



JUDICIAL COUNCIL OF CALIFORNIA

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REPORT TO THE JUDICIAL COUNCIL

For business meeting on: July 18–19, 2019

Title

Judicial Branch Administration: Prevention of Discrimination, Harassment, Retaliation, and Inappropriate Workplace Conduct Based on a Protected Classification

Rules, Forms, Standards, or Statutes Affected

None

Recommended by

The Work Group for the Prevention of
Discrimination and Harassment
Hon. Brad R. Hill, Cochair
Hon. Stacy Boulware Eurie, Cochair

Agenda Item Type

Action Required

Effective Date

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Executive Summary

The Work Group for the Prevention of Discrimination and Harassment recommends several actions to the Judicial Council to improve how judicial branch entities prevent and address harassment, discrimination, retaliation, and inappropriate workplace conduct based on a protected classification. These recommendations include that the Judicial Council direct that the Rules and Projects Committee oversee the rulemaking process for the development of a California Rule of Court setting forth minimum requirements for court policies and procedures; direct that the Center for Judicial Education and Research Advisory Committee revise its 2020–2022 Education Implementation Plan to increase education offerings and modify existing

education, and engage in the rulemaking process regarding education for judicial officers on the prevention of harassment, discrimination, retaliation, and inappropriate workplace conduct based on a protected classification; recommend that courts take several actions designed to improve existing court protocols; and direct that Judicial Council staff support courts in these efforts.

Recommendations

To effectuate the charge of Chief Justice Tani Cantil-Sakauye (Chief Justice), and recognizing the organizational structure of the judicial branch, the Work Group for the Prevention of Discrimination and Harassment (Work Group) recommends that the Judicial Council:

1. Direct the Rules and Projects Committee to oversee the rulemaking process to propose a California Rule of Court clarifying the responsibility of courts to adopt updated policies that: (a) prohibit harassment, discrimination, retaliation, and inappropriate workplace conduct based on a protected classification; (b) contain definitions and examples of prohibited harassment, discrimination, retaliation, and inappropriate workplace conduct based on a protected classification; and (c) address and clarify complaint reporting and response procedures.
2. Direct the Center for Judicial Education and Research Advisory Committee to:
 - A. Under the oversight of the Rules and Projects Committee, engage in the rulemaking process, in consultation with the administrative presiding justices, appellate court clerk/executive officers, trial court presiding judges, and trial court executive officers, regarding education for judicial officers on the prevention of harassment, discrimination, retaliation, and inappropriate workplace conduct based on a protected classification.
 - B. Incorporate the revisions enumerated below on improving and expanding training into the 2020–2022 Education Implementation Plan, and implement further enumerated revisions in a timely fashion.
 1. In the area of judicial education, add explicit references to the proposed California Rule of Court outlined in Recommendation 1 and to the Code of Judicial Ethics, and expand judicial education demeanor trainings in several areas, including antibullying and bystander intervention, and judicial education to prevent harassment, discrimination, retaliation, and inappropriate workplace conduct based on a protected classification for judicial officers.
 2. In the area of staff education, create civility training that emphasizes building skills and understanding on many aspects of civil behavior, including etiquette, implicit bias, respect, and acceptable workplace conduct. This curriculum would be consistent statewide and provided by trained court staff.

3. Include content on the prevention of harassment, discrimination, retaliation, and inappropriate workplace conduct based on a protected classification at all in-person educational venues.
 4. Develop new tools for court staff and judicial officers to help extend their learning beyond the initial training on prevention of harassment, discrimination, retaliation, and inappropriate workplace conduct based on a protected classification.
3. Recommend that courts take action to:
- A. Revise and modernize policies on the prevention of harassment, discrimination, retaliation, and inappropriate workplace conduct based on a protected classification to comply with the proposed California Rule of Court.
 - B. Create workplace investigation protocols to ensure fairness, consistency, and transparency for all parties to an investigation.
 - C. Improve communication and transparency on policies for the prevention of harassment, discrimination, retaliation, and inappropriate workplace conduct based on a protected classification and related complaint resolution processes.
 - D. Gather feedback from current and departing employees to determine areas of needed improvement.
 - E. Develop and adopt informal complaint resolution processes.
4. Direct Judicial Council staff to develop resources to aid courts in the above objectives, such as model policies, processes, procedures, and toolkits.
 5. Direct Judicial Council staff to follow up with court leadership by July 2021 to assess the effectiveness of these recommendations and determine further areas for improvement.

Relevant Previous Council Action

In April 2018, the Chief Justice directed the Judicial Council to take immediate action to revise the California Rule of Court on public records to clarify that settlement agreements to resolve sexual harassment and discrimination complaints against judicial officers must be publicly disclosed in response to records requests. She also created the Rule 10.500 Working Group to develop the rule changes required to achieve this goal. Through developing its proposals, the Rule 10.500 Working Group identified other related issues that were beyond the scope of that group's charge, including harassment and discrimination prevention.

In October 2018, the Chief Justice established the Work Group for the Prevention of Discrimination and Harassment to examine these related issues and make recommendations to the Judicial Council for how the judicial branch can address and prevent harassment, discrimination, retaliation, and inappropriate workplace conduct based on a protected classification. Co-chaired by Administrative Presiding Justice Brad R. Hill of the Court of Appeal, Fifth Appellate District, and Judge Stacy Boulware Eurie of the Superior Court of

Sacramento County, the eight-member group of judicial officers, court executive officers, and attorneys was derived from Judicial Council membership, many of whom also served on the Rule 10.500 Working Group.

