

# **SEXUAL HARASSMENT**

## **POLICY & PROCEDURES**

New York State Unified Court System, Office of Court Administration  
25 Beaver Street, New York, NY 10004

*Revised September 2022*

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## MESSAGE FROM THE CHIEF ADMINISTRATIVE JUDGE

I am pleased to present the Unified Court System's Sexual Harassment Policy & Procedures ("Policy").

This Policy reaffirms the Unified Court System's commitment to ensuring that the workplace is free from sexual harassment and that all claims of sexual harassment are promptly addressed. It also offers guidance on how to recognize sexually harassing conduct, as well as important information about the internal and external complaint procedures available for investigating and resolving claims of sexual harassment.

Thank you for your shared commitment to ensuring that our workplace is an environment free of sexual harassment, in which all are treated with respect, dignity and fairness.

A handwritten signature in black ink, appearing to read "Lawrence K. Marks". The signature is fluid and cursive, with a large initial "L" and "M".

**Lawrence K. Marks**

Chief Administrative Judge  
of the State of New York

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## THE UNIFIED COURT SYSTEM'S SEXUAL HARASSMENT POLICY

The Unified Court System (“UCS”) is committed to maintaining a safe work environment for all its employees, and one that is free from discrimination and harassment, including sexual harassment.

The Unified Court System will not tolerate any form of sexual harassment and all allegations of such conduct will be promptly addressed. Any individual covered by this Policy (*see below*) who is found to have engaged in sexual harassment, or any supervisory employee (*see below*) found to have allowed sexual harassment to occur/continue, will be subject to appropriate administrative, remedial and/or disciplinary action.

The Unified Court System will not tolerate any acts of retaliation against any person for exercising their rights under this Policy or their rights under federal, state, and (where may be applicable) local law.

### WHO IS COVERED BY THIS POLICY?

This Policy applies to all Unified Court System judges and court employees, regardless of status, e.g., permanent, probationary, contingent, temporary, provisional, hourly, etc. (collectively referred to as “**covered individuals**” in this Policy).

### COVERAGE OF NON-EMPLOYEES

The Unified Court System also prohibits sexual harassment by non-employees against covered individuals and, likewise, by covered individuals against non-employees. For purposes of this Policy, “**non-employees**” refers to applicants for employment, interns, per diems, vendors, contractors, subcontractors, consultants, litigants, jurors, attorneys, visitors, or other individuals providing services or conducting business in any UCS court or court-related facility.

### WHAT IS SEXUAL HARASSMENT?

Sexual harassment is a form of sex discrimination that is unlawful under federal, state and local law. Sexual harassment includes unwelcome conduct of a sexual nature or conduct directed at an individual or group of people on the basis of their sex, actual or perceived sexual orientation, gender identity or gender expression when:

- the conduct has the purpose or effect of interfering with work performance, or creating an intimidating, hostile or offensive work environment (even if the complaining individual is not the intended target of the conduct); or
- the conduct is made a term or condition of employment, whether explicitly or implicitly; or
- submission to or rejection of the conduct is used as the basis for employment decisions.

### **Sexual harassment can be in the form of:**

- unwanted verbal or physical advances, sexually explicit or derogatory statements, or sexually discriminatory remarks which are offensive or objectionable to the recipient and cause the recipient to feel discomfort, humiliation or intimidation;
- a “hostile work environment” consisting of words, signs, jokes, pranks, intimidation or physical violence directed at an individual or group because of their sex, actual or perceived sexual orientation, gender identity or gender expression;
- “quid pro quo,” when a person of authority tries to trade job benefits for sexual favors or conditions employment decisions (e.g., hiring, promotions, continued employment) on an individual’s submission to or rejection of unwelcome sexual conduct.

Sexual harassment can occur between anyone, regardless of sex or gender, and can take place outside of the physical workplace or even during non-work hours, depending on the circumstances (for example statements posted on social media or sent via text message where there is a nexus to the covered individual’s employment with the Court System).

Even a single incident of inappropriate behavior may rise to the level of sexual harassment.

