

Washington State Supreme Court Gender and Justice Commission

August 26, 2020



Justice Sheryl Gordon McCloud, Co-Chair
Washington State Supreme Court

Judge Marilyn G. Paja, Co-Chair
Kitsap County District Court

Judge Anita Crawford-Willis
Seattle Municipal Court

Judge Rebecca Glasgow
Court of Appeals, Division II

Justice Steve González
Washington State Supreme Court

Ms. Lillian Hawkins
King County District Court, West Division

Professor Gail Hammer
Gonzaga University School of Law

Ms. Elizabeth Hendren
Northwest Justice Project

Judge Eric Z. Lucas
Snohomish County Superior Court

Ms. Erin Moody
Eleemosynary Legal Services

Ms. Riddhi Mukhopadhyay
Sexual Violence Law Center

Dr. Dana Raigrodski
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Ms. Jennifer Ritchie
Washington Women Lawyers

Judge Jacqueline Shea-Brown
Benton Franklin Superior Courts

Chief Judge Cindy K. Smith
Suquamish Tribal Court

Ms. Sonia M. Rodriguez True
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To: Washington State Courts

Re: Model Anti-Harassment Policy

Dear Washington State Court Judicial Officers and Administrators:

The Conference of Chief Justices (CCJ) and Conference of State Court Administrators (COSCA) have expressed renewed interest in addressing sexual harassment in the courts. The Conference of Chief Justices passed a resolution encouraging state judicial branches to “establish procedures for recognizing and responding to harassment and harassment complaints.” We know that this issue is relevant in Washington State and addressing it at all court levels is essential.

In 2018, the Board for Judicial Administration (BJA) charged the Gender and Justice Commission (GJC) with developing a model anti-sexual harassment policy for Washington Courts. As the Supreme Court Commission dedicated to promoting gender equality in the judicial system, the GJC was well-positioned to complete this task. Today, we are pleased to share the results of our efforts over the past year plus -- a well-researched and vetted model policy -- with you. Commission members Justice Steven González and Ms. Erin Moody, and Judge Beth Andrus lead this effort for us.

In line with our approach to other policy work, the GJC determined that it was necessary to incorporate not only sexual harassment, but all forms of workplace harassment into the model policy. We believe it is equally important for courts to prevent and respond to these other forms, such as racial harassment.

As you review the enclosed model policy, please keep in mind that it is intended for adaptation to meet the needs of each jurisdiction. We know that you will want to take into account local considerations, such as referencing relevant city codes and personnel.

For example, on page three of the policy the “Reporting” section reads, “If you are a supervisor and you become aware of harassment or retaliation, you must take immediate steps to prevent the behavior from reoccurring and must promptly notify [*designated person or office for receiving complaints, e.g., HR department, AOC, or designated court personnel*].”

August 26, 2020
Page 2

We hope that you find this model policy helpful in developing or revising your court's anti-harassment policy. We welcome your questions and feedback.

In addition to the model policy, we want to take this opportunity to share news about a related project. As many of you know, the Commission is currently in the midst of a new study of the nature and impact of gender bias in Washington state courts.

This study has a particular focus on how race and poverty impact women when they access the courts, participate in legal proceedings, or work in the court environment, and the consequences they experience once they leave the courthouse. We have teams of experts conducting extensive research on twenty-seven priority topics, and we are implementing four pilot projects.

One of the pilot projects is a survey on workplace harassment (e.g. harassment based on gender, sexual orientation, race/ethnicity, etc.) in the courthouse. This pilot project was proposed by the same committee that developed the model policy, as a way to better understand harassment in Washington State courts. The Washington State Center for Court Research is leading the development and administration of this survey and we anticipate disseminating it to the court community in the coming months.

Thank you for your consideration.



Justice Sheryl Gordon McCloud
Co-Chair, Gender and Justice Commission



Judge Marilyn G. Paja
Co-Chair, Gender and Justice Commission

Enclosures (2)

MODEL ANTI-HARASSMENT POLICY

Purpose for Offering Model Anti-Harassment Policy to Washington Courts

The Gender and Justice Commission strongly encourages all courts in the State of Washington to adopt a written anti-harassment policy that informs all of its employees, including Judicial Officers, that harassment will not be tolerated; defines and provides examples of harassment and other prohibited conduct; outlines a procedure for employees to report harassment; and encourages all employees, not just targets of harassment, to report misconduct.

