

REPORT
OF THE
NEW JERSEY SUPREME COURT
COMMITTEE ON
SEXUAL HARASSMENT

MARCH 1994

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INTRODUCTION

In August 1993 the New Jersey Supreme Court appointed the Committee on Sexual Harassment "to evaluate the present procedures for handling sexual harassment complaints against judges and against others in the judiciary, and further to evaluate the judicial education and training efforts aimed at preventing sexual harassment at all levels". The Chief Justice asked the Committee to complete its work in two phases. The first phase, to evaluate and make recommendations regarding the handling of sexual harassment complaints against judges, was to be completed in approximately one month. In the second phase, the Committee was to complete all other aspects of its charge by the end of 1993, if possible.

The Committee includes trial and appellate judges, an assignment judge, attorneys experienced with sexual harassment matters in university, corporate and governmental settings, as well as a trial court administrator. Three of the members, including the chair, also serve on the Supreme Court Committee on Women in the Courts. Staff from the Administrative Office of the Courts assisted the Committee.

The Report that follows addresses each of the two phases of the Committee's work and includes the most pertinent background materials in appendices. A supplemental report will be given to the Court after the Committee reviews public comment on the procedures.

PHASE I: SEXUAL HARASSMENT COMPLAINTS AGAINST JUDGES

On November 3, 1993 the Committee transmitted to Chief Justice Robert N. Wilentz "Elective Procedures for Handling Sexual Harassment Complaints Against Judges." These procedures were developed by the Committee over the course of three lengthy meetings and were based upon the collective knowledge and experience of the members. In the discussion, members considered the informal procedures now available at the vicinage level, as well as the formal mechanism of handling complaints through the Advisory Committee on Judicial Conduct, as described by Patrick J. Monahan, Esq., Chief of Professional Services and staff to the ACJC. They also considered recommendations from the Subcommittee on Sexual Harassment of the Committee on Women in the Courts, procedures used in other judicial jurisdictions, and procedures used for handling complaints against university professors and corporate officials. The proposed procedures were published in The New Jersey Law Journal and The New Jersey Lawyer on November 22, 1993, and the public was given a 60 day period for review and comment. A copy of those procedures is included in Appendix A.

The Committee then turned its attention to revising the procedures for handling complaints against non-judges, including judiciary employees and others who come into contact with the

courts. In developing those procedures, the Committee followed as closely as possible the format used in Phase I, drawing where appropriate upon language from the procedures for handling complaints against judges, retaining some language from the existing state judiciary policy, and also relying on language from the Statewide policy on Sexual Harassment promulgated by the State Department of Personnel (hereinafter referred to as State Department of Personnel Policy). The language of the two procedures differed not just in those sections setting forth the complaint processes where some differences were necessary, but also in other sections where uniformity is preferable (e.g. sections on policy, definition of sexual harassment, confidentiality, and retaliation). Therefore, at the conclusion of the comment period on the procedures for handling complaints against judges, the Committee met to discuss the comments received and to reconcile differences in the wording of the two procedures. Where changes have been made since the procedures were first published for comment, that fact is noted in the comment sections of the report, which contain the more specific reasoning of the Committee. A copy of the revised procedures is also included in the Appendix.

**PROCEDURES FOR HANDLING
SEXUAL HARASSMENT COMPLAINTS
AGAINST JUDGES**

A. POLICY ON SEXUAL HARASSMENT.

In recognition of the dignity and worth of each person who works for the Judiciary or who comes into contact with the courts, the New Jersey Judiciary promulgates this policy on sexual harassment for implementation throughout the court system. Accordingly, sexual harassment must not be permitted, whether it is committed by judges, employees or non-employees, against court employees, attorneys, litigants, witnesses or others who come into contact with the court system. Such harassment is illegal, is an abuse of authority and constitutes misconduct. Sexual harassment undermines the public's confidence in the Judiciary and the integrity of employment relationships, debilitates morale, and can be destructive to its victims and their associates, and therefore will not be tolerated.

COMMENT: THE COMMITTEE INITIALLY ADAPTED ITS POLICY STATEMENT FROM THE EXISTING AOC POLICY ON SEXUAL HARASSMENT, AND SUBSEQUENTLY MODIFIED IT TO INCORPORATE LANGUAGE FROM THE STATE DEPARTMENT OF PERSONNEL POLICY. IT STRESSES THAT THE POLICY

COVERS ALLEGED SEXUAL HARASSMENT BY JUDGES OF ANYONE WHO COMES
INTO CONTACT WITH THE COURT SYSTEM.

B. WHAT IS SEXUAL HARASSMENT?

Sexual harassment is defined as unwelcome sexual advances, requests for sexual favors and other verbal or physical conduct based on gender when:

- Submission to such conduct is made either explicitly or implicitly a term or condition of an individual's employment;
- Submission to or rejection of such conduct by an individual is used as the basis for employment decisions affecting such individual; or
- Such conduct has the purpose or effect of unreasonably interfering with an individual's work performance or creating an intimidating, hostile or offensive working environment including, but not limited to:

Gender Harassment: Generalized gender-based remarks and behavior;

Seductive Behavior: Inappropriate, unwanted, offensive physical or verbal sexual advances;

Sexual Bribery: Solicitation of sexual activity or other sex-linked behavior by promise of reward;

Sexual Coercion: Coercion of sexual activity by threat of punishment; and

Sexual Assault: Gross sexual imposition like touching, fondling, grabbing or assault.

COMMENT: FOLLOWING THE COMMENT PERIOD, THE COMMITTEE DECIDED TO USE THE DEFINITION OF SEXUAL HARASSMENT INCLUDED IN THE STATE DEPARTMENT OF PERSONNEL POLICY FOR ITS COMPLETENESS, INCLUDING THE COURT'S CONCLUSION IN LEHMANN V. TOYS 'R' US, INC., ET. AL. THAT "HARASSING CONDUCT NEED NOT BE SEXUAL IN NATURE" (P. 15). GUIDELINES THAT ELABORATE ON THE DEFINITION SHOULD BE DEVELOPED FOR TRAINERS AND PERSONS WHO HANDLE COMPLAINTS.

C. PROCEDURES FOR RESOLUTION.

Employees of the Judiciary, attorneys, litigants, witnesses and others who come into contact with the court system who believe that they may have been subjected to sexual harassment by a judge may seek advice or file a complaint as follows:

1. Informal Procedures.

An informal complaint may be made to the Vicinage EEO/AA Designee and/or the Assignment Judge.*

Upon the receipt of an oral or written informal complaint, the Vicinage EEO/AA Designee or the Assignment Judge shall act upon the complaint within fifteen (15) calendar days by:

- a. providing information concerning the complainant's rights, and/or
- b. investigating and attempting to resolve the complaint informally, and/or
- c. providing information concerning the complainant's rights to file a formal complaint.

In the event the complaint is not resolved on an informal basis and the complainant wishes to proceed, the EEO/AA Designee will assist in preparing a formal complaint.

* These are the procedures to be employed in making a complaint against a Municipal Court Judge or a Superior Court Judge. Where the complaint is against an Assignment Judge or Justice of the Supreme Court, it may be filed with the A.O.C. EEO Officer, Administrative Director of the Courts, or Chief Justice. Where the complaint is against a Tax Court or Appellate Division Judge, it may be filed with the A.O.C. EEO Officer, Administrative Director of the Courts, Presiding Judge of the Tax Court or Presiding Judge for Administration of the Appellate Division, as appropriate.

If an investigation is undertaken, the judge who is the subject of the complaint shall be notified within five (5) calendar days.

COMMENT: THE COMMITTEE BELIEVES STRONGLY THAT THERE SHOULD BE AN INFORMAL COMPLAINT PROCESS CLEARLY DELINEATED AND PUBLISHED AT THE VICINAGE LEVEL. THE COMMITTEE RECOGNIZES THAT IN MANY INSTANCES EMPLOYEES WANT OFFENDING BEHAVIOR TO STOP, BUT DO NOT WANT TO BECOME INVOLVED IN AN EXTENSIVE COMPLAINT PROCESS. THE COMMITTEE FURTHER RECOGNIZES THAT ABSENT PROVISIONS FOR AN INFORMAL COMPLAINT PROCESS, PROBLEMS WILL LIKELY GO UNREPORTED, AND THAT IT IS ESSENTIAL TO HAVE A PROCESS THAT WILL ENCOURAGE REPORTING AT AN EARLY STAGE, BOTH SO THAT PROBLEMS CAN BE RESOLVED AND SO THAT THE JUDICIARY CAN BE AWARE OF OCCURRENCES OF HARASSMENT AND TAKE APPROPRIATE ACTION. THE PERSON TO RECEIVE INFORMAL COMPLAINTS MUST BE SOMEONE WHO IS PERCEIVED TO BE IMPARTIAL, NOT EVEN SUBTLY INFLUENCED OR INTIMIDATED BY JUDGES, ABLE TO MAINTAIN CONFIDENCES, AND EASY TO TALK TO. THE COMMITTEE RECOGNIZES THAT THIS IS A DIFFICULT COMBINATION. IN MOST CASES THE ASSIGNMENT JUDGE WILL BE THE ONE MOST PERCEIVED TO BE ABLE TO ACT, BUT SOME EMPLOYEES MIGHT NOT FEEL COMFORTABLE TALKING AT LEAST INITIALLY TO THAT JUDGE. THE COMMITTEE THEREFORE RECOMMENDS A PROCESS THAT ALLOWS EMPLOYEES TO TALK WITH EITHER THE EEO DESIGNEE OR THE ASSIGNMENT JUDGE.

