Understanding and Avoiding Sexual Harassment in the Workplace

Educational Seminar for Legislative Employees

April 2003

Maine Legislative Council
Office of the Executive Director

121st MAINE STATE LEGISLATURE

LEGISLATIVE COUNCIL

Memo

TO: All Legislative Employees

FROM: Beverly C. Daggett, President, Maine Senate
And Chair, 121st Legislative Council

Patrick Colwell, Speaker, House of Representatives
And Vice-chair, 121st Legislative Council

DATE: March 25, 2003

RE: Sexual Harassment Training Session

The Legislative Council and the presiding officers have adopted a policy prohibiting sexual harassment in the work place. That policy is found in the personnel policies and guidelines handbook, a copy of which was provided to each legislative employee.

The Legislative Council and the presiding officers are committed to a work environment for legislative employees that is free from sexual harassment. Toward that end, we have arranged a training session on sexual harassment: what constitutes sexual harassment; explanation of federal and state laws and rules regarding sexual harassment; internal complaint process available to employees; legal recourse; protection against sexual harassment and retaliation; and employee relations and morale associated with sexual harassment.

In addition to the initial training session, there is scheduled a separate session for employees who have managerial or supervisory authority to discuss their responsibilities and liabilities.

Because of the importance of this training, each employee is required to attend a session. All sessions will be held in Room 208, Cross Building (Business, Research and Economic Development Committee Room).

The training session schedule is as following:

Non-supervisory legislative employees
Wednesday, April 9, 2003; 11:00 – 12:30
Thursday, April 24, 2003; 11:00 – 12:30

Managerial/supervisory legislative employees
Wednesday, April 9, 2003; 9:00 – 10:30
Thursday, April 24, 2003; 9:00 – 10:30

115 STATE HOUSE STATION, AUGUSTA, MAINE 04333-0115 TELEPHONE 207-287-1615 FAX 207-287-1621

Legislative Employee
Training Session on Sexual Harassment

Please register for one of the following training session (check one only):

For Nonsupervisory Employees

- ☐ Wednesday, April 9, 2003 (11:00AM-12:30PM)
- ☐ Thursday, April 24, 2003 (11:00AM-12:30PM)

For Management & Supervisory Employees

- ☐ Wednesday, April 9, 2003 (9:00AM-10:30AM)
- ☐ Thursday, April 24, 2003 (9:00AM-10:30AM)

Name of Employee: _____

Office: _____

Telephone: _____

Name of Immediate Supervisor: _____

Have you been employed by the Legislature for less than 1 year: ☐ Yes ☐ No

Return completed registration form to the Office of the Executive Director (Room 103, Fax: 287-1621) no later than Thursday, April 3, 2003

G:\Execdir-121st\Personnel Actions\sexual harassment training memo 3-27-03.doc (March 24, 2003 1:57 PM)

UNDERSTANDING AND AVOIDING SEXUAL HARASSMENT IN THE WORKPLACE

Moon, Moss, McGill, Hayes & Shapiro
Ten Free Street
Portland, Maine 04112
(207) 775-6001

TABLE OF CONTENTS[1]

[1] These materials are intended to provide background discussion on the law regarding sexual harassment. These materials are not intended as legal advice, and should not be relied upon as legal advice.

UNDERSTANDING AND AVOIDING SEXUAL HARASSMENT IN THE WORKPLACE

INTRODUCTION

As employers and employees in virtually every American work place know, sexual harassment is illegal. In Maine, the Legislature has taken a strong stand against sexual harassment. The Maine Human Rights Act ("MHRA") has long recognized that sexual harassment is a form of sex discrimination. In 1991 the MHRA was supplemented by a separate law that requires training, education and notification to employees on the right to be free of sexual harassment. Under federal law, Title VII and the Civil Rights Act of 1991 provide a basis for sexual harassment claims and expanded remedies for a complainant who successfully proves such a claim.

Although it is well understood that sexual harassment is both illegal and actionable, a great deal of confusion and anxiety remains about what constitutes sexual harassment. In spite of nearly twenty years of court decisions, explanatory regulations, seminars, media coverage, high profile cases and public debate, the contours of the offense are by no means clear. Yet in very recent decisions, the United States Supreme Court has raised the stakes for employers by developing both incentives, in the form of affirmative defenses based on prevention and deterrence, and dire consequences, in the form of strict liability, for sexually harassing conduct by its agents in the workplace. The need for employers, supervisors and managers to recognize, prevent and correct workplace sexual harassment has never been greater.

This paper reviews the legal and practical definitions of sexual harassment; the basis in federal and state law for the prohibition against sexual harassment; the extent and conditions of

employer liability; the remedies for sexual harassment claims; and ways to prevent or minimize the likelihood that harassment will occur.

I. DEFINITIONS OF SEXUAL HARASSMENT

A. Maine Human Rights Act

Under the Maine Human Rights Act ("MHRA"), sexual harassment is one form of sex discrimination. The definition of sexual harassment is contained in the Commission's Regulations, Section 3.06. The Regulation uses the same language as the Sex Discrimination Guidelines issued by the Equal Employment Opportunity Commission (EEOC), described below.

B. EEOC Guidelines on Sexual Harassment

Section 1604.11 of the EEOC Guidelines on Discrimination Because of Sex ("EEOC Guidelines") provides, in relevant part:

> (a) Harassment on the basis of sex is a violation of Sec. 703 of Title VII. Unwelcome sexual advances, requests for sexual favors, and other verbal or physical conduct of a sexual nature constitute sexual harassment when (1) submission to such conduct is made either explicitly or implicitly a term or condition of an individual's employment, (2) submission to or rejection of such conduct by an individual is used as the basis for employment decisions affecting such individual, or (3) such conduct has the purpose or effect of unreasonably interfering with an individual's work performance or creating an intimidating, hostile, or offensive working environment.

C. Quid Pro Quo/ Hostile Environment/ Tangible Employment Action.

From early in the development of the law of sexual harassment, the EEOC, the MHRC and the courts have recognized two broad categories of sexual harassment claims: quid pro quo and hostile environment. The two types of harassment have been (at least in theory) distinguishable in terms of effect on the victim. Quid pro quo harassment has been the term applied to situations where a supervisor or one in authority affects or threatens to affect adversely a subordinate's terms or conditions of employment unless the subordinate gives the supervisor sexual favors or as a punishment for being denied a sexual favor or benefit. Hostile environment harassment has generally applied to bothersome attentions, sexual remarks or other conduct that is sufficiently severe and pervasive to create a hostile workplace environment.

In Burlington Industries v. Ellerth, 118 S. Ct. 2257 (1998) and Faragher v. City of Boca Raton, 118 S. Ct. 2275 (1998), the U.S. Supreme Court observed that the terms quid pro quo and hostile environment are helpful in making rough demarcations between types of cases but otherwise are of limited value, at least where the underlying claim involves supervisory misconduct. The Court used the term "tangible adverse employment action" to distinguish between those cases in which, when supervisory conduct is at issue, an employer will be strictly liable and those in which an employer, while liable, may raise an affirmative defense. Ellerth at 2269. As used by the Court, tangible employment action means a significant change in employment status, such as hiring, firing, failure to promote, reassignment with significantly different responsibilities, or a decision causing a significant change in benefits.

D. Elements of the Definition of Sexual Harassment.

1. Conduct must be unwelcome.

Sexual conduct is illegal only when it is unwelcome. The distinction between "invited, uninvited-but-welcome, offensive but tolerated, and flatly rejected" sexual harassment may be difficult to discern, but making that distinction is critical to determining whether illegal conduct has occurred.

The EEOC and the MHRC look at the circumstances as a whole to determine unwelcomeness. Factors that will be investigated include (1) whether the complainant made a contemporaneous complaint; (2) if no timely complaint was made, the alleged reasons for the delay; (3) whether the parties had been engaged at any point in a consensual relationship; (4) whether and what the complainant directly communicated to the harasser; (5) whether the complainant acquiesced to the conduct; and (6) whether the complainant herself used sexually explicit remarks or acted in a sexually aggressive manner. In Meritor Savings Bank v. Vinson, 477 U.S. 57 (1986), the U. S. Supreme Court held that it is not sufficient for an employer to defend against a sexual harassment claim by showing that the claimant participated in the sex-related conduct (in Vinson, numerous incidents of sexual intercourse) voluntarily. Rather, the legal focus is on whether the victim, by her conduct, communicated that the overtures or other sexual advances were unwelcome. Both the MHRC and the EEOC look for objective evidence of unwelcomeness rather than uncommunicated, subjective feelings.

2. Conduct must be severe or pervasive enough to interfere with work and to create a hostile or intimidating environment.

