

Maryland Judicial Branch

2.6 POLICY PROHIBITING DISCRIMINATION, HARASSMENT, AND RETALIATION

(a) Purpose and Scope

- (1) Purpose.** This Policy is established to ensure compliance with applicable laws governing the Judiciary's equal opportunity responsibilities concerning employees and applicants for employment.
- (A) The Judicial Branch recognizes and honors the value and dignity of each employee and the importance of providing employees with an opportunity to pursue a career in an environment free of discrimination, harassment, and retaliation.
- (B) This policy establishes the process for filing a complaint of discrimination, harassment, and retaliation and assigns responsibilities for reporting, investigating, and resolving such complaints.
- (C) The Judicial Branch has zero tolerance for discrimination, harassment, and retaliation and shall take prompt remedial action, including appropriate disciplinary or remedial action, up to and including termination, to correct, remedy, and prevent unlawful discrimination, harassment, and retaliation.

(2) Scope

- (A) Pursuant to Maryland Rule 16-806, this policy applies to:
- (i) applicants for employment; and
 - (ii) all persons employed by a court, unit, or judicial entity organized within the Judicial Branch
 - (I) including regular, temporary, and contractual employees;
 - (II) regardless of the source of the employee's compensation (*e.g.*, county, state, federal, grant).
- (B) This policy does not apply to:
- (i) the employees of the Register of Wills or the Orphans' Court;
 - (ii) justices and judges, except to the extent that certain justices and judges serve as the administrative head of a court and, therefore, perform administrative duties consistent with this policy.
- (C) Employees may use this policy to report conduct that constitutes discrimination, harassment, or retaliation in the workplace by any person, including justices and judges, supervisors, co-workers, vendors, attorneys, jurors, witnesses, and litigants. Although Judicial Branch officials have limited authority over persons who are not Judicial Branch employees, the Judicial Branch will take reasonable available steps to prevent harm to employees who encounter harassment, discrimination, and retaliation in the workplace by such persons.

(b) Definitions

- (1) Administrative Head:**
 - (A) For the Supreme Court of Maryland, the Clerk of the Court for all employees under the Clerk's supervision and the Chief Justice for all other employees of that Court;
 - (B) For the Appellate Court of Maryland, the Clerk of the Court for all employees under the Clerk's supervision and the Chief Judge for all other employees of that Court;
 - (C) The Clerk of the Circuit Court for all employees under the Clerk's supervision (Clerk's office employees);
 - (D) The County Administrative Judge for all employees under the supervision of the Administrative Judge;
 - (E) For the District Court, the Chief Judge of the District Court, the Chief Clerk, the Administrative Clerk, or Administrative Commissioner for all employees under their supervision;
 - (F) For the Administrative Office of the Courts (AOC), the State Court Administrator;
 - (G) For units organized within the Judicial Branch, the head of the unit where the employee works; and,
 - (H) Any person who, by express written designation, serves as the authorized designee of an administrative head.

- (2) Complainant** – An employee, applicant, or other individual who files a complaint alleging a violation of this policy.

- (3) Disability** – A physical or mental impairment that substantially limits one or more major life activities; a record of such an impairment; or being regarded as having such an impairment. Additional information on disabilities can be found in the Policy on Accommodation of Disabilities.

- (4) Discrimination** – A distinction in treatment because of an individual's race, color, national origin, religion, sex, age, physical or mental disability, pregnancy, sexual orientation, gender identity or expression, political affiliation, marital or family status, genetic information, or any other characteristic protected by state or federal law.

- (5) Equal Employment Opportunity (EEO) Coordinator** – An employee of a circuit court, subject to the supervision of the County Administrative Judge, designated to receive and, upon request, investigate complaints of discrimination, harassment, and retaliation and to provide support and technical assistance in resolving religious accommodation requests for employees of the circuit courts under the supervision of the County Administrative Judge.

- (6) Judicial Entity** – The Supreme Court of Maryland; the Appellate Court of Maryland; a circuit court or any department therein; the District Court or any department therein; the Administrative Office of the Courts or any department therein; a unit of the Judiciary.

- (7) Judiciary Human Resources Division (JHRD)** – The division within the AOC that is responsible for, but not limited to, the following functions for State employees in the Maryland Judiciary: human resources policy development, administration, and interpretation; talent acquisition; employment

and orientation services; employee benefits; position classification and salary administration; and employer-employee relations.