THE COMMITTEE ALSO CONSIDERED RECOMMENDING THAT A SPECIALLY TRAINED "EEO JUDGE" BE APPOINTED IN EACH VICINAGE TO SERVE INSTEAD OF OR IN ADDITION TO THE ASSIGNMENT JUDGE. HOWEVER, THE COMMITTEE DECIDED NOT TO RECOMMEND THIS CONCEPT AT THIS TIME FOR SEVERAL REASONS, INCLUDING 1) THE BELIEF THAT THE ASSIGNMENT JUDGE SHOULD HAVE THE RESPONSIBILITY AND OPPORTUNITY TO REVIEW AND CORRECT SITUATIONS THAT CAN BE RESOLVED AT THE VICINAGE LEVEL, 2) POTENTIAL PROBLEMS OF THE "EEO JUDGE" HAVING OR PERCEIVED TO HAVE CO-EQUAL POWER WITH THE JUDGE BEING COMPLAINED ABOUT, AND 3) ADDITIONAL TIME THAT WOULD BE NEEDED TO APPOINT AND TRAIN "EEO JUDGES". THE COMMITTEE SUGGESTS THIS CONCEPT SHOULD BE GIVEN FURTHER CONSIDERATION BY THE COURT IF THE VOLUME OF COMPLAINTS OR OTHER PROBLEMS WHICH MIGHT EMERGE WARRANT IT. WHEN AN EMPLOYEE LODGES AN INFORMAL COMPLAINT, PROMPT AND EFFECTIVE INVESTIGATIVE ACTION IS REQUIRED. DURING THIS STAGE, THE INVESTIGATOR ATTEMPTS TO WORK OUT A RESOLUTION OF THE PROBLEM WHICH IS SATISFACTORY TO BOTH PARTIES AND TO THE ASSIGNMENT JUDGE. THE INVESTIGATOR NEEDS TO BE TRAINED, AND ABLE TO MAKE JUDGEMENTS ABOUT APPROPRIATE REMEDIES. FLEXIBILITY IN REMEDIES AND TIME FRAMES TO WORK THEM OUT (WITHIN REASONABLE BOUNDS) IS REQUIRED. IN ORDER THAT ALL COURT EMPLOYEES MAY FEEL MORE COMFORTABLE WHEN THEY INITIALLY REPORT COMPLAINTS, THE COMMITTEE FURTHER SUGGEST THAT BOTH A MALE AND A FEMALE BE DESIGNATED AND TRAINED TO RECEIVE COMPLAINTS.

2. Formal Procedures.

In the event the complainant wishes to bypass the informal procedures or is not satisfied with the results of the informal procedures, a formal written complaint may be filed with the Assignment Judge or the Administrative Director of the Courts. Upon the receipt of a written formal complaint, the Assignment Judge or the Administrative Director shall, within five (5) working days, provide a copy of the complaint to the judge against whom the complaint is made. That judge shall be given seven (7) working days to respond either orally or in writing to the Assignment Judge or Administrative Director of the Courts. The contents of the oral or written response shall be provided to the complainant within three (3) working days.

The Assignment Judge, Administrative Director of the Courts, or their respective Designee, shall conduct an investigation forthwith and issue findings and conclusions to the parties within thirty (30) calendar days of the filing of the formal complaint.

The Assignment Judge or Administrative Director of the Courts may:

- a. dismiss the complaint, or
 - b. take other appropriate action at the local level,
- or

- c. refer the matter to the Chief Justice if the action required is beyond the authority of the Assignment Judge or the Administrative Director.

If either party is not satisfied with the decision of the Assignment Judge or Administrative Director, an appeal may be made, in writing, to the Chief Justice within ten (10) working days.

COMMENT: THE COMMITTEE BELIEVES STRONGLY THAT THE VICINAGE PROCESS MUST ALSO PROVIDE FOR A FORMAL COMPLAINT AND INVESTIGATION WITH FACT FINDING TO DETERMINE WHETHER THERE HAS BEEN INAPPROPRIATE WORK PLACE CONDUCT. AN INVESTIGATION AT THE VICINAGE LEVEL (OR AT THE IMMEDIATE ADMINISTRATIVE LEVEL FOR APPELLATE JUDGES, TAX COURT JUDGES OR SUPREME COURT JUSTICES), SHOULD BE CARRIED OUT BY THE ASSIGNMENT JUDGE, (OR OTHER ADMINISTRATIVE JUDGE) OR A DESIGNEE OF THAT JUDGE, OR STATE JUDICIARY PERSONNEL. THOSE INDIVIDUALS MUST BE GIVEN SENSITIVITY TRAINING IN THE AREA OF SEXUAL HARASSMENT IN ORDER THAT THEY MAY DEAL WITH THESE ISSUES EFFECTIVELY. IN ESTABLISHING TIME FRAMES AND NOTICE REQUIREMENTS THE COMMITTEE BALANCED THE NEED FOR PROMPT RESOLUTION OF THE COMPLAINT WITH FUNDAMENTAL PROVISIONS OF FAIRNESS AND DUE PROCESS.

3. Chief Justice.

Upon the receipt of an appeal or a referral by the Assignment Judge or Administrative Director, the Chief Justice may:

- a. Refer the matter, including all materials from the local vicinage to the Advisory Committee on Judicial Conduct for investigation, hearing, disposition and/or recommendations within one hundred and twenty (120) days (any extension of time may be granted only by the Chief Justice), in which case the complaint and response, if any, shall constitute the pleadings before the Committee, subject to appropriate amendments; or
- b. Refer the matter to the Supreme Court for consideration of the issuance of a complaint pursuant to R.2:14-1 and the appointment of a three judge panel pursuant to N.J.S.A. 2B:2A-1 et. seq. for expeditious resolution in accordance with an appropriate scheduling order. Upon receipt of the report, the Supreme Court will schedule oral arguments and decide the case as promptly as possible; or
- c. Take whatever other action the Chief Justice deems appropriate.

COMMENT: IF THE ASSIGNMENT JUDGE CANNOT RESOLVE THE MATTER, OR IF IT IS OF AN EGREGIOUS NATURE, THE ASSIGNMENT JUDGE SHOULD REFER THE CASE TO THE CHIEF JUSTICE. THE COMMITTEE SUGGESTS THAT THE CHIEF JUSTICE HAVE THREE OPTIONS AVAILABLE: 1) DIRECT REFERRAL TO THE ACJC FOR DISPOSITION ON AN EXPEDITED BASIS, 2) REQUEST THE COURT TO CONVENE A THREE-JUDGE PANEL TO CONSIDER REMOVAL, OR 3) TAKE ANY OTHER APPROPRIATE ACTION. IN THE FIRST OPTION, THE CHAIR OF THE ADVISORY COMMITTEE ON JUDICIAL CONDUCT BELIEVES THAT A TIME FRAME OF 120 DAYS IS REALISTIC, GIVEN THAT INITIAL INVESTIGATIVE WORK AT THE VICINAGE OR OTHER ADMINISTRATIVE LEVEL WOULD BE AVAILABLE TO THE ACJC. FOLLOWING THE COMMENT PERIOD, AN ADDITIONAL PHRASE WAS ADDED TO THE FIRST OPTION, SPECIFYING THAT THE COMPLAINT AND ANY RESPONSE FROM THE INVESTIGATION WOULD CONSTITUTE THE PLEADINGS BEFORE THE ACJC.

D. CONFIDENTIALITY.

Complainants may request to remain anonymous. However, complete confidentiality restricts options and may make it difficult to resolve the problem. Disclosure may be necessary under certain circumstances. However, inquiries and complaints will be kept confidential to the fullest extent practicable. The sexual harassment investigative proceedings will be conducted in a manner to protect the confidentiality of the complainant, the alleged harasser and all witnesses.

COMMENT: THIS STATEMENT WAS REWORKED BY THE COMMITTEE FOLLOWING THE COMMENT PERIOD IN ORDER TO RECONCILE DIFFERENCES BETWEEN THE TWO PROCEDURES AND IN CONSIDERATION OF COMMENTS RECEIVED. THIS STATEMENT USES SOME OF THE LANGUAGE FROM THE STATE DEPARTMENT OF PERSONNEL POLICY AND RETAINS SOME LANGUAGE FROM THE INITIAL JUDGES' PROCEDURE. THE COMMITTEE RECOGNIZES THAT THERE ARE TWO DIVERGENT VIEWS AMONG ATTORNEYS REGARDING THE NEED TO KEEP SEXUAL HARASSMENT COMPLAINTS CONFIDENTIAL AND AFFORD ANONYMITY TO COMPLAINANTS. THIS POLICY PROVIDES THE OPTION TO COMPLAINANTS TO REMAIN ANONYMOUS IN ORDER TO ENCOURAGE REPORTING BUT DOES NOT ASSUME THAT SUCH ANONYMITY WILL ALWAYS BE DESIRED OR NECESSARY. FURTHER, IT STATES AS THE DESIRED NORM CONFIDENTIALITY IN THE INVESTIGATIVE PROCESS BUT RECOGNIZES THAT IN SOME CIRCUMSTANCES SUCH CONFIDENTIALITY WOULD BE DETRIMENTAL TO THE INVESTIGATION AND PROPER OUTCOME, OR MAY EVEN BE IMPOSSIBLE, SUCH AS WHEN THERE IS AN AFFIRMATIVE DUTY TO REPORT CRIMINAL CONDUCT. THE COMMITTEE NOTES THAT IT IS IMPORTANT TO PROVIDE INVESTIGATORS WITH TRAINING IN THIS AREA.

E. PROHIBITION AGAINST RETALIATION.

Retaliation in any form, whether by a judge or by anyone else in the court system, against any person who complains of sexual harassment or who assists in the investigation of such

complaints is expressly prohibited. A charge of retaliation may be raised at any step of the complaint procedures or may form the basis of a new complaint. Retaliation may be the basis for a charge of misconduct even though the complaint of sexual harassment has been dismissed.

F. OTHER COMPLAINT PROCEDURES.

Complainants may choose to use both the Judiciary complaint procedures and external procedures available under Federal or State law. The time periods within which complaints may be filed with State or Federal civil rights agencies are short (within 180 days for the New Jersey Division on Civil Rights and within a maximum of 300 days under most circumstances for the U.S. Equal Employment Opportunity Commission), and choosing to use the Judiciary complaint procedures does not stop those time periods from running.

