



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; 02/19/2026

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HARASSMENT, INCLUDING SEXUAL HARASSMENT, DISCRIMINATION & RETALIATION PREVENTION

1. PURPOSE

The purpose of this policy is to protect all employees, including 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 that employees, judges, and justices 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 where employees can work together in an atmosphere that enhances productivity, recognizes employee diversity, and is free from harassment, discrimination, and retaliation. Harassment and/or discrimination because of race, color, religion, sex, age, national origin, citizenship, ethnic origin, ancestry, disability or medical condition, including pregnancy, childbirth, conditions related to pregnancy or childbirth, sexual orientation, socioeconomic status, military status, military leave, veteran status, genetic information, gender identity, spousal affiliation, cultural or religious headdress, political affiliation, or any other status protected by state or federal law, as well as retaliation against employees who files a complaint or engages in a protected activity, 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. (Amended 02/19/26)

This policy has a broad application and applies to justices, judges, all employees (probationary, term, classified, at-will, and temporary employees), and 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.

Procedures for filing complaints related to an alleged violation of the New Mexico Judicial Branch Personnel Rules (NMJBPR), Code of Conduct, or personnel policies, requests for a review of a performance evaluation, or disciplinary actions unrelated to allegations of harassment, discrimination and retaliation are addressed in the NMJBPR. (Added 02/19/26)

2. REFERENCES

Title VII of the Civil Rights Act

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



GENERAL PERSONNEL POLICY AND PROCEDURE:

HARASSMENT, INCLUDING SEXUAL HARASSMENT, DISCRIMINATION, & RETALIATION PREVENTION

3. DEFINITIONS

- 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 or designee.
- 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 (NMJB) Job Classification and Pay Schedule, excluding a justice or judge, and probationary employees. At-will employees serve at the discretion of their judge, justice, director, commissioner, or court executive officer and 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 in accordance with the NMJBPR 18.08. The appointing authority, chief judge, or chief justice may dismiss or discipline any at-will employee. (Amended 11/26/18, 02/19/26) [Ref: NMJBPR Section 18.08]
- F. Business Day** - 8:00 a.m. to 5:00 p.m. local time. Monday through Friday, except judicial branch approved holidays.
- G. Cultural or Religious Headdresses** –Includes hijabs, burkas, head wraps or other headdresses used as part of an individual’s cultural or religious beliefs.
- H. Discrimination** – Unfair treatment, or any practice or behavior, whether intentional or not, which has a negative impact on an individual or group because of protected personal characteristics, which include a 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. Unfair treatment is generally defined as treatment that denies opportunities or benefits to someone based on a protected personal characteristic. (Amended 09/16/14; 11/26/18; 09/30/21)
- I. Disparate Treatment** – When an employee is treated unfairly because of a protected personal characteristic. Examples of disparate treatment include refusing to hire a person, denying a promotion, or giving certain employees unfavorable working conditions due to their protected personal



GENERAL PERSONNEL POLICY AND PROCEDURE:

HARASSMENT, INCLUDING SEXUAL HARASSMENT, DISCRIMINATION, & RETALIATION PREVENTION

characteristics. The different treatments are based on one or more protected factors, and the different treatments are intentional. For example, disparate treatment occurs when a supervisor allows the majority of their employees to enjoy a particular job benefit but denies a single employee that same benefit because of that employee's protected personal characteristic(s). Disparate treatment should not occur based on one or more 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, 02/19/26)

J. Employee – A person who holds a permanent or term position within the judicial branch, excluding a justice, judge, or at-will employee (at-will employee includes temporary employee). (Amended 07/01/14, 02/19/26)

K. Harassment – Is unwelcome behavior or conduct based on protected personal characteristics 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 inappropriate jokes, text messages, emojis, stickers, GIFs (graphical interchange format, images, or soundless videos that play in a loop) and similar or written statements, threats, or slurs, ridicule or mockery, insults or put-downs, offensive objects or pictures, and interference with work performance. Whether the alleged conduct constitutes prohibited harassment depends on the totality of the particular circumstances, including the nature, frequency, and duration of the conduct. All types of Harassment are prohibited, including behavior, which might be described as tormenting, persecuting, or hassling, which is seriously offensive. To constitute prohibited Harassment, which can lead to discipline under the NMJB Harassment, Including Sexual Harassment, Discrimination and Retaliation Prevention Policy (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 contrary to appropriate management or professional behavior. To be unlawful, harassment is unwelcome conduct based on an individual's protected personal characteristics and creates a work environment that is intimidating, hostile, or offensive to a reasonable person. 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 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, 09/16/14, 11/26/18, 02/19/26)

