

MONTEREY COLLEGE OF LAW SEXUAL HARASSMENT POLICY

A. Introduction

Monterey College of Law strongly reaffirms the values of free and open exchange of ideas and the creation and dissemination of knowledge. We recognize the constitutionally protected right to free speech enjoyed by all members of our community and we endorse the principles of academic freedom for our faculty, staff, and students. To sustain this freedom and openness, members of the Monterey College of Law community must adhere to the highest standards of objectivity, mutual trust, and confidence; they must also avoid coercion, intimidation, or exploitation. The standards of conduct within our community require that all members understand that sexual harassment or retaliation have no legitimate place in this environment and are inimical to achieving our objectives.

Students, faculty, and staff have the right to work and learn free from unwanted sexual advances. Advances made by faculty or staff toward students or by supervisors toward subordinates unfairly exploit the power inherent in those relationships. Unwelcome sexual conduct or advances between students interfere with the ability to participate in and benefit from law school programs. In both obvious and subtle ways, the very possibility of sexual harassment can destroy individual members of our community and can poison their academic and career relationships.

Members of our educational community have the right to work and learn in an environment that is free from verbal or physical sexual conduct that might either interfere with an individual's performance, or create a work or educational climate that is hostile, intimidating, or offensive, whether that conduct originates with an instructor, a supervisor, a staff member, or a peer.

Monterey College of Law is thus committed to creating and maintaining a community where all persons who participate in its programs and activities can work and learn together in an atmosphere free from all forms of harassment, exploitation, or intimidation. Monterey College of Law will respond promptly and effectively to reports of sexual harassment, and will take appropriate action to prevent, to correct, and if necessary, to discipline behavior that violates this policy.

B. Definition of Sexual Harassment

Sexual harassment is unwelcome sexual advances, requests for sexual favors, and other verbal or physical conduct of a sexual nature, when submitting to or rejecting this conduct explicitly or implicitly affects a person's employment or education, interferes with a person's work or educational performance, or creates an intimidating, hostile or offensive working or learning environment. To prevent sexual harassment or retaliation, Monterey College of Law will respond to reports of any such conduct.

Sexual harassment may include incidents between any members of the Monterey College of Law community, including faculty, academic appointees, staff, students, and non-student or non-employee participants in programs. Sexual harassment may occur in hierarchical relationships or between peers, or between persons of the same sex or the opposite sex. To determine whether the reported conduct constitutes sexual harassment, the record of the conduct as a whole and the totality of the circumstances will be considered, including the context in which the conduct occurred.

This policy covers unwelcome conduct of a sexual nature. Consensual romantic relationships between members of the Monterey College of Law community may be subject to other policies. While romantic relationships between members of the Monterey College of Law community may begin as consensual, they may evolve into situations that lead to charges of sexual harassment, subject to this policy.

Every member of our community should also be aware of special considerations for relationships between instructors and students currently enrolled in their classes or academic programs. Because of the power possessed by an instructor, and the special need for trust inherent in the teacher/student relationship, an instructor's romantic or sexual advance to a student in her or his class or academic program may seriously compromise that relationship. Unwelcome romantic or sexual advances from an instructor to a student currently enrolled in her or his course must be regarded as a serious breach of professional ethics and proper standards of professional behavior. Such overtures can impair the educational environment, not only for the instructor and the student singled out for her or his attentions, but also for the other students enrolled in the course. Other students may believe they are negatively affected by the relationship, for example through unacceptable discrimination regarding grading, references, access to resources, and educational opportunities.

C. Retaliation

This policy also prohibits retaliation against a person who reports sexual harassment, assists someone with a report of sexual harassment, or participates in any manner in an investigation or resolution of a sexual harassment report. Retaliation includes threats, intimidation, reprisals, and/or adverse actions related to employment or education.

D. Reports of Sexual Harassment

Any member of the Monterey College of Law community may report conduct that they believe constitutes sexual harassment under this policy. The report may be in writing or verbal (oral). In addition, supervisors, managers, and other designated employees are responsible for taking any action needed to prevent sexual harassment, to correct it when it occurs, and to report it promptly to the Sexual Harassment Officer (currently the Director of Admissions and Student Services) or other appropriate official designated to review and investigate sexual harassment complaints.