### **Examples of sexual harassment include (but are not limited to):**

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

- unwelcome physical contact or inappropriate touching, including patting, pinching, stroking, kissing, hugging, or fondling;
- unwelcome sexual advances or physical propositions of a sexual nature;
- physical violence, including sexual assault or any attempt to commit such acts.

#### ***Verbal conduct***

- unwelcome comments of a sexual nature about a person’s appearance, age, private life, etc.;
- sexual comments, stories, and jokes;
- offensive remarks about a person's sex, actual or perceived sexual orientation, gender identity or gender expression;
- unwelcome sexual advances, requests for sexual favors or other verbal propositions of a sexual nature;
- repeated and unwanted invitations for social dates or physical intimacy;
- insults based on sex, actual or perceived sexual orientation, gender identity or gender expression;
- comments meant to convey dominance, or a superior position based on sex, actual or perceived sexual orientation, gender identity or gender expression;
- threats or rewards to solicit sexual favors.

#### ***Other conduct***

- sending sexually explicit messages (for example, through email, text, instant messaging, and/or social media platforms);

- displaying sexually explicit or suggestive material anywhere in the workplace (for example, on a wall, computer or cellular phone screen);
- making sexually suggestive noises, hand gestures or facial expressions;
- whistling meant to convey approval of physical appearance;
- leering or staring in such a way as to make a person feel uncomfortable;
- gender identity stereotyping (treating an individual in a particular manner based on perceptions or assumptions of how individuals of a particular gender should act or look).

## REPORTING SEXUAL HARASSMENT IF YOU ARE A COVERED INDIVIDUAL

The Unified Court System encourages any covered individual who believes that he/she has been subjected to, or has witnessed, conduct that may constitute sexual harassment to report such conduct to their immediate supervisor, the Office of Diversity and Inclusion, or the Office of the Inspector General. You may file a complaint anonymously.

For purposes of this Policy, “**supervisory employee**” means any covered individual, regardless of title or salary grade, with assigned supervisory duties over one or more other covered individuals. If the supervisor is the alleged harasser, the conduct should be reported to any other supervisory employee.

If someone’s actions or conduct make you feel uncomfortable or you believe you have been subjected to sexual harassment, the Unified Court System encourages you to:

- **Keep a written record**

While you are not required to do so in order to make a complaint, we suggest that you keep a written log (either handwritten or electronic). In this log, record the date of any incident, describe what occurred, your response to the incident, and the names of any witnesses (if applicable). If you record these details right away, you will ensure that you capture them accurately, and it will help you to complete a complaint form (if you choose to do so).

- **Contact any or all of the following** (there is no correct order):

- **Discuss the behavior with a supervisory employee**

*NOTE: Supervisory employees **have an obligation to report** complaints or information about suspected sexual harassment to the Office of the Managing Inspector General for Bias Matters (“Inspector General”).*

- **Discuss the behavior with the Office of Diversity and Inclusion**

You can contact a representative of the *Office of Diversity and Inclusion* by phone or email:

212-428-2540

[Diversity@nycourts.gov](mailto:Diversity@nycourts.gov)

***NOTE:** the representatives at the Office of Diversity and Inclusion have an obligation to report complaints or information about suspected sexual harassment to the Inspector General.*

▪ **File a complaint directly with the Inspector General**

A copy of the “Claim of Discriminatory Treatment” form and instructions for filing it are included at the end of this Policy and can also be located at: [Discriminatory Treatment-Complaint Form.pdf \(nycourts.gov\)](#)

**CONTACT INFORMATION FOR THE INSPECTOR GENERAL**

**Phone:** 646-386-3507 or toll-free hotline: 1-877-2 END BIAS (1-877-236-3242)

**Email:** [migbm@nycourts.gov](mailto:migbm@nycourts.gov)

**Mail:**

Office of the Inspector General  
Attention: Managing Inspector General for Bias Matters  
25 Beaver Street  
New York, NY 10004

**SUPERVISORY EMPLOYEES - RESPONSIBILITY TO REPORT**

Any judicial or nonjudicial supervisory employee who receives a complaint or information about suspected sexual harassment, observes what may be sexually harassing conduct, or suspects that sexual harassment may be occurring **is required to report** such suspected sexual harassment to the Inspector General.