Analysis/Rationale

Work Group charge

The charge of the Work Group is to identify and make recommendations to the Judicial Council to improve how judicial branch entities prevent and address harassing, discriminatory, retaliatory, and inappropriate workplace conduct based on a protected classification.

The charge further states that the Work Group should solicit input from judicial officers and judicial branch employees, and consider available resources and information on best practices for ensuring workplaces are free of harassment and discrimination.

Finally, the charge states that the Work Group should consider, for example, proposals for:

1. New or amended rules of court, Standards of Judicial Administration, and/or model policies on prevention of harassment and discrimination that allow for increased awareness of prohibited and inappropriate workplace conduct based on a protected classification and the resources available to address such conduct, including:
 - Modernizing definitions and examples of inappropriate and unlawful conduct;
 - Clarifying reporting obligations;
 - Ensuring appropriate available methods of reporting harassment, discrimination, and inappropriate workplace conduct based on a protected classification;
 - Standardizing judicial branch response to complaints of harassment, discrimination, and inappropriate workplace conduct based on a protected classification; and
 - Ensuring nonretaliation and protection of victims.
2. Improvements to judicial branch education of judicial officers and employees on harassment, discrimination, and inappropriate workplace conduct based on a protected classification, including:
 - Evaluating and considering changes to current training requirements; and
 - Broadening and updating the content of required trainings to focus on issues of harassment and discrimination prevalent in modern society.

Because of the importance of promoting harassment- and discrimination-free workplaces branchwide, the Chief Justice directed the Work Group to provide a final recommendation report within a year of appointment. Consistent with the charge to consider available resources and information on best practices, the Work Group gathered and reviewed information from several sources and used this information to draft the recommendations.

Work Group process and data sources

The Work Group held eight in-person and conference call meetings over the course of seven months, during which members examined research items and discussed potential areas for improvement relating to discrimination, harassment, retaliation, and inappropriate workplace conduct based on a protected classification. Prior to developing recommendations, many factors and options were considered, and the Work Group examined various materials that addressed issues on discrimination, harassment, retaliation, and inappropriate workplace conduct.¹ This included:

- Research, findings, and recommendations from:
 - o The U.S. Equal Employment Opportunity Commission (EEOC) Select Task Force on the Study of Harassment in the Workplace
 - o The Federal Judiciary Workplace Conduct Working Group
 - o The Ninth Circuit Court of Appeals' Workplace Environment Committee
 - o The California Legislature's Subcommittee on Sexual Harassment Prevention and Response
- Materials from:
 - o The American Bar Association
 - o The National Center for State Courts
 - o The California Department of Fair Employment and Housing
- California statutes, regulations, rules of court, and Standards of Judicial Administration
- The California Code of Judicial Ethics
- The Code of Conduct for U.S. Judges and Rules for Judicial Conduct and Judicial Disability by the Committee on Codes of Conduct and the Committee on Judicial Conduct and Disability
- Personnel policies and procedures of California's trial and appellate courts
- Education products for judicial officers and court personnel
- Best practice recommendations from the EEOC and other industry leaders with respect to education designed to prevent discrimination and harassment

In January 2019, Judge M. Margaret McKeown of the United States Court of Appeals for the Ninth Circuit, cochair of the Ninth Circuit Court of Appeals' Workplace Environment Committee, and member of the Federal Judiciary Workplace Conduct Working Group, briefed the Work Group on the research, findings, and recommendations of the above-mentioned federal

¹ A more detailed list of educational materials reviewed by the Work Group is included as Attachment A.

judiciary work groups. The areas Judge McKeown highlighted included: judicial training, complaint and investigative procedures, and bystander reporting.

Rationale and analysis for recommendations

Significant discussion and consideration were given to the unique structural and operational circumstances of the California judicial branch that were not reflected in the findings and recommendations of the various third-party reports reviewed by the Work Group.

The ultimate recommendations reflect the Work Group's charge to create standardized processes across the branch, while also recognizing the autonomy of the courts to manage their operations and workforce, the variance in size and structure of the courts, and that trial courts have unionized workforces with bargained memorandums of understanding impacting the terms and conditions of employment that require the courts to meet and confer with unions about various policy and procedure changes prior to implementation. Specifically, the recommended California Rule of Court establishes an important baseline for policies on prevention of harassment, discrimination, retaliation, and inappropriate workplace conduct based on a protected classification, delineating mandatory required content for such policies, a standardized understanding of what conduct is inappropriate for the workplace, and a requirement that courts implement appropriate complaint, investigatory, and follow-up procedures. These requirements set a mandatory floor, consistent with statutory and regulatory requirements, of the protections and rights afforded to all branch employees.

Yet the proposals go further, recommending that courts take additional steps to expand on and tailor these minimum standards to the needs and realities of their own courts, and provide that Judicial Council staff will create model policies, processes, procedures, and toolkits to aid courts in customizing their own approach to the prevention of harassment, discrimination, retaliation, and inappropriate workplace conduct based on a protected classification. This combination of setting standard baselines through a California Rule of Court paired with the ability for courts to develop custom solutions based on their own operational needs represents a balance between promoting a standardized approach to prevention across the branch while also recognizing the significant autonomy of the courts.

Finally, the recommendation for education and training reflects the Work Group's understanding that mandatory procedures are only part of the solution for prevention of harassment, discrimination, retaliation, and inappropriate workplace conduct based on a protected classification. Prevention requires education to provide a higher level of awareness of how unintentional and seemingly innocuous comments and conduct can be just as insidious as intentional conduct. The recommendations for education and training are paramount to the overall success of achieving workplaces free of harassment, discrimination, retaliation, and inappropriate workplace conduct based on a protected classification.