To violate Title VII, sexual harassment must be sufficiently severe or pervasive to alter the conditions of the victim's employment and create an abusive working environment. In Harris

v. Forklift Systems, Inc. 510 U.S. 17 (1993), the U.S. Supreme Court reiterated that whether a hostile environment exists depends on a totality of the circumstances. The Court cited some key factors to be considered: the frequency of the discriminatory conduct; its severity; whether it is physically threatening or humiliating or a "mere utterance"; whether it unreasonably interferes with an employee's work performance; and the effect on an employee's well-being. The Court held that conduct that is not severe or pervasive enough to create an objectively hostile environment is not actionable, but - on the other hand - "Title VII comes into play before harassing conduct leads to a nervous breakdown."

In investigating sexual harassment claims, the MHRC and EEOC ask: (1) was the conduct verbal or physical or both? (2) was it repeated? (3) was the conduct hostile and patently offensive? (4) was the alleged harasser a co-worker or a supervisor? (5) did others join in perpetrating the harassment? and (6) was the harassment directed at more than one individual?

While the EEOC Guidelines provide that the conduct and its impact on the individual must be viewed from the standard of the "reasonable person", some courts have applied a "reasonable woman" standard, acknowledging the difference in perspectives between men and women about what constitutes offensive conduct and harassment. For example, in Ellison v. Brady, 924 F. 2d 872 (9th Cir. 1991), the Court found it reasonable that the female plaintiff was subject to a hostile environment when a co-worker who had paid her unwelcome attention in the past, and who had been transferred at her request, was transferred back to her building. The Court found that women objectively have reason to feel more physically vulnerable and threatened than men.

Because every case turns on a unique set of facts and depends on the total picture, bright lines are hard to draw. As the Supreme Court observed in Harris, "[what constitutes sexual harassment] is not, and by its nature cannot be, a mathematically precise test." A brief look at fact patterns from cases involving hostile environment claims gives at least a "flavor" for how conduct has been judged.

A single, isolated incident will not usually constitute sexual harassment. Yet, if the incident is severe enough, and particularly if it involves offensive touching or more aggressive physical conduct, it may be actionable. An example is right here at home. In Nadeau v. Rainbow Rugs, 675 A.2d 973 (1996), the Court found that one instance of sexual harassment was sufficiently severe and pervasive to create a hostile environment. The plaintiff worked in the home of her supervisor who, knowing her extreme financial situation, offered her money in exchange for sex. After she refused, her supervisor asked her not to mention the offer because his wife was also in the home, but told her he would keep the offer open. Under the circumstances, the supervisor's actions were harassment for which the company was liable. In another example, Barrett v. Omaha National Bank, 726 F.2d 424 (8th Cir. 1984), it was sexual harassment when a mall supervisor spoke graphically to the plaintiff and touched her offensively while they were in a car from which she could not escape. Even though it was a single incident, the fact that the victim could not escape made the conduct sufficiently severe and hostile to be illegal.

In Henson v. City of Dundee, 682 F.2d 897 (11th Cir. 1982), the plaintiff made out a prima facie case where she claimed the police chief subjected her and co-workers to "numerous harangues of demeaning sexual inquiries and vulgarities...and repeatedly requested that she have

sexual relations with him" over the course of two years. In Paroline v. Unisys Corp., 879 F.2d 100, 50 FEP Cases 306, 311 (4th Cir. 1989), reversed in non-relevant part 900 F.2d 27 (4th Cir. 1990), hostile environment harassment was shown where the employee stated that she feared coming to work, her ability to concentrate was affected, she suffered a "depressive neurosis," co-workers testified she appeared upset and visibly shaken, and the employee alleged unwanted sexual touching and innuendo which escalated into assault and battery by an individual who held a superior position to hers and "perhaps even exercised supervisory authority over her." In Quinn v. Green Tree Credit Corp., 159 F. 3d 759 (2d Cir. 1998), two incidents – a comment about the plaintiff's posterior and touching the plaintiff's breast with papers that the supervisor held in his hand – were found to be too isolated and discrete to be actionable.

In Harris, the Supreme Court reinstated a manager's claim based on conduct by her supervisor that included epithets ("dumb ass woman"), innuendoes ("Let's go to the Holiday Inn and negotiate your raise") and demeaning actions (throwing coins on the floor and asking Harris and other women to pick them up; asking them to get coins from his front pants pocket). The lower court found that the supervisor's conduct "would have offended the reasonable woman", but (wrongly, according to the Supreme Court) required Harris to demonstrate serious or severe psychological injury.

Some cases that do not involve sexually offensive conduct have nevertheless been analyzed under the sexual harassment umbrella. These cases are more accurately harassment based on gender, a more straightforward form of sex discrimination. See. e.g., Williams v. General Motors Corp., 187 F.3d 553, 565 (6th Cir.1999) ("conduct underlying a sexual harassment claim need not be overtly sexual in nature"); O'Shea v. Yellow Technology Services,

Inc., 185 F.3d 1093, 1097 (10th Cir. 1999) ("Harassment alleged to be because of sex need not be explicitly sexual in nature."). Harper v. Casey, 1998 WL 614768 (E.D. Pa. 1998) (female attorney in law office received constant criticism and condescending treatment; introduced evidence that senior attorney treated all females except his secretary demeaningly and in a discriminatory manner such that terms and conditions of work were altered; jury question whether reasonable person would find environment hostile or abusive.)

3. Sexual harassment v. personality conflict.

"[T]here is a crucial difference between personality conflict and sexual harassment....[T]he law does not require an employer to like his employees, or to conduct himself in a mature or professional manner, or, unfortunately, even to behave reasonably and justly when he is peeved." Christoforou v. Rider Truck Rental, 668 F. Supp. 294, 51 FEP Cases 98, 105 (S.D.N.Y. 1987). In Keppler v. Hinsdale School District, 715 F. Supp. 862, 50 FEP Cases 295, 301 (N.D. Ill. 1989), a director of curriculum's claim did not survive a school district's summary judgment motion where she could not demonstrate that the school principal with whom she had ended a consensual affair had threatened punishment "if copulation or some form of erotic engagement was refused." The court reasoned that an employee who chooses to become involved in, and then end, an intimate affair with her employer cannot expect the employer to feel the same as he did about her before and during their private relationship. "The consequences are the result not of sexual discrimination, but of responses to an individual because of her former intimate place in her employer's life." 50 FEP at 300.

However, it may be hard to distinguish abuse which results from a personality conflict from sexual harassment. When a relationship with a supervisor which was originally consensual

breaks apart, the resulting emotions can affect the entire workplace. Even if the supervisor does not take disciplinary action against his former lover, the employer may be liable if the supervisor routinely makes disparaging comments to the former paramour, or assigns her to menial tasks. Compare Koster v. Chase Manhattan Bank, 554 F. Supp. 285, 287-8, 36 FEP Cases 941 (S.D.N.Y. 1983) (hostile environment claim stated where supervisor began a campaign of abuse against female employee who terminated a sexual relationship with him) with Evans v. Mail Handlers, 32 FEP Cases 634 (D.D.C. 1983) (upholding employer's transfer and subsequent termination of an employee after breakup of a three-year consensual relationship with her supervisor caused a squabble that adversely affected the workplace). See Hathaway v. Runyon, 132 F.3d 1214, 1221 (8th Cir. 1997) (no bright line between sexual harassment and unpleasant conduct so jury's decision must generally stand in absence of trial error.)

4. Sexual harassment v. vulgarity.

Vulgarity and other unprofessional conduct are not always sexual harassment - but the lines can be hard to draw. A case arising from the Maine Department of Human Services ("DHS") gave the Maine Supreme Court an opportunity to distinguish between the two. In Bowen v. Department of Human Services, 606 A. 2d 1051 (Me. 1992), a worker in a child protective office alleged that her supervisor's frequent use of profanity, derogatory names and insults and her co-workers' sexually explicit jokes and coarse remarks added up to hostile environment sexual harassment. The Court declined to find a violation. Key in the Court's decision was that Bowen did not claim that the vulgar language was used in her presence or directed at her because she was a woman. Since the conduct was directed at both sexes, a reasonable man could have found it offensive as well. Bowen is in accord with other cases that

have drawn this distinction. Title VII is not a clean language law or a civility code, see e.g., Webb v. Cardiothoracic Surgery Associates of North Texas, P.A., 139 F. 3d 532 (5th Cir. 1998) (rudeness, abrasiveness, shouting and generally uncivil behavior, however offensive, not actionable Title VII.) However, when a plaintiff can show that vulgarity and sexual innuendo are directed at her specifically, liability will apply.

Even though an employer may succeed in the "equal opportunity foul language" defense, the Bowen case and others like it - as well as common sense - show what happens when an employer must, by way of defense, display its dirty laundry (or language). Bowen and cases like it cannot be called "victories", given the embarrassment, expense and unfavorable publicity that resulted. While workplace purity is not the standard or the law, pervasive vulgarity is sure to offend at least some employees, is a symptom of poor management, and can trigger a lawsuit that at best will be extremely uncomfortable for the entire work group.

