

## HAWAII JUDICIARY POLICY DISCRIMINATION/HARASSMENT-FREE WORKPLACE

### I. Authority and Background

The Judiciary is committed to promoting and maintaining a productive work environment free of any form of discrimination and harassment. The Judiciary does not tolerate workplace discrimination or harassment. The Judiciary will take appropriate action when discrimination or harassment is based on a person's "protected class." The Judiciary will act to curb protected class discrimination or harassment without regard to its severity or pervasiveness and does not require that discrimination or harassment rise to the level of unlawfulness before taking action.

### II. Zero Tolerance Policy

Judiciary employees are expected to avoid behavior that could reasonably be perceived as discrimination or harassment prohibited under this policy. The Judiciary will take appropriate action when discrimination or harassment is based on a person's race, color, sex, including gender identity or expression,<sup>1</sup> sexual orientation, condition of pregnancy, act of breastfeeding or expressing milk, religion, national origin, ancestry, age, disability, genetic information,<sup>2</sup> marital status, arrest and court record, income assignment for child support, national guard absence, uniformed service, veteran status, citizenship, credit history or credit report unless directly related to a bona fide occupational qualification, or domestic or sexual violence victim status if the domestic or sexual violence victim provides notice to the victim's employer of such status or the employer has actual knowledge of such status (*protected class discrimination*).

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<sup>1</sup> "Gender identity or expression" includes a person's actual or perceived gender, as well as a person's gender identity (including transgender), gender-related self-image, gender-related appearance, or gender-related expression, regardless of whether that gender identity, gender-related self-image, gender-related appearance, or gender-related expression is different from that traditionally associated with the person's sex assigned at birth. "Transgender" refers to a person whose sex assigned at birth is different from their self-identified gender (e.g. a person whose sex assigned at birth is male who identifies as female and/or a person whose sex assigned at birth is female who identifies as male). A transgender person does not have to have undergone medical treatment or surgical procedures to be protected under the Policy. An individual's self-declaration of gender is sufficient to be provided protection under the Policy.

<sup>2</sup> "Genetic information" includes information about an individual's genetic tests and the genetic tests of an individual's family members, as well as information about any disease, disorder, or condition of an individual's family members (i.e., an individual's family medical history). Family medical history is included in the definition of "genetic information" because it is often used to determine whether someone has an increased risk of getting a disease, disorder, or condition in the future.

## **A. Scope of Policy**

This policy applies to all employees, justices and judges, volunteers, applicants for employment, and persons or entities providing services to the Judiciary, whether on a contract, per diem, full or part-time basis. This policy covers all interactions with staff, clients, and the public.

All Judiciary employees are responsible for ensuring that work in the courts and court-related programs is conducted in an atmosphere that respects the dignity of every Judiciary employee, and people with whom the Judiciary conducts business.

## **B. Examples of Prohibited Conduct**

1. It is a violation of this policy to engage in protected class discrimination.
2. Discrimination or harassment prohibited under this policy includes, but is not limited to, oral, written, physical or visual behavior, that offends, demeans, or intimidates, or refusing to provide services and/or denying access to Judiciary facilities and/or programs, based on a person's status in a protected class.
3. Protected class characteristics may not be used as a basis for taking employment action or making an employment decision that results in an adverse change in benefits, or terms and conditions of employment.
4. Other harassing or offensive conduct directed at individuals based on protected class characteristics is prohibited under this policy, and includes, but is not limited to:
  - a. Unwanted physical contact, sexually suggestive or offensive touching, patting, hugging, or brushing against a person's clothing or body, pinching, or hitting;
  - b. Sexual advances, requests for sexual favors, repeated and unwanted attempts at a romantic relationship, sexually explicit questions, comments about physical attributes;
  - c. Lewd comments, sexual jokes, pressure for sexual activity, such as repeated requests for dates, and threats for refusing a sexual advance;
  - d. Displays of demeaning, insulting, or sexually suggestive objects, pictures, or photographs;