COMMENT:THE COMMITTEE STRESSES THAT NOTHING IN THIS PROCESS PREVENTS REFERRAL TO THE ACJC OR OTHER OUTSIDE AGENCIES AT ANY TIME. RATHER, THIS PROCESS IS INTENDED TO PROVIDE PROMPT AND EFFECTIVE REMEDIES FOR SEXUAL HARASSMENT COMPLAINTS IN A FASHION THAT WILL ENCOURAGE, NOT DISCOURAGE FULL DIALOGUE ABOUT THESE ISSUES. THE WORDING WAS CHANGED SLIGHTLY FOLLOWING THE COMMENT PERIOD TO INCLUDE TIME FRAMES FOR THE STATE AND FEDERAL CIVIL

RIGHTS AGENCIES. ADDRESSES AND TELEPHONE NUMBERS OF THOSE AGENCIES ARE CURRENTLY INCLUDED IN A PAMPHLET ABOUT SEXUAL HARASSMENT THAT WILL BE REVISED AFTER THESE PROCEDURES ARE ADOPTED.

G. RIGHT TO REPRESENTATION.

The complainant and the judge against whom a complaint is filed have the right to be represented by an attorney or a person of their choice at Step 1 (Informal) and Step 2 (Formal). Thereafter, the right to representation is governed by the New Jersey Supreme Court Rules.

COMMENT: BECAUSE OF POTENTIAL CONCERNS ABOUT THE UNAUTHORIZED PRACTICE OF LAW, THE COMMITTEE WISHES TO MAKE IT VERY CLEAR THAT A COMPLAINANT WOULD BE ABLE TO USE A NON-LAWYER AS A PERSONAL REPRESENTATIVE DURING INFORMAL PROCEDURES AND DURING FORMAL PROCEDURES UP TO AND THROUGH THE STEP OF AN APPEAL TO THE CHIEF JUSTICE.

**PHASE II: SEXUAL HARASSMENT COMPLAINTS AGAINST NON-JUDGE
EMPLOYEES OF THE JUDICIARY AND AGAINST NON-EMPLOYEES;
EDUCATION/TRAINING**

Once the Committee had completed its work on Phase I, it turned its attention to its remaining charge to review present procedures and educational programs offered by the judiciary and to recommend improvements. In the course of two meetings the members developed revised procedures for handling complaints against non-judges, including judiciary employees and others who come into contact with the courts, and discussed education/training efforts for judges and employees.

Complaints Against Non-Judge Judiciary Employees and Others

The Committee reviewed current judiciary policy and procedures as provided by Bob E. Battle, the judiciary EEO Officer. These include a separate statewide judiciary policy and individual vicinage policies set forth in their EEO/AA plans. While the vicinage policies generally follow the state approach, the Committee believes it essential to have one uniform policy for all vicinages as well as for judiciary offices at the state level. As noted previously, in drafting these procedures the Committee followed as closely as possible the format used in Phase I, drawing where appropriate upon language from the procedures for handling complaints against judges, retaining some language from the existing state judiciary policy, and also

relying on language from the State Department of Personnel Policy. At the close of the comment period on the procedures for handling complaints against judges, the Committee made some further changes to the non-procedural sections of both procedures (e.g. sections on policy, definition of sexual harassment, confidentiality, and retaliation) in order to provide for more uniformity in appropriate areas.

The proposed procedures are described below. Again, comment sections that are not a part of the procedures themselves are included in this discussion to provide more specific information about the Committee members' thinking in preparing this draft. A copy of the procedures is included in the Appendix.

**PROCEDURES FOR HANDLING SEXUAL HARASSMENT COMPLAINTS
AGAINST NON-JUDGE EMPLOYEES OF THE JUDICIARY
AND AGAINST NON-EMPLOYEES****

A. POLICY ON SEXUAL HARASSMENT

In recognition of the dignity and worth of each person who works for the Judiciary or who comes into contact with the courts, the New Jersey Judiciary promulgates this policy on sexual harassment for implementation throughout the court system. Accordingly, sexual harassment must not be permitted, whether it is committed by judges, employees or non-employees, against court employees, attorneys, litigants, witnesses or others who come into contact with the court system. Such harassment is illegal, is an abuse of authority and constitutes misconduct. Sexual harassment undermines the public's confidence in the Judiciary and the integrity of employment relationships, debilitates morale, and can be destructive to its victims and their associates, and therefore will not be tolerated.

Managerial and supervisory personnel are required to ensure adherence to and compliance with this policy and, upon being

**For complaints against judges see "PROCEDURES FOR HANDLING SEXUAL HARASSMENT COMPLAINTS AGAINST JUDGES"

informed of possible harassment, are required to take appropriate immediate action in response.

COMMENT: THESE PROCEDURES ALSO COVER SEXUAL HARASSMENT COMPLAINTS AGAINST NON-EMPLOYEES WHO ARE ALLEGED TO HAVE ENGAGED IN HARASSMENT IN THE COURSE OF BUSINESS WITH THE COURTS, SUCH AS VENDORS. THE COMMITTEE DETERMINED THAT IT WOULD BE APPROPRIATE TO INCLUDE THIS CATEGORY IN THE SAME PROCEDURES. TO MINIMIZE THE POTENTIAL FOR CONFUSION, THE COMMITTEE ALSO DELIBERATELY FOOTNOTED THE TITLE OF THE PROCEDURES TO REFER READERS TO THE PROPER PROCEDURE FOR COMPLAINTS AGAINST JUDGES. THE SECOND PARAGRAPH STRESSES THE RESPONSIBILITY OF MANAGEMENT AND SUPERVISORS, AND WAS ADAPTED FROM THE STATE DEPARTMENT OF PERSONNEL POLICY. TRAINING OF MANAGERS AND SUPERVISORS REGARDING THEIR RESPONSIBILITIES IS ESSENTIAL, AND WILL BE DISCUSSED IN THE NEXT SECTION OF THE REPORT.

B. WHAT IS SEXUAL HARASSMENT?

Sexual harassment is defined as unwelcome sexual advances, requests for sexual favors and other verbal or physical conduct based on gender when:

- Submission to such conduct is made either explicitly or implicitly a term or condition of an individual's employment;

- Submission to or rejection of such conduct by an individual is used as the basis for employment decisions affecting such individual; or
- Such conduct has the purpose or effect of unreasonably interfering with an individual's work performance or creating an intimidating, hostile or offensive working environment including, but not limited to:

Gender Harassment: Generalized gender-based remarks and behavior;

Seductive Behavior: Inappropriate, unwanted, offensive physical or verbal sexual advances;

Sexual Bribery: Solicitation of sexual activity or other sex-linked behavior by promise of reward;

Sexual Coercion: Coercion of sexual activity by threat of punishment; and

Sexual Assault: Gross sexual imposition like touching, fondling, grabbing or assault.

COMMENT: THE COMMITTEE DECIDED TO USE THE DEFINITION OF SEXUAL HARASSMENT INCLUDED IN THE STATE DEPARTMENT OF PERSONNEL POLICY FOR ITS COMPLETENESS, INCLUDING THE COURT'S CONCLUSION IN LEHMANN V. TOYS 'R' US, INC., ET. AL. THAT "HARASSING CONDUCT NEED NOT BE SEXUAL IN NATURE" (P. 15). THE COMMITTEE NOTES

THAT GUIDELINES THAT ELABORATE ON THE DEFINITION SHOULD BE DEVELOPED FOR TRAINERS AND PERSONS WHO HANDLE COMPLAINTS.

C. PROCEDURES FOR RESOLUTION

Employees of the Judiciary, attorneys, litigants, witnesses, and all other persons who come into contact with the court system who believe that they may have been subjected to sexual harassment by another, whether or not the other person is an employee of the Judiciary, may seek advice or file a complaint as follows:

I. INFORMAL PROCEDURES

STEP 1. Complainants are encouraged to inform the alleged harasser, either directly or through a third party, that the behavior in question is offensive and unwelcome. However, failure to do so will not preclude filing a complaint.

COMMENT: THIS IS TAKEN DIRECTLY FROM THE STATE DEPARTMENT OF PERSONNEL POLICY, AND IS CONSIDERED BY THE COMMITTEE TO BE A STEP THAT SHOULD BE ENCOURAGED IN EMPLOYEE TRAINING AS AN APPROPRIATE WAY TO STOP SITUATIONS BEFORE THEY ESCALATE. CLEARLY THIS STEP SHOULD NOT BE REQUIRED, BECAUSE THERE ARE SITUATIONS WHERE THE EMPLOYEE IS NOT ABLE, EITHER EMOTIONALLY OR PRACTICALLY TO DO SO.

STEP 2. If a complaining Judiciary employee is not satisfied by or does not choose to follow Step 1, then the individual should discuss the matter with her or his immediate supervisor, who should attempt to resolve the complaint informally. If the supervisor is the alleged offending party or part of the problem, the employee should go directly to Step 3.

If the alleged harasser is not an employee of the Judiciary, the complainant should still notify her or his immediate supervisor who shall discuss the appropriate course of action with the local EEO/AA officer or designee and act accordingly.

A non-employee who wishes to file an informal complaint should discuss the matter with either the local EEO/AA officer or designee or the senior manager^{***} responsible for the overall operations of the function where the alleged infraction occurred. Such person shall take appropriate action.

