



## CLERK OF THE COURT INTERNAL POLICY

Area: Human Resources  
Document Number: POL-HR-1002  
Subject: Prohibition against Harassment,  
Discrimination and Retaliation  
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Effective Date: 12/11/2018

Revision Level: A

Last Revised Date: 12/23/20

### PURPOSE:

It is the purpose of this policy to define the policy against Harassment, Discrimination and Retaliation by the Clerk of Superior Court (COSC) and its employees.

### POLICY:

COSC is an equal opportunity employer. In accordance with applicable law, COSC prohibits discrimination and harassment based on race, gender, religion, color, national origin, age, disability, pregnancy, veteran status, genetic information, marital status, socioeconomic status or political affiliation or any other characteristic protected by federal or state laws. COSC also prohibits discrimination and harassment based on sexual orientation or gender identity, including transgender status, as this is considered harassment and a sex characteristic violation under Title VII. COSC is committed to preventing retaliation against employees who engage in activity protected by federal or state discrimination and harassment laws or policy. This Policy outlines a complaint and investigation procedure for employees who believe they have witnessed or been subjected to harassment, discrimination, and/or retaliation. COSC also seeks to address unprofessional and discourteous conduct, which, if allowed to continue, could potentially rise to the level of, or lead to, a violation of law or policy.

Each employee or supervisor is responsible for actively promoting the establishment and maintenance of a professional workplace, free from discrimination, harassment and retaliation. Employees, applicants and other persons discriminated against, harassed, or who have personal knowledge of discrimination are responsible for promptly reporting such conduct in accordance with COSC procedures. To that end, this Policy expressly prohibits anyone from engaging in any type of harassment or discrimination, or any conduct that could rise to the level of harassment or discrimination. Retaliation toward any complainant, witness, or other employee, applicant or other individual complying with this Policy or involved in an investigation undertaken pursuant to this Policy is strictly prohibited.

### DETAILS:

- I. Supervisors shall ensure that all employees are aware of this Policy and the consequences of violating this Policy. Failure by a supervisor to report observed or known harassment, discrimination, or retaliation is grounds for disciplinary action, up to and including termination.
- II. Determining whether specific conduct constitutes a violation of this Policy depends



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upon the facts and the context in which the conduct occurs as well as the severity or frequency of the conduct. Certain behaviors that do not fit the definition of discrimination, harassment or retaliation under this Policy may be unprofessional and inappropriate in the workplace and may also be prohibited by Policy HR2416 *Code of Conduct*, the Judicial Code of Conduct, and/or other policies and procedures of the County. Complaints not based on a Protected Characteristic should also be handled through COSC Human Resources.

III. The following are examples of conduct that could rise to the level of, or lead to discrimination or harassment:

- A. **MAKING EMPLOYMENT DECISIONS** such as hiring, promoting, disciplining, or terminating based on an individual's Protected Characteristic.
- B. **OFFENSIVE or DEROGATORY COMMENTS** directed toward a person on account of their Protected Characteristic.
- C. **PHYSICAL CONDUCT** such as deliberately impeding or blocking movement of another; violating an individual's "personal space;" and unwelcome touching, patting, pinching, or brushing parts of the body.
- D. **VISUAL (nonverbal) or GRAPHIC HARASSMENT** such as derogatory or suggestive photographs, calendars, graffiti, posters, cartoons or drawings; sexually suggestive objects; making obscene gestures; leering; and drawing attention to suggestive or pornographic materials.
- E. **JOKES or COMMENTS** based on a Protected Characteristic, including jokes about:
  - 1. race or national origin;
  - 2. someone's gender; gender identity including transgender status
  - 3. age;
  - 4. religion or religious practices or wardrobe;
  - 5. an individual's body, including jokes about a woman's body during pregnancy;
  - 6. an individual with a disability; or
  - 7. jokes of a sexual nature



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- F. **USING STEREOTYPES OR ASSUMPTIONS** about people based on a Protected Characteristic.
- G. **USING TECHNOLOGY** such as Facebook, Twitter, texting, email, and voicemail to generate, send or display material that is considered obscene, profane, intimidating, threatening, defamatory or which identifies or refers to a Protected Characteristic in derogatory or stereotypical terms. This includes material that is intended only as a joke or for amusement purposes.
- IV. Discipline for violations of this Policy may be implemented to stop and prevent discrimination, harassment, and retaliation. Depending upon the severity and pervasiveness of the behavior, the supervisory team (with COSC HR consultation) will determine the appropriate level of discipline. Unprofessional and discourteous behavior that does not rise to the level of unlawful discrimination, harassment or retaliation may still result in discipline, up to and including termination.
- A. **COMPLAINT AND INVESTIGATION PROCEDURES**
1. An employee is not required to directly confront the individual believed to be engaging in the discriminatory, harassing, or retaliatory behavior toward them. However, employees may certainly choose to advise the person exhibiting the unwanted behavior that the behavior is inappropriate, unprofessional, or making them uncomfortable, and that they wish the behavior to stop.
  2. Employees who feel they have been subjected to discrimination, harassment, and/or retaliation, or who have witnessed what they believe to be discrimination, harassment, or retaliation toward another, should promptly follow the complaint procedure outlined below.
- B. **COMPLAINT PROCEDURE**
1. Employees are encouraged, but not required, to formalize their complaints in writing to COSC Human Resources so that an investigation can begin promptly based on the written information provided by the complainant. Employees should provide any supporting information (e.g., e-mails, pictures, voicemail messages) with their complaint whenever possible.