- e. Demeaning, insulting, intimidating, or sexually suggestive, written, recorded, or electronically transmitted messages (such as e-mail, voicemail, and Internet materials);
  - f. Offensive comments, slurs, jokes, profanity, anecdotes, offensive and/or inappropriate questions or statements to, about or regarding any protected class;
  - g. Refusal to address a person by their preferred name, provided that such name shall not be used when deemed to be inappropriate for a business setting; and
  - h. Disregarding a person's preferences based on his or her self-identified gender. This may include, but is not limited to, failing to address a person by his or her preferred name and/or pronoun, not allowing a person to use the restroom and/or locker room of his or her self-identified gender or limiting a person to using facilities that are an unreasonable distance or travel time from the worksite or Judiciary program location because the individual is transgender, requiring a transgender person to follow procedures that conflict with the person's self-identified gender, refusing to provide services and/or denying access to Judiciary facilities and/or programs based on the person's self-identified gender and/or being transgender.
5. Retaliation: The Judiciary encourages reporting of incidents of discrimination, harassment or retaliation. Retaliation against an individual who makes a complaint, participates in an investigation, or provides information, is prohibited. A person who experiences retaliatory action after taking the following actions should report the matter to the investigator in charge of the complaint or the Equal Employment Opportunity (EEO) Officer:
- a. Making a complaint of harassment or discrimination;
  - b. Making a disability related request for reasonable accommodation;  
or
  - c. Participating in a complaint investigation.

### **C. Reporting Procedures**

The Judiciary encourages employees to report discrimination and/or harassment before it becomes severe or pervasive so that steps may be taken to stop the harassment before it rises to the level of unlawful behavior.

Anyone who observes or experiences discrimination or harassment prohibited

under this policy is encouraged, if at all possible, to make it clear to the offender that he or she finds such behavior offensive. The incidents should also be reported to an immediate supervisor, other supervisory personnel, a program or court administrator, or the EEO Officer who after reviewing the complaint will determine the appropriate follow-up. Employees are not required to report a complaint to their immediate supervisor or to make a complaint to the offender.

While this section describes the general procedures for reporting complaints of discrimination, harassment or retaliation in the workplace, more specific procedural information is attached to this policy as Attachment 1 and describes, in detail, how to report a complaint, including how to report a complaint to an external agency. Regardless of how the complaint is made, all complaints will be taken seriously and investigated promptly.

#### **D. Limited Confidentiality**

The Judiciary shall, to the extent possible, protect the confidentiality of substantiated and unsubstantiated discrimination, harassment and retaliation reports and investigations. Information regarding reports and investigations shall be shared with appropriate individuals and agencies on a “need to know” basis, with due consideration for safety, security, and other interests.

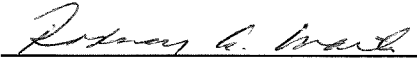
### **III. Responsibility for Implementing Policy**

Judges, chief court administrators and department heads shall ensure that this policy is implemented and enforced within their own courtrooms and programs.

A violation of this policy may result in disciplinary action, up to and including discharge.

### **IV. Review of Policy**

This policy was established in 1998 and amended in 2000, 2007, 2012, and 2017.

Approved:   
**Rodney A. Maile**  
**Administrative Director of the Courts**

Date: MAY 20 2017

## **Attachment 1**

### **PROCEDURES FOR REPORTING DISCRIMINATION, HARASSMENT, OR RETALIATION IN THE WORKPLACE**

#### **I. Procedures**

The Judiciary urges the reporting of any incidents of discrimination, harassment, or retaliation, regardless of the identity of the alleged offender. Anyone who observes or experiences discrimination or harassment prohibited under the Discrimination/Harassment-Free Workplace Policy is encouraged, if at all possible, to make it clear to the offender that he or she finds such behavior offensive. Conduct that violates the Discrimination/Harassment-Free Workplace Policy should also be reported to an immediate supervisor, other supervisory personnel, a program or court administrator, or the Equal Employment Opportunity (EEO) Officer at 539-4336.

Employees are not required to report a complaint to their immediate supervisor or to make a complaint to the offender.

