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AMANDA STANFORD
CLERK OF SUPERIOR COURT

2018 OCT 16 PM 3:47

IN THE SUPERIOR COURT OF THE STATE OF ARIZONA
IN AND FOR THE COUNTY OF PINAL

BY _____ **EAM**
DEPUTY

IN THE MATTER OF UPDATING)
THE JUDICIAL MERIT RULES)
RE: DISCRIMINATION AND HARASSMENT)
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_____)

ADMINISTRATIVE ORDER
No. 2018 - 00032
(Amending Admin Order 2017-00039)

WHEREAS the Presiding Judge of the Superior Court of Arizona in and for Pinal County is the chief judicial officer of the county and has administrative authority over all courts in Pinal County, pursuant to Article VI, Section 11 of the Arizona Constitution, Rule 92 of the Arizona Rules of the Supreme Court; and

WHEREAS pursuant to Arizona Supreme Court Administrative Order No 2018-65, the Arizona Supreme Court adopted a new policy regarding Discrimination and Harassment; and directs each presiding judge of the superior court to adopt and/or update a local policy which conforms with that order, and

WHEREAS there is a need to update Rule 4 of the Judicial Merit Rules which were adopted by Pinal County Administrative Order No. 2017-00039 on July 28, 2017; to comply with Arizona Supreme Court Administrative Order 2018-65;

IT IS HEREBY ORDERED amending Rule 4 of the Judicial Merit Rules, effective October 15, 2018 as set forth in the attached as Exhibit A.

DATED this 16th day of October 2018



HONORABLE STEPHEN F. MCCARVILLE,
PRESIDING JUDGE

- Original: Clerk of the Superior Court
- Copies: Superior Court Judges
- Todd Zweig, Court Administrator
- Tracy McElroy, Conciliation Court
- Rod McKone, Adult Probation
- Denise Smith, Juvenile Court Services
- Adrienne Ward, Court Human Resources
- Amanda Stanford, Clerk of the Court
- Odette Apodaca, Operations Director

CONFORMED COPY FURNISHED

DP

RULE 4 PROHIBITION AGAINST HARASSMENT, DISCRIMINATION AND RETALIATION

This policy covers all employees in the classified and unclassified service as defined in the Rules without regard to regular, temporary, part-time, probationary or emergency status, although nothing in this policy waives the at-will status of an unclassified employee.

4.1 Policy

Discrimination and harassment, including sexual harassment, in the workplace are prohibited. The Court shall not discriminate against or harass an individual in violation of State or Federal law or regulation, in terms of age, race, color, national origin, ethnicity, religion, sex, gender, age, national origin, disability, sexual orientation, marital status, socioeconomic status, political affiliation or any other category protected by law or included in the Arizona Code of Judicial Administration Codes of Conduct. All individuals are to be treated in a fair and non-discriminatory manner throughout the employment process. The Court adheres to all Federal and State laws prohibiting unlawful harassment and/or discrimination.

- A. It is the policy of the Court to treat each employee equitably, to provide communication channels to resolve harassment and discrimination concerns, and thereby support a safe and productive work environment for all Court employees.

4.2 Discipline

Any employee found to have subjected another employee to discrimination or harassment as defined by this Rule and/or Supreme Court Administrative Order 2018-65 shall be subject to disciplinary action, up to and including dismissal, in accordance with the provisions of these Rules.

4.3 Retaliation

- A. An employee shall not take any adverse employment action against another employee for reporting or for participating in an investigation related to a complaint of discrimination, retaliation or harassment.
- B. Any employee or agency representative that retaliates against an employee as a result of the exercise of the employee's protected rights will be subject to disciplinary action, up to and including dismissal.

4.4 Harassment

- A. The Court prohibits harassment based upon protected class/status. Harassment is a form of employment discrimination based on race, color, religion, sex (including pregnancy), national origin, age (40 or older), disability or genetic information that violates Title VII of the Civil Rights Act of 1964, the Age Discrimination in Employment Act of 1967 (ADEA), ~~and~~ the Americans with Disabilities Act of 1990 (ADA), as well as the Arizona Codes of Conduct.

The Court also prohibits, pursuant to anti-harassment laws, harassment against individuals in retaliation for filing a discrimination charge, testifying, or participating in any way in an investigation, proceeding, or lawsuit under these laws; or opposing employment practices that they reasonably believe discriminate against individuals, in violation of these laws.

- B. Harassment becomes unlawful where 1) enduring the offensive conduct becomes a condition of continued employment, or 2) the conduct is severe or pervasive enough to create a work environment that would be considered intimidating, hostile, or abusive. Petty slights, annoyances, and isolated incidents (unless extremely serious) will not rise to the level of illegality. To be unlawful, the conduct must create a work environment that would be intimidating, hostile, or offensive to a reasonable person.

