

# **CONDUCTING WORKPLACE INVESTIGATIONS**

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**This article focuses on threshold considerations of conducting a workplace investigation with an emphasis on the mechanics of conducting interviews. Sample forms, including sample investigative reports, are included.**

## **A. Legal Basis for Workplace Investigations**

In 1998, the Supreme Court issued two landmark decisions that changed the landscape of sexual harassment law: Faragher v. City of Boca Raton, 524 U.S. 775 (1998) and Burlington Industries, Inc. v. Ellerth, 524 U.S. 742 (1998).

Under Faragher and Ellerth, if harassment by a supervisor culminates in a tangible employment action, such as termination or a material change in duties, the employer is vicariously liable for the actions of its supervisor, without regard to whether the employer knew or should have known about the harassing behavior.

Employers do have, however, a two-pronged affirmative defense to vicarious liability for acts of a supervisor that do not culminate in an tangible employment action. The employer must show (1) that it exercised reasonable care to prevent and correct promptly any harassing behavior, and (2) that the employee alleging harassment unreasonably failed to take advantage of preventive or corrective opportunities provided by the employer or to otherwise avoid harm. It is the first factor -- the exercise of reasonable care to prevent and correct promptly any harassing behavior -- that requires a workplace investigation if the employer wants any chance to take advantage of the affirmative defense.

Although this article does not delve into the many legal facets of the decisions, the federal courts continue to define the parameters and meaning of these two cases. Although Faragher and Ellerth established the standard for employer liability, they left open questions for further clarification, most notably what constitutes a tangible

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<sup>1</sup> Mr. Torchia has successfully established an “workplace investigations” practice and is routinely hired by other law firms to serve as an independent third-party investigator of sexual harassment and discrimination claims, in order to preserve the attorney-client privilege between the client and their counsel. Mr. Torchia has conducted literally hundreds of workplace investigations and produces a quality report to support if testimony at trial, if needed. Mr. Torchia has also been hired to train internal investigators of various companies and through a Continuing Legal Education course that he planned and presented. He has also been hired as an expert witness to testify as to the sufficiency of workplace investigations performed by others.

employment action or a hostile work environment, and what are the parameters of the affirmative defense.

## **B. Introduction to Conducting the Investigation**

Investigations are conducted in myriad ways depending, of course, on factors such as the time allotted for the investigation, the number and types of witnesses involved, the nature of the claim, and the scope of the investigation itself. An investigation of a shift supervisor in a meat packing plant in Tennessee will be vastly different than an investigation involving a company President of a high-powered advertising firm in Boston.

The conduct of the investigation will also depend highly on the Investigator – specifically, his or her personality, experience, personal style and skill and knowledge of investigative techniques. A successful investigator is usually a “people person,” able to quickly assess a witness and establish rapport, and adjust to the varied emotions that emerge during an interview. Many investigators are professional or semi-professional interviewers such as attorneys, human resources personnel, and former law enforcement officers.

The techniques for conducting an interview are as varied as the interviewers themselves. Some investigators try to quickly establish a trust relationship, some empathize, and some cajole to evoke an anger response. Others will employ various tried and true investigative techniques such as feigning ignorance, feigning knowledge, repetition, and badgering. The best investigators, of course, will use a combination of all these methods to obtain the most complete information from a given witness.

There are many sources of information on the subject of investigation techniques. The following are a representative sample:

Cynthia B. Schroeder, *The Art and Science of Conducting Interviews and Investigations*, (Pennsylvania Bar Institute 2002).

Ragnar Benson, *Ragnar’s Guide to Interviews, Investigations, and Interrogations: How to Conduct Them, How to Survive Them* (Paladin Press 2002)

William L. Fleisher & Nathan J. Gordon, *Effective Interviewing and Interrogation Techniques* (Academic Press, Inc. 2001)

Amy Oppenheimer & Craig Pratt, *Investigating Workplace Harassment: How to Be Fair, Thorough and Legal* (Society for Human Resource Management 2002)

Don Rabon, *Interviewing and Interrogation* (Carolina Academic Press 1992)

Stan B. Walters, *Principles of Kinesic Interview and Interrogation* (CRC Press 2d ed. 2002)

David E. Zulawski & Douglas E. Wicklander, *Practical Aspects of Interview and Interrogation* (CRC Press 2d ed. 2001)

Paul J.J. Zwier & Anthony J. Bocchino, *Fact Investigation: A Practical Guide to Interviewing, Counseling and Case Theory Development* (National Institute for Trial Advocacy 2000)

David J. Lieberman, Ph.D., *Never Be Lied To Again*, (St. Martin's Griffin 1998)

See also Suzette Haden Elgin, *The Gentle Art of Verbal Self Defense*, (Dorset Press 1980)

### C. **Choosing the Investigator**

There are many considerations when choosing an investigator:

- objectivity, impartiality
- experience conducting investigations
- familiarity with company and/or industry
- professionalism
- availability
- cost
- ability to effectively communicate in writing the finding of the investigation
- ability to effectively communicate orally the finding of the investigation, i.e., will make a credible, likeable and understandable witness

Courts will determine the adequacy of the investigation, in part, based upon the credentials of the investigator. See, e.g., Casiano v. AT&T Corp., 213 F.3d 278, 286 (5th Cir. 2000) (court of appeals affirmed summary judgment for defendant employer who suspended alleged harasser in part as a result of using two “E.O. Specialists” to conduct investigation); Smith v. First Union Nat’l Bank, 202 F.3d 234, 245 (4th Cir. 2000) (court of appeals reversed summary judgment for defendant employer finding inadequate investigation where investigator had never before conducted a sexual harassment investigation, investigation focused on alleged harasser’s management style rather than complaints of sexual harassment, and did not even mention the allegations of sexual harassment to the alleged harasser); Cadena v. The Pacesetter Corp., 224 F.3d

1203, 1209 (10th Cir. 2000) (employer’s investigation was “inadequate, if not a complete shame” where the investigator not only conceded that she did not speak with the complainant, alleged harasser or any other potential witnesses concerning the matter but also admitted that she did not know the identities of complainant or the alleged harasser and was unsure if she had ever been told the nature of specifics of the complaint.)

## **D. Mechanics of Conducting the Interview**

### **1. Preparing for the Interview**

No matter whether the investigator is in-house or hired from the outside, thorough preparation is needed prior to commencing the investigation. In-house or inside investigators are presumably familiar with the company, its work rules, organizational structure and disciplinary policies. Outside investigators will have to work harder to understand the company and how it functions. It is important to learn, as quickly and as completely as possible, everything about the personnel involved, the department, the general mentality of the workforce, and the relationship between employees and management. Attorney investigators should prepare for an investigation and interviews as they would for discovery depositions.

The investigator should outline areas of inquiry and list specific questions to be asked. A list of documents should be made and amended as new documents are discovered or mentioned. In preparation for the investigation, the investigator should obtain and review the following documents, if they exist:

- company’s sexual harassment and related policies
- company’s disciplinary policies
- alleged harasser’s personnel file
- alleged victim’s personnel file
- previous complaints made by alleged victim or against alleged harasser
- internal correspondence regarding the complaint
- videotape, audiotape, or voicemail regarding incident
- sworn documents regarding the complaint, including papers filed with the state administrative agency, or EEOC, and union grievances
- previously prepared statements of any witness
- previously prepared notes
- employment contracts of alleged harasser and victim
- collective bargaining agreement

## **2. Location**

The location of the interview is important. It should be conducted in a quiet, private room. Open offices or cubicles will not suffice. An office or small conference room without windows (or windows with shades) usually suffices. Every effort should be made to avoid interruptions by both the interviewer and interviewee.

The interviews can be conducted on-site, that is, at the employer's location, or if the employer believes the investigation will be too disruptive, distracting or there is no suitable interview location, an off-site location can be used. Many investigators use their own office facilities. Private rooms can also be easily reserved at many hotels and offices of court reporters.

The interviewer should also plan ahead for the convenience of the witness. If the interview is likely to go more than a few hours, the interviewer should, as appropriate, take a break or stop for lunch.

## **3. Preliminary Statement and Introduction**

Keep in mind that, in addition to the alleged harasser and harassee, many witnesses will already know why they are being "called in" to speak with the investigator.

When the witness first comes in, the investigator should introduce himself or herself and read the Preliminary Statement.

**My name is Mike Torchia and I would like to read this statement before we begin. This is my business card.**

**I am an attorney, hired by ABC Company's attorneys. I am here today to investigate claims of sexual harassment. Based on my preliminary investigation, it appears that you and your colleagues have important information.**

**I do not represent ABC Company, and I do not represent you. I am here as an independent investigator. I will also tell you that I have no relationship, personally or professionally to any ABC Company employee. This is the first work of any kind I have performed for ABC Company.**

**I would like to ask you about the claims and would like you to answer the questions honestly and completely. From your responses I will prepare an affidavit that you will have an opportunity to correct. You will be asked to sign your affidavit.**

**You should know that the information you provide is not confidential. Although I and the Company will make every attempt to keep the information confidential, as should you, Company executives and their attorneys will have access to the information and your statement will become part of the investigative file and my final report.**

**At the conclusion of this interview, please do not discuss your statements or my questions with anyone except your attorney.**

There are a variety of initial standard questions that should be asked of the witness. It is essential to know:

- Full name and “nicknames”
- Job title, duties and shift worked for the relevant time period
- Start and end dates with employer
- Family members, significant others, etc. who work at the same company
- Supervisors’ names and titles
- Supervisees’ names and titles
- Whether the witness has previously been involved in an investigation or serious disciplinary procedure at the company
- What the witness has been told by others already interviewed
- What the witness has been told by others involved in the matter

- What the witness has been told by supervisors or management
- Whether the witness is tape recording the interview (the investigator should confirm the interview is not being, and cannot be recorded)
- Whether the witness has been given or offered anything of value to provide or withhold certain testimony
- Whether the witness has been threatened in any way to provide or withhold certain testimony

#### 4. **To Record or Not to Record?**

It is often debated whether an investigative interview should be audio or videotaped. Some suggest having a court reporter present at the interview to take a sworn statement. While these recording techniques have their place in litigation, generally, recording an investigative interview is disfavored.

Most witnesses feel uncomfortable being recorded, and will not be as forthcoming with information. They will be much less likely to implicate themselves, or explain the extent to which they witnessed an event. In short, most interviews proceed better when they are “off the record.” Of course, there is no such thing as “off the record” in the investigative context, but witnesses have the illusion of confidentiality and informality when the investigator is “only” taking handwritten notes.

Tape recording also creates a cumbersome, yet discoverable record, but without the body language and physical inflection of the communication. These tape recordings inevitably lead to transcripts which can make the entire investigative process expensive and ponderous.

If you decide to record, check state law regarding consent of tape recordings. Even if the witness initially consents to being recorded, it is advisable to take steps to avoid a claim under a state or federal law prohibiting such recording. See Wiretapping and Electronic Surveillance Control Act, 18 Pa. Cons. Stat. Ann. §§ 5701-5781 (West 2007). Keep the recorder in plain view at all times. Make certain you state, with the recorder running, the date, time and place of the interview, and the name of the interviewer and witness. Make sure the witness consents on tape to the recording. Acknowledge the recording at least once an hour, getting the witness to continue to consent. At the end of the interview, once again have the witness confirm that the entire interview was tape recorded and consent was given. The investigator should be the custodian of the original tapes and they must be accurately labeled with the “tabs” popped out to avoid inadvertently recording over the interview.

