



NEW MEXICO JUDICIAL BRANCH

Policy No. 2014.NMJB.120

GENERAL PERSONNEL POLICY AND PROCEDURE:

HARASSMENT, INCLUDING SEXUAL HARASSMENT, DISCRIMINATION, & RETALIATION PREVENTION

Dev.: 01/1997; Rev: 08/21/06; 03/01/12; 09/16/14; 11/26/18; 09/30/2021; 03/17/2022; 02/02/2024
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1. PURPOSE

The purpose of this policy is to protect all employees, and at-will employees (referred to in this policy as “employees”) as well as judicial officers, from harassment (including sexual harassment), discrimination, and retaliation and to establish procedures employees must follow if aware of or subject to harassment, discrimination, or retaliation.

The New Mexico Judicial Branch is committed to creating and maintaining a work environment in which employees can work together in an atmosphere that enhances productivity, recognizes employee diversity, and is free from all forms of harassment, discrimination, and retaliation. Harassment and/or discrimination because of race, religion, sex, age, national origin, ancestry, disability or medical condition, sexual orientation, socioeconomic status, or political affiliation, as well as retaliation against employees who file a complaint, is illegal and will not be tolerated by the New Mexico Judicial Branch. Harassment and/or disparate treatment that results in a hostile work environment will not be tolerated.

This policy has a broad application and applies to justices, judges, all employees (probationary, term, classified, at-will, and temporary employees), in addition to outside parties. Any employee who violates this policy will be subject to discipline up to and including termination. Any justice or judge who violates this policy shall be subject to referral to the Judicial Standards Commission, and discipline by the Supreme Court, as appropriate.

2. REFERENCES

Title VII of the Civil Rights Act as amended
EEOC Policy Guidelines, Section 1604.11
New Mexico Human Rights Act [as amended 2021]
NMJBPR Part I, Section 1.05
NMJBPR Part II, Section 15.05
NMJBPR Harassment, Discrimination and Retaliation Prevention Appendix A

3. DEFINITIONS



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- A. Administrative Authority** – Individual or designee with the primary responsibility to supervise and coordinate the administration of a judicial entity, or as designated by the chief judge and approved by the Supreme Court Order. (Amended 11/26/18)
- B. AOC HRD** – Administrative Office of the Courts Human Resources Division.
- C. AOC HRD Director** - Director of the AOC HRD, or designee.
- D. AOC Director or Director** - The Director of the Administrative Office of the Courts.
- E. At-Will Employee** – A person in the judicial branch who holds an at-will job classification as delineated in the New Mexico Judicial Branch Job Classification and Pay Schedule, and excluding a justice or judge. At-will employees serve at the discretion of their judge(s), justice(s), director(s), or commissioner(s), have no rights under the New Mexico Judicial Branch Personnel Rules Part I, e.g., no right of grievance or appeal of a disciplinary action including termination, and may be dismissed by the judicial entity for any reason, and without warning. The appointing authority, chief judge, or chief justice may dismiss or discipline any at-will employee. (Amended 11/26/18)
- F. Business Day** - 8:00 a.m. to 5:00 p.m. local time. Monday through Friday, except holidays.
- G. Cultural or Religious Headdresses** – includes hijabs, burkas, head wraps or other headdresses used as part of an individual’s personal cultural or religious beliefs.
- H. Discrimination** – Any practice or behavior, whether intentional or not, which has a negative impact on an individual or group because of personal characteristics or circumstances unrelated to the person’s abilities or the employment issue in question (e.g., physical or mental disability, serious medical condition, sex, age over forty (40), race, color, religion, national origin, pregnancy, childbirth, conditions related to pregnancy or childbirth, citizenship, ethnic origin, ancestry, sexual orientation, marital status, military leave, veteran status, genetic information, gender identity, socioeconomic status, spousal affiliation, political affiliation, cultural or religious headdress and any other status protected by law, except where there is a bona fide occupational qualification that justifies a differentiation). (Amended 09/16/14; 11/26/18; 09/30/21)
- I. Disparate Treatment** – When an employee is treated differently from others. The different treatment is based on one or more of the protected factors and the different treatment is intentional. For example, disparate treatment occurs when a supervisor allows the majority of his/her employees to enjoy a particular job benefit but denies a single employee that same benefit. Disparate treatment should not occur based on one or more of the protected factors in recruitment, hiring, promotion, benefits, training, job benefits, job duties, termination, or any other aspect of employment. (Added 03/01/12; Amended 11/26/18; 09/30/21)