L. Hostile Work Environment – A term used to describe a workplace where discriminatory or retaliatory conduct makes it difficult or uncomfortable to work, creating a situation where an employee cannot reasonably perform their work, due to certain behaviors by management or co-workers. A hostile work environment relates to conduct that is based on an employee's protected personal characteristics and 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



GENERAL PERSONNEL POLICY AND PROCEDURE:

HARASSMENT, INCLUDING SEXUAL HARASSMENT, DISCRIMINATION, & RETALIATION PREVENTION

is a 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 it must be based upon the totality of the circumstances rather than one or two isolated incidents. (Added 03/01/12, Amended 09/15/14, 11/26/18, 02/19/26)

- M. Investigator Designation** - The Administrative Authority shall designate in writing to the AOC Director two local investigators, one Primary Local Investigator and at least one (1) other Local Investigator for their judicial entity no later than January of each calendar year. [See Section 9.0 herein] (Added 02/19/26)
- N. 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.
- O. Local Investigation** – An investigation, conducted within the judicial entity where the complaint originated, and investigated by two (2) local investigators with the Primary Local Investigator being one of the designated local investigators, or a Qualified Investigator. (Added 03/01/12, Amended 09/16/14, 02/19/26)
- P. Local Investigator** – an individual designated by their Administrative Authority to assist the Primary Local Investigator in the investigation of workplace complaints filed under this policy. Additional local investigators need not meet the strict criteria for the PLI. The Administrative Authority and PLI shall develop requirements for these investigators at their discretion. A local investigator is encouraged to complete one (1) HR investigation training prior to assisting the PLI in any local investigation. A local investigator may be selected from those holding only the following job classifications: AOC Deputy Director, AOC HR Director, AOC HR Deputy Director, AOC HR Statewide Project Manager Senior, AOC HR Project Manager, AOC HR Administrator, AOC HR Services Manager, AOC General Counsel, Attorney Supervisor, Attorney Senior, Attorney Associate, Attorney-General Counsel, Attorney-Deputy 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. The AOC Director may consider alternative job classifications on a case-by-case basis; a request for consideration must be submitted to the AOC Director and the AOC HR Director.
- Q. Primary Local Investigator (PLI)** – The individual(s) designated by their Administrative Authority to lead investigations of workplace complaints filed under the policy. The PLI may not be the Administrative Authority. The PLI must be designated by January 30 of each year. The PLI must complete a HR investigation training prior to investigating their first complaint. The PLI has the responsibility to review the complaint documentation, provide an initial determination if the complaint falls under the policy, and if so, 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 PLI may be selected from those holding only the following job classifications: AOC Deputy Director, AOC HR Director, AOC



NEW MEXICO JUDICIAL BRANCH

Policy No. 2014.NMJB.120

GENERAL PERSONNEL POLICY AND PROCEDURE:

HARASSMENT, INCLUDING SEXUAL HARASSMENT, DISCRIMINATION, & RETALIATION PREVENTION

HR Deputy Director, AOC HR Statewide Project Manager Senior, AOC HR Project Manager, AOC HR Administrator, AOC HR Services Manager, AOC General Counsel, Attorney Supervisor, Attorney Senior, Attorney Associate, Attorney-General Counsel, Attorney-Deputy 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. The AOC Director may consider alternative job classifications on a case-by-case basis; a request for consideration must be submitted to the AOC Director and the AOC HR Director. A PLI may include a Qualified Investigator (Added 03/01/12, Amended 09/16/14, 11/26/18, 02/19/26)