Lie detector tests are sometimes viewed by clients as the perfect solution when faced with a difficult credibility determination. Except in limited circumstances, it is a violation of federal law and many states' laws for an employer to force an employee to take a lie detector test. See The Employee Polygraph Protection Act, 29 U.S.C.A. §§ 2001-2009 (West 2007).

## **5. Representatives at the Interview**

As a matter of law, certain employees have the right to have a representative of their choosing present during an investigatory interview, as long as the interview will not be delayed. These rights are commonly referred to as Weingarten rights, after the seminal case that determined union employees have the right to a union representative at an investigatory interview. See National Labor Relations Bd. v. J. Weingarten, Inc., 420 U.S. 251 (1975). The right to have a representative present has been extended to non-union employees. See Epilepsy Foundation of North East Ohio v. NLRB, 268 F.3d 1095 (D.C. Cir. 2001), cert. denied, 536 U.S. 904 (2002); see also Commonwealth of Pennsylvania Office of Administration v. Pennsylvania Labor Relations Bd., No. Civ.A. 101MAP2005, 2007 WL 519167 (February 20, 2007) (in Pennsylvania, Public Employee Relations Act grants Weingarten rights to individual employees). In Pennsylvania, a "representative" does not include a private attorney. See Cheltenham Twp. v. Pennsylvania Labor Relations Bd., 846 A.2d 173 (Pa. Commw. 2004)<sup>2</sup>

Without getting into extensive debates about who can or cannot be present and under what circumstances, for the investigator, the question is often one of practicality, not law. For example, if the complainant insists on having her attorney present at the interview, and the investigator does not want anyone present, there are only three choices: (1) try and convince the complainant to be interviewed without the representative present (which more often than not fails); (2) interview with the representative; or (3) cancel the interview. Normally, it is more important to conduct the interview rather than cancel it, especially if the interview is of a complainant, harasser or material witness.

Sometimes, the employer will "remind" the employee that she must participate in the investigation, and may even threaten disciplinary action or termination for non-compliance. Although the employer may well be within its rights to do so, this is counterproductive to resolving the underlying complaint and may very well lead to an additional charge of retaliation.

With some pre-interview discussion about the ground rules for the interview, i.e., the representative should merely observe when at all possible, most problems can be avoided.

## 6. Order of Interviews

It is important to determine the order of the interviews to be conducted. Many times the order is pre-determined by witness' availability which are affected by a variety of conflicts such as business trips, vacations, personal commitments, medical procedures and the like.

The complainant should be interviewed first. It is difficult and inefficient to interview others, including the alleged harasser(s), while being forced to guess or assume what the complainant would say. There are, however, circumstances when the complainant may not be the first interview:

- Complainant is unavailable
- Complainant refuses to be interviewed, or interviewed first
- There are cross-complaints with no clear "primary" complainant
- Material witness or alleged harasser will shortly become unavailable and the investigator feels it necessary to "lock-in" the testimony
- Concern that material witness or alleged harasser will be threatened, influenced to change statement, or will independently discover facts tending to change his or her statement, and the investigator feels it necessary to "lock-in" the testimony
- Alleged harasser is influential in the company and insists on being interviewed first

Normally, the sequence of interviews is:

**Complainant → Harasser → Witnesses → Complainant**

Re-interviewing the complainant is almost always necessary, as the harasser, at least, raises issues and new facts. Of course, it may be necessary to re-interview the harasser or witnesses if additional information is discovered which requires clarification, confirmation or rebuttal.

## 7. Interviewing the Complainant

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<sup>2</sup> Beware, state laws differ, for example California and Rhode Island allow an attorney to be present.

Interviewing the Complainant is the main event of every sexual harassment investigation. The interviewer should plan to spend several hours with the Complainant, even for the simplest of complaints.

Complainants will be presented with the same Preliminary Statement as the other witnesses, which should reassure them that the investigator is objective. The Complainant should also be told that the company has responded to her complaints and intends to conduct a prompt and thorough investigation.<sup>3</sup>

The Complainant should be reassured that, to the extent possible, the investigation will be kept confidential, although several others will know the substance of her statements.

It is better to begin asking general, open-ended questions.

Be sure to ask all the “W questions” – who, what, when, where, and why.

In addition to the general witness questions, every Complainant must be asked the following:

- witnesses to incident(s)
- documents or physical evidence to support her version of the facts
- whether harasser has taken the same action against others
- whether the complaint was reported to anyone, and if not, why not
- prior problems with harasser
- prior relationship with harasser
- prior complaints of sexual harassment (whether or not at the same company)

Although it would seem that complainants would relish the opportunity to tell their story against an alleged harasser, there are myriad reasons why complainants can be reluctant to testify. Many complainants are concerned about retaliation, being disciplined or losing their jobs, despite assurances to the contrary. Often complainants, even though they presumably made the complaint to make the harasser stop his conduct, “don’t want to get him in trouble” and express genuine concern for what action the company may take against him. Complainants may also fear physical retaliation or abuse from the harasser, or being outcast by co-workers sympathetic to the harasser. Complainants represented by counsel are more likely not to fear retaliation and are generally more at ease attacking the harasser.

If the Complainant is totally uncooperative, the investigation should nonetheless continue, and the investigator should gather as much information as possible from witnesses and other sources. In this case, “hearsay” becomes more important, i.e., what

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<sup>3</sup> Although men or women can make complaints of sexual harassment, the paradigm remains a male harasser and female victim. With the apologies to all harassed males, we will refer to the victim as a woman.

the complainant told others about the complaint. The investigative report should reflect the fact the complainant was uncooperative, citing her reasons if known.

## **8. Interviewing the Alleged Harasser**

### **a. Initial Statements to the Harasser**

An alleged harasser is unlikely to say much of anything if he feels the investigator is biased or the outcome is predetermined. The alleged harasser must be assured the investigator is objective, no judgment or decisions have yet been made, and (if true), the investigator is merely reporting facts and will not make any recommendations to the decision makers.

The harasser should be reassured, to the extent possible, the investigation will be kept confidential, although several others will know the substance of his statements.

The harasser needs to know there have been complaints brought against him, and the company is quickly conducting an investigation to discover facts.

As an interview technique, the identity of the victim can be kept from the harasser until certain open-ended questions are asked. As a practical matter, alleged harassers are very hesitant, to say the least, to rebut any allegations if the complainant is not identified.

Harassers should be confronted with each and every allegation against them, and in fairness, every defense explored, including whether any documents or physical evidence exists, and whether there are witnesses they believe support their version of the facts. Although tempting to do so, the investigator should not assume the harasser's answers. Assumption is the enemy of logic. The investigator must also not suggest answers before hearing the harasser's version of the facts. For example, the investigator should not say the following:

#### **DO NOT ASK:**

Q: Did you grab her leg or just happen to bump into her?

Q: Did you call her a "bitch" out of anger or were you just kidding?

Q: Did you just walk up and start massaging her shoulders or did she motion for you to come over?

Tell the harasser that retaliation against the victim or any witness will not be tolerated and will be reported in the Investigative Report.

Plan to spend significant time interviewing the harasser. Except for the complainant herself, this will take the most time.

### **b. Stereotypical Harassers**

Chances are, you will know how the alleged harasser is approaching the investigation within the first few minutes of the interview. People who regularly conduct investigations or interviews begin to see distinct categories of reactions by someone being questioned or investigated. Although stereotypes are, by definition, generalities, an examination of several common approaches is instructive. Many harassers float in and out of the stereotypes during the investigation, some during the same interview.

**Cooperative:** The cooperative harasser will answer all questions and volunteer information. Usually a cooperative harasser will overcompensate and volunteer more information than you need or ask for. Cooperation can be genuine or feigned. Cooperative harassers are often overly apologetic and say things such as “I’d never do anything to hurt her,” “I’ll take a lie detector if you want,” “I just want to apologize and make things right.”

◆ If the cooperative harasser is evasive, the investigator’s contrary technique is to be forceful, neutralizing the harasser’s friendly approach and letting him know this is a serious affair.

**Practical:** The practical harasser comes across as a no-nonsense type. Mid-level supervisors often fall into this category. They are guarded, will provide information but do not volunteer, seem concerned but detached at times, and will focus on the logistics of the investigation asking questions such as “What happens now?” “Do I get to see the report?” “Are you making a recommendation?” and similar questions. Interviews with practical harassers tend to be short because of their disinclination to volunteer information.

◆ The investigator’s contrary technique is to repeat the same question until answered or use flattery to develop rapport.

**Silent type:** The silent type harasser is usually angry. It’s the investigator’s job to discover what he is angry about. He may be angry because the allegations are false, or because they are true and he has been caught. He may be angry because he thinks he should be angry, and you will be more likely to believe him. Silent type harassers say almost nothing, and answer questions in few words. Many times they have been advised to answer questions in that manner from an attorney or union representative.

◆ The investigator's contrary technique is to stay friendly, and reassure the harasser you are objective and the process is not predisposed to finding him responsible.

**Hostile:** Like the silent type, the hostile harasser is angry, but lashes out at the investigator, the victim, and usually anyone else mentioned during the interview. The hostile harasser is likely to defend himself with extraneous facts and arguments. Since emotions run high in harasser interviews, an alleged harasser can start the interview perfectly calm and become a hostile harasser when the investigator begins to ask probing questions.

◆ The investigator's contrary technique is to stay calm and friendly, using humor to the extent possible. If the hostile harasser doesn't walk out of the room in the first ten minutes, he is likely to calm down and provide information.

**Distracter:** A distracting harasser will evade the questions and provide extraneous and irrelevant information to distract the investigator from the fact that he is not answering the question. Any good investigator will sift through the muck and obtain an answer, or simply ask the question again. Some distracters are very good, however, at making it appear as if they answer the question. This is especially true for upper level management and executives, who are adroit at deflecting difficult inquiries.

Consider the following exchange from an actual interview with a distracter harasser who was a rank and file factory worker:

Q: As you know, I interviewed [Complainant] yesterday.

She said you called her all sorts of names. Let's start with this. When you came into the lunchroom last Thursday, did you call [Complainant] a "skank"?

A: Jimmy G, he's the guy I told you about in packaging, knows [Complainant] since he's a kid and says her whole family is trash.

Q: Let's focus on what you said in the lunchroom. Did you call [Complainant] a "skank"?

A: Here's the thing. There's like, a hundred people in that lunchroom everyday. Everybody is saying everything.

Q: Okay, but did you call her a "skank" last Thursday?

A: I'm dead either way, right? If I say no, she's just gonna say yes, and I'm dead, because she works up there in the office.

Q: No one is making any decisions here. Did you say. . .

A: . . . that whole family. . .

Q: ...that to her? Did you?  
A: [hesitating] Yeah, but it's true.  
Q: What's true? What's a "skank"?  
A: You know. Skank. She's skanky.

