

# **SEXUAL HARASSMENT INVESTIGATION CHECKLIST FOR CHURCH ORGANIZATIONS (LAY STAFF)\***

## **Points to Remember**

- Take the complaint seriously
- Remain neutral
- Prepare questions in advance of the interviews
- Keep thorough notes of each interview and each step of the process
- Where possible, have a second management-level person present in all interviews
- Follow through with the investigation in the most efficient manner possible
- Maintain confidentiality

## **Interviewing the Complainant**

- Explain how the investigation will be conducted -- that the purpose of the interview is to obtain the facts, clarify the issues and establish a mutual understanding of the problem in order to reach a fair resolution.

**Note:** The complainant is not entitled to have legal counsel present during this interview. If he/she requests counsel, explain that this is not a legal proceeding but, rather, is an internal Church/Agency investigation and, therefore, legal counsel is not included.

- Discuss confidentiality. Inform the complainant that the complaint and investigation will be handled confidentially; however, it will be discussed with the accused and, on a “need-to-know” basis with witnesses and others (who may be specified) within the church/agency who will be involved in assessing the complaint and determining the appropriate disciplinary response, if any.

**Note:** You cannot promise the complainant that the complaint will not go any further than your office. You cannot promise the complainant that his/her identity or that of the witnesses will not be revealed.

- Notify the complainant that you will be taking notes during the interview

**Note:** Make sure your notes are dated and that they specify the time (including total elapsed time) and place of the interview, as well as identifying all persons present

- Review the church/agency’s policy against sexual harassment, stressing that such conduct is not tolerated, that each complaint is investigated and, if sexual harassment is found,

appropriate measures will be taken to alleviate the situation. Thank the complainant for following the policy and reporting the incident.

- Reassure the complainant that he/she will not suffer any retaliation as the result of making a complaint in good faith. If necessary, explain what constitutes retaliation and instruct him/her to report any incidents of retaliation that might ensue.
- Ask the complainant to explain, in as much detail as possible, the conduct he/she is complaining of. Allow him/her the opportunity to tell the story without too many questions or attempts to direct the conversation, then go back and fill in any missing details. Make sure you have the following:
  - date, time and place
  - details of the complained of conduct (including exact words used, where relevant)
  - the identity of all persons involved in the conduct
  - the identity of any witness to the conduct
  - the complainant's response to the conduct -- specifically, determine whether the complainant asked the accused to stop the conduct and, if so, his/her response
- Ascertain whether the complainant is aware of any other employees who have been subjected to the same conduct by the accused.
- Ask the complainant what effect the alleged harassment had on him/her (e.g., lost work time, emotional or physical distress, diminished ability to work, etc.) without suggesting what such effects might be.
- Where appropriate, ask the complainant if a relationship exists or ever existed with the accused and if there was ever any occasion when such conduct was welcomed by the complainant from the accused or any other employee.
- Determine whether the complainant has discussed the conduct with the accused, other employees or other people. Instruct him/her not to talk about the complaint or the investigation with anyone other than his/her immediate family, legal advisor, or other counselor/advisor from this point forward.
- Obtain any original documents (notes, diary, etc.) or evidence. Give the complainant a copy and promise to return the originals after the matter is fully resolved. If the complainant is reluctant to surrender the originals, have a copy made for the church/agency's file.

**Note:** "Fully resolved" means after any charge or lawsuit resulting from the incident has been finalized, whether through adjudication, settlement, or other means. Since a lawsuit must be preceded by a charge and a charge must be filed within a specified time period after the incident, the matter usually is fully resolved if no charge has been filed within the applicable time period. Because filing times vary (both from state to state and when comparing state to federal), and because there can be delays in processing before the

church/agency receives notice of a pending charge, it is advisable to wait at least 12-14 months after the incident to see whether a charge is filed before considering the matter fully resolved and returning materials to the complainant.

- Ask the complainant what type of remedy he/she is seeking. Explain that the church/agency is not bound by his/her desires, but will keep that remedy in mind as it determines the appropriate response, in the event the complaint is supported.
  
- Based on the nature of the complaint, if the complainant and accused work together (either in close proximity or in subordinate/supervisor relationship) determine whether the complainant can continue to work in his/her present position. Where possible, the complainant and accused should be kept apart during the investigation. Possible options:
  - Transferring the complainant to a different position (but only if he/she requests it and it involves a lateral move)
  - Transferring the accused (again, only if he/she requests it and it does not constitute more favorable position)
  - If transfer is not possible, granting the complainant paid leave until the investigation is completed
  
- Ask the complainant to review your notes and to sign them to verify their accuracy. He/she should be permitted to suggest changes or additions. Or, in the alternative, ask the complainant to provide a written summary of his/her complaint, including a list of witnesses.
  