The Commission also encourages all courts to assure that complaints will be handled as confidentially as possible, guarantee that employees who report harassment will not suffer adverse job consequences as a result, and require supervisors or managers within the court to report suspected harassment.

Finally, the Commission asks each court to implement the policy in a meaningful way, ensuring that supervisors and managers become familiar with the policy and review it on a regular basis, and that all employees are regularly trained on its provisions.

While the Commission offers this proposed model anti-harassment policy, it understands that the laws in each local jurisdiction may vary. Each court should review these local laws to ensure that any final policy adopted by your court complies with these legal requirements. Citation to authorities within the model policy are as of the date of creation of the model policy and should be updated as needed.

Model Anti-Harassment Policy

Statement of Purpose

The _____ Court (the Court) is committed to maintaining an environment of respect, dignity, and equal employment opportunity for all people who work in the Court. This policy is essential to that commitment, and it is the responsibility of [*supervisors, the Court Clerk, Court Administrator, and Judicial Officers*] and all employees to comply with and promote its provisions. A violation of this policy by an employee or volunteer may result in disciplinary action, up to and including dismissal from employment.

Everyone who works in the Court has the right to fair and equal treatment, regardless of age (40 years or older); sex (including pregnancy); marital status; sexual orientation; gender identity; gender expression; race; creed; color; national origin; honorably discharged veteran or military status; the presence of any actual or perceived sensory, mental, or physical disability or the use of

a trained dog guide or service animal by a person with a disability; unless based upon a bona fide occupational qualification;¹ or genetic information.²

Definitions

The Court seeks to eliminate all harassment because any act of harassment undermines the integrity and quality of the workplace and is unfair to any employee or volunteer who experiences it.

Harassment is unwelcome language or conduct that targets a person or group of people because of their age (40 years or older); sex (including pregnancy); marital status; sexual orientation; gender identity; gender expression; race; creed; color; national origin; honorably discharged veteran or military status; the presence of any actual or perceived sensory, mental, or physical disability or the use of a trained dog guide or service animal by a person with a disability; unless based upon a bona fide occupational qualification; or genetic information.

Harassment becomes unlawful when the unwelcome language or conduct becomes a condition of continued employment or is severe or pervasive enough that a reasonable person would consider intimidating, hostile, or abusive.

Harassment can take many forms. Some examples include:

- Offensive jokes, comments about a person's body, degrading language, or slurs;
- Demeaning or sexually suggestive photos or videos shared through social media, email, or text message;
- Unwanted touching, offensive gestures, or blocking a person's movement.

Sexual harassment is a form of harassment that is sexual in nature. Sexual harassment includes, but is not limited to:

- Unwelcome comments, jokes, suggestions, or derogatory remarks of a sexual nature
- Inappropriate or unwelcome physical contact such as pats, squeezes, deliberately brushing against someone's body, or impeding or blocking a person's normal movement
- Posting sexually suggestive or derogatory pictures, cartoons, or drawings at one's workstation or in common areas, or sending them through email or text messages
- Unwelcome sexual advances or pressure for sexual favors
- Basing employment decisions (such as promotions, evaluations, or assignments) or access to court services on a person's acquiescence in the sexually harassing conduct

¹ RCW 49.60.040(7)(a) & (26), .180; 49.44.090; *Hegwine v. Longview Fibre Co., Inc.*, 162 Wn.2d 340, 172 P.3d 688 (2007).

² 42 U.S.C. 2000ff-1(a)(1).

Harassment, including sexual harassment, becomes unlawful when the unwelcome language or conduct becomes a condition of continued employment or is severe or pervasive enough that a reasonable person would consider it intimidating, hostile, or abusive.

Harassment can occur in a variety of circumstances. The harasser can be a supervisor, a supervisor in another area, a co-worker, or a non-employee. Anyone can be unfairly affected by severe or pervasive harassment, whether they are the intended target of the harassment or not. And unlawful harassment may occur even if the target or others affected by the harassment do not miss work or lose any wages as a result.

If you are unsure whether conduct or language qualifies as “harassment,” you can and should report it.

Retaliation is any action by court personnel that punishes an employee who in good faith reports harassment, provides information to personnel investigating a claim of harassment, or testifies in a proceeding related to a claim of harassment, or that discourages employees from doing any of these things. Retaliation will not be tolerated.