◆ The investigator's contrary technique is to focus the questions until the distracter answers, no matter how many times he attempts to distract.

**Questioner:** The questioning harasser will answer questions with questions. He will attempt to avoid answering questions until he feels he knows "where you are going" with the inquiry. Some will outright refuse to answer questions until you answer their questions.

◆ The investigator's contrary technique is to become forceful and insist; or employ the distracter technique and answer his question with minimal or non-responsive information.

**Educated:** Some harassers believe they are, or actually are, educated to the process of the investigation. This occurs when investigating, for example, an attorney, human resources manager or upper level manager. The educated harasser will try to shortcut your questions by getting to what he thinks you are asking. For example:

Q: Have you completed an evaluation on the Complainant since she made these allegations against you?  
A: I didn't do anything to retaliate against her if that's what you mean.

or

Q: Did you ever ask her about her sex life?  
A: (rolls his eyes) No, there's no way she can say she worked in a hostile work environment.

Educated harassers can be difficult to interview, especially if they are, in fact, educated to the process.

◆ The investigator's contrary technique is to keep the educated harasser off guard. Instead of asking about one incident, completing the inquiry and moving on, get the information in bits and pieces. This will help distract the educated harasser from seeing a pattern in the questioning and making assumptions about the reasons for your questions.

## **9. Concluding the Investigation**

After making certain that all pertinent information has been obtained, the interview can be concluded.

### **a. Concluding with the Witness**

At the conclusion of each interview, the investigator should make clear to the witness that:

- The witness may be called back if necessary
- The witness should not speak with anyone about the interview
- The witness will receive a draft affidavit to review and sign
- The witness should contact the investigator directly with additional knowledge, corrections to the statement or recollections.
- The witness should contact the investigator directly if there are threats or reprimands for participating in the investigation
- The investigator appreciates the witness' time.

### **b. Organizing the File**

It is suggested there be one folder for each witness. The file should be organized in a way that will make it easy to prepare the investigative report and for others to understand how the investigation was conducted. Remember the investigative report and file are likely entirely discoverable.

Make certain to have all copies of documentary evidence including company documents such as sexual harassment policies, memoranda, employee evaluation and disciplinary reports and the like. The investigator's notes should be neat, legible and dated.

The file should stay in the custody of the investigator.

### **c. The "Preliminary" Results**

At the conclusion of the investigation, it is common for the employer to ask the investigator what he or she "thinks." The employer is really asking, "did he do it," but

will often qualify the question by saying, “I know you just finished and need time to review your notes, and I know this is only your gut feeling, but, did he do it?”

There is nothing wrong with giving a verbal report about the testimony and facts generally. There is also nothing wrong, per se, with the investigator giving an opinion about the credibility of the witnesses, including the complainant and alleged harasser. Keep in mind, however, that whatever is discussed is potentially discoverable. Also, remember the scope of the assignment, that is, if being hired by the employer, it may have asked specifically that you do not render an opinion about the ultimate question, i.e., “did he do it?”

#### **d. Investigative Report Deadline**

Be certain to give the employer an estimate of when the Investigative Report will be completed. Remember to leave time for affidavits to be drafted, sent to witnesses and returned, keeping in mind that witnesses, especially non-employee witnesses of the employer, may not comply with your deadlines.

#### **E. Mechanics of Obtaining Signed Affidavits**

For a variety of reasons, an Investigator may choose not prepare affidavits for witnesses to review and sign. These reasons include time (not enough time before a report must be completed); no written report is being prepared; and cost (investigating person or entity does not or cannot pay for the additional time to prepare affidavits). There are also instances when it is unnecessary to prepare affidavits because the investigation is extremely simple, short, or there are already sufficient documents that “lock in” the complainant, witnesses or alleged harasser (e.g., individuals have written detailed letters of complaint or have previously been asked to provide a written statement).

Assuming affidavits will be prepared, it would seem a relatively simple task to obtain a signed affidavit from a witness. This small piece of administrivia, however, can prove to be maddening for an investigator faced with a deadline for completing the Investigative Report.

At the interview, the investigator will take notes (or record the interview) so that an affidavit can be prepared as an exhibit to the Investigative Report.

Almost always, the investigator will prepare the affidavit sometime after the interview, and will deliver a draft copy to the witness for review. The witness will naturally be concerned about keeping the affidavit confidential, especially since he or she will not know if it accurately reflects their statement until they read it. The following is a recommended procedure for obtaining a signed affidavit, without compromising confidentiality:

1. As soon as practicable, prepare a draft affidavit from the interview notes. Do not identify the affidavit as “DRAFT.”
2. Contact the witness to arrange how the draft will be delivered.
3. Regardless of the delivery method, the draft affidavit must be accompanied by a letter identifying the affidavit as draft, and encouraging the witness to make any changes he or she deems appropriate. Also, remind the witness that the affidavit is not supposed to reflect everything said at the interview, only those facts deemed relevant to the particular investigation.
4. If delivered by e-mail, verify e-mail address and request return receipt.
5. If by facsimile, verify fax number, use a cover sheet, and keep the transmission report.
6. The e-mail and fax delivery is only for the witness to review the draft affidavit and make changes. An original must be signed and returned.
7. Mail the final affidavit with a cover letter to the witness. Enclose a self addressed, stamped envelope for its return.
8. If the affidavit is being mailed to the workplace, or being addressed to another for delivery to the witness, place the final affidavit in an envelope with a seal or sticker over the flap, so that tampering would be evident. The cover letter inside should reference the sticker so the witness will know if someone opened the envelope. Enclose a self-addressed stamped envelope and another sticker so the witness can sign the affidavit, place it in the return envelope, and place the sticker over the flap. This way, the witness will have some assurance that it will not be opened before the investigator sees it. It is not unusual in larger investigations for a company representative to be in charge of distributing and collecting affidavits from company witnesses.

A sample letter to the witness, or affiant, follows:

**Letter to Affiant - Sample**

[Investigator's Letterhead]

January 10, 2007

ABC Consultants, Inc.  
123 Commerce Road  
Philadelphia, PA 19103

RE: Sexual Harassment Claims of Karen Ibsen

Dear [Affiant]:

Enclosed with this letter is an Affidavit prepared for you based upon your oral statement given to me during your interview.

I have enclosed "Instructions to the Affiant" that you should read and follow carefully. If you have any questions or concerns, please do not hesitate to contact me or have your attorney contact me at any time.

Please return the signed and notarized Affidavit no later than Friday, January 19, 2007.

Very truly yours,

MICHAEL J. TORCHIA

/hnl  
Enclosure

Letter to Affiant - Sample

**INSTRUCTIONS TO AFFIANT**

1. You should have two copies of the draft Affidavit. If not, make a copy to put away so you will have a clean version of the Affidavit sent for your review.
2. Review the Affidavit carefully and note any changes. This is your sworn statement so change any spelling errors as well as incorrect facts.
3. If the changes are those which you feel you can correct in handwriting on the Affidavit, do so neatly. Initial any changes in the margin.
4. If the changes cannot be easily corrected by handwriting, note the changes and a new Affidavit will be prepared for your review incorporating your changes.
5. If the Affidavit is satisfactory after you have reviewed it and made changes, sign and have it notarized.
6. You must sign it in the presence of a notary.
7. Make a copy of the amended, signed and notarized Affidavit and return the original in the enclosed, self-addressed, stamped envelope no later than Friday, January 19, 2007.

If you have any questions, please call Michael J. Torchia, Esquire at 215-887-2042.

## **F. The Investigative Report**

The format of the Investigative Report will largely be a function of the scope of the Investigation. It should, at a minimum, provide to an uninformed reader, the identity of the parties; the nature of the complaint; pertinent background information about the employer, department, business surroundings, company policies, etc.; and a summary of the facts and statements of the witnesses. It should also provide the parameters of the investigation, that is, the time frame in which it was conducted, whether or not counsel was present during the interviews, whether there were any restrictions on the investigation, and what additional information is required for a complete investigation, if any.

A “simple” investigation usually involves a single complainant, a single alleged harasser and a small number of witnesses. See Appendix A: Simple Investigation – Sexual Harassment. If the complainant makes a subsequent claim, especially if the claim can survive on its own such as retaliation, a second investigation should be conducted and a separate report prepared. See Appendix B: Simple Investigation – Retaliation (same complainant as Appendix A).

A “complex” investigation can involve multiple complainants, multiple harassers which usually leads to a variety of incidents, documents and witnesses. See Appendix C: Complex Investigation – Sexual Harassment.

Why prepare a written Investigative Report? Employers will almost always want to prove that they acted promptly and reasonably. They want to demonstrate that they took action, spent the time and money to have an investigator conduct an investigation and prepare a report. Without a written report, the investigation appears haphazard and informal. Many times, the employer will want an “update” or “off-the-record” conversation with the Investigator as the investigation proceeds, and before a Report is prepared. There is nothing improper about such conversations, so long as the employer understands such communications are not protected by any privilege and are entirely discoverable, as are any “suggestions” the employer may make to the Investigator about the content of the Investigative Report.

Who prepares the Investigative Report?: The Investigator will prepare the Investigative Report, and is responsible for its contents, including attached exhibits. Since the Report is likely to be the single most important document arising out of the investigation, it is recommended it be bound or otherwise prepared in professional manner. Sufficient copies should be made to provide to the client and, of course, the Investigator should retain at least one complete copy.

Is the Investigative Report confidential? Not usually. The Report will normally be delivered to the hiring client, most often a company or its representative. The Report will likely be shared with other company representatives and its attorneys. If an action is filed, the plaintiff-employee has a right to obtain a copy. Often companies volunteer a copy of the Investigative Report to the employee or his or her attorney without a formal

complaint being filed. The Investigative Report is not normally delivered to the harasser directly from the Investigator.

Do witnesses names appear in the Investigative Report? Yes. The Investigative Report is a complete record of the investigation and witnesses' names and statements will appear. The witnesses must understand that confidentiality will be maintained to the extent possible, but for the most part, their statements are not confidential. This should be disclosed in the Preliminary Statement. If there is a special circumstance, such as the possibility the Investigative Report would be published in the press, a witnesses' name can be redacted and replaced with "Witness 1," "Witness 2" or the like, but that causes numerous complications. For example, who will then have the "key" to the actual names? How is the uninformed reader supposed to gauge the relevance of the testimony without knowing specifically who made the statement? Even if redacted, the witness names would be discoverable. In smaller investigations with only a few witnesses, the testimony of any given witness, even if shrouded, is easily decipherable.

Does the Investigative Report reflect whether witnesses are represented by counsel? Yes. Anyone connected to the investigation must be listed, especially if they are present during the interviews.

Why give dates and times of the interviews? Not only does the chronology provide an accurate picture of the investigation, but it may be important for the employee or the employer, or both, to know how long the investigation took. The employee may argue the investigation was unreasonable in length or that the employer stalled to avoid taking action. The employer will want to show how it acted promptly to address the complaint. If there is a reason why the investigation was delayed, the investigator should note the reason in detail.