A complaint or report may be made either orally or in writing (a complaint form is available through the EEO Officer). A complaint or report, whether oral or written, should include: name of the alleged offender(s), including position and department, if known, a summary of the offensive acts, with the dates, times and places of the incidents, the names of witnesses to the events, and copies of documents, if any, that support the complaint or report.

#### **II. Limited Confidentiality**

The Judiciary shall, to the extent possible, protect the confidentiality of substantiated and unsubstantiated discrimination, harassment and retaliation reports and investigations. Information regarding reports and investigations shall be shared with appropriate individuals and agencies on a “need to know” basis, with due consideration for safety, security, and other interests.

#### **III. Action Taken on Complaints**

All complaints will be investigated promptly. The Judiciary may take appropriate interim action while an investigation is pending, including placing the accused person on leave or temporary assignment.

If the Judiciary finds that an employee violated the Discrimination/Harassment-Free Workplace Policy, the Judiciary will take appropriate corrective action, up to and including discharge of the employee. If an investigation shows that a justice or judge violated the Discrimination/Harassment-Free Workplace Policy, the matter shall be referred to the Commission on Judicial Conduct, which has exclusive authority to take disciplinary action against justices and judges. If the person found to have violated the policy is not employed

by the Judiciary, other appropriate action shall be taken, including notice to the employer. If the person found to have violated the policy is a lawyer, the findings shall also be reported to the Office of Disciplinary Counsel.

#### **IV. Referring Complaints to External Agencies**

In addition to the procedures described above, complaints about discrimination, harassment, or retaliation in the workplace may also be reported to other appropriate agencies, including but not limited to, the federal Equal Employment Opportunity Commission, the Hawai'i Civil Rights Commission, and labor unions. Conduct by a justice or judge that violates the Discrimination/Harassment-Free Workplace Policy shall be reported to the Commission on Judicial Conduct and the Judicial Selection Commission.

Agencies may have time limitations for filing complaints. For example, complaints of unlawful discriminatory practices must be filed with the Hawai'i Civil Rights Commission no later than one hundred eighty (180) days, or with the Equal Employment Opportunity Commission no later than three hundred (300) days from the date of: (1) the alleged unlawful discriminatory act; or (2) the last occurrence of discrimination in a pattern of ongoing discriminatory conduct.

Persons wishing to file complaints with other agencies should contact that agency to obtain information on their specific procedures and should not wait for resolution of a complaint made to the employer, including the Judiciary. Contact information for other agencies are as follows:

Equal Employment Opportunity Commission  
300 Ala Moana Boulevard, Room 7-127  
P.O. Box 50082  
Honolulu, Hawai'i 96850-0051  
Telephone: 1-800-669-4000                      [info@eeoc.gov](mailto:info@eeoc.gov)

Hawai'i Civil Rights Commission  
830 Punchbowl Street, Room 411  
Honolulu, Hawai'i 96813  
Telephone: (808) 586-8636                      [DLIR.HCRC.INFO@hawaii.gov](mailto:DLIR.HCRC.INFO@hawaii.gov)

Hawai'i Government Employees Association Headquarters  
888 Mililani Street, Suite 401  
Honolulu, Hawai'i 96813-2991  
Telephone: (808) 536-2351                      [oahudiv@hgea.org](mailto:oahudiv@hgea.org)

United Public Workers Headquarters  
1426 North School Street  
Honolulu, Hawai'i 96817  
Telephone: (808) 847-2631

Office of Disciplinary Counsel  
201 Merchant Street, Suite 1600  
Honolulu, Hawai'i 96813  
Telephone: (808) 521-4591

Commission on Judicial Conduct  
426 Queen Street, Room 118  
Honolulu, Hawai'i 96813-2914  
Telephone: (808) 539-4790  
[judconduct.c.comm@courts.hawaii.gov](mailto:judconduct.c.comm@courts.hawaii.gov)

Judicial Selection Commission  
417 South King Street  
Honolulu, Hawai'i 96813-2902  
Telephone: (808) 538-5200