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# OFFICE OF INSPECTOR GENERAL

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MARCH 15, 2019

## *Congressional Request:*

### *Office of Inspector General Sexual Harassment Inquiry*

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# **Inquiry Purpose**

The Office of Inspector General (OIG), at the direction of the Senate Committee on Rules and Administration, conducted an inquiry of the Architect of the Capitol's (AOC) response to sexual harassment complaints over the last 10 years. The OIG conducted a data review and through the use of a questionnaire, included employee experiences related to sexual harassment incidents and responses. The OIG evaluated the AOC's Prevention of Sexual Harassment training program, assessed the current policy, and considered the AOC's strategic vision for addressing sexual harassment cases over the next five years.



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**DATE:** March 15, 2019

**TO:** Committee on Rules and Administration  
United States Senate

**FROM:** Christopher P. Failla, CIG  
Inspector General

**SUBJECT:** Congressional Request for Office of Inspector General Review of  
the Architect of the Capitol's Response to Sexual Harassment

This memorandum transmits our response to your October 5, 2018, request for a review of the quality of response to sexual harassment complaints within the Architect of the Capitol (AOC). Our review included avenues for appeal of sexual harassment complaints as well as other areas pertinent to this topic. We reviewed the AOC's complaint process, penalty response, training, and environmental culture.

We found that the AOC has engaged in continual and largely successful efforts to meet the needs of its mission and its employees as it pertains to sexual harassment issues. These efforts include; policy improvements, management-supported cultural change initiatives, and continuous improvements to agency-wide training.

Although the AOC has exhibited success in its efforts, we did note a few areas of concern regarding the AOC's response to sexual harassment issues. Noted issues predominantly involve inadequate reporting and tracking mechanisms and poorly defined victim's advocacy procedures. In addition, indications of outdated and permissive attitudes by AOC officials require further attention. As high profile sexual harassment complaints within the agency and the "Me Too" movement occupy the cultural narrative, the AOC has prioritized addressing these issues. The following report discusses the results of our inquiry and their context in the AOC's culture.

We would like to acknowledge the significant contributions and assistance of AOC personnel during this review. We look forward to discussing the details of this report; Special Agent (SA) Marnie G. Crane will provide a brief of the findings to your Committee. Please contact myself or SA Crane, at 202-593-0109 with any questions or concerns.

**Distribution List:**  
Christine A. Merdon, P.E., CCM, Acting Architect of the Capitol



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# Executive Summary

*CONGRESSIONAL REQUEST: OFFICE OF INSPECTOR GENERAL SEXUAL HARASSMENT INQUIRY*

## Background

In October 2018, Congress requested that the AOC Office of Inspector General (OIG):

- Investigate the sexual harassment cases reported within the AOC over the prior 10 years and the outcome of those cases;
- Include cases reported through the AOC's Equal Employment Opportunity Office (EEO), Human Capital Management Division (HCMD), and Office of General Counsel (OGC), as well as cases reported to the OIG;
- Review how many AOC employees have filed complaints through the Office of Compliance (OOC) and the outcomes of those cases;
- Review whether or not the AOC has internal regulations/policies that adhere to best practices for handling reports of sexual harassment; and
- Review AOC internal regulations and policies for sexual harassment training for all employees, as well as advanced training for managers and/or supervisors regarding the proper handling of complaints from staff.

## OIG Inquiry Actions

Based on this request, the OIG conducted the following actions:

- Reviewed investigations conducted by the OIG from 2008 to present;
- Reviewed complaints received by OOC from 2008 to October 2018, as reported by the AOC's OGC;
- Reviewed complaints received by the AOC's HCMD, Diversity, Inclusion and Dispute Resolution (DI/DR) Office, from October 2008 to October 2018;
- Reviewed and evaluated the AOC's internal policy on sexual harassment;
- Evaluated the AOC's Prevention of Sexual Harassment (POSH) Training;
- Interviewed the AOC's Executive Leadership Team (ELT);
- Identified sexual harassment procedure best practices considered by and incorporated into AOC policies and procedures;
- Performed outreach efforts with AOC employees to solicit input and recommendations for improvement to the AOC's sexual harassment response.

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# Executive Summary

## CONGRESSIONAL REQUEST: OFFICE OF INSPECTOR GENERAL SEXUAL HARASSMENT INQUIRY

### Results in Brief

- Inadequate record keeping, no database automation or internal controls and lack of disclosure to the OIG prevented a full assessment.
- The AOC's reluctance to cooperate with the OIG inquiry is evidence of cultural resistance and lack of transparency at all levels.
- Outdated cultural attitude in some AOC departments, even within the ELT, which has set a tone of permissibility.
- 57 incidents of sexual harassment reported through DI/DR, OIG and the OOC since 2008. Approximately 44 percent of those were substantiated. Of the accused, approximately 24 were at the supervisory level. Resulted in \$377,500 in cash settlements, 88.7 percent in complaints against leaders GS-15 and above.
- Although the AOC's "Avenues of Assistance" have been publicized, they are not universally understood, and awareness of them is inconsistent.
- Based on employee and management feedback, there is a perceived lack of independence of DI/DR and lack of trust in AOC leadership.
- No current requirement to follow AOC's guidance for Typical Penalties for Infractions resulted in inconsistent jurisdictional response to sexual harassment incidents.
- Problems identified in prior OIG reviews remain; some OIG recommendations for improvement not implemented.
- The subjective nature of sexual harassment makes it difficult to measure, prevent, and penalize. Definition depends on the facts and circumstance of each incident and the perceptions and disposition of affected individual(s).
- There is significant disparity between members of the staff about what constitutes sexual harassment. Cultural diversity amongst age groups, trades, genders, and other workforce metrics revealed the need for unified consensus, starting at the top.
- Gaps in Legislative Branch victim advocacy and whistleblower protection laws deter victim reporting and erode employee trust. Providing whistleblower protections may encourage reporting, in addition to removing lingering stigmas and reducing retaliation.
- AOC employees interact regularly with Congress, contractors and members of the public. Additional protections and education could better prepare them for such an integrated workplace.
- Strong training plan developed and implemented by the DI/DR office.
- Critically necessary policy revision is pending deployment in late 2019.
- Hotline implemented. Outsourcing of contract for independence is under consideration.

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## Introduction

On October 5, 2018, the United States Senate Committee on Rules and Administration submitted a request to the AOC OIG to review the AOC's response to sexual harassment issues over the prior 10 years. As the coauthors of legislation to amend the Congressional Accountability Act (CAA) of 1995, which sought to establish protections against sexual harassment within Legislative branch agencies, the committee expressed concern about the outcome of those cases, whether reported through the AOC's Equal Employment Opportunity (EEO) Office, HCMD, OGC, or the OIG.

This Congressional request also tasked the OIG to report on whether the AOC has internal regulations and policies that adhere to a standard set of best practices for handling reports of sexual harassment, and how many AOC employees have filed complaints through the OOC and the outcomes of those cases. Further, the Committee requested a review of the AOC's internal regulations and policies regarding sexual harassment training for all employees, as well as advanced training for managers and/or supervisors regarding proper handling of complaints from staff.

As discussed in the following report, the AOC appears to be energetic in its efforts to improve the agency culture and create an environment of civility; however, some problems remain. The results of our inquiry were primarily positive, with the majority of identified gaps already receiving the attention of AOC officials charged with promoting equal employment opportunities within the agency. We conducted a review of the AOC policy structure and, while believing this topic merited input from the AOC workforce and their leadership, also assessed the AOC's culture climate regarding sexual harassment issues.

We also included a discussion of an OIG Management Advisory, issued in 2011, which addressed deficiencies in the AOC's sexual harassment policy and controls in (**Appendix A**). We included this perspective because the Advisory was produced pursuant to a high-profile sexual harassment investigation conducted in 2011 which had significant parallels to an OIG investigation conducted in 2018, noting that this issue occurred in spite of notable strides made by the AOC to address internal controls via sexual harassment policy and training initiatives. As detailed in this report, some issues addressed in the Management Advisory still exist today, showing that policy changes are needed to shift cultural climate regarding sexual harassment in the workplace.

In the interest of timeliness, we did not research bargaining unit employee exceptions or additional appeal venues/protections for sexual harassment issues as these employees likely have additional support in addressing harassment concerns with union representation.

Finally, our report also seeks to provide additional background about the degree to which sexual harassment issues in the AOC are affected by the agency's status as a Legislative Branch agency. This report also suggests that the lack of whistleblower protections for Legislative Branch personnel may effect employees' willingness to report.

## Methodology and Outcome

In planning the OIG response to this Congressional request, we determined that our review would require an approach not strictly technical or statistical in nature. While the number of reported sexual harassment complaints within the AOC is not statistically significant, nuanced issues surrounding sexual harassment, sexual misconduct, discrimination and workplace equality remain a silent problem. Recognizing the subjective nature of sexual harassment issues, we reviewed technical data and evaluated its impact on the AOC workforce. For the sake of manageability, we have constructed this report as an overview of a) Sexual Harassment Complaint Data, b) Inquiry Limitations, and c) a discussion of Lingering Cultural Bias. Each of these elements was evaluated through the methodology outlined below. More extensive background and support materials for each topic are included as appendices.

**Review of AOC Programs:** Our inquiry began with a technical analysis of the organizational response to sexual harassment issues. This consisted of an evaluation of AOC's internal controls, policy history, and training program. The OIG determined that the AOC lacks strong internal controls with regard to tracking these complaints and that current policy is insufficient regarding the prohibition of and response to sexual harassment. We also found that the agency has made significant strides in developing relevant training and in influencing cultural attitudes. A complete history of AOC policies that apply to sexual harassment response is included in **Appendix B**, as well as a discussion of the upcoming comprehensive policy revision and implementation. The life cycle of a sexual harassment complaint in the context of current policy within the AOC, OOC, and the OIG is outlined in **Appendix C**, with the investigative process delineated in **Appendix D**, and an evaluation of penalties discussed in **Appendix E**. The AOC's newly designed mandatory training program is discussed in detail in **Appendix F**.

**Reported Complaints of Sexual Harassment:** The OIG requested that the OOC, HCMD, and OGC provide records for all reported incidents of sexual harassment within the AOC from October 2008 to October 2018. The OIG also reviewed its own internal records for the timeframe noted above. Each request response revealed limitations, challenges and obstacles to obtaining sufficient reporting about sexual harassment complaints and action taken. With as much precision as was possible with the limited details provided by some of the participants, the complaints were reviewed for technical and investigative significance. The interpretation of results returned by each participant is discussed in **Appendix G**.

**Executive Leadership Team (ELT):** Due to the impact leadership has on policy development and employee work-life quality and morale, the OIG conducted interviews with the AOC's ELT. Our intent was to understand the impact of sexual harassment behavior, policy, and training on individual jurisdictions. Due to the ELT's diverse experiences with respect to leadership styles and employee access, leadership was able to provide valuable recommendations and observations. All but two members of the ELT were interviewed. Themes introduced by the ELT were also discussed with the HCMD, and all parties were in agreement that addressing lingering cultural bias must start with the ELT disseminating appropriate values throughout their respective jurisdictions. Feedback



from the ELT interviews is interwoven through each section of this report, in addition to the appendices.

**AOC Employee Contribution:** Due to the extremely personal nature of sexual harassment, we felt it was important to solicit employee input. In keeping with the committee's December 13, 2018, press release<sup>1</sup> expressing the need for change with sexual harassment issues in the Capitol Hill campus culture, we also used this inquiry as an opportunity to open a dialogue with AOC employees. The OIG distributed a confidential questionnaire to all AOC employees encouraging them to share their views on sexual harassment within the AOC and their experiences and knowledge about the AOC's appeal venues, cultural attitudes, response to harassment, and the quality of training. Approximately 400 employees elected to participate, providing their experiences and observations either in writing or electronically. Our questionnaire was not an official OIG work product but rather a prompt, qualitative discovery and assessment tool to collect additional data and ensure we did not overlook sexual harassment concerns not revealed through other methods of inquiry.<sup>2</sup> Employee responses were overwhelmingly positive and supportive of both the training and the avenues of assistance. However, we feel that it is important to note that the subset of employees who have suffered sexual harassment is small and should be weighted appropriately. Substantive themes gathered from the questionnaire have been included throughout this report to illustrate the impact that issues or programs have on personnel. A sample of the questionnaire is attached in **Appendix H**.

## Limitations of the Data Inquiry

The OIG unfortunately assesses a low level of accuracy in the sexual harassment incident count presented in this report due to two significant factors, as follows.

### *Inadequate Internal Controls*

Due to inadequate internal controls, both the OOC and the DI/DR offices had difficulty providing timely responses to our data request. The request for information was sent on October 24, 2018, with a deadline of November 7, 2018, for both entities. Extensions were granted until November 30, 2018, and then December 7, 2018, for the AOC, and until November 31, 2018 for the OOC. Both departments returned a carefully scrubbed *response*, in some cases incomplete to the point of being of little use. The AOC and the OOC were inhibited by their recordkeeping systems and cited the lack of automation as necessitating a manual file search. In addition, no standardized intake processes exist or are practiced to ensure that all appropriate metrics are collected at the onset of a complaint.

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<sup>1</sup> Retrieved from <https://www.klobuchar.senate.gov/public/index.cfm/news-releases?ID=08466674-824F-42A2-B5C3-7E9D2FAF828F>

<sup>2</sup> While the request sent to the OOC and AOC's DI/DR was for data related to cases of sexual harassment and misconduct, the OOC provided an account of cases that fell into a wider category than did the AOC, with the latter citing a significant difference between sexual harassment and gender discrimination. In our employee questionnaire, we used language that broadly encompassed sexual harassment and gender harassment; it was chosen to be more inclusive and to more closely fulfill the spirit of the inquiry.