STEP 3. If the complainant is not satisfied with the results of Step 2, or if that step is bypassed, the complainant should meet with the local EEO/AA officer or designee and discuss the matter. Upon the receipt of an oral or written informal complaint, the local EEO/AA officer or designee shall inform the senior manager

^{***} Senior managers include the Deputy Director, Assistant Directors, Appellate Administrator, Clerks of the Court, Trial Court Administrators, Tax Court Administrator, Directors of Disciplinary Review Board, Office of Attorney Ethics and Lawyers Fund for Client Protection.

or Assignment Judge as appropriate and act upon the complaint within fifteen (15) calendar days by:

- i. providing information concerning the complainant's rights,
- ii. investigating and attempting to resolve the complaint informally, and
- iii. providing information concerning the complainant's rights to file a formal complaint.

COMMENT: THESE PROCEDURES MIRROR THOSE RECOMMENDED FOR HANDLING COMPLAINTS AGAINST JUDGES, WITH THE EXCEPTION THAT THE ASSIGNMENT JUDGE IS NOT DIRECTLY INVOLVED IN THE RECEIPT OF COMPLAINTS. THE COMMITTEE BELIEVES STRONGLY THAT THERE SHOULD BE AN INFORMAL COMPLAINT PROCESS CLEARLY DELINEATED AND PUBLISHED AT THE VICINAGE AND STATE LEVEL. REFERENCES THROUGHOUT TO THE "LOCAL" EEO/AA OFFICER AND THE SENIOR MANAGER ARE INTENDED TO INCLUDE SUCH POSITIONS AT THE VICINAGE AND STATE LEVEL. THE COMMITTEE RECOGNIZES THAT IN MANY INSTANCES EMPLOYEES WANT OFFENDING BEHAVIOR TO STOP, BUT DO NOT WANT TO BECOME INVOLVED IN AN EXTENSIVE COMPLAINT PROCESS. THE COMMITTEE FURTHER RECOGNIZES THAT ABSENT PROVISIONS FOR AN INFORMAL COMPLAINT PROCESS, PROBLEMS WILL LIKELY GO UNREPORTED, AND THAT IT IS ESSENTIAL TO HAVE A PROCESS THAT WILL ENCOURAGE REPORTING AT AN EARLY STAGE, BOTH SO THAT PROBLEMS CAN BE

RESOLVED AND SO THAT THE JUDICIARY CAN BE AWARE OF OCCURRENCES OF HARASSMENT AND TAKE APPROPRIATE ACTION. THE PERSON TO RECEIVE INFORMAL COMPLAINTS MUST BE SOMEONE WHO IS PERCEIVED TO BE IMPARTIAL, ABLE TO MAINTAIN CONFIDENCES, AND EASY TO TALK TO. WHEN AN EMPLOYEE LODGES AN INFORMAL COMPLAINT, PROMPT AND EFFECTIVE INVESTIGATIVE ACTION IS REQUIRED. DURING THIS STAGE, THE INVESTIGATOR ATTEMPTS TO WORK OUT A RESOLUTION TO THE PROBLEM THAT IS SATISFACTORY TO BOTH PARTIES. THE INVESTIGATOR NEEDS TO BE TRAINED, AND ABLE TO MAKE JUDGEMENTS ABOUT APPROPRIATE REMEDIES. FLEXIBILITY IN REMEDIES AND TIME FRAMES TO WORK THEM OUT (WITHIN REASONABLE BOUNDS) IS REQUIRED. IN ORDER THAT ALL COURT EMPLOYEES MAY FEEL MORE COMFORTABLE WHEN THEY INITIALLY REPORT COMPLAINTS, THE COMMITTEE FURTHER SUGGESTS THAT BOTH A MALE AND A FEMALE BE DESIGNATED AND TRAINED TO RECEIVE COMPLAINTS.

II. FORMAL PROCEDURES

STEP 4. If the complainant wishes to bypass the informal procedures or is not satisfied with the results of the informal procedures, a formal written complaint may be filed with the local EEO/AA officer or designee, who shall provide a copy to the Assignment Judge or senior manager as appropriate. The local EEO/AA officer or designee shall notify the alleged harasser of the complaint within five (5) working days of its receipt. The

alleged harasser shall have seven (7) working days from receipt of notification to respond either orally or in writing to the complaint. The contents of any oral or written response shall be provided to the complainant within three (3) working days of receipt. The complainant shall be given an opportunity to reply to the alleged harasser's response within five (5) working days of receipt.

The EEO/AA officer or designee shall conduct an investigation forthwith and within thirty (30) calendar days of the filing of the formal complaint issue a written report containing findings, conclusions, and recommendations to the Assignment Judge or to the senior manager as appropriate for disposition. In exceptional cases, an additional twenty (20) calendar days may be allowed. The final written determination shall be made by the Assignment Judge or senior manager within ten (10) working days of receipt of the investigation report. A copy of the written determination shall be sent to the complainant and to the alleged harasser, and shall be filed with the Judiciary EEO Officer at the Administrative Office of the Courts.

In cases where the Assignment Judge or senior manager is considered to be part of the problem, the complainant may bypass Step 4 and file a complaint directly with the Administrative

Director. In such cases the Administrative Director shall follow the same procedures and time frames as set forth in Step 4.

COMMENT: IN ESTABLISHING TIME FRAMES AND NOTICE REQUIREMENTS THE COMMITTEE BALANCED THE NEED FOR PROMPT RESOLUTION OF THE COMPLAINT WITH FUNDAMENTAL PROVISIONS OF FAIRNESS AND DUE PROCESS.

STEP 5. If either party is not satisfied with the determination of the senior manager, or with that of the Assignment Judge, an appeal may be made, in writing, to the Administrative Director within fifteen (15) working days. The appeal shall include all of the information provided in Step 4. An appeals panel composed of the Administrative Director or designee, and two other persons appointed by the Chief Justice including an Assignment Judge not involved in the initial complaint and a public member, shall issue a final written determination within 30 days of the receipt of the appeal. A copy of that written determination shall be sent to both parties, the person who issued the initial determination in Step 4, and the Judiciary EEO Officer.

COMMENT: THE COMMITTEE DISCUSSED AT LENGTH THE ISSUE OF WHETHER THE PROCEDURES SHOULD PROVIDE FOR AN APPEAL BY EITHER THE COMPLAINANT, WHO MAY NOT BE SATISFIED BY THE ACTIONS TAKEN, OR

BY THE ALLEGED HARASSER, WHO MAY NOT BE HAPPY WITH DISCIPLINE IMPOSED. IN THE DISCUSSION, IT WAS RECOGNIZED THAT AN APPEALS PROCESS ADDS BOTH TIME AND ANOTHER LAYER TO WHAT THE COMMITTEE DESIRES TO BE AN EFFICIENT AND STRAIGHTFORWARD COMPLAINT PROCEDURE. HOWEVER, IT WAS FELT THAT IT WAS IMPORTANT TO INCLUDE A STATE-LEVEL APPEALS PROCESS TO PROVIDE SOME STANDARDIZATION AND A FINAL OPPORTUNITY TO RESOLVE A COMPLAINT TO THE SATISFACTION OF THE COMPLAINANT WITHIN THE JUDICIARY. THE APPEALS PANEL CONCEPT WAS ADOPTED TO RESOLVE CONCERNS THAT IT WOULD BE INAPPROPRIATE FOR AN ASSIGNMENT JUDGE DETERMINATION TO BE REVIEWABLE SOLELY BY THE ADMINISTRATIVE DIRECTOR.

D. CONFIDENTIALITY

Complainants may request to remain anonymous. However, complete confidentiality restricts options and may make it difficult to resolve the problem. Disclosure may be necessary under certain circumstances. However, inquiries and complaints will be kept confidential to the fullest extent practicable. The sexual harassment investigative proceedings will be conducted in a manner to protect the confidentiality of the complainant, the alleged harasser and all witnesses.

COMMENT: THIS STATEMENT USES SOME OF THE LANGUAGE FROM THE STATE DEPARTMENT OF PERSONNEL POLICY AND RETAINS SOME LANGUAGE FROM THE INITIAL JUDGES' PROCEDURES. THE COMMITTEE RECOGNIZES THAT

THERE ARE TWO DIVERGENT VIEWS AMONG ATTORNEYS REGARDING THE NEED TO KEEP SEXUAL HARASSMENT COMPLAINTS CONFIDENTIAL AND AFFORD ANONYMITY TO COMPLAINANTS. THIS POLICY PROVIDES THE OPTION TO COMPLAINANTS TO REMAIN ANONYMOUS IN ORDER TO ENCOURAGE REPORTING, BUT DOES NOT ASSUME THAT SUCH ANONYMITY WILL ALWAYS BE DESIRED OR NECESSARY. FURTHER, IT STATES AS THE DESIRED NORM CONFIDENTIALITY IN THE INVESTIGATIVE PROCESS, BUT RECOGNIZES THAT IN SOME CIRCUMSTANCES SUCH CONFIDENTIALITY WOULD BE DETRIMENTAL TO THE INVESTIGATION AND PROPER OUTCOME, OR MAY EVEN BE IMPOSSIBLE, SUCH AS WHEN THERE IS AN AFFIRMATIVE DUTY TO REPORT CRIMINAL CONDUCT. THE COMMITTEE NOTES THAT IT IS IMPORTANT TO PROVIDE INVESTIGATORS WITH TRAINING IN THIS AREA.

E. PROHIBITION AGAINST RETALIATION

Retaliation in any form, whether by a judge or by anyone else in the court system, against any person who complains of sexual harassment or who assists in the investigation of such complaints is expressly prohibited. A charge of retaliation may be raised at any step of the complaint procedures or may form the basis of a new complaint. Retaliation may be the basis for a charge of misconduct even though the complaint of sexual harassment has been dismissed.

COMMENT: THE COMMITTEE ADAPTED THIS PROVISION FROM THE STATE
DEPARTMENT OF PERSONNEL POLICY.

F. REMEDIAL ACTION

Remedial action for persons found in violation of this policy may include: referral to counseling; oral reprimand; written reprimand; reassignment; suspension (with or without pay); termination; and referral to the criminal justice system as possible violation of state or federal statutes. Remedial action for non-employees may also include termination of contracts with vendors or other appropriate action.

