

INTERNAL GUIDELINES FOR HANDLING COMPLAINTS OF DISCRIMINATION AGAINST JUDICIAL OFFICERS

Draft Approved by EC 02.06.07
Adopted by EC 12.16.2008

1. Policy

King County Superior Court has in place policies prohibiting discrimination and harassment on the basis of race, color, creed, national origin, age, sex, marital status, sexual orientation, religion, or disability or any other basis protected by state, local or federal law. These policies are set forth in Section 10.06 of the *Administrative Guidelines for Personnel Management* (Attachment A) and in Section 4 of the *Bailiff Policies* (Attachment B). The court adopts the following general guidelines for the handling of internal complaints brought against judicial officers, which are to be read in conjunction with the attached policies.

2. Definitions

The attached policies adequately define discrimination and sexual harassment. A recent U.S. Supreme Court Case (*Burlington N. & S.F.R. Co. v. White*, 548 U.S. ____ (2006), 2006 U.S. LEXIS 4895) adopted a broader definition of unlawful retaliation, which is therefore included in these guidelines:

- a. “Retaliation” means any employer action materially adverse to an employee or job applicant that is likely to dissuade a reasonable worker from making or supporting a charge of discrimination.
- b. “Judge” means an appointed, elected, or portability King County Superior Court judge.
- c. “Judicial officer” means a judge, pro tem judge, commissioner, or pro tem commissioner.

3. Notification

Judicial officers and supervisors are required to immediately report all incidents of possible discrimination, harassment, or retaliation witnessed by or reported to them, involving a judicial officer, to the Presiding Judge (PJ), Assistant Presiding Judge (APJ), or Chief Administrative Officer (CAO). The person receiving this notification will immediately notify the other two, unless either is the subject of the complaint, in which case he or she will not be notified at this initial stage of the complaint.

4. Procedures

A complaint against a judicial officer will be investigated promptly and thoroughly. In all cases, the PJ will assign someone to interview the complaining party. The person assigned to conduct this initial interview must have completed training on how to appropriately conduct investigations of workplace complaints of discrimination, harassment, and retaliation. The initial interview of the complaining party should be completed as soon as possible, but within five business days of receipt by the PJ of the complaint. The results of this initial inquiry will be promptly reported to the PJ, who in consultation with the APJ, the Chair of the Personnel Committee, the CAO, and the Human Resources Manager will promptly decide whether further steps should be taken to address the complaint, including, but not limited to further investigation.

If a determination is made that further investigation is necessary, the PJ will assign an investigating officer to further investigate the complaint. If the involved judicial officer is a commissioner or pro tem judicial officer, the PJ may assign an outside consultant, a court employee, or a judge as the investigating officer. If the involved judicial officer is a judge, the PJ will assign an outside consultant as the investigating officer. In any case, the investigating officer must have completed training on how to appropriately conduct investigations of workplace complaints of discrimination, harassment, and retaliation.

The investigating officer will interview the complainant, the judicial officer involved, and witnesses if any, and will review any relevant materials.

The investigating officer will submit a written report to the PJ within thirty days of the initial receipt of the complaint by the PJ. This report will describe the investigation in detail and include factual findings.

The PJ shall thereafter promptly present the investigator's report to the Executive Committee at its next meeting for further action.

5. Resolution

The Presiding Judge, in consultation with the Executive Committee, will determine the course of action for resolution of the complaint. Once that decision has been made, the complaining party and judicial officer shall be promptly notified of what if any action is to be taken.

6. Commission on Judicial Conduct (CJC)

These procedures do not preclude the referral of a complaint against a judicial officer at any time by any person to the Commission on Judicial Conduct. Every complaining party shall be advised of his or her right to present a complaint to the CJC. Referral to the CJC whether by the complaining party or any other person, including the PJ, will not stay the application of these guidelines which are designed to ensure that the court provides a work environment free from unlawful discrimination, harassment, and retaliation.

7. Complaints Involving the PJ

In any case where the complaint is made against the PJ, the APJ shall fulfill all responsibilities assigned in these guidelines to the PJ.