- R. Mediation** - A process where a neutral third party helps people in conflict negotiate a resolution. The mediator meets with parties in a neutral location to help them find common ground. (Amended 02/19/26)
- S. NMJBPR** – New Mexico Judicial Branch Personnel Rules – Part I for employees.
- T. NMJBPAWE** – New Mexico Judicial Branch Personnel Rules – Part II for at-will employees.
- U. Outside Party** - An individual who is not a justice, judge or employee, or at-will employee of any judicial entity. (Amended 02/19/26)
- V. Protected Personal Characteristics** – Protected factors are identified by state, federal or local law 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. (Added 11/26/18, Amended 02/19/26)
- W. Protected Activity** – Is an action taken by an employee that is legally safeguard from retaliation by their employee, typically including actions like reporting discrimination, harassment, safety violations, or participating in investigations related to these issues, essentially allowing employees to assert their rights under employment laws without fear of negative consequences. Other examples of protected activity include an employee filing an EEOC charge, talking to a manager or human resources about discrimination or harassment, refusing to follow orders that would result in discrimination, resisting sexual advances or intervening to protect other employee in these types of situations. (Added 02/19/26)
- X. Protective Hairstyles** – Includes such hairstyles as braids, locs, twists, tight coils or curls, cornrows, Bantu knots, afros, weaves, wigs, or head wraps, and includes styles historically associated with race, including hair texture, length of hair, protective hairstyles, or cultural or religious headdresses. (Added 09/30/21)
- Y. Qualified Investigator** – someone who is a licensed attorney, a former HR professional or someone with similar experience hired by the judicial entity to conduct an investigation of a complaint under



GENERAL PERSONNEL POLICY AND PROCEDURE:

HARASSMENT, INCLUDING SEXUAL HARASSMENT, DISCRIMINATION, & RETALIATION PREVENTION

this policy. This person must be compensated by the judicial entity utilizing their services.

Z. Referred Complaint – A complaint submitted to the AOC HR Director by the Administrative Authority or local investigator of the judicial entity from which the complaint originated requesting the AOC HR Division to conduct the investigation, which may be considered by the AOC based on the respondent’s job classification within the judicial entity. (Amended 02/19/26)

AA. Retaliation – Workplace retaliation is when an employer takes an adverse action against an employee because of their participation in a protected activity. Examples of workplace retaliation may include materially affecting the terms, conditions or privileges of employment. (Amended 09/16/14, 11/26/18, 02/19/26)

BB. Sexual Harassment – It is unlawful to harass a person (an applicant or employee) because of that person’s sex. It is behavior of a sexual nature that is unwelcome, unwanted, and personally offensive to a recipient. It is also, offensive comments about a person’s sex that are not sexual in nature. It 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. It may be a single act, 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. It may also be offensive remarks about a person’s sex. Harassment is illegal when it is so frequent or severe that it creates a hostile or offensive work environment or results in an adverse employment decision (such as the victim being fired or demoted). (Amended 09/16/14, 11/26/18, 02/19/26)

CC. Unfair Treatment – Unfair treatment, as referenced in the discrimination definition, is generally defined as treatment that denies opportunities or benefits to someone based on a protected personal characteristic. (Added 02/19/26)

DD. Witness - An individual with has direct or indirect knowledge of the incident(s) relevant to an investigation. (Added 08/01/10, Amended 02/19/26)

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)



GENERAL PERSONNEL POLICY AND PROCEDURE:

HARASSMENT, INCLUDING SEXUAL HARASSMENT, DISCRIMINATION, & RETALIATION PREVENTION

5. EMPLOYEE PROVISIONS

- A. Harassment-Free Workplace.** Each manager and supervisor shall establish and maintain a work environment free of harassment, discrimination, and retaliation from justices, judges, employees, and outside parties. (Amended 09/16/14)
- B.** Each New Mexico Judicial Branch employee 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, 02/19/26)
- 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 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 provisions shall apply.



GENERAL PERSONNEL POLICY AND PROCEDURE:

HARASSMENT, INCLUDING SEXUAL HARASSMENT, DISCRIMINATION, & RETALIATION PREVENTION

7. REQUIRED EDUCATIONAL PROGRAMS AND ANNUAL CERTIFICATION

- 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 regard to Harassment, Discrimination and Retaliation Prevention training, and inform judicial entities of this approved training. (Added 02/02/24)
- 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 and judicial officers 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. Regular 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:
- (1) All current employees and judicial officers of that judicial entity with fewer than five (5) consecutive years of service in the New Mexico Judicial Branch have reviewed AOC-approved Harassment, Discrimination, and Retaliation Prevention training within the calendar year. Judicial entities shall train employees and judicial officers utilizing AOC-approved training materials, though may add to or supplement the training with AOC HR Director approval; and, (Amended 09/16/14, 11/26/18, 09/30/21, 02/02/24, 02/19/26)
 - (2) All employees and judicial officers with five (5) or more years of consecutive service in the New Mexico Judicial Branch have reviewed AOC-approved Harassment, Discrimination, and Retaliation Prevention training within the three (3) preceding calendar years; (Added 02/19/26) and,
 - (3) All employees and judicial officers regardless of tenure have reviewed the written Harassment, Discrimination, and Retaliation Prevention Policy and signed the acknowledgement form certifying they have read and understood the policy; and, (Added 02/19/26)
 - (4) AOC HRD shall maintain a record of certification communications received from judicial entities. (Added 02/19/26)
- 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



