

A person in a dark suit and white shirt is holding a magnifying glass over a document. The background is a blurred office setting. A large red triangle is on the right side of the page.

# SEXUAL HARASSMENT REPORTS AND INVESTIGATIONS

PERSONNEL MANUAL ISSUANCE SYSTEM

**dchr**

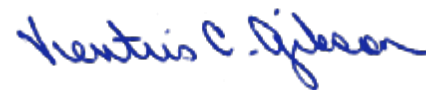
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The word "Overview" is written in a white, sans-serif font on a black rectangular background. This background is part of a larger graphic that includes a red diagonal stripe and a photograph of the District of Columbia flag waving on a pole against a blue sky.

The District of Columbia government is committed to maintaining a safe work environment free from harassment, abuse, and intimidation for all its employees. This issuance defines sexual harassment, and provides steps employees must take to report incidents of misconduct. This issuance also outlines how agencies should handle and investigate sexual harassment reports.

A handwritten signature in blue ink that reads "Ventris C. Gibson".

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Ventris C. Gibson, Director

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A blurred background image of a woman in a dark blazer and white shirt, looking towards the camera. A large red diagonal stripe cuts across the page from the top left towards the bottom right.

# Maintaining an Environment Free from Sexual Harassment

## Maintaining an Environment Free from Sexual Harassment

The District government reaffirms its commitment to maintaining a harassment-free work environment.

The Mayor established a policy and related procedures mandating that workplaces be free from all forms of sexual harassment (Mayor's Order 2017-313). This policy protects individuals from workplace sexual harassment whether they are employees, contractors, interns, applicants for District government employment, or any other persons engaged by the District of Columbia to provide permanent or temporary employment services. The District's laws and policies also prohibit retaliation against anyone who reports harassment or who participates in an investigation.

A photograph of a man in a dark suit and tie, sitting at a desk and writing in a notebook. He has his hand to his chin in a thoughtful pose. The image is partially obscured by a red diagonal graphic element.

# Sexual Harassment Defined

## Sexual Harassment Defined

Sexual harassment is unwelcome conduct of a sexual nature based on one's sex, or perceived sex that affects the terms or conditions of employment. When unwanted sexual conduct impacts a job-related decision, such as assignments, training opportunities, promotions or firing, or when the conduct creates a hostile work-environment because it is severe or pervasive, it is considered sexual harassment.

## Sexual Conduct Relating to Job Benefits (Quid Pro Quo)

A supervisor engages in quid pro quo sexual harassment when he or she makes unwelcomed sexual advances, requests for sexual favors, or engages in other verbal or physical conduct of a sexual nature, based on an employee's sex or perceived sex, and requires that person to submit to such conduct, either explicitly or implicitly, as a term or condition of his or her employment. For example, sexual harassment may occur when there is an expectation that an employee will receive a job-related benefit if he or she submits to the sexual conduct.

## Hostile Work Environments

An individual creates a hostile work environment based on a person's sex or perceived sex if he or she subjects the person to unwelcome sexual conduct, and this conduct is severe or pervasive enough to affect a term, condition, or privilege of employment. For example, an individual may create a hostile work environment for their coworker by using sexually degrading language describing an individual or describing their own sexual experiences, when this conduct is unwelcome and occurs on a daily basis. The District government strongly discourages sexual conduct in the workplace even if these activities are between two consenting parties, as this conduct has the potential to create a hostile work environment for third parties who find these behaviors uncomfortable or offensive.

**Pervasive conduct.** Sexual or romantic comments or gestures are unwelcome when an employee finds them to be offensive, rather than flattering or innocent, and occurs frequently. Different people have different sensitivities. A single offensive comment will not usually rise to the level of "sexual harassment." However, if an employee asks that the comments stop, and the comments persist, the conduct can be deemed "pervasive."

**Severe conduct.** Some conduct is so severe that a single occurrence can constitute sexual harassment. Severe conduct has sexual or romantic overtones, and would offend a reasonable person. This type of conduct is always unacceptable in the workplace. Examples of severe conduct include:

- Sexually assaulting an employee;
- Displaying sexual organs in any manner;
- Taking adverse action against an employee for his or her refusal to engage sexually or romantically; and
- Using sexually oriented language to criticize or otherwise degrade an employee or a class of people.

A man in a dark suit and white shirt is looking down at a blue tablet he is holding. The background is a blurred office setting.

# Designating a Sexual Harassment Officer

## Designating a Sexual Harassment Officer

To assist employees and agencies with accepting, reviewing, and investigating sexual harassment complaints, Mayor's Order 2017-313 requires that all agencies designate a Sexual Harassment Officer (SHO). Agencies are also required to designate an office or alternate person for when the SHO is unavailable. Agencies must submit the names of their designees to OHR and DCHR via email at [OHR@dc.gov](mailto:OHR@dc.gov) and [DCHR@dc.gov](mailto:DCHR@dc.gov) with the subject line, "[Agency Name] - SHO Designations." If an agency makes any changes to the SHO designation, they must notify both agencies within 10 business days.

**i** When agreed upon, smaller agencies may utilize SHOs from larger agencies, or make other mutually agreeable arrangements for designating SHOs. Regardless, the names of all designees must be sent to OHR.

## Who Can an Agency Designate as a SHO?

Agencies can designate SHOs at their discretion so long as the designee is competent in Equal Employment Opportunity (EEO) laws and has no inherent conflict of interest. Due to their role in advocating for, or defending the agency, DCHR recommends that, depending on the circumstances, agencies do not select the agency's General Counsel, or attorneys in an agency's Office of General Counsel. Please refer to OHR's SHO Designation Guidance for more information (Attachment 2 - SHO Designation Guidance).

Since the SHO will investigate allegations of a very sensitive nature, agencies must designate employees with specific criteria in mind. When designating employees to serve as a SHO, the agency should designate someone with:

- **Experience** - as stated above, individuals designated as SHOs should have experience investigating complaints, or have related education and training. For example, experienced investigators know what to look for, how to find it, and how to interpret what they find;
- **Impartiality** - individuals serving as SHOs must be perceived in the workplace, and by the parties to the complaint, to be fair and objective; and
- **Professionalism** - individuals investigating sexual harassment complaints must perform their responsibilities with the utmost professionalism, without interference from personal feelings or bias. While investigating these complaints, the SHO should maintain the confidentiality and integrity of the process to the full extent possible.