II. EMPLOYER LIABILITY

A. Tangible Employment Action.

When a supervisor exercises the authority actually delegated to him by his employer by making decisions or taking actions that affect the employment status of his subordinate(s), such actions are properly imputed to the employer whose delegation of authority empowered the supervisor to undertake them. Strict liability applies, regardless of an employer's preventative or corrective actions. Ellerth, supra, at 2269. Tangible employment action may include failure to promote, termination, wage freeze, poor performance review, denial of training opportunity, undesirable assignment, reduced or increased hours and any similar effect or consequence on an employee's wages, hours and working conditions. See, e.g., Dilenno v. Goodwill Industries of

Mid-Eastern Pennsylvania, 162 F. 3d 235 (3d Cir. 1998)(lateral transfer may constitute adverse employment action, when employer knows that employee cannot perform new job); Sconce v. Tandy Corp., 9 F. Supp. 773, 776 (self-imposed job detriment of seeking lower paying transfer not tangible action; claim to be analyzed as one for hostile environment.)

B. Hostile Environment

In evaluating liability for claims where there is no tangible job action (generally, hostile environment claims), the liability analysis turns first on whether the unwelcome conduct is severe, pervasive and frequent enough to constitute an interference with working conditions. If the conduct is determined to be actionable, the analysis turns to the actor. If the actor is a supervisor, the employer is vicariously liable. However, the employer may raise the affirmative defense outlined in Ellerth and Faragher, supra. In order to make out the two-pronged defense, the employer has the burden of proof to show that it exercised reasonable care to prevent and correct promptly any sexually harassing behavior. The elements of proof are the policies and practices that the employer has in place to prevent and remedy harassment. An effective anti-harassment policy with a complaint procedure is, while "not necessary in every instance as a matter of law," Ellerth at 2293, a cornerstone of the defense. The complaint procedure should be independent and meaningful; it should also be well disseminated. cf. Faragher, supra (City failed to distribute anti-harassment policy and notice of complaint procedures to female lifeguards who worked far from city hall; not found to exercise reasonable care as a matter of law.) An effective supervisory and employee training procedure is also a touchstone of reasonable care. The Supreme Court has cautioned that "employers have great incentive to screen [supervisors], train them and monitor their performance." Ellerth, supra at 2288. The second prong of the defense

requires the employer to prove that it took prompt and adequate remedial action in responding to the complaint. The sufficiency of remedial action will be measured by whether the action ended the current harassment and deterred future harassment by the same or others. Factors used by the courts to judge the sufficiency of the employer's response include the time (promptness) of the response; whether the investigation was adequate; the effectiveness of disciplinary or other corrective measures; recidivism by the harasser. Another factor is the employer's historical response to complaints of harassment. A history of non-response has been held reasonably to excuse the employee from complaining based on futility.

Ellerth and Faragher have put a premium, then, on aggressive and proactive policies and responses by employers and their agents, and on preventing sexual harassment by supervisors.

C. Co-worker Liability

Ellerth and Faragher have not changed the liability analysis for harassment by co-workers; it remains rooted in negligence concepts. If there is actual or constructive knowledge of the harassment and the employer has failed to act, the employer is liable unless it can show that it took prompt and corrective action. Crowley v. L.L. Bean, Inc., 143 F.Supp.2d 38, 58 (D.Me. 2001). The courts and agencies have reasoned that, once the employer knows about the harassment, the failure to stop it means the employer is condoning the conduct and its consequences. The standards for prompt corrective action are those discussed above.

The issue of what constitutes notice to the employer has generated much litigation and confusion. When a supervisor with substantial authority and discretion to make decisions concerning the harasser or the harassee knows of harassment, the knowledge is imputed to the employer. Knowledge may also be imputed when the supervisor has substantial authority for

relaying complaints to management or is in charge of a remote location. When a harassee relies on the appearance of agency of a supervisor, the employer may be considered to have notice. See, e.g., Torres v. Pisano, 116 F. 3d 625, 636-638 (2d Cir. 1997 (discussing levels of employees whose knowledge may be imputed to employer.) If harassment is pervasive, "it can be presumed, subject to rebuttal, to have come to the attention of someone authorized to do something about it." Young v. Bayer Corp., 123 F.3d 672 (7th Cir. 1997).

III. CIVIL REMEDIES

Under both the Maine Human Rights Act and Title VII, an employee who has proven sexual harassment is entitled to back pay, front pay, reinstatement and an injunction against further harassment. Attorneys' fees are also provided. Under Maine law, the maximum civil penalty for victims of sexual harassment has been $10,000 for a first offense, $25,000 for a second offense and $50,000 for a third offense. The Court may award compensatory and punitive damages of up to $50,000, $100,000, $200,000 or $300,000 depending on the size of the employer, in cases of intentional discrimination, although punitive damages may not be awarded against a government entity or an employee of a government entity for an action that occurs within the course or scope of his employment. The MHRA also provides the right to a trial by jury.

The federal Civil Rights Act of 1991 allows recovery of limited compensatory damages and permits the trial of sexual harassment cases before a jury. Damages are recoverable from $50,000 - $300,000, depending on employer size. Equitable relief (reinstatement or front pay, injunction), as well as attorneys' fees for a prevailing party, is also available.

Retaliation for filing a sexual harassment claim or for otherwise exercising rights protected by the MHRA or Title VII is illegal. The remedies available for retaliatory acts are the same as those available in cases of actual harassment.

IV. CONCLUSION

Supervisors and managers who don't recognize sexual harassment or who -- worse -- practice or condone it cost their employers productivity, money, morale and legal liability and run a high risk of being fired, sued or both. The law of sexual harassment is confusing and unpredictable: this is not likely to change. The best prevention of sexual harassment problems for all members of an organization, at any level, is to appreciate the serious effect of sexual harassment on the workplace; to bring concerns in this area promptly to the attention of human resources or personnel; and to be sensitive to the effect of their own conduct and language on co-workers and supervisees.

Appendices

- ✓ Newspaper Articles Regarding Sexual Harassment
- ✓ General Policy Prohibiting Sexual Harassment
- ✓ Other Forms of Prohibited Harassment
- ✓ Legislative Council Policies on Sexual Harassment

Successful harassment claim leads to lawsuit

By BETTY ADAMS
Staff Writer

AUGUSTA — A Sidney woman who won a sexual harassment claim before the Maine Human Rights Commission is suing the state and two state workers, seeking money for damages and emotional distress.

Cathy J. Moody, a former state employee, filed a lawsuit in Kennebec County Superior Court against the Secretary of State's Office, the Bureau of Motor Vehicles, Robert Curtis and Robert Johnson III, both of Augusta.

Moody claims Curtis, who worked with her at the Bureau of Motor Vehicles, subjected her to unwelcome sarcastic and sexual comments and actions, beginning in the fall of 2000, and continued them despite her protests.

The lawsuit, filed on Moody's behalf by attorney P.J. Perrino Jr., says Moody complained to fellow workers and to Johnson, the supervisor. At one point, Moody says she was in tears as she provided details to Johnson.

By January 2001, Moody said she was upset that nothing had been done about Curtis' behavior, and she went to the state Equal Employment Opportunity coordinator.

An investigation by Bureau of

Please see SUIT, *B3*

• Suit

Continued from B1

Motor Vehicle officials found that Johnson failed to forward Moody's complaints to his own supervisor, and Moody claims Johnson began treating her differently than other employees, which created an uncomfortable atmosphere.

Perrino said the complaint with the human rights commission did not name Curtis as a defendant because he was no longer employed by the state at the time.

On April 3, 2001, Moody was reassigned from the stock room to the film room, and two days later she brought a doctor's note saying she could not work because of stress and anxiety resulting from sexual harassment and retaliation.

She filed her discrimination complaint on April 23, 2001. Two months ago, the Maine Human Rights Commission voted 4-0 in finding that reasonable grounds existed to conclude that Moody was harassed, and bureau managers "did nothing to address the retaliatory conduct of her coworkers and supervisors."

Assistant Attorney General Susan Herman said she was aware of the lawsuit and would be preparing a response on behalf of the state. "The Secretary of State's Office does not condone discrimination and believes it acted appropriately under the circumstances," she said.

At the human rights commission hearing, Herman maintained that Moody's claims failed to reach the legal standards of retaliation and sexual harassment.

Neil Jeffrey Young, the attorney who represented Johnson at the hearing, said he received notice of the lawsuit and planned to file a response. However, he said, "There wasn't any retaliation ever by Mr. Johnson, and I fully expect that it will be dismissed."

An attorney for Curtis is unavailable for comment this week.

