

**GENDER FAIRNESS
IMPLEMENTATION COMMITTEE**

**FIRST ANNUAL
PROGRESS REPORT**

OCTOBER, 1990

GENDER FAIRNESS IMPLEMENTATION COMMITTEE

Membership Roster

Associate Justice Rosalie E. Wahl, Chair
Minnesota Supreme Court

Aviva Breen
Economic Status of Women

June Cicero
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Martin Costello
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Sue K. Dosal
State Court Administrator

Honorable George I. Harrelson
Fifth Judicial District Court Judge

Frank V. Harris
Director, MSBA Continuing Legal Education

Honorable Mary Louise Klas
Second Judicial District Court Judge

Honorable Harriet Lansing
Minnesota Court of Appeals

Honorable Jonathan Lebedoff
Fourth Judicial District Court Judge

Honorable Jack J. Litman
Sixth Judicial District Court Judge

Honorable Ember D. Reichgott
Minnesota Senate

Janice M. Symchych
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Dr. Nancy Zingale
Professor, Political Science

Staff to the Committee:

Janet K. Marshall
State Court Administration

INTRODUCTION

On December 22, 1988, by Supreme Court Order, the Gender Fairness Implementation Committee was established and charged with the responsibility of:

- implementing Task Force recommendations;
- developing judicial and legal education programs on Gender Fairness;
- evaluating the effectiveness of reform measures; and
- submitting annual reports to the Chief Justice and the Supreme Court regarding the work and recommendations of the Implementation Committee.

This first report of the Implementation Committee summarizes the progress made over the past year in implementing the Task Force recommendations.

DISSEMINATION OF TASK FORCE FINDINGS & RECOMMENDATIONS

The Gender Fairness Task Force recommendations were formally presented to the judiciary at the Minnesota District Judges Association meeting on September 6th, 1989. Later that day Chief Justice Peter S. Popovich and Associate Justice Rosalie E. Wahl held a press conference in St. Paul to publicly announce the findings and recommendations.

Rebecca Fanning, Court Information Officer, immediately organized a speakers' bureau to support its media relations program communicating the task force findings and recommendations. The office proactively sought speaking engagements and responded to requests, resulting in 22 speeches being given by Justice Rosalie Wahl and members of the Task Force. In addition 38 print and broadcast stories on the task force were generated by the court information office.

Task Force members participated in panel discussions, appeared on radio talk shows, and incorporated mention of the report in related presentations. (See Appendix A for detail of public presentations by Task Force members.)

The Task Force report has been distributed to approximately 1,500 individuals and groups throughout the United States and Canada. Individual copies were given to all judges, court administrators and state legislators. In addition, other state gender fairness task forces, numerous interest groups, educational institutions, governmental agencies and members of the public have requested copies of the report.

The Report was reprinted in the William Mitchell Law Review, Volume 15, No. 4 (1989), with a distribution of over 1,200 copies to attorneys and law schools throughout the United States.

REACTIONS TO REPORT

Informal assessment of the reactions of judges and lawyers suggests that the Report significantly raised awareness of gender issues. Audience response to presentations has usually been interested, sometimes intense, and the discussions spirited. Notable responses include the following:

- Governor Rudy Perpich responded to the Chief Justice's transmittal of the report with a letter commending the judiciary for its efforts in this area and requesting information on the timetable and priorities for implementing changes at various levels with the justice system.
- Judges Dale Wolf and Dennis Seitz of the Sixth Judicial District sent a memo to all court personnel in the Carlton County Courthouse discussing Chapter 4 of the Task Force Report, "Courtroom Environment," and recommended that all personnel read the report.
- The Minnesota Women's Press selected the Minnesota Supreme Court as one of its "Newsmakers '89" for the Court's commissioning of the Task Force and organization of the Implementation Committee.
- Judge Kenneth Sandvik reported that he recently had the opportunity to review a child support order he had issued in conjunction with a pending motion and realized that he had identified female petitioner and male respondent differently throughout the original drafting of the order. Judge Sandvik amended the order to provide that both the petitioner and respondent were identified by name and publicly apologized to the petitioner for any gender bias perceptions caused by his original order.
- A family law attorney reported an increased willingness of judges in his area of the state to grant temporary attorneys' fees and credited the Task Force Report for this change.