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- J. Employee** – A person who holds a permanent or term position within the judicial branch, excluding a justice, judge, or at-will employee. (Amended 07/01/14)
- K. Harassment** – Is unwelcome behavior or conduct that substantially interferes with an individual’s employment. Harassment may include, but is not limited to, verbal or physical attacks, graphic or written statements, and may include text messages, emojis, stickers, GIF (graphical interchange format, images, or soundless videos that play in a loop) and similar or written statements, threats, or slurs. Whether the alleged conduct constitutes prohibited harassment depends on the totality of the particular circumstances, including the nature, frequency, and duration of the conduct in question. Any type of Harassment is prohibited, including behavior, which might be described as tormenting, persecuting, or hassling, which is seriously offensive in nature. To constitute prohibited Harassment, which can lead to discipline under this Policy, the conduct must be such that it detrimentally affects the individual in question and would detrimentally affect a reasonable person under the same circumstances. Harassment includes creating a hostile work environment by creating a workplace situation where an employee cannot reasonably perform work due to behaviors by management, employees, justices, or judges that are clearly contrary to appropriate management or professional behavior. To be unlawful harassment is unwelcome conduct based on one or more protected factors such as disability, serious medical condition, sex, age over forty (40), race, color, religion, national origin, pregnancy, citizenship, ethnic origin, ancestry, sexual orientation, marital status, military leave, veteran status, genetic information, gender identity, socioeconomic status, political affiliation, and any other status protected by law. Harassment becomes unlawful where 1) enduring the offensive conduct becomes a condition of continued employment, or 2) the conduct is severe or pervasive enough to create a work environment that a reasonable person would consider intimidating, hostile, or abusive. Anti-discrimination laws also prohibit harassment against individuals in retaliation for filing a discrimination charge, testifying, or participating in any way in an investigation, proceeding, or lawsuit under these laws; or opposing employment practices that they reasonably believe discriminate against individuals, in violation of these laws. (Amended 03/01/12; Amended 09/16/14; 11/26/18)
- L. Hostile Work Environment** – A term used to describe a workplace situation where an employee cannot reasonably perform their work, due to certain behaviors by management or co-workers. A hostile work environment may be a form of harassment. It is demonstrated by severe and pervasive conduct that permeates the work environment and interferes with an employee’s ability to perform their job. It is very specific behavior that causes severe undue work stress to the employee, and inhibits work performance. The conduct or behavior must be pervasive and constitute a pattern and is based upon the totality of the circumstances rather than consist of one or two isolated incidents. (Added 03/01/12; Amended 09/15/14; 11/26/18)
- M. Judicial Entity** – The Supreme Court, Court of Appeals, Administrative Office of the Courts, District, Metropolitan, and Magistrate Courts, Supreme Court Building Commission, New Mexico Compilation Commission, Supreme Court Law Library and Judicial Standards Commission.



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- N. Local Investigation** – An investigation, which is conducted within the judicial entity where the complaint originated, and if investigated by the local investigator. (Added 03/01/12; Amended 09/16/14)
- O. Local Investigator** – The individual who is trained in the adopted investigation methodology to investigate complaints of harassment, discrimination and retaliation; and has the responsibility to review the complaint documentation, conduct confidential interviews, prepare witness statements, evaluate facts, documents, and statements, prepare a formal written report summarizing the findings of fact and make recommendations for approval by the Administrative Authority. The Administrative Authority should recommend a local investigator for their judicial entity in writing to the AOC Director. Local investigators may be selected from those holding only the following job classifications: AOC Deputy Director, AOC HR Director, AOC HR Project Manager, AOC HR Administrator, AOC HR Services Manager, AOC General Counsel, Attorney Supervisor, Attorney Senior, Attorney Associate, Attorney-General Counsel, Chief Appellate Court Clerk, Court Executive Officer 1, 2 or 3, Deputy Court Executive Officer 1 or 2, HR Administrator Senior, HR Supervisor, or Court Human Resources Operations Manager. (Added 03/01/12; Amended 09/16/14; 11/26/18)
- P. Mediation** - An attempt to bring about a peaceful settlement or compromise between disputants through the objective intervention of a neutral party.
- Q. NMJBPR** – New Mexico Judicial Branch Personnel Rules – Part I for employees.
- R. NMJBPR AWE** – New Mexico Judicial Branch Personnel Rules – Part II for at-will employees.
- S. New Mexico Human Rights Act** – The New Mexico Human Rights Act prohibits discrimination in employment based on race, age, religion, color, national origin, ancestry, sex, sexual orientation, gender identity, pregnancy, childbirth, conditions related to pregnancy or childbirth, physical or mental disability, or serious medical condition (NM Stat. Sec. 28-1-1 *et seq.*). The Act also prohibits discrimination based on spousal affiliation.
- T. Outside Party** - An individual who is not a justice, judge or employee, or at-will employee of any judicial entity.
- U. Protected Factors** – Protected factors are identified by state and/or federal law and include disability, serious medical condition, sex, age over forty (40), race, color, religion, national origin, pregnancy, citizenship, ethnic origin, ancestry, sexual orientation, marital status, military leave, veteran status, genetic information, gender identity, socioeconomic status, political affiliation and any other status protected by law, except where there is a bona fide occupational qualification which justifies a differentiation. (Added 11/26/18)
- V. Protective hairstyles** – includes such hairstyles as braids, locs, twists, tight coils or curls, cornrows, Bantu knots, afros, weaves, wigs, or headwraps, and includes styles historically associated with race,