The phrase "protected classification" is used throughout these recommendations and does not limit the scope of these recommendations to only certain groups of employees. "Protected classifications" apply to and protect all employees, not just those of a particular status within the classification. As an example, the protected classification of sex/gender protects all employees

based on their sex, gender expression, and gender identification, regardless of whether they are male or female, identify or express as a gender other than their sex assigned at birth, or identify as gender nonbinary. This applies to other protected classifications as well; the recommendations apply equally to all groups within that classification. The phrase “protected classification” is used to ensure both that all employees are protected and treated equally, and that courts are also aware that they have legal obligations to investigate and resolve complaints that involve issues related to classifications that are specifically enumerated by statute.

Recommendation 1: Adopt a New California Rule of Court

Consistent with the requirements of California Government Code section 12950 and California Code of Regulations, title 2, section 11023(b), the Work Group recommends that the Judicial Council direct the Rules and Projects Committee to oversee the rulemaking process to propose a California Rule of Court. The proposed California Rule of Court would: (1) clarify the responsibility of the courts to adopt updated policies that prohibit harassment, discrimination, retaliation, and inappropriate workplace conduct based on a protected classification; (2) contain definitions and examples of the same conduct; and (3) address and clarify complaint reporting procedures.

A. Policy on the prevention of harassment, discrimination, retaliation, and inappropriate workplace conduct based on a protected classification

The proposed California Rule of Court would require courts to adopt updated policies prohibiting harassment, discrimination, retaliation, and inappropriate workplace conduct based on a protected classification that contain, at a minimum:

1. A list of all protected classifications under applicable state and federal laws.
2. Definitions and examples of harassment, discrimination, retaliation, and inappropriate workplace conduct based on a protected classification.
3. A prohibition against harassment, discrimination, retaliation, and inappropriate workplace conduct based on a protected classification by judicial officers, supervisors, managers, coworkers, third parties, and other individuals with whom employees come into contact.
4. Complaint intake, investigatory, and follow-up processes that describe and ensure:
 - a. Appropriate reassurances that confidentiality will be preserved to the extent possible, and an explanation that disclosure of information will be limited to the extent consistent with conducting a fair, effective, and thorough investigation.
 - b. An effective complaint reporting procedure that includes multiple individuals to whom an employee can report workplace concerns and

includes someone other than the complainant's supervisor, as described in section B, below.

- c. Fair, timely, and thorough investigations conducted by impartial, qualified personnel.
- d. Documentation and tracking of progress of the investigation.
- e. Consideration of appropriate options for remedial action and resolution.
- f. A clear prohibition of retaliation against anyone making a complaint of harassment, discrimination, retaliation, and/or inappropriate workplace conduct based on a protected classification or participating in an investigation into such claims.
- g. Timely investigation and/or case closures.

B. Complaint reporting procedure

The proposed California Rule of Court also would require courts to adopt a complaint reporting procedure that, at a minimum:

1. Creates effective, open-door policies and procedures for reporting complaints of harassment, discrimination, retaliation, and inappropriate workplace conduct based on a protected classification, including clearly identifying individuals to whom complaints may be made regarding administrative presiding justices, appellate court clerk/executive officers, presiding judges, court executive officers, judicial officers, and court management.
2. Offers multiple avenues for raising complaints and does not require that the employee bring his or her concerns to his or her immediate supervisor.
3. Identifies the Commission on Judicial Performance, the Department of Fair Employment and Housing, and the U.S. Equal Employment Opportunity Commission as additional avenues for employees to lodge complaints and provides contact information for those entities.
4. Instructs supervisors to promptly report complaints potentially involving harassment, discrimination, retaliation, and/or inappropriate workplace conduct based on a protected classification to the administrative presiding justice, an appellate court clerk/executive officer, presiding judge, a court executive officer, human resources, and/or other appropriate judicial officer or executive court administrator, provided that the individual to whom the complaint is reported is not named in the complaint.

Recommendation 2: Improve/Expand and Promote Training

To improve, expand, and promote training on the prevention of harassment, discrimination, retaliation, and inappropriate workplace conduct based on a protected classification, the Work

Group recommends that the Judicial Council direct the Center for Judicial Education and Research Advisory Committee to:

A. Increase training for judicial officers in the prevention of harassment, discrimination, retaliation, and inappropriate workplace conduct based on a protected classification

1. Consistent with the requirements of California Government Code sections 68088 and 11135, and the California Rules of Court, rules 10.461 et seq., the Work Group recommends that the Center for Judicial Education and Research Advisory Committee, under the oversight of the Rules and Projects Committee, engage in the rulemaking process, in consultation with the administrative presiding justices, appellate court clerk/executive officers, trial court presiding judges, and trial court executive officers, regarding education for judicial officers on the prevention of harassment, discrimination, retaliation, and inappropriate workplace conduct based on a protected classification.
2. Create additional courses on the prevention of harassment, discrimination, retaliation, and inappropriate workplace conduct based on a protected classification that would be offered for qualifying ethics elective credit.²

B. Incorporate the following recommendations on improving and expanding training into the 2020–2022 Education Implementation Plan

1. Judicial education
 - a. Add explicit references to the proposed California Rule of Court outlined in Recommendation 1 and to the Code of Judicial Ethics in the design of educational offerings for judicial officers on the prevention of harassment, discrimination, retaliation, and inappropriate workplace conduct based on a protected classification.
 - b. Expand judicial education demeanor trainings to include content on interactions with colleagues, staff, and other individuals throughout the judicial branch, including daily courtroom interactions, appropriate workplace conduct, antibullying education, and education to empower bystanders to intervene when they observe harassment, discrimination, retaliation, and inappropriate workplace conduct based on a protected classification.

