

# APPENDIX DD

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**MASSACHUSETTS TRIAL COURT POLICY AND PROCEDURE FOR THE  
ELIMINATION OF SEXUAL AND GENDER HARASSMENT IN THE  
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### MASSACHUSETTS TRIAL COURT POLICY AND PROCEDURE FOR THE ELIMINATION OF SEXUAL AND GENDER HARASSMENT IN THE WORKPLACE

#### I. PURPOSE AND SCOPE OF POLICY

The Massachusetts Trial Court is committed to the prevention and elimination of sexual and gender harassment in the courts. This document establishes the policy of the Massachusetts Trial Court regarding sexual and gender harassment in the workplace. It applies to judges, elected and appointed officials, managers, supervisors, employees, non-court employees who work in or have business with the court, members of the public who use court facilities, vendors and contractors. The policy applies in every Trial Court facility and office, and at every function, conference, or event related to one's course of employment or business with the Trial Court both during and outside of regular business hours.

This policy provides examples of conduct that may constitute sexual or gender harassment. The list of examples is not comprehensive. It is intended to help the reader determine if certain conduct might be considered a violation of the policy. Finally, this document sets forth the Trial Court complaint procedure that should be followed by anyone who believes that he/she may be a victim of unlawful sexual harassment as well as the procedure that should be followed by supervisors and managers who become aware of conduct that might be in violation of the policy.

#### II. KEY TERMS DEFINED

The following definitions shall apply when interpreting this Policy:

**Sexual Harassment.** Sexual harassment is a form of sex discrimination that is illegal under federal and state law. These laws provide that unwelcome sexual advances, requests for sexual favors, and other physical conduct or verbal and/or no-verbal communication of a sexual nature constitute sexual harassment when:

- submission to or rejection of such speech or conduct is made either explicitly or implicitly a term or condition of an individual's employment or a basis for an employment decision or the implication is made that it will be used for such purpose; or
- such speech or conduct creates an intimidating, hostile, humiliating or sexually offensive environment that is sufficiently severe and pervasive as to interfere with a reasonable person's work performance or to alter the condition of employment and create a hostile work environment.

**Gender Harassment.** Gender harassment is a form of sex discrimination that is illegal under federal and state law. It is severe, pervasive or sufficiently patterned conduct that

is directed against a person because of his/her actual or perceived sex, gender or sexual orientation. It is harassment that does not necessarily involve sexual activity or language.

**Employee.** Unless otherwise indicated in the policy, this term refers to all Massachusetts Trial Court employees including judges, elected and appointed court officials, managers, supervisors, administrators, department heads, union members, union exempt employees, professional employees and other persons paid through the Human Resources Compensation Management System (HRCMS) to provide a service to the Trial Court. Employees with supervisory or managerial responsibilities are referred to herein collectively as supervisors or managers.

**Retaliation.** Retaliation is adverse treatment that is directed at an individual because that individual made a complaint alleging a violation of this policy or assisted in the investigation of a complaint.

**Human Resources Coordinator for Gender Issues (CGI).** Among other duties of the Human Resources Coordinator for Gender Issues (CGI), the CGI is the specialist within the Human Resources Department of the Office of Court Management who serves as the sexual and gender harassment officer for the Trial Court and provides an array of technical assistance to managers handling complaints of sexual and gender harassment. This includes verification of previously substantiated complaints of harassment or retaliation, guidance on the investigative process and documentation, and guidance in determining appropriate remedial or disciplinary action. The CGI accepts complaints filed directly with his/her office and conducts or designates others to conduct investigations of complaints.

The CGI may be contacted at Two Center Plaza, Boston, MA 02108 or by phone at 617-742-8575 or toll free at 1-800-572-5027 or by fax at 617-742-0968 or by email at [cgi@jud.state.ma.us](mailto:cgi@jud.state.ma.us). Other staff of the Human Resources Department may also be contacted at the telephone and fax numbers listed.