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including hair texture, length of hair, protective hairstyles, or cultural or religious headdresses. (Added 09/30/21)

- W. Referred Investigation** – One, which is submitted to the AOC HR Director by the Administrative Authority of the judicial entity from which the complaint originated, after a local investigation is completed.
- X. Retaliation** – Generally is the act of attacking in return, as in taking revenge, reciprocating, settling a score or getting even; workplace retaliation may include materially affecting the terms, conditions or privileges of employment. Retaliation is an adverse action taken against an individual because of an individual’s participation in a protected activity, such as reporting concerns, filing a complaint, or participating in an investigation regarding harassment, sexual harassment, discrimination, or retaliation. (Amended 09/16/14; 11/26/18)
- Y. Sexual Harassment** – Behavior of a sexual nature that is unwelcome, unwanted, and personally offensive to a recipient and may include but is not limited to requests for sexual favors, sexual advances, other verbal, nonverbal, graphic, or physical conduct of a sexual nature; suggestive or obscene e-mails, letters, notes, or invitations; derogatory comments, epithets, lewd language, slurs or jokes; impeding or blocking movements; touching or any physical interference with normal work; sexually oriented gestures; the display of sexually suggestive or derogatory objects, pictures, cartoons, or posters; and such behavior is severe, persistent, and pervasive interfering with or limiting a person’s ability to perform their job. May be a single threat or insinuation that submission to or rejection of sexual favors may explicitly or implicitly be a condition used as the basis for employment decisions, such as, reprisals, withholding support for reappointment, promotions or transfers, or change of assignment. (Amended 09/16/14, 11/26/18)
- Z. Witness** - Any individual who has direct or indirect knowledge of the incident(s) relevant to an investigation. (Added 08/01/10)

4. CONFIDENTIALITY

All individuals involved in any capacity shall maintain confidentiality throughout the investigation process to the extent possible; all information is communicated strictly on a need-to-know basis. (Amended 09/16/14; 11/26/18)

5. EMPLOYEE PROVISIONS

- A. Harassment-Free Workplace.** Each manager and supervisor shall establish and maintain a work environment that is free of harassment, discrimination, and retaliation from justices, judges, employees, and outside parties. (Amended 09/16/14)



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- B.** Each employee of the New Mexico Judicial Branch is expected to abide by this policy and shall avoid any behavior or conduct toward any justice, judge, employee or an outside party that could be interpreted as harassment, discrimination, or retaliation.
- C. Responsibility to Report.** An employee who observes or becomes aware of any possible harassment, discrimination, or retaliation shall immediately report as outlined within this policy. (Amended 09/16/14; 09/30/21)
- D. Retaliation for Participation Prohibited.** An employee shall not be subject to retaliation for making a complaint or participating in an investigation under this policy. (Amended 09/16/14)
- E.** An employee who violates any provision of this policy shall be subject to discipline up to and including termination in accordance with the provisions of the NMJBPR & NMJBPAWE.

6. JUSTICE AND JUDGE PROVISIONS

- A.** Each justice and judge shall establish and maintain a work environment that is free of harassment, discrimination and retaliation from justices, judges, employees and outside parties.
- B.** A justice or judge of the judicial branch is expected to abide by this policy and shall avoid any behavior or conduct toward any justice, judge, employee or outside party that could be interpreted as harassment, discrimination, or retaliation.
- C.** A justice or judge who observes or becomes aware of any possible harassment, discrimination, or retaliation shall immediately report as outlined within this policy. (Amended 09/30/21)
- D.** Any justice or judge who violates this policy shall be subject to referral to the Judicial Standards Commission, and disciplined by the Supreme Court, as appropriate.
- E.** If a complaint against a justice or judge is referred to the Judicial Standards Commission, the provisions of NMSA 1978 §34-10-2.1 shall apply.

