

02 June 2005

LEGAL ADVISORY NO. 09

**TO : ALL ELECTRIC COOPERATIVES
ALL NEA OFFICES CONCERNED**

**SUBJECT : ADVISORY ON OBSERVANCE OF DUE PROCESS
REQUIREMENTS ON EC EMPLOYEE DISCIPLINARY
ACTIONS**

Electric cooperatives that fail to adapt to the changes required by EPIRA are likely to become extinct. The open access and deregulated playing field brought about by EPIRA requires nothing less than a highly competitive and competent electric cooperative that is at par with the best private distribution utilities.

A key factor to be given particular attention by any electric cooperative (EC) which wants to survive under the EPIRA, is its human resources and the level of team work they are capable of. An unhappy, dissatisfied or fragmented team can never achieve such required level of competitiveness and competence.

This advisory sets forth suggested step-by-step detailed procedures that ECs may follow before any disciplinary action is imposed upon an erring employee. Together with the attached suggested forms, these suggested procedures are intended to:

1. Ensure compliance with Labor Laws and jurisprudence especially on the due process and notice requirements;
2. Provide complete audit trail/documentation of all disciplinary actions taken together with the bases for such disciplinary actions;
3. Facilitate gathering of evidences should labor or other cases arise;
4. Avoid costly labor cases and avoid losing labor cases for the simple reason that basic legal requirements were not observed; and

5. Ensure fairness of disciplinary decisions and pinpoint responsibility for such decisions.

The last objective is particularly important if the EC wants to generate and maintain the loyalty, support and commitment of its employees. When employees feel that the EC and the management is fair and loyal to them especially on disciplinary matters, employees will also, in return, be fair and loyal to the EC and its management. This will certainly contribute to the realization of better teamwork and an EC that can keep in pace with the challenges of EPIRA.

For your information and guidance.

