAPTER IX
PENALTIES

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

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

1. Dishonesty:
1st Offense – Dismissal

2. Gross Neglect of Duty:
1st Offense – Dismissal

3. Grave Misconduct:
1st Offense – Dismissal

4. Being Notoriously Undesirable:
1st Offense – Dismissal

5. Conviction of a Crime Involving Moral Turpitude:
1st Offense – Dismissal

6. Falsification of Official Document:
1st Offense – Dismissal

7. Physical or mental incapacity or disability due to immoral or vicious habits: 1st Offense – Dismissal

8. Engaging directly or indirectly in partisan political activities by one holding non-political office: 1st Offense - 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 valuable thing is given by any person in the hope or expectation of receiving a favor or better treatment than that accorded to other person, or committing acts punishable under the anti-graft laws:

1st Offense – Dismissal

10. Contracting loans of money or other property from persons with whom the office of the employee has a business relations:

1st Offense – Dismissal

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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:

1st Offense – Dismissal

12. Nepotism: 1st Offense – Dismissal

13. Disloyalty to the Republic of the Philippines and to the Filipino people:

1st Offense – Dismissal

14. Oppression:

1st Offense – Suspension (6 mos. and 1 day to 1 year)
2nd Offense – Dismissal

15. Disgraceful and immoral conduct:

1st Offense – Suspension for 6 months and one day to one year
2nd Offense – Dismissal

16. Inefficiency and incompetence in the performance of official duties:

1st Offense – Suspension for six months and one day to one year
2nd Offense – Dismissal

17. Frequent unauthorized absences, or tardiness in reporting for duty, loafing or frequent unauthorized absences from duty during regular office hours:

1st Offense – Suspension for six months and one day to one year
2nd Offense- Dismissal

18. Refusal to perform official duty:

1st Offense – Suspension for six months and one day to one year
2nd Offense – Dismissal

19. Gross Insubordination

1st Offense – Suspension for six months and one day to one year
2nd Offense – Dismissal

20. Conduct prejudicial to the best interest of the service:

1st Offense – Suspension for six months and one day to one year
2nd Offense – 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:

1st Offense – Suspension for six months and one day to one year
2nd Offense – Dismissal

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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:

1st Offense – Suspension for six months and one day to one year
2nd Offense – 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 interest or give undue advantage to anyone, or to prejudice the public interest:

1st Offense – suspension for six months and one day to one year
2nd Offense – 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 other than by news and communications media for dissemination to the general public:

1st Offense – Suspension for six months and one day to one year
2nd Offense – Dismissal

25. Recommending any person to any position in a private enterprise which has a regular pending official transaction with his office, unless such recommendation or referral is mandated by (1) la w, or (2) international agreements, commitment and obligation, or as part of the function of his office:

1st Offense – Suspension for six months and one day to one year
2nd Offense – Dismissal

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

1. Simple Neglect of Duty:

1st Offense – Suspension for one month and one day to six months
2nd Offense – Dismissal

2. Simple Misconduct:

1st Offense – Suspension for one month and one day to six months
2nd – Offense – Dismissal

3. Gross Discourtesy in the course of official business:

1st Offense – Suspension for one month and one day to six months
2nd Offense – Dismissal

4. Violation of existing Civil Service law and rules of serious nature:

1st Offense – Suspension for one month and one day to six months
2nd Offense – Dismissal

5. Insubordination:

1st Offense – Suspension for one month and one day to six months
2nd Offense – Dismissal

6. Habitual drunkenness:

1st Offense – Suspension for one month and one day to six months
2nd Offense – Dismissal

7. Unfair discrimination in rendering public service due to party affiliation or preference:

1st Offense – Suspension for one month and one day to six months
2nd – Offense – Dismissal

8. Failure to file sworn Statements of Assets, Liabilities and net worth, and disclosure of business interest and financial connections including those of their spouses and unmarried children under eighteen (18) years of age living in their households:

1st Offense – Suspension for one month and one day to six months
2nd Offense – Dismissal

9. Failure to resign from his position in the private business enterprise within thirty (30) days from assumption of public office when conflict of interest arises, and/or failure to divest himself of his shareholdings or interest in private business enterprise within sixty (60) days from assumption of public office when conflict of interest arises; Provided, however that for those who are already in the service and conflict of interest arises, the official or employee must either resign or divest himself of said interest within the periods herein-above; provided, reckoned from the date when the conflict of interest had arisen:

1st Offense – Suspension for one month and one day to six months
2nd Offense – Dismissal

C. The following are Light Offenses with corresponding penalties:

1. Discourtesy in the course of official duties:

1st Offense – Reprimand
2nd Offense – Suspension for one to thirty days
3rd Offense - Dismissal

2. Improper or unauthorized solicitation of contributions from subordinate employees

1st Offense – Reprimand
2nd Offense – Suspension for one to thirty days
3rd Offense – Dismissal