Betty Adams — 621-5631
badams@centralmaine.com

City cops lose suit

Former officer Parkin wins $18,000 verdict

BY LISA CHMIELECKI
Staff writer

PORTLAND – John Parkin's three-year legal battle against the Lewiston Police Department ended Wednesday afternoon.

After hearing four-and-a-half days of testimony and deliberating for 23 hours, a federal jury found that Parkin was sexually harassed by his fellow officers and supervisors during his seven months as a rookie patrolman on the force.

As compensation for his emotional distress, mental anguish and other losses, the four male and five female jurors ordered the city to pay him $18,000 in damages.

PARKIN

The entire verdict, however, was not in Parkin's favor.

As part of their decision, the jurors ruled that Parkin was not constructively discharged. That means they did not find the environment at the department to have been so intolerable that Parkin had no choice but to quit when he did in June 2000.

As a result, Parkin will not receive additional money in lost wages.

After paying his lawyers and other debts, it is likely that the former rookie cop will not see any of the award.

Still, the 28-year-old Lewiston native felt victorious as he walked out of U.S. District Court in Portland Wednesday morning. For three years, he has stood by his allegations that he was constantly taunted by the other members of the force, including Chief William Welch, for not being macho.

'Never been about money'

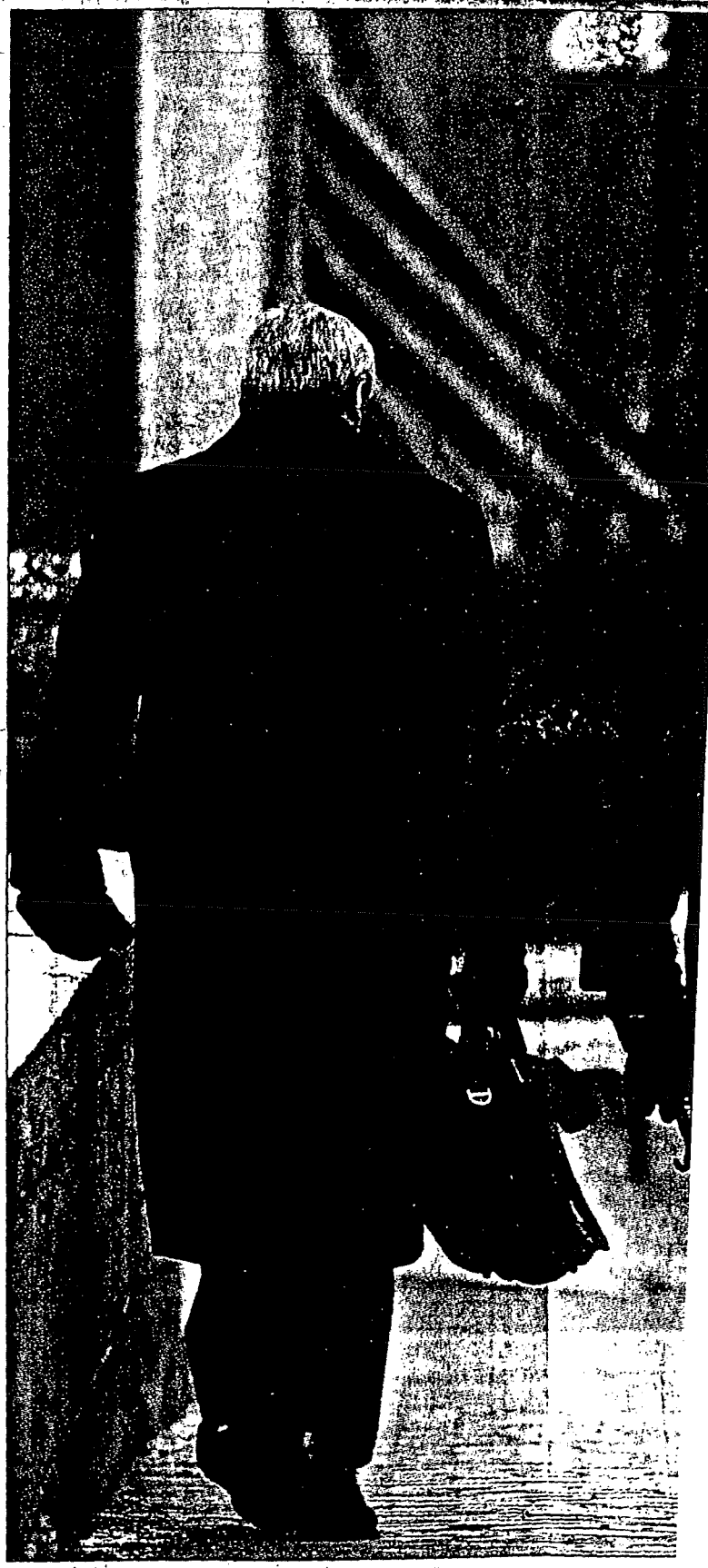
He claimed the officers and supervisors repeatedly called him names, such as "fag" and "pussy," while making fun of everything from his black police gloves to his lightened hair.

The verdict, Parkin said, is validation.

"This has never been about money," he said, standing outside the courthouse Wednesday morning. "It is about the issue of standing up for yourself. And I did that."

Chief Welch, who has repeatedly defended himself and his officers by either denying Parkin's claims or describing the alleged comments as sim-

SEE PARKIN PAGE A7



END OF THE TRIAL: Lewiston Police Chief William Welch, right, and h
Market Street Wednesday morning as they leave the U.S. District Court
man John Parkin $18,000 in his lawsuit against the Lewiston Police Depa

Creatures featured on fr

Parkin

CONTINUED FROM A1

ple teasing, said Wednesday that he was disappointed by the verdict.

The fact that nine jurors ruled that one of his former officers was sexually harassed in late 1999 and early 2000 does not present the need for more changes within the department, he said.

"This case is almost four years old," Welch said. "The policies (for reporting sexual harassment) have been improved."

While still referring to the harassment as "horseplay," Welch acknowledged that Parkin's case against the city has revealed that some officers had been using inappropriate language at one time.

"It wasn't a constant thing that happened every five minutes at the station," the chief said. "I never noticed that it was out of control."

Jokes

Throughout the trial, the city's attorney, Edward Benjamin, described the teasing directed at Parkin as a way for the officers to relieve stress.

As a result of the case, Welch said, the officers have learned that they need to be more sensitive about what they say because conversations that are meant to be private can become public.

Welch testified during the trial that he believes every comment needs to be evaluated individually. Whether he would tolerate one officer calling another officer a "homo" or "faggot" would depend on the context and whether the officer was offended, he testified.

"I don't think people will stop telling jokes now," Welch said after the trial was over. "But they'll have to put the language in context."

'Old standard'

City Administrator Jim Bennett took a stricter stand. He believes that words such as "fag" and "homo" are not acceptable in the workplace under any circumstance.

"The old standard of guys being guys – the locker room conversation – is inappropriate," Bennett said. "Anything that may have been seen as acceptable a decade ago or half a decade ago, may not be now, and we have to make sure we are reminding all employees of that."

Bennett took over as city administrator a year ago. Since then, the city settled two additional cases involving claims of sexual harassment and discrimination against the police department.

Other cases

In one case, the city shelled out $80,000 to two women who filed a suit accusing Welch of violating their civil rights when he pretended to choke them at a domestic violence conference in 2000.

In another, a former crime analyst was paid $50,000. Kathi Levesque worked for the Lewiston Police Department in the late 1990s.

During that time, she made several complaints to then Deputy Chief Andy D'Eramo, alleging that Welch sexually harassed her and that a top lieutenant yelled at her and treated her differently because she was a woman.

Angry that no action was taken to correct the problem, she eventually quit and threatened to sue.

Bennett acknowledged past problems within the police department, but he commended the chief for making improvements and for going a year without any new problems.

"I think he made some incredibly dumb mistakes prior to my arrival," Bennett said about Welch. "But there is no indication that it has continued. I think he does a good job."

Parkin wants his case to serve as an eye-opener for the community on two separate issues.

He hopes it sends the message that a heterosexual male can be harassed by other heterosexual males, and he hopes that it raises questions about the leadership of the police department.

"Obviously there is going to be a big magnifying glass on the department," he said. "So far, nothing has been done. Changes come from the top down. The chief calls it horseplay because that is his definition. He words it differently to make it legal."

Parkin has given up his lifelong dream to become a police officer. He believes there is a connection among police officers across the state that will make it impossible for him to get a job.

"There is a brotherhood that stretches far and you don't speak against it," he said. "That is what I did."

Currently working part-time as a substitute teacher, Parkin plans to return to college.

On Wednesday morning, after the court clerk read the verdict and the jury left the room, Welch walked over to Parkin, shook his hand and said, "It's finally over."