- (8) Fair Practices Officer (FPO)** – An employee in the Office of Legal Affairs and Fair Practices of the Administrative Office of the Courts responsible for ensuring compliance with federal and state equal opportunity laws, and overseeing the investigation of complaints of discrimination, harassment, and retaliation brought under this policy and under state and federal law. For all employees, other than employees of a circuit court subject to the supervision of a County Administrative Judge, the FPO is designated to receive and investigate complaints of discrimination, harassment, and retaliation.
- (9) Harassment** – Threatening, intimidating, or demeaning conduct directed toward an individual because of that individual’s protected class or characteristic, which, based on the totality of the circumstances, unreasonably creates a working environment that a reasonable person would perceive to be abusive or hostile.
- (10) Protected Class or Characteristic** – A trait or characteristic, such as race, color, national origin, religion, sex, age, physical or mental disability, pregnancy, sexual orientation, gender identity or expression, political affiliation, marital or family status, genetic information, or any other characteristic protected by applicable state or federal law.
- (11) Respondent** – An individual alleged to have violated this policy.
- (12) Retaliation** – Adverse action taken against an employee or applicant for employment because the individual opposed an unlawful employment practice, filed a complaint, participated in any way in an investigation of an alleged unlawful employment practice, requested an accommodation, or otherwise sought the protections or entitlements of any discrimination or harassment law.
- (13) Unit** – The Attorney Grievance Commission, the Client Protection Fund, the State Board of Law Examiners, the Thurgood Marshall State Law Library, the Commission on Judicial Disabilities, and the Supreme Court of Maryland Standing Committee on Rules of Practice and Procedure.

(c) Prohibited Conduct

- (1) Discrimination.** This policy prohibits discrimination in recruitment, hiring, promotion, training, compensation, benefits, transfer, discipline, discharge, and other terms and conditions of employment based on a person’s protected class or characteristic.
 - (A) The Judicial Branch is committed to ensuring that employees and applicants are not subject to discrimination based on the individual’s:
 - (i) Race;
 - (ii) Color;
 - (iii) National Origin;
 - (iv) Religion;
 - (v) Sex;
 - (vi) Age;
 - (vii) Physical or Mental Disability;

- (viii) Pregnancy;
- (ix) Sexual Orientation;
- (x) Gender Identity or Expression;
- (xi) Political Affiliation;
- (xii) Marital or Family Status;
- (xiii) Genetic Information; or
- (xiv) Any other characteristic protected by state or federal law.

- (B) **Examples of Prohibited Discrimination.** Such conduct may include the following actions if taken because of an individual's protected class or characteristic:
- (i) Refusing to hire or promote an individual;
 - (ii) Imposing an unjustified disciplinary action;
 - (iii) Failing or refusing to grant a request for leave or other benefit without justification; or
 - (iv) Otherwise treating an applicant or employee less favorably than those in a non-protected class or characteristic.

(2) Harassment

- (A) **Generally**
- (i) This policy prohibits threatening, intimidating, or demeaning conduct directed toward an individual because of the individual's protected class or characteristic, as set forth in (c)(1)(A), that, based on the totality of the circumstances, unreasonably creates a working environment that a reasonable person would perceive to be abusive or hostile.
 - (ii) Harassment is a form of discrimination that undermines the integrity of the employment relationship and the dignity of the harassed employee.
 - (iii) All forms of harassment are unacceptable, and harassment against any protected group will not be tolerated. Even if certain harassment does not violate the law, it may still violate this or other policies of the Judicial Branch and result in discipline.

(3) Sexual Harassment

- (A) Sexual harassment is a form of harassment consisting of unwanted physical or verbal sexual advances, requests for sexual favors, or other sexually-oriented conduct when:
- (i) Submission to such conduct is made a term or condition of an individual's employment, either plainly or by inference; or
 - (ii) Such conduct interferes unreasonably with an individual's work performance or creates an intimidating, hostile, or offensive working environment.
- (B) **Examples of Sexual Harassment.** Such conduct may include:
- (i) Unwelcome touching or near-touching, which can include patting, brushing against, hugging, cornering, invading personal space, or other unwanted physical conduct;
 - (ii) Unwelcome ogling or leering;
 - (iii) Sexual innuendo, teasing, and other sexually-oriented communication, such as jokes, personal inquiries, and sexist insults;

- (iv) Requests or demands for sexual favors. This includes subtle or blatant expectations, pressures, or requests for any type of sexual favor accompanied by an implied or stated promise of preferential treatment (often referred to as quid pro quo) or negative consequences concerning one's employment;
- (v) Displays of offensive, sexually explicit images, including calendars, posters, photographs, pictures, drawings or cartoons; or
- (vi) Participating in or supporting, either directly or indirectly, such harassment.