**COMMON QUESTIONS ABOUT FILING A COMPLAINT  
WITH THE INSPECTOR GENERAL**

**What information should I put in the complaint?**

- The complaint should be as specific as possible about what happened, and it should also include details on how you responded to the person you are filing a complaint against.
- Be sure to describe each event and the date(s) (or as close to the actual date(s) as you can remember).
- Record the names of people who may have witnessed the event(s), or who you believe may have also had similar experiences with the person in question.
- Don't feel limited to the space provided in the complaint form. Use additional sheets as needed to complete your answers.
- Attach any documentation that you believe may be relevant to the complaint.

### **Is there a time limit on making a complaint?**

While there is no time limit on filing a complaint with the Inspector General, in order to ensure that a thorough investigation can be conducted (while information is still fresh and any witnesses still available), it is best not to delay. However, note that there *are* time limits on filing complaints with outside agencies (such as the Federal Equal Employment Opportunity Commission or the New York State Division of Human Rights).

### **I want to keep this as quiet as possible. Will my complaint be treated confidentially?**

All complaints investigated by the Inspector General will be treated as confidentially as possible. Information regarding your complaint or the investigation will only be disclosed if it becomes necessary or is otherwise required.

### **If I file a complaint, how do I know I will be treated fairly?**

Retaliation against any person for making a complaint of sexual harassment is against the law. The Unified Court System will not tolerate any acts of retaliation and will take appropriate action to ensure that individuals covered by this Policy are not subject to retaliation for exercising any of their rights under this Policy or their rights under federal, state, and (where may be applicable) local law. (See *Anti-Retaliation Policy* below, p. 6)

## **INVESTIGATION AND DETERMINATION OF THE INSPECTOR GENERAL**

Every complaint filed with the Office of the Inspector General will be thoroughly evaluated. When an investigation is opened, the person making the complaint will be contacted by the Office of the Inspector General. During the investigation, a series of individual interviews will occur, including with the complainant, the person against whom the complaint has been made, and others who may have information about or are affected by the event(s). The investigation will be handled with sensitivity and with the greatest degree of confidentiality possible.

### **Length of investigation**

In most cases, the Inspector General will complete the investigation within 45 calendar days, although cases may sometimes take longer. A report of the investigation will then be sent to the appropriate administrators, including the appropriate Administrative Judge for review and recommendation, and the appropriate Deputy Chief Administrative Judge (“DCAJ”) (or other decision-maker, as may be applicable) for a determination.\* The person to whom the unwelcome conduct was directed at and the person who is the subject of the complaint should receive a copy of the DCAJ’s (or other decision-maker’s) final determination within 60 calendar days of the time the report was transmitted by the Inspector General to the appropriate court administrator, although some cases may take longer. The determination will indicate whether the complaint has been substantiated (i.e. whether sexual harassment was found to have occurred).

\* In the Court of Appeals, reports of investigations will be sent, for review and determination, to the Chief Judge. In the four Departments of the Appellate Division, reports of investigations will be sent, for review and determination, to the appropriate Presiding Justice.

### **If the complaint is substantiated**

If any covered individual is found to have engaged in sexual harassment, the Unified Court System will take the steps necessary to ensure that appropriate administrative, remedial and/or disciplinary action is imposed, which can include (but is not limited to):

- reprimand, fine, probation, suspension without pay, demotion, loss of annual leave or other benefits;
- sensitivity or other relevant training;
- termination;
- referral to the *Commission on Judicial Conduct* (for judges);
- referral to the *Attorney Grievance Committees* (for lawyers);
- referral to the appropriate prosecutor's office.