² Currently, experienced judicial officers enrolled in the Master Insurance Policy for Defense of Commission on Judicial Performance Actions are required to complete the Qualifying Ethics program every three years that consists of a three-hour core course and two hours of ethics electives.

2. Staff education

- a. Create education that focuses on civility training.³
 - i. Civility training emphasizes building skills and understanding about etiquette, diversity awareness, cultural sensitivity, implicit bias, and bystander intervention. Civility training focuses on respect, acceptable workplace conduct, and the types of behaviors that contribute to a respectful, inclusive working environment. The goal of providing civility training is to prevent conduct that gives rise to harassment, discrimination, retaliation, and/or inappropriate workplace conduct based on a protected classification.
 - ii. The curriculum must be consistent statewide and, when possible, it should be provided by trained court staff.
3. Include content on the prevention of harassment, discrimination, retaliation, and inappropriate workplace conduct based on a protected classification at all in-person educational venues, including New Judge Orientation, Judicial College, Presiding Judge/Court Executive Officer Institute, Supervising Judges Institute, Appellate Justices Institute, and all institutes for justices, judges, subordinate judicial officers, court management, and trial and appellate court personnel. Where appropriate, content addressing implicit bias should also be included.
4. Develop new tools for court staff and judicial officers to help extend their learning beyond the initial training on the prevention of harassment, discrimination, retaliation, and inappropriate workplace conduct based on a protected classification.

C. Implement the following recommendations

1. Continue to research and implement best practice recommendations from the EEOC and other industry leaders in preventing workplace harassment, discrimination, retaliation, and inappropriate workplace conduct based on a protected classification.
2. Conduct follow-up evaluations of educational offerings in the areas of prevention of harassment, discrimination, retaliation, and inappropriate workplace conduct based on a protected classification to assess the long-term impact of those products.
3. Increase marketing, outreach, and awareness of existing educational products to ensure that they are fully utilized by judicial officers and court staff.

³ Although much educational content on civility training already exists, it is currently woven throughout several separate educational products. This content could be consolidated into a single offering.

Recommendation 3: Model Policy on the Prevention of Harassment, Discrimination, Retaliation, and Inappropriate Workplace Conduct Based on a Protected Classification

The Work Group recommends that the Judicial Council direct Judicial Council staff to develop a model policy on the prevention of harassment, discrimination, retaliation, and inappropriate workplace conduct based on a protected classification that conforms to all legal requirements contained in statute, regulations, and in the proposed California Rule of Court outlined in Recommendation 1.

Recommendation 4: Investigation Protocol

To improve fairness, consistency, and transparency for all affected parties when conducting internal investigations in response to complaints of harassment, discrimination, retaliation, and inappropriate workplace conduct based on a protected classification, the Work Group recommends that courts create workplace investigation protocols that address the following topics:

- Preliminary review of the complaint and determination as to whether a formal investigation is warranted, or an informal complaint resolution process is appropriate;
- Communicating with the complainant, respondent, and any witnesses;
- Selecting an investigator;
- Overseeing the investigation process;
- Investigation documentation;
- Determining corrective action, if appropriate;
- Closing out the investigation; and
- Follow-up actions, if necessary.

The Work Group recommends that the Judicial Council direct Judicial Council staff to develop a model investigation protocol consistent with the requirements outlined above and with industry standard best practices. The model protocol would include document templates for courts to use during the investigation process, including initial written acknowledgment to complainant and close-out memorandums.

Recommendation 5: Communication

To demonstrate consistent and sustained local leadership commitment; increase transparency; and improve communication regarding existing policies on the prevention of harassment, discrimination, retaliation, and inappropriate workplace conduct based on a protected classification, and the complaint resolution process, the Work Group recommends that courts consistently inform:

- New employees of the court's commitment to preventing harassment, discrimination, retaliation, and inappropriate workplace conduct based on a protected classification in the

workplace; the methods for raising such concerns; and the steps the court will take to address complaints; and

- Third parties doing contractual business with the court of the court's expectation that those third parties and their employees refrain from any form of bias by words or conduct.

In addition, the Work Group recommends that courts develop procedures to ensure that all current employees are consistently apprised of policies, training opportunities, reporting avenues, and complaint resolution processes. The procedures should include:

- Distributing to all new employees the court's policy on the prevention of harassment, discrimination, retaliation, and inappropriate workplace conduct based on a protected classification and obtaining an acknowledgment of receipt of the policy from individual employees;
- Distributing to all employees the court's policy on the prevention of harassment, discrimination, retaliation, and inappropriate workplace conduct based on a protected classification whenever there are changes to the policy and obtaining an acknowledgment of receipt from individual employees;
- Publicizing the policy and associated complaint procedures in an easily accessible area of the court's website or intranet; and
- Providing contacts and resources for new and current employees to ask questions or raise concerns about existing policies or practices.

The Work Group recommends that the Judicial Council direct Judicial Council staff to develop guidelines to assist courts with the development of these processes and procedures.

Recommendation 6: Gathering Employee Feedback

To increase feedback from current and departing employees, and to gather observations and proposed areas of improvement from these employees, the Work Group recommends that courts:

- Consistently gather information from current and departing employees on workplace culture; and
- Use such information to improve existing policies and procedures and adopt other preventative approaches.