E. Response to Sexual Harassment

The Sexual Harassment Officer shall provide a prompt and effective response to reports of sexual harassment in accordance with these procedures. A prompt and effective response may include early resolution, formal investigation, and/or targeted training or educational programs. On findings of sexual harassment, Monterey College of Law may offer remedies to the individual or individuals harmed by the harassment consistent with applicable complaint resolution and grievance procedures. Such remedies may include counseling, an opportunity to repeat course work without penalty, changes to student housing assignments, or other appropriate interventions. Any member of the Monterey College of Law community who is found to have engaged in sexual harassment is subject to disciplinary action up to and including dismissal.

Generally, disciplinary action will be recommended when the harassing conduct is sufficiently severe, persistent, or pervasive that it alters the conditions of employment or limits the

opportunity to participate in or benefit from educational programs. Any manager, supervisor, or designated employee responsible for reporting or responding to sexual harassment who knew about the harassment and took no action to stop it or failed to report the prohibited harassment also may be subject to disciplinary action. Conduct by an employee that is sexual harassment or retaliation in violation of this policy is considered to be outside the normal course and scope of employment.

F. Intentionally False Reports

Because sexual harassment frequently involves interactions between persons that are not witnessed by others, reports of sexual harassment cannot always be substantiated by additional evidence. Lack of corroborating evidence or “proof” should not discourage individuals from reporting sexual harassment under this policy. However, individuals who make reports that are later found to have been intentionally false or made maliciously without regard for truth, may be subject to disciplinary action. This provision does not apply to reports made in good faith, even if the facts alleged in the report cannot be substantiated by an investigation.

G. Free Speech and Academic Freedom

The administration, faculty, staff, and students of Monterey College of Law enjoy significant free speech protections guaranteed by the First Amendment of the United States Constitution and Article I, Section I of the California Constitution. This policy is intended to protect members of Monterey College of Law community from discrimination, not to regulate protected speech. This policy shall be implemented in a manner that recognizes the importance of rights to freedom of speech and expression.

Monterey College of Law also has a compelling interest in free inquiry and the collective search for knowledge and thus recognizes principles of academic freedom as a special area of protected speech. Consistent with these principles, no provision of this policy shall be interpreted to prohibit conduct that is legitimately related to the course content, teaching methods, scholarship, or public commentary of an individual faculty member or the educational, political, artistic, or literary expression of students in classrooms and public forums. But, freedom of speech and academic freedom are not without limit, and the college will not permit speech or expressive conduct that violates federal or state anti-discrimination laws.

H. Additional Enforcement Information

The federal Equal Employment Opportunity Commission (EEOC) and the California Department of Fair Employment and Housing (DFEH) also investigate complaints of unlawful harassment in employment. The U.S. Department of Education Office for Civil Rights (OCR) investigates complaints of unlawful harassment of students in educational programs or activities. These agencies may serve as neutral fact finders and attempt to facilitate the voluntary resolution of disputes with the parties. For more information, contact the nearest office of the EEOC, DFEH or OCR listed in the telephone directory.

I. Reporting Procedures

A report or complaint of sexual harassment shall be defined as any meeting or discussion

with the Sexual Harassment Officer, or any formal written report or complaint made to inform Monterey College of Law that sexual harassment may have occurred. Persons experiencing problems with sexual harassment are encouraged to report them as soon as possible. Once a report has been made, in whatever form, Monterey College of Law official who has received the report should inform the SHO as soon as possible.

Oral reports of sexual harassment may be resolved informally. When a report is made in a written statement, informing Monterey College of Law that sexual harassment may have occurred and providing information sufficient for further inquiry, investigation by the SHO is required and may result in disciplinary or corrective action after due process is provided to the accused, if it is found that harassment has taken place.

Any member of Monterey College of Law's administration, faculty, or staff who receives reports of sexual harassment should report the matter to the SHO as soon as possible and also inform the complainants of their right to see the SHO or to file a formal complaint.