NEW MEXICO JUDICIAL BRANCH

Policy No. 2014.NMJB.120

GENERAL PERSONNEL POLICY AND PROCEDURE:

HARASSMENT, INCLUDING SEXUAL HARASSMENT, DISCRIMINATION, & RETALIATION PREVENTION

the training. A copy of the individual employee's signed acknowledgment of training must be included in their employee personnel file. (Amended 09/16/14)

G. The Harassment, Discrimination, and Retaliation Prevention Training shall include:

- (1) Provide 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
- (6) Steps to take for resolution if an employee feels harassment, discrimination, or retaliation has occurred.

8. HOW TO REPORT HARASSMENT, DISCRIMINATION, AND RETALIATION

- A.** Individuals who believe that they have been a victim of harassment, discrimination, or retaliation should report their concerns as soon as possible. All employees, regardless of status, 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.** All employees are encouraged to use the "Harassment, Including Sexual Harassment, Discrimination, and Retaliation Prevention Notice Form" to make a written complaint. (Amended 09/16/14, 02/19/26)
- C.** An individual who believes that they have been a victim of harassment, discrimination, or retaliation is encouraged to inform the accused individual that the behavior is unwelcome, offensive, and should stop immediately.
- D.** 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, or local HR Professional.
 - (2) In the Court of Appeals to the Chief Appellate Court Clerk, or local HR Professional. (Amended 02/19/26)
 - (3) In a District Court, Magistrate Court, or the Metropolitan Court to the Administrative Authority, Court Executive Officer of the judicial entity, or local



GENERAL PERSONNEL POLICY AND PROCEDURE:

HARASSMENT, INCLUDING SEXUAL HARASSMENT, DISCRIMINATION, & RETALIATION PREVENTION

HR Professional. (Amended 09/30/21, 02/19/26)

(4) In the AOC, to the AOC HR Director or the AOC HR Deputy Director, who are the designated local investigators.

- E. Where appropriate and possible, the Administrative Authority and the local investigator may attempt to resolve the matter informally, if doing so successfully addresses and stops the alleged conduct or behavior. For example, when the conduct is not severe nor pervasive. (Amended 02/19/26)
- F. Retaliation is strictly prohibited. Any such retaliation also can be the subject of a complaint under this policy. (Amended 02/19/26)
- G. Any employee with management responsibilities 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. (Amended 11/26/18, 09/30/21)
- H. If the alleged harasser is the employee's supervisor, the employee may report to others outside the chain of command as appropriate, such as their judicial entity's local HR Professional, Administrative Authority, or the AOC HRD. (Amended 11/26/18, 09/30/21, 02/19/26)
- I. A complaint against a justice, judge, the at-will personal staff of a judge or justice, a Court Executive Officer, a Chief Appellate Court Clerk, Human Resources staff, the AOC Director, AOC Deputy Director, PLI, or a local investigator shall be submitted directly to the AOC HR Director by the relevant Administrative Authority within three (3) working days of receipt of the complaint, with a request that the AOC investigate. (Amended 11/26/18, 02/19/26)
- J. An 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.
- K. A failure to disclose a complaint of harassment, discrimination, and retaliation shall be subject to discipline, pursuant to the NMJBPR. (Amended 11/26/18, 09/30/21)
- L. An employee may rescind their complaint in writing at any time.

9. PRIMARY LOCAL INVESTIGATOR RESPONSIBILITIES AND DESIGNATION (Added 03/01/12, Amended 09/16/14, 02/19/26)

- A. Each judicial entity shall have at a minimum one (1) designated Primary Local Investigator who will investigate employee complaints received under this policy unless the complaint is referred to and accepted by the AOC.
- B. All judicial entities shall designate their PLI no later than January 30 of each calendar year. The**



GENERAL PERSONNEL POLICY AND PROCEDURE:

HARASSMENT, INCLUDING SEXUAL HARASSMENT, DISCRIMINATION, & RETALIATION PREVENTION

designation shall be provided to AOC HRD.