Individuals who may be ideal designees include:

- HR Advisors or HR Managers
- Individuals competent in or familiar with EEO provisions
- Individuals experienced in conducting investigations
- EEO Officers (not to be confused with EEO Counselors)

## Providing the Contact Information of Sexual Harassment Officers

To ensure that employees know who to contact for sexual harassment concerns, agencies must post the names and contact information of their Sexual Harassment Officer and alternative contact in a high visibility or high traffic area (e.g., a breakroom). Employees may also obtain their Sexual Harassment Officer's contact information from their agency's Equal Employment Opportunity (EEO) Officer or Counselor, Human Resources (HR) office, or the Office of Human Rights. DCHR also maintains a list of Sexual Harassment Officers on its website at <https://dchr.dc.gov/sexual-harassment>.





# Reporting Sexual Harassment

## Reporting Sexual Harassment

All District of Columbia employees are responsible for ensuring a harassment-free workplace. To that end, all employees who know of incidents of sexual harassment, or know of incidents that could create an intimidating, hostile or offensive work environment should report the situation immediately as outlined below. Agencies should protect the confidentiality of all aspects of the harassment complaints and those reporting such complaints, to the greatest extent possible consistent with the investigations and resolutions of the complaints.

## Alleged Victims of Sexual Harassment

Alleged victims of sexual harassment should report the harassing behavior to one of the following individuals within their agency as soon as possible:

- The alleged victim's manager or supervisor, or the manager or supervisor<sup>1</sup> of the alleged harasser;
- Sexual Harassment Officer;
- Designated alternate SHO or Office; or
- General Counsel.

If victims require assistance or are not able to report to one of the individuals above, they may contact the employee relations team at the D.C. Department of Human Resources at (202) 442-9700.

## Witnesses to Sexual Harassment

Employees have a responsibility to report incidents of sexual harassment or behavior that may create an intimidating, hostile, or offensive work environment. Witnesses should report incidents to the following individuals within their agency:

- The witness' manager or supervisor, or the manager or supervisor of the alleged harasser;
- Sexual Harassment Officer;
- Designated alternate SHO or Officer;
- General Counsel; or
- EEO Counselor.



*If the employee does not feel comfortable reporting to the SHO or the alternate SHO, the employee may report to a manager or supervisor; however, unless there is a conflict of interest with the SHO, these individuals will communicate the employee's allegations to the SHO, who will ultimately investigate the matter.*

<sup>1</sup> If the alleged harasser is the employee's supervisor, the employee may report the misconduct to the alleged harasser's supervisor or to the agency's Sexual Harassment Officer.

## Rights Under the D.C. Human Rights Act

In addition to reporting to an agency officer, under the D.C. Human Rights Act, alleged victims may file a legal claim of sexual harassment with the Office of Human Rights or in court.

### File an Administrative Complaint with the D.C. Office of Human Rights

- An individual may file an administrative complaint of sexual harassment directly with the Office of Human Rights (OHR) within 1-year of the incident(s) or discovery of the incident(s).
- Reporting incident(s) of sexual harassment to the Agency Sexual Harassment Officer does not limit or delay the individual's right to file a complaint with the Office of Human Rights as both processes can run parallel to each other.<sup>2</sup>

### File a Civil Action in Court

- An individual may file a complaint of sexual harassment with D.C. Superior Court within 1-year of the alleged harassment or discovery thereof.
- Reporting the incidents of sexual harassment to the Sexual Harassment Officer does not limit or delay the individual's right to file in D.C. Superior Court as both processes can run parallel to each other.

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<sup>2</sup> Reporting incident(s) of sexual harassment to the Agency Sexual Harassment Officer does not constitute reporting a complaint of sexual harassment with the Office of Human Rights.

# Handling Reports of Sexual Harassment

## Handling Reports of Sexual Harassment

### Managers, Supervisors, HR Officials, and EEO Officials

Managers, supervisors, HR officials, and EEO officials who receive reports of alleged sexual harassment must immediately relay the report to the agency's Sexual Harassment Officer and take any appropriate remedial actions after consulting with the agency General Counsel.

### Sexual Harassment Officers

The role of the SHO is to accept, review, and investigate sexual harassment claims by gathering information and preparing a written report with his or her findings and conclusions within 60 days after a claim is reported. Upon receiving a report of potential sexual harassment, the SHO must:

1. Notify the General Counsel, who must notify the Mayor's Office of Legal Counsel;
2. Notify the complainant that the matter is being investigated and contact the complainant to gather more information;
3. Make any additional required communications to, for example, gather relevant facts through documentation and interviews;
4. Investigate; and
5. Report Findings of Fact, Conclusions and Recommendations.

## Maintaining Confidentiality

Any individuals who receive reports of alleged sexual harassment must take reasonable steps to ensure that the details of the report and investigation remain confidential, especially when information pertaining to a sexual harassment report changes hands or is shared as part of an investigation. Failure to safeguard confidential information can result in corrective or adverse action, up to, and including separation.

Notwithstanding the confidentiality requirement, the alleged harasser is entitled to notification of the allegations and must be given an opportunity to respond. Additionally, the confidentiality requirement should not prevent an agency from reporting a suspected illegal or improper act to the appropriate enforcement, investigating or legal organization or from cooperating in any related investigation.

All information obtained in the investigation shall be used by the SHO only for purposes of the investigation.

## Complaints Against Senior Officials

Complaints against certain senior officials (specified below) must be referred to specific government officials for their review. The following chart outlines these requirements.

COMPLAINTS AGAINST SENIOR OFFICIALS	
If the complaint is against...	
Employees with the Mayor's Office of Legal Counsel	Refer the report to the Mayor's General Counsel.
An Agency Director	Refer the report to the SHO at the appropriate Deputy Mayor; the complaint should also be reported to the Mayor's General Counsel if the complaint is against an agency Director appointed by the Mayor.
A Deputy Mayor	Refer the report to the SHO at the Office of the City Administrator
The City Administrator	Refer the report to the Mayor's General Counsel
The Mayor's General Counsel	The matter shall be handled by an independent consultant
The Mayor	The matter shall be handled by an independent consultant



# Investigating the Complaint

## Investigating the Complaint

Once a SHO has received a report of a sexual harassment allegation, he or she is required to immediately begin the investigation process, which must be completed within 60 days of the report. The process consists of 9 steps that are necessary to successfully conduct an investigation:

1. Define the Scope of the Investigation;
2. Recommend Immediate Action to the Agency, if needed;
3. Conflict of Interest Determination;
4. Plan the Investigation;
5. Conduct Interviews (if possible, record all interviews);
6. Gather Documents and Other Evidence;
7. Evaluate the Evidence;
8. Document the Investigation; and
9. Report Findings of Fact, Conclusions and Recommend Actions.