### **Can the Deputy Chief Administrative Judge's (or other decision-maker's) determination be appealed?**

The complainant and the person who is the subject of the complaint have the right to appeal the determination of the DCAJ (or other decision-maker). An appeal may be made by writing to the Chief Administrative Judge at 25 Beaver Street, New York, New York, 10004.\* *Appeals must be filed, i.e. mailed, within 30 calendar days of the date the determination is received.*

If an appeal is filed, the case will be reviewed in its entirety. Written determinations of appeals are generally completed within 30 calendar days. However, depending on the circumstances, more time may be necessary.

\*Requests for reconsideration of determinations in the Court of Appeals should be made to the Chief Judge. In the four departments of the Appellate Division, such requests should be made to the appropriate Presiding Justice. Requests for reconsideration must be made in writing and mailed within 30 calendar days of the date the determination is made.

## **REPORTING SEXUAL HARASSMENT IF YOU ARE A NON-EMPLOYEE**

Non-employees who believe that they have been subjected to sexual harassment by any judicial or nonjudicial employee (covered individuals under this policy) are encouraged to contact the Chief Clerk of the court where the conduct took place, the office of the appropriate DCAJ or the Unified Court System's Director of Human Resources. Non-employees may also file complaints of sexual harassment directly with the Inspector General, as described above under "*File a complaint directly with the Inspector General*" and/or pursue claims of sexual harassment with federal, state or (where applicable) local government agencies, as provided in the "Legal Protection and External Remedies" section of this Policy (p. 8).

## **ANTI-RETALIATION POLICY**

The Unified Court System will not tolerate any acts of retaliation against covered individuals for exercising their rights under this Policy or their rights under federal, state and (where may be applicable) local law.



## **What is retaliation?**

Retaliation is any materially adverse action intended to dissuade an individual from filing a complaint, testifying, assisting or participating in any manner in an investigation or proceeding or from opposing any practice made unlawful under this policy or under applicable law, and any adverse action taken in response to protected activity regardless of whether the action occurs in the workplace. Such retaliation is unlawful under federal, state and (where may be applicable) local law.

Covered individuals who have engaged in “**protected activity**” are protected from retaliation. Protected activity occurs when a covered individual has:

- made a complaint of sexual harassment, either internally or with an outside agency;
- testified or assisted in an investigation or proceeding involving sexual harassment, either internally or with an outside agency;
- opposed sexual harassment by verbally or informally complaining to a supervisor;
- reported that another covered individual has been sexually harassed; or
- encouraged a covered individual to report sexual harassment.

An individual is protected from retaliation even if the complaint is not substantiated.

## **Depending on the facts of each case, examples of possible retaliation include (but are not limited to):**

- an employee is terminated because of rebuffing unwanted advances of a co-worker or supervisor;
- an employee after making a complaint of sexual harassment about a supervisor, is denied a promotion because they made a complaint of sexual harassment about a supervisor;
- an employee receives an “unsatisfactory” performance evaluation or is moved to a less desirable assignment or location because they provided witness testimony during a sexual harassment investigation;
- verbal or written threats of physical violence or non-physical conduct related to an employee’s complaint or participation in an investigation including but not limited to when such statements are posted on social media, sent via email or text message.

## **What do I do if I think I’m being retaliated against?**

You should follow the same suggested steps listed above (see pp. 3-4) that you would follow if you were dealing with a sexual harassment claim, including filing a complaint with the Inspector General. A retaliation claim is considered an independent claim of harassment, and therefore will be investigated regardless of what happens (or what already has happened) with the original complaint.

## SEXUAL HARASSMENT PREVENTION TRAINING

As part of the Unified Court System's commitment to maintaining a work environment free of sexual harassment, it provides training programs to increase awareness about the types of conduct that might constitute sexual harassment, reporting suspected sexual harassment and the rights and remedies that are available to victims of sexual harassment. Covered individuals are required to receive sexual harassment prevention training on an annual basis.

## LEGAL PROTECTIONS AND EXTERNAL REMEDIES

Sexual harassment is not only against the Unified Court System's Policy, it is illegal under federal, state and (where may be applicable) local law. Therefore, if you believe you have experienced act(s) of harassment, you also have a right to file a claim with federal, state and (where may be applicable) local agencies.

