



Majlis Peguam Bar Council Malaysia

Tel : 03-2031 3003 (Hunting Line)
Fax : 03-20342825, 20261313, 20725818
E-mail : council@malaysianbar.org.my
Website : <http://www.malaysianbar.org.my>

Bar Council Malaysia
No. 13, 15 & 17, Leboh Pasar Besar
50050 Kuala Lumpur
Peti Surat 12478
50780 Kuala Lumpur, Malaysia

Bil Tuan :

Bil Kami : **Circular no: 54 /2007**
Dated: 2 March 2007

To all Members of the Bar and Pupils in Chambers

RE: Code of Practice on the Prevention and Eradication of Sexual Harassment in the Workplace

The Bar Council had earlier issued a circular (No. 125/2006) regarding the drafting of a mechanism for the resolution of complaints for members of the Bar and pupils within the legal profession and in dealings with the judiciary and the courts. This was taken in pursuant to the adoption of the Code of Practice on the Prevention and Eradication of Sexual Harassment in the Workplace at the 59th Annual General Meeting of the Malaysian Bar.

The Bar Council has endorsed the complaints mechanism and agreed that it will be in force on 1st March 2007. The complaints mechanism and the scope of its function are attached with the circular for the ease of reference to all Members and Pupils. The document will be made available from the Malaysian Bar website in due course.

This is an important step to ensure lawyers and pupils continue to provide quality services in a safe and healthy environment free from unwanted harassment and intimidation of a sexual nature. We encourage employers to implement similar in-house mechanisms to prevent, handle and eradicate sexual harassment in the workplace.

Ragnath Kesavan
Secretary

SEXUAL HARASSMENT

COMPLAINTS MECHANISM & THE SCOPE OF ITS FUNCTION

1. SCOPE

This mechanism only applies to advocates & solicitors (as hereinafter defined); pupils; and attachment students engaged for the purposes of the legal profession.

The scope of the mechanism covers complaints (as hereinafter defined) involving advocates & solicitors; pupils; and attachment students and the members of the Judiciary (as hereinafter defined).

2. DEFINITIONS

No.	Term	Meaning
(i)	"advocates & solicitors "	means advocates & solicitors of the Malaysian Bar;
(ii)	"Committee"	means the committee established under section 3 of this mechanism;
(iii)	"Complainant"	means a person (including an employee and employer, and a pupil) who lodges a complaint or on whose behalf a complaint is lodged;
(iv)	"complaint"	means a complaint lodged under this mechanism;
(v)	"Designated Officer"	means the Human Rights Officer of the Bar Council;
(vi)	"Judiciary"	means the members, judges, officers of the civil courts and the syariah courts and includes tribunals;
(vii)	"Respondent"	means a person who a complaint is lodged against;
(viii)	"workplace"	means any place where a person attends for the purpose of carrying out any functions in relation to his or her employment, occupation, business, trade or profession within the legal profession and need not be a person's principal place of business or employment including a ship, aircraft, vehicle, and virtual or cyber spaces and includes any context outside the workplace as a result of employment responsibilities or employment relationships.

3. COMPOSITION & SCOPE OF THE COMMITTEE

3.1 Upon receipt of notification of a complaint by the Designated Officer, the Bar Council must establish a committee to consider a complaint as follows:

- (a) an advocate & solicitor with years in practice not less than the Complainant and the Respondent, respectively Provided That where the Respondent has more that 10 years in practice, the advocate & solicitor must either be a member of the Bar Council or a State Bar Committee;
- (b) an advocate & solicitor with similar number of years of practice as the Complainant; and
- (c) a lay person familiar with sexual harassment issues (for example, a member of a non-governmental organisation), and

Provided That at least 50% of the members of the committee must be the same gender as the Complainant.

