

JUDICIAL BRANCH IN YAVAPAI COUNTY SEXUAL AND OTHER UNLAWFUL HARASSMENT POLICY

The Arizona Superior Court located in Yavapai County, the Adult Probation Department, the Juvenile Court Services Department, the Yavapai County Justice Courts and the Municipal/Magistrate Courts located in Yavapai County are committed to providing a work environment that is free of discrimination and unlawful harassment pursuant to the Arizona Code of Judicial Administration §1-304 adopted by Supreme Court Administrative Order No. 2018-65.

Discrimination and harassment, including sexual harassment, in the workplace are prohibited. Employment discrimination and harassment based on race, sex, gender, religion, national origin, ethnicity, disability, age, sexual orientation, marital status, socioeconomic status, or political affiliation are forbidden. Such conduct is grounds for discipline of judicial branch 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's employee.

Every judge and judicial branch 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 judicial branch employees must avoid bias, prejudice and harassment in the performance of their duties, treat other judicial branch employees, court users, and the public with dignity and respect, and comply with this policy.

Sexual harassment is sex discrimination that violates individual rights and state and federal law. Sexual harassment is also a form of misconduct that undermines the integrity of the employment relationship and of the court itself. All judges and judicial branch 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.

A. PROHIBITED CONDUCT

1. Discrimination

It is prohibited in 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.

2. Harassment

Harassment of any kind, which 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. Discrimination based on these protected classes is prohibited by state and federal law. Courts have held harassment 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.

Examples of harassment include, but are not limited to:

- Derogatory remarks about a person's membership in a protected class;
- Visual messages (e.g. posting of cartoons) that are demeaning;
- Jokes and/or nicknames that stereotype or make fun of an individual; or,
- Verbal or non-verbal (e.g. mimicking or imitating) innuendoes that have a negative connotation.

3. Sexual Harassment

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:

- a. Submission to that conduct or communication is made an explicit or implicit term or condition of obtaining or continuing employment.
- b. Submission to or rejection of that conduct or communication by an individual is used as a factor in employment decisions affecting the individual.
- c. The conduct or communication has the purpose or effect or 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 prohibitive 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, 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.

4. Workplace

The 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.

5. Retaliation

Retaliation is an adverse action taken against an individual engaged in protected activity or to discourage an individual from engaging in protected activity and is prohibited. Adverse actions include termination, denial of promotion, refusal to hire, unjustified discipline or evaluation, etc. Protected activity consists of: (1) opposing conduct reasonably believed to constitute discrimination, including harassment, which violates a nondiscrimination statute, this code section, local policy, 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.

B. DUTY TO REPORT

Employees, applicants, and other persons discriminated against or harassed or who have personal knowledge of discrimination or harassment by judges or judicial branch employees in the course of their duties or by anyone in court facilities are responsible for promptly reporting such conduct in accordance with the procedures applicable to each court. 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.

1. Reporting Process

- a. If an employee is the recipient of any unwelcome gesture or remark, they are asked not to remain silent. 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, to the Presiding Judge, Court Administrator, Department Director, and/or Human Resources at any time.
- d. Any supervisor or employee that becomes aware of or observes a situation of harassment shall notify a judge, director, manager or supervisor.
- e. If the misconduct is alleged against a judge, the Presiding Judge, Court Administrator or Human Resources will refer the complaint to the Commission on Judicial Conduct for investigation of alleged misconduct of a judge.

2. Investigation

- a. All reported allegations of misconduct under this policy will be reviewed by the Presiding Judge, Court Administrator, Department Director, and Human Resources as appropriate.
- b. The Human Resources Department in conjunction with the Presiding Judge and Court Administration will determine if the alleged misconduct meets the criteria outlined in this policy and should be investigated.
 - i. The incident/misconduct will have a prompt, thorough, and impartial investigation of employees conducted by a trained investigator.
 - ii. A statement will be given to those involved that any information gathered as part of an investigation will be kept confidential to the extent possible consistent with thorough and impartial investigative and disciplinary processes.
 - iii. Immediate and appropriate corrective action will be taken.
 - iv. The reporting and investigated employees will be informed of the investigation result.
 - v. Any reporting or witnessing employee will be protected from retaliation.
 - vi. Alleged misconduct of a judge will be referred for investigation to the Commission on Judicial Conduct.
- c. The Attorney General's Office may be consulted during the investigation, to review findings, or to defend personnel appeals for employees under State jurisdiction.

C. EDUCATION

Educational opportunities will be offered for judges and judicial branch employees regarding this policy. Judges, managers, and supervisors must receive education regarding their role and responsibility to identify discrimination and harassment and take appropriate action pursuant to this policy. Yearly COJET offerings will contain training on this policy.