## Step 1. Define the Scope of Investigation

Even when a complaint has sexual overtones (see below example), the situation may not call for an exhaustive investigation. Situations may arise when the alleged conduct is of a nature that does not require an extensive investigation to disclose the facts, all parties mutually agree as to the circumstances of the complaint, and these matters may be resolved quickly through informal discussions. Regardless of whether a full investigation is required, the SHO should speak with the relevant parties and document all efforts undertaken to address the matter and indicate the resolution reached and actions taken, if any.

**i** **Example:** *An employee, on a single occasion, asks his co-worker to have dinner with him one night. The co-worker declines saying she has a boyfriend. The employee replies: "He's a very lucky guy." This makes the co-worker uncomfortable and she reports the situation, even though the employee did not further pursue the matter. In this scenario, a full investigation is probably unnecessary. Instead, a simple discussion between the two parties, and possibly their supervisor, will likely resolve the situation. The SHO would document such efforts and any resolution reached.*

## Step 2. Recommend Immediate Action to the Agency, If Needed

Pending final resolution of a sexual harassment complaint, the SHO can recommend to the agency, through the General Counsel whether the workplace requires immediate changes to prevent further harm, and to ensure the investigation is free from disruption. There are two potential immediate actions that may be taken: (1) separating the alleged harasser from the complainant; and (2) separating the complainant from the alleged harasser. If immediate action is needed, such action will be initiated by the agency General Counsel and any interim remedial action should be processed in accordance with the District Personnel Manual and any Collective Bargaining Agreement, if applicable.

**i** **Avoid Retaliation Claims!** *In many sexual harassment investigations, immediate action will need to be taken while the investigation is pending. However, such actions taken should not penalize the employee reporting the harassment or the alleged harasser. If the parties must be separated while the investigation is pending, reassigning the alleged harasser or placing him or her on administrative leave with pay is preferable to moving the reporting employee. Considerations for moving the alleged harasser should only be made if the complainant documents their agreement to moving the alleged harasser.*

## Step 2. Recommend Immediate Action to the Agency, If Needed (Cont.)

### Separating the Alleged Harasser from the Complainant

The agency must assess whether the alleged harasser should be separated from the complainant's work environment. It may be appropriate to take such a step when there are allegations of:

- Serious misconduct, such as sexual touching, sexual assault, violence, threats, or extremely abusive verbal harassment;
- An ongoing pattern of harassment; or
- Misconduct where the complainant(s) or witnesses appear intimidated by the alleged harasser.

As previously noted, moving the complainant may be perceived as retaliatory. The best way to avoid claims of retaliation is to temporarily reassign the alleged harasser in a reasonably comparable placement, even if in a different agency after consulting with DCHR, or place him or her on administrative leave with pay. If these steps are taken, the alleged harasser should be informed that the movement is temporary, that no conclusions have been reached as to the sexual harassment allegations, and that the action being taken is in no way punitive.

### Separating the Complainant from the Work Environment

Sometimes, the complainant of alleged sexual harassment will ask to be reassigned or given time off pending the investigation. If this occurs, find out and document exactly why the employee wants to be taken out of the work environment.

If the alleged victim is experiencing trauma or other health-related issues as a result of the alleged sexual harassment, the agency should take appropriate actions as required or permitted by law to assist the employee. If the alleged harasser has threatened the alleged victim, or co-workers are shunning the alleged victim, this is information that should be included as part of the investigations. Whatever the explanation, it is important to reiterate that retaliation by the alleged harasser or co-workers is not tolerated. Additionally, make the best arrangements to address the alleged victim's concerns. If the alleged victim is removed from the work environment, make sure that the employee can still be available to participate in the investigation.



*Expedite the investigation whenever one or more parties are reassigned or placed on administrative leave pending the investigation.*



## Step 2. Recommend Immediate Action to the Agency, If Needed (Cont.)

### Criminal Allegations

Whenever a report of sexual harassment or subsequent evidence reveals potential criminal conduct, such as sexual assault, physical violence, or threats to do bodily harm, stop the investigation and consult agency counsel immediately. The agency's General Counsel, in consultation with the Mayor's Office of Legal Counsel, will make the determination on whether law enforcement should be contacted and what other immediate steps must be taken. Do not conduct additional interviews or resume your investigation until after consulting your agency counsel or the MOLC.

## Step 3. Conflict of Interest Determination

Generally, the agency's Sexual Harassment Officer (SHO) will investigate reports of sexual harassment. Smaller agencies are authorized to enter into cooperative agreements with other agencies if their staffing level does not allow for the practical appointment of a dedicated SHO. In these cases, the SHO investigating the report may be an employee from another agency. In the event of a conflict of interest, or of a claim of bias that could reasonably be raised against the impartiality of the assigned SHO, the assigned SHO should immediately contact DCHR to request another SHO be assigned to conduct the investigation.

If another SHO is assigned to conduct the investigation, the original SHO should notify the agency General Counsel and the reporting employee in writing of this change. The written notification should identify the new SHO as the formal contact for the investigation and as the individual who is conducting the investigation on behalf of the agency. The written notification is also useful for communicating to involved parties that an investigation is underway.

## Step 4. Plan the Investigation

Before investigating, the SHO must plan how the investigation will be carried out. To do this, DCHR recommends completing the attached Investigation Plan (see Attachment 3). To complete the plan, the SHO will need to rely on the complaint of the alleged victim or third-party witness reports of the potential harassment.

### Meet with the Complainant

The SHO **must** meet with the individual reporting the sexual harassment allegation. The individual may be an alleged victim, third-party witness or an individual to whom the allegation was reported. It is important to clarify the exact allegation from the individual making the report to the SHO. If he or she is not a witness to the allegation, the SHO should also make efforts to clarify the allegation from the original source of the complaint, which might be the alleged victim. These preliminary meetings are only for understanding the actual allegation. More thorough interviews of these witness should occur as the investigation progresses.

