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THE COMMONWEALTH OF MASSACHUSETTS
THE TRIAL COURT
OFFICE OF THE CHIEF ADMINISTRATIVE JUSTICE
Two Center Plaza
Boston, Massachusetts 02108



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June 25, 1990

RE: Trial Court Policy and Procedure for the Elimination of Sexual Harassment in the Workplace

Dear Trial Court Employee:

Within the past few years, state and federal anti-discrimination statutes have been interpreted or amended to make sexual harassment in the workplace an unlawful form of sex discrimination. As a result of the attention consequently focused on the subject of sexual harassment, there is now a better understanding of the nature and scope of the problem.

Current research establishes that a surprising number of employees in both the public and private sector experience some form of sexual harassment each year. The Gender Bias Study of the Massachusetts courts, issued by the Supreme Judicial Court in 1989, reflects that the problem exists among Trial Court employees as well. Research also shows that there is a great deal of misunderstanding among employees and managers regarding the distinction between sexual harassment and other types of social interaction in the workplace. The Office of the Chief Administrative Justice is committed to responding to issues of sexual harassment and other forms of discrimination promptly and effectively. Sexual harassment by supervisors, co-workers or members of the public who use court facilities will not be tolerated.

In order to address these issues, the Office of the Chief Administrative Justice has promulgated the enclosed Policy and Procedure for the Elimination of Sexual Harassment in the Workplace. The goals of preventing and eliminating sexual harassment in the Trial Court are addressed through education designed to foster awareness of the issue and by the institution of a procedure to handle complaints that may arise. The policy defines sexual harassment, gives examples of conduct that fits that definition, and describes how the complaint procedure works.

Naturally, a written policy cannot define or address every concern or problem that may arise in the court workplace. However, the policy does provide enough information to enable

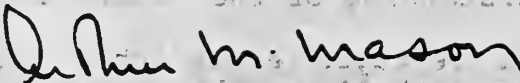
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employees to recognize problems in their offices and to seek assistance in resolving those problems.

Over the next few months, supervisors and employees will be briefed and trained regarding the policy and the procedure for filing complaints. In the meantime, any questions regarding the policy or complaints of harassment may be addressed to any of the sexual harassment investigators whose names appear at the end of the policy. These investigators have been specially trained to respond to your concerns and assist you in resolving problems in a manner that is appropriate to the situation. Of course, problems may also be brought to the attention of your immediate supervisor or Administrative Justice if this feels more comfortable for you.

Thank you for your interest and sensitivity in addressing this important issue.

Sincerely,



Arthur M. Mason
Chief Administrative Justice

AMM:ILC

In order to address these issues, the Office of Administrative Justice has provided the enclosed policy and procedures for the elimination of sexual harassment in the workplace. The goals of prevention and elimination of harassment in the Trial Court are addressed through education designed to foster awareness of the laws and by the implementation of a procedure to handle a complaint that may arise. The policy defines sexual harassment, gives examples of conduct that is prohibited, and details the complaint procedure.

Naturally, a written policy does not eliminate all concerns of problem behavior. It is the responsibility of the Office of Administrative Justice to provide ongoing support and training to ensure the policy is followed and to address any concerns that may arise.

TRIAL COURT POLICY AND PROCEDURE FOR THE ELIMINATION OF
SEXUAL HARASSMENT IN THE WORKPLACE

I. PURPOSE

This memorandum establishes the policy of the Massachusetts Trial Court regarding sexual harassment in the workplace by managers, supervisors, employees, members of the public who use court facilities, vendors and contractors. This memorandum also describes examples of conduct that may constitute unlawful sexual harassment and sets forth a complaint procedure to be followed by persons who believe that they are victims of unlawful sexual harassment.

II. POLICY

The Trial Court fully supports the right of all persons to hold employment in or enjoy access to the Judicial Branch without suffering sexual harassment or discrimination of any kind. It is the policy of the Trial Court to maintain a court environment that is free of sexual harassment. Sexual harassment by managers, supervisors, employees, members of the public who use court facilities, vendors and contractors will not be tolerated.