After battling for three years, both sides expressed relief in the end. The city likely will not appeal the decision, Benjamin said.

"Both the Parkin family and the agency have been through a lot," Welch added. "It is time to move on."

lchmielecki@sunjournal.com

DARYN SLOVER/SUN JOURNAL

TOP OFFICER: Lewiston Police Chief William Welch walks out of U.S. District Court in Portland Wednesday morning after the verdict was announced in John Parkin's lawsuit against the Police Department.

John Parkin versus city of Lewiston

Verdict form

Question: Did the defendant, the city of Lewiston, create or permit to exist a sexually hostile work environment that harmed the plaintiff, John Parkin?
Answer: Yes

Question: Did the defendant exercise reasonable care to prevent and promptly correct any sexually harassing behavior?
Answer: No

Question: Did the plaintiff unreasonably fail to take advantage of any preventive or corrective opportunities provided by the defendant?

Question: What amount of money is the plaintiff entitled to recover as compensatory damages for the period of his employment by the defendant?
Answer: $18,000

Question: What amount of prejudgment interest, if any, do you award respecting compensatory damages for this period?
Answer: $0

Question: Was the plaintiff constructively discharged as a result of a hostile work environment created or permitted to exist by the defendant?

JEREMIAH FREED

THURSDAY
MARCH 28, 2002

Portland Press

EST 1862

Post offices in Maine faulted on harassment

● The Postal Service's inspector general finds that managers were lax in carrying out policies.

By ALLAN DRURY
Staff Writer

The U.S. Postal Service in Maine failed to properly investigate sexual-harassment complaints and gave bonuses to managers after they were disciplined for sexual harassment, a report released Wednesday said.

Postal Service managers also did a poor job of keeping records of which employees received sexual-harassment training, said the report by the agency's inspector general.

The report, which summarized a yearlong investigation, said the Maine district had strong policies to prevent sexual harassment, but managers were lax in carrying out the policies.

Of 16 sexual-harassment complaints filed by Maine employees from 1996 to last year, the district investigated only eight thoroughly enough, the report said.

The inspector general's investigation was conducted at the request of U.S. Sen. Olympia Snowe, R-Maine, after the Maine Sunday Telegram reported the Postal Service in southern Maine had been sued at least five times for sexual harassment.

Those cases, including three at the

Please see POSTAL
Back page this section

Gray village traffic relief inches closer

● Transportation officials hope the so-called westerly bypass will divert up to 10,000 vehicles per day.

By C. KALIMAH REDD
Staff Writer

GRAY – With summer approaching, the town of Gray is bracing for

Catching while he can

Associated Press photo by Robert

Chris Viola unloads groundfish Wednesday aboard the trawler Adventurer in Portland. Gov. Ang King says tighter fishing restrictions expected soon could endanger the industry in Maine.

King: Stricter fish rule endanger jobs in Mai

● The governor urges a federal judge to apply new limits to specific species rather than the entire fishing industry

new management plan unless upcoming meetings settle the issue bef Mediation is scheduled

son, with the eloquent Cadillac [illegible] taking a bite out of "Texaco's" audience. "I Love Lucy" took over first place in the prime time Nielsen ratings, and Berle never regained the top rung. "Texaco's" eight year run ended in 1956.

Through the 1970s and 1980s, he guest starred on numerous TV series, including "The Love Boat," "Fantasy Island" and "Murder, She Wrote."

Berle underwent a heart bypass operation in 1985. A stroke in 1998 essentially ended his career.

Berle was married four times.

He and showgirl Joyce Mathews married in 1941, divorced in 1947, remarried in 1949, and divorced again in 1950. They adopted a daughter, Vicki, in 1945.

Berle married press agent Ruth Cosgrove in 1953, and they adopted William in 1961. She died in 1989.

In 1992, Berle married fashion designer Lorna Adams, who survives him, as do his two children.

[illegible]

He lives on the wrong side of a one track mind!

Last month I put on a tick garden [illegible] of them were dead in the morning!

They should never send up three astronauts in one capsule. Soonet or later they'll start arguing about who gets the seat by the window!

The Army is trying to become more attractive to recruits. In the mess hall now they have strolling violin players.

(A musician) played in Key West. It was the first time I knew what key he was in.

My new parrot must have been raised in a tough neighborhood. He won't talk without an attorney!

I just returned from my vacation. I'm still recovering from bus lag!

A great actor was asked for the ten-thousandth time, "How'd you become a star?" He answered, "I started out as a gaseous cloud. Then I cooled."

crafted specifically to meet previous Supreme Court standards so that it would be upheld.

"This new law not only closes the soft-money loophole for parties, but finally shines a ray of sunshine on flagrant broadcast sham-issue ads and requires they be paid for with hard dollars raised not from union dues or corporate treasury money, but from voluntary, individual donations," Snowe said.

The NRA's lawsuit asserts that the law violates its members' freedom of speech by restricting the type of issue ads that have made the rifle association a formidable force in congressional elections over the years.

"Our case is a rifle shot," said Cleta Mitchell, a campaign finance lawyer who filed the suit on behalf of the NRA. "It goes directly to the issue of prohibition on advertising."

U.S. Rep. Tom Allen, D-Maine, who headed a bipartisan task force to reform campaign legislation five years ago, welcomed Bush's signature.

"This law marks an end to the days when citizens' voices are drowned out of the political process by the hundreds of millions of dollars of soft money spent each election cycle," Allen said.

In an effort to get the case quickly to the Supreme Court, the legal clash will bypass traditional federal court procedures. It will be immediately assigned to a three-judge panel, whose decision will be directly appealed to the nation's highest court. This expedited procedure is written into the legislation.

Staff Writer Bart Jansen contributed to this report.

scheduled to begin in the fall. The work is expected to cost about $13 million and remove more than 75 percent of the traffic from old Route 26 around Sabbathday Lake.

The project will also erase what are locally known as the "seven deadly curves," where numerous serious accidents have occurred over the years. The work would also bring a more rural and quaint atmosphere to Shaker Village, which has long endured traffic racing through its center.

Federal funds will cover the vast majority of the cost for both projects.

The proposed westerly bypass will cost about $4 million. The DOT recently reviewed an environmental assessment of the project and sent it back to a consulting firm for more work. Faucher hopes to advertise for construction sometime in 2003. The bypass should reduce traffic by about 10,000 vehicles a day, or at least 40 percent.

Dealing with traffic is a way of life for those living in Gray and surrounding towns.

Many communities in Greater Portland have struggled with increased traffic in recent years. But Gray is distinctive because of the number of state highways that run directly through its village – Routes 100, 202, 115 and 26. Into this stream of traffic, the Maine Turnpike feeds still more cars and trucks from Exit 11.

On some days, the combination of local commuters, tourists heading toward Bethel and trucks traveling toward Auburn brings traffic to a halt. Delays of up to 25 minutes are common, as are incidents of road rage involving impatient drivers.

A 1999 DOT survey estimated that more than 22,000 cars passed through the town center in a day. The problem has gotten so bad, Fire Chief Jon Barton said, that emergency vehicles sometimes drive on the other side of the street to avoid traffic helps us a very limited amount," said Harriman, who owns the plaza on Main Street and the True Value Hardware store.

Changes to Gray village and Route 26 have been in the works for some time. The Maine Turnpike Authority developed a study of the northern corridor in 1988 to pinpoint problem areas between Gray and Augusta. In a later study, the authority focused more closely on options in the Gray-New Gloucester area.

The study looked at 26 alternatives and eventually narrowed them to six.

Many local residents argue that traffic is created partly by a turnpike toll booth between Exits 11 and 12, in New Gloucester. Truck drivers, hoping to avoid paying up to $4.05, get off the turnpike in Gray and travel up Route 100, only to get back on the turnpike in Auburn, residents say.

But Conrad Welzel, government relations manager for the turnpike authority, questioned that conclusion. He said more businesses have opened along Route 100 into Auburn, and truck traffic through the tolls has increased, rather than decreased.

"I'm not saying that tolls aren't guilty of causing some diversion, but we don't feel that it's a major factor in the process," he said.

Observers agree that the bypass will help the situation, but many say they are concerned that it won't solve the problem. Gray Councilor Dick Barter noted that the traffic has forced many commuters to find alternative ways through smaller neighborhoods to get to their destinations.

"It's a Band-Aid," said Barter. "It's better than nothing. It will move some of the traffic. It isn't going to solve a problem. Everything that is going south is still going to go through Gray Corner."

Staff Writer Kalimah Redd can be contacted at 791-6335 or at:
kredd@pressherald.com

POSTAL

Continued from Page 1A

post office on Forest Avenue in Portland and two in Biddeford, produced jury awards and settlements of more than $2.6 million between 1996 and last year. Victims described behavior that included a male employee exposing himself and men telling women they were ugly and tagging them with derisive nicknames.

