

DEPARTMENT: Superior Court Adult Probation Dept. Juvenile Court Clerk of Superior Court	DIVISION: ALL
RULE NAME: Judicial Merit Rules RULE: Discrimination and Harassment RULE NUMBER: 16	DATE ADOPTED: March 1, 2002 DATE AMENDED: October 10, 2014 DATE AMENDED: November 5, 2018

RULE 16 - DISCRIMINATION AND HARASSMENT

16.01 Nondiscrimination

The Court shall not discriminate or retaliate against an individual in violation of A.R.S. § 41-1461, *et seq.*, or in violation of any federal law.

16.02 Purpose

The Court strives to create and maintain a work environment in which people are treated with dignity, decency and respect. The environment of the Courts should be characterized by mutual trust and the absence of intimidation, oppression and exploitation. The Courts will not tolerate unlawful discrimination or harassment of any kind. Through enforcement of this policy and by education of employees, the Court will seek to prevent, correct and discipline behavior that violates this policy.

All employees, regardless of their positions, are covered by and are expected to comply with this policy and to take appropriate measures to ensure that prohibited conduct does not occur. Appropriate disciplinary action will be taken against any employee who violates this policy. Based on the seriousness of the offense, disciplinary action may include verbal or written reprimand, suspension, or termination of employment.

Managers and Supervisors who knowingly allow or tolerate discrimination, harassment or retaliation, including the failure to immediately report such misconduct to court human resources, are in violation of this policy and subject to discipline.

16.03 Discrimination

It is in violation of the Court's policy to discriminate in the provisions of employment opportunities, benefits or privileges; to create discriminatory work conditions; or to use discriminatory evaluative standards in employment if the basis of that discriminatory treatment is, in whole or in part, the person's race, color, national origin, ethnicity, age, religion, disability status, sex, gender, sexual orientation, gender identity, genetic information, marital status, socioeconomic status, political affiliation or veteran's status.

Discrimination on the basis of a protected category, as enumerated in this policy, may also be strictly prohibited by a variety of federal, state and local laws, including Title VII of the Civil Rights Act 1964, the Age Discrimination Act of 1975, and the Americans with Disabilities Act of 1990. This policy is intended to comply with the prohibitions stated in these anti-discrimination laws.

Discrimination in violation of this policy will be subject to disciplinary measures up to and including termination.

16.04 Harassment

The Court prohibits harassment of any kind, including sexual harassment, and will take appropriate and immediate action in response to complaints or knowledge of violations of this policy. For purposes of this policy, harassment is any verbal, nonverbal, or physical conduct designed to threaten, intimidate or coerce an employee, co-worker, or any person working for or on behalf of the Courts.

The following examples of harassment are intended to be guidelines and are not exclusive when determining whether there has been a violation of this policy.

- Verbal harassment includes comments that are offensive or unwelcomed regarding a person's national origin, race, color, religion, sex, gender, sexual orientation, age, body, disability or appearance, including epithets, slurs and negative stereotyping.
- Nonverbal harassment includes distribution, display or discussion of any written or graphic material that ridicules, denigrates, insults, belittles or shows hostility, aversion or disrespect toward an individual or group because of national origin, race, color, religion, age, sex, gender, sexual orientation, pregnancy, appearance, disability, sexual identity, marital status or other protected status.

16.05 Sexual Harassment

Sexual harassment is a form of unlawful employment discrimination under Title VII of the Civil Rights Act of 1964 and is prohibited under the Court's anti-harassment policy. Sexual harassment includes unwelcome sexual advances, requests for sexual favors, sexually motivated physical contact, or other verbal or physical conduct or any form of communication of a sexual nature when:

- Submission to that conduct or communication is made an explicit or implicit term or condition of obtaining or continuing employment.
- Submission to or rejection of that conduct or communication by an individual is used as a basis for an employment decision affecting that individual.
- The conduct or communication has the purpose or effect of unreasonably interfering with an employee's work performance or creates an intimidating, hostile or offensive environment.

Sexual harassment may take different forms. The following examples of sexual harassment are intended to be guidelines and are not exclusive when determining whether there has been a violation of this policy.

- Verbal sexual harassment includes innuendos, suggestive comments, jokes of a sexual nature, sexual propositions, lewd remarks and threats; requests for any type of sexual favor (this includes repeated, unwelcome requests for dates); and verbal abuse or "kidding" that is oriented toward a prohibitive form of harassment, including that which is sexual in nature and unwelcome.
- Nonverbal sexual harassment includes the distribution, display or discussion of any written or graphic material, including calendars, posters and cartoons that are sexually suggestive or show hostility toward an individual or group because of sex; suggestive or insulting sounds; leering;

staring; whistling; obscene gestures; content in letters, notes, facsimiles, e-mails, photos, text messages, tweets and internet postings; or other forms of communication that are sexual in nature and offensive.