Although responsible officials will attempt to respect the wishes of the complainant with regard to action taken in response to the complaint, Monterey College of Law will take appropriate disciplinary or corrective action whenever deemed necessary to meet the college's responsibilities to provide a safe and non-discriminatory environment for other students and employees. The only case in which a complainant ordinarily may ensure that no action is taken on the complaint is when the person does not disclose the name or other details that would identify the accused.

Repeated sexual harassment of one or more individuals by the same offender must be taken as a more serious offense for purposes of disciplinary action; therefore, all reports and complaints of sexual harassment must be reported to the SHO, who is authorized to keep records of sexual harassment reports and complaints.

J. The Sexual Harassment Officer

The SHO is authorized to receive and resolve reports and complaints of sexual harassment and conduct fact-finding investigations of sexual harassment complaints. The SHO may, at her or his discretion, conduct a survey of any class taught by a faculty member or instructor about whom a sexual harassment complaint has been made and may request the attendance of the dean at any meeting with a faculty member or instructor to discuss a sexual harassment complaint filed against that person. All members of the campus community will cooperate fully with the SHO in fulfilling his or her responsibilities.

The SHO shall serve as consultant to law school officials who receive and resolve reports of sexual harassment and shall serve as principal advisor on sexual harassment policy and procedures. The SHO shall maintain files of all reports and complaints of sexual harassment, separate from any other personnel files, and shall maintain information on the number, location, and nature of reports and complaints.

The SHO shall attempt to resolve any reports of sexual harassment by informing, educating, mediating, or negotiating informal agreements. If no resolution can be reached that is acceptable to both parties and to Monterey College of Law, the SHO may institute a sexual harassment investigation, at the request of the complainant, when the report is made in writing.

The goal of early resolution is to resolve concerns at the earliest stage possible, with the cooperation of all parties involved. Early resolution may include an inquiry into the facts, but typically does not include a formal investigation. Means for resolution shall be flexible and encompass a full range of possible appropriate outcomes. Early resolution includes options such as mediating an agreement between the parties, separating the parties, referring the parties to counseling programs, negotiating an agreement for disciplinary action, conducting targeted educational and training programs, or remedies for the individual harmed by the harassment. Early resolution can also include options such as discussions with the parties, making recommendations for resolution, and conducting follow-up after a period of time to assure that the resolution has been implemented effectively. Steps taken to encourage resolution and agreements reached through early resolution efforts should be documented.

The SHO shall investigate all written complaints of sexual harassment in a timely manner. The SHO may also determine that an investigation is warranted without a written complaint, either because of the severity of the allegations reported, or because of the frequency of allegations against the accused, or for any other reason.

1. Fact-finding Investigation

The SHO shall investigate the circumstances of the alleged offense to the extent necessary to make a determination as to whether the allegations contained in the complaint constitute a violation of the Sexual Harassment Policy. This investigation should normally be completed within thirty (30) calendar days. If the investigation cannot be completed within that time, the SHO will so inform the complainant and the accused.

The SHO will interview anyone and examine any evidence deemed necessary to investigate the complaint fully. If the complainant or the accused request, her/his initial interview with the SHO will be tape recorded, and a copy provided. Although the SHO may seek the advice and assistance of the dean or Board of Directors in conducting the investigation, the investigation will normally be conducted only by the SHO.

2. SHO's Report

The SHO shall prepare a written report that includes a determination either that: (1) the facts do not support the allegations and the complaint should be dismissed; or (2) evidence of a violation of the Sexual Harassment Policy warrants remedial action. The SHO in cooperation with the relevant law school officials will ensure that the appropriate remedies are provided to the complainant, regardless of the outcome of the disciplinary process.

If the case is to be dismissed, a copy of the report with information related to third parties deleted, will be sent to the complainant, the accused, and kept in the SHO's files. The complainant has the right to appeal the dismissal and/or proposed remedies to the Advisory Council within fifteen (15) working days after notice from the SHO.

Even if the SHO does not make a finding of a violation of the Sexual Harassment Policy, but the SHO believes the behavior complained of may constitute misconduct, the SHO may refer the matter to the Dean or the Board of Directors.