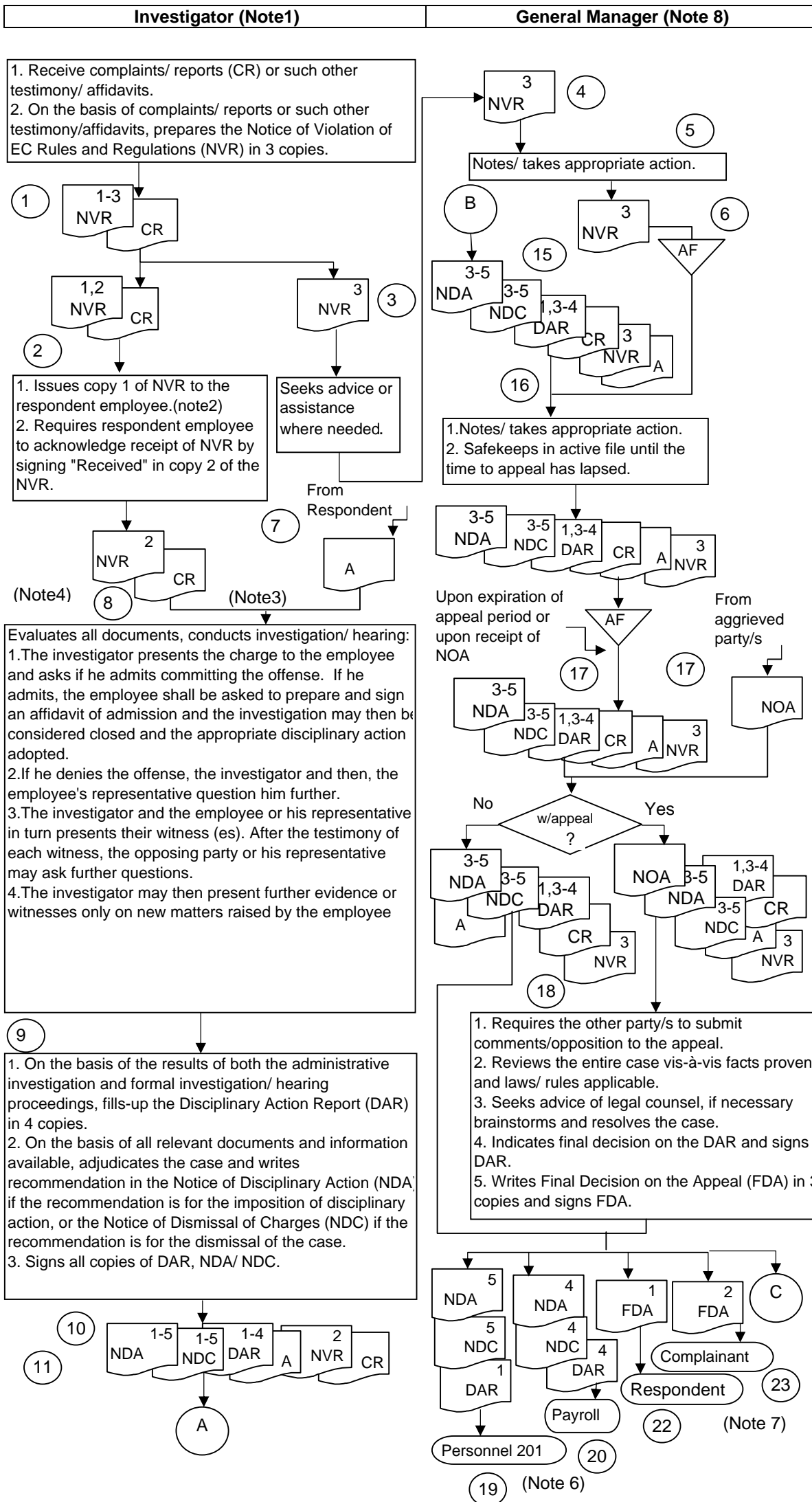

ATTY. JOHN JOSEPH M. MAGTULOY, CPA
Deputy Administrator for Legal Services

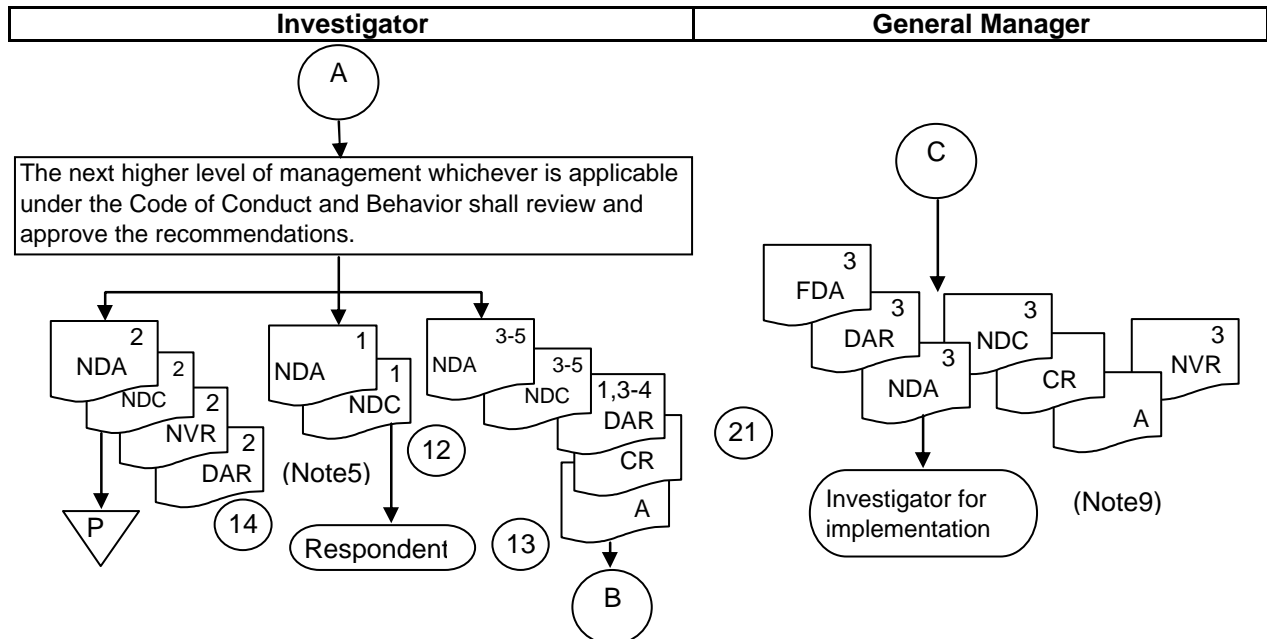
Noted by:


EDITA S. BUENO
Administrator

Attachments:

1. Flowchart on Personnel Management System: Investigation and Adjudication of Violations
2. Notice of Violation of EC Rules and Regulations
3. Disciplinary Action Report
4. Notice of Disciplinary Action
5. Notice of Dismissal of Charges





LEGEND:

- CR - Complaints/Reports or such other testimony/affidavits
- NVR - Notice of Violation of EC Rules and Regulations
- A - Answer
- AF - Active file
- DAR - Disciplinary Action Report
- NDA - Notice of Disciplinary Action
- NDC - Notice of Dismissal of Charges
- NOA - Notice of Appeal (Includes arguments, legal bases and evidences to support desired change in the decision)

NOTES:

1. The Investigator is normally the immediate superior of the respondent employee. The exceptions are:
 - a) If the respondent employee is the General Manager, the investigation shall be conducted by an Investigation Committee created by the EC Board of Directors.
 - b) If the immediate superior is a witness to the offense, is involved in the case, or is personally related to the one under investigation, whether by blood, affinity or friendship, the investigator shall be the next higher level of management.
2. The NVR constitutes reasonable notice to the respondent clearly informing him in writing of the infraction charged against him and of the date, time and place of the investigation. The respondent shall be given at least 10 days from receipt within which to file his written Answer (A).
3. The proceedings for investigation/ hearings shall be set within 1 week from receipt of the respondent's written A or from expiration of the period for filing the A. Nonetheless, the investigator should initiate administrative investigation (ahead of the aforesated formal proceedings for investigation/ hearings) such as gathering data from complainant/s and/ or visiting the site of infraction ,etc. as soon as possible and not later than 5 days from the time he has knowledge of the offense.
4. All proceedings of the investigation/ hearing shall be recorded in writing and properly filed and the due process requirements of the labor laws shall be complied with.
5. The EC through the investigator shall notify the respondent of the decision ASAP and not later than 30 days from submission of the case for decision. If it is a dismissal, it is the NDC that is issued. Otherwise, it is the NDA that is issued. In all cases, the respondent is required to sign the duplicate file copy of the notice as his acknowledgement of his receipt of the notice of the decision.
6. The Personnel Office shall permanently keep the case file with the duty to ensure utmost confidentiality of the records.
7. The officer/staff who releases the FDA copies to the respondent and/or complainant shall require the respondent and/or complainant to sign the duplicate copy of the FDA as proof of receipt of the FDA
8. The procedures outlined under the responsibility column for the General Manager are normally performed by the General Manager (GM). Where the respondent employee is a department manager, an employee under the direct supervision of the GM, or the GM, the procedures outlined hereunder will be performed by the EC Board of Directors or a Committee created by the Board to handle such cases.
9. Suspensions exceeding 30 days should be avoided. Any dismissal or suspension in excess of 30 days should be properly cleared with legal counsel for legal implications.

EC FORM # NVR	ELECTRIC COOPERATIVE NOTICE OF VIOLATION OF EC RULES & REGULATIONS	REF. #
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This is to inform you that you have been charged with violating EC Rules and Regulations:

<input type="checkbox"/> Habitual Tardiness <input type="checkbox"/> Absence without Leave (AWOL) <input type="checkbox"/> Misconduct/Misbehavior <input type="checkbox"/> Dishonesty <input type="checkbox"/> Insubordination/Discourtesy <input type="checkbox"/> Abuse of Authority <input type="checkbox"/> Sexual Harassment	<input type="checkbox"/> Violating Safety Rules <input type="checkbox"/> Negligence of Duty <input type="checkbox"/> Taking Alcoholic Beverages/ Dangerous Drugs <input type="checkbox"/> Violation of Conflict of Interest <input type="checkbox"/> Destroying Goodwill <input type="checkbox"/> Violating Orderliness <input type="checkbox"/> Others
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Description of Offense:

Please explain in writing to the undersigned within 10 days from receipt of this notice why **no disciplinary action** should be taken against you for the commission of the foregoing offense(s). Otherwise, we shall consider your failure to submit an explanation as an admission/waiver on your part. You may attend the investigation of the foregoing offense(s) on _____20 , _____am/pm, at _____.

Should you fail to attend this meeting, we shall act on your case on the basis of the evidence on hand and if warranted, impose the appropriate disciplinary action(s).