G. OTHER COMPLAINT PROCEDURES

Complainants may choose to use both the Judiciary complaint procedures and external procedures available under Federal or State law. The time periods within which complaints may be filed with State or Federal civil rights agencies are short (within 180 days for the New Jersey Division on Civil Rights and within a maximum of 300 days under most circumstances for the U.S. Equal Employment Opportunity Commission), and choosing to use the Judiciary complaint procedures does not stop those time periods from running.

H. RIGHT TO REPRESENTATION

While representation is not required, both the complainant and the person against whom a complaint is filed have the right to be represented throughout the process by an attorney, union representative, or a person of their choice.

COMMENT: THE COMMITTEE NOTES THAT REPRESENTATION BY A NON-ATTORNEY IN SUCH PROCEDURES DOES NOT CONSTITUTE THE UNAUTHORIZED PRACTICE OF LAW.

Education/Training

The Committee reviewed current and proposed programs of education/training in the area of sexual harassment and formulated some general recommendations with respect to future programs. In its review the Committee had the benefit of presentations from John M. Neufeld, Chief, Training and Staff Development and Richard L. Saks, Esq., Chief, Judicial Education. The Committee understands that approximately five years ago all judiciary staff were required to attend a day-long course on EEO/AA that included approximately two hours on sexual harassment that were interspersed with other materials. More recently a course has been given for all judiciary staff and judges entitled "Beyond EEO/AA" that included two scenarios dealing with sexual harassment. To date there has been no program focused entirely

on sexual harassment that all staff or judges are required to attend; however a course on sexual harassment was offered at the Staff College this November and two years ago. At this year's Judicial College 112 judges registered for a three-hour course on sexual harassment that was mandatory for Assignment Judges and Presiding Judges, and voluntary for all other judges.

Staff also described general plans for mandatory training this spring for all judges and judiciary staff, to include a basic component of approximately two hours for all individuals, and an additional hour for managers and supervisors that would focus on their responsibilities. The Committee reviewed two of many video tapes on sexual harassment that are available for training purposes. While the Committee felt that it was not appropriate to endorse a particular video, members agreed on general objectives that such a video should accomplish, including 1) conveying the message that sexual harassment will not be tolerated and that respect in the workplace is essential; and 2) providing examples of positive and negative employee interaction that would stimulate class discussion.

Based upon its review and member experience in this area, the Committee offers the following recommendations with respect to training:

1. A program of sexual harassment training must be developed and presented to all staff and judges. Such training is clearly required for the judiciary to meet its obligations as an employer. The goals of the general training should be 1) to acquaint all judges and staff with the evolving definition of sexual harassment, 2) to impart the understanding that sexual harassment will not be tolerated and that respect in the workplace is essential, and 3) to communicate information regarding the complaint processes. Such a course should be interactive as opposed to passive, and sufficient time should be made available in the day.

2. A program of sexual harassment training must be developed and presented to all managers and supervisors. The purpose of this training should be to inform these individuals of their responsibilities to maintain a workplace that is free from sexual harassment and to equip them to properly handle complaints or problems.

3. Specific training programs should be developed and required for all individuals, be they judges or staff, who will receive or investigate complaints under the procedures that will be established. Such training should include sensitivity training as well as training in investigative techniques.

4. Sexual Harassment training should if possible be offered jointly for judges and staff. Members concluded that joint training would convey the message to staff that this training must be important if judges are attending it with them, and that it is also important for judges to know what training has been provided to staff. Joint training also has the practical advantage of providing more opportunities in a particular vicinage for the judges to schedule their attendance.

5. Sexual harassment training should be required for all municipal court judges and employees. While the Committee notes the dual responsibilities of municipalities and the judiciary for Municipal Court judges and staff, members suggest that sexual harassment training be a mandatory segment of the training currently provided by the AOC for these individuals.

6. Sexual harassment training courses should be planned as part of a continuous curriculum. The Committee recognizes that sexual harassment training is not a "one-shot deal". The subject is so serious that it needs to be introduced and continually included in other training programs that are offered in the judiciary such as new employee and new judge training, volunteer training, and supervisory training. Consultant resources should be made available to AOC staff in this planning process.

7. Sexual harassment training should be provided to staff of the sheriff, surrogate and county clerk whose work is connected to the court. The Committee believes strongly that the judiciary is responsible for providing a court setting that is free from harassment, and therefore should require training for all staff who work in the courts.

CONCLUSION

The New Jersey Supreme Court has broken new ground in its opinions in the area of sexual harassment. The recommended procedures for handling complaints and recommendations regarding training contained in this report are submitted in the hope that they will assist the Court in its administrative capacity to meet the requirements it has established for employers in the State of New Jersey. As the Court noted in Lehmann V. Toys 'R' Us, Inc., etc., et. al. "the most important tool in the prevention of sexual harassment is the education of both employees and employers... [P]roviding employers with the incentive not only to provide voluntary compliance programs but also to insist on the effective enforcement of their programs will do much to ensure that hostile work environment discrimination claims disappear from the workplace and the courts". p.(47)

Respectfully submitted,

Hon. Marilyn Loftus, Chair
Hon. Edward W. Beglin, Jr.
Mary L. Crangle, Esq.
Joseph F. Davis, Esq.
Francis X. Dee, Esq.
M. Joan Foster, Esq.
Joan Kane Josephson, Esq.
Ellen O'Connell, Esq.
Paul Schachter, Esq.
Hon. Thomas F. Shebell, Jr.
Hon. Isabel Brawer Stark

AOC Staff:

Bob E. Battle
Patrick J. Monahan, Esq.
Marilyn C. Slivka

APPENDIX A

PROCEDURES FOR HANDLING
SEXUAL HARASSMENT COMPLAINTS AGAINST JUDGES

**PROCEDURES FOR HANDLING
SEXUAL HARASSMENT COMPLAINTS
AGAINST JUDGES**

A. POLICY ON SEXUAL HARASSMENT.

In recognition of the dignity and worth of each person who works for the Judiciary or who comes into contact with the courts, the New Jersey Judiciary promulgates this policy on sexual harassment for implementation throughout the court system. Accordingly, sexual harassment must not be permitted, whether it is committed by judges, employees or non-employees, against court employees, attorneys, litigants, witnesses or others who come into contact with the court system. Such harassment is illegal, is an abuse of authority and constitutes misconduct. Sexual harassment undermines the public's confidence in the Judiciary and the integrity of employment relationships, debilitates morale, and can be destructive to its victims and their associates, and therefore will not be tolerated.

B. WHAT IS SEXUAL HARASSMENT?

Sexual harassment is defined as unwelcome sexual advances, requests for sexual favors and other verbal or physical conduct based on gender when:

- Submission to such conduct is made either explicitly or implicitly a term or condition of an individual's employment;
- Submission to or rejection of such conduct by an individual is used as the basis for employment decisions affecting such individual; or
- Such conduct has the purpose or effect of unreasonably interfering with an individual's work performance or creating an intimidating, hostile or offensive working environment including, but not limited to:

Gender Harassment: Generalized gender-based remarks and behavior;

Seductive Behavior: Inappropriate, unwanted, offensive physical or verbal sexual advances;

Sexual Bribery: Solicitation of sexual activity or other sex-linked behavior by promise of reward;

Sexual Coercion: Coercion of sexual activity by threat of punishment; and

Sexual Assault: Gross sexual imposition like touching, fondling, grabbing or assault.

C. PROCEDURES FOR RESOLUTION.

Employees of the Judiciary, attorneys, litigants, witnesses and others who come into contact with the court system who

believe that they may have been subjected to sexual harassment by a judge may seek advice or file a complaint as follows:

1. Informal Procedures.

An informal complaint may be made to the Vicinage EEO/AA Designee and/or the Assignment Judge.*

Upon the receipt of an oral or written informal complaint, the Vicinage EEO/AA Designee or the Assignment Judge shall act upon the complaint within fifteen (15) calendar days by:

- a. providing information concerning the complainant's rights, and/or
- b. investigating and attempting to resolve the complaint informally, and/or
- c. providing information concerning the complainant's rights to file a formal complaint.

In the event the complaint is not resolved on an informal basis and the complainant wishes to proceed, the EEO/AA Designee will assist in preparing a formal complaint.

If an investigation is undertaken, the judge who is the subject of the complaint shall be notified within five (5) calendar days.

2. Formal Procedures.

In the event the complainant wishes to bypass the informal procedures or is not satisfied with the results of the informal procedures, a formal written complaint may be filed with the Assignment Judge or the Administrative Director of the Courts. Upon the receipt of a written formal complaint, the Assignment Judge or the Administrative Director shall, within five (5) working days, provide a copy of the complaint to the

* These are the procedures to be employed in making a complaint against a Municipal Court Judge or a Superior Court Judge. Where the complaint is against an Assignment Judge or Justice of the Supreme Court, it may be filed with the A.O.C. EEO Officer, Administrative Director of the Courts, or Chief Justice. Where the complaint is against a Tax Court or Appellate Division Judge, it may be filed with the A.O.C. EEO Officer, Administrative Director of the Courts, Presiding Judge of the Tax Court or Presiding Judge for Administration of the Appellate Division, as appropriate.

judge against whom the complaint is made. That judge shall be given seven (7) working days to respond either orally or in writing to the Assignment Judge or Administrative Director of the Courts. The contents of the oral or written response shall be provided to the complainant within three (3) working days.

The Assignment Judge, Administrative Director of the Courts, or their respective Designee, shall conduct an investigation forthwith and issue findings and conclusions to the parties within thirty (30) calendar days of the filing of the formal complaint.

The Assignment Judge or Administrative Director of the Courts may:

- a. dismiss the complaint, or
- b. take other appropriate action at the local level, or
- c. refer the matter to the Chief Justice if the action required is beyond the authority of the Assignment Judge or the Administrative Director.