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ATTACHMENT A

NON DISCRIMINATION AND ANTI-HARASSMENT POLICY

FROM

ADMINISTRATIVE GUIDELINES FOR PERSONNEL MANAGEMENT
(Adopted February 22, 2006)

10.06 Non Discrimination and Anti-Harassment

- a. Superior Court recognizes and values the integrity of individual employees and their right to work in an environment that fosters mutual respect and is free of discrimination and harassment. Superior Court is therefore committed to a policy that prohibits discrimination or harassment on the basis of race, color, creed, national origin, age, sex, marital status, sexual orientation, religion, or disability, or any other category protected by state, local or federal law. Retaliation is also prohibited. Conduct that constitutes a violation of this policy will result in disciplinary action, up to and including termination.
- b. Supervisors will inform their employees of the Superior Court policy and procedures, and encourage them to report incidents and allegations of discrimination, harassment, and/or retaliation.
- c. Employees who experience or witness such conduct are encouraged to report it.
- d. All employees with supervisory responsibilities should be trained in detecting and addressing complaints of discrimination, harassment, and retaliation.

10.06.01 Definitions

- a. Discrimination is any act or failure to act, the effect of which is to adversely affect or adversely differentiate against individuals or group of individuals by reason of race, color, creed, national origin, age, sex marital status, sexual orientation, religion or disability.
- b. Harassment is a form of discrimination and is unwelcome verbal or physical conduct that denigrates or shows hostility or aversion toward an individual because of race, color, creed, national origin, age, sex, marital status, sexual orientation, religion or disability. To constitute harassment the conduct must:
 - Have the effect or purpose of creating an intimidating, hostile, abusive or offensive work environment;
 - Have the purpose or effect of unreasonably interfering with an individual's work performance; or
 - Be sufficiently severe or pervasive so as to alter the terms or conditions of employment.

- c. Sexual harassment is a form of harassment with certain or specific features. It can take the form of verbal behavior such as unwanted sexual comments, suggestions, jokes, or requests for sexual favors or sexually explicit remarks or derogatory comments based on gender. Non-verbal behavior may include gestures, leering, pictures, or cartoons. Physical behavior may include assault, molestation, touching, or brushing against a person's body. Sexual Harassment occurs when any one of the three criteria are met:
- Submission to such conduct is made either explicitly or implicitly a term or condition of an individual's employment, or;
 - Submission to, or rejection of, such conduct by an individual is used as the basis for employment decisions affecting such individual, or;
 - Such conduct has the purpose or effect of unreasonably interfering with an individual's work performance or creating an intimidating, hostile or offensive work environment.
- d. Retaliation is taking an adverse employment action against an individual because he/she has exercised his/her rights protected under the law by complaining in good faith about discrimination, harassment, and/or retaliation, or assisted or participated in an investigation of such allegations.

10.06.02 Procedures

- a. All employees have the right to file an internal complaint. Reports may be oral or written and may come from any source. Employees also have the right to file a complaint with the Washington State Human Rights Commission under RCW 49.60.230, or the Federal Equal Employment Opportunity Commission under Title VII of the Civil Rights Act of 1964.
- b. Supervisors must report all incidents of discrimination, harassment or retaliation, and any Court employee who experiences or witnesses such conduct is strongly encouraged to report it. Any supervisor who is informed of a complaint must immediately report such complaint to the Human Resources Manager or designee. Failure to do so may result in disciplinary action.
- c. An employee who believes he or she has experienced discrimination, harassment or retaliation should immediately notify his or her supervisor. If, for any reason, the employee is not comfortable reporting inappropriate behavior to his/her supervisor, he/she may notify the Department Director, Human Resources Manager, Deputy Chief Administrative Officer or the Chief Administrative Officer.
- d. Human Resources will make a preliminary determination as to whether the complaint or concern can be addressed without additional investigation. Where an investigation is appropriate, Human Resources will develop a response plan.