The Maine cases were among the reasons the National Organization for Women labeled the Postal Service "a merchant of shame" for its record on harassment and discrimination.

On Wednesday, the Postal Service seized on the inspector general's 33-page report as proof that the agency takes harassment prevention seriously.

"It says the Postal Service had adequate procedures in place," said Gerry Kreinkamp, a Postal Service spokesman in Washington. "They found employees were disciplined and management (in the Maine district) generally agreed with the recommendations in the report."

Kreinkamp also pointed out that the Maine settlements and jury awards were for behavior that took place "years ago." The lawsuits described harassing behavior from 1984 to the late 1990s.

"The important point is that we've taken action to improve things so this doesn't happen again," Kreinkamp said.

On the matter of bonuses, he said the Postal Service awards bonuses based on team accomplishments. If a region's operations meet certain goals for safety and service, managers share bonuses, he said.

But the husband of a sexual-harassment victim said he did not trust the report. Jim Bergeron, whose wife, Pam, received an undisclosed settlement from the Postal Service in October 2000 after filing a lawsuit, said he did not believe the agency could adequately investigate itself.

"There's no credibility in that. They have to cover up," said Bergeron, whose wife was the first female letter carrier in Biddeford. "The lawyers in Portland and many people know there's corruption within that system, and if that report says there are a few things wrong, then you know there's something really stinky going on. They really shattered our lives."

The report recommended that every employee in Maine receive sexual-harassment training and that managers update records. Of 1,680 workers at six postal facilities reviewed by the inspector general, there was no documentation of training for 761, the report found.

The inspector general said that because the Postal Service has a "zero tolerance" policy on sexual harassment, the behavior should be grounds to disqualify personnel from receiving performance bonuses. Five managers involved in sexual-harassment cases received bonuses ranging from $1,718 to $2,900, the report said.

The experiences of the Maine victims back the report's statement that sexual harassment increases stress.

Pam Bergeron, now 56, left the Postal Service via disability retirement due to stress and has been diagnosed with post-traumatic stress disorder.

Jim Bergeron said his wife, who charged that a male letter carrier took his pants down to his knees one night in 1985 while they were alone in the Biddeford Post Office, "just wanted this pervert moved so she could do her job." But his wife felt punished for filing the lawsuit, Bergeron said.

"These are government lawyers," he said. "When they come in, they come in to destroy you. Everything's your fault."

Mary Ann Caret, a Biddeford resident who reached an undisclosed settlement in a suit against the Postal Service two years ago, had a psychiatric breakdown after the harassment. She said in court papers that a male letter carrier exposed himself to her, showed her pictures of him having sex and touched her frequently.

Judith Coffin, a Portland postal employee who committed suicide in 1996, left a note blaming sexual harassment for her despair. In 1998, a jury awarded $3.5 million in damages to her family. The family later accepted a payout of $1.3 million.

Stephanie Berry, a former maintenance worker at the Forest Avenue plant, won a $1 million jury award last year. She resigned in 1996 citing medical problems due to harassment.

And Portland employee Diane Kelley, who reached a $330,000 settlement in 1999, said she suffered a psychiatric breakdown after harassment.

Staff Writer Allan Drury can be contacted at 791-6461 or at:
adrury@pressherald.com

Citation Search Result Rank 16 of 36 Database
5/17/02 BANGORDN 1 MENP
5/17/02 Bangor Daily News (Me.) 1
2002 WL 4874648

Bangor Daily News Bangor, ME

Friday, May 17, 2002

B

Five complaints confirmed against district attorney Commissioners caution Povich to treat everyone 'with courtesy'

BILL TROTTER; OF THE NEWS STAFF

ELLSWORTH - After two hours of discussion Thursday morning, the Hancock County commissioners decided that some complaints filed against the district attorney by a county employee had merit, and they reiterated the county's policy of maintaining a professional workplace atmosphere.

The three-man panel issued a page-long statement in which it affirmed some of the complaints reported by Victim Witness Advocate Tammy Denning against Hancock County District Attorney Michael Povich, who she said addressed her with derogatory terms and sexually suggestive language.

Both Povich, who is being challenged this year in his bid to retain his post, and Denning were in the commissioners' hearing room when the decision was announced at 11:30 a.m.

Citing the county's **sexual harassment** policy, the commissioners said "suggestive remarks of a **sexual** nature will not be appropriate or tolerated," and that they expect Povich to "treat all county employees as well as the general public with complete courtesy."

In her March 27 complaint against Povich, Denning accused him of referring to her and another woman in his office as "my favorite sluts," yelling and swearing at her, other staff members and members of the public, and routinely using derogatory references to women such as "slut," "whore" and "bitch."

The commissioners said they found five of the specific complaints

cited by Denning to be valid and two were not. Five of those seven complaints dated from March, while two dated from last fall, they said.

"We're trying to establish a workplace where our employees are treated in a professional and courteous manner," Hancock County Commission Chairman Ken Shea said Thursday after the meeting. He said a copy of the commissioners' decision would be sent to the Attorney General's Office in Augusta.

After the commissioners' finding was announced, Povich said he got the message about making sure employees in his office were treated with respect "loud and clear." He said it is important that the issue has been dealt with and is over.

"I'm not pleased with causing stress and discomfort," Povich said. "I will clean up things."

Standing in the front hall of his State Street office building, Povich said that the other employees in his office are comfortable with his style of banter and that there should not be any future complaints. He said he expects the banter in his office to continue to a degree which all the employees find agreeable.

"This doesn't turn into a cathedral or a school where you have kids [around]," Povich said, indicating his office.

At a press conference last week, Povich said that Denning's complaint against him stemmed from his reprimanding her for writing a caustic personal letter on March 13 to a local domestic violence organization on letterhead stationery from his office. Denning has been temporarily reassigned to work in the commissioners office while they have been dealing with her grievance.

Povich said Thursday that if Denning elects not to resume her duties as an advocate, the disciplinary action he and the commissioners have agreed on for Denning's use of the letterhead will be moot. He said that Denning will not be terminated for using the letterhead but that all other information concerning the disciplinary action against her will remain confidential.

The commissioners said Denning could return to her position in the District Attorney's Office within the next 30 days or could stay

in her temporary assignment until a regular county position for which she is qualified becomes available.

Denning's attorney, Don Brown of Bangor, said after the meeting that he does not know what decision his client will make or if she will file a lawsuit against Povich. He expressed doubt that the environment in Povich's office will change to Denning's liking.

"I don't hold out any hope he will change," Brown said. "I can't imagine what it could be like to go back to that situation." Denning is under medical care from the stress stemming from the dispute, he said.

"I think it was an appropriate decision," Brown said of the commissioners' finding. He said that Denning sent a complaint to the Maine Human Rights Commission but that he has not heard whether the state agency will take it up.

Denning declined to comment on the matter after the meeting.

The commissioners considered only incidents reported by Denning that occurred in the past six months, they said. According to Commissioner Dennis Damon, county policy requires that nonsexual harassing comments be reported within 10 days of their being made. In considering the allegedly sexual comments made by Povich, the county used a six-month time frame, which is consistent with state law, he said.

Commissioner Shea said after the meeting that the commission has heard informal complaints from other county employees about Povich's use of language before, but that Povich has changed the way he interacts with those employees.

"He can change. He's done it in the past," Shea said. The lesson in this instance is that not everyone reacts the same way to suggestive language or aggressive teasing, he said.

"This is a case where it backfired on him," Shea said.

---- INDEX REFERENCES ----

NAMED PERSON: POVICH, MICHAEL; SHEA, KEN; BROWN, DON

POLICY PROHIBITING SEXUAL HARASSMENT

Sexual harassment in the workplace is unlawful, and it is also unlawful to retaliate against an employee for making a complaint of sexual harassment or for cooperating in an investigation of such a complaint. The Company absolutely prohibits sexual harassment of any employee by a supervisor, a co-worker, a contractor, a vendor or a customer and prohibits retaliation against any employee for making such a complaint or cooperating in the investigation of such a complaint. All supervisory personnel are responsible for enforcing this policy. Failure to do so will be considered a failure to fulfill all the responsibilities of the position.

"Sexual harassment" is defined as "Unwelcome sexual advances, requests for sexual favors, and other verbal or physical conduct of a sexual nature when (1) submission to such conduct is made either explicitly or implicitly a term or condition of an individual's employment, (2) submission to or rejection of such conduct by an individual is used as the basis for employment decisions affecting such individual, or (3) such conduct has the purpose or effect of unreasonably interfering with an individual's work performance or creating an intimidating, hostile or offensive working environment."

Sexual harassment does not refer to occasional compliments of a socially acceptable nature. It refers to behavior which is unwelcome.