IMPLEMENTATION COMMITTEE ACTIVITIES

The Implementation Committee, chaired by Justice Rosalie E. Wahl, met for the first time in June, 1989 and continues to meet on a monthly basis. The initial deliberations of the Committee included an analysis and prioritization of Task Force Recommendations. The Committee established subcommittees to oversee implementation of the recommendations. The subcommittees and areas of concentration include:

Legislation - Drafting and seeking legislative enactment of appropriate recommendations.

Education - Developing and implementing gender fairness education programs for judges, attorneys, law enforcement personnel, and court employees.

Data Collection & Evaluation - Tracking the implementation of the Task Force recommendations and evaluating progress over time in achieving a more gender fair court environment. This task includes the development of data collection systems, where necessary, to evaluate gender fair attitudes and behavior in the court system.

Administration - Working with representatives of the judicial system, prosecution, law enforcement and corrections to implement procedural changes relating to Task Force recommendations.

Individual committee members have been assigned to monitor each subject matter; family law, court environment, domestic abuse, and civil, criminal and juvenile law, to insure that progress is made in each.

PROGRESS TO-DATE

The Implementation Committee has made significant progress in its efforts to implement Task Force Recommendations. On-going communication within the judicial community and among persons with a special interest in gender fairness was identified immediately by the Implementation Committee as a critical element in implementing Task Force recommendations and enhancing gender fairness in the courts. A quarterly newsletter was established to serve this purpose. It is distributed to all justices, judges, judicial district administrators, court administrators, and other persons with an interest in gender fairness. Other significant achievements include:

Education

- September, 1989 - Judges received training on domestic violence and a half day panel discussion on the Task Force findings.
- March, 1989 - MSBA Family Law Institute, attended by 385 lawyers and judges, addressed in detail the economic relationships and realities involved in marriage dissolution.
- June, 1990 - Judges received training on gender fair courtroom interactions.
- June, 1990 - Court administrators presented with panel discussion on the Task Force findings.
- July, 1990 - New judge orientation training given to new judges on family law and domestic violence issues.
- August, 1990 - MSBA Criminal Justice Institute, attended by lawyers, judges and law enforcement personnel, featured sessions on domestic assault and domestic violence.
- September, 1990 - Judges received training on sexual harassment issues.

The Supreme Court Office of Continuing Education for State Court Personnel and the Minnesota State Bar Association Continuing Legal Education Office have both instituted a policy to accept and distribute only educational materials that reflect gender neutral language within.

Justice Wahl has written to the Police Officers Standards and Training Board to solicit assistance in providing training to law enforcement officials in the area of domestic abuse and offering the services of the Implementation Committee in the development of such training.

Legislation

Several significant positive changes, reflecting Task Force recommendations in family and domestic abuse laws, were enacted during the 1990 Session. (See Chapters 573 and 583, respectively, of the 1990 Session Laws for the text of these enactments):

- Providing that when a court awards joint custody over the objection of a party, it must now make detailed findings regarding each of the factors listed in statute and explain how the factors led to the court's determination that joint custody would be in the best interests of the child.
- Providing that custody reports submitted by a court-ordered investigator must contain a similarly detailed analysis and the reason for the investigator's recommendation.
- Providing that if domestic abuse has occurred between the parents, the court must use a rebuttable presumption that joint legal custody is not in the best interests of the child.
- Providing that the court may award temporary costs and reasonable attorneys fees in dissolution, custody, and related proceedings pending the final disposition of the proceeding.
- Providing that the court must award attorneys fees and costs in dissolution and separation proceedings provided certain conditions are met.
- Providing that whenever a prosecutor dismisses a domestic assault charge, the prosecutor must make a record of the specific reason for the dismissal. If the dismissal is due to the unavailability of the witness, the prosecutor must document the reason the witness is unavailable.