## Step 4. Plan the Investigation (Cont.)

### Understand the Complaint First

Before drafting the investigation plan, the SHO must have some understanding of the complaint and allegations. Initially, the SHO should verify the allegations with the individual originally reporting the situation, and then brainstorm and try to answer the following types of questions:

- Who complained? Are there multiple complainants?
- What is the alleged misconduct?
- Were there job-related promises or threats (quid pro quo), or is this a hostile work-environment claim?
- Who is the alleged wrongdoer (their name, position)? Is there more than one harasser?
- How many incidents of harassment have been alleged?
- Have any potential witnesses been named?
- Where and when did the harassment take place?
- How did the harassment come to the attention of the SHO?

Finding the answers to the above questions will help the SHO decide who to interview, what documents and other evidence might be available, and what type of questions to ask witnesses.



**TIP!** Site visits are extremely helpful at placing investigations and evidence in context. Whenever the SHO determines that the environment may be relevant to the events, the SHO should make all reasonable efforts to visit those locations. For example, if the alleged harassment took place in an office, visit the office to see how it is laid out and where it is relative to other employees.

## Step 4. Plan the Investigation (Cont.)

### Investigation Plan

After establishing the general nature of the complaint, and before contacting any witnesses or gathering any documentary evidence, complete a draft investigation plan as thoroughly as possible. The draft plan will be used to communicate the scope of the investigation to necessary people. Keep in mind that the initial draft will be an incomplete plan and the SHO will further develop the plan as the investigation goes forward.

#### Overview

Each investigation plan should have an Overview section. Give the investigation a title, a description with key objectives, and the investigation scope.

#### Basic Information

The Basic Information section provides the allegations. Describe what was alleged - who was harassed, by whom and how?

#### Chronology

Supply a succinct chronology of alleged events leading to the investigation. **This is not a chronology of the investigation;** it is a chronology of the harassing behavior and how that behavior came to the attention of the SHO.

#### Evidence

List any known direct and circumstantial evidence and potential witnesses. The list should be concise, but sufficiently descriptive to alert the reader as to the importance of the physical evidence or witnesses.

### Planned Investigation Activity

This section lists events that will take place during the investigation. This can include meetings, document reviews, and formal witness interviews. This section also includes a listing of notifications made to individuals during the course of the investigation, such as notifications to the General Counsel and to witnesses for purposes of scheduling interviews.

## Step 4. Plan the Investigation (Cont.)

### Notify the General Counsel

Upon receiving a report of an allegation of sexual harassment, the SHO shall promptly notify the agency's General Counsel of the allegation, and share all information related to the allegation, including but not limited to: name(s) of the alleged harasser, alleged victim, and witnesses, nature and type of harassment, any and all relevant date(s) and location(s), and a description of the incident(s) to be investigated. The General Counsel is responsible for determining what information, if any, should be communicated with the agency's leadership and external authorities, **AND** shall notify the Mayor's Office of Legal Counsel of the following within three (3) days of receiving a report of sexual harassment: name(s) of the alleged harasser, alleged victim, and witnesses, nature and type of harassment, any and all relevant date(s) and location(s), and a description of the incident(s) to be investigated.

### Revising the Plan

The investigation plan will be fluid and must be updated as the investigation proceeds. When new evidence is discovered or new witnesses come to light, that information should be added to the plan. Similarly, the plan should be updated with itinerary and notification changes.

## Step 5. Interviews

Once an investigation plan is in place, the SHO will need to direct his or her focus to interviewing witnesses. Whenever possible, the SHO should have a second person, who is equally trained, with him or her during interviews. Additionally, the SHO should never interview more than one witness at a time - witnesses should be interviewed separately.

The SHO should schedule and complete witness interviews as quickly as possible. Generally, the SHO should be able to complete all interviews within five days of receipt of the initial complaint, or as soon as possible. This allows for the investigation to come to a speedier conclusion, and minimizes investigation-related discussion among witnesses in the workplace. If interviewing a union employee, the SHO should refer to the agency's collective bargaining agreement and notify employees in writing that they have a right to union representation at the interview, if applicable. Some agencies require investigators to obtain statements or affidavits after an interview. Although DCHR does not require agencies to obtain statements or affidavits, agencies that find it beneficial to gather statements may do so. If it is feasible, agencies may also record interviews with witnesses.



**TIP!** The SHO should write anticipated questions before interviewing a witness. This practice will give the interview direction and will ensure that all questions needed will be asked.

## Step 5. Interviews (Cont.)

### Opening the Interview

The SHO will want to open every interview with similar remarks. Here is a roadmap that may be used for opening an interview with a witness:

- **Purpose.** The SHO may state that he or she is investigating a workplace complaint and that their role is to investigate the matter by gathering as much information as possible. If it is the complainant being interviewed, the SHO should advise the complainant that their complaint is being investigated.
- **Process.** Explain that the investigation process involves interviewing multiple witnesses and reviewing any necessary documents. Witnesses must be made aware that the agency will take appropriate steps if it finds that misconduct occurred.
- **Confidentiality.** Explain that the interview is confidential to the greatest extent possible and that disclosure of anything discussed in the interview is generally impermissible. (Provide a copy of the confidentiality requirements. See Attachment 4.) Where and when did the harassment take place?
- **Retaliation.** Explain that retaliation for the witness' cooperation is prohibited and that the witness should immediately notify your EEO counselor if any retaliation occurs due to the witness' reporting of sexual harassment or participating in the investigation process.
- **Rights and obligations.** Explain rights and obligations of witnesses, including but not limited to the obligation of government employees to cooperate in agency investigations of sexual harassment complaints. Additionally, if the complaint includes allegations of sexual assault or other possible crimes, the SHO must let the complainant know that they may also get help from the DC Victim Hotline, which provides free confidential, around-the-clock information and referrals for victims of all crime in the District of Columbia. (The DC Victim Hotline is available by phone at 844-443-5732 and online at <https://dcvictim.org>.)
- **Questions or concerns.** Ask the witness if he or she has any questions or concerns about the process.

## Step 5. Interviews (Cont.)


### Interviewing the Complainant(s)

Generally, the employee who is the alleged victim of sexual harassment should be the first person interviewed. The alleged victim should be interviewed within 5 days of acknowledging the initial complaint. The SHO should ask the employee to provide any potential evidence of offensive conduct such as emails, pictures, or other physical evidence. This employee should be able to provide the clearest picture of the alleged misconduct, and provide insight into other potential witnesses and evidence. In addition to being the first witness interviewed, it is likely this employee will need to be re-interviewed after documents are collected and statements are collected from all other witnesses to clarify any inconsistencies in the evidence.