(4) Examples of Other Forms of Harassment. Such conduct may include:

- (A) Verbal abuse, offensive jokes, or remarks about or references to derogatory stereotypes that are related to an individual's protected class or characteristic;
- (B) Transmitting emails, texts, or other communications containing jokes, epithets, slurs, comments that are derogatory or demeaning to an individual's protected class or characteristic, or which promote negative stereotypes. This includes the use of social media while on or off duty when the communication involves references to employees, contractors, or anyone involved in Judiciary programs, services, or operations;
- (C) Display of offensive images that reflect negatively upon a protected class or characteristic, including calendars, posters, photographs, pictures, drawings or cartoons; or
- (D) Participating in or supporting, either directly or indirectly, such harassment.

(5) Retaliation

- (A) This policy prohibits retaliation against an employee because the employee opposed any unlawful employment practice or action; filed a charge of discrimination, harassment, or retaliation; participated in a discrimination, harassment, or retaliation investigation or proceeding; or otherwise sought the protections or entitlements of any discrimination or harassment law.
- (B) Retaliation means a materially adverse action that would likely deter a reasonable person from pursuing a complaint of discrimination, harassment, or retaliation, or otherwise seeking the protections or entitlements of any discrimination or harassment law.
- (C) Example of Retaliation. Such conduct may include:
 - (i) Unjustified discipline or a denial of promotion;
 - (ii) Threats, unjustified negative evaluations, or unjustified negative references; or
 - (iii) Unjustified changes in work assignment or location, or a denial of privileges.

- (6) Violation:** Any employee found to have engaged in discrimination, harassment, or retaliation in violation of this policy will be subject to disciplinary or remedial action, up to and including termination of employment.

(d) General Management Responsibilities

- (1)** Each administrative head shall ensure that each supervisor, manager, and director who reports to the administrative head is familiar with the Judicial Branch policy prohibiting discrimination, harassment, and retaliation, specifically that
 - (A) The Judicial Branch has a zero-tolerance policy for any form of discrimination, harassment, or retaliation; and

- (B) A substantiated complaint of discrimination, harassment, or retaliation shall result in remedial or disciplinary action, or both, up to and including termination of employment; and
- (2) Each County Administrative Judge shall designate a person to serve as the EEO coordinator for the employees under the Administrative Judge's supervision and communicate that designation in writing to those employees and to the Judiciary FPO.
- (3) The EEO coordinator shall annually notify employees under the supervision of an Administrative Judge of this policy and notify new employees upon their hire.
- (4) Any administrative head, EEO coordinator, supervisor, or manager who becomes aware of a complaint or a potential violation of this policy must immediately report the complaint or potential violation to the administrative head, the EEO coordinator, and the FPO (for employees who are not under the supervision of a County Administrative Judge).
- (5) Management employees within the Judicial Branch will make every reasonable effort to handle the complaint in a manner that protects the confidentiality of all parties.

(e) Employee Responsibilities

(1) Adherence to Policy

- (A) All employees within the Judicial Branch shall comply with this policy, act in a responsible and professional manner, and refrain from discriminating, harassing, or retaliating against any person.
- (B) All employees within the Judicial Branch shall support, encourage, and promote a work environment free from discrimination, harassment, and retaliation.
- (C) Any employee engaging in conduct prohibited by this policy shall be subject to disciplinary action, or remedial action, up to and including termination of employment.

(2) Cooperation in an Investigation

- (A) All employees within the Judicial Branch shall cooperate fully with an investigation conducted under this policy or in response to any complaint or charge filed with a state or federal agency enforcing any equal employment opportunity law.
- (B) Employees shall provide complete and accurate information, requested documents, and any other information necessary to conduct a full investigation of the complaint.