The Work Group recommends that the Judicial Council direct Judicial Council staff to develop a toolkit to help courts gather such information. The toolkit should include sample questions for current and departing employees.

Recommendation 7: Informal Complaint Resolution

To provide alternative methods for court employees to ask questions and raise concerns about workplace issues that do not constitute policy violations or harassment, discrimination, retaliation, and inappropriate workplace conduct based on a protected classification, the Work Group recommends that courts adopt informal complaint resolution processes that may be used for such workplace issues. Informal complaint resolution processes could include:

- Providing employees with multiple avenues to seek informal advice or resolution of workplace issues;
- Providing assisted dispute resolution programs for court employees to resolve disputes; and
- Encouraging supervisors/court leaders/court managers to have an “open door” for employees to come forward with complaints.

Recommendation 8: Follow-Up

The Work Group recommends that the Judicial Council direct Judicial Council staff to follow up with court leadership by July 2021 to assess implementation effectiveness and determine further areas for improvement.

Policy implications

The Work Group routinely debated the competing policies of court autonomy and the charge’s call for more standardized processes. At the heart of this debate was the understanding that meaningful progress in the prevention of harassment, discrimination, retaliation, and inappropriate workplace conduct based on a protected classification was not achievable without baseline procedures and protections for all branch employees. The Work Group, by necessity, also considered the reality that courts are autonomous entities with the independence to manage their own operations and workforces, varying greatly in size and structure. In addition, the trial courts have unionized workforces with bargained memorandums of understanding addressing terms and conditions of employment that require the courts to meet and confer with unions about various policy and procedure changes prior to implementation.

These realities manifested themselves throughout the Work Group’s deliberations and shaped the Work Group’s recommendations. The result is a proposal for a California Rule of Court that sets a minimum baseline of compliance that ensures protection of all branch employees, while allowing individual courts to determine, consistent with the baseline, how best to achieve and expand those requirements, and in consideration of their own structure, limitations, and union relationships. The training requirements bind the two competing policies together, providing education to court leadership on the significance of the issue and the need for creative and committed problem-solving, while also providing training to court employees and judicial officers on: (1) their rights if they are subject to such conduct, (2) how their conduct can contribute to the problem, and (3) what each employee can do to promote a more positive work environment.

Comments

In January and February 2019, the Work Group afforded all judicial officers and judicial branch staff an early opportunity to provide confidential comments through an e-mail inbox as it developed policy recommendations for consideration by the Judicial Council.

In early March 2019, the Work Group sent the draft *Invitation to Comment* to trial court presiding judges and CEOs, administrative presiding justices and appellate clerk/executive officers, and the Center for Judicial Education and Research Advisory Committee for early, confidential input on the draft recommendations.

On March 26, the *Invitation to Comment* was distributed to all judicial officers and judicial branch employees for judicial branch comment. The *Invitation to Comment* was sent to all administrative presiding justices, appellate clerk/executive officers, presiding judges, and court executive officers, with a request that the *Invitation to Comment* be shared with their respective court staff and judicial officers. The *Invitation to Comment* was also promoted in *Court News Update* with a request for judicial branch comment. The *Invitation to Comment* elicited a total of 20 responses. Comment was provided on every recommendation included in the *Invitation to Comment*. A comment chart responding to each of these comments is included at the end of this report.

Of the 20 comments, 5 were received from judicial officers, 2 from court management, 11 from court staff, and 2 from individuals who did not identify their position. Of these comments, 5 were received from the appellate courts and 15 were received from trial courts. The comments raised many common themes. Among those, many commenters expressed gratitude and appreciation for the work done by the Work Group. Other commenters encouraged greater emphasis on training for judicial officers, a suggestion that the Work Group has recommended the Judicial Council direct the Center for Judicial Education and Research Advisory Committee to further explore. Still other commenters asked for clarification of terms used in the recommendations, including “protected classifications,” “inappropriate workplace conduct,” and “civility training.” The Work Group has tried to address those comments throughout its final recommendations.

Several commenters also made suggestions regarding complaint and reporting procedures, asking for more clarity in parts of the recommendations and requesting the creation of a branchwide third-party to receive and investigate complaints. While the Work Group was not able to create a third-party entity to receive and address complaints for the reasons discussed throughout this report, it was able to clarify its reporting and complaint procedure proposals.

Alternatives considered

In lieu of proposing a new California Rule of Court mandating various baseline prevention policy requirements and reporting standards, the Work Group considered creating a Standard of Judicial Administration that recommended rather than mandated these actions. The argument in favor of a Standard of Judicial Administration was to emphasize the autonomy of the courts to take action in this area. Ultimately, the Work Group concluded that it was important to set

mandatory minimum standards to ensure that all branch employees are afforded basic rights and protections in the workplace. The California Rule of Court is intended to be consistent with other laws addressing these requirements and provides a uniform way for courts to understand and implement their federal and state obligations in this area. While court autonomy was an important consideration, the Work Group determined that autonomy could be promoted in the options that courts would have to tailor policies and procedures to meet, exceed, and customize the minimum requirements.

As an example, the Work Group reviewed several comments suggesting creation of a third-party entity to receive and investigate complaints. While there was significant debate on this point, the Work Group ultimately decided that the structural and jurisdictional limitations of the branch discussed throughout this report prevented the creation of a branchwide entity. Ultimately, the Work Group proposed that courts create reporting procedures that are clear, accessible for all employees, and consistent with the requirements set out in the proposed California Rule of Court. What that procedure entails is appropriately left to the discretion of each individual court.⁴

Finally, the Work Group considered many alternatives with regard to judicial officer training on prevention of harassment, discrimination, retaliation, and inappropriate workplace conduct based on a protected classification. While these topics are included in many existing judicial officer training forums (see Attachment B), the Work Group determined that a top-down commitment to harassment prevention was essential and recommends that the Judicial Council direct the Center for Judicial Education and Research Advisory Committee to further explore training options in this area, consistent with harassment prevention training offered to managers, supervisors, and employees.