- e. Internal investigations of allegations of discrimination, harassment or retaliation shall be conducted in a prompt and sensitive manner and efforts shall be made during the on-going investigation process to maintain confidentiality, to the extent possible. However, public records laws may limit the extent to which confidentiality can be guaranteed. All employees are required to cooperate with such an investigation.

- f. Upon completion of the investigation, a report of findings shall be made to the Chief Administrative Officer. The appropriate parties shall be notified of the results of the investigation and whether action will be taken.

ATTACHMENT B

DISCRIMINATION AND ANTI-HARASSMENT POLICY

FROM

BAILIFF POLICIES
(Adopted July 2005)

4. DISCRIMINATION AND ANTI-HARASSMENT POLICY

4.1 Policy Statement

- a. Superior Court recognizes and values the integrity of individual employees and their right to work in an environment that fosters mutual respect and is free from discrimination and harassment. Superior Court is therefore committed to a policy that prohibits discrimination or harassment on the basis of race, color, creed, national origin, age, sex, marital status, sexual orientation, religion, or disability, or any other category protected by state, local or federal law. Retaliation is also prohibited. Conduct that constitutes a violation of this policy will result in disciplinary action, up to and including termination.
- b. Judges will inform their bailiffs of the Superior Court policy and procedures, and encourage them to report incidents and allegations of discrimination, harassment and/or retaliation.
- c. Employees who experience or witness such conduct are encouraged to report it.

4.2 Definitions

- a. Discrimination is any act or failure to act, the effect of which is to adversely differentiate against individuals or a group of individuals by reason of race, color, creed, national origin, age, sex, marital status, sexual orientation, religion or disability.
- b. Harassment is a form of discrimination and is unwelcome verbal or physical conduct that denigrates or shows hostility or aversion toward an individual because of race, color, creed, national origin, age, sex, marital status, sexual orientation, religion or disability. To constitute harassment, the conduct must:
 1. Have the effect or purpose of creating an intimidating, hostile, abusive or offensive work environment;
 2. Have the purpose or effect of unreasonably interfering with an individual's work performance; or
 3. Be sufficiently severe or pervasive so as to alter the terms or conditions of employment.
- c. Sexual Harassment is a form of harassment with certain specific features. It can take the form of verbal behavior such as unwanted sexual comments, suggestions, jokes, or requests for sexual favors or sexually explicit remarks or derogatory comments based on gender. Non-verbal behavior may include gestures, leering, pictures, or cartoons. Physical behavior may include assault, molestation, touching, or brushing against a person's body. Sexual harassment occurs when any one of the following three criteria is met:
 - Submission to such conduct is made either explicitly or implicitly a term or condition of an individual's employment, or

- Submission to, or rejection of, such conduct by an individual is used as the basis for employment decisions affecting such individual, or
- Such conduct has the purpose or effect of unreasonably interfering with an individual's work performance or creating an intimidating, hostile or offensive work environment.

d. Retaliation is taking an adverse employment action against an individual because he/she has exercised his/her rights protected under law by complaining in good faith about discrimination, harassment, and/or retaliation, or assisted or participated in an investigation of such allegations.

4.3 Procedures

a. All bailiffs have the right to file an internal complaint. Reports may be oral or written and may come from any source. Bailiffs also have the right to file a complaint with the Washington State Human Rights Commission under RCW 49.60.230, or the Federal Equal Employment Opportunity Commission under Title VII of the Civil Rights Act of 1964.

b. Judges must report all incidents of discrimination, harassment or retaliation, and any bailiff who experiences or witnesses such conduct is strongly encouraged to report it. Any judge who is informed of a complaint must immediately report such complaint to the Presiding Judge or designee.

c. A bailiff who believes he or she has experienced discrimination, harassment or retaliation should immediately notify his or her judge. If, for any reason, the bailiff is not comfortable reporting inappropriate behavior to his/her judge, he/she may notify the Presiding Judge or Chief Administrative Officer.

d. The Human Resources Manager will make a preliminary determination as to whether the complaint or concern can be addressed without additional investigation. Human Resources will consult with the Presiding Judge. When an investigation is appropriate, Human Resources will develop a response plan.

e. Internal investigations of allegations of discrimination, harassment or retaliation shall be conducted in a prompt and sensitive manner, and efforts shall be made during the ongoing investigation process to maintain confidentiality to the extent possible. However, public records laws may limit the extent to which confidentiality can be guaranteed. All bailiffs are required to cooperate with such an investigation.

f. Upon completion of the investigation, a report of findings shall be made to the appropriate entity. The appropriate parties shall be notified of the results of the investigation and whether action will be taken. If the complainant is dissatisfied with the findings regarding a judicial officer, a complaint may be filed with the State Judicial Conduct Commission.