Harassment claims usually involved a pattern of multiple incidents that occur over a period of time. When interviewing the alleged victim, the SHO must ask precise questions and take clear notes. The best practice is to have the employee list all incidents, then go through each incident in detail.

#### SAMPLE QUESTIONS

- What happened? How many incidents have there been?
- When did each incident take place (date as well as time, if possible)? How often?
- Where did they take place?
- Who was involved? What did that person say or do?
- How did you react? Did you say anything to [the employee]? What did you say? Did you react physically (e.g., leaving the room, slamming the door, crying, blushing)?
- Who else was present? Could anyone else have witnessed the incident(s)?
- Prior to these incidents, what was your relationship like with [the accused employee]? Do you know of similar incidents with other employees?
- Have you been affected by this? How?
- Are there any documents or other kinds of evidence relating to the incidents? Were there any email communications? Did you take notes or make journal entries? Were there any additional conversations with others about the incidents?
- When did you first report this and who did you tell? What did you tell them? How did they respond?
- How would you like to see this problem resolved?
- Is there anyone else you think I should interview regarding these incidents?
- Is there anything else you think I should know while I am investigating this matter?

 **Open-Ended Questions.** When interviewing the alleged victim, use open-ended questions. Ask: who, what, where, why and how.

## Step 5. Interviews (Cont.)

### Interviewing Third-Party Witnesses

After conducting an initial interview of the complainant, it is usually most effective to interview any third-party witnesses to the alleged harassment. Third-party witnesses are all other witnesses, excluding the accused employee. Interviewing third-party witnesses after the complainant allows the investigator to confirm or discount allegations made by the complainant, and assists in obtaining a complete account of the potential misconduct before asking the accused employee to respond. A third-party witness should be interviewed within 5 days after the interview with the complainant. If there are multiple third-party witnesses that must be interviewed, each subsequent witness should be interviewed as close in time to the first third-party witness as possible, in order to complete the investigation in a timely fashion.

When questioning third-party witnesses, the goal is to gather as much information as possible without giving too much information away. The interview should begin by stating, in general terms, why the SHO is interviewing the witness. The SHO should inform the witness that he or she is investigating a workplace incident, and that the witness might have information that will help determine what occurred. Then, the SHO will need to move into questions that will help determine whether the witness saw or heard the alleged incident(s).

#### SAMPLE QUESTIONS

- What is your typical workday or work week like? Who is your supervisor? What time do you arrive? Leave? What are your typical responsibilities?
- Do you work with [the alleged victim] or the [accused employee]?
- How would you characterize their working relationship?
- Has [the alleged victim] ever spoken to you about [the accused]? Has the [accused employee] ever spoken to you about [the alleged victim]?
- Have you seen any interactions between [the alleged victim] and [the accused] that made you uncomfortable? Have you seen any interactions that appeared to be of a sexual or inappropriate nature? Describe those interactions. Have you heard [the accused] speak to or about [the alleged victim] in a sexual or inappropriate nature? Describe those conversations?
- [If the witness saw or heard anything that is the subject of the complaint, ask questions to find out what the witness saw/heard, where it occurred, and when.]
- Have you heard these issues discussed in the workplace? When, where and by whom?
- Have you ever had a problem working with [the alleged victim] or [the accused]? If so, what are those problems?

## Step 5. Interviews (Cont.)

- Do you know of anyone else who might have information about these incidents or who might have experienced similar treatment from [the accused]?
- Are there any documents or other evidence you think I should review that relate to these incidents? Were there any email communications?
- Based on our conversation, is there anything else you think I need to know as I continue my investigation?

### Interviewing the Accused Employee

As noted, the employee who allegedly engaged in the harassing behavior should usually be interviewed last. This interview will be uncomfortable for the employee and the SHO regardless of whether the accused employee engaged in the alleged conduct. To avoid the need for a follow-up interview, it is important to have as much information as possible before this interview.

When interviewing an employee suspected of misconduct, he or she might be defensive. When opening the interview, the SHO should make clear that agency has a legal obligation to investigate the matter and has not yet made any determination or judgments regarding the allegations. The SHO should also make clear that the SHO's role is to be unbiased and to find out what happened and resolve the situation. The accused employee's perspective is part of information gathering, and is needed before any conclusions can be reached.

As stated previously, and as is the case for any individual being interviewed, the accused employee is allowed to have a representative of his/her choosing present during the interview.

**i** *Is the alleged harasser's participation in the interview voluntary? Before interviewing the alleged harasser(s) consult agency counsel on whether the accused employee should be compelled to participate in the investigation. Unless the case involves allegations of criminal conduct, their participation will usually be mandatory. However, this decision should be made by agency counsel.*

The SHO also needs to plan the sequence of questions for the accused employee. The first series of questions should be simple, non-controversial questions that the employee can easily and willingly answer. This will establish ease and rapport, which may help to diffuse any defensive tension that might otherwise occur.

**The SHO must advise the employee of the accusations made against him or her.** After preliminary introductions and questioning, the SHO must advise the accused employee(s) of the accusations made against them. Although the SHO **does not** need to identify the person who made the sexual harassment complaint, the SHO must allow the accused a fair opportunity to respond and thus may have to disclose the identity of the alleged victim or complainant.



## Step 5. Interviews (Cont.)

When interviewing the accused, the SHO should outline the totality of the accusation and ask the accused for their response. Then, the SHO should walk through each event that comprises the harassment complaint and obtain specific responses for each event. The SHO must provide the accused employee an opportunity to offer explanations, denials, defenses and potential witnesses and documentation for each event discussed.

### SAMPLE QUESTIONS

- What is your typical workday or work week like? What time do you arrive? Leave? What are your typical responsibilities? Where is your work station located?
- Do you supervise any employees? Who?
- How would you characterize your working relationship with direct reports? Coworkers?
- [Tell the accused employee what misconduct is alleged or suspected.] What is your response to these allegations?
- Did these things happen? What happened? When? Where?
- How did [the alleged victim] respond? Did [he or she] indicate that your statements or actions were offensive? What did he or she say?
- Did anyone witness these incidents?
- Have you discussed or reported these incidents to anyone? Who?
- Have you kept any notes or journals about these incidents?
- What is your work relationship with [the alleged victim]?
- [If the accused denies the allegations entirely:] Could another person have misunderstood your actions or statements? Do you think the allegations are made up? Why?
- Have you ever used profane language in the workplace?
- Have you ever used sexually explicit or suggestive language in the workplace?
- Have you ever seen [the alleged victim] outside of work? Where? When?
- Have you ever had a social relationship with [the alleged victim]? A romantic relationship? Have you ever asked [the alleged victim] out on a date? What was the response?
- Have you ever been accused of workplace harassment? How was it resolved?
- Have you ever received training on sexual harassment in the workplace? When?