### III. KEY FACTORS IN IDENTIFYING SEXUAL OR GENDER HARASSMENT

Sexual and gender harassment occurs in a wide variety of situations that share a common element – the inappropriate introduction into the workplace of sexual or gender-based activities or comments. When trying to determine whether certain behavior violates this policy, consider whether the behavior is:

- **Sexual or gender-based**, as opposed, for instance, to an occasional compliment of a socially acceptable nature;
- **Repeated or pervasive** since a minor, isolated incident will not necessarily violate the policy;
- **Severe** – a single serious incident such as sexual assault will violate the policy;
- **Unwelcome** by even just one person – whether the target of the behavior or a bystander;

- **Intimidating, hostile, or offensive** whether it was the actor's intention or not; or
- **Interfering with** the worker's ability to do his/her job.

#### **IV. SEXUAL AND GENDER HARASSMENT – APPLICABLE PRINCIPLES**

The following general principles apply when determining what might be sexual or gender harassment:

- The effect on the individual alleging harassment – rather than the intention of the accused – is the focus in a sexual and gender harassment situation.
- The victim of sexual or gender harassment may be a man or a woman and the harasser may be a man or a woman.
- The victim does not have to be a different gender or sexual orientation from the harasser.
- The harasser can be a manager, supervisor, co-worker, member of the bar, member of the public or other individual involved in some manner with the court, such as a vendor.
- The victim does not have to be the subject of the offensive behavior. For example, a witness who is not the subject of the behavior may be considered a victim if offended by the conduct.
- The victim need not suffer any economic loss, such as losing a promotion, as a result of the harasser's conduct.
- A victim can be a member of the public or non-court employee.

#### **V. EXAMPLES OF CONDUCT PROHIBITED BY THIS POLICY**

Sexual and gender harassment can take many forms. It might involve physical, verbal or non-verbal conduct. In some instances the conduct must be repeated and pervasive, and in others a single serious incident is enough to constitute sexual or gender harassment. It is unacceptable in any form and in any work-related setting, including conferences, meetings, or work-related social events whether during or outside of regular business hours. The following are some examples of conduct prohibited by this policy:

##### **Physical conduct:**

- Coerced or forced kissing, groping, sexual assault
- Stalking, in person or through electronic or other forms of communication

- Uninvited intimate physical contact such as touching, hugging, patting, brushing up against, pinching and grabbing

**Verbal conduct:**

- Demand for sexual favors accompanied by an implied or overt threat concerning an individual's employment status, security or treatment
- Derogatory comments and/or slurs about an individual's gender or sexual orientation
- Unwanted sexual flirtations or propositions
- Speaking in the workplace of one's sexual activity or inquiring about or commenting on another's sexual activity
- Comments about an individual's body
- Innuendos of a sexual nature
- Verbal innuendos that relate to or reflect negatively on a particular gender or sexual orientation
- Jokes, language, epithets or remarks that have the purpose or effect of stereotyping, demeaning, or making fun of an individual based upon his/her sex, gender or perceived sexual orientation
- Slang terms or labels that can be considered derogatory or too familiar in a professional setting, such as "honey," "sweetie," "dear," "darling" ...

**Non-verbal conduct:**

- Indecent exposure
- Arranging to be alone with a person for the purpose of making sexual advances
- Unwanted sexual flirtations, advances
- Obscene gestures or suggestive or insulting sounds (e.g., catcalls, whistling)
- Prolonged staring or leering at a person
- Purposefully, and unnecessarily, violating a person's personal space

- Display or transfer – through any form of distribution including communication systems such as Internet, email, or fax – of photographs, literature, cartoons, pictures, calendars, graffiti or other material, which are sexually suggestive or degrading to a particular gender or sexual orientation.

## **VI. EMPLOYEE ROLES AND RESPONSIBILITIES**

Employees play a key role in keeping harassment out of the workplace. Employees who are also supervisors or managers have additional responsibilities. Whether an employee believes he/she is experiencing sexual or gender harassment, has witnessed the harassment of another or is a manager obliged to immediately address and resolve any complaint of a violation of this policy, every employee plays a role in maintaining a safe and harassment-free workplace.