Do you state whether there were restrictions on the interview process? Absolutely. If the employer is uncooperative about letting certain witnesses be interviewed, or places unreasonable restrictions on the time for the interview, it should be noted. Remember, the Report will be scrutinized by employer and employee alike, and the Investigator will be cross-examined on how and why certain portions were drafted the way they were, why certain witnesses were not re-interviewed, and why this or that was not done. If there were restrictions, they must be acknowledged.

Does the Investigative Report contain recommendations, e.g., discipline of the harasser? It would be unusual for the Investigator to make such recommendations. Those decisions are best left to the company decision makers and their attorneys. Once the Investigation makes recommendations, there is a significant risk he or she will then be considered to have rendered legal advice, and the objectivity of the Investigator will have been destroyed.

Does the Investigative Report contain an opinion of the ultimate question, i.e., whether sexual harassment occurred? Not unless the client requests such a recommendation. Normally, the employer and its attorneys want to be able to "interpret"

the Report as they see fit, without having to deal with an Investigator's opinion that may or may not be helpful in defending the case. Therefore, most employer's attorneys will simply request an objective report with no ultimate findings or recommendations. Query whether the Investigator's opinion, even if not requested, is admissible or relevant at trial.

Do you disclose compensation in the Investigative Report? Yes, although there need only be an acknowledgment that the Investigator was or will be paid by the client, usually the employer or its attorneys. It is not necessary to state the dollar amount. This is done in the spirit of full disclosure, and to avoid any appearance of impropriety upon cross-examination.

**SAMPLE #1: Simple Investigation**  
**Sexual Harassment**

**INVESTIGATIVE REPORT**

December 13, 2006

This Investigative Report supersedes any previous report.

**MATTER/CASE NAME:** ABC Consultants, Inc.; Karen Ibsen complainant

**INVESTIGATOR:** Michael J. Torchia, Esq.  
Semanoff Ormsby Greenberg & Torchia, LLC  
Suite 200  
610 Old York Road  
Jenkintown, PA 19046  
(215) 887-2042  
Fax: 887-5356

**ATTORNEY CONTACT:** Michael D. Jennings, Esq.  
Clark Lewis LLP  
2004 One Liberty Place  
1650 Market Street  
Philadelphia, PA 19103-7301

**INTERVIEW SCHEDULE:**

Total interviewees: 3

All interviewees are currently employed by ABC Consultants.

Friday, November 3, 2006 (2)	Donald Schuster, Fran Mannon
Friday, November 17, 2006 (1)	Karen Ibsen
Monday, November 27, 2006 (1)	Donald Schuster (follow-up)

The Investigator attempted to interview Larry DeStefano on Monday, November 26, 2005, however, Mr. DeStefano refused to be interviewed without an attorney present. Mr. DeStefano's attorney contacted the Investigator sometime later. At that point, the Investigator believed that Mr. DeStefano had little, if any, personal knowledge of the key events and facts, so the completion of this Report was not delayed.

**RESTRICTIONS OF INTERVIEWS:**

The company placed no restrictions on any interview in terms of scope of questioning or time allotted for each interview, and no person was restricted from being interviewed. To the contrary, company attorneys advised unlimited access to all personnel during the interview process and company officers fully cooperated with interviews, on-site inspection of facilities and scheduling.

**LEGAL REPRESENTATION:**

ABC Consultants, Inc. is represented by Michael D. Jennings, Esq. of Clark Lewis LLP of Philadelphia who did not attend any interview.

Karen Ibsen (Complainant) is represented by Robert Steinman, Esq. of Philadelphia who attended Ms. Ibsen's interview.

Larry DeStefano (potential witness -- not interviewed) is represented by Gregory G. Horatio, Esq. of Pennsauken, New Jersey.

**SEXUAL HARASSMENT POLICY:**

ABC Consultants has a sexual harassment policy in effect that specifically prohibits sexual harassment and directs any complaints to the EEO Officer (Vice President). A copy of the sexual harassment policy is attached as Exhibit "A."

**NATURE OF COMPLAINT:**

Karen Ibsen reported to Fran Mannon an incident that occurred on Thursday, October 19, 2006, the so-called “I Love You” incident, when Donald Schuster, her direct supervisor, told her that he loved her. This statement by Mr. Schuster triggered Ms. Ibsen to reconsider previous incidents between herself and Mr. Schuster, and now believes that Mr. Schuster has been acting romantically towards her and to “win her over.”

Ms. Ibsen reports no incident of quid pro quo sexual harassment, or any other discrimination by Mr. Schuster or others.

**EXHIBIT LIST:**

- Exhibit A.....Sexual Harassment Policy
- Exhibit B..... Karen Ibsen Affidavit
- Exhibit C..... Donald Schuster Affidavit
- Exhibit D..... Fran Mannon Affidavit
- Exhibit E.....Draft affidavits and correspondence
- Exhibit F .....E-mail messages from Karen Ibsen to Joseph Ibsen
- Exhibit G.....Letter from Donald Schuster to Karen Ibsen (blank as of 12/13/01)

**PRELIMINARY STATEMENT:**

The following Preliminary Statement was read to each interviewee in substantially the form that follows:

**My name is Mike Torchia and I would like to read this statement before we begin. This is my business card.**

**I am an attorney, hired by the company’s attorneys. I am here today to investigate claims of sexual harassment brought by Karen Ibsen. Based on my**

preliminary investigation, it appears that you have important information.

I do not represent ABC Consultants, I do not represent Ms. Ibsen and I do not represent you. I am here as an independent investigator.

I would like to ask you about the claims and would like you to answer the questions honestly and completely. From your responses I will prepare an affidavit that you will have an opportunity to correct. You will be asked to sign your affidavit.

You should know that the information you provide is not confidential. Although I and the company will make every attempt to keep the information confidential, as should you, some company employees and their attorneys will have access to the information and your statement will become part of the investigative file and my final report.

At the conclusion of this interview, please do not discuss your statements or my questions with anyone.

I will also tell you that I have no relationship, personally or professionally to any company employee or official. This is the first work of any kind I have performed for ABC Consultants.

**AFFIDAVITS:**

Copies of the three final affidavits are attached to this Report as follows: Karen Ibsen is Exhibit "B"; Donald Schuster is Exhibit "C"; and Fran Mannon is Exhibit "D." The affidavits of Mr. Schuster and Ms. Mannon have been reviewed and signed. Ms. Ibsen made corrections (and initialed each one) but told the Investigator that, on advice of her attorney, she would not sign the affidavit. Because each interviewee had an opportunity to amend their respective affidavits, the final affidavits may vary from the draft affidavits.

The draft Affidavits were prepared directly from the oral statements given during the interview. Not all of the interviewee's comments were incorporated. To the contrary, the affidavits reflect statements directly related to the claims. Generally, positive or negative statements about the company or its personnel or rumors of events not related to the claims were not included in the affidavits. A copy of the draft affidavits and the letter and instructions that accompanied each affidavit are attached as Exhibit "E."

#### SUMMARY OF INTERVIEWS:

##### **"I LOVE YOU INCIDENT"**

The so-called "I love you" incident occurred on Thursday, October 19, 2006 at approximately 3:00 p.m.

Ms. Ibsen reports that earlier that day, Donald Schuster told her he had an appointment at Mellon Bank and also a "field trip" and he wanted her to go with him. In mid-afternoon, Donald told her he could not go to the Bank, but insisted she go with him to this other destination. Ms. Ibsen "did not feel like going," but Mr. Schuster asked several times. Mr. Schuster suggested that, since it was nearing the end of the day, they could take her car and she could go home afterward and he would take a bus or cab back to work. Mr. Schuster agrees that, on the way to City Hall and the "Wonders of Italy" outdoor exhibit, he drove Ms. Ibsen's car.

They both agree that they were discussing Ms. Ibsen's engagement to her fiancé Mark. They both agree that Mr. Schuster told her that she should not marry Mark and that she was marrying him because she had a "problem" living with someone.

While sitting on a concrete bench outside of City Hall, Ms. Ibsen reports that Mr. Schuster said, "I really do love you." He followed this statement by saying that he felt so

much better to finally tell her and that he was glad to “get it off his chest.” Ms. Ibsen was not certain what she said, but thinks she responded, “Thank you, but I don’t know how to respond.” Mr. Schuster reports that Ms. Ibsen said nothing after the comment.

Mr. Schuster reports that he said, “After some consideration, I want you to know I love you and will always be there for you.” He said he also made some reference to being there for her as a brother.

After the conversation, they both agree that Ms. Ibsen drove Mr. Schuster back to work and then drove home alone. There were no witnesses to the conversation.

#### **FOLLOWING THE INCIDENT**

The next day, Friday, October 20, 2006, Ms. Ibsen and Mr. Schuster spoke about the incident. During the conversation, Ms. Ibsen apologized to Mr. Schuster for leading him “into sin.” According to Ms. Ibsen, Mr. Schuster said, “For the past eight months, I have been going out of my mind trying to figure out how you fit into my life” and that Mr. Schuster never qualified his statement, that is, he never said he loved me “like a brother,” “like a friend,” or other such word. Mr. Schuster recalls qualifying his statement that he loved Ms. Ibsen like a brother, and does not remember saying anything about “eight months.” Mr. Schuster also remembers explaining to Ms. Ibsen that, “I said I love you, not that I was in love with you,” and that he had made similar statements to others at work.

Mr. Schuster does not recall saying anything about “eight months,” but recalls an incident that occurred approximately eight months earlier. At that time, in approximately February, 2006, Mr. Schuster mentioned to Ms. Ibsen that “We’re about as close as two people can be without being romantic.” Ms. Ibsen told Mr. Schuster around that same

time, “If you weren’t married, our relationship would be very different.” Ms. Ibsen explained (during a follow-up telephone conversation not contained in her Affidavit) that she made the statement, but meant that she and Mr. Schuster would do more things together as friends if he were not married, and did not mean it in a romantic way.

According to Ms. Ibsen, on Monday, October 23, 2006, Ms. Ibsen told Mr. DeStefano, about the “I love you” comment. After that, Mr. DeStefano had a conversation with Mr. Schuster when Mr. Schuster allegedly said “I always thought that Karen and my relationship would go to the next level.” Ms. Ibsen took that to mean that he was hoping to become romantically involved.

Earlier in the year, there had been rumors that Mr. Schuster and Ms. Ibsen were romantically involved, and Mr. Schuster attempted to dispel these rumors by warning his staff at a staff meeting about spreading gossip and Ms. Moskowitz’s newly implemented “zero tolerance” policy regarding gossip.

In the affidavits, Ms. Ibsen and Fran Mannon describe how Ms. Ibsen spoke with Ms. Mannon and the steps taken by Ms. Mannon to control the situation, including moving Ms. Ibsen’s office, asking Mr. DeStefano to be an intermediary, and authorizing this investigation. Ms. Mannon also told Mr. Schuster to have “no contact” with Ms. Ibsen until further notice.

There were other relatively minor incidents that followed such as a voice mail message left by Mr. Schuster on Ms. Ibsen’s work voice-mail asking if she wanted to discuss the situation; and Mr. Schuster coming to Ms. Ibsen’s office to deliver a box of blank checks and to let her know someone was waiting for her in the lobby. Both of these events were seen by Ms. Ibsen to be breaches of the “no contact” directive. Ms.