An additional significant enactment during the 1990 Session was the appropriation of \$890,000 for the funding of legal representation for indigent people in family law matters.

Two other Task Force recommendations were considered by the 1990 Legislature and were enacted with some modification. The Task Force recommended legislation that would require all prosecuting authorities to have a plan for the effective prosecution of domestic violence cases. The legislature responded by authorizing a pilot program, administered by the Com-

missioner of Public Safety, for the development of effective prosecution plans. The plans will contain policies and procedures for improving domestic abuse prosecution efforts.

The Task Force recommendation pertaining to the creation of a statewide computerized database on domestic abuse was also considered by the 1990 Legislature. The Commissioner of Public Safety was given the responsibility of evaluating the feasibility of the creation of such a database. The database would include the names of the abusers and victims; list certain arrests and convictions; and specify conditions of pretrial release, and the terms and conditions of orders for protection.

Administration

In response to the Task Force recommendation relating to the need for standards of gender fair behavior for all participants in the judicial system, the Supreme Court promulgated an amendment to Rule 4(a)(5) of the Rules of the Board on Judicial Standards to provide that grounds for discipline will include discrimination against or harassment of persons on the basis of sex. In addition, Rule 8.4 of the Rules of Professional Conduct for Attorneys was amended to provide that professional misconduct includes harassing a person on the basis of sex. The comment to this section was also amended to indicate lawyers could be held criminally liable for discrimination and harassment. Both amendments were effective January 1, 1990. (See Appendix B for the text of the amendments.)

Representatives of the Administration Committee have spent considerable time working with the Conference of Chief Judges to develop a uniform sexual harassment policy for the trial court system. The policy addresses the procedure to be followed in making a claim of sexual harassment against court employees, district administrators, judges and non-court employees. It also addresses the investigation of such claims as well as the disciplinary actions to be taken. The policy was adopted by the Conference of Chief Judges in August, 1990, and approved by the Supreme Court on October 11, 1990. (A copy of the policy can be found at Appendix C.) During the fall, all court personnel will receive training on the mechanics of the policy and chief judges and judicial district administrators will receive specialized training on their roles and responsibilities relating to the investigation and resolution of claims.

The Subcommittee has drafted an order which provides that domestic abuse advocates do not commit the unauthorized practice of law when appearing with or assisting victims of domestic abuse in criminal proceedings. This rule is under consideration by the Supreme Court.

The Subcommittee is working with the Conference of Chief Judges and the Uniform Forms and Procedures Committee to insure that gender neutral language is used in all forms, brochures, and documents issued by the judicial system. The Uniform Forms and Procedures Committee has enlisted Laura Cooper, Gender Fairness Task Force member, to review existing forms and recommend gender neutral revisions.

The Subcommittee sent a letter to the Board of Law Examiners requesting that family law be one of the subjects covered on the Minnesota Bar Examination. This suggestion was adopted by the Board, after consultation with the three Minnesota law schools, and approved by the Supreme Court, effective the July, 1992 bar examination.

The Administration Committee is also responsible for interacting with other agencies and organizations to insure implementation of Task Force recommendations. Activities to-date include:

1. Requesting that the Supreme Court Judicial Education Committee require at least ten hours of judicial education credit in family law and domestic abuse during each certification period.
2. Requesting that the State Financing Task Force recommend a procedure which would encourage the appointment of a guardian ad litem for a minor child whenever a child is a victim in a criminal sexual conduct case. (The State Funding Task Force is responsible for recommending uniform standards for the appointment of guardians as litem.)
3. Requesting that the Implementation Committee be given the opportunity to review Department of Human Services' proposed changes in Minnesota child support collection laws prior to introduction during the 1991 legislative session.

