

NOPD CONSENT DECREE MONITOR
NEW ORLEANS, LOUISIANA



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File Number: 37PA-191555

Deputy Superintendent Danny Murphy
Compliance Bureau, New Orleans Police Department
714 Broad Street
New Orleans. LA 70119

Dear Superintendent Murphy:

This letter constitutes confirmation that the Office of Consent Decree Monitor (“OCDM”) has reviewed and provided comments on the revised Chapter 26.3 – Workplace Discrimination, Sexual Harassment, and Retaliation. The OCDM has no objection to the policy as revised.

We believe that the revised Chapter 26.3 – Workplace Discrimination, Sexual Harassment, and Retaliation, incorporates all requirements of the Consent Decree and sets forth clear and appropriate rules to guide officer conduct. We will continue to assess the adequacy of this policy following its implementation. If we identify any concerns following implementation, we will present those concerns to you and the Department of Justice. Additionally, we note that, pursuant to the Consent Decree, NOPD has agreed to review and revise policies and procedures as necessary upon notice of a significant policy deficiency. We also note NOPD’s obligation to review this policy after a year of implementation to ensure it “provides effective direction to NOPD personnel and remains consistent with the Agreement, best practices, and current law.” Consent Decree at ¶ 8.

We appreciate your team’s effort, cooperation, and responsiveness throughout this process.
Very truly

Very truly yours,

David L. Douglass
For SHEPPARD MULLIN RICHTER & HAMPTON LLP*
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CC: HONORABLE SUSIE MORGAN (VIA ELECTRONIC MAIL)
EMILY GUNSTON, DEPARTMENT OF JUSTICE (VIA ELECTRONIC MAIL)



NEW ORLEANS POLICE DEPARTMENT OPERATIONS MANUAL

CHAPTER: 26.3

TITLE: WORKPLACE DISCRIMINATION, SEXUAL HARASSMENT, AND RETALIATION

EFFECTIVE:

REVISED:

PURPOSE

The purpose of this policy is to prevent Department members from subjecting others to, or being subjected to, discrimination, retaliation, or sexual harassment. Nothing in this policy is intended to create a legal or employment right or duty that is not created by law.

POLICY STATEMENT

1. The New Orleans Police Department is an equal opportunity employer and is committed to creating and maintaining a healthy work environment that will provide all employees the opportunity to perform their duties to their fullest potential. The working environment must be free of all forms of discriminatory harassment, including sexual harassment, and retaliation.
2. Harassment, discrimination, and retaliation expose the Department and its employees to serious liability and can lower morale, undermine the integrity of employee relationships, and interfere with the efficiency of Department operations. Harassment, discrimination, and retaliation constitute serious misconduct that will not be tolerated. The Department will take preventive and corrective action to address any behavior that violates this policy or the rights and privileges it is designed to protect.
3. The non-discrimination policies of the Department may be more comprehensive than state or federal law. Conduct that violates this policy may or may not violate state or federal law but still could subject a member to administrative discipline.

DEFINITIONS:

Definitions relevant to this Chapter include:

Complainant—Any person, including an NOPD officer or employee, who makes a complaint against an officer or employee of NOPD.

Discrimination—Discrimination is the disparate or adverse treatment of an individual based on or because of that person's actual or perceived characteristics such as race, color, ethnicity, national origin, ancestry, creed, religion, gender, gender identity, sexual orientation, economic

status, age, cultural group, disability, housing status, or affiliation with any other similar identifiable group.

Retaliation—Treating a person differently or engaging in acts of reprisal or intimidation against the person because he/she has filed a charge of discrimination or complaint, participated in an investigation, opposed a discriminatory practice, or otherwise exercised his or her rights or performed his or her work-related duties. Examples of retaliatory acts include, but are not limited to: threats; unsupported negative evaluations; withholding work-related information; giving punitive work assignments; denial of job benefits; giving demeaning or unnecessary job assignments; blocking advancement (e.g., promotion). This list is not exhaustive. Any conduct reasonably deemed to be retaliatory, harassing, or discriminatory may also violate this Chapter.