- Physical sexual harassment includes unwelcome, unwanted physical contact, including touching, tickling, pinching, patting, brushing up against, hugging, cornering, kissing, fondling, and forced sexual intercourse or assault.

Courteous, mutually respectful, pleasant, noncoercive interactions between employees that are appropriate in the workplace and acceptable to and welcome by both are not considered to be harassment, including sexual harassment.

16.06 Workplace Violence

The Court provides a safe workplace for all employees. It will not tolerate any type of workplace violence committed by or against employees. Employees are prohibited from making threats or engaging in violent activities. This list of behaviors provides examples of conduct that is prohibited:

- Causing physical injury to another person.
- Making threatening remarks.
- Displaying aggressive or hostile behavior that creates a reasonable fear of injury to another person or subjects another individual to emotional distress.
- Intentionally damaging employer property or property of another employee.
- Possessing a weapon while on company property or while on company business.
- Committing acts motivated by, or related to, sexual harassment or domestic violence.

The Court conducts annual inspections of the premises to evaluate and determine any vulnerabilities to workplace violence or hazards. Any necessary corrective action will be taken to reduce all risks.

Although the Court does not expect employees to be skilled at identifying potentially dangerous persons, employees are expected to exercise good judgement and to inform the Court HR in their respective court department if any employee exhibits behavior that could be a sign of a potentially dangerous situation. Such behavior includes:

- Discussing weapons or bringing them to the workplace.
- Displaying overt signs of extreme stress, resentment, hostility or anger.
- Making threatening remarks.
- Showing sudden or significant deterioration of performance.
- Displaying irrational or inappropriate behavior.

Threats, threatening conduct, or any other acts of aggression or violence in the workplace will not be tolerated. Any employee determined to have committed such acts will be subject to disciplinary action, up to and including termination. Nonemployees engaged in violent acts on the employer's premises will be reported to the proper authorities and fully prosecuted.

16.07 Workplace Bullying

The Court will not in any instance tolerate bullying behavior. Employees found in violation will be disciplined, up to and including termination.

The Court defines bullying as repeated, health-harming mistreatment of one or more people by one or more perpetrators. It is abusive conduct that includes:

- Threatening, humiliating or intimidating behaviors.
- Work interference/sabotage that prevents work from getting done.
- Verbal abuse.

Such behavior violates the Court's Code of Ethics, which clearly states that all employees will be treated with dignity and respect.

The Court considers the following types of behavior examples of bullying:

- **Verbal bullying.** Slandering, ridiculing or maligning a person or his or her family; persistent name-calling that is hurtful, insulting or humiliating; using a person as the butt of jokes; abusive and offensive remarks.
- **Physical bullying.** Pushing, shoving, kicking, poking, tripping, assault or threat of physical assault, damage to a person's work area or property.
- **Gesture bullying.** Nonverbal gestures that can convey threatening messages.
- **Exclusion.** Socially or physically excluding or disregarding a person in work-related activities.

In addition, the following examples may constitute or contribute to evidence of bullying in the workplace:

- Persistent singling out of one person.
- Shouting or raising one's voice at an individual in public or in private.
- Using obscene or intimidating gestures.
- Not allowing the person to speak or express himself or herself (i.e., ignoring or interrupting).
- Personal insults and use of offensive nicknames.
- Public humiliation in any form.
- Constant criticism on matters unrelated or minimally related to the person's job performance or description.
- Public reprimands.
- Repeatedly accusing someone of errors that cannot be documented.
- Deliberately interfering with mail and other communications.
- Spreading rumors and gossip regarding individuals.
- Encouraging others to disregard a supervisor's instructions.
- Manipulating the ability of someone to do his or her work (e.g., overloading, withholding information, setting deadlines that cannot be met, giving deliberately ambiguous instructions).
- Assigning menial tasks not in keeping with the normal responsibilities of the job.
- Taking credit for another person's ideas.
- Refusing reasonable requests for leave in the absence of work-related reasons not to grant leave.
- Deliberately excluding an individual or isolating him or her from work-related activities, such as meetings.
- Unwanted physical contact, physical abuse or threats of abuse to an individual or individual's property (defacing or marking up property).

Individuals who feel they have experienced bullying should report this to their supervisor or to Court HR in their respective court department before the conduct becomes severe or pervasive. All employees are strongly encouraged to report any bullying conduct they experience or witness as soon as possible to their supervisor or Court HR in their respective court department to take appropriate action.

