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NoraV Borja

IN THE
SUPREME COURT
OF THE
COMMONWEALTH OF THE NORTHERN MARIANA ISLANDS

IN RE THE NORTHERN MARIANA ISLANDS
JUDICIARY SEXUAL HARASSMENT POLICY

SUPREME COURT NO. 2020-ADM-0009-RUL

**ORDER ADOPTING AMENDMENTS TO
JUDICIARY SEXUAL HARASSMENT POLICY**

¶ 1 This matter comes before the Court on our own motion to adopt amendments to the Judiciary's Sexual Harassment Policy which first came into effect on March 29, 2001. The proposed amendments were reviewed and approved by the Judicial Council on March 11, 2020.

¶ 2 IT IS HEREBY ORDERED that the *Northern Mariana Islands Sexual Harassment Policy*, attached as Exhibit A, is adopted effective on May 1, 2020.

SO ORDERED this 4th day of May, 2020.

/s/

ALEXANDRO C. CASTRO
Chief Justice

/s/

JOHN A. MANGLONA
Associate Justice

/s/

PERRY B. INOS
Associate Justice



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NORTHERN MARIANA ISLANDS JUDICIARY

SEXUAL HARASSMENT POLICY

Effective May 1, 2020

EXHIBIT A

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INTRODUCTION

The Judicial Branch of the Commonwealth of the Northern Mariana Islands will not tolerate sexual harassment. Sexual harassment in any form is an abuse of individual dignity that damages employee morale, threatens work relationships, and subverts the public interest. It is the policy of the Judiciary to provide a work environment free of sexual harassment. When the Judiciary determines that an allegation of sexual harassment is credible, it will take prompt and appropriate measures to correct the issue.

Section 1. General.

(a) **Definition.** Unwelcome sexual advances, requests for sexual favors, and other verbal or physical conduct of a sexual nature shall constitute sexual harassment when:

- (1) Submission to or rejection of such conduct by an individual is used as the basis for an employment decision affecting such individual;
- (2) Such conduct has the purpose or effect of unreasonably interfering with an individual's work performance; and/or
- (3) Such conduct has the purpose or effect of creating an intimidating, hostile or abusive working environment.

(b) **Form of Sexual Harassment.** Sexual harassment may include, but is not limited to, the following:

- (1) Verbal: Sexual innuendo, sexual slurs, suggestive comments, threats or insults of a sexual nature, jokes about gender specific traits, sexual propositions, sexual pranks, repeated sexual teasing, verbal abuse of a sexual nature, repeatedly asking a person to socialize during off-duty hours when the person has said no or has indicated he or she is not interested (supervisors in particular should be careful not to pressure their employees to socialize);
- (2) Nonverbal: Making sexually suggestive or insulting noises, making sexually obscene gestures, whistling, leering, trapping or restraining a person, indecent exposure, arranging to be alone with a person for the purpose of making sexual advances;
- (3) Physical: Touching, pinching, brushing the body, kissing, assault, repeatedly standing too close, coercing sexual intercourse;
- (4) Others: Giving gifts or leaving objects that are sexually suggestive;

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- (5) Work Environment: Display, including distribution or communication through electronic systems, of sexually suggestive photographs, literature, cartoons, calendars and/or graffiti; and/or
 - (6) Retaliation for threatening to report sexual harassment.
- (c) Patterns of Sexual Harassment.** Sexual harassment may occur in a variety of circumstances and encompass many variables including, but not limited to, the following:
- (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 may be the victim's supervisor, a supervisory employee who does not supervise the victim and/or a non-supervisory employee (co-worker);
 - (3) The victim may be the same sex, or the opposite sex, of the harasser;
 - (4) The victim does not have to be the person at whom the unwelcome sexual conduct is directed. The victim may be an individual who is affected by such conduct when said conduct is directed towards another individual; and/or
- A finding of unlawful sexual harassment may be found even when the victim(s) did not suffer a specific economic injury as a result of the harasser's conduct.
- (d) Definition of Employee.** For the purpose of the Judicial Branch Sexual Harassment Policy, an "employee" shall be defined as any personnel within the Supreme Court and Superior Court, including elected and appointed officials.