3. Violation of reasonable office rules and regulations:

1st Offense – Reprimand
2nd Offense – Suspension for one to thirty days
3rd Offense – Dismissal

4. Frequent unauthorized tardiness (Habitual Tardiness);

1st Offense – Reprimand
2nd Offense – Suspension for one to thirty days
3rd Offense – Dismissal

5. Gambling prohibited by law:

1st Offense – Reprimand
2nd Offense – Suspension for one to thirty days
3rd Offense – Dismissal

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6. Refusal to render overtime service:

1st Offense – Reprimand
2nd Offense – Suspension for one to thirty days
3rd Offense – Dismissal

7. Borrowing money by superior officers from subordinates:

1st Offense – Reprimand
2nd Offense – Suspension for one to thirty days
3rd Offense – Dismissal

8. Lending money at usurious rates of interest:

1st Offense – Reprimand
2nd Offense – Suspension for one to thirty days
3rd Offense – Dismissal

9. Willful failure to pay just debts:

1st Offense – Reprimand
2nd Offense – Suspension for one to thirty days
3rd Offense – Dismissal

10. Lobbying for personal interest or gain in legislative halls and offices without authority:

1st Offense – Reprimand
2nd Offense – Suspension for one to thirty days
3rd Offense – Dismissal

11. Promoting the sales of tickets in behalf of private enterprises that are not intended for charitable or public welfare purposes and even in the latter cases, if there is no prior authority:

1st Offense – Reprimand
2nd Offense – Suspension for one to thirty days
3rd Offense – Dismissal

12. Failure to act promptly on letters and request within fifteen days from receipt, except as otherwise provided in the rules implementing the Code of Conduct and Ethical standards for Public Officials and Employees:

1st Offense – Reprimand
2nd Offense – Suspension for one to thirty days
3rd Offense – Dismissal

13. Failure to process documents and complete action on documents and papers within a reasonable time from preparation thereof, except as otherwise provided in the rules implementing the Code of Conduct and Ethical Standards of Public Officials and Employees:

1st Offense – Reprimand
2nd Offense – Suspension for one to thirty days
3rd Offense – Dismissal

14. Failure to attend to anyone who wants to avail himself of the services of the office or act promptly and expeditiously on public transactions:

1st Offense – Reprimand

2nd Offense – Suspension for one to thirty days
3rd Offense – Dismissal

15. Engaging in private practice of his profession unless authorized by the Constitution, law or regulation, provided that such practice will not conflict with his official functions:

1st Offense – Reprimand
2nd Offense – Suspension for one to thirty days
3rd Offense – Dismissal

16. Pursuit of private business, vocation or profession without the permission required by Civil Service rules and regulations:

1st Offense – Reprimand
2nd Offense – Suspension for one to thirty days
3rd Offense – Dismissal

Section 2. Fine as a penalty - The penalty of fine may be imposed instead of suspension of one (1) day to 1 month suspension. (Supreme Court Memorandum Circular No. 30, s. 1989)

Section 3. Extenuating, Mitigating, Aggravating, or Alternative Circumstances. – In the determination of the penalties to be imposed, mitigating, aggravating and alternative circumstances attendant to the commission of the offense shall be considered.

The following circumstances shall be appreciated:

a.Physical Fitness
b.Good faith
c Taking undue advantage of official position
d. Taking undue advantage of subordinate
e.Use of government property in the commission of the offense
f. Undue disclosure of confidential information
g. Habituality
h. Offense is committed during office hours and within the premises of the office or building
i. Employment of fraudulent means to commit or conceal the offense
j. Length of service in the government
k. Education, or
l. Other analogous circumstances

Section 4. Manner of Imposition. – When applicable, the imposition of the penalty may be made in accordance with the manner provided herein below:

a. The minimum of the penalty shall be imposed where only mitigating and no aggravating circumstances are present.

b. The medium penalty shall be imposed where no mitigating and aggravating circumstances are present.

c. The maximum of the penalty shall be imposed where only aggravating and no mitigating circumstances are present.

d. Where mitigating and aggravating circumstances are present, paragraph (a) shall be applied where there are more mitigating circumstances present, paragraph (b) shall be applied when circumstances equally offset each other; and paragraph (c) shall be applied when there are more aggravating circumstances.

Section 4. Penalty for the Most Serious Offense. – If the respondent is found guilty of two or more charges or counts, the penalty to be imposed should be that corresponding to the most serious charge or count and the rest shall be considered as aggravating circumstances.

CHAPTER X
MOTION FOR RECONSIDERATION

Section 1. When made. – The respondent may move for the reconsideration of the Decision of the Disciplining Authority within fifteen days from receipt of the decision provided only one motion for reconsideration shall be allowed.