Sexual Harassment—Unwelcome sexual advances, requests for sexual favors, and other verbal or physical conduct of a sexual nature constitute sexual harassment when:

- (a) Submission to such conduct is made either explicitly or implicitly a term or condition of an individual's employment;
- (b) Submission to or rejection of such conduct by an individual is used as the basis for employment decisions affecting such individuals; or
Such conduct has the purpose or effect of unreasonably interfering with an individual's performance or creating an intimidating, hostile or offense working environment. The following are types of sexual harassment:
 - (a) **Quid Pro Quo (this for that):** This type of harassment exists when a member in management or supervisor states or implies that an employee must consent to unwelcome sexual advances in exchange for some economic benefit such as promotions, merits, job offers, job retention, etc. Also, quid pro quo sexual harassment occurs when rejection of sexual advances would result in adverse decisions affecting an employee's job status, (i.e. demotion, termination, denial of employment, etc.) Note: Field training officers may be considered "of supervisory capacity" due to their status and control over the recruit.
 - (b) **Hostile Work Environment:** Anyone in the work place can commit this type of harassment. A hostile work environment exists where sexual harassment is so pervasive or severe that it creates an intimidating, offensive work place and alters the conditions of employment.

DISCRIMINATION PROHIBITED

4. The Department prohibits all forms of discrimination, whether on or off duty, including any employment-related action by an employee that adversely affects an applicant or employee and is based on actual or perceived characteristics such as race, color, ethnicity, national origin, ancestry, creed, religion, gender, gender identity, sexual orientation, economic status, age, cultural group, disability, housing status, or affiliation with any other similar identifiable group (see Chapter 41.13, Bias-Free Policing).
5. Discriminatory harassment, including sexual harassment, is verbal or physical conduct that demeans or shows hostility or aversion toward an individual based upon that individual's protected class. It has the effect of interfering with an individual's work performance or creating a hostile or abusive work environment.
6. Conduct that may, under certain circumstances, constitute discriminatory harassment, can include making derogatory comments, authoring crude and offensive statements or remarks, making slurs or off-color jokes, stereotyping, engaging in threatening acts, making indecent gestures, pictures, cartoons, posters or material, making inappropriate physical contact, or using written material or department

equipment and/or systems to transmit or receive offensive material, statements or pictures. Such conduct is contrary to department policy and to the department's commitment to a discrimination-free work environment.

RETALIATION PROHIBITED

7. This Department expressly prohibits all forms of retaliation, including discouragement, intimidation, coercion, or adverse action, against any person who reports misconduct, makes a misconduct complaint, or cooperates with an investigation of misconduct.
8. No employee of the Department who is the subject of a misconduct complaint shall intentionally contact, or take any action against, a complainant or a witness involved in the misconduct complaint in retaliation for the complainant or witness having filed or provided information in support of a misconduct complaint. If the accused employee makes such contact or takes such action, the complainant or witness should immediately notify a supervisor. If the accused employee makes contact with, or takes any action against, a complainant or witness who is a member of the public, the accused employee shall immediately advise a supervisor.
9. Retaliation is an egregious offense that will not be tolerated. Any employee who retaliates against another employee or member of the public shall be subject to disciplinary action up to and including termination of employment.

OTHER EXAMPLES OF INAPPROPRIATE CONDUCT

10. Depending on the facts and circumstances, the following are examples of conduct that may violate this Chapter:
 - (a) Touching another person's body in a manner that the employee knows or should know the other person will regard as offensive (e.g. unwelcome neck massages, rubbing another person's hands or arms, touching another person's breasts, buttocks, or genitals);
 - (b) Displaying or circulating sexually suggestive objects or images, including pictures, posters, videos, photographs, cartoons, calendars, drawings, magazines, computer graphics, and literature;
 - (c) Exposing or touching oneself in a manner that the employee knows or should know the other person will regard as offensive;
 - (d) Alluding to another person's or one's own anatomy and/or genitals in a manner that the employee knows or should know the other person will regard as offensive;
 - (e) Telling sexually oriented jokes or making references or inquiries into someone's sexual preferences;
 - (f) Alluding to another person's or one's own mode of dress in a sexually oriented or suggestive manner that the employee knows or should know the other person will regard as offensive; and
 - (g) Posting, possessing, sending, soliciting or displaying in the workplace sexually suggestive, racist, "hate-site" related, or obscene letters, notes, invitations, cartoons, posters, facsimiles, electronic mail or web links.

MEMBER RESPONSIBILITIES

11. This policy applies to all Department personnel. All members shall follow the intent of these guidelines in a manner that reflects Department policy, professional law enforcement standards and the best interest of the Department and its mission.