K. Appeal of Sexual Harassment Officer's Findings and Proposed Remedies

An Advisory Council for the SHO shall be appointed by the president of the Board of Directors of Monterey College of Law. The Council will be composed of the Personnel Committee of the Board of Directors, plus two faculty members, one of whom is male and one of whom is female, to be named by the Dean and the president of the Board of Directors.

The Advisory Council shall meet as required with the SHO to review issues and incidents of sexual harassment, providing advice when appropriate. All incidents are to be discussed without names or identifying details, and all discussions will be confidential to the extent required by law and due process considerations. The Advisory Council will be informed of the outcome of the resolution of cases.

The complainant may appeal the SHO's findings and/or proposed remedies to the Advisory Council within fifteen (15) working days of the receipt of findings/proposed remedies. The Advisory Council shall review the complainant's appeal and provide the SHO the opportunity to respond to the appeal in writing and to amend the findings/proposed remedies within fifteen (15) working days of receipt of the appeal from the complainant. The Advisory Council shall notify the complainant, the SHO, and the accused of the outcome of this review, any amended findings/proposed remedies, and the next step to be taken, within fifteen (15) working days after Council review is completed.

L. Privacy

Monterey College of Law shall protect the privacy of individuals involved in a report of sexual harassment to the extent required by law and law school policy. A report of sexual harassment may result in the gathering of extremely sensitive information about individuals in Monterey College of Law community. While such information is considered confidential, applicable policy regarding access to public records and disclosure of personal information may require disclosure of certain information concerning a report of sexual harassment. In such cases, every effort shall be made to redact the records to protect the privacy of individuals. An individual who has reported sexual harassment may be advised of sanctions imposed against the accused when the individual needs to be aware of the sanction in order for it to be fully effective (such as restrictions on communication or contact with the individual who made the report).

Information about disciplinary action taken against the accused shall not be disclose without the accused's consent, unless it is necessary to ensure compliance with the action or the safety of individuals. Letters of warning and records of other disciplinary actions concerning sexual harassment are to be kept in staff or faculty personnel files and in a student's confidential file. Where there has been a finding, after a due process hearing or after investigation, or an acknowledgment of wrong-doing by staff or faculty, notice shall be placed in their personnel files. Where there has been a finding, after a due process hearing or after investigation, or an acknowledgment of wrong-doing, notice shall be placed in the student's confidential file.

M. Maintaining Records and Files

The Sexual Harassment Officer will maintain confidential records of all reports and complaints of sexual harassment. The file will contain all information, including complaints and reports, formal review documents, investigation reports, any response by the accused to the report, any record of appeal, any findings, remedies and the result of the appeal, and a record of

correspondence notifying the complainant and accused of actions taken and the progress of the complaint.

Files will be maintained on all reports of sexual harassment, whether they result in a formal investigation or not. The files are considered "confidential" for purposes of access and will be maintained in a secure location. Both the complainant and accused may have access to the record to the extent permitted by existing law. The name of any complainant or informant requesting confidentiality will not be included in the file. Other Monterey College of Law officials may have access if the disclosure is relevant and necessary in the ordinary course of the performance of their official duties and is related to the purpose for which the information was acquired. Access may also be given in response to a subpoena, court order or other compulsory legal process. Before the disclosure, the SHO should reasonably attempt to notify the individual to whom the record pertains, if the notification is not prohibited by law.

SHO files will be retained until five years after separation of the accused from law school employment or in the case of a student until five years after graduation; provided there has been no further report or complaint concerning the conduct of the accused for five (5) continuous years, from the date of the last report or complaint, the file will be destroyed. All records pertaining to pending litigation or a request for records shall be maintained in accordance with instructions from legal counsel.

N. Confidentiality of Reports of Sexual Harassment

Certain persons may have an obligation to respond to reports of sexual harassment, even if the individual making the report requests that no action be taken. An individual's request for confidentiality of reports of sexual harassment will be considered in determining an appropriate response; however, such requests will be considered in the dual contexts of Monterey College of Law's efforts to ensure a working and learning environment free from sexual harassment and the due process rights of the accused to be informed of the allegations and their source. Some level of disclosure may be necessary to ensure a complete and fair investigation, although Monterey College of Law will comply with requests for confidentiality to the extent possible.