Investigator's Signature Over Printed Name

RECEIVED BY:

Employee's Signature Over Printed Name and Date Received

EC FORM # NDA	ELECTRIC COOPERATIVE NOTICE OF DISCIPLINARY ACTION	REF. #		
<p style="text-align: center;">_____</p> <p>_____</p> <p>_____</p> <p>This is to inform you that after due investigation, you have been found to have violated EC Rules and Regulations on:</p>				
<table style="width: 100%; border: none;"> <tr> <td style="width: 50%; vertical-align: top; border: none;"> <input type="checkbox"/> Habitual Tardiness <input type="checkbox"/> Absence without Leave (AWOL) <input type="checkbox"/> Misconduct/Misbehavior <input type="checkbox"/> Dishonesty <input type="checkbox"/> Insubordination/Discourtesy <input type="checkbox"/> Abuse of Authority <input type="checkbox"/> Sexual Harassment </td> <td style="width: 50%; vertical-align: top; border: none;"> <input type="checkbox"/> Violating Safety Rules <input type="checkbox"/> Negligence of Duty <input type="checkbox"/> Taking Alcoholic Beverages/ Dangerous Drugs <input type="checkbox"/> Violation of Conflict of Interest <input type="checkbox"/> Destroying Goodwill <input type="checkbox"/> Violating Orderliness <input type="checkbox"/> Others </td> </tr> </table>			<input type="checkbox"/> Habitual Tardiness <input type="checkbox"/> Absence without Leave (AWOL) <input type="checkbox"/> Misconduct/Misbehavior <input type="checkbox"/> Dishonesty <input type="checkbox"/> Insubordination/Discourtesy <input type="checkbox"/> Abuse of Authority <input type="checkbox"/> Sexual Harassment	<input type="checkbox"/> Violating Safety Rules <input type="checkbox"/> Negligence of Duty <input type="checkbox"/> Taking Alcoholic Beverages/ Dangerous Drugs <input type="checkbox"/> Violation of Conflict of Interest <input type="checkbox"/> Destroying Goodwill <input type="checkbox"/> Violating Orderliness <input type="checkbox"/> Others
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<p>Description of Offense:</p> <p>_____</p> <p>_____</p>				
<p>Accordingly, you are hereby given the following disciplinary action effective _____ to _____ 20_____.</p>				
<table style="width: 100%; border: none;"> <tr> <td style="width: 50%; vertical-align: top; border: none;"> <input type="checkbox"/> Written Warning <input type="checkbox"/> Written Reprimand <input type="checkbox"/> Light Suspension </td> <td style="width: 50%; vertical-align: top; border: none;"> <input type="checkbox"/> Grave Suspension <input type="checkbox"/> Dismissal <input type="checkbox"/> Qualified Penalty </td> </tr> </table>			<input type="checkbox"/> Written Warning <input type="checkbox"/> Written Reprimand <input type="checkbox"/> Light Suspension	<input type="checkbox"/> Grave Suspension <input type="checkbox"/> Dismissal <input type="checkbox"/> Qualified Penalty
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<p style="text-align: center;">Note: Repetition of the same or any offense will be dealt with more severely.</p> <p>Summary of Findings: (Use extra sheet if necessary)</p> <p>_____</p> <p>_____</p> <p>_____</p>				
<p>Observation Period _____ to _____</p> <p>Suspension Period _____ to _____</p>				
<p>RECOMMENDED BY: _____ APPROVED BY: _____</p>				
<p>Investigator's Signature Over Printed Name _____ Directress' Signature Over Printed Name _____</p>				
<p>Received by: _____ Employee's Signature Over Printed Name</p>				

cc: Personnel (201 File)
 Legal Counsel/Consultant
 Payroll
 President

EC FORM # NDC	NOTICE OF DISMISSAL OF CHARGES	REF. #
<p style="text-align: right;">_____</p> <p>_____</p> <p>_____</p> <p>Subject : <u>Notice of Dismissal of Charges on Violation of Rules and Regulations</u></p> <p>This is to inform you that after due investigation, you are hereby cleared of the charge(s) _____ described in the Notice of Violation of EC Rules & Regulations dated _____. The evidence on record is not substantial enough to warrant the imposition of any disciplinary action.</p> <p>Thank you for your cooperation.</p> <p>RECOMMENDED BY: _____ APPROVED BY: _____</p> <p>Investigator's Signature Over Printed Name Directress' Signature Over Printed Name</p> <p>Received by: _____ Employee's Signature Over Printed Name</p>		

cc: Personnel (201 File)
 Legal Counsel/Consultant
 Payroll
 President