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Section from King County Superior Court Administrative Guidelines

10.02 Non-Discrimination and Anti-Harassment

- a. Superior Court recognizes and values the integrity of individual employees and their right to work in an environment that fosters mutual respect and is free of discrimination and harassment. Superior Court is therefore committed to a policy that prohibits discrimination or harassment on the basis of race, color, creed, national origin, age, sex, marital status, sexual orientation, religion, or disability, or any other category protected by state, local or federal law. Retaliation is also prohibited. Conduct that constitutes a violation of this policy will result in disciplinary action, up to and including termination.
- b. Supervisors will inform their employees of the Superior Court policy and procedures, and encourage them to report incidents and allegations of discrimination, harassment, and/or retaliation.
- c. Employees who experience or witness such conduct are encouraged to report it.
- d. All employees with supervisory responsibilities should be trained in detecting and addressing complaints of discrimination, harassment, and retaliation.

10.02.01 Definitions

- a. *Discrimination* is any act or failure to act, the effect of which is to adversely affect or adversely differentiate against individuals or group of individuals by reason of race, color, creed, national origin, age, sex, marital status, sexual orientation, religion or disability.
- b. *Harassment* is a form of discrimination and is unwelcome verbal or physical conduct that denigrates or shows hostility or aversion toward an individual because of race, color, creed, national origin, age, sex, marital status, sexual orientation, religion or disability. To constitute harassment the conduct must:
 1. Have the effect or purpose of creating an intimidating, hostile, abusive or offensive work environment;
 2. Have the purpose or effect of unreasonably interfering with an individual's work performance; or
 3. Be sufficiently severe or pervasive so as to alter the terms or conditions of employment.
- c. *Sexual harassment* is a form of harassment with certain or specific features. It can take the form of verbal behavior such as unwanted sexual comments, suggestions, jokes, or requests for sexual favors or sexually explicit remarks or derogatory comments based on gender. Non-verbal

behavior may include gestures, leering, pictures, or cartoons. Physical behavior may include assault, molestation, touching, or brushing against a person's body. Sexual Harassment occurs when any one of the three criteria are met:

1. Submission to such conduct is made either explicitly or implicitly a term or condition of an individual's employment, or;
 2. Submission to, or rejection of, such conduct by an individual is used as the basis for employment decisions affecting such individual, or;
 3. Such conduct has the purpose or effect of unreasonably interfering with an individual's work performance or creating an intimidating, hostile or offensive work environment.
- d. *Retaliation* is taking an adverse employment action against an individual because he/she has exercised his/her rights protected under the law by complaining in good faith about discrimination, harassment, and/or retaliation, or assisted or participated in an investigation of such allegations.

10.02.02 Procedures

- a. All employees have the right to file an internal complaint. Reports may be oral or written and may come from any source. Employees also have the right to file a complaint with the Washington State Human Rights Commission under RCW 49.60.230, or the Federal Equal Employment Opportunity Commission under Title VII of the Civil Rights Act of 1964.
- b. Supervisors must report all incidents of discrimination, harassment or retaliation, and any Court employee who experiences or witnesses such conduct is strongly encouraged to report it. Any supervisor who is informed of a complaint must immediately report such complaint to the Human Resources Manager or designee. Failure to do so may result in disciplinary action.
- c. An employee who believes he or she has experienced discrimination, harassment or retaliation should immediately notify his or her supervisor. If, for any reason, the employee is not comfortable reporting inappropriate behavior to his/her supervisor, he/she may notify the Department Director, Human Resources Manager, Deputy Chief Administrative Officer or the Chief Administrative Officer.
- d. Human Resources will make a preliminary determination as to whether the complaint or concern can be addressed without additional investigation. Where an investigation is appropriate, Human Resources will develop a

response plan.