7. EMPLOYEE EDUCATIONAL PROGRAMS

- A. Employment-Related Civil Rights Training.** The AOC shall, publish an appendix to this policy designating approved New Mexico Judicial Branch Civil Rights Training in regards to Harassment, Discrimination and Retaliation Prevention training, and inform judicial entities of this approved training.



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- B.** Each judicial entity shall ensure every employee and judicial officer attends an AOC approved Harassment, Discrimination, and Retaliation Prevention training within thirty (30) business days of hire. (Amended 02/02/2024)
- C.** At minimum new employees must view the required training materials included in the training/learning platform, receive a passing grade, obtain a certificate of completion for their personnel file, and sign the NMJB acknowledgement form. (Amended 09/16/14; 09/30/21)
- D. Annual Training and Judicial Entity Certification.** The Administrative Authority or designee shall certify to the AOC HR Director by June 30 of each calendar year in a letter or e-mail that all current employees and judicial officers of that judicial entity have received AOC approved Harassment, Discrimination, and Retaliation Prevention training within the calendar year. Judicial entities are required to confirm all employees have completed training by running the training platform course reports before submitting certification to AOC HRD. AOC HRD will maintain a record of certification communications received from judicial entities. Judicial entities are encouraged to train staff utilizing all AOC approved training materials, though may add to or supplement the training with AOC HR Director approval. (Amended 09/16/14; 11/26/18; 09/30/21; 02/02/2024)
- E.** Follow-up Harassment, Discrimination, and Retaliation Prevention Training may be provided, as appropriate and is the responsibility of each entity's local HR. (Amended 02/02/2024)
- F. Acknowledgment Form Required.** Each employee who attends Harassment, Discrimination, and Retaliation Prevention Training shall sign a verification acknowledging that the employee has attended the training. A copy of the individual employee's acknowledgment of training must be included in his/her employee personnel file. (Amended 09/16/14)
- G.** The Harassment, Discrimination, and Retaliation Prevention Training shall include:

 - (1)** providing the judicial officer or employee a copy of this policy and/or the location on the nmcourts website; (Added 09/30/21)
 - (2)** an overview of the NMJBPR and NMJBPRawe Section 1.05 and 15.05;
 - (3)** what constitutes harassment, discrimination, and retaliation;
 - (4)** examples of harassment, discrimination, and retaliation;
 - (5)** examples of how to handle a harassing, discriminatory, or retaliatory situation; and



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(6) steps to take for resolution if an employee feels harassment, discrimination, or retaliation has occurred.

8. LOCAL INVESTIGATOR DESIGNATION (Added 03/01/12, Amended 09/16/14)

The Administrative Authority should recommend one or two local investigators for their judicial entity in writing to the AOC Director and AOC HR Director. Local investigators may be selected from those holding only the following job classifications: AOC Deputy Director, AOC HR Director, AOC HR Deputy, AOC HR Statewide Project Manager Senior, AOC HR Project Manager, AOC General Counsel, Attorney Supervisor, Attorney Senior, Attorney Associate, Attorney- General Counsel, Chief Appellate Court Clerk 1 and 2, Court Executive Officer 1, 2 or 3, Deputy Court Executive Officer 1, 2, and 3, HR Administrator Senior, HR Supervisor, or Court Human Resources Operations Manager. (Amended 11/26/18; 09/30/21)

The local investigator will be trained in the New Mexico Judicial Branch adopted investigation methodology to investigate complaints of harassment, discrimination, and retaliation. The local investigator has the responsibility to review the complaint documentation, conduct confidential interviews, prepare witness statements, evaluate facts, documents, and statements, prepare a formal written report summarizing the findings of fact and make recommendations for approval by the Administrative Authority. (Added 03/01/12; Amended 09/16/14; 11/26/18)

- A. A local investigator shall not be the Administrative Authority.
- B. Each appointed local investigator must attend an AOC approved investigation training(s) prior to investigating a harassment, discrimination, or retaliation complaint. The local investigator upon completion of the approved and required training shall be appointed by the Administrative Authority following approval from the AOC Director and AOC HR Director.
- C. The local investigator shall send to the AOC Director and AOC HR Director a copy of the complaint and final report upon conclusion of the investigation. (Added 11/26/18)
- D. Staff designated as the local investigator shall not receive additional compensation.
- E. The local investigator may refer associated parties to mediation in accordance with section 15 below.