Although we determined that the AOC lacked strong internal controls for capturing sexual harassment data, it should be noted that the AOC is committed to improving its internal controls for EEO complaints, and has self-identified the lack of an electronic tracking system as a significant inhibitor to their processes. The DI/DR office is currently in the process of identifying a suitable automated system for in-take and tracking, with this initiative receiving the full support of the Acting Architect of the Capitol. DI/DR's goal is to have a fully automated, current database with search functionalities that better enables tracking of violator names and other data within the 2019 calendar year.

It is similarly worth noting that the December 2018 legislation introduced by the Senate Rules and Administration committee requires the OOC to establish an electronic recordkeeping system that accepts and tracks victim claims; this will facilitate more effective reporting and capture of case demographics and metrics.

### ***AOC Reluctance to Provide Information***

The second obstacle to obtaining accurate counts for harassment complaints was the reluctance of the HCMD to provide details for individual complaints. The OIG sent requests to the OOC, the OGC, and the HCMD's DI/DR office, which falls under the direction of the Chief Administrative Officer (CAO). The CAO appointed the Chief Human Capital Officer (CHCO) to coordinate response for the DI/DR office and the OGC.

The OIG specifically requested raw data that was not redacted, sanitized, or polished by further analysis. On December 7, 2018, the CHCO sent a memorandum accompanying the results of their data review. The OIG had requested names of each complainant and complete details of their harassment in order to identify repeat offenders and evaluate the quality of responses to harassment. The HCMD response declined to provide details or names, citing the following in their memo:

*- Although the IG Act of 1978 provides the OIG broad authority to access all documents and materials maintained by Federal Agencies, Section 6 (C)(1) prohibits Federal agencies from releasing information that is "in contravention of any existing statutory restrictions or regulation of the Federal Agencies." Accordingly the AOC is maintaining the confidentiality /privacy of the names of the complainants and those accused of Sexual harassment based on the provisions listed below:*

*- CAA (2 U.S.C. Sec1416 (a)-(b)) requires that all information in the counseling and mediation stages at the OOC remain "strictly confidential." The CAA section also requires that all proceedings and hearing officer deliberations at the OOC remain confidential.*

*- AOC Order 24-1 (paragraph 4) directs that DI/DR "will not reveal the source of the information unless unavoidable or required by law."*

*- AOC Order 4-16 requires the AOC to protect the personal privacy and prevent unwarranted invasions of personal privacy for all AOC employees.*

The OIG contends that the provisions of the CAA requiring privacy apply equally to agency officials with a “need to know” of the outcome and details of the complaint. If any official outside of the parties participating in the mediation are privy to the conclusion, such as the Architect of the Capitol, the CAO, CHCO, or other members of the OGC, then the need to know also extends to the OIG. The OIG Legal Counsel confirmed that the CAA provision is intended to protect the victim from public exploitation and to protect the mediation process from being used as precedent in future mediated settlements. This legal issue will be further explored by the OIG and AOC counsel; for expediency, the inquiry continued with only the information made available for evaluation.

The OIG also contends that disclosure of the information is required by law, as outlined in the IG Act of 1978, and the IG Empowerment Act of 2016, with the OIG request to access personally identifiable information falling within its scope of authority and further warranted by the Congressional request for this review.

Although the HCMD cited the AOC Policies 24-1 and 4-16, it failed to acknowledge the AOC Order 40-1 *Authority and Responsibilities of the OIG and Responsibilities of AOC Employees*, which requires compliance with OIG investigations and requests as described in **Appendix D**.

The AOC’s reluctance to provide information resulted in the absence of identifiers that would have enabled the OIG to account for complainants who made reports to multiple avenues of assistance. Second and third requests made to the HCMD identified only a total of three repeat offenders. Based on the final count of complaints it is possible that up to 15 complaints were reported to multiple avenues of assistance. The limitations raised by restricted access to files controlled by the HCMD also left the OIG unable to determine the nature of many of the complaints with many described simply as “sexual harassment, inappropriate remarks or inappropriate touching.” As a result, much of the following data discussed in this report is pieced together from a spreadsheet of limited details provided by the HCMD, meetings with the DI/DR Director, leadership input, and employee participation. In many cases the DI/DR Director or Legal Counsel had to clarify or provide context for information not released by the OGC.

Finally, the AOC’s OGC attributed their reluctance to release complete details to the OIG as attorney/client privilege. The OIG concedes that information discussed during the mediation process only, to potentially include testimony preparation, discovery and negotiations, are covered by this privilege; however final documents such as settlement agreements, nondisclosure agreements, and etc. should still be provided to the OIG. The EEO-based sexual harassment complaints filed with the AOC’s internal DI/DR office, however, are not covered by attorney client privilege and are also not covered by the CAA protection cited by the OGC Memorandum. The AOC has been firm in its stance that the DI/DR office exists to assist employees rather than to partner with the OGC to protect the agency from litigation. As such, the EEO process is not covered under attorney/client privilege.

## Results of Inquiry

### Sexual Harassment Complaint Data Summary

Approximately 57 separate incidents of sexual harassment were reported through the DI/DR office, the OIG, and the OOC within the last 10 years. Approximately 44 percent of those were substantiated through a variety of investigative efforts. Of the accused, approximately 24 were at the supervisory level (complaints against supervisors were substantiated at approximately 35 percent). Penalties for complaints ranged from no action taken, verbal counseling, suspension, termination, and mediated cash settlements. Based on the information available, we determined that the AOC has paid out approximately \$377,500 over the last 10 years, with some cases still pending mediation. The number of pay-outs is relatively low compared to the number of complaints, with about 9 percent of the total complaints resulting in cash pay-outs (with approximately only 21 percent of the pay outs resulting from complaints which were substantiated). Of note, at least \$335,000 of the case settlements paid by the AOC were related to sexual harassment by leaders GS-15 and above. As expected, the larger jurisdictions, such as the House and Senate Office Buildings, accounted for nearly half of the complaints. The U.S. Capitol Visitor Center (CVC) had a disproportionate number of complaints when compared to the size of the jurisdiction, with a total of nine reported complaints. A recurring theme of employee responses to our questionnaire concerned inadequate attention paid by the AOC to harassment originating from contact with the public and indifference by the CVC leadership pertaining to harassment complaints. After a third request to the AOC for data clarification, it appeared that there were only four repeat offenders during the 10 year review period. From the limited data set provided, we believe two of the repeat offenders resigned after an OIG Investigation and two may still be AOC employees.

Given the size of the AOC's workforce, we note that the actual number of sexual harassment complaints is relatively low and the number of substantiated complaints is even lower. There remains, however, the perception that sexual harassment is a pervasive problem within the AOC. We feel misperception is attributed to the lingering cultural bias discussed in this report and also to the tendency of employees in dysfunctional work environments to casually use terminologies that apply to legally protected classifications for workplace conditions. For example, an employee may say they are being sexually harassed when perhaps they are facing disparate treatment based on gender or sexuality, which are different from sexual harassment. The distinction is not just the terminology but in the significant impact of each type of experience. While toxic work environments and workplace dysfunction are problematic, harassment based on sexuality, gender, race, orientation or other very personal distinctions lead to hurtful experiences that cause damage beyond the workplace. While the OIG takes both issues seriously, it is sexual harassment and not dysfunctional work environments this report addresses. Of note, the DI/DR office has robust dispute resolution and conciliation functions for addressing hostile work places and employment discrimination. Therefore, focus of this inquiry is on those incidents that fall under the umbrella of Equal Employment Opportunity protections and which, therefore, require a more prescribed approach by the DI/DR office.

## **Impact of Organizational Distrust and Lingering Cultural Bias**

### ***Employee and Leadership Concerns about Trust***

A recurring theme expressed by both management and non management staff is a lack of trust in AOC's *Avenues of Assistance*, the umbrella nomenclature the AOC uses for resources available to assist employees with work-life concerns. Because of this, some complainants either sought independent reporting opportunities, such as with the OIG or OOC, requested confidentiality from the DI/DR office, or withdrew entirely from the complaint process, making it difficult for the DI/DR office to respond to issues effectively.

Results from the questionnaires sent to employees, as well from leadership interviews, consistently identified a lack of institutional trust and a need for the agency to better clarify the AOC's *Avenues of Assistance*. Some of the comments received reflect a need for basic communication improvements to help ensure that employees are aware that these venues exist.

While the OIG inquiry indicates that employees are seeking increased trust and management is eager to create trust, this is not being effectively communicated. In our interview with the OOC, they also noted they receive feedback most often from AOC employees (and most of their claimants) that there is no advocate for the employee and that the OOC is too close with the agency management. Specifically, complainants fear a lack of independence of the AOC's DI/DR office.

The DI/DR Director expressed a desire to assuage the fears of employees in order to encourage earlier reporting and more extensive cooperation. With these objectives in mind, the DI/DR office coordinated with the OOC to launch a confidential hotline voicemail in January 2019. The new venue is available to AOC employees on a 24-hour per day basis and provides the option for employees to leave their name and telephone number if a return call is desired. Only DI/DR office personnel have access to the messages, as publicized in informational flyers sent to all AOC employees.

Additionally, the OIG recommended that the DI/DR office contract an external answering service to take hotline calls for greater independence, consistency of intake, and confidentiality; the DI/DR office is working with the AOC's Information Technology Division (ITD) to research outsourcing. The OIG participates in a Federal Hotline Working Group and recommends that the Agency contract a third party answering service as it would increase anonymity and the perception of impartiality, and would also ensure all calls are answered by a live person rather than a voicemail service. Having trained intake contractors serves two functions: 1) Contractors trained in complaint intervention collect valuable metrics and are able to enter standardized details into an automated database, and 2) Having personal interaction between complainants and trained personnel can help identify distraught employees that may need an emergency referral to the Employee Assistance Program or violence intervention.

While employees with complaints of sexual harassment also have the option to report directly to the OOC or appeal an unfavorable outcome, we note inherent problems with the OOC process. These problems largely stem from the burden of proof being placed on the victim, with that individual required either to hire their own counsel or represent themselves once the mediation period has passed and resulted in a lack of satisfactory resolution. For lower graded AOC employees, in particular, both options are out of reach. These employees may inherently have lower levels of education and income, making it difficult to pursue their cases through external representation. The task of mastering witness depositions and discovery processes alone imposes impossibly onerous burdens on those employees whose only option is self-representation. The issue of this un-level playing field has been longstanding and is recognized by the OOC itself. During interview for this inquiry, the OOC acknowledged there were significant flaws in the system and that claimants unable to hire counsel are severely disadvantaged, as each claimant must produce their own evidence and prepare their own cases.

### **Staff Responses to Questionnaire: Are the AOC Avenues of Assistance Adequate?**

#### ***Mostly positive feedback:***

- “I do feel they are adequate. There are always areas that can be improved, but the AOC avenues and processes seem to be generally fair and helpful.”
- “I do feel the AOC is doing the best they can with what they have. There are plenty of programs and avenues. I do feel supervision needs more thorough education on handling sexual harassment in the workplace because, it’s one thing in the classroom and another out in the field. Or maybe take the class annually vs. every so many years, I do understand that it is very expensive to do so, but I think it is an expense worthy of utilizing”

#### ***But also confusion about the different options available, which supports the ELT recommendation to better publicize the AOC Avenues of Assistance:***

- “Part of the problem is that Compass is a mess so it is hard to create a virtual space for staff to easily access. If this existed, I suspect outreach/awareness were better. So maybe the agency, as a whole, needs to invest in better messaging, infrastructure/platforms to make it easier for programs to reach out to staff where they are.”
- “First, I did not even know there was such a thing called Avenues of Assistance, so I feel like there should be better outreach and awareness that these even exist as a set of multiple options for employees to go to for such things.”

Although ELT members indicated a high level of concern for the well-being and protection of employees, they hear skepticism from their employees that victims have impartial advocates and that their complaints will be met without reprisal or a breach in confidentiality. Employee trust is also eroded because complainants are often not privy to actions taken against the accused, which can leave them with the impression that their concerns are not taken seriously. Two ELT members also pointed out that transparency, when balanced with confidentiality, can signal that leadership is hearing both sides of a complaint and treating employees fairly.



An additional factor compounding trust issues is that even when penalties are applied, or help is available, this is not effectively being publicized to the workforce. Several ELT members recommended creating a targeted campaign describing each Avenue of Assistance using visual graphics and language to connect with all AOC demographics. They noted that the diverse workforce includes employees for whom English is not a native language, as well as adults who are not literate. Many also recommended sharing lessons from real AOC harassment investigations that resulted in positive outcomes.

### **The Lifecycle of a Complaint**

*In our interviews with the Director of the DI/DR office, she provided the following explanation of the complaint reporting process:*

- A complaint is filed with the DI/DR office and resolved to the party's satisfaction; OGC and OOC are not involved or informed.
- A complaint is filed with the DI/DR office and results in disciplinary action; in these cases the OGC is likely informed as a precaution for the agency.
- A complaint is filed with the OOC first (and only with the OOC); OGC is made aware of the complaint if it moves through the counseling phase to the mediation phase. In these cases the DI/DR is never informed.
- A complaint is filed with the DI/DR office and the party is dissatisfied with the outcome; they can then file a complaint with the OOC. Once the DI/DR office is made aware of a complaint being mediated through the OOC, all action in the DI/DR office is terminated.