- Invite the complainant to contact you if he/she remembers any further information which may be helpful. Explain that you may be contacting him/her again in order to review information uncovered during the rest of your investigation and that you certainly will be in contact to advise him/her of the final determination on this complaint.
  
- Consult with legal counsel at some early point in the process and on an ongoing basis throughout the process.

### **Following Up the Complainant's Interview**

- Review the complainant and the accused's personnel files to determine whether any other complaints were previously reported, either by the same employee or by others. Also, check to see if any negative disciplinary action has recently been imposed on either, including poor performance reviews, job demotions, etc.
  
- If any church/agency staff will be used to transcribe notes, have access to the file or otherwise be privy to the details of the investigation, make sure they understand their obligation to maintain absolute confidentiality.

## Interviewing Witnesses

- In most cases, the witnesses, if any, should be interviewed before the accused, to ensure that you have as much information as possible before his/her interview. Move as swiftly as possible; the longer the investigation takes at this point, the greater the chance that the accused will learn of it before hearing from you.
- Explain that a complaint of sexual harassment has been received and that, per the church/agency's policy, it is being investigated. Advise the witness that he/she has been identified as someone who may have information relevant to the complaint and the purpose of the interview is to obtain his/her knowledge of the incident(s) in question.
- Discuss confidentiality. Inform the witness that the investigation will be handled confidentially; however, it will be discussed with others on a "need-to-know" basis.

**Note:** Remember that you cannot promise the witness that his/her identity will not be revealed.

- Advise the witness that you will be taking notes during the interview. Make sure your notes specify the date, time and place of the interview as well as the identity of all persons present.
- Reassure the witness that he/she will not suffer any retaliation as the result of participating in this investigation. If necessary, explain what constitutes retaliation and instruct him/her to report any incidents of retaliation that might ensue.
- In questioning the witness, begin with the general and move to the specific.

For example, if the issue has to do with Supervisor A telling dirty jokes and using sexually suggestive language, start with questions about the general workplace environment, move to questions about inappropriate joking and language, next move to questions about Supervisor A's joking and language and, finally, ask whether the witness heard Supervisor A tell a dirty joke or use suggestive language with the complainant.

- Encourage the witness to provide any other useful information related to the complainant, the accused or the alleged conduct.
- Instruct the witness not to reveal the fact of the investigation or any of the details discussed during the interview with anyone.
- Ask the witness to review your notes and to sign them to verify their accuracy. He/she should be permitted to suggest changes or additions. Or, in the alternative, ask the witness to provide a written summary of his/her observations or knowledge. In the event the witness has no knowledge concerning the complaint, a statement to that effect should be prepared and signed. Invite the witness to call or contact you if he/she recalls anything further that might assist in the investigation.

## Interviewing the Accused

- Inform the accused of the allegations made against him/her and that an investigation is being conducted.
  - It is not always necessary to identify the complainant -- if the conduct in question is generalized “bad behavior” it does not matter who complained.
  - It is not always necessary to characterize the complaint as “sexual harassment,” especially if the church/agency’s policy is broad and covers other inappropriate behavior.
  - As with the complainant, the accused does not have a right to have legal counsel present during this interview.
  
- Review the church/agency’s policy against sexual harassment, stressing that such conduct is not tolerated, that each complaint is investigated and, if sexual harassment is found, appropriate measures will be taken to alleviate the situation.
  
- Inform the accused that discipline will result in the event the complaint is deemed to be supported. If the conduct described by the complainant is serious enough to warrant discharge, this possibility should be mentioned.
  
- Explain how the investigation will be conducted -- that the purpose of the interview is to obtain the facts, clarify the issues and establish a mutual understanding of the problem in order to reach a fair resolution.
  
- Discuss confidentiality. Inform the accused that the complaint and investigation will be handled confidentially; however, it will be discussed on a “need-to-know” basis with witnesses and others (who may be specified) within the church/agency who will be involved in assessing the complaint and determining the appropriate disciplinary response, if any.
  
- Notify the accused that you will be taking notes during the interview. Record the date, time and place of the interview and the identity of all persons present.
  
- Direct the accused not to take any retaliatory action against the complainant, the witnesses, or anyone else involved in the complaint or investigation, advising him/her that such action will result in discipline up to and including immediate discharge. The accused should be instructed to avoid all non-church/agency-related contact with the complainant during the course of the investigation.
  
