



Cochise County Judicial System

Policy Title: Discrimination and Harassment

Policy Number: 1002

Effective: March 1, 2021

Last Reviewed/Updated: February 22, 2021

I. Policy

This policy applies to all judges, elected officials, employees and volunteers of the superior court, justice of the peace courts, probation department, superior court divisions, court administration and clerk of the superior court in Cochise County. This document shall be provided to, or made readily available to, all judges, employees and volunteers covered by this policy to include posting in areas highly visible to employees, publication on the Cochise County website and inclusion in employee orientation materials and education materials on this subject.

Discrimination and harassment, including sexual harassment, in the workplace are prohibited. Employment discrimination and harassment based on race, color, religion, sex (including pregnancy, gender identity, sexual orientation and transgender status), national origin, ethnicity, age (40 or older), disability, marital status, socioeconomic status, political affiliation, ancestry, veteran status, genetic information or any other status protected by federal, state or local laws are forbidden. Such conduct is grounds for discipline of CCJS employees, up to and including dismissal; grounds for discipline of judges by the Commission on Judicial Conduct; and grounds for termination of vendor contracts when the conduct is by a vendor employee.

Every judge and Cochise County Judicial System (CCJS) employee must strive to create a work environment free of discrimination and harassment. As required by the Code of Judicial Conduct and the Code of Conduct for Judicial Employees, all judges and CCJS employees must avoid bias, prejudice and harassment in the performance of their duties, treat other CCJS and county employees, court users, and the public with dignity and respect, and comply with this policy.

Sexual harassment is sex discrimination that violates individual rights as well as federal, state, and local laws. Sexual harassment is also a form of misconduct that undermines the integrity of the employment relationship and of the judiciary itself. All judges and CCJS employees must be able to work in an environment that is free from unsolicited and unwelcome sexual overtures and innuendo. Sexual harassment debilitates morale and interferes with productivity. Therefore, sexual harassment is unacceptable conduct in the workplace.

II. Definitions. In this section, the following definitions apply:

“Discrimination” is differing treatment of an individual, involving any term or condition of employment, based on that individual's race, color, religion, sex (including pregnancy, gender identity, sexual orientation and transgender status), national origin, ethnicity, age (40 or older), disability, marital status, socioeconomic status, political affiliation, ancestry, veteran status,

genetic information or any other status protected by federal, state or local laws. Discrimination based on these protected classes is prohibited by federal, state, or local laws. Courts have held discrimination against an individual because of sexual orientation or because of gender identity, including transgender status, is discrimination because of sex in violation of Title VII.

“Harassment” is verbal or physical conduct or any form of communication that is directed at an individual because of his or her race, color, religion, sex (including pregnancy, gender identity, sexual orientation and transgender status), national origin, ethnicity, age (40 or older), disability, marital status, socioeconomic status, political affiliation, ancestry, veteran status, genetic information or any other status protected by federal, state or local laws and that is sufficiently severe, pervasive, or persistent to have the purpose or effect of creating a hostile environment.

“Sexual harassment” includes unwelcome sexual advances, requests for sexual favors, sexually motivated physical contact, other verbal or physical conduct or any other form of communication of a sexual nature when:

1. Submission to that conduct or communication is made an explicit or implicit term or condition of obtaining or continuing employment.
2. Submission to or rejection of that conduct or communication by an individual is used as a factor in employment decisions affecting the individual.
3. The conduct or communication has the purpose or effect of substantially interfering with an individual's employment or of creating an intimidating, hostile, or offensive environment.

Sexual harassment may involve relationships of unequal power. Such situations might contain elements of coercion, such as when compliance with requests for sexual favors becomes a criterion for granting or denying privileges or for favorable or unfavorable treatment on the job; however, sexual harassment also might involve relationships among peers, such as when repeated unwelcome advances or unwelcome sexual comments by one co-worker toward another co-worker has a harmful effect on the latter's ability to perform his or her job. Sexual harassment also might involve employee behavior directed at non-employees or non-employee behavior directed at employees. Sexual harassment may occur when it is directed at members of the opposite gender or when it is directed at members of the same gender.

Examples of conduct that may constitute sexual harassment include, but are not limited to:

- Sexually suggestive calendars, posters, and cartoons;
- Sexual innuendoes, suggestive comments, jokes of sexual nature, sexual propositions, lewd remarks, threats;
- Requests for any type of sexual favor, including repeated, unwelcome requests for dates;
- Verbal abuse or “kidding” that is oriented toward a prohibited form of harassment, including that which is sexually oriented and considered unwelcome;
- Suggestive or insulting sounds;
- Leering, staring, whistling, or using obscene gestures;
- Content in letters and notes, facsimiles (faxes, e-mails, text messages, social networking, and other content that is sexual in nature; or,
- Unwelcome, unwanted physical contact, including but not limited to: touching, tickling, pinching, patting, brushing up against, hugging, cornering, kissing, fondling, forced sexual activity or assault.