Examples of sexual harassment may include but are not limited to: 1) repeated offensive sexual flirtations, advances or propositions; 2) continued or repeated verbal abuse of a sexual nature; 3) graphic or degrading verbal comments about an individual or his or her appearance; 4) the display of sexually suggestive objects or pictures; and 5) any offensive or abusive physical contact.

In addition, no one should imply or threaten that an applicant or employee's "cooperation" of a sexual nature (or refusal thereof) will have any effect on the individual's employment, assignment, compensation, advancement, career development, or any other condition of employment.

Any employee who experiences sexual harassment is requested to immediately report the matter to one of the following persons:

- Your immediate supervisor, **OR**
- directly to [name, title, work address and tel #], **OR**
- directly to [name, title, work address and tel #]

The Company will promptly investigate any complaint of sexual harassment. Any employee who is determined, after investigation, to have harassed another employee in violation of this policy will be subject to appropriate disciplinary action up to and including termination of employment.

Employees have the legal right to file a complaint of sexual harassment with the Maine Human Rights Commission, and are protected by law from retaliation for exercising this right:

Maine Human Rights Commission
State House Station 51
Augusta, ME 04333
(207) 624-6050

OTHER FORMS OF HARASSMENT

Harassment on the basis of any other protected characteristic is also strictly prohibited. Under this policy, harassment is verbal or physical conduct that denigrates or shows hostility or aversion toward an individual because of his/her race, color, religion, sex, age, national origin, ancestry, creed, citizenship, alienage, physical or mental disability, veteran status, or any other characteristic protected under federal, state or local law and that:

1) *Has the purpose or effect of creating an intimidating, hostile or offensive work environment;*

2) *Has the purpose or effect of unreasonably interfering with an individual's work performance; or*

3) *Otherwise adversely affects an individual's employment opportunities.*

Harassing conduct includes, but is not limited to: epithets, slurs or negative stereotyping; threatening, intimidating or hostile acts; denigrating jokes and display or circulation in the workplace of written or graphic material that denigrates or shows hostility or aversion toward an individual or group (including through the Internet and Company E-mail).

If an employee believes that he or she has been subjected to harassment or discrimination, the employee is encouraged to promptly file a complaint with a department manager or Human Resources Representative, whose name, address and phone number can be found in the Company's internal phone directory. If an employee becomes aware that another employee is being harassed, it is the employee's responsibility to bring this conduct immediately to the attention of the Company.

When the Company receives a complaint under this policy, it will, to the extent possible, investigate the allegations in a prompt and objective manner. The Company's investigation may include interviews with the complaining party, the person accused, and/or witness(es). All employees are expected to cooperate in investigations. Confidentiality will be maintained to the maximum extent possible and information will be shared only with persons who need to know. Further, any retaliation against an individual who has raised concerns or filed a complaint of harassment or discrimination or who has cooperated in an investigation of a complaint of harassment or discrimination is unlawful and will not be tolerated.

If the Company's investigation reveals that a violation of this policy occurred, the Company will act promptly to eliminate the offending conduct and, where appropriate, the Company will impose disciplinary action, up to and including termination of the employment or other relationship with the person(s) responsible for the violation. The Company will respond promptly to complaints of harassment and discrimination and take corrective and/or remedial action as appropriate. The Company may also impose corrective and remedial action when it determines that, although the conduct did not rise to the level of unlawful conduct, the conduct was unacceptable or inappropriate.

notify the employee's office director of the request and prior to release must submit the draft or drafts to the office director for review.

E. PERSONAL BEHAVIOR AND DRESS

A legislative employee's behavior and dress in the work place must, at all times, be in keeping with a professional, business setting.

A legislative employee is prohibited from consuming alcoholic beverages, using illegal substances or working while under the influence of either in the work place.

F. SEXUAL HARASSMENT

The Legislative Council affirms the dignity of all legislative employees to work in an environment that is free from intimidation, hostility and offensiveness. Sexual harassment is a particular form of employee harassment, which is a violation of the Maine Human Rights Act of 1964, the federal Civil Rights Act and this policy. The Legislative Council has adopted this policy to provide a work environment that is free from sexual harassment.

Office directors and supervisors have special responsibility for assuring compliance with this policy with respect to those employees who report to the director or supervisor. It is incumbent upon directors and supervisors to take prompt action to eliminate sexual harassment; employees may perceive that directors or supervisors condone sexually harassing behavior if a director or supervisor fails to intervene and take appropriate corrective action to eliminate sexual harassment.

Sexual harassment is unacceptable conduct and will not be condoned or tolerated in the work place. It undermines the integrity of the employment relationship, destroys morale, interferes with performance and demeans its victims. Sexual harassment by an employee is grounds for disciplinary action, in accordance with the Legislative Council's policies on employee discipline.

The Legislative Council's sexual harassment policy must be reviewed with the employee at the time of the employee's performance evaluation.

1. Definition

Sexual harassment is deliberate or repeated unsolicited comments, gestures or physical contact of a sexual nature that are unwelcome. The following behaviors constitute sexual harassment and are subject to disciplinary action.

a. Abusing the dignity of an employee through insulting or degrading sexual remarks or conduct, such as:

- Repeated sexual flirtations, advances or propositions.

- Continued or repeated verbal abuse of a sexual nature, sexually related comments and joking, graphic or degrading comments about an employee's appearance, or the display of sexually suggestive pictures of either sex or objects.

- Any unwelcome physical contact or touching, such as patting, pinching, or constant brushing against an employee's body.

b. Threats, demands or suggestions that an employee's work status, job security, opportunity for advancement, salary, benefits, work assignment or other conditions of employment are contingent upon the employee's tolerance of or acquiescence to sexual advances; or

c. Retaliation against employees for complaining about the behaviors described above.

2. Complaint Procedure

An employee who believes that he or she is being or has been subjected to sexual harassment must report the harassment to his or her supervisor or, if the sexual harassment involves the supervisor, report the matter to the employee's office director or the executive director if the sexual harassment involves an office director. The Legislature has established the following procedures to encourage prompt, informal resolution of complaints of sexual harassment.

Upon receipt of a written or oral complaint, the person notified shall immediately notify the person's office director who shall then notify the executive director. The executive director, in consultation with the office director, shall investigate the complaint and take appropriate corrective actions to informally resolve the matter. If an informal resolution is not attained, the complaint will be dealt with in accordance with the procedures for Disciplinary Action.

In addition, Maine law provides that the employee may file a complaint with the Maine Human Rights Commission at any time within 180 days from the date of alleged sexual harassment.

G. ACCEPTANCE OF GIFTS

No state employee may accept or solicit a gift from any person or organization with whom the employee has, or may expect to have, work-related contact in the course of his or her employment if the gift is to influence the employee performance of the employee's official

A committee clerk is prohibited from consuming alcoholic beverages or using illegal substances, or working while under the influence of either.

E. SEXUAL HARASSMENT

The Legislature affirms the dignity of all legislative employees to work in an environment that is free from intimidation, hostility and offensiveness. Sexual harassment is a particular form of employee harassment, which is a violation of the Maine Human Rights Act of 1964, the federal Civil Rights Act and this policy. The presiding officers and the Legislative Council have adopted this policy to provide a work environment that is free from sexual harassment.

Committee chairs and the LIO Manager have special responsibility for assuring compliance with this policy with respect to those employees who report to the committee chairs or the LIO Manager. It is incumbent upon committee chairs and the LIO Manager to take prompt action to eliminate sexual harassment; employees may perceive that committee chairs or the LIO Manager condone sexually harassing behavior if a committee chair or the LIO Manager fails to intervene and take appropriate corrective action to eliminate sexual harassment.

Sexual harassment is unacceptable conduct and will not be condoned or tolerated in the work place. It undermines the integrity of the employment relationship, destroys morale, interferes with performance and demeans its victims. Sexual harassment by an employee is grounds for disciplinary action, in accordance with the presiding officer and Legislative Council's policies on employee discipline.

The sexual harassment policy must be reviewed with the employee at the time of the employee's performance evaluation.

1. Definition

Sexual harassment is deliberate or repeated unsolicited comments, gestures or physical contact of a sexual nature that are unwelcome. The following behaviors constitute sexual harassment and are subject to disciplinary action.

a. Abusing the dignity of an employee through insulting or degrading sexual remarks or conduct, such as:

- Repeated sexual flirtations, advances or propositions.
- Continued or repeated verbal abuse of a sexual nature, sexually related comments and joking, graphic or degrading comments about an employee's appearance, or the display of sexually suggestive pictures of either sex or objects.

- Any unwelcome physical contact or touching, such as patting, pinching, or constant brushing against an employee's body;

b. Threats, demands or suggestions that an employee's work status, job security, opportunity for advancement, salary, benefits, work assignment or other conditions of employment are contingent upon the employee's tolerance of or acquiescence to sexual advances; or

c. Retaliation against employees for complaining about the behaviors described above.