Ibsen also speculated that Mr. Schuster had read e-mail messages on her computer, specifically, two message sent to her brother. The two e-mail messages are attached as Exhibit “F.”

The “I Love You” incident and the incidents that immediately followed caused Ms. Ibsen to reconsider previous incidents between herself and Mr. Schuster, and now believes that Mr. Schuster has been acting romantically towards her and to “win her over.” These incidents include:

- Mr. Schuster asked Ms. Ibsen to lunch several times and also asked her to accompany him on business and personal errands. For example, bank deposits, a trip to the farmer’s market and trip to pick up a suit in New Jersey for his sister’s wedding. Mr. Schuster does not dispute this and notes he has done this with other staff members.

- In June, 2006, Ms. Ibsen was moving into a new residence. In between the move and training at the Ramada Inn, Mr. Schuster insisted that he and Ms. Ibsen go to lunch at a fast food restaurant. While at the fast food restaurant, Mr. Schuster leaned over and kissed her forehead. Ms. Ibsen said nothing in response. Mr. Schuster does not materially dispute this, but remembers the kiss being on the top of her head, not forehead.

- In the summer of 2005, Mr. Schuster was scheduled to go to Texas on a trip. Ms. Ibsen was out to lunch with Mr. Schuster and Mr. DeStefano and they teased her and asked her if she wanted to go to Texas for an accounting conference and stay in the same room with Mr. Schuster. Mr. Schuster does not materially dispute this.

- Mr. Schuster sent Ms. Ibsen a postcard from Texas to her home saying, “Wish you were here. It’s beautiful.” Mr. Schuster does not dispute this.

- There were three times when Ms. Ibsen ran into Mr. Schuster at a local CVS Drug Store. According to Ms. Ibsen, he knew when she would go to Genuardi Grocery Store for lunch. After that, she would occasionally go to CVS Drug for errands. Three separate times Ms. Ibsen met Mr. Schuster in CVS Drug and became increasingly upset, assuming Mr. Schuster had followed her. Mr. Schuster does not dispute this, although states it was merely coincidence that he saw her in the store, and goes there frequently.

- Many times, Mr. Schuster asked to take Ms. Ibsen's 14 year old son, Misha, fishing. Ms. Ibsen thought that was a little unusual and Misha didn't want to go so Ms. Ibsen kept putting him off and that never occurred. Mr. Schuster does not dispute that he once asked Ms. Ibsen's son to go fishing, and that he asked her son to go to the golf driving range.

- For Christmas, 2005, Mr. Schuster bought Ms. Ibsen a designer sweater and asked Ms. Ibsen to come to the parking lot to give it to her. Mr. Schuster also bought Ms. Ibsen a T-shirt and printed from the computer the word "Sweetheart" and pinned it on the shirt. This referred to gossip that had been occurring in the office that Ms. Ibsen was supposedly his favorite. Mr. Schuster does not materially dispute this. At the Christmas party in 2005, Mr. Schuster had been drinking and asked Marcia Villas and myself to go out afterwards to get a drink and Marcia and Ms. Ibsen refused.<sup>4</sup>

- In October, 2005, Ms. Ibsen resigned her position at ABC Consultants to start another job at a Center City law firm as an accounts payable clerk. The same day Ms. Ibsen resigned, Mr. Schuster came to her house and delivered a letter asking her to stay at

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<sup>4</sup> Although Ms. Iamurri has a copy of the letter and promised to deliver it to the Investigator as of the date of this report, it has not been received. The report will include an empty Exhibit "G" tab to have the letter placed there when received.

ABC Consultants and later matched the salary increase she would have received had she left. Ms. Ibsen stayed at ABC Consultants. Mr. Schuster does not dispute this. The letter is attached as Exhibit "E."

- In April, 2006, Ms. Ibsen casually mentioned to Mr. Schuster and Mr. DeStefano together that Ms. Ibsen was moving in with her fiancé, Mark. Mr. Schuster told Ms. Ibsen should have told him separately from Mr. DeStefano. Mr. Schuster disputes this, and stated that he did not like the way Ms. Ibsen told him, that is, that she seemed nervous to say that her fiancé was moving in, and that made Mr. Schuster feel "like a parent." Mr. Schuster said did not care that Ms. Ibsen told he and Mr. DeStefano at the same time.

- There was an incident earlier in the year when my fiancé, Mark, came to pick me up and was waiting in a handicapped parking space. Mr. Schuster made him move his car and then came to me and said, "Ms. Ibsen think Ms. Ibsen made Mark move, you know how Ms. Ibsen hate that." Ms. Ibsen thought that was strange because Ms. Ibsen would have thought that Mr. Schuster knew who Mark was on site and would not have treated him like that. Mr. Schuster does not dispute that he made Mark move his car from a handicapped space, and stated he does that often.

- During the summer, 2005, Ms. Ibsen was talking on the telephone with Mark trying to schedule a cable company visit. Mr. Schuster walked in, stayed for a few minutes, and came back after Ms. Ibsen was off the telephone. When he came back, he shoved papers in her direction and said that he was not happy with her talking on the telephone and that, "I need you to be available. I need you when I need you." Once again, Ms. Ibsen thought this was unusual as he had not commented on short personal

telephone calls in the past. Mr. Schuster does not dispute that he asked Ms. Ibsen to cut her personal calls short, but said he did not know she was talking with her fiancé.

- On March 19, 2006, Mr. Schuster came by Ms. Ibsen's house and left a small piece of pre-packaged birthday cake in between her storm and screen door. On the box was imprinted, "Everyone should have cake on their birthday." Mr. Schuster does not dispute this.

Ms. Ibsen reports no attempts by Mr. Schuster to elicit sexual favors; that they never discussed sex or their respective sex lives; there was no physical contact (except as stated above); no harassment or discrimination of any other type (religion, national origin, race, etc.); no harassment or discrimination by anyone other than Mr. Schuster; and no retaliation by the company for making these complaints.

**RECOMMENDATIONS:**

As an independent investigator I have not been asked to provide, nor have I volunteered any recommendations for action to any official of ABC Consultants or their attorneys.

**COMPENSATION:**

I have or will be compensated by ABC Consultants, Inc. and no other person or entity.

THIS INVESTIGATIVE REPORT WAS

COMPLETED ON  
DECEMBER 13, 2006.

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MICHAEL J. TORCHIA, ESQ.

**SAMPLE #2: Simple Investigation**  
**Retaliation**

**INVESTIGATIVE REPORT**

**RETALIATION  
CLAIM**

**July 7, 2007**

**MATTER/CASE NAME:**

**ABC Consultants, Inc.; Karen Ibsen  
complainant**

**INVESTIGATOR:**

**Michael J. Torchia, Esq.  
Semanoff Ormsby Greenberg & Torchia,  
LLC  
Suite 200  
610 Old York Road  
Jenkintown, PA 19046  
(215) 887-2042  
Fax: 887-5356**

**ATTORNEY CONTACT:**

**Michael D. Jennings, Esq.  
Clark Lewis LLP  
2004 One Liberty Place  
1650 Market Street  
Philadelphia, PA 19103-7301  
(215) 241-5555**

**INTRODUCTION:**

On December 13, 2006, the Investigator delivered an Investigative Report to Michael D. Jennings, Esq. after investigating sexual harassment claims made by Karen Ibsen. This second investigation and report is made after Ms. Ibsen made claims of retaliation against ABC Consultants, Inc., primarily Fran Mannon and Donald Schuster. This Investigative Report does not supercede the December 13, 2006 Report but, in fact, is intended to supplement it.

**DELAY IN COMPLETING REPORT:**

The Investigator was hampered in his efforts to complete this Report by the delay in scheduling the interview of Karen Ibsen, and to a lesser extent, Larry DeStefano. In addition, the Investigator attempted, many times, to obtain Ms. Ibsen's comments to the draft affidavit prepared for her. Despite several representations by Ms. Ibsen's attorney that a separate affidavit would be provided, and after the Investigator set a deadline and waited more than a week after the deadline expired, Ms. Ibsen never produced comments on the draft affidavit or provided a separate affidavit.

This Investigative Report, now being completed in July, 2007, is approximately four months later than intended. Initially, this Investigative Report was targeted to be completed at the end of March.

**INTERVIEW SCHEDULE:**

Total interviewees: 5

All interviewees are currently employed by ABC Consultants except Fran Mannon, who was terminated on or about May 2, 2007.

Monday, March 12, 2007 (2)	Fran Mannon; Donald Schuster
Tuesday, March 15, 2007 (1)	Louisa Rodham
Thursday, May 3, 2007 (1)	Larry DeStefano
Monday, May 7, 2007 (1)	Karen Ibsen

**ATTEMPTS TO SCHEDULE INTERVIEWS:**

Karen Ibsen: Ms. Ibsen's attorney, Robert Steinman, Esq. was first contacted by telephone in February, 2007 and asked to call to arrange an interview time. Subsequently, the Investigator faxed a letter to Mr. Steinman and placed additional calls asking to call to arrange an interview time. The Investigator made contact with Mr. Steinman, and was told that Ms. Ibsen was to be married in two weeks and an interview could be scheduled upon her return to work. In April, the Investigator made several attempts to schedule an interview. The Investigator made contact with Mr. Steinman, who said, because there was a possibility of resolving the Matter with ABC Consultants, Inc., to call back in a week. The Investigator made additional attempts to schedule an interview, until it was finally scheduled for Monday, May 7, 2007.

Larry DeStefano: Mr. DeStefano initially refused to be interviewed regarding the first investigation in November. After a letter and several conversations with Mr. DeStefano's attorney, the Investigator received a return letter dated March 6, 2007 stating "If a statement is mandated by [Mr. DeStefano's] employer, my client will readily cooperate." The Investigator planned on taking a statement on March 12, 2007. Mr. DeStefano, however, refused, eluding to being "caught in the middle" between Ms. Ibsen and Mr. Schuster. Apparently, Mr. DeStefano was told he must provide a statement.

The interview was eventually scheduled for Tuesday, May 1, 2007.

**RESTRICTIONS OF INTERVIEWS:**

The company placed no restrictions on any interview in terms of scope of questioning or time allotted for each interview, and no person was restricted from being interviewed. To the contrary, company attorneys advised unlimited access to all personnel during the interview process and company officers fully cooperated with interviews, on-site inspection of facilities and scheduling.

**LEGAL REPRESENTATION:**

ABC Consultants, Inc. is represented by Michael D. Jennings, Esq. of Clark Lewis LLP of Philadelphia who did not attend any interview.

Karen Ibsen (Complainant) is represented by Robert Steinman, Esq. of Philadelphia who attended Ms. Ibsen’s interview.

Larry DeStefano is represented by Gregory G. Horatio, Esq. and Stèfan Moriarty, Esq. of Pennsauken, New Jersey who did not attend Mr. DeStefano’s interview.