- C. The PLI designation may only be given to the following job classifications provided they have passed their probationary period.
- (1) Appellate Attorney: Senior, Associate or Assistant.
 - (2) Attorney – General Counsel, Deputy General Counsel, Managing Attorney, Senior or Supervisor.
 - (3) Chief Appellate Court Clerk 1 or 2.
 - (4) Court Executive Officer 1, 2 or 3.
 - (5) Deputy Court Executive Officer 1, 2 or 3.
 - (6) Court Human Resources Operations Manager.
 - (7) Human Resources Administrator Senior or Supervisor.
 - (8) Other job classifications may be considered and approved or rejected by the AOC Director on a case-by-case basis. A request and justification must be submitted to AOC HRD prior to the yearly January 30 designation.
- D. The Administrative Authority may not be the Primary Local Investigator.
- E. The PLI must attend and successfully complete an AOCHRD-approved HR Investigation training prior to investigating a complaint under this policy.
- F. The PLI must receive continuous training every two (2) years in HR Investigations, HR Laws, or a directly related area specified and approved by the AOC HRD.
- G. The PLI must also read, review, attend, and follow any NMJB investigation materials and training as required by AOC HRD. Exceptions to a specific process or the use of specific AOC HRD approved investigation materials may be considered on a case by case basis.
- H. Complaints referred to the AOC must be submitted to the AOC HR Director within three (3) working days of receipt of the complaint. The judicial entity may submit a request to hire a Qualified Investigator to conduct the investigation when they submit the complaint. The Qualified Investigator must be paid for by the judicial entity. [See Section 8.0 herein] (Amended 11/26/18, 09/30/21, 02/19/26)
- I. The PLI is responsible for:



**GENERAL PERSONNEL POLICY AND PROCEDURE:
HARASSMENT, INCLUDING SEXUAL HARASSMENT, DISCRIMINATION, &
RETALIATION PREVENTION**

- (1) Reviewing the complaint documentation thoroughly analyzing the alleged discrimination, harassment, and/or retaliation, including a description of what occurred and the date(s), time(s), place(s) of the incidents.
 - (2) Communication with the complainant, accused, witnesses, and AOC HRD as appropriate.
 - (3) In conjunction with the administrative authority ensuring the investigation procedures outlined in this policy are followed.
 - (4) Conducting confidential investigatory interviews, preparing witness statements and after an evaluation of facts, documents, and witness statements, prepare a formal written report summarizing the findings of fact and make recommendations for approval by the Administrative Authority.
 - (5) Consulting with AOC HR Director over the course of the investigation for guidance on procedural issues as appropriate. (Added 03/01/12, Amended 09/16/14, 11/26/18, 02/19/26)
- J.** Each appointed primary local investigator must attend an investigation training prior to investigating a harassment, discrimination, or retaliation complaint. (Amended 02/19/26)
- K.** The Administrative Authority or local investigator may refer associated parties to mediation in accordance with section 15 below. (Amended 02/19/26)

10. ADDITIONAL LOCAL INVESTIGATORS REQUIREMENTS AND RESPONSIBILITIES (Added 02/19/26)

- A.** In addition to the PLI, a judicial entity must designate one (1) or more additional local investigators.
- B.** Additional local investigators need not meet the strict criteria for the PLI.
- C.** The Administrative Authority and PLI shall develop requirements for these investigators at their discretion. These investigators are not required, but encouraged to attend an HR investigation training prior to assisting the PLI in any investigation.

11. INVESTIGATION PROCEDURES (Primary & Local Investigator) (Added 03/01/12, Amended 09/16/14, 02/19/26)

- A.** Upon receipt of a harassment, discrimination, or retaliation complaint, the PLI must provide an acknowledgment of receipt to the complainant within three (3) business days of receipt.
- B.** The PLI shall make an initial determination within ten (10) business days whether the complaint states



NEW MEXICO JUDICIAL BRANCH

Policy No. 2014.NMJB.120

GENERAL PERSONNEL POLICY AND PROCEDURE:

HARASSMENT, INCLUDING SEXUAL HARASSMENT, DISCRIMINATION, & RETALIATION PREVENTION

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.