16.08 Consensual Romantic or Sexual Relationships

The Court strongly discourages romantic or sexual relationships between a manager or other supervisory employee and his or her staff (an employee who reports directly or indirectly to that person) because such relationships tend to create compromising conflicts of interest or the appearance of such conflicts. In addition, such a relationship may give rise to the perception by others that there is favoritism or bias in employment decisions affecting the staff employee. Moreover, given the uneven balance of power within such relationships, consent by the staff member is suspect and may be viewed by others, or at a later date by the staff member, as having been given as the result of coercion or intimidation. The atmosphere created by such appearances of bias, favoritism, intimidation, coercion or exploitation undermines the spirit of trust and mutual respect that is essential to a healthy work environment. If there is such a relationship, the parties need to be aware that one or both may be moved to a different department or other actions may be taken.

If any employee of the Court enters into a consensual relationship that is romantic or sexual in nature with a member of his or her staff (an employee who reports directly or indirectly to him or her), or if one of the parties is in a supervisory capacity in the same department in which the other party works, the parties must notify the Appointing Authorities of the respective Court Departments or Court Human Resources. Because of potential issues regarding quid pro quo harassment, the Court has made reporting mandatory. This requirement does not apply to employees who do not work in the same department or to parties where neither one supervises or otherwise manages responsibilities over the other.

Once the relationship is made known to the Court, the Court will review the situation with Court Human Resources in light of all the facts (reporting relationship between the parties, effect on co-workers, job titles of the parties, etc.) and will determine whether one or both parties need to be moved to another job or department. If it is determined that one party must be moved, and there are jobs in other departments available for both, the parties may decide who will be the one to apply for a new position. If the parties cannot amicably come to a decision, or the party is not chosen for the position to which he or she applied, the Appointing Authorities of the respective Court Departments or the Presiding Judge will decide which party will be moved. That decision will be based on which move will be least disruptive to the organization as a whole. If no other jobs are available for either party, the parties will be given the option of terminating their relationship or resigning.

16.09 Retaliation

An employee may not be subjected to an adverse employment action in response to:

- Filing or raising a complaint or concern of discrimination or harassment.
- Opposing any practice that is a form of employment discrimination.

- Taking part in an investigation.

However, filing groundless or malicious complaints is an abuse of this policy and will be treated as a violation.

Any person who is found to have violated this section will be subject to discipline up to and including termination of employment.

16.10 Confidentiality

All complaints and investigations are treated confidentially to the extent possible, and information is disclosed strictly on a need-to-know basis. The identity of the complainant is usually revealed to the parties involved during the investigation, and the Appointing Authority or their Designee will take adequate steps to ensure that the complainant is protected from retaliation during and after the investigation. All information pertaining to a complaint or investigation under this policy will be maintained in secure files within the Court Human Resources department.

16.11 Commission on Judicial Conduct

The Commission on Judicial Conduct is an independent state agency. The Commission's purpose is to investigate complaints of alleged unethical conduct by state and local judicial officers and to prosecute, when appropriate, formal charges of judicial misconduct. Membership includes judges, attorneys and public members. Attorney members are appointed by the Arizona State Bar and public members are appointed by the Governor.

16.12 Referral to the Commission on Judicial Conduct for Judicial Officers

The Court has established the following procedures for lodging a complaint of alleged harassment, discrimination or retaliation by state or local judicial officers.

- A. An employee (complainant) who believes they have been harassed or discriminated against by a judicial officer, should submit their complaint as soon as possible after an incident has occurred, preferably in writing to the Commission on Judicial Conduct. The Commission accepts electronic complaints where the complainant uses the Commission's complaint form, attaches a PDF copy of that form to an e-mail, and sends the e-mail to the Commission at cjc@courts.az.gov. The form can also be printed, filled in by hand, and mailed to the Commission at the address listed on the form.
- B. The complaint should consist of a statement of facts describing the judge's alleged misconduct and listing the names of witnesses who can verify the facts. The complainant may attach copies of documents or witness statements that substantiate the allegations of misconduct he or she believes may help the Commission understand the complaint.
- C. All complaints are numbered and screened in the order in which they are received. The Commission will review the complaint and determine whether it alleges judicial misconduct.
- D. If the complaint alleges actionable misconduct, the Commission staff will investigate to determine whether there is evidence to support the allegations. An investigation may entail

reviewing documents, asking the judge to submit a written response, and interviewing relevant witnesses.

- E. Once the investigation is complete, the Commission members review the matter to determine the appropriate disposition. The Commission may dismiss a complaint, with or without an advisory comment or warning; issue a public reprimand; or file formal charges against the judge.
- F. If the Commission dismisses your complaint, you may submit a request for reconsideration within 15 days of the date of the dismissal order.
- G. All complaints become public at some point. The degree and timing of the public disclosures depend on how a complaint is resolved.
 - a. **Dismissals:** The complaint and order of dismissal are made public after the time for a request for reconsideration has expired. All identifying information as to the complainant and the judge is redacted.
 - b. **Reprimands:** The complaint, judge's response, and reprimand order become public after the time for a request for reconsideration and for the judge to request a formal hearing expires.
 - c. **Formal Cases:** When formal charges are filed, and the judge files an answer or the time for filing the answer expires, everything subsequently filed in the case is available to the public.