Data Collection and Evaluation

This subcommittee is charged with assessing the impact of the Task Force Report. Logs have been distributed to Task Force members for the recording of each members' presentations and their assessments of responses to the Report. In addition, the subcommittee is developing a system for assessing the implementation of each of the Report's recommendations and for evaluating its impact. Requirements for gathering baseline data in some areas are being determined. A follow-up survey of attorneys and judges in three to five years is being planned as one means of measuring the impact of the Report and its recommendations.

FUTURE EFFORTS

The Implementation Committee has made notable progress in implementing the Gender Fairness Task Force recommendations. Committee efforts have been aimed at, with some success in the first year, the fostering of a climate within the judicial system in which the nature and consequences of gender bias are both acknowledged to exist and understood to be unacceptable.

During the next year the Implementation Committee will continue its efforts to educate the judiciary and the legal system on the findings of the Task Force and on gender bias issues in general. Upcoming educational efforts include:

- September - December, 1990 - All court personnel will receive training on the uniform trial court sexual harassment policy.
- October, 1990 - Judicial district administrators and the Conference of Chief Judges will receive training on the investigation and resolution of sexual harassment claims.
- December, 1990 - Minnesota will participate in a model training program, sponsored by the Women Judges' Fund for Justice, dealing with spousal support (maintenance) and child custody and visitation. A one day program will be presented at the December Judges meeting. One-half of the day will be devoted to each topic.
- February, 1991 - Court administrators will receive training on the Domestic Abuse Act and on sexual harassment and other employment discrimination issues.

Considerable effort will be spent on coordinating the prosecutor domestic abuse plan pilot projects. Implementation Committee members are in the process of soliciting five county attorney and five city attorney volunteers for this pilot project. To-date the following have agreed to participate:

County Attorneys

Beltrami
Benton
Lyon
Ramsey

City Attorneys

Mankato
Minneapolis
St. Paul

The Implementation Committee is also working with an advisory committee to draft the model plan for use by the volunteers. The volunteers may adapt the model plan for their use and must file a plan with the Commissioner of Public Safety by November 15, 1990. The model plan will be made available to all city and county attorneys.

The Implementation Committee is represented on the Commissioner of Public Safety's Advisory Committee on the feasibility of establishing a computerized database containing information about domestic assault convictions and violations of Orders for Protection. The advisory committee consists of representatives from the Department of Corrections Advisory Council on Battered Women, State Court Administration, law enforcement, Department of Public Safety, Department of Human Services (the study is also being conducted with respect to child abuse data), County Attorneys' Association, Crime Victims Ombudsman, and the Commission on the Economic Status of Women. The group will report to the Legislature in February, 1991.

Justice Rosalie E. Wahl and other Implementation Committee members will meet with the Swedish Cabinet Minister for Women's, Youth, and Consumer Affairs and her Deputy Minister on Monday, October 29, 1990. The purpose of their visit, which precedes a visit to Canada, is to learn about gender fairness in the courts and pay equity.

CONCLUSION

The Implementation Committee has spent considerable time and effort over the past year on implementing recommendations and providing educational opportunities to the judiciary and attorneys. During this second year of operation the Committee will continue these efforts and will begin to extend educational efforts to individuals and organizations that are affiliated with the judicial system, such as law enforcement, court services and corrections. In addition, the group will begin to measure the impact of implementation of the recommendations in terms of gender neutral attitudes and behaviors in the judicial system.