9. LOCAL INVESTIGATOR TRAINING



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- A. Should the AOC develop an investigation training it will be mandatory for all designated local investigators. Additional required training may be developed and required as requested, required, or necessary. (Amended 09/16/14; 11/26/18)
- B. The AOC sponsored training will provide local investigators with information regarding how to conduct local investigations based upon this policy.
- C. In addition to the AOC sponsored training, local investigators are encouraged, and may be required to attend additional relevant training.
- D. With the AOC Director approval, local investigators may attend an investigation training conducted outside of the judiciary. If the local investigator takes a third party training, they must provide the agenda, training materials, and any certificates obtained from the training for consideration in the approval.
- E. Local investigators who receive training from outside the judiciary will be required to work with AOC HRD Investigators on the first investigation, they conduct until trained on the New Mexico Judicial Branch adopted investigation methodology to investigate complaints of harassment, discrimination, and retaliation provide guidance on the process, guidelines and forms the judiciary follows.

10. HOW TO REPORT HARASSMENT, DISCRIMINATION, AND RETALIATION

- A. A justice, judge, at-will employee, or an employee should submit a clear, concise, and relevant written complaint within a reasonable time not to exceed 120 calendar days from the most recent alleged related incident.
- B. Employees may also report allegations of harassment, discrimination, and retaliation verbally, and to their supervisor, manager, or human resources. If the alleged harasser is the employee's supervisor, they may report to others outside the chain of command as appropriate, or the AOC HR Director or AOC HR Deputy Director. Management may not ignore a verbal or written complaint, and all complaints related to harassment, discrimination, and retaliation need to be immediately disclosed to the Administrative Authority and Human Resources. A failure to disclose a complaint of harassment, discrimination, and retaliation may be subject to disciplinary action (Amended 11/26/18; 09/30/21)
- C. An individual may use the "Harassment, Including Sexual Harassment, Discrimination, and Retaliation Prevention Notice Form" to make a written complaint. (Amended 09/16/14)



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- D. A complaint against a justice, judge, the personal staff of a judge or justice, Court Executive Officer, Chief Appellate Court Clerk, human resources staff, the AOC Director, or a local investigator shall be submitted directly to the AOC HR Director. (Amended 11/26/18)
- E. A complaint against an employee or an outside person shall be submitted as follows:
 - (1) In the Supreme Court to the Chief Appellate Court Clerk.
 - (2) In a District Court, Magistrate Court, or the Metropolitan Court to the Court Executive Officer of the judicial entity. (Amended 09/30/21)
 - (3) In the AOC, or Court of Appeals to the AOC HR Director.

If a local investigator has not been appointed, the judicial entity shall submit the complaint to the AOC HR Director within five (5) working days. (Amended 11/26/18; 09/30/21)

- F. An individual who believes that he or she has been a victim of harassment, discrimination, or retaliation is encouraged to inform the accused individual that the behavior is offensive and that it should stop immediately.
- G. Regardless of whether or not the accused individual is confronted directly about their behavior, the complaining individual shall immediately report the behavior.
- H. Any employee knowingly making false statements in a complaint or during an investigation of harassment, discrimination, or retaliation shall be subject to discipline, pursuant to the NMJBPR.

11. INVESTIGATION PROCEDURES (Local Investigator or AOC Director) (Added 03/01/12, 09/16/14)

- A. Upon receipt of a harassment, discrimination, or retaliation complaint, the investigator shall make an initial determination within ten (10) business days whether the complaint states facts that fairly describe improper harassment, discrimination, or retaliation as defined in this policy. The complaint should be read broadly, and should not be held to technical pleading standards. If the investigator determines that the complaint does not allege improper harassment, discrimination, or retaliation, the investigator shall so notify the complainant in writing. In judicial entities where a local investigator has not been appointed all complaints shall be forwarded directly to the AOC HR Director. (Amended 11/26/18)



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- B. Nothing in this section shall prevent the investigator from addressing the allegations with the Administrative Authority if the complaint states facts related to mismanagement or misconduct that is not improper harassment, discrimination, or retaliation.
- C. If the investigator's initial determination is that the complaint does state a cause of improper harassment, discrimination, or retaliation the investigator will provide the accused individual with a copy of the full complaint within ten (10) business days, unless the complainant rescinds the complaint. Rescinding a complaint must be done in writing. (Amended 11/26/18)
- D. The accused individual may submit a clear, concise, and relevant written response within ten (10) business days of receipt of the complaint against him or her. Any response will be provided by the investigator to the complainant within five (5) business days of receipt of the response.
- E. The investigator shall initiate a confidential investigation within twenty (20) business days after providing the complaint to the accused.
- F. All interviews and discussions with parties associated with the complaint and witnesses shall be conducted in private. The investigator should conduct all interviews with another investigator present. If the judicial entity has only one approved investigator, a second trained and approved investigator from another judicial entity or AOC HRD may be used. (Amended 11/26/18)
- G. The investigator shall inform each interviewee in writing to keep the matter confidential, and each interviewee should sign a confidentiality statement. (See Investigation Participant Acknowledgment Form 2014.NMJB.120-B) (Amended 09/16/14; 11/26/18)
- H. If the complainant, respondent, or a witness is unwilling to be interviewed, to sign the formal complaint statement, to timely sign a witness statement, or to otherwise, participate or cooperate in the investigative process, the investigators shall prepare and sign a written statement attesting to the refusal of the complainant, respondent, or witness to cooperate in the investigation. An investigation of the allegation shall nevertheless, be conducted in a manner appropriate to the circumstances. (Amended 11/26/18)