III. DEFINITION OF SEXUAL HARASSMENT

A. The legal definition of sexual harassment

Sexual harassment is a form of sex discrimination that is illegal under both Title VII of the Civil Rights Act of 1964 and G. L. c. 151B s. 16A. These laws provide that unwelcome sexual advances, requests for sexual favors, and other physical or verbal conduct of a sexual nature constitute sexual harassment when:

-- submission to or rejection of such advances, requests or conduct is made either explicitly or implicitly a term or condition of an individual's employment or a basis for employment decisions affecting the individual; or

-- such conduct has the purpose or effect of unreasonably interfering with an individual's work performance or creating an intimidating, hostile, humiliating or sexually offensive work environment.

B. Examples of conduct that can constitute unlawful sexual harassment

Sexual harassment does not refer to behavior or occasional compliments of a socially acceptable nature. It refers to behavior that is not welcome, that is personally offensive and that fails to respect the rights of others. Sexual harassment occurs in a variety of situations which share a common element: the inappropriate introduction of sexual activities or comments into the court environment.

Sexual harassment often involves relationships of unequal power. Such situations may contain elements of coercion, such as when compliance with requests for sexual favors becomes a criterion for granting privileges or favorable treatment on the job. However, sexual harassment may also involve relationships among "equals", such as when repeated advances or demeaning verbal comments by a co-worker towards another co-worker have a harmful effect on a person's ability to perform his or her work. Sexual harassment can also involve employee behavior directed at non-employees or non-employee behavior directed at employees.

Examples of sexual harassment include, but are not limited to, the following:

- repeated offensive sexual flirtations, advances, or propositions,
- continued or repeated verbal abuse or innuendo of a sexual nature,
- uninvited physical contact such as touching, hugging, patting or pinching,
- verbal comments of a sexual nature about an individual's body or sexual terms used to describe an individual,
- display of sexually suggestive objects or pictures,
- jokes or remarks of a sexual nature in front of people who find them offensive,
- prolonged staring or leering at a person,
- making obscene gestures or suggestive or insulting sounds,
- the demand for sexual favors accompanied by an implied or overt threat concerning an individual's employment status or promises of preferential treatment,
- indecent exposure

C. Dispelling common myths about harassers and victims

Contrary to popular belief, sexual harassment is not limited to prohibited behavior by a male employee toward a female employee or by a supervisory employee toward a non-supervisory employee. Sexual harassment can be found in any of the following less "traditional" situations:

1. A man as well as a woman may be the victim of sexual harassment, and a woman as well as a man may be the harasser.
2. The harasser does not have to be the victim's supervisor. He or she may also be a supervisory employee who does not supervise the victim, a co-worker, or, in some circumstances, a non-employee such as a member of the bar or the public who uses court facilities.
3. The victim does not have to be the opposite sex from the harasser.
4. The victim does not have to be the person at whom the unwelcome sexual conduct is directed. The victim may be someone who is affected by such conduct even though it is directed at another person. For example, the sexual harassment of one employee may create an intimidating, hostile, humiliating or offensive work environment for a co-worker, or may interfere with the co-worker's work performance. In addition, consensual sexual behavior in the office between two employees may be offensive to a third employee or result in favoritism that harms the third employee.
5. Sexual harassment does not depend on the victim's suffering an economic injury, such as losing a promotion, as a result of the harasser's conduct. As the examples of improper conduct listed above show, sexual harassment can occur whenever unwelcome conduct of a sexual nature creates an intimidating, hostile, humiliating or offensive work environment.

IV. EMPLOYEE, SUPERVISOR AND MANAGER RESPONSIBILITIES

Each employee, supervisor and manager of the Trial Court is personally responsible for ensuring that his or her conduct does not sexually harass any other employee or non-employee in the workplace. Each employee, supervisor and manager is responsible for cooperating in any investigation of alleged sexual harassment if requested to do so by the person conducting the investigation.