Fiscal and Operational Impacts

The Work Group does not anticipate any significant one-time or sustained annual costs associated with implementation of these recommendations. The Work Group does anticipate some operational impacts for Judicial Council staff and courts in the short term, primarily for courts' human resources staff, but expects only minimal operational impacts thereafter. Specifically, the Work Group anticipates that courts will examine existing harassment prevention policies to ensure compliance with the proposed California Rule of Court and draft proposed informal complaint resolution policies, investigation protocols, communication processes, and guidelines for gathering employee feedback. While Judicial Council staff will attempt to alleviate some of these operational impacts through the creation of model policies and protocols, the Work Group anticipates that some courts will want to create their own policies and

⁴ The Work Group notes that the Judicial Council, as the human resources provider for the Supreme Court and Courts of Appeal, staffs a hotline for employees of those courts to call and report issues of harassment, discrimination, retaliation, and inappropriate workplace conduct based on a protected classification. The Work Group anticipates that trial courts will consider their own reporting alternatives as part of their policies, reporting guidelines, and investigation procedures, and encourages each court to adopt reporting processes that reflect the needs of its employees and the operational realities of the court.

procedures, or at the very least will have to customize model policies to fit the operational realities of that court.

Attachments and Links

1. Chart of comments, at pages 17–42
2. Attachment A: Educational Materials Reviewed by Work Group
3. Attachment B: Center for Judicial Education and Research (CJER) Training and Events for Judicial Officers on the Prevention of Harassment, Discrimination, Retaliation, and Inappropriate Workplace Conduct Based on a Protected Classification

Judicial Branch: Prevention of Discrimination, Harassment, Retaliation, and Inappropriate Workplace Conduct Based on a Protected Classification

All comments are verbatim unless indicated by an asterisk (*)

	Commenter	Comment	Work Group Response
1.	Donna Englehardt Superior Court of San Bernardino County	If I read it correctly, I thank you for the plans to provide harassment training separate from current sexual harassment classes.	The Work Group for the Prevention of Discrimination and Harassment (Work Group) appreciates the support from the commenter. The commenter indicates agreement with the recommendations.
2.	Michael E. Lines Court Services Clerk Superior Court of Kings County	<p>Regarding the snip-it below, I suppose “all protected classifications” are such items as race, religion, sexual orientation, etc. But since this list would constantly be changing and added to, why not just say “all people”?</p> <p>Recommendations</p> <p>Recommendation 1: New California Rule of Court</p> <p>Consistent with the requirements of California Government Code section 12950 and 2 California Code of Regulations 11023(b), the Work Group recommends that the Judicial Council adopt a new California Rule of Court that clarifies the responsibility of the courts to adopt updated policies that contain definitions and examples of and prohibit harassment, discrimination, retaliation, and inappropriate workplace conduct based on a protected classification; address and clarify complaint reporting procedures; and promote the standardization of judicial branch processes to respond to complaints.</p> <p><i>A. Harassment, Discrimination, and Retaliation Prevention Policy</i></p> <p>The new rule would require courts to adopt updated policies prohibiting harassment, discrimination, retaliation, and inappropriate conduct in the workplace based on a protected classification that contain, at a minimum:</p> <ol style="list-style-type: none"> 1. A list of all protected classifications under applicable state and federal laws. 2. Definitions and examples of harassment, discrimination, retaliation, and inappropriate workplace conduct based on a protected classification. 3. A prohibition against harassment, discrimination, retaliation, and inappropriate 	The Work Group appreciates this concern and notes that the phrase “protected classification” is used throughout the recommendations and does not limit the scope of these recommendations to only certain groups of employees. “Protected classifications” apply to and protect all employees, not just those of a particular status within the classification. As an example, the protected classification of sex/gender protects all employees based on their sex, gender expression, and gender identification, regardless of whether they are male or female, identify or express as a gender other than their sex assigned at birth, or identify as gender nonbinary. This applies to other protected classifications as well; the recommendations apply equally to all groups within that classification. The phrase “protected classification” is used to ensure both that all employees are protected and treated equally, and that courts are aware that they have legal obligations to investigate and resolve complaints that involve issues related to classifications that are specifically enumerated by statute.