Section 2. Implementation of Policy and Judiciary's Responsibilities.

- (a)** The Chief Justice shall and hereby designates the Judiciary Sexual Harassment Prevention Commission ("the Commission") as the body to implement this sexual harassment policy.
- (b)** The Commission shall be comprised of five (5) members, as follows:
 - (1) The Director of Court of the Supreme Court, who shall serve as the chairperson;
 - (2) One supervisory employee of the Supreme Court, appointed by the Chief Justice;

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- (3) One supervisory employee of the Superior Court, appointed by the Presiding Judge;
 - (4) One non-supervisory employee of the Superior Court, appointed by the Presiding Judge; and,
 - (5) One non-supervisory employee selected by the four appointed employees described in Section 2(b)(1)-(5).
- (c) If the Presiding Judge fails to appoint Commission members pursuant to Section 2(b)(3)–(5), within 15 working days of a Commission vacancy, the Chief Justice shall make said Commission appointment(s).

The initial members of the Commission shall be appointed on or before April 13, 2001.

- (d) The Commission shall be balanced, to the extent practical, in terms of gender. The Commission members, except for the chairperson, shall each serve a two (2) year term.
- (e) This sexual harassment policy shall be distributed to all employees of the Judiciary. All employees shall receive periodic training on sexual harassment issues.
- (f) Questions regarding this policy and its implementation and any requests for copies may be addressed to the chairperson of the Commission.
- (g) Any supervisor, judicial officer, or employee who: (1) engages in any form of harassment prohibited by this policy and/or, (2) retaliates against an individual who has complained of harassment and/or, (3) aids another individual who has been the subject of a sexual harassment complaint, shall be subject to applicable disciplinary action. Any supervisor or judicial officer who fails to act upon employee complaints or on personal knowledge of harassment will also be subject to applicable disciplinary action.

Section 3. Complaint Process.

All sexual harassment complaints shall be processed as follows:

- (a) An accurate record of unwelcome behavior or misconduct is needed to resolve a formal complaint of sexual harassment. Therefore, any employee of the Commonwealth judiciary who has a work-related sexual harassment complaint shall notify the chairperson of the Commission in writing of the unwelcome behavior or misconduct within 30 working days following the incident. In the chairperson's absence, the vice chairperson shall be notified of the incident in the same manner as the chairperson described herein. In the event that the individual

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directed by this Section to be notified is the alleged harasser, the employee shall notify any member of the Commission in the manner described herein. Commission member names shall be available to any employee by contacting the Director of Courts .

- (b)** To ensure the prompt and thorough investigation of a sexual harassment complaint, the complainant should provide as much of the following information as is possible:

 - (1) The name, department and position of the person(s) allegedly committing harassment.
 - (2) A description of the incident(s), including the date(s), location(s) and the presence of any witnesses.
 - (3) The effect of the incident(s) on the complainant's ability to perform his or her job, or on other terms or conditions of his or her employment.
 - (4) The names of other individuals who might have been subject to the same or similar harassment.
 - (5) What, if any, steps the complainant has taken to try to stop the harassment.
 - (6) Any other information the complainant believes to be relevant to the harassment complaint.
- (c)** The complaint shall be signed and dated by the employee alleging the unwelcome behavior or misconduct. The Commission, complainant, respondent, investigator, and witnesses shall keep confidential the identity of the parties confidential and the existence and details of the complaints. If any staff receives information regarding a complaint under this Policy, such staff shall keep such information and the existence and details of the complaint confidential. Information may be revealed to persons designated to investigate sexual harassment cases under this Policy. The identity of a complainant may be released to the respondent and witnesses as reasonably necessary to conduct proper investigation.
- (d)** If criminal allegations are made in the complaint, the chairperson shall notify the police immediately.
- (e)** Upon receipt of the complaint, the chairperson shall refer the matter to the employee's immediate supervisor to discuss the possibilities of immediate resolution. If no resolution is possible and/or if a solution acceptable to the employee alleging the unwelcome behavior and/or misconduct cannot be reached within ten (10) working days of the receipt of the complaint by the chairperson, then the chairperson shall refer

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the matter to the Commission for further investigation and resolution.