Section 2. Effect of filing. - The filing of a motion for reconsideration shall suspend the reglementary period for filing an administrative appeal. In case the said motion is denied, the respondent shall have fifteen days within which to appeal the assailed decision reckoned from the receipt of Resolution of Denial of the motion for reconsideration.

Section 3. Ground for Motion for Reconsideration. – The motion for reconsideration shall be based on any of the following:

a) New evidence has been discovered which materially affects the decision rendered; or b) The decision is not supported by evidence on record; or
c) Errors of law or irregularities have been committed prejudicial to the interest of the movant.

CHAPTER XI
ADMINISTRATIVE APPEAL

Section 1. Who may appeal. – Only the party adversely affected by the Decision may file an appeal within fifteen days from receipt of the decision or denial of the motion for reconsideration if there be any. Any appeal made by any other person shall be dismissed.

Section 2. Where to appeal. – Except as otherwise provided by Section 5 and Section 6, Chapter VIII of this Rules, decisions rendered by the Executive Director or Director shall appealed to the Secretary. Decisions rendered by the Secretary shall be appealed to the Civil Service Commission.

Section 3. How appeal is perfected. To perfect an appeal the appellant shall submit the following:

a) Notice of appeal which shall specifically state the date of the Decision appealed from and the date of receipt thereof;

b) Appeal memorandum containing the grounds relied upon for the appeal, together with the certified true copy of the Decision, Resolution, or Order appealed from, to be submitted within ten (10) days from the date of filing of the notice of appeal; and

c) Proof of payment of appeal fee in the amount of two hundred pesos (P200.00) to the agency of the disciplining authority. Failure to comply with the above requirements within the reglementary period shall be construed as failure to perfect an appeal and the decision shall become final and executory.

Within five (5) days upon perfection of the appeal, the Secretary shall issue a written order directing the agency or regional office concerned to transmit the whole records of the case being appealed to the Office of the Secretary.

Section 4. Service of copies of the Appeal and Order Pleadings to the Appellee.- The appellant shall serve to the appellee copies of his or her notice of appeal and appeal memorandum, as well as such other motions or pleadings, and he or she shall submit to the appellate agency proof of service thereof.

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Section 5. Appellees' Comment. – The appellee shall submit to the appellate agency, his or her comments or objections to the appeal memorandum or pleadings of the appellant within ten (10) days from receipt thereof. Failure of the appellee to submit his or her comments or objections shall be construed as a waiver thereof.

Section 6. Effect of filing an appeal. – The appeal shall stay the Decision appealed from unless otherwise provided by la w. The appellate agency may direct execution pending appeal, as it may deem just, considering the nature and circumstances of the case.

Section 7. Action on the appeal. - The appellate agency shall review the records of the proceedings and may, on its own initiative or upon motion, receive additional evidence.

Section 8. Finality of Decision of Appellate Agency. – The decision of the appellate agency shall become final and executory fifteen (15) days after the receipt by the parties of a copy thereof unless a motion for reconsideration was timely filed.

Section 9. Motion for Reconsideration. The respondent may move for a reconsideration of the Resolution of the appellate agency in accordance with Chapter X.

CHAPTER XII
REMOVAL OF ADMINISTRATIVE PENALTIES OR DISABILITIES

Section 1. When granted. – In meritorious cases and upon favorable recommendation of the Secretary to the Civil Service Commission, and the Civil Service Commission to the President, the President may commute or remove administrative penalties or disabilities.

CHAPTER XIII
MISCELLANEOUS PROVISIONS

Section 1. Filing of Pleadings, Motion for Reconsideration, Appeals, and Other Documents. – Any pleading, motion, appeal, and other similar documents when sent by registered mail shall be deemed filed on the date shown by the postmark on the envelope which shall be attached to the record of the case and in case of personal delivery, the date stamped by the receiving office.

Section 2. Computation of Period. – In computing any period of time prescribed by these rules, the first day shall be excluded and the last day included unless it be a Sunday, a Saturday, or legal holiday, in which case the deadline for filing shall be the first working day following the Sunday or any legal holiday.

CHAPTER XIV
FINAL PROVISIONS

Section 1. Retroactivity of the Rules. – These rules shall be applicable to all pending cases in the DOST System, provided no substantive rights are adversely affected.

Section 2. Repealing clause. – All DOST Administrative Orders, Memorandum Orders, and Memorandum Circulars, and Rules and Regulations inconsistent with these rules are hereby repealed.

Section 3. Effectivity. – These rules shall take effect fifteen (15) days after publication in a newspaper of general circulation

Section 4. Filing with the University of the Philippines Law Center. – Three certified copies of these rules shall be filed with the University of the Philippines Law Center on the date of publication.

Adopted: 03 Dec. 2008

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(SGD.) ESTRELLA F. ALABASTRO
Secretary

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