### **A. Responsibility to Comply with Policy**

Every employee of the Trial Court is personally responsible for conducting him or herself in a manner that is in full compliance with this policy. Any behavior of a sexual nature in the workplace should be avoided, as it may be offensive to those who witness it or are the object of it. Under state law, employees may be held personally liable for engaging in sexual harassment.

### **B. Reporting Inappropriate Behavior**

Employees are encouraged to promptly report to a manager or the CGI conduct that may be in violation of the policy. Managers rely on employees to inform them when employees observe inappropriate conduct of the nature described in the policy, especially if it is offensive to them or to any other employee or user of the court. Only with such knowledge can the manager take steps to stop the behavior. Reporting information promptly prevents escalation of a bad or potentially dangerous situation.

### **C. Options for Dealing with Sexual and Gender Harassment**

All court employees and persons who have business with the court are entitled to work in an environment free from sexual and gender harassment. Employees and others covered by this policy have several options to address conduct that they perceive to be in violation of the policy. Individuals may choose to use one or more of the options described below, in any order they see fit. It is not necessary to use the self-help option before making a complaint.

**Self-help.** If an employee believes that he/she is being harassed, the most immediate goal should be to stop the conduct, while remaining safe. In some situations, an employee can do this by telling the other person that the behavior is offensive and not welcome and requesting that the behavior stop. An employee may wish to take this step if he/she believes that the other party may not be aware that the behavior is offensive and had no intention of offending.

If an employee chooses this option, the employee should consider describing to the other person the specific language or behavior that was offensive and the circumstances in which the incident took place; or the employee might firmly state that while it may not be intended, the behavior is offensive, intimidating or embarrassing. The employee might say something like, "I don't like jokes like that; I don't think they're funny. Please don't tell them."

**Seeking information.** In some instances, confronting the other person about the behavior may be too intimidating or uncomfortable. This may be especially true if the other person is the employee's supervisor or manager. The employee may decide to discuss the situation with his/her manager, or, alternatively, with another local manager, a regional manager, or the CGI. These individuals can provide more information about sexual and gender harassment, discuss possible approaches to addressing the employee's concerns, and explain the complaint process. If during the discussion a manager learns that a potentially serious violation of this policy may have occurred, or learns that the person whose conduct is in question was previously found to have violated the policy, the manager may be required to conduct a full investigation. Although the person seeking information under these circumstances may not wish the matter to go any further than a discussion with the manager, the manager may be under an obligation to act.

**Making a complaint.** An employee may choose to make a verbal or written complaint to the Trial Court alleging a violation of the policy. If this option is selected, the employee should make the complaint to the employee's manager, a regional manager or the CGI. The employee should be prepared to provide a written document explaining the employee's allegation(s) with some specificity. Specific information such as a description of the incident, times, dates, witnesses, statements, and other details supporting the allegation will allow the manager or CGI to conduct a thorough investigation of the matter. Complaints made with the CGI must be in writing. Employees are encouraged to contact the CGI with any questions about the allegation(s) or about the process before making a complaint. The CGI will send or make available to the employee a complaint form that will assist the employee in providing the necessary information.

**Other options.** In addition to filing a complaint within the Trial Court, an employee may choose to pursue the matter outside of the Trial Court. Using the Trial Court complaint process does not prohibit an employee from also doing the following:

- Filing a formal complaint within 300 days of the most recent incident with the: Massachusetts Commission Against Discrimination (MCAD), One Ashburton Place, Boston, MA 02108, 617-727-3990; Massachusetts Commission Against Discrimination (MCAD), 436 Dwight Street, Room 220, Springfield, MA 01103, 413-739-2145; or United States Equal Employment Opportunity Commission (U.S. EEOC) John F. Kennedy Fed Bldg., 2400 Government Center, Boston, MA 02114, 1-800-669-4000; or



- Filing a grievance under the collective bargaining agreement where the employee is a member of a union; or
- Engaging an attorney to represent the employee's interests.