- C. Harassment in any form, including sexual harassment, will not be tolerated. Unlawful harassment shall be grounds for disciplinary action, up to and including dismissal. Unlawful harassment by judges shall be grounds for complaint to the Commission on Judicial Conduct pursuant to the rules of the Commission on Judicial Conduct. Unlawful harassment by vendor employees shall be grounds for termination of vendor contracts within the Court. Harassment or acts of discrimination deemed as a policy violation but not rising to the level of being unlawful will be subject to disciplinary action, up to and including dismissal.
- D. Harassment can include “sexual harassment” or unwelcome sexual advances, requests for sexual favors, and other verbal or physical harassment of a sexual nature. Harassment constitutes unlawful sexual harassment when it is so frequent or severe that it creates a hostile or offensive work environment or when it results in an adverse employment decision. Such as:
1. Submission to such conduct is made either explicitly or implicitly as 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;
 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;
 4. Harassing behavior that rises to the level of unlawful “sexual harassment” may include, but is not limited to, unwelcome or unwanted sexual advances including petting, pinching, brushing up against, hugging, cornering, kissing, fondling or any physical conduct considered unacceptable by another individual; unwelcome or unwanted requests or demands for sexual favors and/or verbal abuse, bantering or teasing that is sexually oriented and is considered unacceptable by another individual. This includes but is not limited to:
 - a. innuendoes, jokes, sexually oriented comments that offend others;
 - b. displaying an intimidating, hostile or offensive attitude because of rejected sexually oriented demands, requests, physical contact or attention;
 - c. interfering with a co-worker’s performance by exchanging unwanted sexual attentions, or sexually oriented conduct that reduces personal productivity or safety on working time;
 - d. condoning a working environment that is not free of sexually oriented innuendoes or any other actions of a sexual nature that could offend others; and
 - e. harassment not of a sexual nature, such as offensive remarks about a person’s sex. For example, it is illegal to harass a woman by making offensive comments about women in general.
 5. 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 their job. 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. Sexual harassment also might involve employee behavior directed at non-employees or non-employee behavior directed at employees.

E. Reporting a Complaint

1. Every employee of the Court has an affirmative duty to maintain a workplace free of unlawful harassment and intimidation.
 - a. An employee (complainant) who believes they have been subjected to discrimination, unlawful harassment, or retaliation in violation of these rules should present their complaint promptly in writing or orally to their immediate supervisor, an Appointing Authority, or the Superior Court Administrator and/or the Superior Court Presiding Judge, if the complaint is against the Appointing Authority.
 - b. Supervisors or department heads who receive complaints or reports of unlawful harassment must immediately inform the Appointing Authority of such complaints.
 - c. The Appointing Authority shall meet with the complainant at the earliest practicable time to discuss the complaint thoroughly and objectively. The complainant will be advised by the Appointing Authority that the complaint is to be treated confidentially to the extent possible and should not be discussed with others, including other employees, to preserve the integrity of any investigation into the allegations.
 - d. ~~The Appointing Authority~~ A trained investigator shall conduct an investigation into the allegations. Confidentiality of all parties involved in the investigation shall be respected to the extent that such confidentiality does not interfere with the Court's legal obligation to investigate allegations of misconduct and to take appropriate action.
 - e. The Appointing Authority shall make a final determination as to whether the report of discrimination, harassment, or retaliation was substantiated.
 - i. If misconduct is substantiated, the Appointing Authority shall make recommendations of disciplinary action, up to and including dismissal of the offending party, in accordance with the provisions of the Rules.
 - ii. The Appointing Authority shall notify the complainant of the conclusion of any review or investigation under this rule. The notice shall advise the complainant in writing whether the allegations were substantiated. The notice shall also advise the complainant whether remedial measures have been put in place; however, the details concerning specific measures (such as disciplinary action) may or may not be disclosed.
 - iii. The decision of the Appointing Authority is final and is not subject to grievance or appeal.

F. Discipline

Any employee found to have subjected another employee to discrimination, harassment, including sexual harassment, or retaliation as defined by this policy shall be subjected to disciplinary action, up to and including dismissal, in accordance with the provisions of the Superior Court in Pinal County Merit System Rules and Policies.

G. Responsibility

1. All employees have a duty to report any known instances of unlawful harassment, discrimination, or retaliation against themselves or another employee to their supervisor, an Appointing Authority or Court Human Resources Representative.
2. Supervisors who become aware – formally or informally – of situations which could potentially involve discrimination, harassment (including sexual harassment) or retaliation must notify the Appointing Authority or Court Human Resources immediately.
3. Retaliation, in any form, against any complaining employee or participating witness shall not be tolerated and shall be grounds for disciplinary action, up to and including dismissal.
4. It shall be the responsibility of all Elected Officials and Appointing Authorities, in coordination with the Court Human Resources Representative, to ensure compliance and enforcement of the provisions of this policy within their respective departments.

4.5 Education

Appointing Authorities shall provide educational opportunities for employees within their department regarding this policy and any forms of harassment and unlawful discrimination.

- A. Judges, managers and supervisors shall receive education and education materials which enables them to recognize harassment and to take appropriate action pursuant to this policy and procedures.
- B. This policy and local procedures shall be effectively disseminated to every employee by posting in areas highly visible to employees, publication on the Court Human Resources web page and included in employee orientation materials.

4.6 Definitions

In this Rule, the following definitions apply:

“Discrimination” is differing treatment of an individual, involving any term or condition of employment, based on that individual's race, sex, gender, religion, national origin, ethnicity, disability, age, sexual orientation, marital status, socioeconomic status, or political affiliation. Discrimination based on these protected classes is prohibited by state and federal law. 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, sex, gender, religion, national origin, ethnicity, disability, age, sexual orientation, marital status, socioeconomic status, or political affiliation and that is sufficiently severe, pervasive, or persistent to have the purpose or effect of creating a hostile environment. Courts have held harassment of an individual because of sexual orientation or because of gender identity, including transgender status, is harassment because of sex in violation of Title VII.

“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; or (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.

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