APPENDIX A **GENDER FAIRNESS SPEAKING ENGAGEMENTS*** **1989 - SEPTEMBER, 1990**

Criminal Justice Division
House Judiciary Committee

Minneapolis Television Network (Channel 32)

First Unitarian Society

R-Kids

Minnesota Women's Consortium (2 times)

William Mitchell Ethics Committee

MSBA Family Law Section

The Business and Professional Women's Club of
Minneapolis

Minnesota County Attorneys Association

Minneapolis League of Women Voters

"Legislative Report" - Channel 6 Cable

Leonard, Street and Dienard

TwinWest Chamber of Commerce

Minnesota State Bar Association

Mid Metro BPW Business and Professional

WJON in St. Cloud - "FOCUS"

Minnesota Association of Women in Criminal
Justice

BPW District 8

Minnesota - National Organization for Women

St. Louis Park Business and Professional Women

ACES Candlelight Vigil, St. Paul

Women in Business Seminar - "Creating
Leadership Opportunities for Women in the
1990s"

National Council of Jewish Women, St. Paul
Chapter - "Self Esteem"

North Hennepin Community College Sociology
class

Minnesota Business and Professional Women's
Convention, Sheraton Park Place

Humphrey Institute of Public Affairs symposium,
"Responses to Domestic Violence." Speech: "A
Policy Perspective on Domestic Violence"

Domestic Assault Intervention Forums, St.
Joseph's Parish

New Judges - Family Law, Domestic Abuse,
Minneapolis

Administrative Law Judges/Child Support Hearing
Officers - Child Support, St. Paul

Minnesota District Judges Association - Domestic
Abuse presentation (Maddens)

Bar Leadership Conference - Family Law Issues

Ramsey County Suburban Training Facility -
Deputy Sheriff's - Domestic Abuse

Junior High Community Center - Family Law
Issues (2 times)

Ramsey County Bar Association, Family Law
Section - GFTF Findings

Conference of Chief Judges - Family Law Issues

Ramsey County Court Employees - Domestic
Abuse

Twin Cities Live - KSTP

St. Paul City Council

National Association of Women Judges - Child
Support

*These speaking engagements were reported to the Research & Planning Office, State Court Administration, and may not represent all presentations made on behalf of the Gender Fairness Report.

Joint Session; House & Senate Judiciary Committee

Financial Professional Association Seminar - Spousal Maintenance

Tenth Judicial District Judges - Spousal Maintenance

Ramsey County Law Wives - Domestic Violence

Legal Services evaluation staff and volunteer attorneys - Child Support

Girls' State - Domestic Violence

MDJA Meeting (Duluth)

Humphrey Institute - General Description of Project

KUDM - U of M Radio

William Mitchell Law School - Class on law of sex discrimination

National Displaced Homemakers' Meeting

Court Administrators Conference (Maddens)

First Bank System Foundation, "Confronting Domestic Violence in the 90s," Holiday Inn Metrodome

BPW Meeting - Normandy Inn, Minneapolis

Girl Scout Major Donor Society Dinner, Minneapolis Club

U of M Law School Lex Alumnae 8th Annual Holiday Luncheon, Minneapolis Athletic Club (Legislative issues including gender fairness)

St. Philip the Deacon Lutheran Church Speech: "Life Goals -- You Can!"

Minnesota Women's Consortium, "Women Come to the Capitol," St. Paul College Club

Coalition for Battered Women, "Battered Women's Action Day at the Capitol," Capitol Rotunda

Nicole Johnson Vigil, Brookdale Courthouse

American Association of University Women

Faribault

Minnesota Valley Branch

Burnsville

Willmar

One speaking engagement - location unknown

Kiwanis Club

Redwing

North Suburban

Southwest Minneapolis

St. Paul

APPENDIX B RULES CHANGES

In response to the Task Force recommendations relating to the need for standards of gender fair behavior for all participants in the judicial system, the Supreme Court promulgated the following amendments to rules governing the conduct of judges and attorneys, effective January 1, 1990:

Rule 4(a)(5) of the Rules of the Board on Judicial Standards
was amended to read:

- (a) Grounds for Discipline Shall Include:**
- (5) Conduct prejudicial to the administration of justice that brings the judicial office into disrepute, including but not limited to, discrimination against or harassment of persons on the basis of race, color, creed, religion, national origin, sex, marital status, or age.**

Rule 8.4 of the Minnesota Rules of Professional Conduct was amended effective January 1, 1990, to read:

It is professional misconduct for a lawyer to:

- (g) harass a person on the basis of sex, race, age, creed, religion, color, national origin, disability, sexual preference or marital status in connection with a lawyer's professional activities.**

The comment to this section was also amended to indicate lawyers could be held criminally and civilly liable for discrimination and harassment.