(3) Responding to Harassment. If an employee believes that the individual is being subjected to harassment, the employee should:

- (A) Inform the offending person that the conduct is unwelcome and should cease immediately. It is important for the victim to communicate that the conduct is unwelcome, particularly when the alleged harasser may have some reason to believe that the behavior may be welcome. However,

a victim of harassment need not confront the harasser directly, so long as the victim's *conduct* demonstrates that the harasser's behavior is unwelcome;

- (B) Document the date, time, location, and nature of the alleged harassing incident, and note any witnesses; and
- (C) If the alleged harassment does not cease, report the alleged harassing behavior promptly in accordance with this policy.

(4) Reporting Violations and Complaints for Employees of the Clerks' Offices, Courts, Units, and Entities Other than the Circuit Courts

(A) Reporting Violations

- (i) Employees who become aware of or suspect harassment, discrimination, retaliation, or any violation of this policy by any supervisor, co-worker, or member of the public, including justices and judges, supervisors, co-workers, vendors, attorneys, jurors, witnesses, and litigants, must immediately report the violation to the employee's manager, supervisor, or administrative head.
- (ii) Employees are encouraged to use the complaint form available on the Fair Practices resources webpage at <http://mdcourts.gov/fairpractices/forms/fpd305eeocomplaintform.pdf> when reporting prohibited behavior or other violations of this policy.
- (iii) Each manager, supervisor, EEO coordinator, or administrative head shall direct the employee to complete a complaint form, assist the employee in completing the form, or memorialize that an oral complaint was made if the employee did not complete the form.
- (iv) Once received, the complaint shall be provided to the EEO coordinator, administrative head, and FPO for prompt consideration, investigation, and resolution.

(B) Filing a Complaint

- (i) An employee may also report a violation directly to the FPO, in lieu of reporting through the employee's chain of command, by:
 - (I) Completing a complaint form. Forms are available on the Fair Practices resources webpage at <http://mdcourts.gov/fairpractices/forms/fpd305eeocomplaintform.pdf>.
 - (II) Submitting the complaint form by mail or delivery to:
Fair Practices Officer
Office of Legal Affairs and Fair Practices
Internal Affairs Division
187 Harry S. Truman Parkway
Annapolis, Maryland, 21401
 - (III) Submitting the complaint form electronically by email to fairpractices@mdcourts.gov.
- (ii) An employee may direct a telephone inquiry to (410) 260-3679.

- (C) Filing Complaints Independent of Fair Practices Officer. If an employee is reluctant to file a complaint with the FPO, or if the complaint concerns the FPO or persons within the Office of

Legal Affairs and Fair Practices, the employee may mail a written complaint, via certified mail, return receipt requested and clearly labeled “Confidential,” to:

State Court Administrator
Maryland Judicial Center
187 Harry S. Truman Parkway
Annapolis, MD 21401

(D) Timeliness of Complaints

- (i) A complaint of discrimination, harassment, or retaliation should be filed as soon as possible.
- (ii) The Office of Legal Affairs and Fair Practices or, when applicable, County Administrative Judge may at their discretion determine that complaints are untimely.

(5) Reporting Violations and Complaints for Employees of the Circuit Courts under the Authority of the County Administrative Judge

- (A) All circuit court employees who become aware of or suspect harassment, discrimination, retaliation, or any violation of this policy by any supervisor, co-worker, or member of the public, including justices and judges, supervisors, co-workers, vendors, attorneys, jurors, witnesses, and litigants, must immediately report the violation to either the employee’s manager, supervisor, EEO coordinator, or the administrative head (County Administrative Judge).
- (B) Employees are encouraged to use the complaint form available on the Fair Practices resources webpage at <http://mdcourts.gov/fairpractices/forms/fpd305eeocomplaintform.pdf> to report a prohibited behavior or other violation of this policy.
- (C) Each manager, supervisor, EEO coordinator, or County Administrative Judge shall direct the employee to complete a complaint form, assist the employee in completing the form, or memorialize that an oral complaint was made if the employee did not complete the form.
- (D) Once received, the complaint shall be provided to the EEO coordinator and the County Administrative Judge for prompt consideration, investigation, and resolution.