12. Any member who believes, in good faith, that he/she has been discriminated against, harassed, subjected to retaliation, or who has observed harassment or discrimination, should promptly report such conduct in accordance with the requirements of this chapter and **Chapter 52.1.1—Misconduct Complaint Intake and Investigation** so that appropriate investigative and disciplinary actions may be taken. If the member's immediate supervisor is the accused employee, the member may report allegations to a supervisor higher in the chain of command or directly to the Public Integrity Bureau.
13. Every employee is responsible for taking the initiative to prevent sexual harassment in the workplace. Therefore, all employees shall:
 - (a) Conduct themselves in a professional manner and maintain a professional attitude;
 - (b) Avoid any type of act or discussion that the employee knows or should know others will regard as offensive; and
 - (c) Cease immediately any behavior or discussion if told that such conduct is offensive.
14. Any employee who encounters harassment, retaliation, and/or discrimination is encouraged to inform the offending party that his or her actions are unwelcome and/or offensive.

COMMANDERS AND SUPERVISORS RESPONSIBILITIES

15. Supervisors receiving written or verbal allegations of violations of this Chapter shall take such allegations seriously, deal with them in a prompt and effective manner, and, where appropriate, initiate a disciplinary investigation, by completing NOPD Form 230 – PIB Intake Form – Commendation – Complaint or Documentation of Minor Violation, and take all appropriate investigative and disciplinary actions, consistent with **Chapter 52.1.1—Misconduct Complaint Intake and Investigation**.
16. A supervisor to whom a complaint is given shall meet with the complainant and document the incident(s) complained of; the persons(s) performing or participating in the alleged acts of discrimination, harassment, or retaliation; any witnesses to the incident(s); and the date, time, and place of the incident(s).
17. All complaints of alleged inappropriate behavior shall be documented in writing and forwarded to the Public Integrity Bureau.
18. Supervisors shall take appropriate corrective action to stop or prevent further discrimination, harassment, or retaliation as soon as it is reported or observed.
19. Commanders shall take the initiative in preventing sexual harassment in the work place by setting good examples, demonstrating courteous and professional behavior at all times, and actively monitoring the work environment.
20. Commanders and supervisors shall ensure that employees do not suffer reprisal or retaliatory actions for presenting allegations of inappropriate behavior.
21. If a complaint can be resolved without a formal investigation through non-disciplinary counseling or training, supervisors shall thoroughly document this action in writing and forward to the Public Integrity Bureau in a Universal Complaint Form (see **Chapter 35.1.7—Non-Disciplinary Counseling for Minor Violations**).
22. Supervisors are not authorized to advise employees about their legal remedies as provided by Federal and/or State agencies.

ADDITIONAL CONSIDERATION

23. Discrimination and discriminatory harassment does not include actions that are in accordance with established rules, principles or standards, including:
- (a) Acts or omission of acts based solely upon bona fide occupational qualifications under the Equal Employment Opportunity Commission (EEOC) and the Louisiana Commission on Human Rights, and
 - (b) Bona fide requests or demands by a supervisor that an employee improve his/her work quality or output, that the employee report to the job site on time, that the employee comply with City or Department rules or regulations, or any other appropriate work-related communication between supervisor and employee.

PUBLIC INTEGRITY BUREAU RESPONSIBILITIES

24. The Public Integrity Bureau shall separately track all complaints of harassment, discrimination, or retaliation and maintain all files of such complaints. All files concerning complaints of inappropriate behavior shall be kept in such a manner as to allow the files to be accessed by the name of the accused and the name of the complaining employee. Access to the files shall be restricted to supervisory individuals conducting pertinent police business.
25. Failure of a commander or supervisor to take corrective action on a complaint of inappropriate behavior shall be reported to the Commander of the Public Integrity Bureau.

EQUAL OPPORTUNITY COMPLAINTS

26. No provision of this policy shall be construed to prevent any employee from seeking legal redress outside the Department after the employee has first filed an internal complaint within the Department and allowed the Department to investigate the complaint and take corrective action as needed. Employees who believe that they have been harassed or discriminated against are entitled to bring complaints of employment discrimination to federal, state and/or local agencies responsible for investigating such allegations. Specific time limitations apply to the filing of such charges. Employees are advised that proceeding with complaints under the provisions of this policy does not in any way affect those filing requirements.

QUESTIONS REGARDING DISCRIMINATION OR SEXUAL HARASSMENT

27. Members with questions regarding discrimination or sexual harassment are encouraged to contact a supervisor, Employee Relations, the Personnel Director or the Chief Administrative Officer or they may contact the Louisiana Commission on Human Rights.

INFORMATION POSTINGS

28. Managers and Commanders shall ensure that the Equal Employment Opportunity Commission (E.E.O.C.) or Louisiana Workforce Commission posters, notifications or other governmental information is properly posted in the workplace as required.