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2. If an employee's complaint is made orally to the designated individuals, or to their immediate supervisor, the person receiving the complaint should immediately document the employee's allegations. It is recommended, but not necessary, that the employee making the complaint be asked to review and sign the documented summary upon its completion to confirm the accuracy of the information. NOTE: Even if an individual complaining about alleged discrimination, harassment and/or retaliation states that they "just want some advice" or "don't want any action taken," the person receiving the complaint should advise the complainant that they are obligated to record the information and inform the necessary individuals (for example, the Appointing Authority and Human Resources) so that the office can take appropriate and immediate action.
3. Supervisors exercise authority on behalf of COSC and must ensure that their workplace is free of discrimination, harassment and retaliation. To that end, they must take each and every complaint seriously and report any observed or learned violations of this Policy. Supervisors must notify COSC Human Resources of any complaints received or any observed potential harassment, discrimination or retaliation and forward any and all corresponding documentation. Failure to follow this Policy may lead to discipline, up to and including termination.

### C. INVESTIGATION PROCEDURE


1. Upon receipt of a complaint by COSC Human Resources, a timely and thorough investigation to the extent appropriate will be conducted. Depending on the nature of the complaint, the investigation may be conducted by COSC Human Resources, members of the supervisory team, or through a joint effort between management and COSC Human Resources. Every effort will be made to address the complaint at the lowest possible level depending upon the nature of the complaint.

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2. Employees who have filed a complaint should not be relocated, reassigned, or transferred under any circumstances, even if the complainant requests the transfer, without first consulting COSC Human Resources or legal counsel. In some cases, the Appointing Authority may choose to temporarily transfer or remove an employee who is alleged to have engaged in discriminatory, harassing, or retaliatory behavior from the workplace during the period of time necessary to complete the investigation.
  
3. Every employee has an obligation to provide information or other assistance that may be needed in order to ensure that a prompt, complete and fair investigation is conducted. Failure of an employee to cooperate in an investigation may lead to discipline, up to and including termination. After the investigation, a verbal or written report will be provided by the investigator(s) to the appropriate Appointing Authority who will decide the appropriate action. The Appointing Authority may consult with the investigator(s) and legal counsel prior to finalizing any decision. In addition, the investigated and reporting employees will be informed when the investigation is closed.

**D. CONFIDENTIALITY**

1. Complaints under this Policy will be handled with confidentiality, to the greatest extent permitted by law. While the investigation is underway, a limited number of individuals will be given information regarding the complaint which may include the Appointing Authority, COSC Human Resources, legal counsel, and departmental staff members involved in the investigation process and/or those members of management involved in any disciplinary decision following the investigation.
  
2. Employees who are interviewed as part of an investigation must keep the discussions confidential while the investigation is pending and may be subject to disciplinary action, up to and including termination, for revealing information.

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3. Investigation and disciplinary records will be maintained by COSC Human Resources and may be subject to disclosure under applicable Arizona and federal law.

**APPLICABILITY:**

This policy applies to all employees deputized by the Clerk of the Court. Failure to adhere to the provisions of this policy may result in disciplinary action including dismissal.

**DEFINITIONS:**

- A. **Appointing Authority:** The elected official or the designated representative authorized to act in this capacity.
- B. **Human Resources:** COSC Human Resources is located at 620 West Jackson Street Suite 3052, Phoenix, Arizona 85003 and can be reached by calling 602-506-3941.
- C. **Discrimination:** Different treatment in the terms, conditions, and privileges of employment because of an individual's Protected Characteristic.
- D. **Harassment:** Unwelcome sexual advances; requests for sexual favors and other conduct of a sexual nature; or treatment of an individual based on a Protected Characteristic that is not welcome, that is offensive, that interferes with work effectiveness or that creates an intimidating, hostile, or offensive work environment. Not all conduct that is unpleasant or upsetting constitutes harassment.
- E. **Protected Activity:** An employee's good faith expressed opposition to an employer's practice that they have a reasonable belief to be discrimination; such as, complaining of alleged discrimination or harassment against oneself or another, or filing a charge of discrimination. Protected Activity may also include exercising legal rights, such as requesting a reasonable accommodation based on religion or disability, requesting leave under the Family Medical Leave Act or filing a workers' compensation claim.



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- F. **Protected Characteristic:** All characteristics covered by applicable federal or state laws including, but not limited to, race, gender, gender identity, including transgender status, religion, color, national origin, age, disability, pregnancy, veteran status, marital status, socioeconomic status, political affiliation and genetic information. For purposes of this definition, sexual orientation is also a Protected Characteristic. COSC also prohibits discrimination and harassment based on sexual orientation or gender identity, including transgender status, as this is considered harassment and a sex characteristic violation under Title VII.
- G. **Retaliation:** Subjecting an employee to adverse treatment or adverse action because the employee engaged in a 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.
- H. **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:
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.



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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 same gender.

- I. **Supervisor:** Any member of management that has supervisory responsibilities.



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**REVISION HISTORY:**

| Revision Number | Issuing Authority | Summary of Changes                               | Approval Date |
|-----------------|-------------------|--|---------------|
| -               | N/A               | Document Origination                             | 11/1/2018     |
| A               | Lori Fiscus       | Updated definition of "Protected Characteristic" | 12/23/2020    |


**IMPLEMENTATION**

This policy will be signed upon new hire and will be posted on the intranet. Educational opportunities will be provided to all employees.

In addition, all employees in a Lead and Supervisory capacity will receive mandatory annual training regarding their role and responsibility to identify discrimination and harassment and to take appropriate action pursuant to this policy and local procedures.

**AUTHORIZED SIGNATURES:**

Issuing Authority:


  
12/30/2020  
 Lori Fiscus  
 Administrator

Approving Authority:

  
 Michael Nimtz  
 Deputy Director

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Mike Nimtz  
Deputy Director