

Johannesburg Society of Advocates
Sexual Harassment Policy

PREAMBLE

Whereas:

- the values of dignity and equality are foundational to the Constitution of the Republic of South Africa;
- the rights to dignity, equality and to be free from all forms of unfair discrimination, to bodily and psychological integrity and to practice any profession in a safe working environment are protected in the Bill of Rights;
- sexual harassment and related misconduct undermine these values and result in a violation of these rights.

Recognising that:

- The profession of advocates holds a respected position in society and plays an important role in the protection of the rule of law and the rights enshrined in the Constitution;
- Advocates accordingly hold themselves to a high standard of professional ethics and conduct;
- The profession is not immune from sexual harassment and its effects and as a collective has committed itself to its eradication;
- Sexual harassment persists at the Johannesburg Society of Advocates (‘JSA’) and South African society at large;
- Sexual harassment is a form of professional misconduct;
- The JSA, all constituent Groups and members have a responsibility to maintain a work environment that is free from and in which members are protected from all forms of sexual harassment;
- A broader culture of patriarchy and enduring sexism has historically and continues to influence the profession’s structural response to discrimination based on sex and members’ behaviour;
- Power differentials between colleagues within the legal profession generally and the advocates’ profession specifically are entrenched, unique and can be significant.

And further recognising that:

- sexual harassment affects women, men and gender non-binary people regardless of their sexual orientation or gender identity;
- women have historically been disproportionately affected by sexual harassment;
- secondary victimisation is as serious, and in some circumstances can be more serious, than sexual harassment, and unless specifically addressed, will have the effect of deterring complainants and others from speaking out.

And acknowledging that in order appropriately and effectively to respond to sexual harassment and related misconduct, a system must be adopted that:

- engenders the trust and respect of the community it serves;
- creates complaints mechanisms and procedures that are properly resourced, effective and expeditious;
- appropriately balances the need to eradicate sexual harassment and protect members with the specific needs and wishes of any complainant;
- ensures that the rights of those accused of sexual harassment, including to procedural fairness, are protected;
- is supported with adequate training and counselling;
- is monitored and evaluated on an ongoing basis.

The JSA adopts this policy.

1. **Definitions, tests and interpretation**

- 1.1. “**Sexual harassment**” is unwelcome conduct of a sexual nature, or other related unwelcome conduct based on the gender or sexual orientation of the complainant, which has the purpose or effect of violating the complainant’s rights and dignity, or creating an uncomfortable, degrading, humiliating, or hostile situation or environment.
- 1.2. “**Conduct**” may take the form of non-verbal, verbal and / or physical conduct. A single instance of conduct may qualify as sexual harassment. Conduct need not be ongoing or persistent to constitute sexual harassment.
- 1.3. “**Unwelcome conduct**” is conduct that is not wanted, or is perceived by the complainant to be demeaning, compromising, embarrassing, threatening or offensive, even where the alleged perpetrator did not intend their conduct to be unwelcome.
- 1.4. The essence of sexual harassment is that it is conduct unwelcome to the recipient. This should be the guiding principle in interpreting this policy for those making complaints, refuting allegations, or adjudicating claims of sexual harassment.

- 1.5. In considering whether conduct is unwelcome, regard must be had to the difference in power that is often present between a senior and junior colleague, mentor and pupil, or any other power differential. A colleague's apparent voluntary participation in, or failure to object to, conduct with an individual in a position of power does not on its own demonstrate that the conduct was welcome.
- 1.6. The test for determining whether conduct creates an uncomfortable, degrading, humiliating or hostile situation or environment is partly subjective and partly objective. The fact that one person may be able to ignore or deal comfortably with certain behaviour does not mean that it is acceptable if directed to another.
- 1.7. Without derogating from the generality of the definition of sexual harassment in 1.1, the following constitute specific forms of sexual harassment:
 - 1.7.1. special victimisation, where a person is victimised or intimidated for failing to submit to sexual advances;
 - 1.7.2. *quid pro quo* harassment, where a person influences or attempts to influence a person's professional or employment circumstances and/or opportunities by coercing or attempting to coerce that person to engage in sexual activities.
- 1.8. "Schedule A" contains an illustrative list of examples of verbal, non-verbal and physical conduct that may constitute sexual harassment.

2. **Application and Scope of the Policy**

- 2.1. This policy applies where a member of the JSA is an alleged perpetrator of sexual harassment or related misconduct irrespective of whether the aggrieved person is a member of the JSA or not.
- 2.2. Subject to 2.5, this policy also applies where an aggrieved person in respect of sexual harassment or related misconduct is a member of the JSA irrespective of whether the alleged perpetrator is a member or not.
- 2.3. Without limitation of the above, the policy is applicable in the following places and circumstances:
 - 2.3.1. All places where the business of the JSA and its members is being conducted (including Court buildings);
 - 2.3.2. All professionally-related activities, including social activities and other events or functions, performed at any other site, including under the auspices of another professional body similar to the JSA;
 - 2.3.3. Any other place where the conduct in question is between members of the JSA and has an impact on a member's professional life.
- 2.4. Any reference in this policy to a member of the JSA includes a pupil member.

- 2.5. Where a grievance is lodged by any member of the JSA against an alleged perpetrator who is not a member of the JSA, the JSA shall be obliged to assist the aggrieved person by facilitating the pursuit of an informal complaints procedure, by referring them to an appropriate body for resolution and / or where appropriate to provide assistance and support to the final resolution of any such grievance.
- 2.6. This policy shall be the policy of the JSA. Groups are encouraged to adopt this policy as their Group policy or where they wish to adopt their own policy, to adopt one that is either consistent with or enhances this policy.
- 2.7. Where an officer or structure contemplated by this body assumes jurisdiction under this Policy and it subsequently transpires that the conduct constitutes or also entails harassment proscribed under the JSA General Harassment Policy or other conduct over which the JSA has jurisdiction, but not specifically under this Policy, the officer or structure that assumes jurisdiction shall be deemed to have jurisdiction under this policy and a complainant will not be obliged to initiate a new complaint.

3. Professional misconduct

- 3.1. Sexual harassment constitutes professional misconduct.
- 3.2. The following forms of related conduct constitute professional misconduct (**‘related misconduct’**) and are subject to the same sanctions and grievance and complaints procedures for sexual harassment set out in this policy:
 - 3.2.1. victimisation;
 - 3.2.2. intimidation;
 - 3.2.3. penalisation;
 - 3.2.4. less favourable treatment; or
 - 3.2.5. similarly prejudicial treatment to the above;of a person (including but not limited to an SHO) for lodging a grievance, reporting sexual harassment, initiating a complaint or otherwise implementing or participating in the implementation of this policy.
- 3.3. The JSA recognises that the effects of related misconduct can be as or more serious than sexual harassment.
- 3.4. Where a reference is made in this policy to sexual harassment, it should be interpreted to include a reference to related misconduct.
- 3.5. To the extent that this policy recognises other forms of professional misconduct, infractions shall be subject to the usual disciplinary procedures of the JSA.

4. Sexual Harassment Officers (SHO)

- 4.1. Sexual Harassment Officers (SHOs) will be appointed as a core mechanism for implementation of this policy. All SHOs are appointed for a five year renewable term.
- 4.2. The Bar Council must appoint a minimum of two JSA SHOs.
- 4.3. The JSA shall request every Group to appoint a minimum of 2 SHOs from among their members.
- 4.4. When the JSA or Groups appoint SHOs, it is desirable that at least one male and one female SHO is appointed.
- 4.5. The JSA must publish the names and contact details of all JSA and Group – appointed SHOs on its website.
- 4.6. SHOs shall be responsible for:
 - 4.6.1. Promoting awareness and facilitating access to training of members of the JSA and their Groups on sexual harassment and this policy.
 - 4.6.2. Receiving grievances.
 - 4.6.3. Providing assistance contemplated in 2.5 above.
 - 4.6.4. Assisting aggrieved persons by advising on available complaints procedures and the processes contemplated by this policy.
 - 4.6.5. Receiving informal complaints and take such steps as are necessary to facilitate the finalisation of the informal procedure.
 - 4.6.6. Assisting a complainant to lodge a formal complaint with a Group or the JSA.
 - 4.6.7. Providing support to a complainant throughout informal or formal complaints procedures, providing first response counselling and assisting a complainant to access counselling services where appropriate.
 - 4.6.8. Where requested, to provide guidance to a member who may request guidance on whether their conduct or intended conduct constitutes proscribed conduct under this policy
 - 4.6.9. In appropriate cases, initiating a formal complaint or otherwise escalating a matter or complaint to the JSA, Legal Practice Council or other appropriate body.

- 4.6.10. In consultation with a complainant or other affected person, monitoring whether any related misconduct occurs and assisting, advising and supporting the complainant or other person in respect thereof.
- 4.6.11. Monitoring and periodically reporting to the JSA in respect of the effectiveness and implementation of the Policy;
- 4.6.12. Performing any other function of an SHO contemplated by this policy.
- 4.7. An SHO shall treat all discussions and communications as confidential, subject to clause 6 and the sub-clauses therein.
- 4.8. The Chairperson of the Bar Council shall be responsible for ensuring that SHOs are appointed and shall be obliged, together with the Bar and Group leadership structures, to assist SHOs in the exercise of their duties and functions.
- 4.9. The JSA shall ensure that SHOs are trained (and periodically re-trained) by a suitably qualified external service provider or providers. The purpose of this training shall be to equip SHOs to fulfil their functions as set out in this policy in line with best practice.
- 4.10. The JSA shall provide funding for the training and support of SHOs.
- 4.11. The process for the appointment and replacement of SHOs at Group- and Bar-level shall be determined by the Bar Council and the Group leadership, respectively, provided that the process adopted does not undermine, and adheres to, this policy.

5. Standing Committee on sexual harassment and related misconduct

- 5.1. The JSA shall establish a standing committee on sexual harassment and related misconduct which is sub-committee of the Bar Council and which shall be chaired by a suitable member of the JSA. Standing committee members are appointed for a five year renewable term.
- 5.2. In each year, the Chairperson of the Bar Council shall designate a suitable member of the Bar Council to be responsible for all liaison between the Bar Council and the standing committee. The member so designated by the Chairperson of the Bar Council shall have undergone the training for SHOs or members required by this policy.
- 5.3. An SHO may serve as a member of the standing committee.
- 5.4. The functions of the standing committee are:
 - 5.4.1. To appoint a suitable persons to investigate and prosecute formal complaints and to appoint panel members to preside over the prosecution of formal complaints.

- 5.4.2. To arrange training of SHOs and members.
 - 5.4.3 To provide assistance contemplated by 2.5 above.
 - 5.4.4 Where appropriate, to assist a complainant to source suitable legal representation in any formal proceedings.
 - 5.4.5 To develop procedural guides in line with good practice in respect of the resolution of complaints.
 - 5.4.6. To facilitate engagement between SHOs and between members, SHOs, the JSA and other relevant bodies as required to implement this policy.
 - 5.4.7. To assist the JSA and Groups to source appropriate external service providers where required to implement this policy.
 - 5.4.8. To develop relationships with non-governmental organisations and other organisations with appropriate experience.
 - 5.4.9. With the assistance of SHOs, to monitor the prevalence of sexual harassment within the advocates' profession, to identify patterns in respect of grievances and complaints in terms of this policy.
 - 5.4.10. To report annually to the JSA on the implementation of the policy, budgetary requirements and to make any recommendations (within two months of any AGM) to improve the profession's response to sexual harassment or the policy.
 - 5.4.11. To perform any other function required of it by the Bar Council or necessary to give proper effect to this policy.
- 5.5. The process for the appointment and replacement of members of the standing committee shall be determined by the Bar Council, provided that the process adopted does not undermine, and adheres to, this policy.

6. Complaints Procedures

6.1. General

- 6.1.1. There are two kinds of complaints procedures: informal and formal. The purpose of the informal procedure is to provide a non-adversarial process to resolve a complaint through dialogue or agreement. The purpose of a formal procedure is to provide a fair process specifically suited to sexual harassment matters through which the allegations of a complainant are tested and appropriate sanctions are imposed for sexual harassment and related misconduct.

- 6.1.2. Disciplinary sanctions may only be imposed by the JSA or a Group after a formal complaints disciplinary procedure has been followed.
- 6.1.3. The choice of complaints procedure usually rests with the complainant. However, an SHO may initiate a formal complaint procedure against the wishes of a complainant in an appropriate case subject to 6.5 below.
- 6.1.4. Where an informal complaint is lodged, a complainant may claim anonymity and require that their identity not be disclosed to any person other than the SHO or other person who may be dealing with the complaint. Where a formal complaint is lodged, and to ensure procedural fairness, anonymity (towards the alleged perpetrator) may not be claimed by a complainant and the identity of the parties involved must be disclosed to those involved including the alleged perpetrator.
- 6.1.5. A person aggrieved by sexual harassment or related misconduct may approach any SHO for assistance.
- 6.1.6. A complainant may elect to lodge a complaint with a Group or with the JSA. Where the complainant and alleged perpetrator belong to the same Group (as members of that Group, staff employed by that Group, or similar), it may be appropriate for complaints to be resolved at a Group level. However, where a complainant wishes to make the complaint directly to the JSA, they are free to do so. Where the complainant and the alleged perpetrator do not belong to the same Group (e.g. they are members of or employed by different Groups, or the complaint may involve a person employed by the JSA), it may be more appropriate for complaints to be resolved at JSA level. Notwithstanding anything to the contrary in this clause, the election as to where to lodge a complaint lies with a complainant.
- 6.1.7. Nothing in this policy limits the right of an aggrieved person to approach the Legal Practice Council for the purpose of lodging or resolving a complaint or to pursue any other remedy.

6.2. Duties of an SHO when receiving a grievance

- 6.2.1. When approached by an aggrieved person, an SHO must advise and explain:
 - 6.2.1.1. That there are informal and formal complaints procedures;
 - 6.2.1.2. That they can choose which to follow subject to what is provided for in the policy;
 - 6.2.1.3. That they may pursue a formal procedure if the informal procedure fails to secure a satisfactory outcome for the complainant;

- 6.2.1.4. The role of the SHO during the complaints process and that the SHO assisting may not be called as a witness during a complaints procedure;
 - 6.2.1.5. That the JSA and Groups are obliged to protect a complainant from facing any adverse consequences if a complaint is pursued and what remedies are available for secondary victimisation;
 - 6.2.1.6. That anonymity may only be claimed vis-a-vis an alleged perpetrator in an informal procedure;
 - 6.2.1.7. That they are entitled but not obliged to require that confidentiality be maintained in respect of a complaint subject to the SHO's and JSA's rights and duties of disclosure set out in this policy;
 - 6.2.1.8. That no negative inference on his/her credibility will follow as a result of late reporting, if applicable;
 - 6.2.1.9. What counselling and emergency medical services are available and how to access independent counselling services;
 - 6.2.1.10. That they have a right to refer a matter to the SAPS;
 - 6.2.1.11. That they have a right to obtain legal advice.
- 6.2.2. An SHO must thereafter assist an aggrieved person who wishes to lodge a complaint or to provide the assistance contemplated in the policy and perform the SHO's other duties in terms of this policy in respect of the matter.

6.3. Informal Complaints Procedure

- 6.3.1. In the informal complaints procedure, a complainant may request either:
- 6.3.1.1. That a complaint be addressed in a non-adversarial manner.
 - 6.3.1.2. That a complaint be addressed by the SHO directly with the alleged perpetrator without the further involvement of the complainant.
- 6.3.2. The informal procedure may include, but is not limited to:
- 6.3.2.1. An approach to the alleged perpetrator with information that certain forms of conduct constitute sexual harassment;

- 6.3.2.2. A discussion where the objective is to give the alleged perpetrator an opportunity to apologise;
 - 6.3.2.3. Mediation;
 - 6.3.2.4. The presentation of the case to a panel of not more than 3 persons (including the SHO) convened by the SHO in consultation with the Chairperson of the JSA and / or Group Leader, as appropriate, to consider suggestions and to make recommendations that may achieve a resolution based on agreement between the alleged perpetrator and the complainant.
- 6.3.3 Every endeavour must be made to conclude the informal procedure within thirty days of the incident being reported to the SHO.
- 6.3.4. Should the informal procedure fail, the complainant has the right to pursue a formal complaints procedure. An informal procedure shall be regarded as having failed if the outcome is not satisfactory to the complainant and is recorded as such. The choice of a complainant initially to pursue informal proceedings shall not be regarded as diminishing the seriousness or importance of the complaint.
- 6.3.5. The SHO shall record only the following information for the JSA's records in respect of informal complaints procedures, which may be published by the JSA in its discretion unless the complainant requests that the information remains confidential:
- 6.3.5.1. The fact that the informal procedure was initiated;
 - 6.3.5.2. Subject to a complainant's request for anonymity, the names of the participants, their gender and seniority;
 - 6.3.5.3. The date, time and location of the alleged incident(s);
 - 6.3.4.4. The outcome of the informal procedure, if any, and whether the outcome is satisfactory to the complainant.
- 6.3.6. On the request of a complainant and subject to Clause 6.3.5, strict confidentiality shall be maintained in respect of any informal procedure, and it shall be a disciplinary offence to breach this confidentiality.
- 6.3.7. Save for the information referred to 6.3.5 above, no part of the proceedings of an informal procedure may be used as evidence in any subsequent formal complaints or other disciplinary procedure.

6.4. Formal Complaints to the JSA and Groups

- 6.4.1. A formal complaint to the JSA shall lie directly to the Bar Council.
- 6.4.2. Where a complainant wishes to proceed with a formal complaint to the JSA, they shall, either directly or through an SHO, advise the chair of

the standing committee of this, and prepare and sign a written statement providing full particulars of the alleged sexual harassment or related misconduct.

- 6.4.3. Upon receipt of the statement referred to above, the standing committee shall appoint a panel of three members of the JSA (“**the panel**”), including one member to serve as the Chair of such a panel, to determine the complaint, record its findings and make recommendations to the Bar Council in respect of an appropriate sanction. Two members of the panel must be SHOs.
- 6.4.4. The standing committee must designate and appoint a suitable person to investigate and prosecute the complaint. This must be a person with knowledge and experience in matters relating to gender based violence and / or gender equity and could be any SHO, any member of the standing committee or any other suitable person.
- 6.4.5. The panel must observe the principles of natural justice in the performance of its functions.
- 6.4.6. The alleged perpetrator will be requested to submit a statement responding to the complainant’s allegations.
- 6.4.7. The panel may request the complainant to furnish the names of other individuals whom the complainant believes may have knowledge concerning the incident or similar incidents.
- 6.4.8. If the panel believes that potential witnesses will be helpful in resolving the matter, it will conduct interviews with those witnesses.
- 6.4.9. A complainant or an alleged perpetrator is entitled to legal representation.
- 6.4.10. In recognition of the principle that fairness depends on the circumstances of each case, the Chairperson of the panel, in consultation with the other members of the panel, shall determine the panel’s procedures in respect of each complaint. The Panel may follow either an adversarial or inquisitorial process but must consider the appropriateness of following an inquisitorial process where requested by a complainant.
- 6.4.11. Without derogation, the Chair may determine the following matters as part of the procedure:
 - 6.4.11.1. Whether an alleged perpetrator will be permitted to cross-examine a complainant, and if so, whether directly or through their legal representative;
 - 6.4.11.2. Whether questions should be addressed to a complainant only in writing or through a member of the Panel;

- 6.4.11.3. Whether any special measures to protect the complainant or witnesses are required (such as allowing the complainant or a witness to participate via video-link or any other measures).
- 6.4.12. It is the complainant's election whether a hearing, or any part thereof, should be held *in camera* and whether any portion of the proceedings, including shall remain confidential.
- 6.4.13. It is also the complainant's election whether their identity be redacted from any record of the JSA in respect of the complaint and its determination.

6.5. Duties of SHO where no complaint is pursued by a complainant

- 6.5.1. The JSA has a duty to eradicate sexual harassment and to protect persons against sexual harassment within its sphere of influence.
- 6.5.2. Where any member of the JSA has reason to believe that sexual harassment has occurred but has not been reported by the affected person, the member is encouraged to discuss the matter with an affected person and (either alone or together with the affected person) to report it to an SHO or the standing committee.
- 6.5.3. If an SHO or standing committee member receives a report in terms of section 6.5.2 or if an aggrieved person has reported an incident but the member or aggrieved person does not wish to pursue a complaint, the SHO or standing committee member, as the case may be, must consider whether or not to initiate a formal complaint. In doing so, the aggrieved person may not be forced to lodge a complaint and the following factors must be considered:
 - 6.5.3.1. The risk to any person including the person who reported the incident if no complaint is initiated.
 - 6.5.3.2. The nature or seriousness of the alleged conduct;
 - 6.5.3.3. The history of the alleged perpetrator with regard to previous cases and complaints including but not limited to this policy.
- 6.5.4. The SHO or standing committee member must, when considering whether to initiate a complaint, be sensitive and have due regard to the wishes of the complainant and the potential impact of the decision on reporting of complaints.
- 6.5.5. If the SHO or standing committee member decides to initiate a complaint under this section it must advise the person reporting the incident and the complainant (if different). A complaint is initiated by

an SHO by lodging a written report to the chair of the standing committee.

6.5.6 If a complaint is pursued, the procedures and protections in 6.3 and 6.4 shall apply, with the necessary changes.

7. Duties of the Bar Council

7.1. The Bar Council retains ultimate responsibility for the effective implementation of this policy.

7.2 The Bar Council has the following specific responsibilities:

7.2.1 To impose an appropriate sanction in respect of the findings of a panel after observing the principle of natural justice.

7.2.2 To report annually to the membership of the JSA on the prevalence of sexual harassment and related misconduct, the implementation of the policy and make recommendations for any necessary amendments.

7.2.3 To maintain all records relating to formal complaints and the records relating to informal complaints contemplated by 6.3.5 above.

7.2.4 Where appropriate, to make information available to its membership and the public relating to the complaints, findings and sanctions. No information revealing the identity of a complainant may be made known to the membership or public without the consent of the complainant unless the interests in protecting the general membership in doing so clearly outweigh the interests of the complainant.

7.2.5 To refer information relating to any findings against a candidate for conferment of silk or appointment to the judiciary (whether on an acting or permanent basis) to the responsible recommending or appointing body.

7.2.6 Where appropriate, to inform the Legal Practice Council about complaints against members and their outcome.

8. Sanctions

8.1. Sexual harassment and related forms of misconduct are forms of serious professional misconduct. Conduct that is perceived by some to be innocuous can have serious adverse consequences. Any sanction must, nevertheless, be appropriate to the circumstances of a particular case.

8.2. In addition to any other sanction that may be imposed by the JSA, the JSA may make the following orders and determinations and / or impose the following sanctions, either alone, or in combination, after a person has been found guilty of sexual harassment or related misconduct:

- 8.2.1. An order to undergo appropriate, sexual harassment, diversity and / or gender sensitivity training;
- 8.2.2. An order to pay a contribution to the Bar Council which shall be used for purposes of implementing this policy or the Transformation Fund .
- 8.2.3. Suspension from the JSA;
- 8.2.4. Expulsion from the JSA;
- 8.2.5. An order to pay part or all of the costs of the complaints procedure or any part thereof including of any legal costs or any failed informal complaints procedure;
- 8.2.6. An order to pay part of all of the costs of any counselling and/or therapeutic and/or medical costs required by a complainant;
- 8.2.7 An order to refrain from contact;
- 8.2.8 An order to take such steps or to refrain from taking such steps as are necessary to ensure that the complainant's advancement in the profession or access to work is not prejudiced.
- 8.2.8 Any other appropriate sanction.
- 8.3. The findings of a formal disciplinary proceeding must be put to the alleged perpetrator at any interview they may have for (a) the conferral of Senior Counsel status; and (b) any assessment by the JSA for judicial appointment, and they must be invited to comment or respond thereto.
- 8.4 The above section applies to sanctions imposed by Groups with the necessary changes. A Group may impose any other appropriate sanction contemplated by its Constitution.

9. **Pupils**

- 9.1. Pupillage is a period of professional training characterised by a relationship of trust between the pupil-mentor and the pupil under supervision and assessment. The JSA regards it as inappropriate for a sexual relationship to exist between a pupil-mentor and a pupil.
- 9.2 Where there is the potential for such a relationship to exist, there is a duty on the part of the mentor to report the relationship to the Chair of the Pupillage Committee (which report shall be treated as confidential), and the Chair of the Pupillage Committee shall immediately allocate the pupil a new mentor in discussion with the pupil.
- 9.3 Where a pupil initiates a complaint about sexual harassment or related misconduct against their mentor, the pupil should immediately be allocated a new mentor.

9.4. In such circumstances, the SHO or standing committee member receiving the complaint:

9.4.1 Must explain that the lodging of the complaint and allocation of a new mentor will not affect the pupil's overall assessment;

9.4.2 Must immediately liaise with the Chair of the JSA Pupillage Committee regarding the change of a pupil's mentor, which must be attended to as a matter of urgency.

10 Undesirable conduct

10.1 It is generally undesirable for members in a senior / junior relationship who are on brief in the same matter to engage in a sexual relationship. This does not apply to members who are in established relationship or where the members are in an equal relationship of power.

11. Malicious complaints

11.1 Lodging a complaint or reporting sexual harassment under this policy maliciously constitutes unprofessional conduct. A complaint under this section may not be pursued until any complaint about sexual harassment has been finalised. The fact that a complaint may be withdrawn or does not result in an adverse finding may not be relied upon as the basis for lodging a complaint under this section.

12. Appeal

12.1. The ordinary appeal procedures of the JSA shall apply to decisions made in terms of this policy.

13. Counselling and Training

13.1. Within 3 months of the adoption of this policy, the JSA is to identify suitable service providers to undertake the following services:

13.1.1. Counselling services where a complainant has no access to counselling services of their own or requires assistance accessing counselling services;

13.1.2. Mediation services;

13.1.3 Training services for all members, including pupil members (whether via a train the trainer model or otherwise).

13.2 The JSA shall provide training as follows:

13.2.1. All pupil members during their pupillage;

13.2.2. All existing members within two years of the adoption of this policy with priority to training senior members in awareness of sexual harassment and related misconduct;

13.2.3. All new members within two years of their becoming members of the JSA;

13.2.4. Voluntary refresher training available to all members annually.

13.3 The training in 13.2.1 to 13.2.3 above shall be mandatory. Failure to participate in or complete the training within two years of the roll-out of the training by the JSA:

13.3.1. shall be deemed misconduct;

13.3.2. shall be regarded as an aggravating factor in considering any sanction if a member is found guilty of sexual harassment or related misconduct.

14. Consequential Amendments to JSA Rules

14.1. This policy shall take immediate effect upon adoption and shall be adopted with a budget for immediate implementation.

14.2 Any necessary consequential amendments to the JSA Rules and that are required in order to give effect to this policy shall be effected within 3 months of its adoption or such extended period as the Chairperson of the JSA may determine is necessary.

Schedule A: Examples of Sexual Harassment

1. Sexual harassment may include, but is not limited to, the following types of conduct:
 - 1.1. Non-verbal conduct including: gestures, behaviour with sexualised overtones, indecent exposure, and the display of, or sending by electronic or other means, sexually explicit pictures, videos or messages;
 - 1.2. Verbal conduct including: innuendos, suggestions or hints of a sexual or sexualised nature, sexual advances, sexual threats, demands or requests for sexual favours (whether or not in return for career advancement and/or junior briefs), comments with sexual overtones, sex-related jokes or insults, graphic comments about a person's body, inappropriate enquiries about a person's sex life, whistling of a sexual nature, and the sending, by electronic or other means, sexually explicit text or images;
 - 1.3. Physical conduct including: touching, sexual assault, and rape (as defined in the Criminal Law (Sexual Offences and Related Matters) Amendment Act, No. 32 of 2007);
 - 1.4. Any such conduct, be it non-verbal, verbal, or physical conduct, that targets, or has the effect of targeting, a complainant based on their gender and/or sexual orientation.
 - 1.5. Grooming, where an action or series of actions is taken in a professional context with the overall aim of befriending and establishing a relationship of trust and dependency with a person in order to facilitate sexual harassment or sexual assault.

2. Sexual harassment may, depending on the facts of a particular case and without limitation:
 - 2.1. Take the form of conduct not listed above;
 - 2.2. Combine various forms of conduct;
 - 2.3. Be conduct repeated over time which has the cumulative effect of qualifying as sexual harassment;
 - 2.4. Be conduct that occurs in a single instance.