**ANTI-RETALIATION POLICY:**

ABC Consultants has an anti-retaliation policy in effect that promises an employee will not be subject to retaliation if a sexual harassment complaint is made. The anti-retaliation policy is part of the Sexual Harassment policy attached as Exhibit “A.” The anti-retaliation clause is:

*No employee will be subject to any form of retaliation or discipline for pursuing a sexual harassment complaint, whether or not it is ultimately determined that sexual harassment occurred, except if it is determined that the complaint was filed in bad faith.*

**EXHIBIT LIST:**

- Exhibit A .....Sexual Harassment and Retaliation Policy*
- Exhibit B ..... Karen Ibsen Affidavit*
- Exhibit C .....Fran Mannon Affidavit*
- Exhibit D .....Fran Mannon Notes of Meeting of January 29, 2007*
- Exhibit E ..... Donald Schuster Affidavit*
- Exhibit F .....Louisa Rodham Affidavit*
- Exhibit G .....Louisa Rodham Statement of February 5, 2007*
- Exhibit H ..... Karen Ibsen handwritten changes to L. Rodham Statement*
- Exhibit I .....L. Rodham Statement (revised) with “post-it note” acknowledgment*
- Exhibit J .....Larry DeStefano Affidavit*
- Exhibit K .....Draft Affidavits (alphabetical order)*
- Exhibit L .....L. DeStefano letter of April 23, 2007; F. Mannon letter of April 25, 2007*

**AFFIDAVITS:**

Copies of four final affidavits are attached to this Report. Because each interviewee had an opportunity to amend their respective affidavits, the final affidavits may vary from the draft affidavits. Ms. Ibsen, through her attorney, refused to comment on or return her draft affidavit. Although the Investigator was told a separate affidavit would be produced, as of the date of this report, it has not. Notwithstanding, Ms. Ibsen's position is well documented by the draft affidavit and the three documents attached as Exhibits G, H and I which represent statements given by Karen Ibsen to Louisa Rodham, and contain corrections by Ms. Ibsen indicating their accuracy.

The draft Affidavits for all interviewees were prepared by the Investigator directly from the oral statements given during the interview. Not all of the interviewee's comments were incorporated. To the contrary, the affidavits reflect statements directly related to the claims. Generally, positive or negative statements about the company or its personnel or rumors of events not related to the claims were not included in the affidavits. A copy of the draft affidavits and the letter and instructions that accompanied each affidavit are attached as Exhibit "K."

**NATURE OF COMPLAINT:**

This retaliation complaints arise from Karen Ibsen reporting to Fran Mannon an incident that occurred on Monday, October 23, 2006 -- the so-called "I Love You" incident -- when Donald Schuster, her direct supervisor, told her that he loved her ("the Claims"). This statement by Mr. Schuster caused Ms. Ibsen to reconsider previous incidents between herself and Mr. Schuster, and she grew to believe Mr. Schuster had been acting romantically to "win her over."

Several months ago, Ms. Ibsen complained she suffered retaliation since making the Claims. She alleges, among other things, employees of ABC Consultants intentionally hid information necessary to perform her job, unfairly criticized her work performance and behavior, have not met their commitment to keep her separated from Donald Schuster, and generally want her to resign her position.

**PRELIMINARY STATEMENT:**

The following Preliminary Statement was read to each interviewee in substantially the form that follows:

**My name is Mike Torchia and I would like to read this statement before we begin. As you may know, I investigated Ms. Ibsen's claims several months ago. That first investigation was the first work of any kind I performed for ABC Consultants.**

**I am an attorney, hired by the company's attorneys. I am here today to investigate claims of retaliation brought by Karen Ibsen. Based on my preliminary investigation, it appears that you have important information.**

**I do not represent ABC Consultants, I do not represent Ms. Ibsen and I do not represent you. I am here as an independent investigator.**

**I would like to ask you about the claims and would like you to answer the questions honestly and completely. From your responses I will prepare an affidavit that you will have an opportunity to correct. You will be asked to sign your affidavit.**

**You should know that the information you provide is not confidential. Although I and the company will make every attempt to keep the information confidential, as should you, some company employees and their attorneys will have access to the information and your statement will become part of the investigative file and my final report.**

**At the conclusion of this interview, please do not discuss your statements or my questions with anyone.**

**I will also tell you that I have no relationship, personally or professionally to any company employee or official.**

## SUMMARY OF INTERVIEWS:

Karen Ibsen believes that Donald Schuster, through Fran Mannon and Larry DeStefano, retaliated against her for making the Claims. She also believes Fran wanted her to leave the company. Fran Mannon and Donald Schuster deny any action was taken against Karen Ibsen in retaliation for making the Claims. Louisa Rodham has little first hand knowledge and could only opine that action against Ms. Ibsen was not retaliatory.

Larry DeStefano, although stopping short of stating there was retaliation, implied he believes retaliatory action was taken against Ms. Ibsen was making the Claims. Mr. DeStefano was a reluctant witness, before, during and after the Investigator's interview. As described above, Mr. DeStefano refused to be interviewed for the initial investigation. When interviewed, he was hesitant to answer questions, was generally evasive, and admitted trying to being "caught in the middle" between Ms. Ibsen and Mr. Schuster. After the interview, although making corrections to his affidavit (indeed initialing the changes) he refused to sign the affidavit stating in an attached note he had been advised not to. Mr. DeStefano made a written complaint of retaliation against Mr. Schuster in a letter of April 23, 2007, to which Fran responded on April 25, 2007. A copy of both letters are attached as Exhibit "L."

### **Meeting With Fran Mannon**

At the end of January, 2007, Fran called Ms. Ibsen into a meeting. At the meeting, Fran discussed deficiencies in Karen's work and related complaints. Before the meeting, Karen thought Fran may want to speak with her about the results of the sexual

harassment investigation, but was apparently surprised when the subject of the meeting was her work performance.

Fran told Karen there were multiple complaints about not processing checks quickly enough. Karen responded that she cuts checks when she received them, or in some instances, checks were in fact processed. Karen believes that some check requests were not forwarded or were hidden deliberately by Mr. Schuster. No other interviewee believes that checks were intentionally hidden, including Larry DeStefano who would have the most direct knowledge. In response to the accusations that Karen had not been timely processing checks, Larry DeStefano and Ms. Ibsen instituted a date-stamping system so there could be no dispute when she received the requests.

Karen asked Fran if she could transfer out of the accounting department, although Karen reported Fran said there were no positions available. Fran reported that serviced coordinator positions were open, but Karen did not apply, although Fran offered and there would likely have been no reduction in pay. Fran also asked Karen if she wanted to be transferred to a female supervisor, but Karen did not respond.

Fran placed a memo in Karen's personnel file regarding poor work performance and the conference.

After the meeting, and partially in response to the complaints against her, Karen contacted a representative from a client with whom she had been working. The representative sent an e-mail saying that Karen was doing a good job with the client's project. Although Karen said she gave it to Fran and Larry DeStefano to be placed in her personnel file, it was not there when she reviewed her personnel file.

### **Dress Code**

Prior to the conference, Fran told Karen the staff noticed she was wearing jeans more often than usual. According to Ms. Ibsen, this statement occurred on a Thursday in January. Karen responded, "Okay." Fran recalls reminding Karen that "dress down day" was Friday because she had been often wearing jeans.

The following Monday, Fran came up to Karen's office specifically to check to see if she was wearing jeans, an action denied by Fran. Both agree there was no further discussion of the dress code.

Ms. Ibsen believes this is retaliation and an example of Fran harassing her with petty complaints.

### **Working Hours**

Also in January, Ms. Ibsen admits came in early, worked through lunch and left at approximately 3:30 p.m. She did so to reduce the potential to see Donald Schuster. Ms. Ibsen stated she liked to work in the morning because Mr. Schuster did not come in until between 9:00 and 9:30 a.m. Fran told Karen she was not allowed to take lunch at 3:30 p.m. which placed Karen back on the regular schedule of leaving at 4:00 p.m. Ms. Ibsen did not know if others were allowed to work through lunch and leave early. Notwithstanding, Ms. Ibsen believes this is an example of retaliation because other employees had altered schedules.

### **Work Checklist**

Donald told Larry to make a checklist to monitor her work because it was something the company's auditors would need. Ms. Ibsen stated, to her knowledge, no one else was required to fill out a checklist when tasks were completed. Mr. DeStefano

stated Mr. Schuster asked him to complete a checklist to confirm the accounts payable, then later asked for another checklist to confirm the general ledger. Karen spoke with Larry about the checklist and said she would not help the company develop a checklist to use against her. Karen stated she does not know whether Larry completes a checklist of her work currently.

### **Annual Review**

Ms. Ibsen's anniversary date is April 5th. She did not receive, nor did she request a review this year. Ms. Ibsen stated in three years, she received only one review.

### **Missing Salary Document**

Ms. Ibsen stated that, in the Fall of 2006, after an increase in pay, there was a salary document containing the breakdown of her wages. Although Mr. Schuster was supposed to place it in her file, she believes he never did which caused the annual salary calculations to be incorrect. The problem was rectified in or around November, 2006. Other than Larry DeStefano, she did not tell anyone about the missing document.

### **Interaction with Donald Schuster**

Ms. Ibsen repeatedly stated she did not want any interaction at all with Donald Schuster although from time to time there were incidents of interaction. Ms. Ibsen stated Mr. Schuster walked into Larry DeStefano's office "a few times" when she was sitting there, came in, did not say anything, and backed out. Karen did not make a complaint about these incidents.

Karen reports feeling intimidated simply seeing Donald at any time, including staff meetings. The last staff meeting she attended was September, 2006, because Donald

attends these meetings. Karen believes her agreement with the company to “keep Donald away” includes staff meetings.

Karen stated that, when Larry was out and her officemate, Jen Bernard, was away, she noticed that Donald walking by her office many more times than usual. She once noticed him walking past her office ten to twelve times in a short period of time.

Karen has not spoken with Donald since she made the Claims. Occasionally she sends an e-mail him to let him know checks are available in Larry’s office.

Mr. Schuster acknowledged he is to have no contact with Ms. Ibsen, but said literally no contact is “simply impractical.” He noted bank files are kept in Karen’s office and there are times when he must place things in the safe, for example, tokens and petty cash. He also stated there are times when he needs to review the importance of any other information that may be in her office. Donald said he has made every attempt to avoid going into Karen’s office and in fact, has made “extraordinary attempts” to avoid contact with her altogether.

Since the Claims, at Fran’s direction, Larry DeStefano has replaced Donald Schuster as Karen’s supervisor. Fran denies ever promising Karen that she could have literally no contact with Donald.

### **Louisa Rodham Meeting**

Karen spoke with Louisa Rodham, Vice President and Chief Operating Officer of ABC Consultants, about these complaints of retaliation. Karen spent an hour telling Ms. Rodham the various acts of retaliation and provided a written statement. Karen reported

that, although she did not expect her to be, Louisa seemed generally concerned with resolving the problem and was pleasant to deal with.

As a result of the meeting with Ms. Rodham, there are several affidavits (an initial draft and two amendments) that set forth Ms. Ibsen's position. These documents are attached to this report.

### **Letter to the Board of Directors and Subsequent Action**

On April 30th, Ms. Ibsen sent a letter to the Board of Directors complaining about the retaliation against her and the fact that "nothing had been done." She also wanted to make the Board aware of these incidents. She reports concern that the Board was not aware since all employees signed a new policy that did not provide for the Board being told about complaints.