### ***Interaction with External Entities***

On a daily basis, AOC employees interact with Congressional staff at all levels, contractors and members of the public, with the latter more so in jurisdictions such as the U.S. Botanic Garden and the Capitol Visitor Center. The challenges of each environment vary and require responses appropriate to the jurisdiction, particularly when the harassment source is not subject to AOC policies. For example, the CVC staff of approximately 120 employees, eight of whom are supervisors, interact with 2.5 million visitors annually.

Additionally, interviews with AOC leadership revealed that some custodial staff, especially those on the night shift, report exposure to harassment while working in the offices of Members of Congress. Some staff have reported overhearing harassing conversations, being the target of harassment, and observing materials such as pornography, but do not speak up due to fear of losing their jobs.

Employees have reported to both AOC leadership and the OIG that these AOC employees feel unprotected and disadvantaged. Interviews with AOC leadership and employee feedback suggest that increased engagement with AOC tenants in the congressional and judicial communities would help promote an environment of mutual respect. When they experience negative interactions with external entities, it is unclear if AOC employees are fully aware of available options and protections.

### ***Concerns about Advocacy and Independence***

In October 2018, a Confidential Source (CS) approached the OIG with concerns about the HCMD's interactions with the Agency's OGC regarding sexual harassment complaints. The CS reported that the manner in which data is recorded and collected within the HCMD, and specifically the DI/DR office, presents an internal obstacle for the AOC. The CS noted that the DI/DR office has no effective means for recording and tracking the dissemination of information outside of DI/DR to the jurisdictions and the OGC.

The CS also reported that staff members of the HCMD and OGC share information informally at a very early stage of the investigative process, thereby providing the AOC/OGC with an unfair advantage if the complaint is elevated to the OOC. The CS reiterated their concern that the HCMD is not objective or independent in responding to victim complaints because they are anticipating litigation through the OOC and exchange information with the OGC that can damage victim advocacy. The DI/DR office has an assigned attorney on staff whose purpose is to serve as a firewall between the DI/DR staff and the OGC. The CS, however, did not believe the staff attorney was being utilized correctly, and instead the HCMD is circumventing the firewall in an effort to establish a possible future defense against litigation. To fulfill its mission (i.e., to perform Equal Employment Opportunity functions) the DI/DR office is designed to be neutral and to protect employee civil rights. The CS explained that employment counsel from the OGC should not get involved until and unless the employee files a formal complaint with the OOC.

### **External Entities**

#### ***Employee feedback noted:***

- Referring to the POSH Training, "No one had an answer when we asked "What happens if the harasser is a member of Congress?" This was not a hypothetical question. It happens."
- "I think that there is no good way to report issues that employees may have with people outside of their own office. The AOC works with people throughout the Capitol complex as well as interacting with the public. But we do not have a system in place to report issues that we have with those people" [There is an established system, it is just not universally understood.]



The DI/DR office refuted the CS concerns that sexual harassment complaint information is prematurely shared with the OGC. The DI/DR Director explained that employee complaints and their confidentiality are provided primary consideration and the DI/DR office does not directly involve the OGC. If there is a potential risk to the agency, the Director stated she must notify the OGC, but that her daily legal advice comes from the OGC attorney assigned to the DI/DR office.

## **Employee Independence Concerns**

*Many of the more poignant questionnaire responses cite a lack of transparency, follow-up and resolution with complaints of harassment and discrimination.*

- “Never really sure confidentiality is adhered to fully. Too many people (supervisors, HCMD, OGC, and OIG) tend to get information about reports and cases, in my opinion. Is the employee’s confidentiality ever fully kept?”
- “The whole system is [designed] to protect the Architect of the Capitol, EEO, Office of Compliance or any other assistance under this Agency.”
- “We have noticed that if you present a problem you might get labeled, you are the problem. It is easier to say that then fix the problem. “This is the way it’s always been around here,” is a phrase used by AOC Supervisors.”

*When asked where they would feel most comfortable making a complaint:*

- “Office of Compliance, it is not an AOC division or jurisdiction and I feel things would be handled more fairly.”

## **Impact of Tone at the Top on Attitudes and Culture within AOC**

The cultural, professional, and educational diversity of the AOC workforce has created unique challenges for the agency as it addresses sexual harassment and other workplace environment issues. These challenges are reflected in both the employee responses to OIG outreach and in DI/DR observations and revisions to the structure of the POSH training. Although the launch of the new training program brought together cross sections of the AOC workforce to invite dialogue, it had the unintended consequence of revealing outdated beliefs and attitudes. The training was designed to provide Supervisory training separately; unfortunately this resulted in some of the early employee sessions of the training devolving when sensitive topics were broached. A complete discussion of the AOC training program is included in **Appendix F**.

The cultural resistance and classroom disruptions noted during the POSH training sessions appeared to originate from approximately one-third of the workforce, many of whom were third shift and/or skilled labor employees. The DI/DR Director acknowledged it was not an across-the-board response from these employees, but the prevalence of the behavior demanded a targeted response. As discussed in **Appendix F**, the addition of a management official in each session significantly improved the training environment.

While resistance to the issues explored in training may have been most noticeable with skilled trade and/or third shift workers, it exists at all levels, and much of the employee feedback noted confusing messages about what is and is not permissible. The behavior of this sub-group was highlighted during the training sessions; however, less evident is the conduct of some senior leaders who outwardly model and portray appropriate behavior. Violations of AOC ethics standards were brought to light during the investigation of a senior executive accused of sexual misconduct in OIG Investigation 2018-0014-INVI-P. “Key word” searches conducted on the accused’s AOC email traffic also revealed correspondence with other senior executives. The inappropriate and sexist nature of the emails between these executives was alarming and demonstrated the need for the AOC to address outdated cultural norms at all levels of the AOC workforce. The use of degrading and cavalier language in workplace communication, especially by leaders, can contribute to a confusing and seemingly permissive environment, allowing offenders to minimize the inappropriateness of their conduct. The outcome of the investigation was relatively high profile, and appears, based on employee feedback, to have served to degrade some AOC employees’ faith in management. The Inspector General shared the discovery of the derogatory email exchange with the Acting Architect of the Capitol for action she deemed appropriate. The Acting Architect of the Capitol referred the discovery to the DI/DR office and a formal sexual harassment case was initiated February 2019; the outcome is pending DI/DR investigation.

### **ELT and Senior Leaders**

- “I have found if you report anything about an ELT member, you are discouraged from filing a complaint and you are penalized if you say something.”
- “In my 11 years here, I have never experienced sexual harassment from anyone below upper management. I have only experienced harassment at the ELT level and that has not changed.”
- “All employees, regardless of their position, should be held accountable for any sexual behavior in the workplace during work hours. Does the policy reflect this?”
- “The attitude at the ELT level needs to change. They should be accountable. Many of us were aware of [Recently Resigned Senior Executive’s] behavior before he became a superintendent, but the ELT ignored it.”

### ***Employee and Management Efforts to Improve Cultures***

All sources agreed that the next step in minimizing sexual harassment within the AOC would be to address the cultural bias and enduring distrust of management. Subsequent to that effort, steps should be taken to remove the stigma associated with making a report of harassment and to ensuring victim advocacy and re-integration is part of the response process. The following cultural impact strategies and best practices were offered during the inquiry.

Some jurisdictions have used the popular AOC Chooses Civility program to create their own workplace etiquette agreements, voting on behaviors that best reflect the values of their jurisdiction. Regular all-hands meetings are being used to promote a message of

Civility and bystander harassment intervention. Non-management leaders can be leveraged to spread the message of civility and respect and to encourage harassment reporting. Both Employees and management called for the AOC to elevate expectations of employee behavior above what is legally permissible, and begin to set a zero tolerance environment.

The DI/DR Director developed a strong strategic action plan for the DI/DR program, which was presented to the Acting Architect and the ELT in December 2018. The ongoing initiative to modernize the AOC culture is multifaceted. One section will target the AOC departments that demonstrated difficulty in understanding the prohibitions of sexual harassment during POSH training. The DI/DR Director plans to work with those managers to conduct climate surveys and develop plans to influence cultural change in a personal and tailored manner. Issues revealed by the POSH training provided a perspective of where the problem areas exist and allowed the DI/DR Director to address departments and employees who may be struggling.

The DI/DR office agreed that jurisdiction management should be leveraging unofficial leaders to improve culture and expectations at the “shop level.” Later in 2019 the DI/DR office will provide a video to each jurisdiction that further explores the AOC Chooses Civility program. The DI/DR office will also implement “tag teams” in every jurisdiction to help bring the message of civility to front line employees on an organic level.

By leveraging the AOC’s civility program in conjunction with the POSH training bystander intervention messaging, leaders can help victims of harassment shed the stigma associated with reporting and reinforce to the workforce that speaking up is valued and expected. The threat to employee reporters appears to be two-fold based on questionnaire responses. Some employees experience retaliatory behavior following a

## Employee Observations on AOC Culture:

*AOC employees shared consistent observations on areas for improvement in the workplace culture.*

- “The AOC is a great place to work. However, as a woman, I face casual sexism every day. I believe sexual harassment stems from believing that someone is beneath you and I see that mindset in my peers. I believe that there should be more focus on the underlying issues that lead to sexual harassment as well as the act itself.”
- “Management should refrain from using phrases like “boys will be boys” when excusing inappropriate behavior”
- “I think this is part of a larger change in culture. While I was sitting in the training, I watched the men in front of me laughing and play on their phones. I think until they or their loved ones are personally affected then they won’t get it, and anyone speaking up will be deemed just ‘too sensitive’ or ‘trying to get attention.’ There needs to be consistent, ongoing, responses to problems so that everyone can see that yes, these are problems we need to be concerned about, and yes, actions will be taken to prevent them from continuing or happening again.”
- “Sexual harassment and gender discrimination does occur at many levels at the AOC. From maternity leave to women leading meetings, to jokes about women staying in the kitchen, there is a culture that has been allowed to permeate the agency that is inappropriate. Those displaying offensive, rude and harassing nature, including some at the executive level, should be held accountable.”
- “The culture itself contributes to the belief that nothing will be done when one complains.”
- “Many left the training thinking inappropriate behaviors were “okay” just because they were technically legal. I think the training unintentionally validated inappropriate behavior.”

report and a few reported re-victimization when returning to the workplace. Retaliatory behavior is discussed in **Appendix E**, under the Penalty section, and it is important to note that reprisal actions are another facet of the AOC cultural environment in need of attention.

### **Subtlety of Retaliation**

- “I constantly feel disrespected especially by the men who used to yell and bully me, talk over me, belittle and demean. They stick together. But the fact that I sought assistance from HR and they left me with that person all these years is sad. They have made sure to keep me in my place. I don’t trust anyone.”

#### ***When asked about the adequacies of the AOC process:***

- “No, communication could be improved to make employees more aware of our options and greater concern could be shown by the AOC employee relations people for all employees, not just the person committing the offense- they should not be so afraid of disciplining employees, including firing them.

In line with Equal Employment Opportunity Commission’s (EEOC) best practice recommendations and Human Resource (HR) industry research, the AOC has discovered that while a robust POSH plan may help insulate the agency from risks of vicarious liability and litigation, it does little to effect the cultural change necessary to prevent sexual harassment. Accordingly, the AOC has recognized that other efforts are necessary to continue the Agency’s progress in instituting cultural change for this issue.

During our inquiry, the ELT expressed a desire to take a strong stance against sexual harassment, to ensure complaints are taken seriously, and hold perpetrators responsible. In spite of this,

inconsistent messaging from top agency leaders and lenient penalties have contributed to an organizational climate that has resulted in employee discomfort with reporting. Because of the data limitations, there was no effective method to evaluate the extent to which employees have not come forward, or financial impacts to the Agency due to lost productivity. Therefore, we highlighted some concerning quotations and feedback by the few who were willing to come forward.

## Conclusion

The Congressional request leading to this inquiry comes at a time of heightened national interest in workplace sexual harassment and the harm it poses to both individual employees and their employer. This request provided the OIG with an opportunity to review the AOC's response to sexual harassment issues and to observe their responsiveness to oversight. We have found that although the AOC has significantly evolved its cultural values, the Agency, like its Capitol Hill neighbors, is still susceptible to encounters with workplace sexual, racial and gender harassment.

The AOC has been conscientious in its attention to building a culture of respect, inclusion, and diversity. With continued effort, the organization can create an environment that is inhospitable to harassment behaviors and can earn the trust of its diverse workforce. The DI/DR Director's strategic plan over the next five years is consistent with industry best practices and recognizes that implementing mandatory training will not be sufficient to preventing harassment. The POSH training has been thoughtfully developed and implemented at 100 percent, and will be extended to focus on bystander intervention, supervisory accountability, and cultural evolution. Efforts to install civility into all facets of the agency culture have been well received and are far reaching, even in their early stages.

### Most Feedback was Positive and Optimistic

- "I think the culture at AOC has improved since I started working here in 2011. Policies and employee culture have both improved to make sure these things are rooted out of the workplace."
- "The AOC is working on cultural change as long as they continue to encourage long standing employees to work towards a culture of respect of everyone in the workplace within the AOC. We are on the right path."
- "Since arriving in the AOC, I have always wondered why the OOC process is missing an investigation element. I am sure congress would not support having a neutral entity investigate claims of sexual harassment and discrimination since some of the cases would be against them. At least the AOC process provides that element. Maybe the oversight and ethics folks will take action and make the OOC process better for individuals to report their issues. It would save time and money along with more accountability across the board."

This OIG inquiry served to highlight areas already recognized by the DI/DR office, such as the critical need for policy revision, adoption of standardized penalties, and modernization of critical internal infrastructure and controls. No improvement in investigative technique or punitive standards will be sufficient in the absence of a quality automated tracking mechanism. In instances where a complaint involves a first-time violator with a low-level offense, that employee may be counseled quickly and appropriately with minimal punishment needed. In instances where a repeat violator is reported, an electronic tracking system will enable the DI/DR office to provide a more informed understanding of potential

issues and a more comprehensive response. The investigation of a seemingly small complaint could reveal more pervasive problem or pattern.

In the absence of a statutory obligation for the OOC or a similar investigative body to fully investigate complaints, it is incumbent upon the AOC to determine if complaints of harassment are valid and to respond appropriately. Without adequate investigation and resolution of complaints, perpetrators of harassment may conclude that nothing of consequence will happen as a result of inappropriate behavior in the workplace. Although cash settlements for these complaints have been minimal, litigation costs and lost productivity arising from workplace stress must be factored in while considering the negative impact of sexual harassment.

Academic and regulatory sources reviewed for this report show a consensus that preventing sexual harassment must begin at the top of the organization. As residents of Capitol Hill, change in the AOC must occur in concert with improvements in the Congressional cultural and development of protective legislation. The national attention these issues are receiving provides Legislative Branch agencies an opportunity to improve policy and ensure harassing behaviors are not enabled by gaps in policy and employee protections. Incorporating zero tolerance language into the agency mission statement, DI/DR policy, and the position descriptions of agency leaders would signal to the workforce that their safety is taken seriously. While diversity in the AOC's workforce initially suggested a cultural bias from those in the trades and labor, it is equally important that managers exemplify integrity and civility in leadership and their personal conduct. Although the AOC has many reporting channels and seemingly effective avenues to support their personnel, these programs are not universally understood by all personnel.

Ultimately, it is the responsibility of the Architect to advocate for all AOC personnel in a top down approach and to address the systemic inequalities that enable harassment and pose a risk to the Agency. The AOC is continuing to develop their already robust diversity efforts and is focusing its attention on areas where these efforts have fallen short or are in need of improvement. The Agency will remain on track if it implements the changes discussed in the course of this inquiry and if they are publicized in a manner that increases transparency and organizational trust.

## **Appendix A**

### **AOC Management Advisory**

In August of 2011, the OIG completed an investigation (OIG 11-14-I) into a House Office Building supervisor accused of engaging in time card fraud as well as other abuses of supervisory authority (unprofessional sexual relationships with subordinates and involvement in promotions of those subordinates). The investigation revealed a longstanding issue involving multiple harassment complaints against the supervisor which had been inadequately addressed by the AOC. As an after-action effort, the OIG issued a Management Advisory (MA (I)-11-01) on September 22, 2011, which included four recommendations to address gaps in policy for inappropriate supervisor/subordinate relationships and the handling of EEO matters. Recommendations relevant to gaps in policy are discussed in **Appendix B**, along with discussion of AOC's policy improvements. Recommendations to implement required EEO and Sexual Harassment Training for all AOC employees has been accomplished and is discussed in **Appendix F**. Other recommendations and issues raised in the Advisory are discussed below.

### **Then and Now: Lack of Faith in EEO Office**

#### ***Inadequate Investigation of Sexual Harassment Complaints***

A significant internal control weakness discussed in the Management Advisory was the lack of faith in the EEO Office on the part of both managers and employees. This issue was again raised in employee feedback to this inquiry, seven years later. MA(I)-11-1 sought to ensure the effectiveness and adequacy of investigations into sexual harassment complaints by recommending that the AOC implement certified sexual harassment complaint investigations training for EEO staff. This recommendation arose from concerns raised during the investigation that sexual harassment complaints had been made against the subject of the investigation, with those complaints inadequately addressed and left unresolved.

The AOC implemented certified sexual harassment training as recommended for the EEO staff in 2012, but the training has not been updated. The AOC's then EEO Director arranged for the EEO/DP staff to receive EEO-specific investigative training from the EEOC. They have not repeated this training, but have focused on advanced dispute resolution and mediation related training.

OIG MA(I)-11-1 files contain supporting documentation for this recommendation and show discussion with the Agency regarding their assertion that "formal EEO authority" resides with the OOC, and although the EEO/DP<sup>3</sup> had no enforcement authority, it investigated claims of discrimination and harassment. In correspondence with AOC management (September 2, 2011), the OIG expressed the following:

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<sup>3</sup> Renamed at the time of Investigation 11-14-1 as the Equal Employment Opportunity and Diversity Programs Office (EEO/DP), later renamed again as the Diversity, Inclusion and Dispute Resolution (DI/DR) Office.



“Who investigates and the quality of those EEO investigations is at the very heart of our recommendation. The SUBJECT of the OIG investigation had encountered prior numerous sexual harassment complaints, but none had been adequately investigated and/or resolved, leading the SUBJECT to believe that nothing of consequence would happen as a result of continued predatory behavior with the female workforce. We are simply trying to determine who has the responsibility to conduct the sexual harassment complaint.”

### ***Impartiality/Independence of DI/DR Office***

Another and perhaps more significant issue addressed in the Advisory was the Agency’s positioning of the EEO office as an arm of HCMD. The advisory included a recommendation to reposition the EEO office as a direct report to either the Architect or the Chief Operating Officer. Although the OIG provided strong supporting evidence (citations from an EEOC Management Directive and a Council of Federal EEO and Civil Rights Executives report)<sup>4</sup>, OIG files containing discussions with the Agency about this recommendation show considerable pushback. In its September 21, 2012 Notice of Final Action, the Agency stated it had contracted an independent HR contractor to review the placement of the EEO office. The contractor determined the change in reporting structure was not necessary and offered other recommendations to improve the perception of its independence and neutrality. The OIG was not given details from the HR Contractor’s recommendations or which of those would be adopted. HCMD and DI/DR were asked about the HR Contractor’s findings again in February 2019 and were unfamiliar with any such findings.

Despite the AOC’s 2012 determination, employee feedback from this inquiry again raises concerns about the appearance and fact of the impartiality and objectivity of the DI/DR office. The EEO function, as well as that of the OIG, are intended by congressional statute to provide independent advocacy for government employees and accountability oversight of federal agencies. In early interviews, the DI/DR Director stated that there are advantages to both the EEO function falling within the HR Directorate and also to operating autonomously. She noted that most of the DI/DR’s work involved peer-to-peer employee dispute resolution and very few sexual harassment claims. The DI/DR Director initially believed that alignment within the Human Capital section more effectively leveraged other departments in dispute resolution, diversity and inclusion efforts. As of the final March 2019 meeting for this inquiry, the DI/DR Director acknowledged that the DI/DR office would be more effectively aligned under the Architect of the Capitol.

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<sup>4</sup> Our recommendation to reposition that office was based on: 1) Equal Employment Opportunity Commission Management Directive 110 (November 9, 1999) which stated “Each federal agency shall appoint a Director of Equal Employment Opportunity...who shall be under the immediate supervision of the agency head...The EEO Director cannot be placed under the supervision of the agency’s Director of Personnel or other officials responsible for executing and advising on personnel actions;” and 2) a May 2002 Council of Federal EEO and Civil Rights Executives *Report on the EEO Directors’ Chain of Command in the Federal Sector* which stated “most egregious, at 6 agencies, not only do the EEO Directors not report to the head of the agency, but they report to a personnel or human resources official. Neutrality, objectivity and impartiality in the processing of discrimination complaints are virtually impossible....”



The fidelity to the DI/DR office's current placement reflects the same agency resistance exhibited at the time of our 2011 Management Advisory, and may have resulted in AOC employees having been underserved over the past a decade. Although the DI/DR Director reports that she was not hindered or unable to perform EEO type functions because of the department's alignment within the HCMD, her office could offer greater protections to employees with increased autonomy. The DI/DR office's dual reporting responsibility to both the Architect of the Capitol, with whom she meets in person monthly or quarterly, and to the CHCO adds to employee misconception. Employees have expressed through various contacts from 2011 to present that the DI/DR office is an arm of the department that oversees hiring, promotions and discipline, rather than as an independent EEO resource. Realigning the DI/DR office, as recommended in MA(I) 11-1, would allow the DI/DR Director to administer the authorities of her position unhindered by the seniority of the complainants or accused, and in keeping with the requirements for "neutrality, objectivity and impartiality" in the processing of EEO complaints. Elevation of sensitive claims such as sexual harassment, or when the accused is a member of the senior executive staff, enables the DI/DR Directorate to be more closely aligned with the Architect as the deciding official, and less as an advisory tool. Such structure would also reduce conflicts of interest when the accused is a jurisdiction head, which has happened on at least three occasions during the tenure of the current DI/DR Director.

### **Employee Concerns about Independence**

*Current employee feedback included statements such as:*

- "EEO is connected to AOC Management and may not be objective."
- "AOC management usually covers up management wrong doing and places blame on employees- until the wrong doing is reported in the Washington Post."
- "The AOC's HR representative met with and told me she always tried to meet management halfway, how do you do that when one party is in pain? Everything I said got back to the [Jurisdiction Head]. No confidentiality. Will never ask for assistance here. Will leave first."

It is worth noting that the OIG files reveal that although the OIG accepted the Agency's Notice of Final Action responses, the former IG still believed this to be a matter of concern. The issue was internally re-visited in the months prior to the retirement of the OIG's first statutory Inspector General in 2013. Although renewed efforts were initiated at that time, the issue lay dormant during the tenure of the second statutory Inspector General who, prior to his appointment as IG, was the AOC's Deputy General Counsel and the primary crafter of the AOC responses to the concerns addressed in the Management Advisory.

It is also interesting to note that in an August 30, 2011, the AOC status update on recommendation implementation provided to the OIG, while the Agency did not concur with the realignment recommendation, they did acknowledge that the alignment of the EEO/DP had been the focus of past attention, stating:

“In 2006, the Committee on Appropriations for the House of Representatives questioned whether EEO/DP could “function in an independent and unimpeded manner,” and recommended that the office be placed “under the purview of the Inspector General.” More recently, the House Committee on Oversight and Government Reform inquired about the degree in which legislative branch EEO offices functioned independently and about their access to agency heads.”

While not advocating to realign the DI/DR office under the OIG purview, investigative efforts would benefit from earlier communication and increased collaboration between the Investigative team for response to sensitive EEO claims. In addition to the investigative techniques mentioned in **Appendix D**, utilizing the OIG Investigators for sensitive claims would minimize contracting/outourcing costs for claims that do not conflict with the OIG mission. The AOC’s firm allegiance to retaining the DI/DR office as an entity of the HCMD over the ensuing eight years is puzzling in light of the attention paid by three of its oversight bodies to the independence issue. Sexual Harassment remains the responsibility of EEO professionals, however the overlap of harassment with abuse of authority investigations makes it worthwhile to consider a stronger partnership between the OIG and the DI/DR Directorate.

## Appendix B

### Policy Review

In the 10 year span covered by this inquiry, AOC policies have undergone significant revision, but gaps remain. Several factors have affected the AOC harassment policy and response. The inquiry review period began in 2008, just one year after the 2007 statutory creation of the OIG. No official AOC policy addressing sexual harassment was in place until 2011, following an OIG Investigation (OIG 11-14-1, August 9, 2011). Prior to that time, sexual harassment issues were addressed on an ad hoc basis via policies for ethics and employee standards of conduct. Systemic issues revealed by OIG Investigation 11-14-1, as communicated in MA(I)-11-1 (September 2011) had a significant impact on the development and modernization of AOC policies and responses to sexual harassment. The following section outlines the historical development of these responses.

On May 10, 2011, the AOC issued a one-page *Sexual Harassment Policy Statement*, which forbade sexual harassment and ascribed disciplinary action up to and including termination for “any employee who engages in sexually harassing conduct, or any supervisor who knowingly permits such conduct to occur.”

MA (I)-11-1 included a recommendation to issue policy that specifically prohibited unprofessional relationships between supervisors and subordinates within their supervisory chain. On January 31, 2013, the AOC complied by issuing Policy Memorandum 4-17, *Policy Memorandum Regarding Relationships between Supervisors and Subordinates*. This memorandum also stated that “unwelcome (or involuntary) romantic relationships between a supervisor and a subordinate are covered and strictly prohibited by the AOC Sexual Harassment Policy Statement” (May 10, 2011). Policy Memorandum 4-17 is still in effect.

In September of 2013, the AOC issued Policy Memorandum 24-2, *Sexual Harassment in the Workplace* and Policy Memorandum 24-3, *Equal Employment Opportunity and Workforce Diversity*, which stated that the AOC is committed to providing a work environment “free from unlawful discrimination, harassment and retaliation...” and that “Racial, ethnic, religious or sexist comments, jokes symbols, gestures and other behavior prohibited by this policy not be tolerated in the AOC workplace.” These memoranda direct employees who have been sexually harassed to report the matter to their immediate supervisor, next level of supervision, or the EEO office. These memoranda also stated that “formal” complaints of sexual harassment may be filed with the OOC, but does not offer an explanation of what is meant by “formal.” It does not clarify if only complaints submitted to the OOC are considered formal, or how the designation of ‘formal’ affects complaint outcomes.<sup>5</sup> Both policies have been re-issued with no significant revisions on a yearly basis since 2013.

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<sup>5</sup> An AOC intranet web page that provides information on appeal venues for employment-related disputes offers more information; this page states that issues of harassment (not specifically defined as sexual) may be filed with the DI/DR Office, who will assist them in “resolving workplace disputes through the

MA (I) 11-1 also noted that while the AOC Personnel Manual's *Table for Typical Penalties for Infraction* included most types of employee misconduct, employee/supervisory unprofessional relationships were not addressed. In the AOC's March 29, 2013, Notice of Final Action to MA (I) 11-1, the Agency stated that this infraction would be addressed under a misconduct line item relating to impaired job performance and trustworthiness. A March 31, 2014 update of Order 752-1, *Discipline*, included unprofessional relationships between supervisors and subordinates as its own line item in the Table of Penalties included in this order.

Per current policy, all complaints of sexual harassment are to be immediately reported to the DI/DR office, which falls within the HCMD under the direction of the CAO. All members of the ELT who were interviewed were familiar with the current AOC policy and their requirement to report all harassment.

Of note, the current Director, DI/DR, was hired approximately five years ago to modernize and manage the equal employment and diversity programs within AOC. That individual was instrumental in the OIG's inquiry and was interviewed at length regarding current and future sexual harassment responses. The Director independently identified a deficiency in the current policy and outlined a two-phase solution. First, in March 2019, DI/DR issued an updated, but temporary, Policy Statement to fill some gaps until a comprehensive sexual harassment policy for employees and supervisors is released in mid-2019. The new policy will include specific prohibited behaviors, actionable guidance for managers and penalty guidelines. Both the temporary and permanent policy will be published on AOC's intranet, searchable by AOC personnel. The ELT feedback regarding

## Legislation

As a Legislative Branch agency, the AOC is not required to comply with the sexual harassment best practices mandated by the United States EEOC for Executive Branch agencies. It is, however, subject to the AOC Human Resources Act of 1994<sup>6</sup>, which applied equal employment opportunity laws for the first time uniformly throughout the agency. This Act directed the AOC to develop human resource management programs consistent with practices common amongst other Federal and private sector organizations.

The AOC is also subject to the CAA, which was enacted in 1995 and applied Title VII of the Civil Rights Act of 1964 to Congress, thereby prohibiting discrimination in personnel actions as well as harassment based on race, color, religion, sex, or national origin. Formal EEO authority in the legislative branch resides in the OOC under the CAA, although it has no investigative authority.

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AOC Conciliation Program, an informal dispute resolution program. The Conciliation Program enables DI/DR to investigate allegations of discrimination based on race, color, national origin, sex, sexual orientation, gender identity....” This same intranet page provides information on services offered by the Office of Compliance, tying their authority to the Congressional Accountability Act and their services to the 13 civil rights and workplace safety laws covered by this Act. One of these is Title VII of the Civil Rights Act of 1964, which provides an appeal venue for employees with sexual harassment complaints due to its prohibition on discriminatory practices: “All personnel action affecting covered employees shall be made free from any discrimination based on (1) race, color, religion, sex, or national origin....”

<sup>6</sup> Architect of the Capitol Human Resources Act, 2 U.S. Code § 1831

the DI/DR office was almost entirely positive, noting an improvement in proactivity and innovation since the addition of the Director to the HCMD staff.

The ELT identified a lack in clarity about avenues of assistance available to their staff and a lack of actionable prevention tools as their primary policy concerns. Multiple leaders also recommended that policy regarding prohibited relationships be expanded to include non-sexual but social interaction between senior leaders and their subordinates. Two sexual harassment complaints, one in 2011 and one in 2018, involving senior leaders and low-level subordinates could potentially have been prevented if AOC had implemented an anti-fraternization policy discouraging the development of prohibited relationships.

### **Relevant AOC Policies**

- *Sexual Harassment Policy Statement*, May 10, 2011
- Policy Memorandum 24-2, *Sexual Harassment in the Workplace*, September 2013 (re-issued yearly since 2013)
- Policy Memorandum 24-3, *Equal Employment Opportunity and Workforce Diversity*, September 2013 (re-issued yearly since 2013)
- AOC Order 752-1, *Discipline*, Table of Penalties, March 31, 2014
- AOC Order 752-2, *Standards of Conduct*, April 25, 2014
- AOC Policy Memorandum 4-17, *Relationships Between Supervisors and Subordinates; Abuse of Authority; Unwelcome (or involuntary) Romantic Relationships*, January 31, 2013
- Policy Memorandum 410-1, *Mandatory Training Requirements*, November 8, 2018
- AOC Order 8-5, *IT Resources and De Minimis Use*, February 20, 2018

## Appendix C

### Complaint Process

The AOC is a relatively small agency with a proportionately low number of complaints per year, therefore the DI/DR office is able to tailor its response on a case-by-case basis. The AOC is not subject to the EEOC reporting guidelines and instead coordinates with the OOC to respond to formal harassment claims. Because most complaints are of a peer-to-peer dispute nature, AOC implemented an informal conciliation process by attempting to resolve employee complaints as early and at the lowest level possible.

#### *DI/DR Options*

All calls that come to the DI/DR office fall into one of three categories: contacts, claims, or management referrals. The DI/DR Administrative Support Assistant arranges them into a Weekly Docket that is managed by the director. When an employee calls the DI/DR office, uses the hotline or appears in person, they are assigned to a DI/DR staff member by the Director. Each staff member has their own technique and method for collecting information and managing the interaction. The categories are as follows: “Contacts” are when employees call or walk-in to ask questions, vent or get advice without filing an official claim or before waiving their anonymity. “Claims” are reserved for when a victim waives anonymity and participates in a conciliation or investigative process. “Management Referrals” are calls for assistance from an AOC leader for any number of workplace problems. Only Claims and Management Referrals that cannot be easily addressed by a quick consultation are then turned into a DI/DR file.

Immediate action includes separating the accused and the recipient of the behavior. If the victim declines to waive confidentiality then the allegations must be assessed for their impact on others. If the allegations are egregious or pose a threat to an AOC employee, then DI/DR must take action despite the victim’s request for confidentiality. Ensuring effective victim advocacy and confidentiality, while still promoting a safe environment for other AOC employees, requires achieving a balance of these factors.

#### *OOC Options*

AOC employees who prefer to report sexual harassment to an external entity, either to seek confidentiality or due to displeasure with the AOC response, can file a formal claim with the OOC. The OOC enforces the CAA and is considered the formal venue for harassment complaints, although it has no investigative authority for EEO or sexual harassment allegations.

In December 2018, the OIG met with the OOC’s Director of Administrative Dispute Resolution and its General Counsel to discuss the distinction of formality. The OOC defines sexual harassment as “a form of discrimination on the basis of sex,” and traditionally it did not separate allegations of sexual harassment from those involving sex-based disparate treatment. In their written response to the OIG, the OOC stated “In fact, for many years the OOC classified all claims alleging discrimination as civil rights cases without further differentiation.” The OOC acknowledged that categories bleed into one

another, but stated that they made their best effort to identify claims that may be considered sexual harassment or sexual misconduct for this inquiry.

Counseling at the OOC is an informal but confidential process during which the employee's claim is evaluated against the requirements of the statutes of the CAA. The employee and the counselor identify potential claims but no legal advice is issued. Once the claimant has established sufficient cause for a dispute, their case is filed for mediation with the OOC's pool of mediators. The process becomes formal once the written mediation request is filed within 180 days of the triggering event. The amendments to the CAA drafted by Congress in winter 2018 (S.3749-31) are positioned to improve conditions

for legislative workers and protection of rights.

### Impact from Public Exposure

- "Past issues of temper, volatility and threatened violence by members of congress were weakly addressed by AOC executives and other members of congress. I worked through my trauma through my own sources, subsequently."
- "It is hard to file a complaint about someone who is visiting the Capitol. They often aren't in the building by the time the complaint is registered. Also, I feel like my behavior is put under scrutiny when I complain about a visitor."
- "I think the entire agency is unaware that most of the harassment I experience comes from individuals outside the agency, like our partners in the USCP and the thousands of visitors that we get every day."
- "Have AOC contractors who work full time in AOC buildings also take sexual harassment training."
- The training explicitly stated that the training was not meant for dealing with visitors. I work on the frontline staff, greeting our 2 million visitors per year. We are subject to daily sexual harassment from visitors and were told that the AOC can't and won't do anything. In terms of employee harassment, we get harassed by Capitol staff from other departments all the time so the training has done nothing."

### External Threats

On a daily basis, AOC employees interact with Congressional staff at all levels, contractors and members of the public, with the latter more so in jurisdictions such as the U.S. Botanic Garden and Capitol Visitor Center (CVC). The challenges of each environment vary and require responses appropriate to the jurisdiction, particularly when the harassment source is not subject to AOC policies.

For example, the CVC staff of approximately 120 employees, eight of whom are supervisors, interact with 2.5 million visitors annually. Because CVC employees have experienced harassment from members of the public and professional visitors to the CVC, they receive additional training on how to interact effectively with the public. The disproportionate number of CVC complaints, coupled with a pattern of

negative employee feedback, suggests that there are some unresolved issues surrounding the AOC response to external threats and harassment.



An example of one such external interaction was shared by the CVC Chief Executive Officer. A CVC employee was sexually harassed by a member of the press corps assigned to work in the CVC. Once notified, CVC and DI/DR management coordinated to have the official's press credentials suspended. CNN, the employer, investigated the incident and terminated the employee.

The incident was not included in the AOC's data response to this inquiry, although the CVC director credited the DI/DR office with the intervention that ensured the press member would no longer work in the CVC. The DI/DR Director explained the incident as an example of a management referral that was resolved by a few swift actions without a formal claim being filed or case being opened. The DI/DR Director recalled that the incident took place when the Administrative Assistant was out of the office and it was therefore not added to the weekly docket used to track contacts, claims and management referrals. Although the incident highlighted appropriate action taken to protect an employee from external harassment source it also highlights the gap in internal controls.

The AOC is also sensitive to the possibility that external partners and the public could possibly face harassment by AOC employees. In January 2014, a female contractor made a sexual harassment complaint against unknown employees of the Capitol Power Plant. According to Capitol Power Plant leadership, the female was hesitant to report the AOC employee's harassing behavior for fear of jeopardizing the contract. Her complaint resulted in the DI/DR office implementing jurisdiction-wide training which enabled Capitol Power Plant leadership to show that the complaint was taken seriously even when the accused was unidentified.

Additionally, interviews with AOC leadership revealed that some custodial staff (particularly night shift) report exposure to harassment while working in the offices of Members of Congress. Some have complained of being the target of sexual harassment, overhearing harassing conversations and observing materials such as pornography in member offices, but they do not speak up for fear of losing their jobs. Employees have reported to both AOC leadership and the OIG that some customers have expressed attitudes of entitlement and superiority, which leaves these AOC employees feeling unprotected and disenfranchised. Leadership interviews and employee feedback suggest that increased engagement with AOC tenants in the congressional and judicial communities would help promote an environment of mutual respect.



## **Appendix D**

### **Investigation of Complaints**

The sensitive nature of sexual harassment dictates that the tone and pace of the investigative response be set by the recipient of the harassment. Sexual harassment victims cannot be compelled to participate in an inquiry or investigation; therefore the efficacy of response depends largely on the cooperation of the recipient of the harassment with investigators/EEO professionals. Additionally, while the definition of sexual harassment is rooted in legal terms, it is also influenced by the perception and sensibilities of the recipient of the behavior. In order for a complaint of sexual harassment to be substantiated by the DI/DR office, it must meet the legal standard of proof as “severe or pervasive.” The severity and impact of harassing behaviors can differ drastically depending on the life experiences of the recipient and can be either one egregious incident or a pattern of lesser but harassing incidents. This legal standard has been applied within the AOC over the last 10 years to all cases identified by the HCMD in their response to our data request.

Per the CAA, the OOC has no investigative authority over claims of sexual harassment. This means that AOC has sole responsibility for ensuring that claims of harassment are properly investigated. In the absence of a comprehensive policy regarding sexual harassment, much of the AOC response relies on the expertise and direction of the DI/DR Director. The AOC does not have many complaints of sexual harassment annually, so each complaint is handled individually, resulting in slightly different responses to each complaint. The OIG requested to interview each of the five DI/DR staff members involved in complaint intake and the investigative process. The interviews were planned as a means to obtain a complete picture of complaint procedures and to verify that staff members had a consistent understanding of sexual harassment responses. The HCMD declined to allow anyone other than the Director of DI/DR to be interviewed by the OIG; even the initial meeting with the DI/DR Director was postponed by the HCMD and only authorized after a meeting with the CHCO. The OIG Legal Counsel engaged in lengthy discussions with the OGC regarding AOC’s lack of cooperation. The OGC/HCMD ultimately conceded to staff interviews several weeks into the inquiry process; in the interests of timeliness the OIG omitted interviews with the staff members.

The goal of the DI/DR conciliation process is to mediate locally without initiating a formal complaint when possible. The DI/DR Director attempts mediation between parties and makes low-level recommendations that benefit employees and the jurisdiction. As soon as there is a clear sign of wrongdoing, such as sexual harassment, the process is stopped and the investigative/disciplinary process is initiated. No parties who are subject to sexual harassment are forced to participate in the conciliation process by the DI/DR office. According to Employee feedback there have been occasions when their complaints are not properly elevated to the DI/DR office and are improperly addressed at shop, department or jurisdiction level, resulting in further victimization of the complainant.

The DI/DR investigative process usually begins by separating the employees in a manner that minimizes negative impacts to the victim and premature punishment of the accused. Typically, a DI/DR staff member interviews all parties, which may consist of the complainant, the subject/accused, the supervisor and available witnesses. When needed, the DI/DR office can review emails, time and attendance, phone records and other resources managed by AOC's ITD. If additional investigative expertise is required, DI/DR hires an attorney or investigative firm with experience in EEO mediation. If the interview is conducted by DI/DR staff, then the Director generally observes or participates.

Independent investigators and mediation attorneys occasionally supplement DI/DR manpower, generally when responding to high visibility complaints or if there is a potential conflict of interest between the DI/DR staff and the complainant/accused. In the latter case, the DI/DR office will also request that the investigating authority make a conclusion and issue a recommendation based on their inquiry. The DI/DR office uses a variety of contractors and does not have a binding contract with any investigator or firm. Depending on the complexity of the complaint, the investigations cost between \$1,800 and \$3,000; the DI/DR office contends that the complaint volume does not justify a full time or dedicated investigator.

Some of the cases in the DI/DR office data provided by the AOC noted inappropriate touching but provided no further clarifying details of the incident. The DI/DR office explained that the reported incidents did not include indecent assaults or touching which was sexual in nature. While still inappropriate in a work environment, the incidents involved contact such as a rub to the shoulder or grab to the arm, consequently there was no need for law enforcement engagement. When a workplace incident does involve indecent touching or assault, the AOC refers these to the U.S. Capitol Police.

Lastly, the recommendations of the OIG's 2011 Management Advisory (MA-11-01) were discussed with the DI/DR Director. In the Management Advisory, the OIG recommended the AOC implement certified sexual harassment investigations training for EEO staff. The

## Why a Centralized Response?

*While AOC policy requires all sexual harassment response be made by trained EEO professionals, at times it has been addressed by department managers, with unfavorable results.*

- "I reported a case of inappropriate touching to my supervisors and the managers decided it would be appropriate to sit myself and my harasser down, face to face, to have a conversation. It ended very badly. He denied everything and I got very upset in front of all my managers. It was handled completely inappropriately and was very damaging to my views of the AOC at the time. Now, I've left that jurisdiction and will never look back."

*When asked where they feel most comfortable reporting issues, this employee identified EEO (DI/DR)*

- "I do not feel the local level really applies the tools to mitigate issues. I have seen firsthand how they've allowed a situation to persist only to result in the current lawsuit gains not only an employee but the agency. If they'd acted as they should have in the beginning this would not have occurred."

advisory was issued prior to the re-organization of the current DI/DR department and the arrival of the DI/DR Director. Although the previous staff participated in investigative training from the Equal Employment Opportunity Commission, only one of the investigator/EEO specialists is still on staff. To date, the current DI/DR staff has not received standardized interview training or formal refresher training. The DI/DR Director explained that since the department is not a traditional EEO office they focus on refining their Alternative Dispute Resolution and Conciliation skill-set. The director is confident in her staff's ability to collect necessary information; she further stated that if a certain complaint required advanced skills she would outsource to a contractor and if she hired someone without the requisite skillset she would ensure they went through training.

### ***Sensitivity of Harassment Investigations and Victim Advocacy***

At least two sexual harassment complaints against senior AOC leaders, in 2011 and 2018, originated from the OIG. In both instances the victim disclosed a lack of faith in the DI/DR reporting process or expressed a fear of retaliation by management. Improving the perception of independence and autonomy of the DI/DR office might eliminate the reservations some victims have in reporting harassment through the proper channels, thus returning responsibility of such investigations to the DI/DR office.

To a great extent, the DI/DR office relies on victim cooperation to investigate successfully, but the DI/DR office will continue a harassment investigation if corroborating evidence is found. As stated, increased collaboration between the DI/DR office and the OIG investigations division could broaden investigative capability. For example, the DI/DR office conducted an investigation in April 2018 (as described in **Appendix E**) and found only circumstantial evidence. By requesting OIG investigative assistance, the DI/DR office could leverage additional investigative techniques not otherwise available. OIG Investigators can conduct adversarial subject interviews that may elicit an admission of wrongdoing, or develop confidential sources to collect sensitive information. The OIG's authority to conduct interviews under various employment protections such as Kalkines and Garrity Warnings could also add value to these investigations.

Based on employee feedback the biggest concerns with the investigative process is ensuring that all reports of harassment are being immediately reported to the DI/DR office and they are being addressed uniformly. Additionally, employees cite a lack of victim follow-up or advocacy that assists them in adjusting to their work environment post-report. Ensuring consistency in the investigative, penalty and response process is at the core of the observations shared by many inquiry respondents.

### **Advocating for Employee Victims**

- “I filed a complaint against a manager in my office. I was removed from my office for 6-8 months (which was very obvious and not discreet) only to be told the behavior was inappropriate but didn't rise to the level of harassment. Just to return to the office and my cubicle right next to his.”
- “There is a big urging for people to come forward, but no real steps to help the victims after reporting and get them prepared to re-enter office where abuse/harassment took place.”

## Appendix E

### Penalties

When misconduct is substantiated, disciplinary action against the offender, ranging from verbal or written reprimands to termination, is necessary. While employers have the latitude to administer discipline in proportion to the seriousness of the offense, EEOC guidelines recommend that corrective action reflect the severity of the conduct and persistence of the harassment. The OIG was unable to perform a complete review of the AOC response to harassment complaints because they provided only a spreadsheet with descriptors such as “inappropriate remarks of a sexual nature,” “inappropriate touching,” “hostile workplace,” “sexual harassment” and “masturbating in workplace.” To place the resulting corrective action in context, the harassment complaint would need to be more fully described. Although we lacked the case files for AOC complaints, the following general observations were made based on the data provided, interviews with leadership, and employee feedback.

The data returned by the HCMD and OGC was compared with the AOC Policy Memorandum 752-1, with an effective date of December 18, 2015. The policy notes the following of interest to this inquiry: Final decision making authority for all disciplinary actions has been delegated by the Architect to jurisdiction heads, who now serve as Deciding Officials; The Architect now serves as the Appeal Official (for employee appeals); and Minor disciplinary actions (reprimands to suspensions of five work days or less) may be taken by the jurisdictions. The policy also references the AOC Order 752-1, Discipline, with an effective date of March 31, 2014, which includes the most recent table of penalties.

Currently, the table of penalties for responding to AOC employee misconduct is managed by the HCMD and includes one provision for sexual harassment. After a complaint is investigated by the DI/DR office, the Director returns the findings, along with recommended actions to the deciding official. In most cases the official is in agreement with the DI/DR office recommendations and guidance, but they do not always adhere to the published table of penalties in AOC disciplinary policy:

*Misconduct of a sexual nature that includes, but is not limited to, unwelcome sexual remarks, offensive jokes, offensive sexual banter, offensive gesture, unwelcome physical touching, unwanted sexual advances. 1<sup>st</sup> Offense: Suspension to removal, 2<sup>nd</sup> Offense: Suspension to removal and 3<sup>rd</sup> Offense: Removal.*

The data provided by the DI/DR office shows a spectrum of responses to substantiated claims, ranging from verbal reprimands to termination. A few complaints reported by the DI/DR office appeared to have disciplinary actions which were incongruent with the reported accusation, the published table of penalty and/or appeared inconsistent with a later mediated settlement. An example of one of these is as follows:

In April 2018 a male U.S. House of Representatives employee reported hearing noises coming from the bathroom that suggested an AOC employee was regularly

masturbating in the Ford House Office Building bathroom during work hours. Multiple people were interviewed, computer resources were reviewed and the accused was questioned. Circumstantial evidence substantiated the complaint and DI/DR recommended the employee be terminated. The deciding official, the CAO, declined to take this action due to the circumstantial nature of the evidence and based on the employee's long history of good work within the AOC. Instead, the employee was given a letter of reprimand.

Although the DI/DR office fundamentally disagreed with the deciding official's course of action, they could not further elevate the penalty for reconsideration because it would have violated due process for other employees facing disciplinary action. Missing from the aforementioned Order 752-1 is a mechanism for presenting disciplinary action to a higher deciding official should other agency components disagree with the penalty. Incidentally, in this particular occasion the deciding official was the CAO, under whom the DI/DR office is aligned.

The DI/DR office and the Employee Relations Branch can only make recommendations of appropriate actions to the deciding officials. As such, the DI/DR office cannot ensure equitable punishment across jurisdictions, in fact, there are times when the DI/DR office does not receive follow-up from the jurisdiction regarding what action was taken or what penalty, if any, was issued. For example:

In August 2011 the DI/DR office received a complaint of ongoing inappropriate remarks made by one Senate Office Buildings employee to another. The allegation was investigated by the DI/DR office over the course of one month and the claim was substantiated, resulting in a two-day suspension of the accused. The complainant later filed a formal complaint in January 2012 with the OOC, and the claim went to mediation. In May of 2012 the parties settled and the claimant was awarded \$25,000, restoration of 68 hours of sick leave and was allowed to provide informal input into training in addition to receiving a formal apology.

From the information provided, it is unclear if the initial disciplinary action of a two-day suspension was reasonable. Also, as stated above, a suspension of five days or less is reserved for minor offenses. It is difficult to conceive that a minor offense resulted in the second highest sexual harassment settlement in the review period. Finally, the DI/DR office has no additional information on the complaint once the findings were returned to the Senate Office Buildings for action deemed appropriate. Similarly, in 2017, a Capitol Building report of sexually harassing remarks between two employees resulted in the offender being verbally counseled. The incident is reported as a substantiated occurrence of sexual harassment but did not meet the recommended first offense penalty of Suspension, as outlined in policy. No mitigating factors are known because the OIG does not have access to the case file.

### *Alternatives*

The AOC has successfully used non-punitive responses to complaints not substantiated as sexual harassment, but still inappropriate, or when the accused was not identified, for reasons which are not clear to the OIG. Much of the DI/DR mission involves informal advisory conversations with management to adjust work environments. The DI/DR office has tools available to address hostile work places and jurisdictions struggling with employee relations, such as recommending additional leadership training, team-wide sexual harassment training or temporary reassignments to other departments. For example:

A female CVC employee was being harassed by a male CVC coworker, with the behavior carried over from the workplace to the metro during their commute. Management immediately changed her metro subsidy benefit and provided a parking spot to remove her from the harassing environment. The accused was also quickly terminated.

Currently, each jurisdiction has the discretion to respond to substantiated complaints as they see fit, which has resulted in inconsistent disciplinary actions across jurisdictions. Several ELT members expressed a desire to create a repeatable process for disciplining employees and supervisors who engage in workplace harassment and discrimination. Most ELT members also expressed an interest in having a zero tolerance policy for inappropriate and harassing behavior in the workplace. The DI/DR Director expressed agreement, but explained that this would be difficult to implement; it would require that AOC take definitive action in every case with no exceptions, and implementing such a policy would set a high bar requiring discipline actions that are consistent from case to case.

At least two substantial harassment investigations in the last 10 years involved senior AOC executives. In these instances, the AOC relied on either OIG investigations or DI/DR contracted investigations (to prevent a conflict of interest). At present, there does not appear to be a venue for providing guidance to senior executives or other employees on how to report harassment which occurs at the senior management level. A noteworthy comment made to an ELT member in the recent mandatory POSH training was “what happens when the fox is guarding the henhouse?” Employees of all demographics need to

### **Zero Tolerance Policy**

*Although it is a best practice, and considering a zero tolerance policy was suggested by the ELT, AOC does not currently have one and faces the following obstacles to implementation:*

- All adverse actions related to substantiated sexual harassment are adjudicated at the jurisdiction level, without elevation to a higher level, consistency is difficult, especially if the accused is a member of the executive staff.
- Punishment for sexual harassment rests with one agency leader rather than a panel of unbiased agency leaders from a wider cross section of the agency.
- Not all employees are familiar with a table of penalty; to establish the credibility of a zero tolerance stance, an agency-wide announcement should announce the initiative and updated table of penalty.



feel safe reporting and elevating issues if they are not resolved at the lowest level. If a zero tolerance policy is adopted by the AOC, it must extend to instances of Sexual Harassment by those in senior leadership positions at the AOC.

***Do Lenient Penalties, Fear of Retaliation and Lack of Whistleblower Protection Impact Willingness to Report?***

Finally, a recurring theme in employee input and leadership interviews was the need for AOC to conduct follow-up inquiries with victims of harassment to ensure the behavior has not resumed and victims have not suffered retaliation. Although not overwhelming, the OIG received feedback from 19 employees who reported filing claims for sexual harassment but 63 percent of these reporting they experienced retaliation for their actions. Another six employees disclosed to the OIG that they faced sexual harassment but chose not to report due to fear of reprisal and retaliation. Although small in number, this sub-set of employees is of particular concern to the OIG. While this inquiry shed light on employees fearful of reporting sexual harassment, it does not address employees who are also fearful of reporting other types of misconduct, crime or policy violations within the AOC. Although it is not common knowledge outside of the Legislative Branch community, the lack of whistleblower protections for Legislative Branch employees is a recognized inhibitor to the filing of complaints; this is reflected in the AOC cultural narrative that those who report are not protected by the AOC, OOC or legislation.

## **Retaliation and Lack of Whistleblower Protection**

- “When I sought to go over his head [supervisor] to talk to a female who might understand the situation better, I felt that my relationship with him was damaged a bit since I didn’t take my concern to him. The people that I did report to did not take any action, that I was able to detect, against the person I reported, but instead I was disciplined for a dress code issue that had never been written about or discussed until I reported his comments about the way I wear my uniform.”
- When asked if they had made a complaint “I have not, but I would not have felt it a safe environment. I have been retaliated against for bringing a successful IG complaint, so I would have no reason to believe I would be safe in this area.”
- “I thought it was safe and was sadly wrong. It is not confidential.”
- “Was left under the same jurisdiction where this occurred and retaliation has been coming at me ever since then. My career has suffered for speaking up. I could do the best job ever but won’t be recognized. My position and what I do is diminished, minimalized, and lessened. I will always strive to achieve the best and have a positive attitude even through these circumstances.”
- “It might be beneficial to have more frequent training and focus on removing the stigmas associated with reporting sexual harassment.”

***And some reported being harassed, but feeling unsafe to report due to possible retaliation:***

- “That is why I did not file a complaint. Didn’t feel that the investigation would be handled properly by AOC internally- unsure that there would be retribution for filing it.”
- “I did not file a complaint because I knew there would be retaliation and/or my career would be stalled. To risk my livelihood was not worth it.”

## **Appendix F**

### **Prevention of Sexual Harassment Training**

#### ***Development of Current Training***

The current Director of DI/DR joined the AOC in July 2013 and on reviewing the EEO program, found that the policy and training module appeared outdated. An early initiative of the Director was to lead the AOC Chooses Civility program, an agency-wide initiative promoting civility through ten principals of behavior expected in the workplace. The program had the broad support of the ELT, and it was used as one foundation for the overhaul of the AOC sexual harassment training program.

For the 2015-2016 training cycle, the DI/DR office contracted an external company to provide mandatory training sessions which focused on sexual harassment and inclusion. That training did not sufficiently convey the desired message and was not suited to AOC's unique workforce.

To develop the new program, the DI/DR office assessed other Legislative agency policies, reviewed industry best-practices and held focus groups of employees of varying demographics. There was positive feedback regarding the focus groups at upper and lower employee levels, with some employees stating that they felt their opinions and experiences were valued. With this feedback in mind, the current POSH training was developed and consists of mandatory in-person sessions divided into two topics. The first is an obligatory policy-based review of acceptable and unacceptable behavior, and the second addresses bystander responsibilities and what can be done, from a workplace culture perspective, to prevent or stop harassing behaviors.

From March 2018 to October 2018, the DI/DR office conducted in-person training of all AOC employees, with separate sessions for supervisory and non-supervisory personnel. The DI/DR office also collaborated with the OOC to develop a complimentary online course planned for implementation in January 2019. As of 2019, all newly hired AOC employees must complete the on-line course within 30 days of onboarding. The two-year cycle will begin again in 2020, alternating annually between in-person and online sessions.

#### ***Feedback***

In interviews with leadership, the OIG received very mixed feedback about the training. In contrast, the responses to the OIG's employee questionnaire were mostly positive regarding the quality and effectiveness of the training. The following are the recurring concerns and overarching themes from employee and leadership feedback on the quality of the POSH training.

Both the DI/DR office and the ELT were frank in discussing lessons learned from early POSH sessions. In its first year, the program continually evolved as leadership learned how to best address this sensitive topic. In early trainings, many employees left feeling more harassed than they did in their day-to-day work environments. Supervisors were not included in the sessions, which resulted in discussions that devolved to include



inappropriate content. Personnel complained that the DI/DR office presented a message of harassment prevention and bystander intervention, but overlooked the harassing behavior occurring in the training. Some comments provided by both leadership and in employee questionnaires described DI/DR staff as losing control of employee behaviors in the early training sessions, which resulted in caustic, uncomfortable and harassing training environments. The DI/DR office was aware of the criticism and changed course, electing to have an ELT member lead each subsequent session to set the behavioral tone.

Some ELT members maintained that the messaging was almost identical in supervisor and employee trainings, expressing a common criticism that managers lack advanced training for responding to complaints of hostility, harassment and discrimination. Both management and employees identified a need for cultural change, but some were at a loss for how to effect and inspire such change. Two members of the ELT were closely associated with the two previously discussed harassment investigations of Senior Executives; both expressed concern that they had seen red flags and, in hindsight, could have intervened. They stated a need for actionable tools in identifying early warning signs of abuse, discrimination and harassment. In the next cycle of POSH training, the DI/DR office plans to expand the message of bystander intervention and improving cultural attitudes.

The AOC workforce is significantly diverse regarding education level, skill set, age, cultural background, union status and other demographics. A message and teaching style appropriate for historians, for example, may not be similarly effective for the wage-grade labor force. Feedback suggested that individual sessions include a mix of supervisory, non-supervisory, GS/WG personnel, long-term and new employees to provide accountability for disrespectful behavior and foster diversity of perspective. The DI/DR office acknowledged that hosting training sessions jointly would be beneficial moving forward and that they will also consider the suggestion of adding a post-training break-out session for supervisors to develop strategies and actionable tools. Most of the feedback suggestions had already been anticipated or implemented by the DI/DR office.

The POSH training was mandatory for all personnel, and ensuring one hundred percent compliance resulted in a substantial workload for the DI/DR office, in addition to their full time assignments. The volume made it difficult to conduct sessions on the third shift, even though this group of often disenfranchised employees comprises a large percentage of AOC staff. The consensus of inquiry participants was that the training was not well received by third shift employees. This was attributed to their having to attend in addition to their regular work schedule or at the end of the shift when they were tired and inattentive. To remedy this, the DI/DR office plans to use the 2018 POSH training module to develop curriculum for use by contract instructors to make it accessible to the third shift. Some of the ELT suggested it was too early to transition from in-person to online training, calling for one additional year of repeated in-person training. The DI/DR office currently plans to implement the newly designed online training for 2019, with the stipulation that due to work-load, if in-person training was repeated before 2020, it would have to be contracted.

The POSH training exposed a wide variety of beliefs and interpretations of what constitutes harassment. The DI/DR office, the ELT and other AOC employees recognized a pervasive misunderstanding of sexual harassment within some segments of the agency. A common suggested solution for addressing these beliefs and cultural biases was to include examples of AOC harassment incidents to personalize the training and put it in context. Employees also cited a lack of transparency when allegations are made, so sharing AOC cases, with redacted identifiers, may help reassure personnel that the AOC takes their concerns seriously.

Some ELT members suggested including a discussion of female perpetrators of sexual harassment along with that of male perpetrators. The solicited employee feedback included some additional compelling comments of this nature, and cited a lack of discussion about the impact of sexual harassment between same-sex co-workers or related to sexual orientation. Feedback noted that the training focused on the impact of sexual harassment women receive from men, excluding harassment in other protected groups. The DI/DR Director identified parts of the curriculum which already includes information about perpetrators of both genders.

A suggestion was also made to address possible false allegations, though the DI/DR Director suspected that the number of false complaints/allegations was not significant. She explained that it is nearly impossible to determine if a complainant truly believes they are being sexually harassed even if the action does not meet the legal definitions. Pointing out that more complaints are likely true than the number being substantiated, due to a lack of corroborating evidence available to the DI/DR investigation. She reiterated that sexual harassment complaints are subject to the perception of the recipient of the behavior, and the DI/DR office is designed to encourage reporting, even if it is not substantiated enough to impose punishment.

### **Training and transparency**

- “I do wish we could have worked through real-life examples. They seemed hesitant to address actual situations.”
- “Informative yes, but I would have liked to see data on cases received, and the results. This would show me how effective AOC has been at handling cases.”
- “I would consider bringing a public speaker with a personal story to share in order to put a face with a story to make it appear more authentic to certain Non-believers.”

## Training

### *Training and Culture:*

- “I think if this agency actually cared about sexual harassment they would treat it like they treat the importance of safety. Safety is hammered into employees. Each shop has a safety meeting before each shift. POSH training, scheduled for 4 hours that only ended up taking 1.5 hours, once per year is just about checking a box NOT addressing a systemic problem.”
- “Address equal rights for homosexual employees and include information on passage of laws supporting their rights when addressing those laws defending rights to work in a sexual harassment free government work environment.”
- “While the recent sexual harassment awareness training contained a lot of good information, there were many attendees who did not take the training seriously or did not understand some basic concepts involved. It ended up creating an uncomfortable environment.”
- “The training we took did not make me feel safe that there is an adequate way to deal with reporting incidents of harassment. The training was focused on telling employees what behaviors not to engage in, when it should have been equally focused on reporting and follow-through of sexual harassment incidents.”
- “I have not seen any meaningful change in the work environment however I have seen that management is more aware of the prevalence of this behavior since the training was conducted.
- When asked if training was useful “It was, my group was engaged and participated in a good session. I learned a lot from the session. The instructors were excellent and took this very seriously.”
- “I feel like the training wasn’t necessary for most, but it was eye opening to see that it was indeed necessary for others. I don’t feel like it was taken seriously enough (it was taken as a joke) and individuals proceeded to turn it around on the accuser- asking what if the reporting individual is lying and that they should be judging their character instead of making accusations. It did not make me feel comfortable to work here.”

## **Appendix G**

### **AOC and OOC Response**

The AOC responded to the OIG data request by providing a series of spreadsheets with historical sexual harassment complaint data. The data was categorized as 1) complaints handled by the DI/DR Office and referred back to management for action deemed appropriate (a total of 40 complaints reported); 2) matters filed with the OOC that resulted in engagement by the OGC (a total of 12 cases are referenced; some apply to a singular incident of harassment); and 3) cases handled through AOC's Disciplinary Process but not reported to DI/DR (such as those referred immediately to Employee Relations or the OIG; a total of 3three complaints). Separate from the DI/DR information was a total of nine complaints received by the OIG and investigated or referred to management.

The OOC reported that AOC employees filed 312 requests for counseling during the last 10 years. Of those 312 requests, 178 alleged a violation of Section 201 of the CAA ("discrimination because of race, color, religion, sex, national origin, age or disability"). Of the 178 requests for counseling, 46 alleged discrimination because of sex, 11 of which could be construed as alleging sexual harassment or sexual misconduct. Of those 11 requests, four ended after counseling and did not proceed to mediation. The remaining seven requests for counseling proceeded to the mediation phase and were resolved with the OGC; as such, the AOC's OGC, rather than the OOC, retained the evidence related to the claim, the employee information and results of mediation.

The HCMD did not initially provide any type of complaint outcome information or settlement agreement details for those who underwent the formal complaint process. They also declined to provide biographical/demographic identifiers for individuals involved in the complaints. On December 10, 2018 and December 12, 2018 the OIG submitted a request for additional information to the AOC's General Counsel and to the OOC.

On December 17, 2018, the OOC's General Counsel provided case identification numbers and complainant names associated with the seven mediated AOC claims, for de-confliction and identification purposes. They also identified an eighth claim involving sexual harassment that was resolved subsequent to the initial request. Of note, the AOC's OGC indicated that one of the original seven provided by the OOC did not meet their definition of sexual harassment and was not included in their response. This highlighted the use by the OOC and AOC of slightly different distinctions when referencing sexual harassment. Traditionally, the OOC has not separated allegations of sexual harassment from those involving sex-based disparate treatment, but they acknowledged that these categories can overlap and stated they were diligent in their efforts to identify claims that may be considered sexual harassment or have involved sexual misconduct.

The OGC agreed to provide limited details regarding the mediated settlements of four AOC complaints. Three of the cases provided by the OOC had no correlating mediated settlement agreements in the OGC database. The OGC attributed this to two of them having been dismissed in Federal court, although they had no settlement record for the third. The two court cases involved the same House Office Buildings employee; the OOC provided the individual's name which enabled us to de-conflict the cases.

### **Complaint Settlements Reported by the AOC's OGC**

**2008- Settlement Amount of \$8,924:** Not provided by the DI/DR office because it occurred in the first half of 2008, and therefore outside of the "10 year" time frame requested by OIG. The case number was included in the OOC response. The OGC responded only with the dollar value of the settlement; the DI/DR office had no further information pertaining to the complaint. The OGC disclosed on March 14, 2019 that in 2008 a U.S. Botanic Garden employee alleged a hostile work environment, unfair discipline, retaliation and termination because of sex.

**2013 – Settlement Amount of \$8,575:** According to records provided by AOC, in September 2012 a complaint filed with the OOC was mediated with the AOC OGC on behalf of a Planning and Project Management Employee who alleged harassment by an "unknown employee." The OGC information states "Unknown, No information contained in file." In their clarification letter regarding outcomes and pay-outs, the DI/DR office reports that the settlement resulted in an \$8,575 lump sum payment to complainant. The OGC also reported that both the employee and accused would separately attend training on conflict resolution. The details inconsistently noted that the offender is unknown but also that they will be required to attend training.

**2012- Settlement Amount of \$25,000:** The initial information provided by the DI/DR office stated only that a Senate Office Buildings employee alleged that a co-worker made inappropriate remarks. The DI/DR office substantiated sexual harassment and recommended "appropriate action be taken" and the accused was suspended for two days within one month of initiation. Supplemental information supplied by the OGC reported that the complaint was filed with the OOC in January 2012 and resulted in a mediated settlement of \$25,000, 68 hours added to the employee's sick leave, informal input regarding AOC training information and an agreement that the employee is a valuable employee, for which AOC issued an apology. The DI/DR office has no additional information pertaining to the complaint or the settlement; they had no record of the victim providing input to AOC training.

## Complaint Settlements (Continued)

**2015– Settlement Amount of \$70,000:** In April of 2011, an AOC House Office Buildings employee reported harassment by a co-worker. The HCMD records described the incident as “Sexual harassment, hostile work environment, unfair terms and conditions and interference with the Family Medical Leave Act because of sex, disability and reprisal.” The HCMD reported that both the accused and the complainant were House Office Buildings non-supervisory employees and characterized the status of complaint substantiation as “N/A.” Because the OOC had provided the complainant’s name, we researched the OIG systems and open-source Federal Court records and determined that the accused in the investigation was a GS-15 House Supervisor who was under OIG investigation at that time. This complaint was filed with the OOC for mediation with the OGC (AOC) and resulted in a \$70,000 lump sum payment to the complainant, restoration of the employee’s sick leave to a zero balance, placement of the employee in a desired clerk position as GS 05-07, and removal of a reprimand from the employee’s personnel file.

This case received significant attention within the agency and was also reported on in local media.<sup>7</sup> The OIG investigation found that allegations of unacceptable conduct of a supervisor and falsification of Time & Attendance records of a subordinate were both substantiated; the AOC proposed termination of the supervisor but that individual was allowed to resign without punitive action.

The accused is the same offender in a total of three complaints of allegedly harassing women in the workplace; none of the complaints were reported to the DI/DR office. The above was an OOC complaint adjudicated through mediation, a second complaint was withdrawn from the OOC and dismissed in federal court and a third report made by an OIG CS alleged sexual harassment. In all three instances the complainant expressed reservation in reporting the senior management official to the HCMD.

**2019– Settlement Amount of \$265,000:** An AOC Library Building and Grounds employee reported sexual harassment and misconduct by a Library Buildings and Grounds Senior Executive concurrently to the OIG and the OOC in June 2018. The employee came to the OIG on a confidential basis, citing distrust of the DI/DR office. The misconduct was substantiated by the OIG and the Senior Executive resigned, with no punitive action in September 2018. In January 2019 the employee was awarded a \$265,000 settlement by mediation with the AOC. Despite the admissions of wrongdoing by the Senior Executive, without statutory protection, settlement liability was assumed by the agency.

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<sup>7</sup> Roll Call, AOC Draws Sexual Harassment Suit, Emma Dumain, April 19, 2012, 12:18 pm. Retrieved from <https://www.rollcall.com/news/aoc-draws-sexual-harassment-suit-213946-1.html>

***OIG Response***

The OIG does not investigate claims of sexual harassment as a matter of policy or by charter but occasionally receives complaints. When employees report incidents of sexual harassment their complaint is either referred to management for further action or the employee is advised to make a report to the DI/DR office. The OIG maintains an automated case tracking system that was queried by complaint type, name (those provided by the OOC) and key-word search. A total of 13 possible complaints/investigations was returned, with nine of them related to possible allegations of sexual harassment and the others eliminated as gender discrimination.

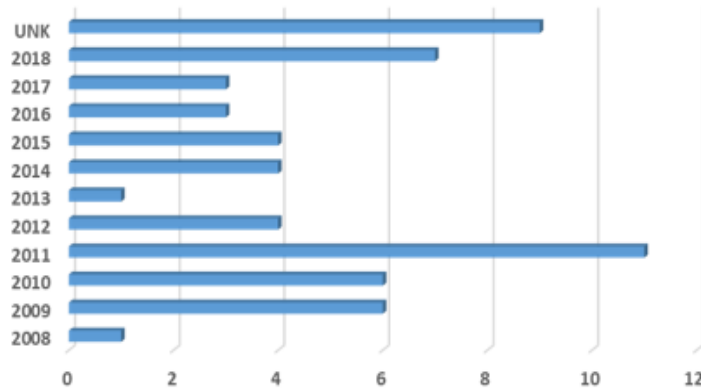
Within the scope of the inquiry there were four occasions when sexual harassment was Investigated as part of another criminal or administrative investigation. On two of those occasions the reporter came to the OIG as confidential sources, expressing fear of reprisal in reporting to the DI/DR office. Both victims filed formal OOC complaints described in the Mediated Settlement section above. Of the nine possible sexual harassment complaints, four were referred to the DI/DR office and actually filed complaints with that office, only were classified by the DI/DR office as sexual harassment. The other complainants were either confidential or opted not to seek further assistance after referral to the HMCD.

The OIG also has a commitment to providing a safe, impartial and confidential reporting mechanism for employees. When an employee discloses to the OIG an issue better suited for an HCMD or DI/DR office solution, they are directed by OIG staff to make the report themselves. If information is learned during the course of an investigation, or if the complainant grants permission, the OIG will create a formal management referral. This inquiry raised awareness in our own staff of the need to more clearly document when a complainant was referred to another avenue of assistance and to follow up when possible to ensure action was taken when incidents are reported directly to management.



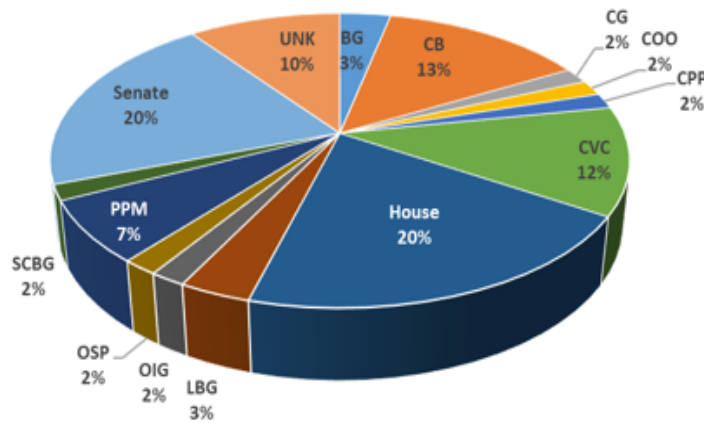
## Graphical Representation of Data

Complaints by Year



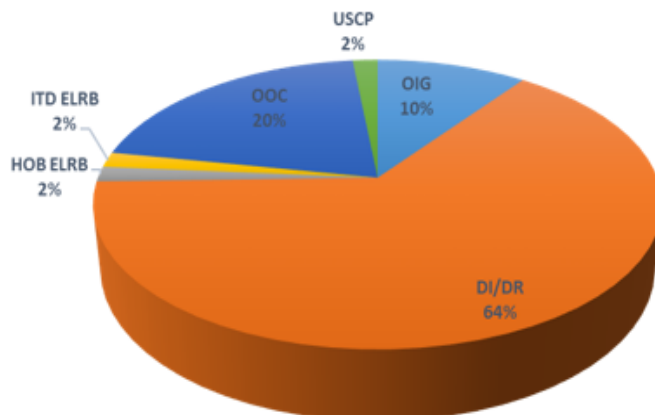
Total complaints received by AOC's DI/DR, OOC and OIG for each year between 2008 and 2018. Note that the number of complaints is highest in 2011 and 2018, the same years high profile complaints were made about senior AOC leaders. The Unknown category is attributed to inconsistent record availability.

Complaints by Jurisdiction



Jurisdiction of complaints received by AOC's DI/DR, OOC and OIG for each year between 2008 and 2018. 10% were unknown due to limited record availability.

Office Receiving Complaint



Breakdown by reporting venue. Demonstrating that DI/DR, OOC and OIG have most of the complaints with a couple being reported directly to the AOC's Employee and Labor Relations Branch by the House Office Buildings, IT Division and US Capitol Police.

## Congressional Request and OIG Response

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United States Senate

COMMITTEE ON  
RULES AND ADMINISTRATION  
WASHINGTON, DC 20510-6325

October 5, 2018

Mr. Christopher P. Failla, CIG  
Inspector General  
Architect of the Capitol  
499 S. Capitol Street, SW, Suite 518  
Washington, DC 20515

Dear Mr. Failla:

We are concerned about the handling of sexual harassment cases in each of the Legislative Branch agencies. Therefore, we ask that you investigate the sexual harassment cases reported within the Architect of the Capitol (AOC) organization over the last ten years and the outcomes of those cases, whether reported through its Equal Employment Opportunity Office, Human Capital Management Division, Office of the General Counsel, or Office of the Inspector General. The Office of the Inspector General should take appropriate measures to protect the privacy of individuals during its investigation.

We would like to know whether or not the AOC has internal regulations and policies that adhere to a standard set of best practices for handling reports of sexual harassment. Furthermore, to the extent you are able to gather this information, we would like to know how many AOC employees have filed complaints through the Office of Compliance (OOC) and the outcomes of those cases.

This investigation should also include a review of the AOC's internal regulations and policies regarding sexual harassment training for all employees, as well as advanced training for managers and/or supervisors regarding the proper handling of complaints from staff.

While we understand and appreciate the volume of work your office is currently undertaking and your limited resources, we do view this as a priority and ask that you focus as much time and attention on responding to our request as is practicable at this time.

Sincerely,

  
Roy Blunt  
Chairman

  
Amy Klobuchar  
Ranking Member



**Office of Inspector General**  
499 South Capitol Street, SW, Suite 518  
Washington, DC 20515  
202.593.1948  
[www.aoc.gov](http://www.aoc.gov)

October 15, 2018

The Honorable Roy Blunt, Chairman  
The Honorable Amy Klobuchar, Ranking Member  
Committee on Rules and Administration  
United States Senate  
Washington, DC 20510

Dear Mr. Chairman and Ranking Member Klobuchar:

I received your letter dated October 5, 2018, requesting the Architect of the Capitol (AOC) Office of Inspector General (OIG) investigate the handling of sexual harassment cases reported at the AOC over the last 10 years and the outcomes of those cases. We take this tasking very seriously, and I have assigned AOC OIG Special Agent Marnie Crane to lead this inquiry.

My intent is to provide you and your committee an informational report outlining the number of sexual harassment cases reported; the number of cases reported and investigated in each AOC jurisdiction; the outcome of the sexual harassment cases investigated; the number of AOC employees against whom multiple accusations have been made; and the employment status of each accused employee.

The inquiry will also include a review of the AOC's internal regulations and policies, including policies regarding sexual harassment training for all employees as well as advanced training for managers and/or supervisors regarding the proper handling of complaints from staff, compared with standard best practices for the handling of sexual harassment allegations.

I appreciate your confidence in the AOC OIG in undertaking this task and hope to provide this informational report in the next several weeks. I will keep the Senate Rules Committee staff informed of our progress during my monthly meetings.

Sincerely,

Christopher P. Failla, CIG  
Inspector General

cc: The Honorable Stephen T. Ayers, FAIA, LEED AP, Architect of the Capitol  
Christine A. Merdon, PE, CCM, Chief Operating Officer

## **Acronyms and Abbreviations**

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AOC	Architect of the Capitol
CAA	Congressional Accountability Act
CAO	Chief Administrative Officer
CHCO	Chief Human Capital Officer
CS	Confidential Source
CVC	Capitol Visitor Center
DI/DR	Diversity, Inclusion and Dispute Resolution Office
EEO	Equal Employment Opportunity Office
EEOC	Equal Employment Opportunity Commission
EEO/DP	Equal Employment Opportunity and Diversity Programs Office
ELT	Executive Leadership Team
HCMD	Human Capital Management Division
ITD	Information Technology Division
OGC	Office of General Counsel
OIG	Office of Inspector General
OOC	United States Congress Office of Compliance
POSH	Prevention of Sexual Harassment
SA	Special Agent

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United States Government

## MEMORANDUM

DATE: April 9, 2019  
TO: Christopher P. Failla, CIG  
Inspector General  
FROM: Christine A. Merdon, P.E.  
Acting Architect of the Capitol   
SUBJECT: Response to Office of Inspector General Sexual Harassment Inquiry

Thank you for providing your report on the Architect of the Capitol (AOC) responses to sexual harassment in the workplace. I sincerely appreciate your assessment. It is important to me that every employee feels safe at work every day, and no form of harassment should be tolerated.

As the Acting Architect of the Capitol, I am proud that you highlighted the fact that the "AOC has engaged in continual and largely successful efforts to meet the needs of its mission and its employees as it pertains to sexual harassment issues." These efforts include policy improvements, management-supported cultural change initiatives and continuous improvements to agency-wide training.

The agency has made great strides in improving the work culture, and this is reflected in our selection as one of the 2018 Best Places to Work in the Federal Government rankings by the Partnership for Public Service among midsize federal agencies. In addition to annual mandatory prevention of sexual harassment courses, I have emphasized our AOC Chooses Civility campaign since becoming the Acting Architect of the Capitol. This campaign focuses on 10 specific actions employees can take to foster respect in the workplace, and the Office of Congressional Workplace Rights (OCWR) has featured AOC Chooses Civility in a recent OCWR newsletter as a model for others to follow. I also swiftly established a confidential hotline, coordinated additional training and met with the leaders of OCWR to demonstrate my commitment to providing a safe and respectful workplace.

I appreciate your support for organizational change to have the office of Diversity, Inclusion and Dispute Resolution report directly to the Architect of the Capitol, since such a framework is the standard in other federal equal employment opportunity offices. We have already made progress on some of the report recommendations and are focused on implementing additional changes. I also appreciate your support for the agency's greater organizational restructuring plans to provide additional oversight, stronger management and better accountability.

Again, thank you for your thoughtful review. I look forward to continuing to work with you and will be making changes within the AOC to affect a culture change to ensure all our employees feel comfortable and confident to do their very best work on behalf of the American people.