	Commenter	Comment	Work Group Response
3.	Hon. Barbara Kronlund Judge Superior Court of San Joaquin County	<p>1. Under Rec. No. 3, I would include providing process or procedure for purely “confidential” complaints to be made. Sometimes staff truly doesn’t want to get anyone in trouble, doesn’t want word to get around and gossip to roll, but simply wants something offensive to STOP. This would be a mechanism to respect the staff’s wishes, and yet still remedy the problem.</p> <p>2. Under Rec. No. 7, I would like to see some way to incorporate into training opportunities non-court-employee partners or court users who have frequent interaction with court staff, such as representative from the DA’s Office, PD’s Office, Court Security, and Sheriff’s Office. Many times the harassment and unwelcome conduct is coming from these court users who may not have proper training through their own departments.</p> <p>3. Under Rec. No. 7, Item A. 3., I would be sure to include social media as this is [a] huge issue regarding bullying. We are seeing it at the schools and in court cases. (Just handled defamation case where plaintiff prevailed for “bullying” Face Book postings). And this could be presented also as falling under “Conduct Unbecoming” of court staff/judges, against existing court policies.</p> <p>4. Under the “Request for Specific Comments” on the last page, I would answer bullet point No. 1 with - Yes, there will be required training and preparation of a manual, which will take a minimum of 6 months to develop and roll out, as well as involve some costs.</p>	<p>1. The Work Group agrees with the commenter’s concern about less formal ways to resolve certain types of complaints and has included Recommendation 7 – Informal Complaint Resolution for courts to develop informal complaint resolution procedures.</p> <p>2. The Work Group appreciates the sentiment behind the suggestion to expand training initiatives to include justice partners such as the District Attorney’s Office and sheriff’s department. However, training of justice partners and court users goes beyond the Work Group’s charge. The Work Group notes that Recommendation 5 – Communication includes that courts communicate their expectations to third parties doing business with the courts about the court’s expectations that “those third parties and their employees refrain from any form of bias by words or conduct.”</p> <p>3. The suggestion about incorporating information about bullying through social media is timely and appropriate. The Work Group has provided this suggestion to the Center for Judicial Education and Research (CJER) and encourages CJER to consider how to incorporate information on this topic into the proposed civility training.</p>

	Commenter	Comment	Work Group Response
			4. The Work Group appreciates the feedback on time and costs associated with implementing the proposed recommendations.
4.	Hon. Maria Stratton Justice Second District Court of Appeal	<p>As a judicial officer I have two comments:</p> <p>1. Recommendation 7: Training I do not know what “civility training” is. How is it different from training on the topics of harassment and discrimination? This needs to be fleshed out in more detail. If it is different from training on the other topics, the report needs to explain why it is germane to this report. If it is related, then that should be explained as well.</p> <p>2. [Recommendation] 7: Training It would be very helpful to those who are implementing the report’s recommendations if the report actually listed current CJER education programs for the judicial officers which touch on these subjects and then recommend what should be added and where new programs should be added. For example, I think there should be a mandatory course at the Judicial College and at New Judge Orientation. New judges [need] to be taught explicitly what they can and cannot do in their new roles (not what they should and should not do). They need to be offered solutions for when and if they develop some type of personal relationship, i.e., sexual or romantic, with staff. Currently the programs offer “best practices” which leave it to the judicial officer’s discretion how to act. We need to take a stronger position of what will not be tolerated. In addition, the programs for judges in supervisory roles need to be strengthened about what can and cannot be done (again, not should) and the options for the supervising judge when issues arise.</p>	<p>1. The Work Group appreciates the suggestions on further developing the training recommendation. A definition of civility training has been incorporated into the recommendations.</p> <p>2. The Work Group completed an extensive review of the current education products for judicial officers and has included in Attachment B of the report a list of current CJER education programs for judicial officers that touch upon related topics.</p> <p>The majority of the curriculum at Judicial College and New Judge Orientation covers the responsibilities of judicial officers based on the Canons of Judicial Ethics. The Work Group also recommends that the Judicial Council direct CJER to incorporate courses on the prevention of harassment, discrimination, retaliation, and inappropriate workplace conduct based on a protected classification at all in-person education venues.</p>
5.	Charles Johnson Clerk/Executive Officer First District Court of Appeal	<p>My comment has to do with Recommendation 7: Improve/Expand and Promote Training.</p> <p>I note that all court staff are required as part of their orientation upon hiring, to have training on their rights and obligations vis a vis</p>	The Work Group agrees with the importance of training all court staff and judicial officers. Currently, judicial officers receive training in the prevention of harassment and discrimination during

	Commenter	Comment	Work Group Response
		<p>harassment, retaliation and inappropriate workplace conduct. In addition, many courts, including the one for which I work, require further, periodic, training for all staff. Furthermore, Government Code Section 12950.1 mandates live, biannual training for supervisors and managers at every court, on preventing and responding to harassment, retaliation and inappropriate workplace conduct. I think I speak for many who believe that judicial officers should also be required to receive such training on a periodic basis. I do not think it reflects well on the branch when middle-manager staff are required to take such training but the ultimate supervisors are not.</p>	<p>the Qualifying Ethics Core Course. This course is attended by the vast majority of judicial officers and is updated every three years. Judicial officers also have additional ethical rules that require a training specific to their responsibilities and obligations.</p> <p>In addition to these existing training programs, the Work Group recommends that the Judicial Council direct CJER, under the oversight of the Rules and Projects Committee, to engage in the rulemaking process, in consultation with the administrative presiding justices, appellate court clerk/executive officers, trial court presiding judges, and trial court executive officers, regarding education for judicial officers on the prevention of harassment, discrimination, retaliation, and inappropriate workplace conduct based on a protected classification.</p>
6.	Julie Christiansen Superior Court of San Bernardino County	<p>Thank you for providing me with the opportunity to provide feedback on this important topic. As a current employee of the San Bernardino County Superior Court, I feel that the information I can provide would be helpful to your endeavors.</p> <p>1. <u>Lead by example</u>. Hold supervisors and managers accountable. I have experienced supervisors who not only harass employees, but foster an environment of bullying amongst coworkers as well. Supervisors accomplish this by selecting “favorites” in the office. These favorites can do no wrong, and the supervisors participate in office gossip with them, wanting to “get the scoop” and gossip about others in the office. These favorites become office tattletales. This toxic environment is not conducive to a cohesive working environment; rather, it creates an air of</p>	<p>The Work Group agrees with several of the themes included in this comment, including the importance of leading by example, raising awareness of harassing and bullying conduct, and emphasizing tolerance at the courts. The Work Group notes that several of the existing recommendations, including Recommendation 2 – Improve/Expand and Promote Training, Recommendation 5 – Communication, and Recommendation 6 – Gathering Employee Feedback promote those</p>