Ms. Ibsen stated that, as a result of her letter, John Shrum, a member of the Board of Directors, called on April 30th and asked her questions about the letter and the policies and procedures. Mr. Shrum used to work at ABC Consultants. He did not tell her what action the Board would take and Karen offered to have him call if he needed further information.

Ms. Ibsen said she heard that on Thursday, May 3, 2007, the Board had an emergency closed meeting and on Friday, there was a staff meeting (which she did not attend because Donald Schuster attended) at which time it was explained the Board fired Fran Mannon because of a "policy issue." She heard Fran admitted acting inappropriately, but does not know in what context that was said. Even though Karen's

name was not mentioned, she believes most staff members assume Fran was fired in connection with her complaints and the Claims.

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**RECOMMENDATIONS:**

As an independent investigator I have not been asked to provide, nor have I volunteered any recommendations for action to any official of ABC Consultants or their attorneys.

**COMPENSATION:**

I have or will be compensated by ABC Consultants, Inc. and no other person or entity.

THIS INVESTIGATIVE REPORT WAS

COMPLETED ON  
JULY 29, 2007.

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MICHAEL J. TORCHIA, ESQ.

**SAMPLE #3: Complex Investigation**  
**Sexual Harassment**

**INVESTIGATIVE REPORT**

December 18, 2005

This Investigative Report supersedes any previous report.

**MATTER/CASE NAME:** Pittsfield Twp. adv. [Complainant]

**INVESTIGATOR:** Michael J. Torchia, Esq.  
Semanoff Ormsby Greenberg & Torchia, LLC  
Suite 200  
610 Old York Road  
Jenkintown, PA 19046  
(215) 887-0200  
Fax: 884-3500

**ATTORNEY CONTACT:** James R. Randolph, Esq.  
Dechert Lewis, LLP of Philadelphia  
(215) 241-1000

**INTERVIEW SCHEDULE:**

Total interviews: 41

\*All interviewees are currently employed by Pittsfield Township unless otherwise indicated.

Friday, October 16, 2005 (2)	Chief Joseph Storm, Lt. Jay Frankel
Wednesday, October 21, 2005 (10)	Sgt. Michael Vahan, Ptlm. Robert Essing, Ptlm. Robert Kripati, Ptlm. Joseph Coin, Ptlm. Jack Berlin, Ptlm. Todd Sondheim, Sgt. William Clemens, Ptlm. Joshua Loch, Ptlm. Joseph Alfredo, Ptlm. Carl Suppert
Thursday, October 22, 2005 (7)	Ptlm. John DiGuilio, Ptlm. Scott Frankel, Sgt. William Donald, Ptlm. Joseph Sadie, Ptlm. Bridget McCardle, Ptlm. Joseph Gast, Det. Walter Shofer.
Friday, October 23, 2005 (5)	Sgt. P. Andrew Tracker, Acting Sgt. Clarence Martin, Ptlm. Peter Barnett, Ptlm. David Wells, Ptlm. Raymond Purcy
Monday, October 26, 2005 (5)	Det. James Devane, Det. Mark Cattell, Records Off. Robert Wooley, Sec. Louisa Semancer, Disp. Robert Wilkinson, Sr.
Wednesday, October 28, 2005 (8)	Disp. Alfred Marononi, Clerk/Sec. Carol Morgan, Clerk/Sec., Tina Galley, Disp. Fred Amici, Disp. James Delay, Disp. Robert Fowler, Det. Sgt. Richards, Ptlm. John Newler (via telephone; no affidavit; employee of Newton Twp.)
Saturday, November 07, 2005 (1)	Det. Sgt. John Farroway (telephone)
Monday, November 16, 2005 (3)	Ptlm. Kurt Feller, Ptlm. Daniel McNish, Ptlm. Keith Roberts

**RESTRICTIONS OF INTERVIEWS:**

There were no restrictions placed on any interview in terms of scope of questioning or time allotted for each interview, and no person was restricted from being interviewed. To the contrary, Township attorneys advised unlimited access to all personnel during the interview process and police administration fully cooperated with interviews, on-site inspection of facilities

and scheduling to the point of paying overtime to officers and dispatchers to interview when off-duty. In addition, on October 16, 2005 Lt. Frankel issued “Special Order No. 9910” directing all officers to participate and cooperate with my investigation and reissued “Special Order No. 9911” which contained a correction. A copy of both Special Orders are attached collectively as Exhibit “A.”

**LEGAL REPRESENTATION:**

Pittsfield Township is represented by James R. Randolph, Esq. of Dechert Lewis, LLP of Philadelphia.

Patrol Officer [Complainant] is represented by Joseph F. Boulee, Esq. of Smith, Jones and Williams, of Philadelphia.

Patrol Officer [Complainant #2] is represented by Joseph F. Boulee, Esq. of Smith, Jones and Williams, of Philadelphia.

Sergeant [Respondent] is represented by Carol Laine, Esq. of Dilworth Block, LLP of Philadelphia. Also, Fraternal Order of Police attorney Scott Miller, Esq. of Duffy & Miller of Millersville attended [Respondent’s] interview. Mr. Miller did not attend any other interviews.

**SEXUAL HARASSMENT POLICY:**

Pittsfield Township has a sexual harassment policy in effect that specifically prohibits sexual harassment and directs any complaints to the Mayor. A copy of the sexual harassment policy is attached as Exhibit “B.”

**NATURE OF CLAIMS:**

Patrol Officer [Complainant] has alleged sexual harassment and retaliation against the Pittsfield Township Police Department. [Complainant’s] claims emphasize the alleged unwelcomed conduct by Sergeant [Respondent] and retaliatory acts after he brought the unwelcomed conduct to the attention of Police Administration, specifically, Chief Joseph Storm (“Storm”) and Lieutenant Jay Frankel (“Frankel”). [Complainant] also reports incidents of sexual harassment occurring to others.

No other interviewee indicated that he or she intended to take action as a result of discrimination or sexual harassment except Patrol Officer [Complainant #2]. [Complainant #2] alleged sexual harassment against Sergeant [Respondent] and, since [Complainant #2] appeared

at the interview with an attorney purporting to represent him against the Pittsfield Township Police Department, I am assuming that [Complainant #2] is at least considering making a formal claim. I am unaware of any formal claims yet made by [Complainant] or [Complainant #2].

**PRELIMINARY STATEMENT:**

The following Preliminary Statement was read to each interviewee in substantially the form that follows:

**My name is Mike Torchia and I would like to read this statement before we begin. This is my business card.**

**I am an attorney, hired by Pittsfield Township's attorneys. I am here today to investigate claims of sexual harassment brought by [Complainant]. Based on my preliminary investigation, it appears that you and your colleagues have important information.**

**I do not represent Pittsfield Township, I do not represent Mr. [Complainant] and I do not represent you. I am here as an independent investigator. If you are represented by counsel you have the right to have counsel present although I will tell you that this is not a criminal investigation.**

**I would like to ask you about the claims and would like you to answer the questions honestly and completely. From your responses I will prepare an affidavit that you will have an opportunity to correct. You will be asked to sign your affidavit.**

**You should know that the information you provide is not confidential. Although I and the Township will make every attempt to keep the information confidential, as should you, Township officials and their attorneys will have access to the information and your statement will become part of the investigative file and my final report.**

**At the conclusion of this interview, please do not discuss your statements or my questions with anyone except your attorney.**

**I will also tell you that I have no relationship, personally or professionally to any Pittsfield Township employee or official. This is the first work of any kind I have performed for Pittsfield Township.**

**AFFIDAVITS:**

Affidavits were prepared directly from the oral statements given during the interview. Not all of the interviewee's comments were incorporated into the affidavits. To the contrary, the affidavits reflect statements directly related to the claims. Generally, positive or negative statements about the Police Department personnel or rumors of events were not included in the affidavits. A copy of the letter and instructions that accompanied each affidavit to each interviewee is attached as Exhibit "C."<sup>5</sup>

AFFIDAVITS: Copies of the 40 affidavits are attached to this Report. All affidavits have been reviewed signed and notarized by the interviewees unless otherwise indicated. Because each interviewee had an opportunity to amend their respective affidavits, the final affidavits may vary significantly from the draft affidavits.

**SUMMARY OF INTERVIEWS:**

**INCIDENT OF SEPTEMBER 1, 2005:** During the evening of September 1st, [Complainant] was working the 3:00p.m. to 1:00a.m. shift. [Sergeant #1] was [Complainant's] supervisor, but had to leave left at approximately 9:30p.m. The next shift began at 10:00p.m. For the overlapping time, Sergeant [Respondent] was in charge of both Platoons. The incident began when [Respondent] asked Dispatcher Lawler to call [Complainant] back to the station ("Code 2")

to change vehicles. It is undisputed between [Complainant] and [Respondent] that [Respondent] called [Complainant] back to the station at least several times. There exists a tape of the radio transmissions that evening which is in the possession of Police Administration. It is also undisputed that during the radio interplay, there was some tension between [Complainant] and [Respondent]. [Complainant] became increasingly agitated at being ordered to Code 2 and [Respondent] became increasingly agitated that [Complainant] was not returning. It appears that tension escalated each time [Respondent] called and [Complainant] responded. This tension resulted in a confrontation in the courtyard of the police station. The confrontation continued from the courtyard into the station and climaxed when [Respondent] relieved [Complainant] from duty. There is some dispute as to the exact words spoken (and the versions of the incident are contained in the respective affidavits of [Complainant] and [Respondent]), however, [Respondent] claims that [Complainant] was cursing and complaining at being written up, and [Complainant] claims he did not curse and only made one complaint. [Respondent's] version of the events is contained in a letter dated September 2<sup>nd</sup> to Lt. Frankel attached to this Report as Exhibit "D."

This event is important because it caused a meeting with [Complainant], Storm and Frankel on September 3<sup>rd</sup> when [Complainant] complained for the first time that he had been sexually harassed by [Respondent]. Also, many officers believe that [Complainant] complained of sexual harassment because he was upset at having been disciplined.

The following documents which are relevant to the incident of September 1<sup>st</sup> only are not attached to this Report: (1) [Respondent's] disciplinary report of [Complainant]; (2) a summary of the radio transmissions of September 1<sup>st</sup>; (3) Police Daily Attendance Report; (4) Police Manual of Operating Procedures and Disciplinary Code (October, 1997) and (5) Daily Report

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<sup>5</sup> Various letters accompanied the affidavits but only the date due and method of return varied. The attached letter is substantially similar to the letters that all interviewees received.

Sheet and Radio Log showing [Complainant] relieved from duty at 2330 (11:30pm). This Report Sheet does not indicate a car stop by Patrolman [Complainant #2].

**COMPLAINTS OF SEXUAL HARASSMENT PRIOR TO SEPTEMBER 1, 2005:**

It is undisputed that the Police Administration and Pittsfield Township officials did not know that [Complainant] was offended or was suffering unwelcomed conduct by [Respondent] prior to September 3<sup>rd</sup>. In fact, [Complainant] stated that he did not complain to Police Administration or Pittsfield Township officials about [Respondent's] actions prior to September 3, 2005.