- Question the accused in the same way as you did the witnesses -- moving from the general to the specific. As with the complainant, make sure you obtain all of the facts related to the complaint.
  
- If the accused admits the conduct but asserts that it was not “unwelcome,” ask him/her for all facts that support this assertion.

- Question the accused about the nature of his/her relationship with the complainant -- whether a relationship exists or ever existed with the complainant, the nature of his/her workplace interactions with the complainant (if he/she normally uses sexual language, innuendo, jokes, gestures, etc.), if the accused is a supervisor, whether the complainant has recently been subjected to any criticism or disciplinary action.
- Ask the accused to identify any witnesses who might corroborate his/her response to the complaint.
- Remind the accused of the need for confidentiality and instruct him/her not to talk about the complaint or the investigation with anyone other than his/her immediate family and/or legal advisor.
- Ask the accused to review your notes and to sign them to verify their accuracy. He/she should be permitted to suggest changes or additions. Or, in the alternative, ask the accused to provide a written summary of his/her response.
- Invite the accused to contact you if he/she remembers any further information that may be helpful. Explain that you may be contacting him/her again in order to review information uncovered during the rest of your investigation and that you certainly will be in contact to advise him/her of the final determination on this complaint.

### **Follow-up and Determination**

- Review all notes, statements and evidence. Determine whether any further interviews are required (e.g., new witnesses identified by the accused, a follow-up interview of the complainant or any of the witnesses to confront him/her with information provided by the accused).
- Analyze each person's story and assess its credibility -- Is it logical? Does it contain inconsistencies? Is it supported or contradicted by the testimony of witnesses? Does the complainant or the accused have any motivation for lying? If there were no witnesses, could the incident have occurred at the time, place and in the manner described without having been observed?
- Determine whether a violation of the policy of the church/agency's policy occurred.
- If you conclude that no violation occurred or there is insufficient evidence to make a conclusion, the complainant and the accused each should be notified. The complainant should be advised that the evidence will be preserved and that the church/agency will investigate again if he/she provides further information. The complainant also should be encouraged to report any future incidents. The church/agency's policy should be reviewed and both parties reminded that such conduct is not tolerated, that each complaint is investigated and, if sexual harassment is found, appropriate measures will be taken to alleviate the situation. Each party also should be reminded of the prohibition against retaliation.

- If you conclude that a violation occurred, the complainant and accused each should be informed of that conclusion; however, the complainant does not need to know the disciplinary action that will be imposed, only that disciplinary action will follow and that the remedy will not necessarily be the one he/she suggested.
  
- Make sure that the discipline imposed is appropriate for the offense -- according to the courts, it must be “reasonably calculated to end the harassment.” The following actions, either alone, or in combination, may be considered with respect to the accused:
  - Apology to the complainant
  - Oral reprimand
  - Written warning
  - Counseling
  - Transfer or reassignment
  - Demotion
  - Adjustment of salary or bonus
  - Suspension (but keep in mind that exempt employees cannot be placed on unpaid suspension for other than a full work week without compromising their exempt status)
  - Discharge
  
- In the weeks following the investigation, follow-up with the complainant to ascertain whether he/she has experienced any retaliation or further inappropriate behavior from the accused.
  
- In the event discipline was imposed against the accused, follow-up to ensure that the remedial measures imposed have been carried out appropriately (e.g., ensure that he/she has attended the counseling session, made the necessary apology, etc.).

\*This checklist is intended to assist church organizations in investigating complaints of sexual harassment involving lay employees. Complaints involving clergy should be reported to the bishop or district superintendent immediately. Bishops and their cabinets may find this checklist helpful for the investigation of complaints against clergy, but they always must follow the requirements of the *Book of Discipline* first and foremost.

**NOTE:** This checklist assumes that there is a written policy in place in an organization addressing sexual harassment in the workplace. Recent U.S. Supreme Court decisions have underscored the importance of having such policies (up to date), ensuring that all staff are aware of such policies, and reinforcing the organization's support for enforcement.

**DISCLAIMER:** This checklist is provided by the legal department of the General Council on Finance and Administration (GCFA) to assist church organizations with general information about investigating complaints of sexual harassment. This checklist also is not intended to and does not establish a standard of care regarding how to investigate a claim of sexual harassment. GCFA is not engaged in legal, accounting, or other professional service. Church organizations should always seek the assistance of competent legal counsel as they address complaints of sexual harassment.

**THANK YOU:** The GCFA legal department greatly appreciates the input, expertise and work of Carol Browne, a partner in the Chicago law firm of Vedder, Price, Kaufman & Kammholz, in preparing this checklist.