Retaliation can include isolation at work, transfer to a less desirable position, demotion in title or job duties, dismissal, discipline, suspension, failure to hire or promote, negative performance reviews, exclusion from work-related events, or threatening or hostile behavior.

A Judicial Officer is anyone who is authorized to perform judicial functions, including an officer such as a magistrate, court commissioner, part-time judge, or judge pro tem.

Procedures for Reporting, Investigating and Resolving Incidents of Harassment

All employees have a responsibility to create a work environment that promotes dignity and respect. That is why the Court expects employees and volunteers to report harassment and retaliation immediately. If you are a supervisor who witnesses or knows about harassment, we expect you to immediately report that behavior and take steps to prevent its reoccurrence. We ask all employees, volunteers, and supervisors to follow the procedures described below, as applicable.

Reporting

If you are an employee or volunteer and you experience harassment, you should tell the harasser to stop, if you are comfortable doing so, and / or immediately report the harassment to *[their] [any] supervisor or [other designated party, such as the Court’s HR department, the Administrative Office for the Court, or designated court personnel]*, or any Judicial Officer, either orally or in writing. You should use the same reporting procedures if you experience retaliation.

If you are a supervisor and you become aware of harassment or retaliation, you must take immediate steps to prevent the behavior from reoccurring and must promptly notify *[designated person or office for receiving complaints, e.g., HR department, AOC, or designated court*

personnel]. If you fail to do so, you may be subject to corrective / disciplinary action up to and including dismissal. You have this reporting responsibility, even where the alleged harasser is a not a Court employee.

If you experience harassment or retaliation by a Judicial Officer, you may, in addition to following the procedures outlined in this policy, report the behavior to the Commission on Judicial Conduct.

You may also file a complaint with the Washington State Human Rights Commission or the Equal Employment Opportunity Commission.

Outside Contact Information

If you believe you have faced discrimination, harassment and/or retaliation, you have a right to file a discrimination, harassment, and/or retaliation complaint with an outside federal, state, or local agency. Below is the contact information for the agencies that cover Washington State.

Federal

Equal Employment Opportunity Commission: 1-800-669-4000
1-844-234-5122 (ASL Video Phone); www.eeoc.gov.

State

Washington Human Rights Commission: 1-800-233-3247; www.hum.wa.gov.

Investigation

The Court will promptly investigate a complaint of harassment or retaliation under this policy. The object of an investigation shall be to determine (1) whether harassment, as defined in this policy, has occurred; and (2) what corrective / disciplinary action, if any, should be taken.

Scope. Investigations will vary according to the nature and complexity of the underlying complaint. They may be informal or formal, depending on the circumstances, and may include, but are not limited to, interviewing witnesses and gathering relevant evidence. All Court employees and volunteers shall cooperate with investigations conducted under this policy.

Objectivity. Investigations will be objective and will not be conducted by any person having an interest in the outcome. An investigation may be conducted either by designated court personnel or by an outside entity. In any investigation, both the reporting party and the subject of the report have a right to be timely notified as to (1) the identity of the designated investigator(s) and (2) the outcome of the investigation.

Confidentiality. In any investigation, every reasonable effort will be made to maintain the confidentiality of the reporting party, the subject of the complaint, and any participating witnesses. Absolute confidentiality cannot be guaranteed in an investigation but identifying information will be shared with witnesses and other parties outside the investigating body only on a “need to know” basis.

The Court expects staff and others who learn of a report of harassment to minimize disruption and stress in the workplace by refraining from gossip and speculation about the report, the persons involved, the investigation, or its resolution.

At any time during the process, if the harassment continues, recurs, or if retaliation occurs, you should immediately contact [*the person designated to investigate the incident*].

Resolution

If the Court determines that a report of harassment is substantiated, [*name of decision-maker or decision-making body*] will determine the appropriate corrective / disciplinary action, up to and including dismissal.

After completion of the investigation and necessary personnel action, [*insert designated representative*] may provide follow-up to affected individuals, witnesses, or staff, considering the nature of the conduct and the circumstances of each case.

Prohibition on Retaliation

Retaliation is strictly prohibited. If you engage in retaliation, you will be subject to disciplinary action, up to and including dismissal.

Dissemination and Publication of Policy

A copy of this policy will be disseminated to all Court employees and volunteers and will be included in the orientation materials given to each new Court employee.

The policy will be published on the Court's website and will be available in paper format from [*insert custodian of policy, i.e., Court Administrator, Court Clerk*].