If either party is not satisfied with the decision of the Assignment Judge or Administrative Director, an appeal may be made, in writing, to the Chief Justice within ten (10) working days.

3. Chief Justice.

Upon the receipt of an appeal or a referral by the Assignment Judge or Administrative Director, the Chief Justice may:

- a. Refer the matter, including all materials from the local vicinage to the Advisory Committee on Judicial Conduct for investigation, hearing, disposition and/or recommendations within one hundred and twenty (120) days (any extension of time may be granted only by the Chief Justice), in which case the complaint and response, if any, shall constitute the pleadings before the Committee, subject to appropriate amendments; or
- b. Refer the matter to the Supreme Court for consideration of the issuance of a complaint pursuant to R.2:14-1 and the appointment of a three judge panel pursuant to N.J.S.A. 2B:2A-1 et. seq. for expeditious resolution in accordance with an appropriate scheduling order. Upon receipt of

the report, the Supreme Court will schedule oral arguments and decide the case as promptly as possible; or

- c. Take whatever other action the Chief Justice deems appropriate.

D. CONFIDENTIALITY.

Complainants may request to remain anonymous. However, complete confidentiality restricts options and may make it difficult to resolve the problem. Disclosure may be necessary under certain circumstances; however, inquiries and complaints will be kept confidential to the fullest extent practicable. The sexual harassment investigative proceedings will be conducted in a manner to protect the confidentiality of the complainant, the alleged harasser and all witnesses.

E. PROHIBITION AGAINST RETALIATION.

Retaliation in any form, whether by a judge or by anyone else in the court system, against any person who complains of sexual harassment or who assists in the investigation of such complaints is expressly prohibited. A charge of retaliation may be raised at any step of the complaint procedures or may form the basis of a new complaint. Retaliation may be the basis for a charge of misconduct even though the complaint of sexual harassment has been dismissed.

F. OTHER COMPLAINT PROCEDURES.

Complainants may choose to use both the Judiciary complaint procedures and external procedures available under Federal or State law. The time periods within which complaints may be filed with State or Federal civil rights agencies are short (within 180 days for the New Jersey Division on Civil Rights and within a maximum of 300 days under most circumstances for the U.S. Equal Employment Opportunity Commission), and choosing to use the Judiciary complaint procedures does not stop those time periods from running.

G. RIGHT TO REPRESENTATION.

The complainant and the judge against whom a complaint is filed have the right to be represented by an attorney or a person of their choice at Step 1 (Informal) and Step 2 (Formal). Thereafter, the right to representation is governed by the New Jersey Supreme Court Rules.

**ELECTIVE PROCEDURES FOR HANDLING
SEXUAL HARASSMENT COMPLAINTS
AGAINST JUDGES**

A. POLICY ON SEXUAL HARASSMENT.

The firm commitment of the New Jersey Judiciary is that sexual harassment by judges of court employees, attorneys, litigants, witnesses and others who come into contact with the court system is an abuse of authority and constitutes prohibited unprofessional and unacceptable conduct. Sexual harassment undermines the public's confidence in the Judiciary and the integrity of employment relationships, debilitates morale, and can be destructive to its victims and their associates.

B. WHAT IS SEXUAL HARASSMENT?

Sexual harassment is unwelcome conduct that is based on gender, whether the behavior is verbal or physical in nature, regardless of the peer, supervisory or other relationship between the parties, and regardless of whether the manifestation of the harassment is requests for sexual favors, sexist remarks, or behavior which denigrates a person because of the person's sex or sexual orientation.

C. PROCEDURES FOR RESOLUTION.

Employees of the Judiciary, attorneys, litigants, witnesses and others who come into contact with the court system who believe that they may have been subjected to sexual harassment by a judge may seek advice or file a complaint as follows:

1. Informal Procedures.

An informal complaint may be made to the Vicinage EEO/AA Designee and/or the Assignment Judge.*

Upon the receipt of an oral or written informal complaint, the Vicinage EEO/AA Designee or the Assignment Judge shall act upon the complaint within fifteen (15) calendar days by:

a. providing information concerning the complainant's rights, and/or

* Where the complaint is against an Assignment Judge or Justice of the Supreme Court, it may be filed with the A.O.C. EEO Officer, Administrative Director of the Courts, or Chief Justice. Where the complaint is against a Tax Court or Appellate Division Judge, it may be filed with the A.O.C. EEO Officer, Administrative Director of the Courts, or Presiding Judge for Administration.

b. investigating and attempting to resolve the complaint informally, and/or

c. providing information concerning the complainant's rights to file a formal complaint.

In the event the complaint is not resolved on an informal basis and the complainant wishes to proceed, the EEO/AA Designee will assist in preparing a formal complaint.

If an investigation is undertaken, the judge who is the subject of the complaint shall be notified within five (5) calendar days.

2. Formal Procedures.

In the event the complainant wishes to bypass the informal procedures or is not satisfied with the results of the informal procedures, a formal written complaint may be filed with the Assignment Judge or the Administrative Director of the Courts. Upon the receipt of a written formal complaint, the Assignment Judge or the Administrative Director shall, within five (5) working days, provide a copy of the complaint to the judge against whom the complaint is made. That judge shall be given seven (7) working days to respond either orally or in writing to the Assignment Judge or Administrative Director of the Courts. The contents of the oral or written response shall be provided to the complainant within three (3) working days.

The Assignment Judge, Administrative Director of the Courts, or their respective Designee, shall conduct an investigation forthwith and issue findings and conclusions to the parties within thirty (30) calendar days of the filing of the formal complaint.

The Assignment Judge or Administrative Director of the Courts may:

- a. dismiss the complaint, or
- b. take other appropriate action at the local level, or
- c. refer the matter to the Chief Justice if the action required is beyond the authority of the Assignment Judge or the Administrative Director.

If either party is not satisfied with the decision of the Assignment Judge or Administrative Director, an appeal may be made, in writing, to the Chief Justice within ten (10) working days.

3. Chief Justice.

Upon the receipt of an appeal or a referral by the Assignment Judge or Administrative Director, the Chief Justice may:

a. Refer the matter, including all documentation from the local vicinage to the Advisory Committee on Judicial Conduct for investigation, hearing, disposition and/or recommendations within one hundred and twenty (120) days (any extension of time may be granted only by the Chief Justice); or

b. Refer the matter to the Supreme Court for consideration of the issuance of a complaint pursuant to R.2:14-1 and the appointment of a three judge panel pursuant to N.J.S.A. 2B:2A-1 et. seq. for expeditious resolution in accordance with an appropriate scheduling order. Upon receipt of the report, the Supreme Court will schedule oral arguments and decide the case as promptly as possible; or

c. Take whatever other action the Chief Justice deems appropriate.

D. CONFIDENTIALITY.

To the fullest extent practicable, inquiries and complaints will be kept confidential. Complainants may request to remain anonymous. However, complete confidentiality restricts options and may make it difficult to resolve the problem. In addition, disclosure may be necessary under certain circumstances.

E. PROHIBITION AGAINST RETALIATION.

Retaliation in any form, whether by a judge or by anyone else in the court system, against any person who complains of sexual harassment or who assists in the investigation of such complaints is expressly prohibited. A charge of retaliation may be raised at any step of the complaint procedure or may form the basis of a new complaint. Retaliation may be the basis for a charge of judicial misconduct even though the complaint of sexual harassment has been dismissed.

F. OTHER COMPLAINT PROCEDURES.

Complainants may choose to use both the internal elective complaint procedure and any external procedures which may be available under Federal or State law. The time periods within which complaints may be filed with State or Federal civil rights agencies are short, and choosing to use this elective complaint procedure does not stop those time periods from running.

G. RIGHT TO REPRESENTATION.

The complainant and the judge against whom a complaint is filed have the right to be represented by an attorney or a person of their choice at Step 1 (Informal) and Step 2 (Formal). Thereafter, the right to representation is governed by the New Jersey Supreme Court Rules.

APPENDIX B

PROCEDURES FOR HANDLING SEXUAL HARASSMENT
COMPLAINTS AGAINST NON-JUDGE EMPLOYEES
OF THE JUDICIARY
AND
AGAINST NON-EMPLOYEES

**PROCEDURES FOR HANDLING SEXUAL HARASSMENT COMPLAINTS
AGAINST NON-JUDGE EMPLOYEES OF THE JUDICIARY
AND AGAINST NON-EMPLOYEES¹**

A. POLICY ON SEXUAL HARASSMENT

In recognition of the dignity and worth of each person who works for the Judiciary or who comes into contact with the courts, the New Jersey Judiciary promulgates this policy on sexual harassment for implementation throughout the court system. Accordingly, sexual harassment must not be permitted, whether it is committed by judges, employees or non-employees, against court employees, attorneys, litigants, witnesses or others who come into contact with the court system. Such harassment is illegal, is an abuse of authority and constitutes misconduct. Sexual harassment undermines the public's confidence in the Judiciary and the integrity of employment relationships, debilitates morale, and can be destructive to its victims and their associates, and therefore will not be tolerated.

Managerial and supervisory personnel are required to ensure adherence to and compliance with this policy and, upon being informed of possible harassment, are required to take appropriate immediate action in response.

B. WHAT IS SEXUAL HARASSMENT?

Sexual harassment is defined as unwelcome sexual advances, requests for sexual favors and other verbal or physical conduct based on gender when:

- Submission to such conduct is made either explicitly or implicitly a term or condition of an individual's employment;
- Submission to or rejection of such conduct by an individual is used as the basis for employment decisions affecting such individual; or
- Such conduct has the purpose or effect of unreasonably interfering with an individual's work performance or creating an intimidating, hostile or offensive working environment including, but not limited to:

Gender Harassment: Generalized gender-based remarks and behavior;

Seductive Behavior: Inappropriate, unwanted, offensive physical or verbal sexual advances;

Sexual Bribery: Solicitation of sexual activity or other sex-linked behavior by promise of reward;

Sexual Coercion: Coercion of sexual activity by threat of punishment; and

¹For complaints against judges see "PROCEDURES FOR HANDLING SEXUAL HARASSMENT COMPLAINTS AGAINST JUDGES"

Sexual Assault: Gross sexual imposition like touching, fondling, grabbing or assault.