- (f) The Commission shall promptly investigate the complaint. All investigation related to the complaint shall be documented for the purpose of drafting a written report. The investigation shall include interviews with all relevant persons including, but not limited to, the charging employee, the accused, and witnesses. The investigating party must retain documentation of all complaint(s).
- (g) Within fifteen (15) working days from the date of receipt of the complaint, the investigator(s) shall draft a written complaint report. The report shall be based on the totality of the circumstances including the nature of the alleged sexual advances and the context in which the alleged incidents occurred. The report shall be presented to the chairperson of the Commission.
- (h) Within fifteen (15) working days from the date of receipt of the report, the chairperson shall issue a written decision of the Commission outlining the action to be taken. This decision shall be directed to the alleged harasser with copies to be distributed to the charging party, and may contain the following:
 - (1) If the complaint is verified, the accused shall be subject to immediate and appropriate corrective action pursuant to applicable Commonwealth laws, personnel policies, rules and regulations up to and including discharge, where appropriate. Corrective action may include, but shall not be limited to, (1) a letter of clarification of expectations, (2) written reprimand, (3) suspension, (4) reduction of pay in grade, (5) delay or loss of step increase, (6) demotion, and/or (7) termination. Determining whether corrective action is warranted, and the level of corrective action, shall be based on the facts of the case and the severity of the harassment.
 - (2) If the complaint cannot be verified, immediate and appropriate action shall be taken to assure that the charging employee, accused, and any witnesses are reacquainted with the Judiciary's Sexual Harassment Policy. Specifically, it is the judiciary's policy to provide a work environment free of sexual harassment and that the judiciary has a zero-tolerance policy towards sexual harassment in the workplace.

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- (3) If the claim is patently false or baseless, the charging employee shall be subject to immediate and appropriate corrective action pursuant to applicable Commonwealth laws, personnel policies, regulations and rules.
- (4) Employees who have been found by the investigation and chairperson to have subjected another employee to unwelcome conduct of a sexual nature, whether such behavior meets the legal definition of sexual harassment or not, will be subject to discipline or other appropriate action.
- (i) In the event that the individual to whom the complaint is presented by the employee alleging sexual harassment does not follow the complaint investigation procedure described herein in a timely fashion, the employee alleging sexual harassment shall notify the Commission.
- (j) If the Commission receives an allegation of sexual harassment informally (i.e. not through the Complaint process under Section 3 of this Policy), or has reasons to believe sexual harassment is occurring, it will take the necessary steps to ensure that the matter is promptly investigated and addressed in accordance with this Policy. The Judiciary is committed to take action if it learns of possible sexual harassment, even if the individual does not wish to file a formal complaint.

Section 4. Retaliation.

There shall be no retaliation or discrimination against an employee who files a complaint of harassment or who aids another employee who has complained of harassment. Retaliation is a serious violation of this sexual harassment policy and shall be reported immediately. Any person found to have retaliated against another employee for reporting sexual harassment shall be subject to the same disciplinary action provided for sexual harassment offenders, as described in Section 3 herein.

Section 5. Posting.

This policy shall be posted in the following offices: Clerk of Court Offices, Director of Court's Office, and staff lounges.

Section 6. Effective Date.

This policy, with its amendments, shall take effect on May 1, 2020. Pending matters shall be reviewed under the amended policy.