Training

All supervisors, including [*Court Clerk, Court Administrator,*] and Judicial Officers, must attend training at least once every [*insert number*] years. All other employees must attend training at least once every [*insert number*] years.

For new employees and new supervisors, training should be completed within [*insert time period, i.e., the first month*] of employment or within [*insert time period, i.e., the first month*] of becoming a supervisor.

Model Anti-Harassment Policy FAQs

Why was the Model Policy created? The national Conference of Chief Justices and Conference of State Court Administrators have urged state judicial branches to establish procedures to recognize and respond to harassment in the state courts. The Washington Supreme Court's Gender and Justice Commission drafted a model policy that each court within the state is strongly encouraged to adopt and implement.

What constitutes "harassment" under the policy? "Harassment" is unwelcome language or conduct that targets a person or group of people, and is unlawful harassment when the unwelcome language or conduct becomes a condition of continued employment or is severe or pervasive enough that a reasonable person would consider it intimidating, hostile, or abusive. Unlawful harassment may occur even if those affected by the conduct do not miss work or suffer wage loss as a consequence. Harassment can take many forms, and can include sexual harassment.

"Sexual harassment" is harassment that is sexual in nature. It includes, but is not limited to: unwelcome comments, jokes of a sexual nature, inappropriate touching, display of sexually suggestive or derogatory material (including electronic), sexual advances or pressure, basing employment decisions on sexual conduct.

What groups are protected as potential targets of harassment under the policy? People or groups of people harassed because of their age (40 years or older); sex (including pregnancy); marital status; sexual orientation; gender identity or expression; race; creed; color; national origin; honorably discharged military status; presence of any actual or perceived disability or use of service animal; or genetic information.

What does the policy tell people who experience or are aware of harassment to do? The policy encourages all employees to report harassment immediately, outlines procedures for doing so, and provides protection from retaliation. It also requires supervisors to take immediate steps to prevent the alleged behavior from reoccurring and requires them to promptly notify the appropriate authority. Failure to do so may subject the supervisor to discipline up to and including dismissal.

Does this policy cover harassment at the workplace by people who are not court employees? Yes.

Does the policy address retaliation against victims or reporters? Yes. "Retaliation" is defined in the policy as any action by court personnel that punishes an employee who in good faith provides information about harassment or a related investigation, or that discourages employees from doing so. The policy describes examples of retaliation.

Will I be required to continue working directly with the alleged harasser during the investigation, or will I be moved to a less desirable job assignment when I have reported? This raises legal questions that are outside the scope of the model anti-harassment policy. Each court should work through the issues on a case-by-case basis with the advice of legal counsel.

How does the policy provide for investigation of complaints of harassment or retaliation? The policy requires courts to investigate promptly. The form of investigation is tailored to the nature and complexity of the complaint, and may be formal or informal. All court employees are required to cooperate with the investigation. Investigations must be objective, and cannot be conducted by any person having a personal interest in the outcome. Both the reporting party and the subject of the report have a right to be timely notified as to (1) the identity of the designated investigator(s) and (2) the outcome of the investigation. Every reasonable effort will be made to prevent those outside the investigation from learning the identity of the reporting party, the subject of the complaint, and any participating witnesses. Identifying information will be shared with witnesses only on an as-needed basis.

Will the allegations, investigation results, and identities of those involved be disclosed to someone filing a Public Records Act request? This raises legal questions that are outside the scope of the model anti-harassment policy. Each court should work through the issues on a case-by-case basis with the advice of legal counsel.

If harassment and/or retaliation is substantiated, what are the potential outcomes? The decision-maker or decision-making body will determine the appropriate corrective/disciplinary action, up to and including dismissal, depending on the facts and circumstances of each case.

How will people learn about and know how to implement this policy? Copies of the policy are to be disseminated to all court employees and volunteers, and all supervisors, including judicial officers, must attend regular training. New employees must complete training within a specified time after hiring.

Is this policy the exclusive way to report harassment or retaliation? No. If you have experienced harassment by a judicial officer, you may also file a confidential complaint with the Commission on Judicial Conduct: www.cjc.state.wa.us (360) 753-4585. If you have experienced harassment or retaliation by court personnel other than judges, you may also file a complaint with the Washington State Human Rights Commission: www.hum.wa.gov (800) 233-3247; and with the federal Equal Employment Opportunity Commission: www.eoc.gov (800) 669-4000.