This amendment was included in the petition of the Minnesota State Bar Association for amendment to the Minnesota Rules of Professional Conduct.

APPENDIX C

MINNESOTA TRIAL COURTS UNIFORM SEXUAL HARASSMENT POLICY

Adopted by the Conference of Chief Judges

August 17, 1990

Amended September 21, 1990

Approved by Supreme Court, October 11, 1990

APPLICABILITY

The following sexual harassment complaint procedure has been developed specifically to ensure that complaints are investigated and resolved quickly and in a manner that is fair to all. It shall apply to all state funded trial court employees. It is equally available for use by employees of the trial courts in Minnesota who are not state funded. Trial court employees who are members of a union may also elect to file a grievance under their collective bargaining agreement. All trial court employees may also file a complaint with the Minnesota Department of Employee Relations, the Federal Equal Employment Opportunity Commission, the Minnesota Department of Human Rights, or they may file a law suit in the appropriate court.

I. DEFINITION

Sexual harassment is defined under Title VII of the Civil Rights Act and Minnesota Statutes Chapter 363. Sexual harassment includes unwelcome sexual advances, requests for sexual favors, sexually motivated physical conduct or other verbal or physical conduct or communication of a sexual nature when:

- A. submission to that conduct or communication is made a term or condition, either explicitly or implicitly, of obtaining or continuing employment or a basis for employment decisions affecting the individual; or
- B. submission or rejection of that conduct or communication by an individual is used as a factor in employment decisions affecting the individual; or
- C. that conduct or communication has the purpose or effect of substantially interfering with an individual's employment, or of creating an intimidating, hostile or offensive employment environment; and the employer knows or should know of the existence of the harassment and fails to take timely and appropriate action.

A single act or communication may constitute sexual harassment.

II. EXAMPLES OF CONDUCT THAT CAN CONSTITUTE UNLAWFUL SEXUAL HARASSMENT

Sexual harassment is 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 does not refer to behavior or comments of a socially acceptable nature.

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 one 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:

- offensive sexual flirtations, advances, or propositions,
- verbal abuse or innuendo of a sexual nature,
- uninvited physical contact such as touching, hugging, patting or pinching,
- 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,
- obscene gestures or sexually 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.

III. SEXUAL HARASSMENT COMPLAINT PROCEDURE

A. THE PROCEDURE

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 the individual would like help writing down his or her thoughts, the person spoken with at Step 1 of this procedure will assist.

STEP 1. An individual who believes that he or she may be subject to harassment should, as soon as possible, contact the Responsible Representative. The Responsible Representative is his/her supervisor or the next higher level supervisor or the Judicial District Administrator. The individual will have a private meeting

with the Responsible Representative during which he/she can get more information about sexual harassment and the complaint and investigation procedure.

In all circumstances the individual may contact the Chief Judge or the State Court Administrator directly to discuss his/her situation or to make a complaint.

The Responsible Representative shall report the inquiry or complaint immediately to the Judicial District Administrator who will be responsible for supervising the investigation.

If the alleged harasser is a Judicial District Administrator, the Responsible Representative shall give notice of the inquiry or complaint immediately to the Chief Judge who may obtain investigative assistance from the State Court Administrator's Office.

If the alleged harasser is a judge, the Responsible Representative shall give notice of the inquiry or complaint immediately to the Chair of the Conference of Chief Judges who shall assign the matter for investigation to a Chief Judge from another district and the State Court Administrator.