## Step 5. Interviews (Cont.)

- Are you aware of the Mayor’s policy concerning sexual harassment? What is your understanding of the Mayor’s policy? How do you know about the policy?
- Are there others you can think of who might have information about these allegations?
- Do you know of any documents or other physical evidence I should be reviewing in the course of the investigation? Were there any email communications?
- Is there anything else you think I need to know for purposes of this investigation?

## Closing the Interview

After the SHO completes his or her interview questions, the SHO should review their notes with the interviewee. The SHO should make sure that all aspects of the situation have been covered and captured accurately. The SHO should remind the interviewee about the District’s confidentiality and retaliation policies. Witnesses should also be asked to report any new information to the SHO immediately.

Alleged victims and harassers must be advised of what to expect next. This includes informing them that they may be interviewed again if necessary.

## Documenting the Interview

The investigator must document the interview after its conclusion. The investigator can complete documentation in one of two ways. If the interview is recorded (which is the best practice), the investigator can document the interview by providing a transcription of the audio. If the interview is not recorded, or transcription services are unavailable, the investigator can draft a “memo to file” summarizing what was asked, and what the witnesses said in the interview. (See attachment 6: Sample Interview Summary Memo.)

Summaries are only useful if they are reliable. Therefore, it is vital that summaries be drafted immediately following the interview. If drafting the summary immediately is impractical, it must be drafted no more than 24 hours after the interview.

Interview documentation must include notes documenting the length of any breaks or interruptions, who was present in the room, and copies of any handwritten notes. Handwritten notes must be signed and dated by the author.

## Step 5. Interviews (Cont.)

### Follow-Up Interviews

If credible and relevant information surfaces that implicates a previously interviewed witness, and that witness did not have an opportunity to provide comments or respond to that information, the SHO must conduct a follow-up interview.

If new accusations or defenses arise, the alleged victim and the alleged harasser(s) must have a fair opportunity to respond. Except when they are trivial, new developments of this nature require re-interviewing the necessary witnesses.

## Step 6. Gather Documents and Physical Evidence

Throughout the interviewing step, the SHO may discover potential evidence. Evidence may include: emails, text messages, phone messages, letters, notes, journals, photographs, time and attendance records, building access records, gifts, offensive objects, policies, and other relevant items. The SHO must obtain evidence during and immediately following the interviewing phase.

If a SHO requires assistance in obtaining evidence, he or she should consult agency counsel. If necessary, agency counsel may request e-mail, telephonic and building access records from the Office of the Chief Technology Officer (OCTO) or Department of General Services (DGS). Moreover, agency counsel may be able to assist with securing other types of evidence, if needed.

## Step 7. Evaluate the Evidence

Once the SHO has completed all interviews and obtained all evidence, the SHO must determine what happened based on the evidence. After determining what happened, the SHO will make conclusions as it relates to the Mayor's sexual harassment policy. In other words, the SHO will make conclusions based on his or her **findings of fact**.

### Findings of Fact

The SHO will need to weigh all evidence such as, statements by witnesses, documents, and any other physical evidence, to determine what happened (i.e., what the "facts" are).

**i** **Standard of Proof.** *The SHO must decide what the facts are in any given investigation. A "fact" is an actual event or circumstance established by the evidence. The standard applied is a "preponderance of the evidence." This means, that the evidence shows, more likely than not, that an alleged event or circumstance occurred. It is not enough that alleged conduct could have occurred. Instead, the SHO must determine that it is more likely than not that the alleged conduct actually occurred.*

## Step 7. Evaluate the Evidence (Cont.)

### Assemble the Evidence

Before beginning the evaluation of evidence, the SHO should assemble the evidence into a logical order, and label each item for easy reference in an appropriately indexed investigative file. At this stage, almost every piece of evidence should have been documented. Therefore, the easiest assembly is to arrange each document in chronological order, labeling each piece of evidence in sequence as Exhibit 1, 2, 3 and so forth. Since the investigation plan is updated to include all evidence as the investigation progresses, it should be an easy matter to simply number the evidence listed in the plan.

Be sure to use a common identification method for all documents. A good practice is to use the format of “Document Title, document type/author (Date).” A sample list of evidence might look like the following:

1. Karen Connor Appointment to Deputy Director, SF-50 (April 1, 2012)
2. Daniel Smith Appointment to Prog. Analyst, SF-50 (March 15, 2013)
3. 2013 Performance Evaluation, Daniel Smith (4 rating) (Dec. 1, 2013)
4. 2014 Performance Evaluation, Daniel Smith (5 rating) (Dec. 7, 2014)
5. Party Tonight?, email message from Karen Connor to Daniel Smith, and his reply (Oct. 1, 2017)
6. 2017 Performance Evaluation, Daniel Smith (2 rating) (Dec. 5, 2017)
7. Interview of Daniel Smith, transcription (Jan. 10, 2018)
8. Interview of Samuel Adams, transcription (Jan. 10, 2018)
9. Interview of Karen Connor, transcription (Jan. 11, 2018)
10. Interview of Jack Daniels, transcription (Jan 10, 2018)



**Legal Standards.** *Legal authorities and standards, such as Mayor's Order 2017-313 are not evidence. They are legal authorities. They should not be listed as part of the evidence.*

## Step 7. Evaluate the Evidence (Cont.)

### Credibility

Sexual harassment investigations will invariably involve conflicting accounts of the same events. The SHO must consider each version of the facts and evaluate the credibility of competing evidence. When deciding the credibility of one version of events over another, the SHO should consider the factors below.