C. PROCEDURES FOR RESOLUTION

Employees of the Judiciary, attorneys, litigants, witnesses, and all other persons who come into contact with the court system who believe that they may have been subjected to sexual harassment by another, whether or not the other person is an employee of the Judiciary, may seek advice or file a complaint as follows:

I. INFORMAL PROCEDURES

STEP 1. Complainants are encouraged to inform the alleged harasser, either directly or through a third party, that the behavior in question is offensive and unwelcome. However, failure to do so will not preclude filing a complaint.

STEP 2. If a complaining Judiciary employee is not satisfied by or does not choose to follow Step 1, then the individual should discuss the matter with her or his immediate supervisor, who should attempt to resolve the complaint informally. If the supervisor is the alleged offending party or part of the problem, the employee should go directly to Step 3.

If the alleged harasser is not an employee of the Judiciary, the complainant should still notify her or his immediate supervisor who shall discuss the appropriate course of action with the local EEO/AA officer or designee and act accordingly.

A non-employee who wishes to file an informal complaint should discuss the matter with either the local EEO/AA officer or designee or the senior manager² responsible for the overall operations of the function where the alleged infraction occurred. Such person shall take appropriate action.

STEP 3. If the complainant is not satisfied with the results of Step 2, or if that step is bypassed, the complainant should meet with the local EEO/AA officer or designee and discuss the matter. Upon the receipt of an oral or written informal complaint, the local EEO/AA officer or designee shall inform the senior manager or Assignment Judge as appropriate and act upon the complaint within fifteen (15) calendar days by:

- i. providing information concerning the complainant's rights,

²Senior managers include the Deputy Director, Assistant Directors, Appellate Administrator, Clerks of the Court, Trial Court Administrators, Tax Court Administrator, Directors of Disciplinary Review Board, Office of Attorney Ethics and Lawyers Fund for Client Protection.

- ii. investigating and attempting to resolve the complaint informally, and
- iii. providing information concerning the complainant's rights to file a formal complaint.

II. FORMAL PROCEDURES

STEP 4. If the complainant wishes to bypass the informal procedures or is not satisfied with the results of the informal procedures, a formal written complaint may be filed with the local EEO/AA officer or designee, who shall provide a copy to the Assignment Judge or senior manager as appropriate. The local EEO/AA officer or designee shall notify the alleged harasser of the complaint within five (5) working days of its receipt. The alleged harasser shall have seven (7) working days from receipt of notification to respond either orally or in writing to the complaint. The contents of any oral or written response shall be provided to the complainant within three (3) working days of receipt. The complainant shall be given an opportunity to reply to the alleged harasser's response within five (5) working days of receipt.

The EEO/AA officer or designee shall conduct an investigation forthwith and within thirty (30) calendar days of the filing of the formal complaint issue a written report containing findings, conclusions, and recommendations to the Assignment Judge or to the senior manager as appropriate for disposition. In exceptional cases, an additional twenty (20) calendar days may be allowed. The final written determination shall be made by the Assignment Judge or senior manager within ten (10) working days of receipt of the investigation report. A copy of the written determination shall be sent to the complainant and to the alleged harasser, and shall be filed with the Judiciary EEO Officer at the Administrative Office of the Courts.

In cases where the Assignment Judge or senior manager is considered to be part of the problem, the complainant may bypass Step 4 and file a complaint directly with the Administrative Director. In such cases the Administrative Director shall follow the same procedures and time frames as set forth in Step 4.

STEP 5. If either party is not satisfied with the determination of the senior manager, or with that of the Assignment Judge, an appeal may be made, in writing, to the Administrative Director within fifteen (15) working days. The appeal shall include all of the information provided in Step 4. An appeals panel composed of the Administrative Director or designee, and two other persons appointed by the Chief Justice including an Assignment Judge not involved in the initial complaint and a public member, shall issue a final written determination within 30 days of the receipt of the appeal. A copy of that written determination shall be sent to both

parties, the person who issued the initial determination in Step 4, and the Judiciary EEO Officer.

D. CONFIDENTIALITY

Complainants may request to remain anonymous. However, complete confidentiality restricts options and may make it difficult to resolve the problem. Disclosure may be necessary under certain circumstances; however, inquiries and complaints will be kept confidential to the fullest extent practicable. The sexual harassment investigative proceedings will be conducted in a manner to protect the confidentiality of the complainant, the alleged harasser and all witnesses.

E. PROHIBITION AGAINST RETALIATION

Retaliation in any form, whether by a judge or by anyone else in the court system, against any person who complains of sexual harassment or who assists in the investigation of such complaints is expressly prohibited. A charge of retaliation may be raised at any step of the complaint procedures or may form the basis of a new complaint. Retaliation may be the basis for a charge of misconduct even though the complaint of sexual harassment has been dismissed.

F. REMEDIAL ACTION

Remedial action for persons found in violation of this policy may include: referral to counseling; oral reprimand; written reprimand; reassignment; suspension (with or without pay); termination; and referral to the criminal justice system as possible violation of state or federal statutes. Remedial action for non-employees may also include termination of contracts with vendors or other appropriate action.

G. OTHER COMPLAINT PROCEDURES

Complainants may choose to use both the Judiciary complaint procedures and external procedures available under Federal or State law. The time periods within which complaints may be filed with State or Federal civil rights agencies are short (within 180 days for the New Jersey Division on Civil Rights and within a maximum of 300 days under most circumstances for the U.S. Equal Employment Opportunity Commission), and choosing to use the Judiciary complaint procedures does not stop those time periods from running.

H. RIGHT TO REPRESENTATION

While representation is not required, both the complainant and the person against whom a complaint is filed have the right to be represented throughout the process by an attorney, union representative, or a person of their choice.

APPENDIX C

PRESENT JUDICIARY DISCRIMINATION
COMPLAINT PROCEDURE

ADMINISTRATIVE OFFICE OF THE COURTS
STATE OF NEW JERSEY

DISCRIMINATION COMPLAINT PROCEDURE

This discrimination complaint procedure will be used for all complaints alleging unlawful treatment among or between employees (e.g., transfers, termination) on the basis of race, color, sex (including sexual harassment), religion, age, national origin, political affiliation, marital status, physical or mental handicap. Both classified and unclassified employees, including judges' secretaries, may file discrimination complaints. The steps are as follows:

1. Discuss the matter with an immediate supervisor (e.g. the judge to whom the employee is assigned or other key management personnel) and the employee will indicate that he/she wants corrective action to be taken. In any complaint alleging discrimination by an immediate supervisor, the employee may bypass this step and follow Step 2.
2. If the employee is not satisfied with the results of the discussion with the immediate supervisor or if Step 1 is bypassed, the employee may file a written complaint with the Assignment Judge at the trial court level, if the Assignment Judge is not a party to the grievance, or with the Administrative Director of the Courts if the aggrieved person is a state level employee. The following information is to be given:
 - a. The employee's name, title, and immediate supervisor;
 - b. the basis for the complaint (e.g. age, race, sex);
 - c. a detailed description of the alleged discriminatory action.

At the State level, the Administrative Director or his designee will acknowledge receipt of the complaint and send a copy to the EEO Officer in the AOC. The Administrative Director or his designee will issue a final written determination to the employee within 30 days of the receipt of the complaint. A copy of the determination will be sent to the EEO Officer in the AOC. If the employee agrees, the Administrative Director, or his designee, may have an additional 20 days in which to respond.

At the trial court level, the Assignment Judge will acknowledge receipt of the complaint and within 30 days of receipt of the complaint act in a prudent way to resolve the matter. If the employee agrees the Assignment Judge, or his designee, may have an additional 20 days in which to respond.

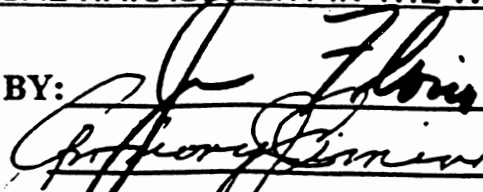
3. If the employee is not satisfied with the determination of the Assignment Judge, the employee may appeal to the Administrative Director of the Courts. The appeal will include all of the information provided in Step 2 and a copy of the Assignment Judge's determination. The Administrative Director, or his designee, will issue a final written determination within 30 days of the receipt of the appeal or complaint. A copy of the determination will be sent to the EEO Officer in the AOC.
4. Any employee dissatisfied with a determination that is made will be advised that the New Jersey Division on Civil Rights and the U.S. Equal Employment Opportunity Commission (EEOC) have complaint procedures which can be utilized.

APPENDIX D

STATE OF NEW JERSEY DEPARTMENT OF PERSONNEL
POLICY ON SEXUAL HARASSMENT IN THE WORKPLACE

SUBJECT: SEXUAL HARASSMENT IN THE WORKPLACE

AUTHORIZED BY:



Jim Florio, Governor

Anthony Cimino,
Commissioner

EFFECTIVE DATE: 9/1/93

PURPOSE

In recognition of the dignity and worth of each person in State employment, this policy concerning sexual harassment is promulgated State-wide. All employees—female or male—shall be permitted to work in an environment free from all forms of unlawful discrimination and conduct which can be considered harassing, coercive or disruptive, including sexual harassment. Sexual harassment is a form of employee misconduct which undermines the integrity of the employment relationship. Sexual harassment debilitates morale and interferes with work productivity and, therefore, will not be tolerated.

COVERAGE

This policy applies to all employees in State departments, colleges and authorities and prohibits such conduct by or towards all employees.

Independent contractors, vendors and all other parties engaged in a business relationship with the state of New Jersey are expected to adhere to the spirit and intent of this policy.