- C. If the Administrative Authority and PLI determines that the complaint does not allege improper harassment, discrimination, or retaliation, the PLI shall notify the complainant in writing and include a brief explanation of how the complaint does not fall under the policy. (Amended 11/26/18, 02/19/26)

(1) Nothing in this section shall prevent the PLI 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.

- D. If the PLI's initial determination is that the complaint does state a cause of improper harassment, sexual harassment, discrimination, or retaliation, PLI will provide the accused individual with a copy of the entire complaint within ten (10) business days, unless the complainant rescinds the complaint. (Amended 11/26/18)

- a. The accused individual may submit a clear, concise, and relevant written response within ten (10) business days of receipt of the complaint against them. Any response will be provided by the PLI to the complainant within five (5) business days of receipt of the response.
- b. The PLI shall initiate a confidential investigation within twenty (20) business days after providing the complaint to the accused.
- c. All interviews and discussions with parties associated with the complaint and witnesses shall be conducted in private.
- d. The PLI should conduct all interviews with another investigator present.
- e. The PLI shall inform each interviewee in writing to keep the matter confidential, and each interviewee should sign the NMJB Investigation Participant Acknowledgement Form that they understand the requirements related to an investigation, including confidentiality. (See Investigation Participant Acknowledgment Form 2014.NMJB.120-B) (Amended 09/16/14, 11/26/18, 02/19/26)
- f. 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 local investigators shall prepare and sign a written statement attesting to the refusal of the complainant, respondent, or witness to cooperate in the investigation. The Administrative Authority or designee shall take appropriate action dependent upon the circumstances. An investigation of the allegation shall nevertheless, be conducted in a manner appropriate to the circumstances. (Amended 11/26/18, 02/19/26)

- E. Written & Signed Statements** - All interviews of the complainant, respondent, and witnesses shall be documented by the PLI in statement form, signed by the individual interviewed, and will become



GENERAL PERSONNEL POLICY AND PROCEDURE:

HARASSMENT, INCLUDING SEXUAL HARASSMENT, DISCRIMINATION, & RETALIATION PREVENTION

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:

- 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 local investigator must:

- a. Inform the respondent of the nature of the inquiry;
- b. Request that the respondent reply to each of the allegations made;



GENERAL PERSONNEL POLICY AND PROCEDURE:

HARASSMENT, INCLUDING SEXUAL HARASSMENT, DISCRIMINATION, & RETALIATION PREVENTION

- 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;
- 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 PLI 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. This includes a review of the complainant and respondent's employee personnel files (i.e.; performance evaluations, past corrective actions), and ensuring required training was attended. Investigators may need to consider the credibility of all witnesses, including the complainant and respondent. (Added 02/19/26)
- (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, emails, and findings of fact, conclusions, and recommendations. (Added 03/01/12, Amended 02/19/26)



NEW MEXICO JUDICIAL BRANCH

Policy No. 2014.NMJB.120

GENERAL PERSONNEL POLICY AND PROCEDURE:

HARASSMENT, INCLUDING SEXUAL HARASSMENT, DISCRIMINATION, & RETALIATION PREVENTION

- B.** The Administrative Authority of the judicial entity in which the complaint was submitted and investigated by a PLI makes the final decision regarding any actions to be taken, except as required by section 13B of this policy. 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. (Amended 02/19/26)
- C.** Communications following the investigation shall be distributed with the requirement of confidentiality, as follows:
- (1)** Complainant: A copy of the results of the investigation, pertaining to the complainant's allegations, shall be provided to the complainant, as well as any requirements or recommendations, specific to them. Pertinent recommendations or requirements for the judicial entity as a whole shall be included. Recommendations or requirements related to the respondent, witnesses, or other individuals shall not be included. Other or additional concerns raised over the course of the investigation and unrelated to the complainant are not included. (Amended 02/19/26)
 - (2)** Respondent: A copy of the results of the investigation, pertaining to the complainant's allegations, and the respondent's response shall be provided to the respondent, as well as any requirements or recommendations, specific to them. Pertinent recommendations or requirements for the judicial entity as a whole shall be included. Recommendations or requirements related to the complainant, witnesses, or other individuals shall not be included. Other or additional concerns raised over the course of the investigation and unrelated to the complainant are not included. (Amended 02/19/26)
 - (3)** The PLI shall provide a copy of the results of the investigation 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.
 - (4)** If the complainant is an at-will employee of a judge, a copy of the investigation results provided to the complainant shall also be provided to their judge. (Amended 02/19/26)
 - (5)** If the respondent is an at-will employee of a judge, a copy of the investigation results provided to the respondent shall be provided to their judge. (Amended 02/19/26)
 - (6)** Witnesses shall receive a communication in writing informing them the investigation is closed, and remind them to continue to keep the investigation confidential.
- 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



