

**IN THE CIRCUIT COURT OF THE FIFTH JUDICIAL CIRCUIT
OF THE STATE OF FLORIDA**

ADMINISTRATIVE ORDER NUMBER A-2004-14-B

**AMENDED SEXUAL HARASSMENT POLICY AND PROCEDURES
FOR SEXUAL HARASSMENT COMPLAINTS
AGAINST JUDGES AND EMPLOYEES**

WHEREAS the Florida Supreme Court has issued Administrative Order Number SC18-06 “Sexual Harassment Policy and Complaint Procedures Against Judges” requiring that each Circuit adopt and implement the policy and procedures contained therein on a local level, it is upon consideration thereof

ORDERED AND ADJUDGED that the policy and procedures outlined herein are adopted as the Sexual Harassment Policy and Procedures for Sexual Harassment Complaints against Judges and Employees of the Fifth Judicial Circuit.

1. Policy

It is the policy of the Fifth Judicial Circuit to foster a workplace free of sexual harassment, or sexual misconduct. Sexual harassment occurs if there are unwelcome sexual advances; unwelcome requests for sexual favors; or unwelcome verbal or physical conduct of a sexual nature from or involving an employee's supervisors, peers, subordinates or other persons in contact with an employee during the course of the conduct of the employee's business when:

1. Submission to such conduct is either explicitly or implicitly a term or condition of employment; or
2. Submission to or rejection of such conduct by an individual is used as the basis for employment decisions affecting such individual or as the basis for any official action; or
3. Such conduct has the purpose or effect of interfering with an individual's work performance or creates a persistently intimidating and hostile environment, as that term is defined in state and federal law.

Sexual misconduct is any behavior of a sexual nature that is committed without consent or by force, intimidation, coercion, or manipulation. Sexual misconduct can occur between

strangers or acquaintances, including people involved in an intimate or sexual relationship, and is not necessarily actionable sexual harassment.

The Fifth Judicial Circuit joins the Florida Supreme Court and the entire state court system to condemn any sexual harassment or sexual misconduct and to advance the position that anyone in contact with the state courts system in the Fifth Judicial Circuit should feel empowered to bring any such inappropriate activity to the attention of all proper authorities, including and especially the Chief Judge. Anyone authorized to investigate or pursue a complaint of sexual harassment or sexual misconduct hereunder must always maintain an open-door policy that fosters the free expression of any complaint.

In accordance with Florida Supreme Court Order AOSC18-6 the chief judge has the authority to take any administrative action necessary to protect the complainant from further sexual harassment or sexual misconduct and from retaliation related to a complaint hereunder.

It is the policy of the Fifth Judicial Circuit that all complaints of sexual harassment or sexual misconduct against any judge or employee within the Fifth Judicial Circuit will be treated seriously and acted upon promptly. The following procedures apply to complaints against judges or employees made by employees of the Fifth Judicial Circuit, applicants for employment with the Fifth Judicial Circuit, and, when applicable, by attorneys, litigants, or other members of the public.

2. Notification

In accordance with AOSC18-6 the chief judge may designate any Fifth Judicial Circuit officer or employee to be responsible for receiving and documenting complaints of sexual harassment or sexual misconduct against judges or employees of the Fifth Judicial Circuit.

Any employee or applicant for employment with the court system who believes that he or she is the subject of sexual harassment by a judge or employee of the Fifth Judicial Circuit should submit his or her complaint in writing, or, if the person prefers, he or she may submit the complaint orally. The complaint may be submitted to any of the following: the chief judge or his or her designee, trial court administrator, human resource consultant, or general counsel. If the person receiving the complaint is not the chief judge or his or her designee, the person receiving the complaint should forward it to the chief judge or his or her designee, for an investigation pursuant to section 4, below. Student interns working for the state courts system who believe they are the subject of sexual harassment may use these complaint procedures, but in all instances, should submit a complaint to their college or university in accordance with school sexual harassment complaint procedures.

If any person has difficulty writing out the complaint and the person requests assistance in reducing the complaint to writing or if the person prefers to submit the complaint orally, the chief judge shall designate a person, who will not be involved in the investigation or adjudication of the complaint, to aid the person in reducing the complaint to writing.

If the chief judge is the subject of a complaint, the employee or applicant should submit the complaint to the administrative judge of the county in which the employee is headquartered. The administrative judge to whom such a complaint is referred will assume all complaint investigation and resolution duties for which the chief judge otherwise would be responsible. The administrative judge to whom such a complaint is referred and/or the office of the general counsel will be responsible for maintaining records pertaining to the complaint.

If an employee or applicant chooses not to file a formal complaint, and any person designated hereunder to receive complaints has actual knowledge or receives information that a substantial likelihood exists that a judge or employee has engaged in sexual harassment or sexual misconduct, the person may inquire into the matter and take appropriate action.

3. Time for Filing Complaints

In order to ensure that all complaint procedures can be utilized without risk of precluding the filing of a charge of discrimination with state or federal entities, an employee or applicant should report an incident of sexual harassment within ninety (90) days of the date of occurrence.

4. Investigations

A complaint of sexual harassment or sexual misconduct against a judge or employee will be investigated promptly and thoroughly. If a complaint has been made, the chief judge may designate another person to make an initial inquiry into the complaint.

The chief judge, or his or her designee, will interview the complainant within five (5) days of the submission of the complaint to ascertain relevant facts and circumstances. If the complainant does not divulge names or details of the incident(s), the chief judge, or his or her designee, will rely upon any information that is available. If another person has been designated to make an initial inquiry into the complaint, the designee will report details of the complaint, including any relevant facts, circumstances, and information, to the chief judge within ten (10) days of the submission of the complaint.