3.2 The Committee established must-

- (a) accept a complaint of sexual harassment;
- (b) investigate a complaint of sexual harassment;
- (c) with the Complainant's consent, attempt to amicably resolve a sexual harassment complaint through conciliation, including but not limited to the employer and the Judiciary;
- (d) record the terms of any agreements reached to resolve a sexual harassment complaint;
- (e) refer a sexual harassment complaint as follows:
 - (i) where the Respondent is an advocate & solicitor, to the Disciplinary Board;
 - or
 - (ii) where the Respondent is the Judiciary, to the Bar Council;for further action;
- (f) must record all complaints made under this mechanism including the nature and particulars including the status of the complaint for example whether the complaint was subsequently withdrawn, dismissed, resolved by conciliation and referred to the Disciplinary Board. The records must be retained for a period of 6 years from the date of receipt of the complaint by the Designated Officer; and
- (g) must take cognisance of any previous complaints, which may have been made against the Respondent as set out in the records pursuant to section 3.2(f) and may inform the Complainant of such complaints.

3.3 The Committee may deal with a complaint as a representative complaint if it is satisfied that the complaint was made by a person who is a member of a class of

persons against whom the alleged similar sexual harassment was directed on behalf of that class.

- 3.4** The Committee is bound to maintain confidentiality until completion of the enquiry.

4. MAKING A COMPLAINT

- 4.1** Subject to section 8, it is not necessary for the Complainant to have exhausted the remedies available to him with his employer before making a complaint under this section provided that the Committee may require the Complainant to explain the reasons the Complainant has not exhausted such remedies.
- 4.2** A complaint may be made to the Designated Officer and/or any committee members of the Bar Council and/or State Committees. Any and all complaints must be received and recorded by such persons. In the event any committee members of the Bar Council and/or State Committees receive a complaint, such member must forward the complaint to the Designated Officer within seven (7) days.
- 4.3** Lodging a written complaint by hand, post, facsimile or other electronic transmission may make a complaint.
- 4.4** A complaint must set out the details of the alleged contravention in the form annexed hereto..
- 4.5** The Designated Officer may assist a Complainant in writing his or her complaint. After the complaint has been finalised, confidentiality should be maintained, if the Complainant so desires, by withholding the Complainant's name and other particulars that would identify him or her.
- 4.6** A complaint is to be made within 24 months after the last incident of alleged sexual harassment provided that the complaint may include incidents of alleged sexual harassment by the same respondent occurring prior to the said period.
- 4.7** The Committee may accept a complaint made after the 24 months time limitation has expired if the Committee is satisfied that it is reasonable to do so.

PART A:

DEALING WITH COMPLAINTS EXCLUDING THE JUDICIARY

5. PROCEDURE AFTER MAKING A COMPLAINT

- 5.1** Within 14 days of the Designated Officer accepting a complaint, the Designated Officer is to:
- 5.1.1** notify the Respondent of that acceptance;
 - 5.1.2** notify the Chairperson of the Gender Committee of the Bar Council or the President of the Bar Council, as the case may be.
- 5.2** A Complainant may apply, at any time, to the Committee to withdraw a complaint.

- 5.3 An application to withdraw a complaint is to include a statement of the reasons for the application.
- 5.4 The Committee, on receipt of an application to withdraw a complaint, may investigate the circumstances for the application.
- 5.6 If the Committee is satisfied that an application to withdraw a complaint is made voluntarily, the Committee is to-
- (a) grant the withdrawal; and
 - (b) record the term of any agreement reached between the Complainant and the respondent;
- 5.7 Without prejudice to section 5.2, the Complainant may within 24 months after the last incident of alleged sexual harassment, re-file the complaint in the form annexed hereto.
- 5.8 The withdrawal of the complaint does not prevent the Committee from investigating the complaint if satisfied that-
- (a) the complaint was not withdrawn voluntarily; or
 - (b) it is in the interest of the legal profession to do so.