DEFINITIONS

Sexual harassment is defined as: unwelcomed sexual advances, requests for sexual favors and other verbal or physical conduct based on gender when:

Submission to such conduct is made either explicitly or implicitly a term or condition of an individual's employment;

Submission to or rejection of such conduct by an individual is used as the basis for employment decisions affecting such individual; or

Such conduct has the purpose or effect of unreasonably interfering with an individual's work performance or creating an intimidating, hostile or offensive working environment including, but not limited to:

Gender Harassment: Generalized gender-based remarks and behavior;

Seductive Behavior: Inappropriate, unwanted, offensive physical or verbal sexual advances;

Sexual Bribery: Solicitation of sexual activity or other sex-linked behavior by promise of reward;

Sexual Coercion: Coercion of sexual activity by threat of punishment; and

Sexual Assault: Gross sexual imposition like touching, fondling, grabbing or assault.

AUTHORITY

Title VII of the Civil Rights Act of 1964 as amended; N.J.S.A.10:5-1 et.seq.; N.J.S.A.11A:1-1 et.seq.; N.J.A.C.4A:7-1.3.

RESPONSIBILITIES

***Managerial/Supervisory**

In order to ensure the integrity of the work environment, managerial and/or supervisory personnel are required to ensure adherence to and compliance with this policy; and, upon being informed of possible sexual harassment, are required to take appropriate immediate action in response, including informing employees of their right to file a discrimination complaint with their Affirmative Action Officer.

***Employee**

Employees are encouraged, whether directly or through a third party, to notify the alleged harasser that the behavior in question is offensive and unwelcome. However, failure to do so would not preclude filing a complaint.

Employees are encouraged to promptly report all alleged incidents of sexual harassment.

There are various ways in which employees may file discrimination complaints, including sexual harassment, either concurrently or sequentially:

1. Affirmative Action Office

(The complainant may initiate a sexual harassment or other discrimination complaint directly with the Division of Equal Employment Opportunity and Affirmative Action, Department of Personnel, if filing the complaint with the appointing authority would pose a conflict of interest by virtue of the alleged harasser having any involvement in the intake, investigative or decision-making process.)

2. Other Forums

(See "Sexual Harassment Complaint Processes Available to NJ State Employees" attached)

TRAINING

Recognizing the diversity and complexity of sexual harassment issues and the State workforce, education and training will be provided to equip all employees and supervisors to act effectively in the work environment, free from sexual harassment.

Those individuals administering the response process to sexual harassment complaints shall receive additional training and education on an ongoing basis.

CONFIDENTIALITY

To the extent possible, the sexual harassment investigative proceedings will be conducted in a manner to protect the confidentiality of the complainant, the alleged harasser and all witnesses. All parties involved in the proceedings will be advised to maintain strict confidentiality, from the initial meeting to the final agency decision, to safeguard the privacy and reputation of all involved.

RETALIATION

It shall be a violation of this policy for any employee to take reprisals against any person because she/he has filed a complaint, testified or assisted in any proceeding under this policy. Threats, other forms of intimidation, and/or retaliation against the complainant or any other party based on involvement in the complaint process may be cause for disciplinary action.

PROTECTION OF ALL PARTIES

All complaints will be addressed.

The alleged harasser will be notified once a formal complaint is filed with the Affirmative Action Office or with the Division of Equal Employment Opportunity and Affirmative Action in the Department of Personnel.

A finding of no probable cause as a result of an investigation does not necessarily establish that an accusation is false. However, this policy shall not be used to intentionally bring frivolous or malicious charges against any employee.

REMEDIAL ACTION

Remedial action for employees found in violation of this policy may be progressive in nature and include:

- Referral to counseling;
- Oral reprimand;
- Written reprimand;
- Reassignment;
- Suspension (with or without pay);
- Termination;
- Referral to the criminal justice system for possible violation.

DOCUMENTATION

It will be the responsibility of the Division of Equal Employment Opportunity and Affirmative Action in the Department of Personnel to receive and collect data regarding complaints filed under this policy.

INCIDENTS INVOLVING VENDORS

Procedures shall be developed to address incidents of sexual harassment involving independent contractors or vendors conducting business with the state of New Jersey.

DISTRIBUTION

The distribution of the policy shall consist of:

Distribution to all current employees

Distribution to all new hires

Reissuance of a general policy statement at least once per year to all employees.

The state of New Jersey is committed to maintaining a heightened awareness of the personal dignity of others by fostering a work environment free of sexual harassment.

Attachment

ADDENDUM TO POLICY

SEXUAL HARASSMENT COMPLAINT PROCESSES

AVAILABLE TO NEW JERSEY STATE EMPLOYEES

1. SUPERIOR COURT OF NEW JERSEY

Can bring directly in New Jersey Superior Court, claim of N.J. Law Against Discrimination (N.J.L.A.D), N.J.S.A. 10:5-1, et. seq. violation.

Can also bring N.J.L.A.D. claim in Federal Court if plaintiff is bringing a Title VII or 42 U.S.C. §1983 claim there.

* Statute of Limitations (period of time in which plaintiff must file action or else be barred from filing suit) (2 or 6 years) Montells v. Haynes case pending before N.J. Supreme Court. Statute of Limitations under N.J.L.A.D. is an open issue.

Remedies Available

Depending on the claims and the proofs and who the defendants are, the available remedies under NJLAD are...

1. Compensatory damages for lost wages.
2. Compensatory damages for medical or psychiatric expenses.
3. Injunctive relief.
4. Punitive damages (damages to punish for malicious wrongdoing).
5. Attorney fees.

2. NEW JERSEY DIVISION ON CIVIL RIGHTS ("DCR")

Must file complaint within 180 days.

Can get an adversarial hearing after 6 months with the Office of Administrative Law.

Either transfer to OAL or wait for a probable cause determination by the DCR.

A Deputy Attorney general will represent plaintiff once the DCR completes its investigation and finds probable cause unless defendant is a New Jersey state agency represented by a deputy. It is an open question as to who represents plaintiffs in that situation

Case can be referred over to the Federal Agency, the EEOC.

If the Division on Civil Rights makes a determination of no probable cause, the moving party's only recourse under the NJLAD is to appeal the decision to the New Jersey Superior Court, Appellate Division.

Remedies Available

Compensatory, punitive, injunctive and or equitable relief.

3. FEDERAL COURT - TITLE VII

Plaintiff must within 300 days of harassment incident file a complaint with the EEOC.

EEOC issues a "right to sue" letter and within 90 days receipt of the "right to sue" letter, plaintiff must file Title VII complaint in Federal District Court.

Remedies Available

Compensatory.

Punitive damages (depending on who defendant is).

Equitable relief.

Attorney fees.

4. 42 U.S.C. §1983 - Federal Statute creating a remedy for a constitutional deprivation by a person acting under color of State law.

Can be brought in State or Federal district court against State employee—not against State agency.

Must be brought within 2 years of incident.

Remedies Available

Compensatory damages.

Punitive damages.

Injunctive relief.

Attorney fees.

5. DEPARTMENT OF PERSONNEL - MERIT SYSTEM BOARD

* (N.J.S.A. 11A:7, et. seq., N.J.A.C. 4A:7-3.2, et. seq.)

Employee first brings complaint to departments' or colleges' Affirmative Action Officer within 20 days of incident.

Affirmative Action Officer investigates and issues report.

Department head or college president issues a written decision on the complaint. Department head or college president has 45 days from date of complaint to issue a decision.

Department head or college president may find discipline appropriate.

Employee can appeal department head's or college president's decision to the Division of EEO/AA within the Department of Personnel within 20 days of receipt of the decision.

Employee can appeal from Division of EEO/AA (Department of Personnel) decision within 20 days to the Merit System Board.

Can appeal Merit System Board's decision within 45 days to the New Jersey Superior Court, Appellate Division because Merit System Board's opinion is a final agency decision.

Remedies Available

Equitable relief.

6. UNION CONTRACTUAL GRIEVANCE

First step is to submit a written grievance with 30* days of harassment on a "grievance form" provided by the State which will contain a general description of relevant facts of the grievance to the designated representative of each party.

Complainant can proceed with or without union representation.

If grievance is appealed to the second step and department head or designee determines grievance resolution not within authority of department, grievance may be forwarded to Office of Employee Relations for determination within 10* days.

Within 20* days from receipt of grievance, the Office of Employee Relations must respond in appropriate fashion.

** Time frames may vary with each union contract.*

7. STATE COLLEGE PROCESS

* N.J.A.C. 9:6A-7.4 applies to New Jersey state college unclassified employees. Career employees follow procedure in #5.

Employee first brings complaint to departments' or colleges' Affirmative Action Officer within 20 days of incident.

APPENDIX E

1993 JUDICIAL COLLEGE COURSE
ON SEXUAL HARASSMENT

1993 JUDICIAL COLLEGE

COURSE NUMBER 13

Judicial Ethics: Addressing Sexual Harassment

Lynn Hecht Schafran, Esq.
Director, National Judicial Education
Program to Promote Equality for Women
and Men in the Courts, New York, NY
Jonathan A. Segal, Esq., Pennsylvania

Sexual harassment is illegal, immoral, extensive and expensive. Unfortunately, most people do not know precisely what it is. The legal definition alone conveys little, and in a time of changing mores about acceptable behavior, there is confusion and concern, particularly among men, about what behaviors are acceptable and what may be perceived as crossing the line.

This program will explore what the legal definition of sexual harassment encompasses, how that definition interacts with the Code of Judicial Conduct, how sexual harassment can be prevented, and the judge's role in creating and sustaining a harassment-free environment in chambers and the courtroom.

NOTE: This course will be offered twice.
All assignment judges and presiding judges of civil, criminal, and family divisions are required to attend this course in accordance with the Chief Justice's instructions. All other judges are encouraged to attend.