#### CREDIBILITY CONSIDERATIONS

- **Plausibility.** Which version of the facts makes the most sense? Does one version defy logic or common sense?
- **Direct Knowledge.** Did the witness see and hear the events they described, or does the witness rely on secondhand information? Secondhand information is typically less credible than firsthand knowledge.
- **Details.** How general or specific is the evidence? Specific details, particularly when supported by other evidence, are usually more credible than vague and unsubstantiated allegations.
- **Corroboration.** Are statements and other documents corroborated by other evidence?
- **Contradictions.** Are the witnesses' statements internally consistent? If a witness' statements are internally inconsistent, then their statements are typically less credible.
- **Demeanor.** A witness' demeanor may cause his or her statement to be less credible. Did the accused have a strong reaction to the allegations, or no reaction at all? Did the alleged victim seem genuinely upset? Demeanor is hard to judge and should not be the sole consideration when determining credibility. But, strong reactions one way or the other can be one consideration in assessing credibility.
- **Omissions.** Did any of the witnesses leave out details that they should have mentioned? If so, is the omission reasonable?
- **Prior Incidents.** Has the alleged victim made similar complaints in the past about others? Does the accused employee have a documented history of this type of misconduct?
- **Motive.** Do any of the witnesses have a motive for lying or exaggerating about the incident(s)? Do any of the witnesses have loyalty to or hold a grudge against any of the parties?
- **Credibility.** Do any of the witnesses have a history within the workplace that affects their credibility?

## Step 7. Evaluate the Evidence (Cont.)

### Authenticity of the Evidence

Issues of authenticity pertain to when a particular piece of evidence is not what it appears to be. Information that a piece of evidence was forged or altered would raise an issue as to its authenticity. Evidence collected from records databases or other reliable sources such as official agency files can be presumed authentic unless there is specific reason to believe otherwise. Key pieces of evidence should be authenticated by witness testimony if possible. For example, if an employee sends a note, ask that employee if they did indeed send the note. If issues of authenticity arise, they must be resolved.

### Tell the Story with the Facts

After assembling and assessing the credibility of all the evidence, the SHO is ready to list and decide each relevant fact in the case. For this purpose, a statement is “factual” if it describes an event or a thing in a manner that does not require substantial interpretation or characterization. Best practice is to list each individual fact that is needed to explain to someone who has no knowledge of the case, who the parties are, what happened, and why it matters. List the facts in a sequence that makes sense (e.g., chronologically) and is in a manner that tells a compelling story of events. For each fact listed, the SHO must cite evidentiary support.

At this phase, the SHO is not stating conclusions or opinions. However, if a witness disputes a fact, the SHO must weigh the competing evidence and decide which version is most credible and more likely to be true. For disputed facts, the SHO will list the disputed fact, citing all the evidentiary support. The SHO must also note that the fact was in dispute, how it was in dispute, and how the SHO resolved the factual dispute. For each statement explaining the resolution of a disputed fact, the SHO must cite evidentiary support.

As noted, for each fact listed, the SHO must cite to the piece of evidence that establishes that fact. Factual listings should be as concise as possible. Undisputed facts should be no more than one sentence. Disputed facts should be no more than three sentences.

### SAMPLE FACTUAL LISTING

1. Ms. Karen Connor was initially appointed to the D.C. Department of Human Resources as a Deputy Director on May 10, 2012 April 1, 2012. (Ex. 1).
2. Mr. Daniel Smith is a Program Analyst with the D.C. Department of Human Resources, who was appointed on March 15, 2013 (Ex. 2).
3. Between 2013 and 2016, Mr. Smith was an excellent performer, receiving ratings of 4 or 5 out of 5 on his performance evaluations (Ex. 3, 4).

## Step 7. Evaluate the Evidence (Cont.)

4. On September 1, 2017, Ms. Connor asked Mr. Smith to report to her office. (Ex. 7).
5. Within seconds of arriving in her office, Ms. Connors closed the door and started to share stories about her personal sex life (Ex. 7). For example, Ms. Connor informed Mr. Smith that she is a “swinger” (Ex. 7). She also shared that her husband has a girlfriend and she allows her son to watch pornography (Ex. 7).
6. Mr. Smith informed Ms. Connor that this conversation was unwelcome and made him uncomfortable (Ex. 7).
7. Over the next few weeks, Ms. Connor spoke about her sex life any time she encountered Mr. Smith in the office. (Ex. 7).
8. On October 1, 2017, Ms. Connor sent Mr. Smith an email in which she requested Mr. Smith join her for a “swingers” party (Ex. 5).
9. Mr. Smith declined the invitation to the party via email (Ex. 5).
10. Over the next few weeks, Ms. Connor stopped by Mr. Smith’s office on multiple occasions to see if Mr. Smith would accompany her to a “swingers” party (Ex. 7).
11. On, December 3, 2017, Ms. Connor told Mr. Smith that his performance rating would be adversely impacted if he did not consent to attending a “swingers” party (Ex. 7). In her interview, Ms. Connor disputed that her invitation was for a “swingers” party (Ex. 9). However, during witness interviews, two employees, Mr. Adams and Mr. Daniels, stated that Ms. Connor verbally asked them, prior to sending the email, whether Mr. Smith might be interested in going to a “swinger” party with her (Ex. 8 and 10).
12. On December 5, 2017, Ms. Connor issued Mr. Smith’s performance evaluation for 2017, rating him as “needing improvement,” or 2 out of a possible 5 (Ex. 6).
13. Notwithstanding the performance rating, Mr. Smith was an outstanding performer in 2017 and should have received at least a rating of “excellent,” or 4 out of 5 (Ex. 3 and 4). Though Ms. Connor rated him as a 2, when pressed on specific performance criteria used in prior performance evaluations, Ms. Connor could not articulate why she rated Mr. Smith a 2. (Ex. 9). She further indicated that his performance in those areas was properly scored in the past (Ex. 9). Mr. Daniels and Mr. Adams provided similar statements about Mr. Smith’s previous performance and his reputation for being a top performing employee. (Ex. 8 and 10).

## Step 7. Evaluate the Evidence (Cont.)

### Make Findings

After making factual findings, the SHO must apply those facts to the applicable standards in order to determine whether sexual harassment may or may not have occurred. Each conclusion shall be stated clearly, and shall be accompanied by a concise statement of the basis for that conclusion, including the facts, evidence, or other matters upon which the conclusion is based.

**i** **Example.** Pursuant to Mayor's Order 2017-313, "quid pro quo" sexual harassment is prohibited. "Quid pro quo" sexual harassment includes instances where the rejection of sexual advances is used as the basis for an employment decision.

Ms. Connor informed Mr. Smith that the only way she would provide him with a favorable performance rating is if he consented to attending a "swingers" party her. Following Mr. Smith's refusal to attend such a party, Mr. Smith received a poor performance rating. The evidence supports the conclusion that the invitation to attend the party was of a sexual nature and Ms. Connor relied on Mr. Smith's refusal to attend the "swingers" party as the basis for lowering his performance rating. More likely than not, Ms. Connor's conduct violated Mayor's Order 2017-313.