(6) Reporting Violations and Complaints Concerning Justices and Judges of the Maryland Courts

- (A) Employees who become aware of conduct by a justice or judge that constitutes harassment, discrimination, or retaliation in relation to an employee within the Judicial Branch must immediately report the conduct to the judge’s supervising judge.
 - (i) For circuit court Judges, the report shall be made to the County Administrative Judge;
 - (ii) For District Court Judges, the report shall be made to the Administrative Judge of the District in which the judge serves;
 - (iii) For District Court Administrative Judges, the report shall be made to the Chief Judge of the District Court;
 - (iv) For County Administrative Judges, the report shall be made to the Circuit Administrative Judge;

- (v) For Judges of the Appellate Court of Maryland, the report shall be made to the Chief Judge of the Appellate Court of Maryland.
 - (vi) For Justices of the Supreme Court of Maryland the report shall be made to the Chief Justice of the Supreme Court of Maryland.
 - (vii) For the Chief Judge of the District Court, Circuit Administrative Judges, and the Chief Judge of the Appellate Court of Maryland, the report shall be made to the Chief Justice of the Supreme Court of Maryland.
- (B) Employees are encouraged to use the complaint form available on the Fair Practices resources webpage at <http://mdcourts.gov/fairpractices/forms/fpd305eeocomplaintform.pdf> when reporting this conduct. Additional information on the Judicial Disabilities Commission can be found at <http://www.mdcourts.gov/cjd/>.
- (C) The supervising judge, or designee, shall investigate the allegations and take prompt remedial action to correct, remedy, and prevent discrimination, harassment, retaliation, and comply with Maryland Rule 18-102.15 if such remedial action fails or is inappropriate.

(f) Processing, Investigating, and Resolving Complaints

- (1)** As soon as possible after receiving the complaint, the EEO coordinator, administrative head, and FPO (but not for complaints involving circuit court employees under the supervision of the County Administrative Judge) shall consult to determine:
- (A) Whether the complaint alleges conduct in violation of the policy (*e.g.*, discrimination or harassment based on a protected class or retaliation);
 - (B) Whether immediate action is warranted; and
 - (C) The identity of the person(s) who shall conduct the investigation.
- (2)** This policy prohibits discrimination and harassment on the basis of protected characteristics as well as retaliation. Investigations under this policy are, therefore, limited to these matters. A complaint that does not allege any of these shall be referred to the appropriate administrative head or JHRD.
- (3) Investigation.** The EEO coordinator, administrative head, FPO (but not for complaints involving circuit court employees under the supervision of the County Administrative Judge) or designee shall investigate the allegations of prohibited harassment, discrimination, or retaliation promptly and:
- (A) Inform the complainant and respondent that every reasonable effort will be made to handle the complaint in a manner that protects the confidentiality of all parties; and
 - (B) Advise the respondent, complainant, and any other persons participating in the investigation that retaliation is strictly prohibited and will not be tolerated.

(4) Confidentiality

- (A) The administrative head, FPO, or any other person designated, including the EEO coordinator, to conduct the investigation, shall maintain the confidentiality of all actions taken to investigate and resolve complaints under this policy to the maximum extent allowed by law.
- (B) It is the policy of the Judicial Branch to divulge confidential investigative materials only when required to do so by law.

(5) Concluding the Investigation. Upon completion of the investigation,

- (A) The administrative head, FPO (but not for circuit court employees under the supervision of the County Administrative Judge), or designee shall prepare a report of the investigation.
 - (B) The administrative head, in consultation with the FPO, shall take prompt remedial action to correct, remedy and prevent prohibited discrimination, harassment, and retaliation. For circuit court employees under the supervision of the County Administrative Judge, the County Administrative Judge or designee, in consultation with the Office of the Attorney General, shall take prompt remedial action to correct, remedy, and prevent prohibited discrimination, harassment, and retaliation.
 - (C) The FPO or the County Administrative Judge or designee shall inform the complainant and respondent of the conclusion of the investigation.
 - (D) The EEO coordinator or FPO shall also inform the complainant of the ability to pursue allegations of harassment, discrimination, or retaliation by filing a charge with the Maryland Commission on Civil Rights or the U.S. Equal Employment Opportunity Commission. This notice does not constitute legal advice, nor does it represent all legal remedies or options available to the complainant.
- (6)** Nothing in this policy precludes the administrative head, in consultation with the JHRD, the FPO, or the Office of the Attorney General from taking immediate steps to correct the situation causing the complaint.

(g) Interpretive Authority: The Office of Legal Affairs and Fair Practices is responsible for the interpretation of this policy.

(h) Not a Contract: This policy does not constitute or create an express or implied contract. It is not intended to, and does not, create contractual obligations with respect to any matter it covers.