Written & Signed Statements - All interviews of the complainant, respondent, and witnesses shall be documented by the investigator in statement form, signed by the individual interviewed, and will become part of the evidence of the investigation. Each page of the signed statement should be initialed by the complainant, respondent, or witness. Any refusal to sign will be noted by the investigators.

(1) Interview of the Complainant

The allegation shall be discussed in detail to determine:



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- a. Identity of the accused individual (hereafter, the "respondent");
- b. The specific details of each event the complainant believes is inappropriate, including date(s), time(s), location(s), act(s), gesture(s) and dialogue;
- c. Whether there are any documents to support the allegations of the complainant;
- d. To the extent possible, any economic and/or psychological consequences to the complainant;
- e. The nature and past history of the relationship between the complainant and respondent and the relationship of the respondent to the organization (i.e., supervisory employee, non-supervisory employee, third party, elected official);
- f. Any statement(s), act(s), or gesture(s) the complainant has made to let the respondent know the behavior is unwelcome. If the complainant initially welcomed the conduct by active participation, the complainant should have given specific notice to the respondent that the conduct was no longer welcome for any such subsequent conduct to be deemed unwelcome;
- g. Whether the complainant knows of others who may have been party to the alleged behavior by the respondent;
- h. The names of any witnesses to the alleged behavior;
- i. Whether management could have become or was aware of the incident(s) that are the subject of the complaint; and
- j. Whether the complainant has made a previous complaint concerning the alleged behavior and to whom such complaint was made.

(2) Interview of the Respondent

The respondent should receive an explanation and be afforded the opportunity to discuss the allegation(s) in detail. The investigator must:

- a. Inform the respondent of the nature of the inquiry;
- b. Request that the respondent reply to each of the allegations made;
- c. Ask for the name(s) of witnesses, if any, who are actual witnesses to the alleged behavior and can confirm the respondent's statement;



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- d. Obtain copies of any relevant documentation supporting the respondent's statement;
- e. Ask if the respondent has previously had any kind of conflict with the complainant;
- f. Determine the nature and history of the relationship between the complainant and the respondent. Assess if the complainant initially welcomed the conduct by active participation and if the complainant gave specific notice to the respondent that the conduct was no longer welcome; and
- g. Inform the respondent that any retaliation against the complainant is unlawful and, in the case of an employee, will result in discipline up to and including termination.

(3) Interview of Complainant's and Respondent's Witnesses

- a. If there are witnesses to the alleged behavior or to other matters discussed in the separate interview with the complainant and respondent, the witnesses must be interviewed to confirm or refute any of the allegations.
- b. Because harassment, discrimination and retaliation often occur in private, there may not be any witnesses to the alleged behavior. Evidence may be obtained from individuals who observed either party's demeanor immediately after the alleged behavior or individuals with whom the complainant or respondent discussed the incident.

12. FINDINGS OF FACT, REPORT & FINAL DECISION

A. Upon completing the investigation, the investigator shall:

- (1) Evaluate the complainant and respondent's accounts of the events for internal consistency, contradictions, and plausibility.
- (2) Evaluate all other facts, documents, and statements gathered during the investigation.
- (3) Prepare a thorough report documenting all information gathered regarding the alleged behavior, and recommend appropriate action (which may include disciplinary action) to the Administrative Authority. Report documentation must include all documentation, signed witness statements, findings of fact, conclusions, and recommendations. (Added 03/01/12)



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- B.** The Administrative Authority of the judicial entity in which the complaint was submitted and investigated by a local investigator makes the final decision regarding any actions to be taken, except as required by section 13E herein.
- C.** Communications following the investigation shall be distributed with the requirement of confidentiality, as follows:

 - a.** A copy of the results of the investigation shall be provided to the complainant, as well as any requirements or recommendations especially for the complainant. Recommendations or requirements related to individuals other than the complainant shall not be included.
 - b.** A copy of the results of the investigation shall be provided to the respondent, as well as any requirements or recommendations especially for the respondent. Recommendations or requirements related to individuals other than the respondent shall not be included.
 - c.** If the investigation is conducted by the AOC HRD, a copy of the results of the investigation shall be provided to the Administrative Authority of the judicial entity in which the complainant and respondent reside.
 - d.** If the investigation is conducted by the local investigator, a copy of the results of the investigation shall be provided to the supervisor of the complainant or respondent. Recommendations or requirements related to individuals other than the supervisor's employee shall not be included. Generally, the names of witnesses should not be included.
 - e.** If the complainant or respondent is an at-will employee of a judge, a copy of the investigation results provided to the respondent shall be provided to the judge, and
 - f.** Witnesses shall receive a communication in writing informing them the investigation is closed.
- D.** A confidential file containing all documentation shall be maintained by the judicial entity in the case of a local investigation or the AOC HRD in the case of a referred investigation. A copy of the complaint and final findings of fact report should be sent to the AOC Director and AOC HR Director within thirty (30) business days of closure of the investigation. (Amended 11/26/18)

13. REFERRED INVESTIGATION (If referred to AOC HRD) (Added 03/01/12, Amended 09/16/14)

- A. Referral to AOC HRD.** If upon review of the local investigation findings the Administrative Authority determines based upon the facts, documents, witness statements, and local investigator's report that the investigation rises to the level of complexity that a referral to the AOC HRD for



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investigation is required, the Administrative Authority shall forward the complaint and all supporting documents to the AOC HR Director within thirty (30) business days of receipt. In judicial entities where a local investigator has not been appointed all complaints shall be forwarded directly to the AOC HR Director. (Amended 11/26/18)

- B. Local Investigator's Summary Report.** The local investigator's report shall summarize the evidence gathered and the reason why AOC HRD assistance is required.
- C. Referred back to Judicial Entity.** The local investigation will terminate at the point it is referred to the AOC HRD, unless the AOC Director determines that the investigation does not rise to the level of complexity requiring an AOC HRD investigation. Should this occur the investigation must be completed by the judicial entity in which the complaint arose. If the judicial entity has not appointed a local investigator or if the local investigator is not yet formally trained, the investigation may commence under the direction and guidance of the AOC HR Director. (Amended 09/16/14)
- D. Mediation.** The AOC HR Director may refer associated parties to mediation in accordance with section 15 below.
- E.** Any recommendations made by the AOC HR Director or designee shall be reviewed by the AOC Director. All AOC Director approved actions including discipline up to and including termination shall be adopted and implemented by the judicial entity within 45 calendar days. Nothing in this policy limits the authority of a judge as the appointing authority for an at-will employee of the judge's personal staff from imposing a higher level of discipline, up to and including termination of an at-will employee.

14. INVESTIGATING OUTSIDE-PARTY HARASSMENT

- A.** Upon receipt of harassment, discrimination, or retaliation complaint against an outside party, the investigator shall initiate an investigation by interviewing the complainant and complainant's witnesses in the manner stated above. If appropriate, interviews will be held with the respondent and the respondent's witnesses in the manner stated above.
- B.** In reviewing and responding to such a case, the investigator shall consider the extent of judicial branch control and any other legal responsibility the judicial branch has with respect to the conduct of outside parties, and recommended action to the Administrative Authority or appropriate administrative party.

15. GRIEVANCE RIGHTS



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- A. **At-Will Employee.** An at-will employee who is disciplined under this policy has no grievance rights under NMJBPR Part II.
- B. **A Classified or Career Status Employee/An Employee Who Has Completed Probationary Period.** An employee who has completed the probationary period who is suspended, demoted, terminated or suffers a loss of accrued compensation under this policy may file a grievance in accordance with the NMJBPR Part I.

16. MEDIATION (Added 03/01/12, Amended 09/16/14)

Mediation is the process through which a complainant and respondent work under the direction of a mediator to resolve conflicts. A solid agreement, or “win-win” solution, is the intended outcome of any mediation, and all of the parties involved will put in a considerable amount of time and effort to reach this agreement. It is preferred that parties mutually agree to mediate differences and conflicts. Should an agreement to voluntary mediation not be reached, nothing in this section precludes a judicial entity, or an investigator from recommending or requiring parties to attend mandatory mediation. Failure to comply with a mandatory mediation or a mediation agreement could result in disciplinary action. (Amended 09/16/14)

- A. parties must attend the mediation with an agreement of good faith as stated by signing and completing a confidential mediation agreement. (Amended 09/16/14)
- B. A party may withdraw from or suspend a voluntary mediation process at any time, and for any reason. The mediator may suspend or terminate a voluntary mediation, if the mediator feels that the mediation will lead to an unreasonable result, if an impasse has been reached, or if the mediator determines that he/she can no longer effectively perform his/her facilitative role. (Amended 09/16/14)
- C. It is understood between the parties and the mediator that the mediation will be strictly confidential. Mediation discussions, any draft resolutions and any unsigned mediated agreements shall not be admissible in any court, administrative or other contested proceeding. Any signed mediation agreements are binding on the parties and will be kept in the employee’s personnel file.
- D. The judicial entity in which the complaint arose is responsible for any fees associated with a selected mediator.
- E. All mediation referrals and agreements must be documented by the investigator. Such documentation shall include the names of all associated parties; the specific date mediation is to take place and the anticipated date of completion.