16.13 Complaint Procedures for Court Employees

The Court has established the following procedures for lodging a complaint of harassment, discrimination or retaliation. The Court will treat all aspects of the procedure confidentially to the extent reasonably possible.

- A. An employee ("Complainant") who believes they have been harassed or discriminated against, should submit their complaint as soon as possible after an incident has occurred, preferably in writing or verbally to the Appointing Authorities of the respective Court Department.
- B. Upon receiving a complaint or being advised by a supervisor or manager that violation of this policy may be occurring, the receiving person will notify the Appointing Authority of the respective Court Department and review the complaint with the Attorney General's Office.
- C. The Appointing Authority of the respective Court Department or their Designee will initiate an investigation to determine whether there is a reasonable basis for believing that the alleged violation of this policy occurred.
- D. If necessary, the Complainant and the person against whom the complaint is made ("Respondent") will be separated during the course of the investigation, either through internal transfer or administrative leave.
- E. During the investigation, the Appointing Authority of the respective Court Department or their Designee, together with legal counsel or other management employees, will interview the complainant, to determine whether the alleged conduct occurred. The Complainant will be advised by the Appointing Authority or their Designee that the complaint is to be treated confidentially and should not be discussed with other employees or others due to the sensitivity of the complaint.

- F. The Appointing Authority or Designee will document a complaint as specifically as possible, including instances, dates and places of claimed harassment; names of witnesses to the instances, and names of others whom the Complainant believes have experienced similar harassment by the respondent. The document will be presented to the Complainant for review and approval evidenced by signing the documents.
- G. The Appointing Authority or Designee will next meet with Respondent at the earliest practicable time to inform the responding party of the complaint. The Respondent will be given copies of the documents presented by the Complainant or prepared by the Appointing Authority that the Complainant signed.
 - 1. If the Respondent chooses to respond, they may do so verbally or in writing. The response will be documented by the Appointing Authority or Designee as specifically as possible, and the documents will be presented to the Respondent for review and approval evidenced by the Respondent's signature on the documents.
 - 2. The Respondent will be advised by the Appointing Authority or Designee that the complaint and the response are to be treated confidentially and should NOT be discussed with others except as the Respondent finds necessary to prepare a response.
- H. Copies of any documents of the response should be given to the Complainant who may reply in writing to the Appointing Authority within a period stated by that Appointing Authority.
- I. A copy of the written reply will be given to the Respondent by the Appointing Authority. The Appointing Authority or Designee may interview other people concerning the complaint, who will be advised that the proceedings are to be treated confidentially and should not be discussed with others.
- J. The Appointing Authority or Designee will render a written decision with findings and conclusions, and a copy will be given to the Complainant, the Respondent, and the Court Administrator, provided however if the Court Administrator has acted in the matter as the Appointing Authority, a copy will be given to the Presiding Judge.
 - 1. If harassment, discrimination or retaliation is found, the decision will state the specific remedial action to be taken.
 - 2. If the Respondent is a classified employee with regular status and harassment, discrimination or retaliation is found, remedial action which is disciplinary, i.e. dismissal, suspension, or demotion, may not be taken until the procedures stated in Rule 10.02 have been completed. Any disciplinary action taken by the Appointing Authority pursuant to Rule 10.02 will be subject to the employee's right of appeal pursuant to Rule 11. (Amended October 10, 2014)
 - 3. To the extent permitted by procedures established under Rule 3.20, the decisions may be pursued as a grievance by either party other than a classified employee having the right of appeal under Rule 11. (Amended October 10, 2014)

16.14 Discrimination and Harassment Training and Education

The Administrative Office of the Courts through its Education Services Division shall provide educational opportunities for judges and judicial branch employees regarding this policy. Presiding Judges of each county shall ensure additional educational opportunities are offered for judges and judicial branch employees within their county regarding this policy and procedures. Judges, managers, and supervisors must receive education regarding their role and responsibility to identify discrimination and harassment and to take appropriate action pursuant to the Arizona Code of Judicial Administration, Chapter 3: Judicial Officers and Employees of Section 1-304: Discrimination and Harassment and local procedures.

- a. All full-time and part-time judges governed by the Arizona Code of Judicial Administration and local procedures shall complete biennial training on discrimination and harassment.
- b. All full-time and part-time administrators, managers and supervisors governed by the Arizona Code of Judicial Administration and local procedures shall complete annual training on discrimination and harassment regarding their role and responsibility and taking appropriate action when identifying discrimination and harassment.
- c. All full-time and part-time court personnel governed by the Arizona Code of Judicial Administration and local procedures shall complete annual training on discrimination and harassment.