V. SEXUAL HARASSMENT COMPLAINT PROCEDURE

A. The procedure

The following sexual harassment complaint procedure has been developed specifically to ensure that complaints are investigated quickly and in a manner that is fair to all. Trial Court employees who are members of O.P.E.I.U., Local 6 may elect to file a grievance under their collective bargaining agreement. However, other employees, Local 6 members who wish to resolve such complaints in a more confidential manner, and non-employees may follow the steps below.

In all instances where an individual believes that he or she has been sexually harassed, it is helpful, but not necessary, to start the process of resolution by writing down a description of the offensive conduct, the date or dates on which it took place, and the names of anyone who witnessed the conduct or heard the offensive remarks. If you would like help writing down your thoughts, the person you speak with at Step 2 of this procedure will assist you.

STEP 1. If an individual believes that he or she is being sexually harassed, the most immediate goal is to stop the offensive conduct. Individuals should:

- Firmly confront whomever is doing the harassing.
- State that his/her conduct offends, intimidates, and/or embarrasses you.
- Describe how the harassment negatively affects your work.
- Request that he or she stop the conduct immediately.
- Say things like:

"Please don't touch me. I don't like it. It makes me uncomfortable."

"I don't think jokes like that are funny. Please don't tell them when I am in the room."

"I'd like it a lot better if you'd comment on the quality of my work rather than on the way I look."

"My name is _____, not 'Honey.'"

If practical, bring a witness with you for this discussion. After the discussion, write a summary of the conversation, including the date and name of anyone who accompanied you.

In some instances, confronting the harasser directly may be too intimidating or uncomfortable, particularly when the harasser is an immediate supervisor. In such instances, this step need not be taken, and the complaint process can begin at Step 2.

- STEP 2.** An individual who wants to discuss his/her situation or make a complaint should contact one of the sexual harassment investigators listed on the last page of this policy as soon as possible. The individual will have a private meeting with the investigator, at which time he/she can get more information about sexual harassment and the complaint procedure in order to decide whether to make a complaint. The sexual harassment investigator will describe the complaint investigation procedure more fully.
- STEP 3.** In those instances where an informal resolution is appropriate, the sexual harassment investigator will advise and assist the individual in resolving the matter in that fashion. Complaints of sexual harassment concerning judges will be referred directly to the Administrative Justice of the department in which the judge complained against sits.
- STEP 4.** In those instances where a formal complaint is made concerning anyone other than a judge, the sexual harassment investigator will record the individual's statement of events. Specifically, the investigator will request the following information: a description of the incident(s), the name of the alleged harasser, times, locations, specific words/actions, and the name of any witnesses to the incident(s). The investigator's notes will be for his or her own use during the investigation. Therefore, individuals are advised to make their own written notes containing the same information that they give to the investigator. An individual making a complaint may bring a friend, relative, colleague or union representative to the meeting.
- STEP 5.** The sexual harassment investigator will meet privately with the alleged harasser. The alleged harasser should respond to the allegations and may submit a written statement. The alleged harasser may also submit the names of witnesses. The alleged harasser may bring a friend, relative, colleague or union representative to the meeting.
- STEP 6.** Any witnesses that the investigator decides should be contacted will be interviewed privately. Neither the individual making the complaint nor the alleged harasser will be present at witness interviews.

STEP 7. Upon completion of the investigation, the sexual harassment investigator will draft a report stating his or her findings. The report will be forwarded to the Administrative Justice of the department in which the alleged harasser works, and copies will be forwarded to the Chief Administrative Justice, the person making the complaint, and the alleged harasser.