**MEETING OF SEPTEMBER 3, 2005:**

The first time that the Police Administration was aware that [Complainant] objected to actions of [Respondent] occurred at a meeting among Chief Storm, Lieutenant Frankel and Patrolman [Complainant] on September 3, 2005. [Complainant] stated that he did not feel he could complain to Police Administration because of his belief that Lieutenant Frankel and Chief Storm had a close relationship with Sergeant [Respondent] and his further belief that nothing would be done if he complained. At this meeting, after discussing incident of September 1st, [Complainant] complained of [Respondent's] allegedly sexually harassing actions. Storm and Frankel told [Complainant] that they would speak to [Respondent]. After [Complainant] left the meeting, Storm told Frankel to speak to [Respondent] and tell him to immediately "stop doing anything" to [Complainant]. Soon thereafter, Lieutenant Frankel spoke to [Respondent], told him generally of the allegations, and asked him to stop having any contact with [Complainant]. From the time that Lieutenant Frankel spoke to Sergeant [Respondent], there was no further contact between [Respondent] and [Complainant] that [Complainant] alleges was unwelcomed.

**[COMPLAINANT’S] CORRESPONDENCE:**

In a letter of September 8, 2005, [Complainant] resigned from the Tactical Response Team. [Complainant’s] letter of September 8<sup>th</sup> is attached as Exhibit “E.”

In a letter of September 14, 2005, to “Police Department Administration,” [Complainant] asked for [Respondent] to be held accountable for his actions. This letter was delivered to Chief Storm and Lt. Frankel. [Complainant’s] letter of September 14, 2005 is attached as Exhibit “F.”

**EMERGENCY MEETING OF OCTOBER 14, 2005:** On October 14<sup>th</sup>, Chief Storm called an emergency Sergeants meeting. The meeting was attended by Mark LeBeau (Mayor), Chief Storm, Lt. Frankel, and the Sergeants. At the meeting, the Sergeants were told of [Complainant’s] claims generally. The Sergeants were also instructed to pass along to the patrol officers instructions to immediately cease any horseplay or comments to each other and to immediately report any inappropriate conduct.

**[COMPLAINANT’S] CLAIMS OF SEXUAL HARASSMENT:** [Complainant] makes a variety of claims against [Respondent] ranging from [Respondent] grabbing his genitals and buttocks, to various comments of a sexual nature, to displaying pornographic images on the computer. [Complainant] alleges that the first comment occurred when he was an intern. [Respondent] generally denies the allegations although admits to displaying some pornographic material on the computer, but offers explanations (see [Respondent] Affidavit). [Respondent] also admits some grabbing and pinching of [Complainant] and others buttocks but denies ever grabbing his genitals.

**[COMPLAINANT #2’S] CLAIMS:** [Complainant #2] has also made a variety of claims against [Respondent] ranging from [Respondent] grabbing his genitals and buttocks, to various comments of a sexual nature, to displaying pornographic images on the computer. [Respondent] admits to displaying some pornographic material on the computer, but offers explanations (see

[Respondent] Affidavit). [Respondent] also admits to pinching [Complainant #2] some time ago but never since.

**[COMPLAINANT'S] CLAIMS OF RETALIATION:** Although [Complainant] had no further contact with [Respondent], following [Complainant's] meeting with Chief Storm and Lieutenant Frankel, [Complainant] makes several complaints of retaliation.

A. MIKE LEBEAU'S COMMENTS: [Complainant] complains of retaliation because the Mayor, Mike LeBeau allegedly said to [Complainant] that the investigation may result in a finding that he "might be the bad guy." After the conversation, Mr. LeBeau delivered to [Complainant] a memorandum dated October 14, 2005 outlining what steps the Township had taken and were about to take regarding his claims including my investigation and sexual harassment training (previously scheduled). A copy of Mr. LeBeau's memorandum is attached as Exhibit "G." Mr. LeBeau also provided [Complainant] the opportunity to rejoin the Tactical Response Team. In addition, Mr. LeBeau offered to have [Complainant] contact him at any time and provided his work and home telephone numbers. There was also an offer to contact Commissioner Thomas Mahoney. Finally, Mr. LeBeau notified [Complainant] that a meeting was going to be held among the Sergeants to explain the situation.

B. JUVENILE ARREST: [Complainant] complains of retaliation regarding an arrest of a juvenile outside District Court (See [Complainant] Affidavit). [Complainant] called a juvenile offender a "jerk-off" and feels that he should not be disciplined for using that term. This matter is still being investigated.

C. NO STEPS TAKEN TO REMEDY CONDUCT: [Complainant] complains that after he reported [Respondent's] conduct during the meeting of September 3rd, no steps were taken to remedy the conduct. [Complainant] also compares the action taken after he complained to action taken after someone wrote graffiti on Patrol Officer [Female Officer] locker (see below). [Complainant's] perception is that there was immediate action taken after the locker incident, but no immediate action taken after he complained. [Complainant] also believes that nothing would

have been done to remedy his complaints if [Female Office Worker] had not informed, Det. Sgt. John Galloway, of sexually charged comments [Respondent] made to her. [Complainant] believes that Det. Sgt. Galloway spoke with Chief Storm about the comments to [Female Office Worker], and it was only then that the Police Department took seriously the allegations of sexual harassment.

D. SAFE SEX FLYER: [Complainant] alleges that someone placed a "safe sex" flyer into his mailbox. It is unknown who, if anyone, placed this flyer into [Complainant's] mailbox. The flyer was given to Sergeant Galloway at a meeting in Highspire to give to [Sergeant #1] from Lou Ninke, a former dispatcher now a detective in Highspire. North told [Sergeant #1] to give it to Sgt. Clement. Sgt. Galloway looked in the envelope briefly, saw the flyer and gave it to [Sergeant #1]. Sergeant Clement placed it in his own mailbox which is directly above [Complainant's]. That is the last time anyone saw the flyer until [Complainant] discovered it in his mailbox. [Complainant] discovered the flyer in his mailbox without the envelope or business card. [Complainant] does not think that [Respondent] placed it in his mailbox, [Respondent] was not working that day and denies any involvement. A copy of this "safe sex" flyer is attached as Exhibit "H."

**UNWELCOMED NATURE OF [RESPONDENT'S] ACTIONS:** There are contradictory statements regarding whether [Respondent's] conduct seemed to be unwelcomed by [Complainant]. [Complainant] testified that the conduct was unwelcomed since the time he was an intern. Most other interviewees either declined to speculate whether the conduct was unwelcome to [Complainant] or opined that the current claims of sexual harassment were retaliatory against Sergeant [Respondent] for relieving him of duty on September 1st. Several interviewees characterized [Complainant] as someone who engaged in practical jokes and the daily banter between the officers. Several interviewees commented that [Complainant] is a bodybuilder and participated in an amateur boxing contest and thought that [Complainant] would have protested if the conduct was unwelcomed. The prevailing theory among the officers is that

the sexual harassment claims brought by [Complainant] are in retaliation for being relieved from duty on September 1<sup>st</sup>.

**WORKING ENVIRONMENT AND HORSEPLAY:** Although many officers stated that they did not themselves engage in it, virtually all officers acknowledge a longstanding pattern of horseplay, banter and joking among the officers. Virtually all officers commented that there was frequent, sometimes constant banter, many times of a sexual manner, between the officers while in the squad room and that pictures and jokes were often left in each others mailboxes, posted on lockers and on bulletin boards. No officer reported significant banter while performing job duties or in the field and no officer reported banter having any detrimental effect on service to the public. There were reports of physical horseplay or "goosing" or pinching of the buttocks or upper thigh to make another officer "jump." There would be gestures or actual "tapping" or "flicking" another officer's crotch, but other than Patrol Officers [Complainant] and [Complainant #2], no officer reported actual grabbing of genitals. Many officers commented that the horseplay both verbal and physical had been going on for many years, that it was known that certain officers were more targeted than others, especially [Detective #1], and that most everyone engaged in it in one way or the other.

**OTHER INCIDENTS OF SEXUAL HARASSMENT:**

There were incidents both reported and unreported that may be considered sexual harassment.

A. [Female Office Worker] reports a comment made to her from [Respondent] in the Spring, 2005. [Female Office Worker] made a comment to the effect, "These people are really up my ass today." [Respondent] replied, "I wouldn't mind being up your ass." [Respondent] recalls the incident but reports that his response was, "That must hurt." [Female Officer Worker] made no complaint at the time but, in late September, 2005, told Det. Sgt. John Galloway.

B. [Officer #1] reports a comment made to him from [Respondent]. During training with the PR24 nightstick with [Respondent], there was a move the officers were practicing when

a female police officer from Swarthmore ended up on the floor with [Officer #1] on top of her. Sgt. [Respondent] said, "If you make any humping moves I'll kick your ass." [Officer #1] reported that he took it as humor and the female officer laughed and did not appear offended.

C. Several officers recall an inappropriate graffiti being written on Patrol Officer [Female Officer] locker. Apparently, the phrase was "Hot Babe." The graffiti was discovered by a fellow officer, reported, and erased before Patrol Officer [Female Officer] ever saw it. There was an internal investigation and interview of all officers but the perpetrator was never found. This incident occurred approximately one year ago. Officer [Female Officer] made no complaint.

D. Several officers reported hearing rumors that one or more of the interns had complaints about [Respondent] and others but these rumors could not be confirmed and no complaints were made. The interns allegedly involved were not contacted. [Complainant] reports that [Intern], a former intern, changed her work schedule to avoid riding with [Respondent]. [Complainant] said that [Intern] said, that while in the basement gunroom, [Respondent] grabbed an electrical stun gun and was "begging her" to let him stun her between her thighs. See [Complainant] Affidavit.

E. [Dispatcher] reports that 6-12 months ago [Complainant] stated to several officers that [Dispatcher] had been masturbating in the radio room the night before. When [Complainant] made a reference to [Dispatcher] masturbating during a radio transmission, [Dispatcher] asked [Sergeant #1] to talk to [Complainant]. [Sergeant #1] spoke with [Complainant], asked him to stop, and [Complainant] apologized to [Dispatcher]. [Complainant], however, continued to refer to [Dispatcher] as "Spanky" referring to masturbation.

**OTHER DOCUMENTS AND EVIDENCE:**

There exists additional evidence that, if this matter progresses to formal claims, will become relevant and necessary to review in detail.

A. Sergeant [Respondent] stated that he has personal notes of events that occurred at the station including notes involving [Complainant].

B. Radio transmissions to and from [Complainant] are recorded as a matter of course by the dispatcher including the events of September 1, 2005.

C. [Complainant] stated that he is in possession of the original "safe sex" flyer allegedly found in his mailbox. It is in a sealed evidence bag.

**RECOMMENDATIONS:**

As an independent investigator I have not been asked to provide, nor have I volunteered any recommendations for action to any official of Pittsfield Township, the Police Department or their attorneys.

**COMPENSATION:**

I have or will be compensated by Pittsfield Township and no other person.

THIS INVESTIGATIVE REPORT WAS  
COMPLETED ON DECEMBER 18, 2005.

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MICHAEL J. TORCHIA, ESQ.