The Mayor's Order also defines sexual harassment as including sexually related conduct that is sufficiently severe or pervasive so as to create a "hostile work environment." Here, Ms. Connor repeatedly discussed her sexual preferences and experiences with Mr. Smith despite his repeated objections. Ms. Connor continually asked Mr. Smith about his own sexual experiences and desires. Finally, Ms. Connor repeatedly invited Mr. Smith to parties of a sexual nature despite his requests that she cease making such invitations. More likely than not, Ms. Connor's pervasive sexual comments and invitations created a hostile work environment as defined under Mayor's Order 2017-313.

Moreover, pursuant to 6B DCMR § 1800.3(g), employees shall not use their position for personal gain, and § 1800.43(h) requires employees to act impartially when carrying out their duties. Ms. Connors violated the Code of Ethics by using her supervisory influence to punish Mr. Smith for refusing her romantic advances and failing to act impartially when assigning his performance rating. Therefore, based on the evidence it is likely that Ms. Connors violated Mayor's Order 2017-313 and engaged in other misconduct, warranting disciplinary action.



## Step 8. Document the Investigation

Having fully investigated the matter, made findings of fact, and reached factual conclusions pertaining to the allegation, the SHO must reduce the totality of his or her investigation to a written investigation report. It is recommended that the SHO issue a preliminary report within 30 days after the completion of an investigation. It is recommended that each report contain the elements listed below. A sample investigation report is attached for guidance.

### REPORT ELEMENTS

- **Executive Summary.** The executive summary provides a concise summary of the entire report. It should state why an investigation was conducted, list the high-level findings, and conclusions.
- **Scope of the Investigation.** This section outlines what the allegation was, how it came to the SHO, and the steps the SHO took to investigate the case. The steps taken should be a chronology of events within the investigation, including the date, time, and actions taken to further the investigation. List all of the witnesses interviewed, and the date and location of each interview in the chronology of events.
- **Documentary and Physical Evidence.** This section lists all of the documents and other physical evidence collected in support of the investigation.
- **Allegations and Findings.** This section lists the original allegations and the investigator's factual findings.
- **Conclusions.** This section lists the applicable standards, such as the Mayor's Order, and the SHO's conclusions based on the factual findings.
- **Recommendations.** This section makes recommendations, if warranted, to the agency based on the SHO's findings.

## Step 9. Report Findings

After completing a final report, the SHO will provide agency counsel with a copy of the report, which includes the SHO's conclusions as to the facts. The agency or the SHO must also provide the complainant and the alleged harasser with a copy of the findings. Agency counsel shall be responsible for coordinating any necessary action against any individual based on the findings, and providing the report to agency leadership and the MOLC.

## Step 9. Report Findings (Cont.)

### No Misconduct

If the investigation report concludes that the accused employee(s) did not engage in any type of misconduct, and if any parties have been temporarily reassigned or placed on administrative leave, they should be recalled immediately. Additionally, agency counsel must evaluate the report, consulting with the SHO if needed, to determine whether the original allegations or subsequent statements regarding the sexual harassment claim were made in good faith. If allegations were made in bad faith, action against the complainant may be appropriate.

### Findings that are Inconclusive

When no decision can be reached, actions should still be taken. If the SHO cannot determine what happened, then the parties involved should at minimum be informed of this fact and re-educated on the agency's and District's sexual harassment and other relevant policies. If an agency's policy contains vagaries or gaps that inhibit the determination of whether a policy was violated, recommendations to revise the policies should be made.

### Misconduct

When misconduct is found, agency counsel will take the lead in taking prompt administrative action. Agency counsel may work with their internal agency HR officials. However, because timing has legal consequences, agency counsel must monitor the administrative action process. If the SHO believes that disciplinary action is warranted, they may recommend that disciplinary action be taken, but they may not recommend how it should be executed.

Please note that an employee who is found to have engaged in inappropriate conduct who is not terminated must attend mandatory sexual harassment training within sixty (60) days of his or her receiving notice of the finding. This training must be in addition to any disciplinary actions and must occur even if the employee has already received sexual harassment training.

In addition to imposing discipline on the employee found to have engaged in misconduct, the agency may also have an obligation to report credible violations of the District's Code of Conduct to the Board of Ethics and Government Accountability (BEGA). Such violations of the Code of Conduct may arise where the employee has engaged in ethical violations such as giving gifts to employees for sexual favors, bribing witnesses or potential reporters of sexual harassment, or using government resources to carry out the harassing behavior.



# Legal

## Legal

### Authorities

1. Human Rights and Relations, Title 4 of the D.C. Municipal Regulations (see § 101)
2. Sexual Harassment Policy, Guidance and Procedures, Mayor's Order 2017-313 (Dec. 18, 2017)
3. Corrective and Adverse Actions; Enforced Leave; and Grievances, Title 6-B, Chapter 16 of the D.C. Municipal Regulations
4. Employee Conduct, Title 6-B, Chapter 18 of the D.C. Municipal Regulations

### Applicability

The provisions of this issuance apply to all District employees under the Mayor's personnel authority.

# Additional Information

For additional information concerning this issuance, please contact the Department of Human Resources, Policy and Compliance Administration, by calling (202) 442-9700 or by sending an e-mail to [dchr.policy@dc.gov](mailto:dchr.policy@dc.gov).

# Attachments

[Attachment 1 - Easy-to-Read Digest: Mayor's Order 2017-313](#)

[Attachment 2 - SHO Designation Guidance](#)

[Attachment 3a - Sample Investigation Plan](#)

[Attachment 3b - Investigation Plan Template](#)

[Attachment 4 - Sample Notice of Confidentiality](#)

[Attachment 5 - Sample Witness Affidavit](#)

[Attachment 6 - Sample Interview Summary](#)

[Attachment 7a - Sample Investigation Report](#)

[Attachment 7b - Investigation Report Template](#)

[Attachment 8 - Model Complaints Summary](#)

[Attachment 9 - Sample Notification to Complainant/Alleged Harasser/Witnesses](#)

[Attachment 10 - SHO Investigation Process Diagram](#)

[Attachment 11 - SHO Training PowerPoint](#)

Attachment 12 - Rights and Responsibility Notices (Coming Soon)