**Employee Assistance Program.** If an employee wishes to speak to someone outside of the court for counseling or to discuss workplace issues, the employee may contact the Employee Assistance Program (EAP), an employee benefit that provides assistance and short-term counseling to employees on a wide range of issues, including work-related stress. The Trial Court is not informed of those who use this benefit. Telephone and in-person counseling services are provided at no cost to the employee and are confidential. Information about the EAP can be found on the Trial Court website at <http://trialcourtweb.jud.state.ma.us/admin/hr/eap.html> or be telephone at 1-800-451-1834.

**Keeping notes.** It is recommended that whatever option an employee chooses when dealing with a perceived policy violation that the employee keep notes about the behavior at issue, including the dates, times, locations, and persons involved in the situation and the steps taken by the employee to attempt to resolve the situation, if applicable.

#### **D. Cooperating in Investigations, Maintaining Confidentiality, Retaliation**

Employees are required to cooperate in any inquiry or investigation of an alleged violation of this policy and to maintain confidentiality of all proceedings connected with the inquiry or investigation. All discussions between managers and persons who believe that a violation of the policy may have occurred, or who have questions about the policy, will remain confidential to the fullest extent possible consistent with the Trial Court's commitment to ensure the safety and well-being of all people working in or using the courts. All actions taken to investigate and resolve complaints shall also be conducted with as much confidentiality as possible without compromising the thoroughness of the investigation or the safety of all persons involved.

Employees are prohibited from retaliating or discriminating in any way against another employee who has alleged a violation of this policy or cooperated in the investigation of a complaint. Such retaliation is unlawful and will not be tolerated. Claims alleging retaliation will be investigated; and, if substantiated, will be treated as a policy violation that could result in disciplinary action.

#### **E. Additional Responsibilities of Supervisors, Managers, Judges**

Supervisors and managers are in leadership positions in the courts and their own behavior serves as a model to other employees of what is expected. In addition, under the law, supervisors and managers may be held personally liable for their behavior.

It is the duty and responsibility of supervisors and managers to strictly enforce the terms of this policy. They must be vigilant to ensure that the workplace remains free of sexual and gender harassment and take appropriate action if they are aware of behavior that could be or could lead to a violation of this policy.

Managers are well-advised to be on guard against any conduct of a sexual nature, even if there is no indication that it is perceived to be offensive or unwelcome at the time the conduct occurs. Others may subsequently witness the behavior and find it offensive, or the conduct may escalate. All efforts to avoid these risks are prudent.

Judges hold visible positions of authority within the court and as such are in a unique position to influence the court environment. A judge should take reasonable steps to notify an appropriate manager or the CGI if the judge witnesses or receives a credible report of behavior that the judge believes is in violation of this policy.

#### **F. Required Action by Supervisors and Managers**

**Managers and supervisors must act.** A manager who becomes aware of conduct that may constitute a violation of the policy or could potentially lead to a violation of the policy – whether or not a complaint has been made – must take appropriate action to stop the conduct. A supervisor should immediately notify his/her manager, or regional manager, if appropriate, of such an incident and that manager will then determine the most appropriate response.

In the situation where an employee has not come forward with a specific complaint, but the manager is aware of an incident that might be in violation of this policy, the manager has a range of options:

- The manager may decide to conduct an investigation on his/her own initiative and take remedial action, possibly including disciplinary action, to promptly eliminate the conduct;
- If the manager has personally observed the offending conduct, he/she may choose to speak directly to the offending party and explain that such behavior is not acceptable and must stop immediately and may provide the party with a copy of this policy or other materials that help explain the provisions of the policy;
- The manager might choose to hold a staff meeting to discuss the provisions of this policy, distribute a copy of the policy and remind staff that sexual and gender harassment will not be tolerated in the court. The manager may remind staff that they work in a system dedicated to justice and fairness, and that this type of conduct undermines the integrity of the entire court system.

Managers are encouraged to contact the CGI about any situations that involve this policy – even those that do not involve a complaint – and to seek advice about an appropriate response by the manager. Contacting the CGI allows the Trial Court to

track such behavior and plan systemic efforts to eliminate it. It also helps to ensure that individuals who move from one location to another are held accountable for their behavior in all settings.