In those instances where an informal resolution is appropriate, the Judicial District Administrator or Investigator appointed in accordance with the policy (either being referred to as "Investigator") will advise and assist the individual in resolving the matter in that fashion. A report of the informal resolution will be filed with the Chief Judge of the district. In matters concerning the Chief Judge, the report will be filed with the Chief Justice.

Following an inquiry and/or complaint, the Investigator shall conduct an investigation appropriate to the nature of the inquiry or complaint. The investigation will be kept confidential to the extent possible given the nature of the investigation required.

In those instances where a formal investigation and resolution is required, the following procedures apply.

STEP 2. The Investigator will interview the individuals to determine as completely as possible the facts and circumstances and possible witnesses. 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.

STEP 3. The Investigator will meet privately with the alleged harasser to permit the alleged harasser to respond to the allegations and to determine as completely as possible the facts and circumstances and possible witnesses.

STEP 4. The Investigator will conduct private interviews with those available witnesses the Investigator determines should be interviewed. Neither the individual making the complaint nor the alleged harasser will be present at witness interviews.

STEP 5. Upon completion of the investigation, the Investigator will draft a report stating his or her findings. The report will be forwarded to the Chief Judge of the

district. In situations where the Investigator is not the Judicial District Administrator, the report will be forwarded directly to the Chief Judge who supervised the Investigator.

- i. 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 Chief Judge shall review the report and may return the matter to the Investigator for further investigation and/or fact-finding. If the Chief Judge 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.
- ii. In the event that the findings of the Investigator indicate that sexual harassment has occurred, the Investigator will recommend the action to be taken by the appropriate local manager. The Chief Judge shall review the report and may return the matter to the Investigator for further investigation and/or fact-finding. If the Chief Judge accepts the report as submitted or as amended, he/she shall forward the report of the recommended action to be implemented by the appropriate local manager.

Upon completion of the investigation concerning a Judicial District Administrator or a judge, the Investigator will draft a report stating his or her findings. The report will be forwarded to the Chief Judge of the judicial district for appropriate action.

Upon completion of the investigation concerning a Chief Judge, the Investigator will draft a report stating his or her findings, and forward it to the Chief Justice for appropriate 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:

- i. The initial meeting with the Investigator should take place as soon as practicable, but in no event later than two weeks, taking into consideration the nature of the conduct complained about.
- ii. If a formal investigation and resolution (as opposed to an informal resolution) is undertaken, the investigation should begin immediately. The investigation should be completed, and the Investigator's findings and recommendations should be forwarded to the Chief Judge within three weeks of the time that the complaint is made.
- iii. The Chief Judge should review the report of the Investigator and either close the matter or refer it to the local manager within two weeks of his/her receipt thereof.

C. CONFIDENTIALITY

Accessibility to court records maintained pursuant to this Harassment Policy is governed by the Rules of Public Access to Records of the Judicial Branch, or its successor. Subject to these rules, 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 complaint or investigation will not be discussed with anyone who is not directly involved in the investigation and its resolution.

D. NO REPRISAL FOR FILING COMPLAINT OF SEXUAL HARASSMENT

No employee, supervisor, manager, department head or administrator shall be subject to reprisal or discriminated against in any way for making a complaint of sexual harassment or for assisting in the investigation of such a complaint, regardless of the outcome of the investigation.

IV. DISCIPLINARY PROCEDURE

A. If an investigation of a complaint of sexual harassment reveals that an employee, supervisor, manager, department head or administrator has engaged in actions or conduct constituting sexual harassment, disciplinary action up to and including discharge will be taken. The disciplinary action will depend upon the seriousness of the violation. The disciplinary action recommended by the Investigator and approved by the appropriate Chief Judge or the Chief Justice will be taken by the appropriate supervisor, manager, or department head.

B. 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.

C. 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.

D. 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 take appropriate disciplinary action.

E. 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.