GENERAL PERSONNEL POLICY AND PROCEDURE:

HARASSMENT, INCLUDING SEXUAL HARASSMENT, DISCRIMINATION, & RETALIATION PREVENTION

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. REQUIREMENTS AND RECOMMENDATIONS

- A. Any recommendations made by the local investigators shall be reviewed and approved by the Administrative Authority. All Administrative Authority approved actions including discipline up to and including termination shall be adopted and implemented by the judicial entity within 45 calendar days of final approval of the finding of fact report. (Added 02/19/26)
- B. If the investigation is referred to and accepted by the AOC, 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 of the final approval of the findings of fact report. (Amended 02/19/26)
- C. 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 a harassment, discrimination, or retaliation complaint against an outside party, the local investigator shall initiate an investigation as determined appropriate by the Administrative Authority and the local investigator. The Administrative Authority should take steps to promptly address and mediate the situation. (Amended 02/19/26)
- B. In reviewing and responding to such a case, the local 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 recommend action to the Administrative Authority or appropriate administrative party.

15. GRIEVANCE RIGHTS

- 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.



GENERAL PERSONNEL POLICY AND PROCEDURE:

HARASSMENT, INCLUDING SEXUAL HARASSMENT, DISCRIMINATION, & RETALIATION PREVENTION

16. MEDIATION

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 a local investigator from recommending or requiring parties to attend mandatory mediation. A mandatory mediation may be conducted by management, HR, contract mediator, or staff with similar experience. Failure to comply with a mandatory mediation or a mediation agreement could result in disciplinary action. (Added 03/01/12, 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 they can no longer effectively perform their 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 court, administrative or other contested proceedings. 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. The local investigator must document all mediation referrals and agreements. Such documentation shall include the names of all associated parties; the specific date mediation is to take place, and the anticipated date of completion. (Amended 02/19/26)
- F. The Office of Mitigation, 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. Please email work.together@gsd.nm.gov for further information (Amended 09/30/21, 02/19/26) 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

Distribution: All employees (classified & at-will) of the New Mexico Judicial Branch including judges and justices
Retain until Superseded

Amended: February 19, 2026



NEW MEXICO JUDICIAL BRANCH

Policy No. 2014.NMJB.120

GENERAL PERSONNEL POLICY AND PROCEDURE:

HARASSMENT, INCLUDING SEXUAL HARASSMENT, DISCRIMINATION, & RETALIATION PREVENTION

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 20 14.NMJB.120-C)
- (4) Harassment Policy Flow Chart. (Form 2014.NMJB.120-E)
- (5) Appendix A – Harassment, Including Sexual Harassment, Discrimination and Retaliation Prevention Designated approved New Mexico Judicial Branch Civil Rights Training.

Approved by Supreme Court Order #: S-1-AO-2026-00005, February 19, 2026

Karl W. Reifsteck, Director
Administrative Office of the Courts

February 25, 2026

Date



NEW MEXICO JUDICIAL BRANCH

Policy No. 2014.NMJB.120

**GENERAL PERSONNEL POLICY AND PROCEDURE:
HARASSMENT, INCLUDING SEXUAL HARASSMENT, DISCRIMINATION, &
RETALIATION PREVENTION**

**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:



NEW MEXICO JUDICIAL BRANCH

Policy No. 2014.NMJB.120

GENERAL PERSONNEL POLICY AND PROCEDURE:

HARASSMENT, INCLUDING SEXUAL HARASSMENT, DISCRIMINATION, & RETALIATION PREVENTION

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



NEW MEXICO JUDICIAL BRANCH

Policy No. 2014.NMJB.120

**GENERAL PERSONNEL POLICY AND PROCEDURE:
HARASSMENT, INCLUDING SEXUAL HARASSMENT, DISCRIMINATION, &
RETALIATION PREVENTION**

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.