**Investigation of complaint.** If a person makes a verbal or written complaint under this policy with a manager or supervisor, or a written complaint with the CGI, the manager or CGI must conduct a thorough investigation of the allegation so that if it is substantiated, prompt remedial action can be taken to stop the offending behavior. Investigations will be conducted in a fair and timely manner and will include private, individual meetings with the person making the complaint, the person about whom the complaint is made, and with any witnesses. The person conducting the investigation may also choose to review records or go to the location at issue to view the conditions at that location. To the extent practicable, the person making the complaint and the person about whom it is made will be kept informed of the progress of the investigation.

**Notification and coordination requirements.** If a person makes a complaint and the manager finds that any of the conditions listed below exist, the manager *must* contact the CGI for guidance and coordination so that a thorough investigation can be completed and a timely decision issued. The CGI should be contacted as soon as possible after the manager becomes aware of the complaint. However, the manager must always take immediate steps to ensure the safety of any person the manager believes is at risk of harm. Sometimes this will require that action be taken before the CGI is contacted. The following conditions trigger the manager's obligation to call the CGI:

- The alleged conduct could place the complainant or another person at risk of harm;
- The complaint alleges conduct that is repeated, frequent or pervasive;
- The complaint alleges a serious form of harassment;
- The manager is aware or learns that another harassment complaint is pending against the person about whom the current complaint is being made or that that individual was previously found to have violated this policy;
- In addition to the underlying complaint of harassment, there is an allegation that the person about who the complaint is made has retaliated against the complainant.

Under these circumstances, after the investigation is completed and before a final decision is made in the matter, including a determination on disciplinary action, if applicable, the manager must contact the CGI again to discuss the manager's proposed findings and decision on the complaint. The person investigating the complaint will then issue a written report including findings, the final decision, and any discipline or other remedial action that is recommended.

The written report together with any completed forms that the CGI has requested must then be submitted to the CGI. The complainant and the person about whom the complaint was made will be notified of the findings and decision as soon as possible.

**Keeping records and maintaining confidentiality.** In all matters implicating this policy that come to the attention of a manager, the manager must maintain in an investigative file copies of all documents as well as a narrative about how the manager became aware of the matter and all actions taken in response. This account may include dates, times, places and names of people to whom the manager spoke, witness statements, notes and any other applicable documentation. All actions taken to investigate and resolve complaints shall be conducted with as much confidentiality as possible without compromising the thoroughness of the investigation or the safety and well-being of all persons involved.

**Interference is prohibited.** Any supervisor or manager who prevents or attempts to prevent an individual from making a complaint under this policy, or who fails to cooperate with or interferes in any way with the investigation of such a complaint, will be subject to disciplinary action.

## **VII. DISCIPLINE**

If an investigation of a complaint of sexual or gender harassment reveals that an employee has engaged in actions that violate this policy, discipline will be imposed, up to and including discharge. The discipline will depend upon the seriousness of the violation. The appropriate manager will take disciplinary action in accordance with the progressive discipline provisions set forth in the Trial Court Personnel Policy and Procedures Manual or pursuant to other appropriate disciplinary provisions.

Complainants will be informed that remedial action was taken to stop the harassing behavior. To monitor the success of the remedial action in stopping the behavior, complainants will be asked to report any further incidents.

## **VIII. NON-COURT EMPLOYEES**

Managers are also responsible for responding to allegations of harassment by non-court employees. In the case of non-court employees who work regularly in the court, the appropriate manager shall inform in writing the employer of the person alleged to be in violation of the policy about the situation and seek assurance from the employer that the offensive conduct will stop immediately. If the offensive behavior does not stop, the court may take appropriate action.

If a member of the public or other non-court employee is found to be in violation of this policy, a manager may have the individual removed from the court premises or take other appropriate action. The manager shall keep written notes of all actions taken under this provision. As with all potential violations of this policy, managers are strongly encouraged to contact the CGI for advice and assistance.