### **Federal law prohibiting sexual harassment:**

**Title VII of the Civil Rights Act** of 1964, as amended, prohibits harassment and discrimination on the basis of race, color, religion, sex, or national origin to influence decisions on hiring, promoting, or firing an individual. Title VII is enforced by the Equal Employment Opportunity Commission (EEOC).

Visit [www.eeoc.gov/employees/howtofile.cfm](http://www.eeoc.gov/employees/howtofile.cfm) for information on how to file a claim with the EEOC.

### **New York State law prohibiting sexual harassment:**

The **New York State Human Rights Law** provides prohibitions against sexual harassment and protections to victims. These New York State laws are enforced by the New York State Division of Human Rights (DHR) and the New York State Department of Labor, Division of Equal Opportunity Development (DOL).

For information on how to file a complaint with the DHR, visit [www.dhr.ny.gov/complaint](http://www.dhr.ny.gov/complaint) or call 888-392-3644

### **Local laws prohibiting sexual harassment:**

Some cities and counties have their own local laws and, in some places, their own human rights agency. Check with your local government for information.

*NOTE: if you have filed a complaint with the Inspector General's Office and then choose to also file a complaint with an outside agency, the Inspector General may have to await a final determination from the outside agency before completing its internal investigation.*

## IMPORTANT REFERENCES

### **Office of Diversity and Inclusion**

<http://ww2.nycourts.gov/careers/diversity/index.shtml>

### NYS Office of Court Administration

25 Beaver Street  
New York, NY 10004

212-428-2540

[Diversity@nycourts.gov](mailto:Diversity@nycourts.gov)

### **Office of the Inspector General**

**Attention: Managing Inspector General for Bias Matters**

<http://ww2.nycourts.gov/admin/ig/index.shtml>

### NYS Office of Court Administration

25 Beaver Street  
New York, NY 10004

646-386-3507 or 1-877-2 END BIAS (1-877-236-3242)

[migbm@nycourts.gov](mailto:migbm@nycourts.gov)



# NEW YORK STATE UNIFIED COURT SYSTEM

## OFFICE *of the* INSPECTOR GENERAL

### CLAIM OF DISCRIMINATORY TREATMENT

Please complete this form to file a complaint with the Inspector General's Office. Any individuals contacted by the Office of the Inspector General will be asked not to disclose the facts or contents of your claim unless disclosure is necessary.

#### Your Information:

Name		How Would You Like To Be Addressed? (Ms., Mr. or Other)	
Title		Work Location	
City	State	ZIP	
Home Address			
City	State	ZIP	
Home Phone	Cell Phone	Work Phone	E-mail

#### Information About Complaint:

Following receipt of your claim, you will be advised of the name and telephone number of the staff member responsible for investigating your claim. You also will be informed if the office needs further information or if there is a reason why the office cannot proceed with the investigation. You may file complaint anonymously.

#### 1. I believe that I have been treated in a discriminatory manner based on my:

Race	Sexual Orientation	Marital Status	Disability
Age	Color	Domestic Violence Status	National Origin
Religion	Creed	SEX (including Sexual Harassment)	Gender Identity or Expression
Other (please specify): _____			

#### 2. I believe that the act or treatment described below is discriminatory:

\_\_\_\_\_

#### 3. I believe that the following individual(s) has (have) acted in a discriminatory manner:

\_\_\_\_\_

#### 4. Date of act or treatment (or indicate if ongoing): \_\_\_\_\_ Ongoing

#### 5. Witnesses (include names, work locations and telephone numbers):

\_\_\_\_\_

I authorize the New York State Unified Court System's Office of the Inspector General to use my name in investigating this claim.

Signature \_\_\_\_\_

Date \_\_\_\_\_

Please attach any additional information you may have about the claim and mail, fax or email this form or a copy to:

**Office of the Inspector General**  
**Office of Court Administration**  
**Attn: Managing Inspector General for Bias Matters**  
**25 Beaver Street**  
**New York, NY 10004**  
**Phone: 646-386-3507 or Fax: 212-514-7158**  
**E-Mail: [migbm@nycourts.gov](mailto:migbm@nycourts.gov)**