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- F. The Office of Alternative Dispute Prevention and Resolution, Risk Management Division, General Services Department of the State of New Mexico offers alternative dispute resolution services. The office coordinates a range of services including a network of skilled mediators to respond to requests for direct assistance. Call 827-0444 or 827-0576 or email ADR.Bureau@state.nm.us for further information. (Amended 09/30/21)

17. ATTACHMENTS AND ACKNOWLEDGMENT

- A. All New Mexico Judicial Branch employees, (Classified and At-Will) will be provided with a copy of the Harassment, Including Sexual Harassment, Discrimination and Retaliation policy and must sign the acknowledgment form upon receipt of the policy, which will become a part of the employee’s personnel file. (Form 2014.NMJB.120-A)
- B. Attachments include the following forms:
 - (1) NMJB Acknowledgment Form – Harassment, Including Sexual Harassment, Discrimination and Retaliation Prevention Training (Form 2014.NMJB.120-A)
 - (2) Investigation Participant Acknowledgment. (Form 2014.NMJB.120-B)
 - (3) Harassment, Including Sexual Harassment, Discrimination and Retaliation Complaint Form. (Form 2014.NMJB.120-C)
 - (4) Administrative Authority Acknowledgment Form for training materials. (Form 2014.NMJB.120-D)
 - (5) Harassment Policy Flow Chart. (Form 2014.NMJB.120-E)

Approved by Supreme Court Order #: S-1-AO-2024-00007, February 2, 2024

Effective Date: Developed - September 1997; Revised - August 21, 2006; March 1, 2012; September 16, 2014; November 26, 2018; September 30, 2021; March 17, 2022; February 2, 2024



for Arthur W. Pepin, Director
Administrative Office of the Courts

2/2/2024

Date



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HARASSMENT, INCLUDING SEXUAL HARASSMENT, DISCRIMINATION, AND RETALIATION COMPLAINT FORM

Form 2014.NMJB.120-C

Reference: Harassment, Including Sexual Harassment, Discrimination & Retaliation Prevention Policy NMJBPR Part 1, Section 1.05 & NMJBPR Part 2, Section 15.05 (Rvd. 09/16/14; 01/01/18, 1/12/2024)

All individuals involved in any capacity shall maintain confidentiality throughout the investigation process to the extent possible; all information is communicated strictly on a need to know basis. Upon receipt of a harassment, discrimination, or retaliation complaint the investigator will provide the accused individual with a copy of the full complaint within ten (10) business days, unless the complainant rescinds their complaint. Please review the above-mentioned policy, and review the definitions in preparation for completing this form.

Name: _____

Date: _____

Judicial Entity: _____

Telephone Number: _____

Please answer the following questions with as much information as possible.

Name the accused individual

State the date, time and location the event(s) occurred:

Give the specific details of each event that leads you to believe that you have been harassed, discriminated or retaliated against or that you have observed harassment or discrimination (review definitions of harassment, discrimination and retaliation as outlined in the Harassment, Including Sexual Harassment, Discrimination and Retaliation policy.):

Describe the act(s), gesture(s) and dialogue that occurred:



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Were there any witnesses to the event? If so, name them:

What is the nature and past history of your relationship to the accused individual (employee/supervisor)?

Why do you think the harassment, discrimination, or retaliation is occurring?

Do you have documents to support your allegations? If so, please attach copies.

Describe any statements, act(s), or gesture(s) you made to let the accused individual know the behavior is unwelcome:

Have there been any economic and/or psychological consequences to you? If so, state what they are:

Do you know of others who may have suffered harassment, discrimination, or retaliation by the accused? If so, name the individuals and describe the alleged conduct:

Could



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management be aware of the event about which you are complaining? If so, how?

Have you complained previously of the alleged behavior? If so, to whom and when?

Provide any other details or information that you feel might be pertinent:

I attest that the information provided above is true and accurate to the best of my knowledge.

Signature of complainant _____

Received by: _____ Date: _____

Any employee knowingly making false statements in a complaint or during an investigation of harassment, discrimination, or retaliation shall be subject to discipline, pursuant to NMJBPR.