If the chief judge determines the complaint is unfounded or is insufficient to constitute sexual harassment, he or she may decline to pursue any action on the complaint. If a designee

determines the complaint is unfounded or insufficient to constitute sexual harassment, he or she shall consult with general counsel for legal review. If general counsel is acting as the designee, he or she shall consult with the chief judge for final determination to decline to pursue any action on the complaint.

If the chief judge, or his or her designee, determines the complaint is facially sufficient to constitute sexual harassment, the chief judge may appoint an investigating officer or officers to formally investigate the complaint, or may take any other action appropriate under the circumstances.

If the chief judge, or his or her designee, determines the complaint is insufficient to constitute sexual harassment, but nevertheless indicates potential sexual misconduct, the chief judge may take any action appropriate to address the circumstances, including but not limited to appointing an investigating officer or officers to formally investigate the complaint.

The chief judge, his or her designee, or investigating officer will interview the complainant, the judge or employee implicated, and witnesses, if any, and will review relevant documents. If any investigating officers have been appointed, they will submit a written report to the chief judge or his or her designee, within thirty (30) days of the submission of the complaint for formal investigation.

5. Resolution

The chief judge, or administrative judge if the chief judge is the subject of a complaint, shall determine the course of action for internal resolution of the complaint, and may appoint another person, other than the subject of the complaint, to recommend the course of action for internal resolution.

If the chief judge, or his or her designee, determines the complaint, including any relevant facts, circumstances, and information, is insufficient to constitute sexual harassment, the chief judge may attempt to resolve the complaint informally through mutual conciliation by meeting with the complainant and the subject judge or employee to discuss a method of resolution, including alternative dispute resolution. In attempting to resolve the complaint, the chief judge, or administrative judge if the chief judge is the subject of the complaint, may counsel or take other appropriate direct action with the employee or judge involved.

If the complaint concerns an employee who is not a judge, and investigation reasonably indicates that the subject employee engaged in activity that constitutes sexual harassment, sexual misconduct, or otherwise raises a substantial question as to the employee's fitness for continued employment, that employee shall immediately be terminated from employment.

If the complaint concerns a judge, and investigation reasonably indicates that the subject judge engaged in activity that constitutes sexual harassment, sexual misconduct, or otherwise raises a substantial question as to a judge's fitness for office, the chief judge shall refer the complaint and all written documentation pertaining to the complaint to the Judicial Qualifications Commission.

To the extent not otherwise prohibited by statute or rule, a written summary of the resolution will be provided to the complainant within a reasonable time after a determination is made and any action pursuant thereto is taken.

6. Documentation and Confidentiality

All information pertaining to a complaint of sexual harassment must be documented and maintained by the chief judge, the administrative judge if the chief judge is the subject of the complaint, the trial court administrator, or general counsel.

All records made or received by any person pursuant to these complaint procedures are exempt from public disclosure as provided in rule 2.420(c)(3)(A), Florida Rules of Judicial Administration. Such records are exempt from public disclosure for the duration of an initial inquiry, formal investigation and resolution of the complaint, and at all times thereafter, unless the records are forwarded to the Judicial Qualifications Commission.

If records pertaining to a complaint are forwarded to the Judicial Qualifications Commission, such records will be confidential under rule 2.420(c)(3)(A), and rule 23(a), Rules of the Judicial Qualifications Commission, until any formal charges against the judge is filed by the Investigative Panel of the Commission with the clerk of the Florida Supreme Court.

Records within the possession of any judge or court staff and pertaining to a complaint that has been forwarded to the Judicial Qualifications Commission will become public upon formal charges being filed with the clerk of the Florida Supreme Court.

7. Referral to the Judicial Qualifications Commission

The Judicial Qualifications Commission is responsible for investigating all reported instances of judicial misconduct. These procedures do not preclude the referral of a complaint against a judge at any time by any person to the Judicial Qualifications Commission. If a complaint has been referred to the Judicial Qualifications Commission, no further action by the chief judge is required.

For anyone wishing to file such a complaint, the Commission's mailing address is Post Office Box 141106, Tallahassee, Florida 32317. The Commission's Executive Director can be contacted by telephone at 850-488-1581 or by email at contact@floridajqc.com.

8. Referral to the Florida Commission on Human Relations or the United States Equal Employment Opportunity Commission

These procedures do not preclude the filing of a charge of employment discrimination with the Florida Commission on Human Relations or the United States Equal Employment Opportunity Commission.

For anyone wishing to file such a complaint, the Florida Commission on Human Relations (FCHR) is located at: 4075 Esplanade Way, Room 110, Tallahassee, FL 32399. The telephone number for the FCHR is: 850-488-7082 or 1-800-342-8170.

The United States Equal Employment Opportunity Commission (EEOC) office with jurisdiction over complaints arising in Lake, Marion and Sumter Counties is located at the Miami District Office located at 100 SE 2nd Street, Suite 1500, Miami, FL 33131. The telephone number for the EEOC Miami District Office is: 1-800-669-4000.

The United States Equal Employment Opportunity Commission (EEOC) office with jurisdiction over complaints arising in Hernando and Citrus Counties is located at the 501 East Polk Street, Suite 1000, Tampa FL 33602. The telephone number for the Tampa office is: 1-800-669-4000.

9. Referral to the Chief of Human Resources, Office of the State Courts Administrator

For anyone wishing to file a complaint under this policy, the Chief of Human Resources, OSCA is located at: 500 South Duval Street, Tallahassee, Florida 32399-1925. The telephone number is 850-617-4028.

DONE AND ORDERED in Chambers at Ocala, Marion County, Florida, this 26th day of February 2018.


S. SUE ROBBINS
CHIEF JUDGE
FIFTH JUDICIAL CIRCUIT