“Workplace” is any location where a judge or judicial employee is present due to court employment; including locations outside the courthouse or court office, travel to and from those locations, and CCJS sponsored events.

“Retaliation” is an adverse action (e.g., termination, denial of promotion, refusal to hire, unjustified discipline or evaluation, etc.) taken against an individual to deter protected activity or for engaging in protected activity. Protected activity consists of: (1) opposing conduct reasonably believed to constitute discrimination, including harassment, which violates a nondiscrimination statute, this code section, or CCJS policy; (2) reporting such conduct; or (3) testifying, assisting, or participating in any manner in an investigation or other proceeding related to a discrimination complaint.

III. Duty to Report/Retaliation

Employees, applicants, and other persons discriminated against or harassed or who have personal knowledge of discrimination or harassment by judges or CCJS employees in the course of their duties or by anyone in CCJS facilities are responsible for promptly reporting such conduct in accordance with the procedures set forth herein. Each employee has an affirmative duty to maintain a workplace free of discrimination, harassment, and intimidation. Any form of retaliation against an individual for reporting discrimination or harassment truthfully to the best of that person’s knowledge is prohibited and shall be grounds for disciplinary action, which may include termination. A false and malicious report of harassment, discrimination or retaliation (as opposed to a report that, even if erroneous, is made in good faith) will be the subject of appropriate disciplinary action.

IV. Procedure for Reporting Discrimination or Harassment

Complaints or reports of discrimination or harassment shall be made to: any CCJS supervisor; the Court Administrator; or the Judicial Human Resources Director. However, a CCJS supervisor or the Court Administrator receiving a report must forward the report to the Judicial Human Resources Director. If the Judicial Human Resources Director is the subject of the complaint or report, that report shall be forwarded to the Court Administrator.

- A. If an employee is the recipient of any unwelcome gesture or remark, they are asked to speak up. It is traditionally best to resolve issues directly with the harasser by making it clear that such conduct is offensive and unwelcome. The employee should clearly state they want the offensive conduct to cease;
- B. If the employee is unable to confront the harasser or feels unsafe in doing so, they can contact their immediate supervisor or manager; or,
- C. An employee may submit a complaint, either verbally or in writing at any time.

A verbal report of discrimination or harassment must be reduced to writing by either the complainant or the person receiving the report. If the complainant does not write the report, the writer of the report shall verify the accuracy of the report with the complainant.

A complaint against a judge shall be made to the Commission on Judicial Conduct, 1501 W. Washington, Suite 229, Phoenix, AZ 85007. Complaint forms and procedure are available at

www.azcourt.gov/ascjc. The Commission's telephone number is (602) 452-3200 and email address is cjc@courts.az.gov.

V. Investigation

The Judicial Human Resources Director shall evaluate any report or complaint of discrimination or harassment. However, any complaint of discrimination or harassment by a judge shall be investigated by the Commission on Judicial Conduct. The Judicial Human Resources Director shall conduct, oversee or assist with the investigation of any complaint of discrimination or harassment by any other CCJS employee. If the Judicial Human Resources Director is the subject of the report or complaint, or cannot otherwise act as an impartial investigator, the Court Administrator shall conduct the investigation. Trained investigators may be employed to assist the Court Administrator in any such investigation.

All reported complaints that potentially violate this policy shall be investigated. The complainant does not have the option to request no investigation be conducted.

All judges and CCJS employees are directed to cooperate with any investigation of discrimination or harassment. Any information gathered as part of an investigation shall be kept confidential to the extent possible consistent with thorough and impartial investigative and disciplinary processes.

The Judicial Human Resources Director shall submit a written report to the Court Administrator upon conclusion of the investigation. The report shall contain specific findings regarding the alleged acts of discrimination and/or harassment and may contain recommendations to resolve the complaint. The Court Administrator shall take any necessary actions to address any substantiated findings of discrimination or harassment. If discipline is imposed, the employee may appeal the action pursuant to the judicial merit rules, if applicable.

The Court Administrator shall complete a final report of the resolution of the complaint including the actions taken to resolve the complaint. The written report, or a summary thereof if deemed appropriate, shall be communicated to all concerned parties, redacted as necessary to preserve confidentiality consistent with this policy.

VI. Other Rights and Remedies

Employees and other persons have legal rights and remedies available under federal, state and local laws regarding discrimination and harassment. This policy does not affect those rights or remedies. An employee or other person who believes they have been the victim of discrimination and/or harassment is responsible for taking any necessary actions to protect their rights under federal, state, and local laws. This policy does not extend any deadlines under federal, state, or local laws.