2. Complaint Procedure

A committee clerk who believes that he or she is being or has been subjected to sexual harassment must report the harassment to his or her committee chair and the LIO Manager or, if the sexual harassment involves a committee chair or the LIO Manager, report the matter to the executive director of the Legislative Council. The Legislature has established the following procedures to encourage prompt, informal resolution of complaints of sexual harassment.

Upon receipt of a written or oral complaint, the person notified shall immediately notify the executive director. The executive director, in consultation with the LIO Manager, shall investigate the complaint and take appropriate corrective actions to informally resolve the matter. If an informal resolution is not attained, the complaint will be dealt with in accordance with the procedures for Disciplinary Action.

In addition, Maine law provides that the employee may file a complaint with the Maine Human Rights Commission at any time within 180 days from the date of alleged sexual harassment.

F. ACCEPTANCE OF GIFTS

The acceptance of gifts by committee clerks may create a conflict of interest or the appearance of a conflict of interest, thus possibly jeopardizing not only their own effectiveness, but also the effectiveness of their committee and the committee chairs.

No legislative employee may accept or solicit a gift from any person or organization with whom the employee has, or may expect to have, work-related contact in the course of his or her employment if the gift is to influence the employee performance of the employee's official duties or vote, or is intended as a reward for action on the part of the employee, pursuant to 17-A MRSA §605.

F. SEXUAL HARASSMENT

The Legislature affirms the dignity of all legislative employees to work in an environment that is free from intimidation, hostility and offensiveness. Sexual harassment is a particular form of employee harassment, which is a violation of the Maine Human Rights Act of 1964, the federal Civil Rights Act and this policy. The presiding officers and the Legislative Council have adopted this policy to provide a work environment that is free from sexual harassment.

Leaders and supervisors in their offices have special responsibility for assuring compliance with this policy with respect to those employees who report to the Leader or supervisor. It is incumbent upon Leaders and supervisors to take prompt action to eliminate sexual harassment; employees may perceive that Leaders or supervisors condone sexually harassing behavior if a Leader or supervisor fails to intervene and take appropriate corrective action to eliminate sexual harassment.

Sexual harassment is unacceptable conduct and will not be condoned or tolerated in the work place. It undermines the integrity of the employment relationship, destroys morale, interferes with performance and demeans its victims. Sexual harassment by an employee is grounds for disciplinary action, in accordance with the presiding officer and Legislative Council's policies on employee discipline.

The sexual harassment policy must be reviewed with the employee at the time of the employee's performance evaluation.

1. Definition

Sexual harassment is deliberate or repeated unsolicited comments, gestures or physical contact of a sexual nature that are unwelcome. The following behaviors constitute sexual harassment and are subject to disciplinary action.

a. Abusing the dignity of an employee through insulting or degrading sexual remarks or conduct, such as:

- Repeated sexual flirtations, advances or propositions.

- Continued or repeated verbal abuse of a sexual nature, sexually related comments and joking, graphic or degrading comments about an employee's appearance, or the display of sexually suggestive pictures of either sex or objects.

- Any unwelcome physical contact or touching, such as patting, pinching, or constant brushing against an employee's body.

b. Threats, demands or suggestions that an employee's work status, job security, opportunity for advancement, salary, benefits, work assignment or other conditions of employment are contingent upon the employee's tolerance of or acquiescence to sexual advances; or

c. Retaliation against employees for complaining about the behaviors described above.

2. Complaint Procedure

An employee who believes that he or she is being or has been subjected to sexual harassment must report the harassment to his or her supervisor or, if the sexual harassment involves the supervisor, report the matter to the employee's Leader or the presiding officer if the sexual harassment involves a Leader. The Legislature has established the following procedures to encourage prompt, informal resolution of complaints of sexual harassment.

Upon receipt of a written or oral complaint, the person notified shall immediately notify the person's Leader who shall then notify the executive director. The executive director, in consultation with the Leader, shall investigate the complaint and take appropriate corrective actions to informally resolve the matter. If an informal resolution is not attained, the complaint will be dealt with in accordance with the procedures for Disciplinary Action.

In addition, Maine law provides that the employee may file a complaint with the Maine Human Rights Commission at any time within 180 days from the date of alleged sexual harassment.

G. ACCEPTANCE OF GIFTS

The acceptance of gifts by Legislative Leadership employees may create a conflict of interest or the appearance of a conflict of interest, thus possibly jeopardizing not only their own effectiveness, but the effectiveness of their Leader and presiding officer.

No legislative employee may accept or solicit a gift from any person or organization with whom the employee has, or may expect to have, work-related contact in the course of his or her employment if the gift is to influence the employee performance of the employee's official duties or vote, or is intended as a reward for action on the part of the employee, pursuant to 17-A MRSA §605.

Furthermore, Legislative Leadership employees and members of their immediate families may not accept gifts from a lobbyist or anyone acting on behalf of a lobbyist which involves a payment of any kind, a loan, discount, favor, hospitality or other goods or services, which exceed a value of $25. Gifts that are exempt from this prohibition include:

A legislative employee is prohibited from consuming alcoholic beverages or using illegal substances in the workplace or working while under the influence of either.

F. SEXUAL HARASSMENT

The Legislature affirms the dignity of all legislative employees to work in an environment that is free from intimidation, hostility and offensiveness. Sexual harassment is a particular form of employee harassment, which is a violation of the Maine Human Rights Act of 1964, the federal Civil Rights Act and this policy. The presiding officers and the Legislative Council have adopted this policy to provide a work environment that is free from sexual harassment.

The Clerk and the Secretary and supervisors in their offices have special responsibility for assuring compliance with this policy with respect to those employees who report to the Clerk, the Secretary or their supervisors. It is incumbent upon the Clerk and the Secretary and their supervisors to take prompt action to eliminate sexual harassment; employees may perceive that the Clerk or the Secretary or their supervisors condone sexually harassing behavior if the Clerk or the Secretary or a supervisor fails to intervene and take appropriate corrective action to eliminate sexual harassment.

Sexual harassment is unacceptable conduct and will not be condoned or tolerated in the work place. It undermines the integrity of the employment relationship, destroys morale, interferes with performance and demeans its victims. Sexual harassment by an employee is grounds for disciplinary action, in accordance with the presiding officer and Legislative Council's policies on employee discipline.

The sexual harassment policy must be reviewed with the employee at the time of the employee's performance evaluation.

1. Definition

Sexual harassment is deliberate or repeated unsolicited comments, gestures or physical contact of a sexual nature that are unwelcome. The following behaviors constitute sexual harassment and are subject to disciplinary action.

a. Abusing the dignity of an employee through insulting or degrading sexual remarks or conduct, such as:

- Repeated sexual flirtations, advances or propositions.

- Continued or repeated verbal abuse of a sexual nature, sexually related comments and joking, graphic or degrading comments about an employee's appearance, or the display of sexually suggestive pictures of either sex or objects.

- Any unwelcome physical contact or touching, such as patting, pinching, or constant brushing against an employee's body.

b. Threats, demands or suggestions that an employee's work status, job security, opportunity for advancement, salary, benefits, work assignment or other conditions of employment are contingent upon the employee's tolerance of or acquiescence to sexual advances; or

c. Retaliation against employees for complaining about the behaviors described above.

2. Complaint Procedure

An employee who believes that he or she is being or has been subjected to sexual harassment must report the harassment to his or her supervisor or, if the sexual harassment involves the supervisor, report the matter to the Clerk or the Secretary, as applicable, or to their presiding officer if the sexual harassment involves the Clerk or the Secretary. The Legislature has established the following procedures to encourage prompt, informal resolution of complaints of sexual harassment.

Upon receipt of a written or oral complaint, the person notified shall immediately notify the Clerk or the Secretary, as applicable, who shall then notify the executive director. The executive director, in consultation with the Clerk or the Secretary, shall investigate the complaint and take appropriate corrective actions to informally resolve the matter. If an informal resolution is not attained, the complaint will be dealt with in accordance with the procedures for Disciplinary Action.

In addition, Maine law provides that the employee may file a complaint with the Maine Human Rights Commission at any time within 180 days from the date of alleged sexual harassment.

G. ACCEPTANCE OF GIFTS

The acceptance of gifts by Clerk or Secretary employees may create a conflict of interest or the appearance of a conflict of interest, thus possibly jeopardizing not only their own effectiveness, but the effectiveness of the Clerk or the Secretary and their presiding officer.

No legislative employee may accept or solicit a gift from any person or organization with whom the employee has, or may expect to have, work-related contact in the course of his or her employment if the gift is to influence the employee performance of the employee's official duties or vote, or is intended as a reward for action on the part of the employee, pursuant to 17-A MRSA §605.