6. CONCILIATION

- 6.1 The Complainant and Respondent must abide by any directions issued by the Committee in relation to confidentiality of any matter raised or discussed in the proceedings.
- 6.2 The Committee must attempt to resolve by conciliation any complaint within 60 days from the date of notification under section 3.1.
- 6.3 The Committee, by written notice, must direct the Complainant and the respondent to a conciliation conference at a specified time and place.
- 6.4 A person, without reasonable excuse, must not fail to comply with any direction given under section 6.3.
- 6.5 A conciliation conference is to be held in private.
- 6.6 A person may use an interpreter at a conciliation conference.
- 6.7 The Committee is to record the terms of any agreement reached to resolve a complaint.
- 6.8 The record made by the Committee is to be signed by both parties.
- 6.9 The Committee is to-
- (a) provide a copy of the record to each party; and

- (b) hold the original record on file for a period of 6 years from the date of receipt of the complaint by the Designated Officer.
- 6.10 Anything said, written or done in the course of conciliation proceedings and all allegations and evidence adduced at the conference is privileged.
- 6.11 A person who raises an issue at an inquiry is to prove that issue on the balance of probabilities.
- 6.12 It is not necessary for evidence of sexual harassment to be corroborated before a respondent can be found liable in a sexual harassment complaint.
- 6.13 The Committee may take evidence on oath or affirmation and for that purpose a member of the Committee may administer an oath or affirmation.
- 6.14 The Committee –
- (a) is not bound by the rules of evidence but must observe the rules of natural justice;
 - (b) must conduct the hearing in accordance with equity and good conscience and the substantial merits of the case without regard to technicalities and legal form; and
 - (c) may take notice of any matter as it thinks fit.
- 6.15 The Committee may dismiss a complaint if it finds after an inquiry that the complaint is unsubstantiated.
- 6.16 Where the Committee is not unanimous on any question or matter to be determined, a decision must be taken by a majority of members.

7. REFERRAL TO THE DISCIPLINARY BOARD

- 7.1 Where the Respondent is an advocate & solicitor, the Committee is to refer a complaint to the Disciplinary Board for inquiry if the Committee –
- (a) believes the complaint cannot be resolved by conciliation; or
 - (b) has attempted to resolve the complaint by conciliation but has not been successful; or
 - (c) believes that the nature of the complaint is such that it should be referred for inquiry; or
 - (d) is requested by the Complainant to do so.
- 7.2 The Committee is to refer a complaint to the Disciplinary Board within 3 months of the date of a notification under section 3.1 regardless of whether an investigation or conciliation has been completed.
- 7.3 A referral for inquiry is to be accompanied by a statement of case only and not anything done in the course of conciliation.

7.4 The Designated Officer may assist a Complainant in writing the statement of case.

PART B:

8. DEALING WITH COMPLAINTS INVOLVING MEMBERS OF THE JUDICIARY

8.1 Where the Respondent is a member of the Judiciary, the Designated Officer is to refer a complaint to the President of the Bar Council for his further action.

8.2 The Designated Officer must monitor the progress of actions taken by the Bar Council and issue progress reports to the Complainant every 3 months or when requested by the Complainant from time to time.

[End]

ANNEXURE

FORM OF COMPLAINT

To:
Human Rights Officer
Bar Council
No 13, 15 & 17
Leboh Pasar Besar
50050 Kuala Lumpur

MODE OF DELIVERY:	
Attention to:	
	Human Rights Officer
	Committee members of the Bar Council
	Committee members of the State Committees
Transmission:	
	By Hand
	By Post
	By Fax
	By E-mail
Date:	

<u>No.</u>	<u>Description</u>	<u>Details</u>
(i)	Details of Complainant	
	Name:	
	New NRIC No.:	
	Old NRIC No.:	
	BC Sijil No.:	
	Legal Firm:	
	Years in Practice:	
(ii)	Details of Respondent	
	Name:	
	Legal Firm (if available)	
	Details of Judiciary:	

	Relationship of Respondent to Complainant e.g. employer	
(iii)	Details of the Complaint	
	Date(s)/Time Period:	
	Description of Complaint	
	Details of Witnesses (if any):	

Yours faithfully,

__[signature]_____

Name:

Date: