Report and Recommendations of the Judicial Council Ad Hoc Committee to Prevent Sexual Harassment in the Judicial Branch of Government

Presented to Chief Justice Harold D. Melton, Supreme Court of Georgia

and

the Judicial Council of Georgia

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I. Executive Summary

Under the Code of Judicial Conduct, Georgia judges are prohibited from engaging in harassment and have a duty to prevent court staff and attorneys (among others) from engaging in harassment. Although the Code of Judicial Conduct sets an important baseline for judicial conduct, it appears that the majority of courts do not have separate sexual harassment policies that define prohibited conduct and create reporting and investigation processes that judicial branch employees can use if they experience or observe sexual harassment. Notably, however, judicial branch employees in many classes of courts are employed by the state, by municipalities, or by counties, and the sexual harassment policies for those government entities may apply to judicial branch employees. Similarly, most courts do not conduct regular sexual harassment training for judges and judicial branch employees, although judicial employees may receive training from a municipality or county if they are employed by those government entities.[1]

As explained more fully below in Part V.C, the practical realities of how the various classes of courts in Georgia operate—and how court staffs are employed—currently make it difficult, if not

[1] Chief Justice Harold D. Melton's February 2019 order establishing the Ad Hoc Committee to Prevent Sexual Harassment in the Judicial Branch of Government instructed the Committee to "encourage each class of court, and corresponding court councils, to establish and maintain policies to: (1) provide every judge and employee with training that addresses the various forms of workplace harassment, including sexual harassment, and related intimidation and reprisal that are prohibited by law; and (2) establish procedures for recognizing and responding to harassment and harassment complaints." Georgia's judicial branch is committed to providing a safe and respectful environment that is free from unlawful harassment and discrimination, and the Committee agrees that each court and class of court should work to prevent all types of workplace harassment in the judicial branch. However, given the focus of the Chief Justice's February 2019 order, the Committee focused its attention specifically on the prevention of sexual harassment in the judiciary.

impossible, to promulgate a single anti-harassment policy that applies uniformly to all judges and employees in all classes of court in Georgia. In addition, because of the Judicial Qualifications Commission's ("JQC") constitutional authority to "discipline, remove, and cause involuntary retirement of judges as provided by [Article VI of the Georgia Constitution]," it appears that only the JQC—and not individual courts or classes of courts—can formally discipline judges for a violation of an individual court's or court council's sexual harassment policy, if one is instated.

The Committee has nonetheless formulated a set of recommendations that courts can and should consider, and encourages individual courts and classes of court to adopt these recommendations. The recommendations include: (1) requiring judges and judicial branch employees to participate in sexual harassment training at least once every year and (2) creating or revising sexual harassment policies for individual courts or classes of court in light of best practices.

The Committee has created the following work product in addition to this report:

- Best Practices for Anti-Harassment Policies document (Appendix A)

- Classes of Court Matrix (Appendix B)

- 30-Minute Training Video for judges and judicial employees (temporarily available on the Judicial Council webpage and later available through the Institute of Continuing Judicial Education)

- Model Anti-Harassment Policies for both Appellate and Trial Courts (forthcoming)

II. Background

A. Executive Branch Efforts to Prevent Sexual Harassment

On January 14, 2019, Governor Brian Kemp issued an Executive Order on Preventing Sexual Harassment in the Executive Branch of Government. Among other things, the Executive Order directed the Georgia Department of Administrative Services to "promulgate a uniform sexual harassment prevention policy that shall apply to all Executive Branch agencies"; to develop mandatory "sexual harassment prevention training" that all Executive Branch employees would take at least once a year; to develop "sexual harassment prevention training specifically applicable to employees holding supervisory and managerial positions"; and to develop "standardized investigative training for state employees who are designated by their agency head to investigate complaints of sexual harassment." It also required each Executive Branch agency to "promptly review all complaints of sexual harassment," and the Department of Administrative Services to "develop procedures regarding investigation and resolution of sexual harassment complaints."[2]

B. Judicial Branch Efforts to Prevent Sexual Harassment

In light of Governor Kemp's January 2019 Executive Order, as well as a January 2018 resolution by the Conference of Chief

[2] The Department of Administrative Services has done so, and Executive Branch policies and trainings can be found at: https://doas.ga.gov/human-resources-administration/sexual-harassment-prevention/hr-professionals/employee-training.

Justices,[3] Chief Justice Harold D. Melton signed on February 13, 2019, an order establishing the Judicial Council Ad Hoc Committee to Prevent Sexual Harassment in the Judicial Branch of Government (the "Committee").[4] In that order, the Chief Justice asked the Committee to "convene to research, examine, and evaluate best practices and encourage each class of court, and corresponding court councils, to establish and maintain policies to: (1) provide every judge and employee with training that addresses the various forms of workplace harassment, including sexual harassment, and related intimidation and reprisal that are prohibited by law; and (2) establish procedures for recognizing and responding to harassment and harassment complaints."

Since February 2019, the Committee has met in person four times and over the phone twice and has dedicated many hours to researching, reviewing, and discussing materials relevant to the recommendations contained in this report.

III. Committee Composition

The Committee was comprised of eight judges representing each of Georgia's classes of court. In addition, four advisory members attended and contributed to Committee meetings and to this report. Please see Appendix C for a full list of Committee members and advisors.

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[3] See Conference of Chief Justices, Resolution 2, In Support of Commitment to Awareness and Training on Workplace Harassment in the Judicial Branch (Jan. 31, 2018), available at: https://www.ncsc.org/Topics/Access-and-Fairness/Workplace-Conduct/Harassment-Guide/Resolutions.aspx.

[4] The Judicial Council of Georgia develops policies for administering and improving Georgia courts and is chaired by the Chief Justice of the Supreme Court.

IV. Committee Process

The Committee met on April 11, 2019; June 14, 2019; September 18, 2019; and November 18, 2019. The Committee also conducted conference calls on October 28, 2019, and on December 2, 2019.

Over the course of nine months, the Committee gathered, reviewed, discussed, and considered sexual harassment policies from other state and federal courts and from cities, counties, courts, and judicial or court councils in Georgia. (See Appendix D for select policies reviewed.) The Committee also invited Rebecca Sullivan, Assistant Commissioner and General Counsel, Georgia Department of Administrative Services, to present about her experience helping to formulate sexual harassment prevention policies and training materials for the Executive Branch and training materials for the Legislative Branch.

The Committee spent significant time discussing each class of court: how many judges and employees comprise each class of court; characteristics unique to each class of court; and what types of sexual harassment policies and training do (and do not) exist within each class of court and/or court council. (For more on the classes of court, see Part V.C below.) Along the same lines, the Committee discussed the role of the constitutionally-created JQC—and how the constitutional authority delegated to that entity to "discipline, remove, and cause involuntary retirement of judges as provided by [Article VI of the Georgia Constitution]," affects (and potentially eliminates) the ability to impose requirements or discipline on judges by virtue of a court-wide or council-wide sexual harassment policy. See Ga. Const. Art. VI, Sec. VII, Par. VI.

It was through those discussions that the Committee realized that the complex landscape of Georgia's judiciary does not lend itself to a singular policy (let alone mandate) for the prevention of sexual

harassment. Understanding this complex landscape, and considering the research and discussion the Committee undertook, the Committee nonetheless chose to formulate a suite of recommendations that individual courts and/or court councils can adopt (or modify based on the particular characteristics and needs of a given court or class of court) when creating or updating sexual harassment policies and training.

V. Georgia's Judicial Landscape

A. Code of Judicial Conduct

Under Georgia's Code of Judicial Conduct, judges are prohibited from engaging in harassment and have a duty to prevent court staff and attorneys (among others) from engaging in harassment. Specifically, the Code of Judicial Conduct makes clear that

> [a] judge shall not, in the performance of judicial duties, by words or conduct manifest bias or prejudice, or engage in harassment, including but not limited to bias, prejudice, or harassment based upon age, disability, ethnicity, gender or sex, marital status, national origin, political affiliation, race, religion, sexual orientation, or socioeconomic status.

Rule 2.3 (B) (emphasis supplied). Moreover,

> Judges shall not permit court staff, court officials, or others subject to the judge's direction and control to do so.

Id. Additionally,

> Judges shall *require* lawyers in proceedings before the court to refrain from manifesting bias or prejudice, or engaging in harassment, based upon attributes including, but not limited to, age, disability, ethnicity, gender or sex, marital status, national origin, political affiliation, race, religion, sexual orientation, or socioeconomic status, against parties, witnesses, lawyers, or others.

See Rule 2.3 (C) (emphasis in original).

As a result, separate and apart from any court-specific, court-council-specific, municipal, county, or state policy, judges are already prohibited from engaging in harassment, may not allow "others subject to the judge's direction and control" to engage in harassment, and "shall require lawyers in proceedings before the court" to refrain from harassment.

B. Judicial Qualifications Commission

Because the JQC is vested with the constitutional authority to "discipline, remove, and cause involuntary retirement of judges," a court-specific, court-council-specific, or other policy generally cannot set forth disciplinary procedures against judges who do not comply with the relevant policy. The practical result is that the primary recourse against a judge for allegations of sexual harassment or other unlawful harassment in violation of the Code of Judicial Conduct should be sought through the JQC, and that anti-harassment policies promulgated by specific courts, judicial councils, or other government entities—though critically important for setting the tone and expectations of judges—may not be

enforceable against judges by the entities that promulgated the policies.[5]

C. Classes of Court in Georgia

The classes of trial court in Georgia are: Superior Court, State Court, Juvenile Court, Probate Court, Magistrate Court, and Municipal Court.[6] Georgia's appellate courts are comprised of the Supreme Court and the Court of Appeals. Each of the classes of trial court has its own court council.

An important realization that developed during initial Committee meetings was that the same human-resources policies do not necessarily apply to judicial branch employees within the same

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[5] As outlined in the Best Practices document contained in Appendix A, the Committee recommends that anti-harassment policies set forth "requirements" for both judges and employees. Doing so will help demonstrate each judge's ethical duty and commitment to preventing sexual harassment in the judiciary, and will encourage judges to comply with such policies and training requirements voluntarily. The Committee has recommended that judges be "required" to comply with various aspects of court-wide or court-council-wide anti-harassment policies and training requirements, even though judicial discipline ultimately rests with the JQC. The Committee notes that some other state court anti-harassment policies similarly recognize that harassment-related complaints may be made against judges through state entities like Georgia's JQC. See, e.g., Arizona Code of Judicial Administration Discrimination and Harassment policy (adopted July 18, 2018); Kansas Supreme Court Policy Prohibiting Sexual and Other Workplace Harassment (revised Jan. 2019). See also United States Court of Appeals, Policy on Equal Employment Opportunity, Discrimination, Harassment, and Employment Dispute Resolution for the Seventh Circuit (adopted May 1, 2018) (noting that "[a]lleged judicial misconduct must be addressed through a judicial misconduct complaint").

[6] Georgia's statewide Business Court is set to begin operations on January 1, 2020, and therefore is not included in this report. However, the Committee's recommendations apply equally to the Business Court once it begins operations.

class of court, let alone to employees throughout the judicial branch as a whole. That is because judicial employees in a given class of court may not be employed by the same entity, and some may not be covered by any policy at all. To make matters even more complex, the judges in a given class of court may be employed by a different entity than the employees.

Practically speaking, this means that judicial employees within the same class of court may be governed by different human-resources policies—including anti-harassment policies—and the judicial employees within a class of court may be governed by a different policy than the judges within the same class of court. These differences work against the ability to impose a uniform policy for the entire judicial branch and present difficulties such as the potential for multiple (or even conflicting) definitions of sexual harassment; different reporting requirements; different investigation procedures; and different disciplinary actions, just to name a few.

The Classes of Court Matrix contained in Appendix B provides specific information about the sources of employment for judges and employees in each class of court and illustrates the phenomenon explained above. Examples include:[7]

- In state court (150 judges), juvenile court (156 judges), probate court (194 judges), and magistrate court (471 judges), both the judges and the employees are employed by the county.

- In the Supreme Court (9 justices) and the Court of Appeals (15 judges)—both statewide appellate courts—the justices and judges and the employees are employed by the state.

[7] Data contained in this report and in the Classes of Court Matrix are accurate to the best of the Committee's knowledge as of the date of this report, and may change after that date.

- But in superior court (323 judges), judges are employed by the state, whereas employees working in the superior court are employed by the state or a county.

- And in municipal court (360 full-time and part-time judges), judges are employed by a city (or on a contract basis), whereas the employees working in municipal court may be employed by either a city or a unified government.

The Committee considered the reality of Georgia's judicial system when formulating its recommendations.

VI. Recommendations

Given all of this, the Committee recommends (1) mandating sexual harassment prevention training for all judges and judicial employees in Georgia's judicial branch and (2) creating or revising anti-harassment policies for classes of court or for individual courts.

A. Education & Training

Education is a critical aspect of preventing sexual harassment in any workplace. Yet the Committee's research revealed that almost no class of court requires regular sexual harassment prevention training for judges or for judicial employees.[8]

[8] As detailed in the Classes of Court Matrix (Appendix B), the only two classes of court that currently require training for judges are juvenile court (training conducted in May 2019) and superior court (training planned for January 2020). State, magistrate, probate, and municipal courts do not currently require regular training for judges; nor do the Supreme Court or Court of Appeals. With respect to judicial employee training, the Committee understands that the cities or counties that employ judicial employees in state, juvenile, probate, magistrate, and municipal courts may require training, which may be provided by either the city or the county.

The Committee therefore recommends that **courts (and/or court councils) mandate that judges and judicial branch employees participate in sexual harassment prevention training at least once every year**. And because this recommendation does not appear to conflict with relevant policies currently in place in courts or court councils, it may be able to be implemented uniformly across classes of court.[9]

Specifically, and as detailed in the Best Practices document found in Appendix A, the Committee recommends that:

- **All new judicial employees receive sexual harassment prevention training within a set period of time after their employment begins**;

- **Current judicial employees be required to receive sexual harassment prevention training at least once every year**; **and**

- **Judges be required to receive sexual harassment prevention training at least once every year**.

Understanding that training can be costly, and that in-person training may not be realistic for every court in Georgia's 159 counties on a yearly basis, the Committee has partnered with the Department of Administrative Services to create a 30-minute video that judges and judicial branch employees can view remotely to learn about (and thus help prevent) sexual harassment. The video is free and will soon be available through the Institute of Continuing

[9] The Committee also notes that some classes of courts have approved uniform rules that impose on judges continuing judicial education requirements, as well as consequences—up to and including sanctions—for judges who do not fulfill those requirements. See, e.g., Uniform Superior Court Rule 43; see also Uniform State Court Rule 43.

Legal Education. At the very least, this video can be used for new employee training and for judges' and employees' required training.

The Committee also recommends that courts (or classes of court) investigate and, when possible, arrange periodic in-person training about, sexual harassment prevention that is specific to that court (or class of court). Courts may wish to consult the Administrative Office of the Courts, the Institute of Continuing Judicial Education, or the Institute of Continuing Legal Education to learn more about in-person trainings.

B. Implement or Update Anti-Harassment Policies

The Committee's research also highlighted the dearth of sexual harassment prevention policies implemented in individual courts and classes of courts. To that end, only two courts (the Supreme Court and the Court of Appeals), one court council (the Council of Superior Court Judges), and the Administrative Office of the Courts currently have anti-harassment policies in place.[10]

At first blush, the lack of individual and class-wide court policies might suggest a need to require individual courts or classes of courts to adopt anti-harassment policies. But because of the complex judicial landscape in Georgia described above—and particularly because some judicial branch employees are already bound by other government entities' sexual harassment policies, mandating court-specific policies would likely create discord to the extent the court's policy conflicted with whatever policy already applied to the judicial branch employees serving that court. Courts

[10] In addition, the probate court judges council does not have its own anti-harassment policy but judges are covered by the relevant county's policy, and municipal policies may apply to municipal judges. Also note that in those courts where no court-wide or council-wide policy exists, judicial employees may be bound by their employer's (i.e., municipality's or county's) anti-harassment policies. See Classes of Court Matrix, Appendix B.

should therefore be mindful of other applicable policies (including, for example, state, county, and municipal policies), and should not adopt policies that would impermissibly conflict with applicable state or federal law, or with other applicable policies, when creating or revising their own sexual harassment prevention policies.

Notwithstanding this complexity, however, the Committee recognizes that there is a need and an opportunity for courts and court councils to make headway in creating or updating sexual harassment prevention policies for judicial branch employees and for judges.[11] Accordingly, the Committee makes the following recommendations with respect to individual court or class-of-court sexual harassment policies:

- **For all courts or classes of court in which judges have not been instructed about a reporting or investigation policy for claims of sexual harassment,** the Committee recommends that the court or class of court review the models and best practices contained in this report and implement a policy that promotes a consistent and uniform system—which the judges agree to follow—for reporting and investigating claims of sexual harassment.

- **For courts or classes of court in which judicial employees are not covered by a sexual harassment policy**, the Committee recommends that the court or class of court create and implement a policy based on the models and best practices contained in this report. When possible, adopting a class-wide policy is most desirable

[11] As explained above, the Committee hopes that the findings and recommendations contained in this report encourage judges across Georgia to voluntarily submit to court-specific or class-of-court-specific sexual harassment policies, which will help ensure that all courts throughout Georgia's judicial branch are free of harassment.

because it will promote consistency in reporting, investigation, and discipline for employees within the same class of court. Class-wide policies can be adopted through a class of court's judicial council.

- **For courts in which judicial employees are already covered by a sexual harassment policy** (likely a municipal, county, or state policy), the Committee recommends that the court or class of court review the models and best practices contained in this report; evaluate the policy that applies to their judicial employees; and, as needed, work with the relevant government entities to revise and update their sexual harassment policies in light of best practices.

- **For all courts that rely on independent contractors to provide any kind of service for the court**—which likely includes many courts—the Committee recommends that, consistent with the best practices set forth in Appendix A, the court review contracts to ensure that independent contractors are bound by the court's sexual harassment policy. If a court relies on independent contractors but is not the entity that has authority to draft or modify contracts, the Committee recommends that the court work with the relevant entity to do so as needed.

To assist in this process, the Committee has created, or is in the process of creating, the following materials:

1. **Best Practices for Anti-Harassment Policies (Appendix A):** This document, which reflects the research and discussion the Committee undertook over the past nine months, sets forth more than two dozen best practices that

the Committee agrees Georgia courts (or classes of courts) should consider when crafting their own anti-harassment policies.

2. **Model Appellate Court Policy:** The Committee thought it would be helpful if Georgia courts had access to model policies to consider when formulating sexual harassment prevention policies. Recognizing that there are some differences between trial and appellate courts, the Committee sought to put forth one model appellate court anti-harassment policy and one model trial court anti-harassment policy.

   To that end, and in light of the Committee's recommendations, the Supreme Court has reexamined, and is in the process of updating, its anti-harassment policy. Although the revised policy has not yet received final approval, the Court anticipates approving a new policy by January 2020 and will make it available for courts to use as a model—keeping in mind the differences between trial courts and appellate courts (such as the size of the court, number of court employees, and frequency of interaction with attorneys and with the public) and how those differences may counsel in favor of differences in a given court's policy.

3. **Model Trial Court Policy:** Members of the Committee are currently drafting a model trial court policy in light of best practices and considering the unique characteristics of trial courts. The Committee anticipates completing a model policy by January 2020 and will make it available upon completion.

VII. Conclusion

Georgia's judicial branch is committed to ensuring that courts across the state are free of unlawful harassment—including sexual harassment. Judges are ethically prohibited from engaging in harassment, and as leaders of our courts should set the tone for conduct within courthouses across our state. Notwithstanding the complexities of how judicial branch employees are employed across our state's classes of courts, courts and classes of courts should work to implement sexual harassment policies that are consistent with best practices. Finally, all judges and judicial branch employees should participate in sexual harassment training so they can learn about, and thus prevent, sexual harassment in Georgia's judicial branch.

Appendix A: Best Practices for Anti-Harassment Policies

The following list of best practices was created after the Ad Hoc Committee reviewed and evaluated a number of sexual harassment prevention policies, including policies from state and federal courts and policies that currently apply to Georgia's Executive Branch agencies (among others). This list is intended to serve as a resource for Georgia courts that are creating or updating an anti-harassment policy.[1] Although it is thorough, it is not necessarily comprehensive, and courts should also confer with their own human resources professionals and/or legal counsel in adopting a court-specific policy. Moreover, courts should be mindful of other applicable policies (including, for example, state, county, and municipal policies), and should not adopt policies that would impermissibly conflict with applicable state or federal law, or with other applicable policies, when creating or revising their own sexual harassment policies. The Committee nonetheless encourages courts to review and consider these best practices as they draft or update their own policies to prevent sexual harassment—and all other types of unlawful harassment—in Georgia's judicial branch.[2]

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[1] To provide additional assistance and resources to Georgia courts, the Committee has also cited to a number of provisions in other courts' or government entities' anti-harassment policies whose provisions are similar to the best practices included in this document. The examples provided are not exhaustive. Moreover, the Committee has cited to such policies not to endorse one particular policy or another, but merely to offer tangible examples of how courts and other government entities have chosen to draft and implement various aspects of their anti-harassment policies.

[2] Although this document specifically references sexual harassment, anti-harassment policies should cover all types of unlawful harassment.

First Principles

1. Begin with a purpose or value statement.

- Example policy: widespread practice.

2. Remind judges of their already-existing obligations under Rule 2.3 of the Georgia Code of Judicial Conduct.

- In addition to requiring that judges "perform judicial duties without bias or prejudice," Rule 2.3 (B) of the Ga. Code of Judicial Conduct states that:

  "A judge shall not, in the performance of judicial duties, by words or conduct manifest bias or prejudice, or engage in harassment, including but not limited to bias, prejudice, or harassment based upon age, disability, ethnicity, gender or sex, marital status, national origin, political affiliation, race, religion, sexual orientation, or socioeconomic status." (Emphasis supplied.)

- The Code not only prohibits judges from engaging in harassment; it also requires that judges prevent court staff and lawyers (among others) from engaging in harassment.

  "Judges shall not permit court staff, court officials, or others subject to the judge's direction and control to do so." Rule 2.3 (B).

  "Judges shall *require* lawyers in proceedings before the court to refrain from manifesting bias or prejudice, or engaging in harassment,

based upon attributes including, but not limited to, age, disability, ethnicity, gender or sex, marital status, national origin, political affiliation, race, religion, sexual orientation, or socioeconomic status, against parties, witnesses, lawyers, or others." Rule 2.3 (C) (emphasis in original).

3. Define the parameters of conduct that can constitute sexual harassment and provide a non-exhaustive list of examples.

- Example policy: widespread practice.

Complaints

4. Investigate all complaints that allege sexual harassment.

- Example policies: Georgia Court of Appeals, Georgia Department of Administrative Services/OIG,[3] Arizona Supreme Court, Kansas Supreme Court.

5. Provide confidentiality to the greatest extent possible in the reporting and investigation process and clearly state any known limitations on the full confidentiality of information.

[3]See Georgia Department of Administrative Services—Office of the State Inspector General, Statewide Sexual Harassment Prevention Policy (effective March 1, 2019), available at: https://doas.ga.gov/human-resources-administration/sexual-harassment-prevention (hereinafter Georgia Department of Administrative Services/OIG).

- Example policies: Georgia Court of Appeals, Georgia Department of Administrative Services/OIG, Arizona Supreme Court, Kansas Supreme Court, U.S. Court of Appeals for the Seventh Circuit, U.S. Court of Appeals for the Ninth Circuit.

6. Encourage submission of complaints within a certain amount of time from the date of the alleged conduct.

- Prompt reporting helps courts protect their employees, allows courts to take quick remedial action when necessary, and facilitates a proper investigation when witnesses and evidence are still available.

- Example policy: The U.S. Equal Employment Opportunity Commission generally requires a "charge" of discrimination "within 180 calendar days from the day the discrimination took place."

  See https://www.eeoc.gov/employees/timeliness.cfm

- Example policy: In the U.S. Court of Appeals for the Ninth Circuit, complaints must be filed within 180 days of the misconduct.

7. Require supervisors and managers to report all instances of sexual or unlawful harassment, require employees to report all instances of sexual or unlawful harassment they observe, and strongly encourage (or require) employees to report instances of sexual or unlawful harassment they personally experience.

- Example policies: Georgia Court of Appeals, Georgia Judicial Council/Administrative Office of the Courts,

Georgia Department of Administrative Services/OIG, Arizona Supreme Court.

8. **Do not <u>require</u> employees to ask an alleged harasser to stop unwelcome conduct before filing a complaint, but consider permitting it as part of the reporting process.**

   - <u>Example policies</u>: Georgia Council of Superior Court Judges, Arizona Supreme Court, South Dakota Unified Judicial System, U.S. Court of Appeals for the Seventh Circuit, U.S. Court of Appeals for the Ninth Circuit.

9. **Strongly encourage all complaints to be made in writing, but allow complaints to be made either orally or in writing.**

   - <u>Example policies:</u> Georgia Court of Appeals, Georgia Council of Superior Court Judges, Georgia Judicial Council, Administrative Office of the Courts (JC/AOC), Georgia Department of Administrative Services/OIG, Kansas Supreme Court, South Dakota Unified Judicial System.

10. **Clearly indicate which employees, supervisors, and/or managers are responsible for receiving complaints of sexual harassment (the "designated employees").**

    - <u>Example policy</u>: widespread practice.

11. **Consider designating two or more people (and people of different genders) as those responsible for receiving and investigating complaints.**

    - <u>Example policy</u>: Georgia Department of Administrative Services/OIG.

12. **Consider creating a complaint form for employees who wish to make written complaints.**

    - Example policy: U.S. Court of Appeals for the Ninth Circuit.

13. **If oral complaints are permitted, train designated employees how to receive and document an oral complaint about harassment.**

    - This process may involve steps such as the designated employee listening to and documenting the complaint, and then asking the person making the complaint to review the documentation and verify its accuracy.

    - Provide similar training to supervisors and managers, since they are typically required to receive and act upon complaints of sexual harassment.

Investigations

14. **Clearly designate which individuals will investigate complaints of sexual harassment.**

    - Designated employees for purposes of receiving complaints may or may not also be designated to investigate complaints.

    - Example policy: widespread practice.

15. **Train designated investigators on how to appropriately investigate a complaint of sexual harassment.**

- Each entity creating or updating its anti-harassment policy should also consider how it will define an "investigation."

- Example policy: Georgia Department of Administrative Services/OIG.

16. Require that investigators interview the complainant and witnesses and give the subject of the complaint the opportunity to be interviewed.

- Example policy: Georgia Council of Superior Court Judges.

17. Ensure no person is permitted to investigate his or her own conduct.

- Example policies: Georgia Court of Appeals, Georgia Council of Superior Court Judges.

18. Require judges and court employees, and strongly encourage others, to cooperate with investigations into complaints of sexual harassment, and consider providing that failure to cooperate may result in disciplinary action.

- Example policies: Georgia Department of Administrative Services/OIG.

19. Review contracts to ensure that independent contractors are bound by the court's sexual harassment policy.

- Example policy: Under the Georgia Department of Administrative Services/OIG policy, "independent

contractors who are regularly on Agency premises and/or regularly interact with Agency personnel" must "complete employee sexual harassment prevention training on an annual basis." The Georgia Department of Administrative Services offers resources, including templates, to help Georgia agencies comply with these requirements. See https://doas.ga.gov/human-resources-administration/sexual-harassment-prevention/state-contract-resources.

20. Prohibit retaliation against an employee for submitting a sexual harassment complaint, participating in an investigation, or otherwise opposing sexual harassment.

- Example policy: widespread practice.

21. Consider setting deadlines for the completion of investigations and resolution of complaints.

- Example policy: The Georgia Department of Administrative Services/OIG policy generally requires that investigations conclude with the issuance of a written report within 45 days of the investigator's assignment; a final determination must be made within 21 days of receipt of the investigative report.

Post-Investigation

22. Conclude investigations with documentation detailing:

(a) The facts gathered;

(b) The conclusions reached (such as wrongdoing, no wrongdoing, or inconclusive); and

(c) Any remedial steps taken based on the conclusion.

- Example policies: The policies of the Georgia Court of Appeals, Georgia Department of Administrative Services/OIG, Maryland Judicial Branch, and South Dakota Unified Judicial System require the submission of a written report.

23. **Consider following up with the complaining party and sharing the conclusion reached after investigation.**

- Example policies: Georgia Court of Appeals, Georgia Judicial Council Administrative Office of the Courts (JC/AOC), Kansas Supreme Court.

Education

24. Require all new employees to receive sexual harassment training and to certify their review of the sexual harassment policy within a set period of time after their employment begins.

- Example policies: The Georgia Court of Appeals, Georgia Judicial Council Administrative Office of the Courts (JC/AOC), and Georgia Department of Administrative Services/OIG require employees to certify receipt of and/or review the entity's sexual harassment policy.

- Example policy: The Georgia Department of Administrative Services/OIG requires training for new Executive Branch employees within 30 days.

25. **Require judges to receive sexual harassment training at least once every year.**

    - Example policy: The Georgia Department of Administrative Services/OIG requires annual training for Executive Branch managers and supervisors.

26. **Require current employees to receive sexual harassment training at least once every year.**

    - Example policy: The Georgia Department of Administrative Services/OIG requires annual training for "all covered" Executive Branch employees.

Appendix B: Classes of Court[1]

Class	Number of Courts / Number of Counties	Active or FT Judges	Senior or PT Judges	Employment	Anti-Harassment Policy?	Regular Anti-Harassment Training?
Supreme Court	1 / Statewide	9	N/A	• **Justices**: State • **Employees**: State	• **Court:** Yes • **Employees:** Yes • **Council:** N/A	• **Court:** No • **Employees:** No
Court of Appeals	1 / Statewide	15	N/A	• **Judges**: State • **Employees**: State	• **Court:** Yes • **Employees:** Yes • **Council:** N/A	• **Court:** No • **Employees:** No
Superior	159 /159	214	109	• **Judges**: State • **Employees**: State <u>and/or</u> County	• **Court:** Yes • **Employees:** Yes (State/County) • **Council:** Yes	• **Judges:** Jan. 2020 • **Employees:** Varies
State	71 / 71	129 active	21 senior	• **Judges**: County • **Employees**: County	• **Court:** No	• **Judges:** No • **Employees:** County

[1] Data contained in this Report and in the Classes of Court Matrix are accurate to the best of the Committee's knowledge as of the date of this Report, and may change after that date.

Class	Number of Courts / Number of Counties	Active or FT Judges	Senior or PT Judges	Employment	Anti-Harassment Policy?	Regular Anti-Harassment Training?
					• **Employees:** Varies[2] • **Council:** No	
Juvenile	159 / 159	69 FT	21 senior + 28 PT +9 FT assoc. judges + 7 PT assoc. judges + 22 pro tem judges	• **Judges**: County • **Employees**: County	• **Court:** No • **Employees:** Yes (County) • **Council:** No	• **Judges:** May 2019 • **Employees:** County, if any
Probate	159 /159	159 Chiefs	12 senior judges; 23 assoc.	• **Judges**: County • **Employees:** County	• **Court**: Yes (County) • **Employees**: Yes (County) • **Council:** No	• **Court:** No • **Employees:** County, if any
Magistrate	159 /159	229 (159 Chiefs)	242 PT (12 senior judges)	• **Judges**: County • **Employees**: County	• **Court:** No • **Employees:** No • **Council:** No	• **Court:** No • **Employees:** County, if any

[2] In some counties, judicial employees are not considered to be covered by County anti-harassment policies. However, the executive director of the Council of State Court Judges is bound by AOC anti-harassment policies.

Class	Number of Courts / Number of Counties	Active or FT Judges	Senior or PT Judges	Employment	Anti-Harassment Policy?	Regular Anti-Harassment Training?
Municipal	387	47 FT	~313 PT	• **Judges**: City or contract • **Employees**: Varies	• **Court:** Varies • **Employees:** Varies • **Council:** No	• **Judges:** No • **Employees:** Varies, if any

* Georgia's statewide Business Court is set to begin operations on January 1, 2020, and therefore is not included in this report.

Appendix C: Committee Composition & Acknowledgements

We are grateful for the time and effort of the judges who served on the Judicial Council Ad Hoc Committee to Prevent Sexual Harassment in the Judicial Branch of Government:

- **Justice Sarah Hawkins Warren**, Supreme Court of Georgia (Chair).
- **Judge Carla Wong McMillian**, Court of Appeals of Georgia.
- **Judge Horace J. Johnson, Jr.**, Superior Court, Alcovy Judicial Circuit.
- **Judge Dax E. Lopez**, State Court of DeKalb County.
- **Judge Maureen E. Wood**, Juvenile Court, Rockdale Judicial Circuit.
- **Judge Torri M. ("T.J.") Hudson**, Probate Court of Treutlen County.
- **Chief Judge Rebecca J. Pitts**, Chief Judge of the Butts County Magistrate Court.[16]
- **Judge Matthew McCord**, Municipal Court of Stockbridge.

We are also grateful for the service of the following advisory members of the Committee:

- **Edwin Bell**, Deputy Court Administrator, DeKalb County Superior Court.
- **Jamala McFadden, Esq.**, The Employment Law Solution: McFadden Davis, LLC.
- **Shelly Seinberg**, **Esq.**, Senior Assistant Attorney General, Office of the Georgia Attorney General.

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[16] Chief Judge Pitts replaced then-Chief Judge Joyette Holmes, Magistrate Court of Cobb County, who was appointed in July 2019 to serve as District Attorney of Cobb County.

- **Rebecca Sullivan**, **Esq.**, Assistant Commissioner and General Counsel, Georgia Department of Administrative Services.

We also thank staff from the Administrative Office of the Courts who supported the Committee throughout this process.

- In particular, we thank **Stephanie Hines** from the Administrative Office of the Courts.

In addition, we thank:

- **Cynthia Clanton**, Director, Administrative Office of the Courts.
- **Jessica Farah**, Senior Legal Counsel for the Administrative Office of the Courts.
- **Alicia Adamson**, legal intern for the Administrative Office of the Courts.
- **Jay Wolfe**, intern to Justice Sarah Hawkins Warren.

Appendix D: Select Reference Materials

Orders

- **Supreme Court of Georgia Chief Justice Harold D. Melton**, Order (Feb. 13, 2019) (attached).

- **Georgia Governor Brian Kemp**, Executive Order (Jan. 14, 2019).

    - **Available at:** https://gov.georgia.gov/executive-action/executive-orders

- **Conference of Chief Justices**, Resolution 2 (Jan. 31, 2018)

    - **Available at:** https://www.ncsc.org/~/media/microsites/files/ccj/resolutions/01312018-support-commitment-awareness-training-workplace.ashx

Georgia Policies

- **Georgia Court of Appeals**, Harassment Policy of the Court of Appeals of Georgia (revised May 2019) (attached).

- **Georgia Judicial Council, Administrative Office of the Courts (JC/AOC)**, Harassment (Sexual/Unlawful) Policy (revised August 2016) (attached).

- **Georgia Council of Superior Court Judges**, Harassment Policy (attached).

- **Georgia Department of Administrative Services**, Office of the State Inspector General, Statewide Sexual Harassment Prevention Policy (effective March 1, 2019)

    - Available at: http://doas.ga.gov/assets/Human%20Resources%20Administration/Sexual%20Harassment%20Prevention%20Policy/Statewide%20Sexual%20Harassment%20Prevention%20Policy%20FINAL.pdf

<u>Other State Courts</u>

- **Arizona Code of Judicial Administration**, Part 1: Judicial Branch Administration, Chapter 3: Judicial Officers and Employees, Section 1-304: Discrimination/Harassment (effective July 18, 2018).

    - Available at: https://www.azcourts.gov/Portals/0/admcode/pdfcurrentcode/1-304%20New%20Code%20Section%202018%20with%20Post%20AJC%20CJ%20Edits.pdf

- **Arizona Supreme Court**, Administrative Order No. 2019-27, Discrimination and Harassment Training (Mar. 13, 2019).

    - Available at: https://www.azcourts.gov/Portals/22/admorder/Orders19/2019-27.pdf?ver=2019-03-13-124428-353

- **Kansas Supreme Court**, Policy Prohibiting Sexual and Other Workplace Harassment (revised Jan. 2019).

- Available at: http://www.kscourts.org/kansas-courts/supreme-court/administrative-orders/Admin-order-306.pdf

- **Maryland Judicial Branch**, Policy Prohibiting Discrimination, Harassment, and Retaliation (revised July 1, 2017).

  - Available at: https://www.courts.state.md.us/sites/default/files/import/hr/pdfs/employeehandbookprint.pdf

- **South Dakota Unified Judicial System**, Rule 1.2 Discrimination, Sexual and Other Unlawful Harassment (attached).

<u>Federal Courts</u>

- **United States Court of Appeals for the Seventh Circuit**, Policy on Equal Employment Opportunity, Discrimination, Harassment, and Employment Dispute Resolution (adopted May 1, 2018).

  - Available at: http://www.ca7.uscourts.gov/human-resources/EEO_Plan.pdf

- **United States Court of Appeals for the Ninth Circuit**, Employment Dispute Resolution Policy and Commitment to a Fair and Respectful Workplace (effective Jan. 1, 2019)

  - Available at: https://www.ca9.uscourts.gov/datastore/general/2019/06/18/NinthCircuitEDRPolicyApproved-12272018.pdf

Judicial Council of Georgia
Administrative Office of the Courts

Chief Justice Harold D. Melton
Chair

Cynthia H. Clanton
Director

Judicial Council Ad Hoc Committee to Prevent Sexual Harassment in the Judicial Branch of Government

In accordance with the bylaws of the Judicial Council of Georgia, ad hoc committees exist to address issues of limited scope and duration, and the Judicial Council Chair shall create and charge ad hoc committees as are necessary to conduct the business of the Judicial Council.

Therefore, I hereby establish the Ad Hoc Committee to Prevent Sexual Harassment in the Judicial Branch of Government to address the recommendations contained in Resolution 2 of the Conference of Chief Justices[1] and the Executive Order issued by State of Georgia Governor Brian Kemp on January 14, 2019.[2] Specifically, this Ad Hoc Committee will convene to research, examine, and evaluate best practices and encourage each class of court, and corresponding court councils, to establish and maintain policies to: (1) provide every judge and employee with training that addresses the various forms of workplace harassment, including sexual harassment, and related intimidation and reprisal that are prohibited by law; and (2) establish procedures for recognizing and responding to harassment and harassment complaints.

The following members are hereby appointed to the Ad Hoc Committee to Prevent Sexual Harassment in the Judicial Branch of Government:

- Justice Sarah Hawkins Warren, Supreme Court of Georgia, Chair
- Judge Carla McMillian, Court of Appeals of Georgia
- Judge Horace J. Johnson, Jr., Superior Court, Alcovy Judicial Circuit
- Judge Dax E. Lopez, State Court of DeKalb County
- Judge Maureen E. Wood, Juvenile Court, Rockdale Judicial Circuit
- Judge TJ Hudson, Probate Court of Treutlen County
- Chief Judge Joyette Holmes, Magistrate Court of Cobb County
- Judge Matthew McCord, Municipal Court of Stockbridge

Committee membership may include advisory members appointed, as needed, by the Ad Hoc Committee Chair. Advisory members may be heard but shall not be entitled to vote. The

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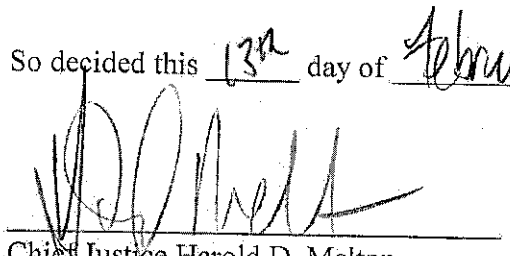
[1] Conference of Chief Justices, Resolution 2 "In Support of Commitment to Awareness and Training on Workplace Harassment in the Judicial Branch," adopted as proposed by the CCJ Board of Directors at the Midyear Meeting on January 31, 2018.

[2] Governor Brian P. Kemp, Resolution 01.14.19.02 "Preventing Sexual Harassment in the Executive Branch of Government."

Administrative Office of the Courts shall provide staff support to this Committee and notify the judiciary of the creation of the aforementioned Committee. Recommendations of this Committee shall be presented to the Judicial Council for consideration. The Committee will exist from the date of this order until December 31, 2019.

So decided this 13th day of February, 2019.



Chief Justice Harold D. Melton
Chair, Judicial Council of Georgia

THE STATE OF GEORGIA

EXECUTIVE ORDER

BY THE GOVERNOR:

PREVENTING SEXUAL HARASSMENT
IN THE EXECUTIVE BRANCH OF GOVERNMENT

WHEREAS: The State of Georgia does not tolerate sexual harassment in the workplace, and the State of Georgia is committed to providing a harassment free-workplace and environment for its employees and all citizens who interact with state government; and

WHEREAS: The prevention of sexual harassment in the agencies of state government is an important responsibility of the state; and

WHEREAS: Every state employee should be trained regarding the avoidance and prevention of sexual harassment and enforcement of policies and procedures to prohibit sexual harassment; and

WHEREAS: Effective prevention of sexual harassment depends upon on the impartiality, consistency, and transparency of the investigations; and

WHEREAS: Implementation of uniform sexual harassment reporting and investigation practices will assist in the objective to eliminate sexual harassment in the state; and

WHEREAS: The Office of Inspector General was established to prevent and investigate certain types of employee misconduct in the Executive Branch of state government.

NOW, THEREFORE, BY VIRTUE OF THE POWER VESTED IN ME AS THE GOVERNOR OF THE STATE OF GEORGIA, IT IS HEREBY

ORDERED: **Sexual Harassment Policy.** In consultation with the Executive Counsel, the Georgia Department of Administrative Services Human Resources Administration Division shall promulgate a uniform sexual harassment prevention policy that shall apply to all Executive Branch agencies. Such policy shall also specifically prohibit retaliation against any person who has reported or participated in the investigation of possible sexual harassment. Each Executive Branch agency shall make this policy available to all employees and retain documentation of each employee's acknowledgement of the policy.

IT IS FURTHER

ORDERED: **Mandatory Training of State Employees.** In consultation with the Executive Counsel, the Department of Administrative Services Human Resources Administration Division shall develop sexual harassment prevention training for all Executive Branch employees. Each agency shall provide this training to all new employees within thirty (30) days of hire and require all employees, including part-time and seasonal employees, to take the sexual harassment training at least once a year.

In consultation with the Executive Counsel, the Department of Administrative Services Human Resources Administration Division shall develop sexual harassment prevention training specifically applicable to employees holding supervisory and managerial positions. Each agency shall provide this training to new managers and supervisors within thirty (30) days of employment or promotion to a managerial or supervisory position.

Evidence of receipt of training shall be documented and retained by each Executive Branch agency.

IT IS FURTHER

ORDERED: **Sexual Harassment Investigations.** Each Executive Branch agency shall designate at least two persons, not of the same gender, to investigate complaints of sexual harassment. Each agency shall promptly review all complaints of sexual harassment and immediately report any complaint made directly to the agency to the Office of Inspector General.

Each Executive Branch agency shall ensure employees that are directly supervised by a designed investigator have the ability to report complaints of sexual harassment to a person other than their direct supervisor.

The Office of Inspector General shall independently review each sexual harassment complaint notification and provide oversight on whether the complaint can be fairly and impartially handled internally at the agency from which it originated. The Office of Inspector General shall determine an impartial investigator to handle any investigations determined to be unable to be fairly or impartially handled at the agency from which it originated.

The Executive Counsel and the Office of Inspector General, in consultation with the Department of Administrative Services Human Resources Administration Division, shall develop procedures regarding investigation and resolution of sexual harassment complaints, which shall be binding on Executive Branch agencies.

IT IS FURTHER

ORDERED: **Sexual Harassment Investigation Training.** The Office of the Inspector General in conjunction with the Department of Administrative Services Human Resources Administration Division shall develop standardized investigative training for state employees who are designated by their agency head to investigate complaints of sexual harassment. All agencies shall require the employees designated to conduct sexual harassment investigations to take the investigator training to ensure consistency among all sexual harassment investigations across the state.

IT IS FURTHER

ORDERED: **Office of Inspector General Audit Authority.** The Office of Inspector General shall have authority to review a sexual harassment investigation at any time. The Office of Inspector General may request any information related to a sexual harassment complaint or investigation from any agency at any time.

Executive Branch agencies shall provide full cooperation to the Office of Inspector General and produce any information requested pursuant to this Order as soon as it is available.

IT IS FURTHER

ORDERED: **Applicability.** This Executive Order applies to every Executive Branch agency. "Agency" means any Executive Branch agency, board, bureau, commission, council, department, entity, or instrumentality of any kind, and others as may be designated by the Governor, to the extent that such designation does not conflict with state law. All Executive Branch agencies are required to comply with this Order in addition to all federal and state laws governing sexual harassment. Nothing in this Order has the effect of supplanting or superseding any federal or state law.

This the 14th day of January 2019.

GOVERNOR

CONFERENCE OF CHIEF JUSTICES

Resolution 2

In Support of Commitment to Awareness and Training on Workplace Harassment in the Judicial Branch

WHEREAS, the Conference of Chief Justices is committed to the rule of law and to strict observance of laws relating to conduct in the workplace; and

WHEREAS, the Conference of Chief Justices has historically championed gender equity in the state courts and in 1988 passed a resolution urging each Chief Justice to establish separate task forces devoted to the study of gender bias in the court system and minority concerns as they relate to the judicial system; and

WHEREAS, recent events have raised public awareness of pervasive sexual harassment in the workplace in government, the media, and private industry; and

WHEREAS, State codes of judicial conduct require judges, in the performance of their judicial duties, not to manifest bias or prejudice or engage in harassment (including sexual harassment) and not to permit court staff, court officials, or others subject to the judge's direction and control to do so; and

WHEREAS, a judicial disciplinary commission exists in every state to hold judges accountable; and

WHEREAS, as a separate branch of government, the judicial branch has the duty to protect its employees against harassment and intimidation in the workplace;

NOW, THEREFORE, BE IT RESOLVED that the Conference of Chief Justices encourages the judicial branch of each state, territory, and the District of Columbia to establish and maintain policies:

(1) to provide every judge and employee with training that addresses the various forms of workplace harassment, including sexual harassment, and related intimidation and reprisal that are prohibited by law; and

(2) to establish procedures for recognizing and responding to harassment and harassment complaints; and

BE IT FURTHER RESOLVED that the National Center for State Courts shall create a repository of resources that address workplace harassment in the state courts, including model policies and procedures.

Adopted as proposed by the CCJ Board of Directors at the Midyear Meeting on January 31, 2018.

Harassment Policy of the Court of Appeals of Georgia

References: OCGA § 15-5-24
Title VII of the Civil Rights Act of 1964, as amended by the Civil Rights Act of 1991
The Americans with Disabilities Act of 1990
Age Discrimination in Employment Act of 1967
Fair Employment Practices Act
Equal Employment Opportunity Act of 1972

1. INTRODUCTION

The Court of Appeals of Georgia is an equal opportunity employer and is committed to recruit, hire, train, and promote employees without regard to race, color, religion, national origin, sex, age, disability, or any other classification protected by federal or state law. The Court is committed to a fair and equitable workplace where everyone is respected and valued, and to providing a workplace environment free of harassment, sexual or otherwise.

2. SCOPE

This policy applies to all judicial and nonjudicial employees including judges, law clerks, staff attorneys, central staff attorneys, administrative assistants, fiscal office employees, clerk's office employees, and information technology employees. This policy governs the process of filing, investigating, and resolving a harassment complaint.

3. POLICY STATEMENT

Harassment will not be tolerated by the Court.[1] Any Court employee who has been found engaging in harassing behavior will be subject to disciplinary action, up to and including termination.

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[1]While this policy focuses on claims of harassment, it includes all forms of discrimination.

_____ (INITIALS)

The Court will not tolerate retaliation for having filed a good faith sexual or unlawful harassment complaint or for having provided any information in a harassment investigation. No employee will be subject to any detrimental action due to the reporting of alleged sexual or unlawful harassment, even if the Court determines that no actionable harassment occurred. Any employee who has engaged in acts of retaliation or is untruthful in reporting a harassment claim or responding to an investigation will be subject to disciplinary action up to and including termination.

4. DEFINITIONS

Sexual Harassment: Unwelcome sexual advances; unwelcome requests for sexual favors; and other unwelcome verbal, written, electronic, or physical conduct of a sexual nature from another person, including, for example, when:

(a) Submission to such conduct is made a condition of employment, either explicitly or implicitly;
(b) Submission to or rejection of such conduct is used as the basis for employment decisions;
(c) Such conduct has the purpose or effect of unreasonably interfering with an individual's work performance or creating an intimidating, hostile, or offensive working environment.

Sexually Harassing Conduct: Examples of conduct that may constitute sexual harassment include, but are not limited to, the following:

(a) Physical touching;
(b) Sexual comments of a provocative or suggestive nature;
(c) Suggestive looks or gestures;
(d) Jokes, printed material, or innuendoes intended for and directed to another employee;
(e) Making acceptance of unwelcome sexual conduct, advances, or requests for sexual favors of any nature a condition for employment, employment decisions, or continued employment (pressure for sexual favors).

This list is representative and is not intended to be exhaustive.

_____ (INITIALS)

Harassment (Non-sexual): Verbal, written (including electronically generated), or physical conduct that disparages or shows hostility or aversions toward a person because of that person's race, color, religion, national origin, sex, age, disability, or any other classification protected by federal or state law. Harassment is action that creates an intimidating, hostile, or offensive work environment or unreasonably interferes with a person's work performance.

Harassing Conduct (Non-sexual): Examples of conduct that may constitute harassment include, but are not limited to, the following: epithets, slurs, negative stereotyping, or threatening, intimidating, or hostile acts – including jokes – that relate to race, color, religion, national origin, sex, age, disability, or any other classification protected by federal or state law. Harassing conduct may also include written or graphic material that disparages or shows hostility or aversion towards an individual or group because of these characteristics that is displayed on walls, bulletin boards, computers, or other locations or circulated in the work place. This list is representative and is not intended to be exhaustive.

Retaliation: Any unfavorable employment action taken or unfavorable employment condition created that is directed toward an employee because he or she reported a good-faith allegation of harassment or provided candid information during an investigation of alleged harassment or retaliation.

5. PROCEDURE

All employees and judges are required to report any act of sexual or unlawful harassment. All reports of sexual or unlawful harassment will be investigated quickly, and to the extent possible, confidentially. Information will be released only as required by law. Only those people directly involved in the matter will be told about the complaint during the pending investigation. Anyone informed of the alleged offense must maintain confidentiality.

Ensuring Policy Awareness

The harassment policy shall be periodically displayed on all official bulletin boards of the Court and is available in the Employee Handbook, online in the S drive under Court BBS/ Court Forms & Info/ Employee Handbooks.

_____ (INITIALS)

Judges, managers, directors, and supervisors shall take ongoing proactive steps to ensure that their work environments are free from any type of harassment and to educate and counsel their staff on appropriate conduct.

All employees are required, as a condition of their employment with the Court, to read and become familiar with the Court's policy regarding harassment which will be explained to new employees at orientation and to current employees through each judge periodically. New employees will initial and sign an acknowledgment of the Court's policy at orientation, and management will meet to have all current employees initial and sign an acknowledgment of the Court's policy.

Reporting Harassment

All claims of harassment or retaliation shall be reported to the Chief Judge, the Clerk of Court, or the Deputy Court Administrator.

All employees and judges are required to report events of alleged harassment or retaliation against themselves or others as outlined below.

An employee who believes that this policy has been violated, that any terms or conditions of employment depend on sexual favors, or that he or she has been the victim of a retaliatory act, is required to report that activity immediately. Any employee who observes or receives information that another employee is or has been subjected to harassment or any retaliatory act shall report that activity immediately as outlined below.

Judges, managers, or supervisors who have reason to believe that harassment or retaliation may exist in their offices or any other office shall report that activity immediately in accordance with this policy.

These reports may be expressed orally by telephone or in person, but employees are encouraged to submit their complaint in writing. If the complainant's report does not sufficiently support allegations of harassment or retaliation as prohibited by this policy, the investigator may request additional information from the complainant.

_____ (INITIALS)

The Chief Judge or the Clerk/Court Administrator may suspend, transfer, or reassign personnel involved to prevent further harassment or to facilitate the investigation. Unless otherwise directed in writing by the Chief Judge or Clerk/Court Administrator, no disciplinary action will be offered or taken against the alleged violator until the investigation has been completed. For emergency situations of a severe nature, a designee, after consultation with the Chief Judge or Clerk/Court Administrator, will take appropriate actions to protect the alleged victim or to deter the alleged violator from any further harassment. If necessary, protective measures will be taken for the safety of the parties and any other affected employees.

Investigations: Upon receipt of an oral or written report of harassment or retaliation, the Chief Judge (or the most senior judge, if the Chief Judge is the subject of the complaint) and the Clerk/Court Administrator (or the Chief Judge, if the complaint is against the Clerk/Court Administrator) shall appoint a panel of three judges to investigate the facts and circumstances of all claims of perceived harassment. The panel shall present the details of the investigation in a written report to the Chief Judge and Clerk/Court Administrator, or the alternative parties as set out above.

The confidentiality of the parties involved in a complaint or investigation will be maintained to the extent possible without compromising the thoroughness of the investigation.

Corrective Action: If the investigation reveals a violation of the policy, prompt corrective action will be taken to stop the discrimination, harassment, or retaliation and to prevent its recurrence. Actions taken will be based on the individual circumstances of the situation and may include counseling, discipline, sanctions, or termination. An employee may be subjected to disciplinary action for violations of this policy, even if the conduct is not a violation of state or federal law.

If the investigation does not support a finding that this policy has been violated, the individual making the report and the individual against whom the allegation was made shall be so advised. Both will be advised that retaliation for making the report is prohibited.

_____ (INITIALS)

The Chief Judge, Clerk/Court Administrator, or Deputy Court Administrator will notify the complainant and alleged violator that the investigation was completed and the results of the investigation. Disciplinary actions will be rendered as soon as reasonably practical. A written report summarizing the complaint, investigation, results, and discipline, if any, will be prepared by the panel and maintained in a separate file by the Clerk's Office.

EMPLOYEE ACKNOWLEDGMENT OF ANTI-HARASSMENT POLICY

I acknowledge that I have read the Court of Appeals' policy regarding harassment, and understand that incidents of harassment, substantiated by investigation, violate this policy and are grounds for disciplinary action.

_____
NAME (PRINT OR TYPE)

_____ _____
SIGNATURE DATE

_____ (INITIALS)

Bibliography

Georgia

OCGA § 15-5-24

Sexual Harassment Policy for the Supreme Court of Georgia and Its Employees, amended September 2018 to change Designated Judge

Georgia Attorney General Department of Law Anti-Harassment Policy, February 16, 2018

Georgia General Assembly Sexual and Other Unlawful Harassment Policy, 2018

Georgia Judicial Council Administrative Office of the Courts Harassment Policy HR-04-01-004, Revised August 2016

Georgia Governor Brian Kemp January 14, 2019 Executive Order, Preventing Sexual Harassment in the Executive Branch of Government (mandating training and reporting in Executive Branch agencies)

Georgia Governor Brian Kemp January 14, 2019 Executive Order, Establishing a Code of Ethics for Executive Branch Officers and Employees

City of Atlanta

Atlanta City Ordinance #94-68 on Discrimination and Harassment

2009-6 Official Opinion from Georgia Attorney General (re applicability of local ordinances to state agency)

_____ (INITIALS)

Federal

Title VII of the Civil Rights Act of 1964, as amended by the Civil Rights Act of 1991

The Americans with Disabilities Act of 1990

Age Discrimination in Employment Act of 1967

Fair Employment Practices Act

Equal Employment Opportunity Act of 1972

Administrative Office of the Federal Courts Memorandum re Workplace Conduct, December 20, 2017

Letter from former and current Federal Law Clerks to U.S. Supreme Court Chief Justice John Roberts and others, December 20, 2017 (asking federal judiciary to consider ways to address workplace harassment within the federal judicial system)

Federal Law Clerk Handbook, December 2017

U.S. Court of Appeals for the 6th Circuit, Employee Manual (2017)

U.S. Court of Appeals for the 7th Circuit Policy on Equal Employment Opportunity, Discrimination, and Harassment and Employment Dispute Resolution, May 1, 2018

U.S. Department of Justice, Office of the Inspector General Management Advisory Memo re The Handling of Sexual Misconduct and Harassment Allegations by DOJ Components, May 31, 2017

U.S. Department of State Sexual Harassment Policy, 2018

Federal Judicial Council Administrative Office of the Courts, Policy Number HR-

_____ (INITIALS)

04-01-004, Revised August 2016

Department of the Army Commanding General's Policy Letter #5, Dec. 15, 2014

Federal Model Employment Dispute Resolution (EDR) Plan, Judicial Conference of the United States, 2010

U.S. Office for Personnel Management Guidance for Agency-Specific Domestic Violence, Sexual Assault, and Stalking Policies, February 2013

1994 Sexual Harassment in Federal Workplace Report

U.S. Merit Systems Protection Board Report to President and Congress on Sexual Harassment in the Federal Workplace, 1994

Other

Conference of Chief Judges Resolution 2, January 31, 2018, In Support of Awareness and Training on Workplace Harassment in the Judicial Branch

AAUW Sexual Harassment Employer's Guide: Move Beyond Compliance

Massachusettes Commission against Discrimination, MCAD Policy 96-2 Adopted by the Commission on October 25,1996

_____ (INITIALS)

Judicial Council
Administrative Office of the Courts
(JC/AOC)

Policy Procedure Owner	**Human Resources**
Policy Title	**Harassment (Sexual/Unlawful)**
Policy Number	**HR-04-01-004**
Effective Date	**October 2005**
Revision Date	**August 2016**

References: O.C.G.A §15-5-24
Title VII of the Civil Rights Act of 1964, 42 USC 2000e, as amended by The Civil Rights Act of 1991
The Americans with Disabilities Act of 1990, Title 1
Age Discrimination in Employment Act of 1967: 29 USC 621
Fair Employment Practices Act, Chapter 45-19, as amended
Equal Employment Opportunity Act of 1972

1. Introduction

The Judicial Council/Administrative Office of the Courts (JC/AOC) is committed to providing a workplace environment free of sexual and unlawful harassment by establishing specific guidelines. The JC/AOC is committed to a fair and equitable workplace where everyone is respected and valued.

2. Applicability

All JC/AOC employees, including interns are subject to this policy.

3. Policy Statement

Harassment and the ramifications of committing harassment will be explained to each employee during orientation, and the employee will sign the Policy Orientation Acknowledgement form *(Attachment 1)*. Harassment training will be provided to all employees biennially.

Harassment of any form will not be tolerated by the JC/AOC. Any JC/AOC employee who has been found engaged in harassing behavior will be subject to disciplinary action, up to and including termination.

All employees are required to report any act of sexual or unlawful harassment. All reports of sexual or unlawful harassment will be treated in an expeditious and confidential manner. Release of information shall be only as required by law. Only those persons with direct involvement will be informed of the complaint during the pending investigation. Anyone informed of the alleged offense must observe applicable privacy and confidentiality requirements.

The JC/AOC will not tolerate retaliation for having filed a good faith sexual or unlawful harassment complaint or for having provided any information in a sexual or unlawful harassment investigation. No employee will be subject to any detrimental action due to the reporting of alleged sexual or unlawful harassment, even if it is determined that there was no formal harassment. However, any employee who has engaged in acts of retaliation, or knowingly makes a false charge of any form of harassment, or any employee who is untruthful in making a charge or in responding in an investigation will be subject to disciplinary action up to and including termination.

4. Definitions

The terminology contained within this document is in accordance with Webster's Dictionary except for terms specifically defined in this section.

Sexual Harassment: Unwelcome sexual advances; unwelcome requests for sexual favors; and other unwelcome verbal, written, electronic or physical conduct of a sexual nature from same or opposite sex when:

1. Submission to such conduct is made, either explicitly or implicitly, a term or condition of an individual's employment;

2. Submission to or rejection of such conduct by an individual is used as the basis for employment decisions affecting such individual; or,

3. Such conduct has the purpose or effect of unreasonably interfering with an individual's work performance or creating an intimidating, hostile, or offensive working environment.

Examples of sexual harassment may include, but are not limited to, the following:

1. Physical touching;

2. Sexual comments of a provocative or suggestive nature;

3. Suggestive looks or gestures;

4. Jokes, printed material, or innuendoes intended for and directed to another staff member;

5. Making acceptance of unwelcome sexual conduct, advances, or requests for sexual favors of any nature a condition for employment, employment decisions, or continued employment (pressure for sexual favors).

NOTE: Sexual harassment shall not apply when personal contact is necessary for an emergency act like but not limited to security or health reasons.

Retaliation: Any unfavorable employment action taken or unfavorable employment condition created which is directed toward an employee due to the employee's having reported a good faith allegation of harassment or having

provided information or assistance in an honest manner during an investigation of alleged harassment or retaliation.

Harassment: Verbal, written, electronically generated, or physical conduct that disparages or shows hostility or aversion toward an individual because of that person's race, color, religion, gender, national origin, age, or disability. Harassment does one or more of the following:

has the purpose or effect of creating an intimidating, hostile, or offensive work environment; or has the purpose or effect of unreasonably interfering with an individual's work performance.

Harassing Conduct or Behavior: Harassing conduct or behavior includes, but is not limited to, epithets, slurs, negative stereotyping, or threatening, intimidating or hostile acts - including jokes - that relate to race, color, creed, ancestry, citizenship, religion, sex, age, national origin, disability status, gender, gender identity and expression, sexual orientation, pregnancy, and any other characteristics protected from discrimination by law. Harassing conduct may also include written or graphic material that disparages or shows hostility or aversion toward an individual or group because of race, color, creed, ancestry, citizenship, religion, sex, age, national origin, disability status, gender, gender identity and expression, sexual orientation, pregnancy, and any other characteristics protected from discrimination by law and that is displayed on walls, bulletin boards, computers, or other locations or circulated in the work place.

Note: The above list is a representation of harassing conduct and or behavior and is not intended to be exhaustive.

Affected Division Director: Means the JC/AOC Division Director for whom the alleged violator works.

5. Procedure

Ensuring Policy Awareness

The harassment (sexual/unlawful) policy shall be periodically displayed on all official bulletin boards of the JC/AOC and posted permanently on the agency intranet and web site.

JC/AOC Associate and Assistant Division Directors, Managers, and Supervisors must take ongoing proactive steps to ensure their work environments are free from any type of harassment and to educate/counsel their staff on appropriate conduct.

All employees will be required, as a condition of their employment with the JC/AOC, to read and become familiar with the JC/AOC's policy regarding harassment (sexual/unlawful) and sign the Policy Orientation Acknowledgement form *(Attachment 1)*.

Reporting Harassment (Sexual/Unlawful)

All employees are required to report events of alleged harassment and/or retaliation against themselves or others.

If any employee believes that unwelcome sexual advances or language are interfering with his or her productivity or comfort in the workplace, if he or she believes that any terms or conditions of employment depend on sexual favors, or if he or she believes that he or she has been the victim of any retaliatory act, that employee is required to report such activity immediately.

Any employee who observes or receives information that any employee is or has been subjected to harassment of any nature or has been subjected to any retaliatory act shall report such activity immediately.

JC/AOC Associate and Assistant Division Directors, Managers, or Supervisors who have reason to believe that harassment or retaliation may exist in their division or in another shall report such activity immediately in accordance with this policy.

All claims of harassment or retaliation shall be reported to the JC/AOC Human Resources Manager directly. The JC/AOC Human Resources Manager will communicate all such activity to the proper JC/AOC Division/Assistant Director and the JC/AOC Director, unless either of the latter parties is the alleged offender.

In the event of allegations implicating the JC/AOC Human Resources Manager, the alleged affected employee shall report the claim of sexual harassment directly to the JC/AOC Director.

Such reports can initially be expressed by telephone, or in person; however, they will ultimately be required to be put in writing.

Counseling and other assistance shall be offered to the alleged victim through Human Resources.

JC/AOC Division Director or Assistant Director, may suspend, transfer, or reassign personnel involved in order to prevent further harassment or to facilitate the investigation. For emergency situations of a severe nature, a designee, after consultation with their affected JC/AOC Division Director, will take appropriate actions to protect the alleged victim and/or to deter the alleged violator from any further harassment of the alleged victim. Unless otherwise directed in writing by the JC/AOC Division Director, no disciplinary action will be offered or taken against the alleged violator until the investigation has been completed and a written report has been issued.

If a complaint does not sufficiently support the allegations of harassment or retaliation as prohibited by this policy, the JC/AOC Human Resources Manager may request additional information from the complainant.

Investigations

All reports referred will include a written statement from the person reporting the alleged harassment. This written statement is mandatory and will serve as the official filing of a complaint.

Investigations will be conducted by gathering relevant information and interviewing appropriate witnesses.

The JC/AOC Human Resources Manager will coordinate the investigation and present the facts in a written report to the JC/AOC Director.

After reviewing the written report with the JC/AOC Director, in consultation with the affected JC/AOC Division Director will determine if the facts support a finding that harassment has occurred. Appropriate disciplinary action and/or other corrective action will be taken up, to and including termination.

The JC/AOC Director has final determination in all outcomes.

The affected JC/AOC Division Director and/or the JC/AOC Human Resources Manager will notify the complainant and subject employee(s) of the completion of the investigation. Disciplinary actions will be rendered as soon as reasonably practical.

6. Attachments

Attachment 1 - Policy Orientation Acknowledgement

7. Record Retention

Attachment 1: Place in employee's official personnel folder for the length of employment.

Upon termination of State employment, withdraw the official personnel folder and place in inactive file for seven years for full-time, and six years for temporary employees.

14.0 HARASSMENT

It is the policy of the superior courts to maintain a workplace environment free from harassment. The superior courts will not tolerate any form of harassment of or by any employee. The term harassment includes, but is not limited to, offensive language, jokes, or other verbal, graphic, or physical conduct relating to an employee's race, sex, religion, color, national origin, age, or disability which creates for the reasonable person experiencing such harassment an offensive, intimidating, or hostile work environment or which interferes with an individual's job performance. Further, a form of harassment includes retaliation against others for their participation in harassment complaints.

Scope

This policy shall apply to all superior court judges, employees of the State of Georgia or any county working under the direct supervision and control of superior court judges, and any person having complaints against individuals covered by this policy due to conduct arising out of the work environment. Attorneys not made subject to this policy under the foregoing provision are excluded from its scope.

Sexual Harassment Defined

Harassment includes sexual harassment which is described as:

1. Unwelcome sexual advances;
2. Requests for sexual favors; and
3. Other verbal or physical conduct or materials of a sexual nature which unreasonably affect an employee's terms or conditions of employment.

Sexual harassment may arise:

1. When an employee is subjected to unwelcome sexual conduct or materials and the conduct or materials are sufficiently severe and pervasive to create a hostile, intimidating, or offensive work environment; or
2. When a person's submission to or rejection of unwelcome sexual conduct is used as the basis for an employment decision affecting an individual.

Examples of sexual harassment include but are not limited to the following:

1. Physical assaults, e.g., intentional physical contact that is sexual in nature such as touching, pinching, fondling, or brushing against another's body;
2. Sexual advances, requests for sexual favors, and other verbal or physical conduct of a sexual nature when submission to such activity is:
   a) Explicitly or implicitly a term or condition of employment, continued employment, or advancement; or
   b) Used as the basis for a decision about employment, continued employment, or advancement.

3. The use of graphic material to harass such as reading or publishing sexual displays or publications including but not limited to calendars, graffiti, sexual-oriented cartoons, or other foul or obscene printed or visual materials.
4. Other verbal or physical conduct of a sexual nature which has the purpose or effect of interfering with an individual's work performance or creating an intimidating, hostile or offensive work environment. This harassing conduct includes but is not limited to the following types of conduct: sexual propositions, sexual innuendos, sexually suggestive comments including "kidding," "teasing," and "joking" involving gender-specific traits, foul or obscene language or gestures.

The gravamen (central or essential element) of any claim is not whether the complainant participated in conduct which forms the basis of the complaint but rather whether the complainant found the conduct unwelcome.

Procedure

Since the superior courts will not tolerate harassment of any type, the Council of Superior Court Judges has established a procedure to respond to any such complaints.

Informal Process

Designated Person

The chief judge of each circuit shall designate a person to receive complaints of harassment. However, if the chief judge is the alleged harasser, then the district administrative judge for the district shall receive such complaint since under no conditions shall a complainant be placed in a position to file a complaint with the alleged harasser. If the district administrative judge is the alleged harasser, then the president of the Council of Superior Court Judges shall receive such complaint. If the complaint is against the president of the Council of Superior Court Judges, then the complaint shall be received by the secretary-treasurer of the Council of Superior Court Judges.

Informal Complaints

If both the complainant and the alleged harasser agree, the matter may be handled in an informal manner. Complaints of this nature may be made to the designated person verbally or in writing. Once the complaint is submitted to the designated person, the designated person shall contact the alleged harasser to determine if the parties wish to proceed in an informal manner.

If both parties agree to the informal process, the parties understand this is a process which attempts to resolve the difficulties between them in an amicable manner with no disciplinary action being sought. The designated person shall arrange a meeting at an agreed-upon time and place for the purpose of discussing the difficulties between the parties. At the meeting, the designated person will act as a mediator and proceed in such a manner. If the matter can be amicably resolved, no further action shall be necessary and the matter shall be terminated.

Formal Process

Formal complaints as to persons subject to the jurisdiction of the Judicial Qualifications Commission

If the complainant is unwilling to submit to the informal process, he/she shall file a complaint with the Judicial Qualifications Commission and such complaint shall proceed as any such complaint. If the alleged harasser does not wish to submit to the informal process, then he/she shall so notify the designated person. The designated person shall then advise the complainant of this and advise the complainant of his/her right to file a Judicial Qualifications Commission complaint.

Formal complaints as to persons not subject to the jurisdiction of the Judicial Qualifications Commission

All other persons not subject to the Judicial Qualifications Commission shall be subject to formal complaints as set forth below.

DESIGNATED PERSON

The designated person for receiving formal complaints shall be appointed from among the employees of the individual circuits, judicial administrative districts, and the Council of Superior Court Judges. The district administrative judge, in consultation with the district court administrator for each district, shall appoint the designated person from among its employees to receive such complaints. The president of the Council of Superior Court Judges, in consultation with the executive director of the Council, shall appoint from among the employees of the Council a designated person or persons for the office. The names of the designated persons shall be published as part of that particular circuit, district, or office.

1. The person designated to receive the complaints shall display, through interest, education, and experience, the ability to mediate and negotiate the settlement of disputes among employees. The duties of this person as mediator of disputes shall be added to the job description of the person selected.
2. The executive director of the Council of Superior Court Judges, in consultation with the executive director of the Institute of Continuing Judicial Education, shall develop a program for the initial and continuing education of designated persons in the skills necessary for the successful resolution of complaints of harassment and in the techniques of witness interviewing.
3. A formal complaint shall be written. Upon request, the designated person shall assist the complainant in submitting a written complaint. A formal complaint should be submitted if:
   a) The informal process does not resolve the complaint; or
   b) The complaint is the second or subsequent complaint against the harasser after the harasser has been informed that the behavior was unwelcome, whether or not submitted by the same complainant; or
   c) In the discretion of the designated person or the complainant, the conduct complained of is of a particular flagrant or excessive nature.
4. The designated person shall receive formal complaints and refer them to the chief judge, the district administrative judge, or the president of the Council of Superior Court Judges. Upon referral, the designated person shall provide the alleged harasser and the district court administrator with a copy of the complaint.

5. An investigation shall be conducted by the designated person. The designated person shall first talk separately with the complainant and then with the alleged harasser. The designated person shall contact all witnesses identified by either party as having knowledge concerning the matter under consideration.
6. The findings of the designated person shall be one of the following:
   (a) Probable cause to believe that harassment has occurred;
   (b) No probable cause to believe that harassment has occurred;
   (c) No probable cause to believe that harassment has occurred and the complaint is considered frivolous or evidence of harassment is inconclusive.
7. The chief judge, administrative judge, president of the Council, or the Executive Committee (in the case of a president of the Council) shall take appropriate disciplinary action against the harasser.
8. Records regarding discipline imposed as a result of a finding of harassment or a finding of a frivolous complaint shall be retained in the office of the executive director of the Council of Superior Court Judges.

RULE 1.2 DISCRIMINATION, SEXUAL AND OTHER UNLAWFUL HARASSMENT

(A) Policy. The Unified Judicial System is committed to providing a work environment that is free from all forms of unlawful discrimination and harassment, including sexual harassment. Actions, words, jokes, or comments based on an individual's sex, sexual orientation, gender and gender identity, race, color, creed, ancestry, national origin, pregnancy, religion, familial or military status, political affiliation, disability, age (40 years of age or older), genetic information, or any other legally protected characteristic will not be tolerated.

(B) Definitions. One specific kind of illegal behavior is sexual harassment. Sexual harassment, which can consist of a wide range of unwanted sexually directed behavior, is defined as:

Unwelcome sexual advances, requests for sexual favors, and other verbal or physical conduct of a sexual nature, when:

(1) Submission to such conduct is made either explicitly or implicitly a term or condition of employment;

(2) Submission or rejection of the conduct is used as a basis for making employment decisions; or,

(3) The conduct has the purpose or effect of interfering with work performance or creating an intimidating, hostile, or offensive work environment.

This definition includes gender-based harassment of a person of the same sex as the harasser.

(C) Notification and Confidentiality. All judicial officers and employees should be encouraged to report any incident of discrimination, sexual or other unlawful harassment in confidence and without fear of retaliation, as provided below. The disclosure of allegations of discrimination, sexual or other unlawful harassment shall be restricted to those individuals who have a need to know. Any complaint brought against a judicial officer or employee of the Unified Judicial System shall not be discussed by the investigators with anyone other than those directly involved in the investigation of the complaint.

(D) False Reporting. False or frivolous charges of discrimination, sexual or other unlawful harassment can severely damage the otherwise good reputation of an accused person. Given the serious impact such charges may have, any judicial officer or employee who falsely accuses another of discrimination, sexual or other unlawful harassment shall be subject to the full range of disciplinary actions available under the UJS Personnel Rules up to and including termination, depending on the circumstances.

(E) Reporting Procedures. Any supervisor who becomes aware of possible discrimination or sexual or other unlawful harassment must immediately advise the State Court Administrator's Office so the allegation can be investigated. A judicial officer or employee who believes that she or he has been discriminated against or harassed is encouraged to identify the offensive conduct to the offending party and request that it stop immediately. If the judicial officer or employee chooses not to

discuss directly with the offending party or after confronting the offending party the conduct does not cease, a judicial officer or employee should report the matter as follows:

(1) A complaint of discrimination, sexual or other unlawful harassment should be brought to the attention of the employee's appointing authority or the Director of Human Resources. The person to whom the complaint is addressed shall initiate an investigation by informing the State Court Administrator's Office immediately.

(2) A formal complaint of discrimination, sexual or other unlawful harassment may be verbal or in writing and should contain the name of the offending party, the recipient of the offensive conduct, the nature of the conduct that is alleged to constitute discrimination or unlawful harassment, the time when the conduct occurred and any witnesses to the incident. The complaint shall be treated by the recipient and/or investigator as confidential and no judicial officer or employee should disclose the existence, or content of the complaint to anyone other than those who need to know.

(F) Investigation. Upon receipt of a complaint and after consulting the appointing authority, if appropriate, the State Court Administrator's Office shall coordinate an investigation. The complainant should be informed that to adequately investigate the allegations, the offending party must be confronted and made aware of the allegations. The procedure to be followed is:

(1) The person investigating the allegation shall conduct an interview with the party registering the complaint. The purpose of the interview is to determine a true and complete account of the incident. The investigating party should determine the severity of the conduct, the frequency of the alleged acts, the relationship of the parties, the response of the complainant at the time of the incident, witnesses, and the employment environment within the office or workplace. Only under such circumstances as where necessary to ensure the integrity of the investigation or to comply with other employment laws should an employee be encouraged not to discuss the matter with co-workers.

(2) The investigating party shall inform the alleged discriminator or harasser that a complaint has been brought against him or her and interview that person. The individual should be informed that retaliation or intimidation directed toward the complainant or any employees participating in the investigation will not be tolerated. Only under such circumstances as where necessary to ensure the integrity of the investigation or to comply with other employment laws should an employee be encouraged not to discuss the matter with co-workers.

(3) The investigating party shall make a written record of the interviews and any other aspect of the investigation. The investigating party shall also prepare a written report summarizing the findings and, if appropriate, recommending disciplinary action.

(4) Upon completing the investigation, the appointing authority and/or the State Court Administrator shall take appropriate action, as may be warranted.

(G) Appeal of Disciplinary Action. If an employee is disciplined for discrimination, sexual or other unlawful harassment, the employee may appeal the disciplinary action as provided in Rule 8.0.

(H) Retaliation for Filing a Complaint Prohibited. Any intimidation, retaliation or interference for filing a complaint or assisting in an investigation is prohibited and disciplinary action may be taken against any employee of the Unified Judicial System knowingly participating in such conduct.