Upon completion of Steps 1-7:

In the event that the findings of the investigator indicate that sexual harassment has not occurred, the investigator will recommend that the matter be closed. The Administrative Justice shall review the report and may refer the matter back to the investigator for further investigation and/or fact-finding. If the Administrative Justice accepts the report as submitted or as amended, he/she shall notify the person making the complaint and the alleged harasser that the matter has been closed.

In the event that the findings of the investigator indicate that sexual harassment has occurred, the investigator will recommend that the matter be referred to the appropriate local manager for further action. The Administrative Justice shall review the report and may refer the matter back to the investigator for further investigation and/or fact-finding. If the Administrative Justice accepts the report as submitted or as amended, he/she shall forward the report to the appropriate local manager for action.

B. Timetable for investigating complaints.

The Trial Court recognizes that the interests of all persons are best served by the prompt investigation and resolution of sexual harassment complaints. However, difficulty in scheduling meetings, especially when the persons involved may be some distance away, makes adherence to strict timetables impossible. Therefore, absent extenuating circumstances, the following timetable will be employed as closely as possible:

1. The initial meeting with a sexual harassment investigator should take place within ten days of the day that the individual contacts the investigator.
2. If the individual decides to make a complaint, the investigation should begin immediately. The investigation should be completed, and the sexual harassment investigator's findings and recommendations should be forwarded to the Chief Administrative Justice and the appropriate Administrative Justice within three weeks of the time that the complaint is made.

3. The Administrative Justice should review the report of the sexual harassment investigator and either close the matter or refer it to the local manager within two weeks of his/her receipt thereof.

C. Confidentiality.

All actions taken to investigate and resolve complaints through this procedure shall be conducted with as much confidentiality as possible without compromising the thoroughness of the investigation. The sexual harassment investigator will not discuss the complaint or the investigation with anyone who is not directly involved in the investigation.

D. No retaliation for filing complaint of sexual harassment.

No employee, supervisor or manager shall be retaliated or discriminated against in any way for making a complaint of sexual harassment or for assisting in the investigation of such a complaint.

VI. DISCIPLINARY PROCEDURE

1. If an investigation of a complaint of sexual harassment reveals that an employee, supervisor, manager or department head has engaged in actions or conduct constituting sexual harassment, disciplinary action will be taken up to and including discharge. The disciplinary action taken will depend upon the seriousness of the violation. Disciplinary action will be taken by the appropriate supervisor, manager or department head.
2. Any supervisor, manager or department head who prevents or attempts to prevent an individual from making a complaint of sexual harassment, or who fails to cooperate with or interferes in any way with the investigation of such a complaint, will be subject to disciplinary action.
3. Any supervisor, manager or department head who retaliates or discriminates in any way against an individual who makes a complaint of sexual harassment or assists in the investigation of such a complaint will be subject to disciplinary action.
4. Supervisors, managers or department heads who become aware of instances of sexual harassment in their departments, even in the absence of a formal complaint, should impose appropriate disciplinary action.
5. Any non-employee found to have committed an act of sexual harassment may be removed from court premises, or other appropriate action may be taken.

Employees of the Trial Court who wish to file a complaint of sexual harassment, or who wish to learn more on the subject, may contact any one of the following people:

Marge Brown
Deputy Commissioner
Office of Comm. of Probation
One Ashburton Place, Room 405
Boston, MA 02108-1543
(617) 727-6746

Sandra Ricci
Asst. Chief Probation Officer
Barnstable Superior Court
Courthouse
Main Street
Barnstable, MA 02630
(508) 362-2511

Christine Burak
Staff Attorney
Supreme Judicial Court
1300 New Courthouse
Boston, MA 02108
(617) 725-8034

Rachel Stockton
Asst. Chief Probation Officer
Springfield District Court
50 State Street
Springfield, MA 01103
(413) 781-8100

Ron Corbett
Supervisor
Court Probation Services
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Richard Durand
Assistant Clerk
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Martha Taylor
Head Administrative Asst.
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Dorchester District Court
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