- e. Internal investigations of allegations of discrimination, harassment or retaliation shall be conducted in a prompt and sensitive manner and efforts shall be made during the on-going investigation process to maintain confidentiality, to the extent possible. However, public records laws may limit the extent to which confidentiality can be guaranteed. All employees are required to cooperate with such an investigation.
- f. Upon completion of the investigation, a report of findings shall be made to the Chief Administrative Officer. The appropriate parties shall be notified of the results of the investigation and whether action will be taken.

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Section from King County Superior Court Bailiff Policies

4.2 Non-Discrimination and Anti-Harassment Policy

4.2.1 Policy Statement

- a. Superior Court recognizes and values the integrity of individual employees and their right to work in an environment that fosters mutual respect and is free from discrimination and harassment. Superior Court is therefore committed to a policy that prohibits discrimination or harassment on the basis of race, color, creed, national origin, age, sex, marital status, sexual orientation, religion, or disability, or any other category protected by state, local or federal law. Retaliation is also prohibited. Conduct that constitutes a violation of this policy will result in disciplinary action, up to and including termination.
- b. Judges will inform their bailiffs of the Superior Court policy and procedures, and encourage them to report incidents and allegations of discrimination, harassment and/or retaliation.
- c. Employees who experience or witness such conduct are encouraged to report it.

4.2.2 Definitions

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- b. Harassment is a form of discrimination and is unwelcome verbal or physical conduct that denigrates or shows hostility or aversion toward an individual because of race, color, creed, national origin, age, sex, marital status, sexual orientation, religion or disability. To constitute harassment, the conduct must:
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pictures, or cartoons. Physical behavior may include assault, molestation, touching, or brushing against a person's body. Sexual harassment occurs when any one of the following three criteria are met:

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 - Such conduct has the purpose or effect of unreasonably interfering with an individual's work performance or creating an intimidating, hostile or offensive work environment.
- d. Retaliation is taking an adverse employment action against an individual because he/she has exercised his/her rights protected under law by complaining in good faith about discrimination, harassment, and/or retaliation, or assisted or participated in an investigation of such allegations.

4.2.3 Procedures

- a. All bailiffs have the right to file an internal complaint. Reports may be oral or written and may come from any source. Bailiffs also have the right to file a complaint with the Washington State Human Rights Commission under RCW 49.60.230, or the Federal Equal Employment Opportunity Commission under Title VII of the Civil Rights Act of 1964.
- b. Judges must report all incidents of discrimination, harassment or retaliation, and any bailiff who experiences or witnesses such conduct is strongly encouraged to report it. Any judge who is informed of a complaint must immediately report such complaint to the Presiding Judge or designee.
- c. A bailiff who believes he or she has experienced discrimination, harassment or retaliation should immediately notify his or her judge. If, for any reason, the bailiff is not comfortable reporting inappropriate behavior to his/her judge, he/she may notify the Presiding Judge or Chief Administrative Officer.
- d. The Human Resources Manager will make a preliminary determination as to whether the complaint or concern can be addressed without additional investigation. Human Resources will consult with the Presiding Judge. When an investigation is appropriate, Human Resources will develop a response plan.
- e. Internal investigations of allegations of discrimination, harassment or retaliation shall be conducted in a prompt and sensitive manner, and efforts shall be made during the ongoing investigation process to maintain confidentiality to the extent possible. However, public records laws may limit the extent to which confidentiality can be guaranteed. All bailiffs are required to cooperate with such an investigation.
- f. Upon completion of the investigation, a report of findings shall be made to the appropriate entity. The appropriate parties shall be notified of the results of the

investigation and whether action will be taken. If the complainant is dissatisfied with the findings regarding a judicial officer, a complaint may be filed with the State Judicial Conduct Commission.