	Commenter	Comment	Work Group Response
		<p>hostility among co-workers, distrust, and oftentimes an overly competitive nature among co-workers. Implement annual or bi-annual training on how to be a professional supervisor, and how to treat all employees fairly, without bias. [Ensure] that the supervisor understands that this type of unprofessional behavior will not be tolerated, and could affect their pay by a possible transfer or demotion (ie, repercussions to the behavior).</p> <p>2. <u>Confidential Evaluations</u>. Distribute yearly, confidential evaluations of supervisors to randomly selected employees. These evaluations would be sent directly to Human Resources. If it is found, after investigation, that the supervisor is engaging in harassing, inappropriate or bullying behavior, they must attend mandatory training and education to correct their behavior as soon as possible.</p> <p>3. <u>Mandatory training</u>. Many times, people are simply ignorant of the fact that their comments might affect someone in a negative way. A simple comment such as “you’re tall” or “you have a funny laugh” to a co-worker might not seem so simple to someone who is [self-conscious] about their height, for example. This mandatory training would teach proper workplace decorum, treating others with the same respect in which you would want to be treated. After training, employees would have to sign an agreement that they will abide by the rules. If they break the rules, they would face penalties (such as suspension without pay, for example).</p> <p>4. <u>Reporting procedures</u>. Make it easier for the employee to report inappropriate workplace behavior. Provide a direct method (such as an 800 number) strictly for reporting purposes, and reassure the employee that they should not fear reprisal from their reporting. Internal comment cards could also be provided for any employee who feels harassed or discriminated against by either their supervisor or co-worker. Provide a drop box which will be accessed only by Human Resources.</p>	<p>themes. In addition, the Work Group has recommended that the Judicial Council direct CJER to provide products and events about civility training to court staff. This training will cover the topics of how to be professional, treat employees fairly, and display proper workplace decorum.</p> <p>The Work Group understands the commenter’s desire for additional avenues for reporting inappropriate workplace behavior, including a hotline number for reporting complaints and a drop-box system to be accessed only by court human resources. The Work Group also recognizes that each court is its own separate entity and most court employees are represented by unions and have bargained memorandums of understanding covering many terms and conditions of employment.</p> <p>The Work Group has recommended creation of a California Rule of Court to standardize complaint reporting procedures, including: requirements that courts create intake, investigatory, and follow-up processes; that any procedure clearly identify to whom complaints against court leadership are made; and that court processes identify outside organizations such as the California Department of Fair Employment and Housing, the United States Equal</p>

	Commenter	Comment	Work Group Response
		<p>5. <u>Raise awareness</u>. Bullying and all types of harassing behavior has become an epidemic. We need to de-stigmatize the victim, as many times the victim of this behavior feels responsible, in some way. Invite guest speakers, hold fundraisers, get the word out there. The more people involved, the less the bully will feel protected from his or her behavior.</p> <p>6. <u>Become tolerant</u>. Provide workshops and discussion groups on various personality types (Briggs Myers, for example) where we can learn about how to be more tolerant of others, even those with whom we feel we have little in common. The truth is, we are all valuable and have something to offer. The key is to be respectful and more inclusive of others.</p>	<p>Employment Opportunity Commission, and the Commission on Judicial Performance, as possible reporting options. The Work Group has also recommended that courts develop new investigation protocols and has tasked Judicial Council staff with developing model policies and protocols in these areas. The Work Group has also recommended improvements to training, which will include education on when and how employees can report issues of harassment, discrimination, retaliation, and inappropriate workplace conduct based on a protected classification.</p> <p>Finally, the Work Group notes that the Judicial Council, as the human resources provider for the Supreme Court and Courts of Appeal, staffs a hotline for employees of those courts to call and report issues of harassment, discrimination, retaliation, and inappropriate workplace conduct based on a protected classification. The Work Group anticipates that trial courts will consider their own reporting alternatives as part of their policies, reporting guidelines, and investigation procedures, and encourages each court to adopt reporting procedures that reflect the needs of its employees and the organizational structure of the court.</p>
7.	Nancy Nardini-Hanson Director of Human	<ul style="list-style-type: none"> • New California Rule of Court for Harassment, Discrimination, and Retaliation Prevention Policy and Complaint Reporting Procedure 	The Work Group appreciates the commenter’s agreement with

	Commenter	Comment	Work Group Response
	Resources & Administration Superior Court of Nevada County	<ul style="list-style-type: none"> • Model Harassment, Discrimination, and Retaliation Prevention Policy – I am glad this [ruling] is coming forward for courts. It will create continuity and provide a platform for continued improvement, discussion, training and compliance. [All highlighting made by commenter.] • Model Investigation Protocol • Communication • Data Gathering • Informal Complaint Resolution – an important component is encouraging employees to come forward. The better we do with opening the lines of communication, providing a consistent safe place for resolution, we can begin to be proactive rather than reactive. Training is key here. [All highlighting made by commenter.] • Improve/Expand and Promote Training – I would like to see a training developed for “all” court employees, not just managers and Judicial Officers. A standardized training that is updated annually. This would be an exceptional way to insure “all” courts were compliant and provided a valuable consistent resource. [All highlighting made by commenter.] • Follow-Up 	<p>Recommendation 3 – Model Policy on the Prevention of Harassment, Discrimination, Retaliation, and Inappropriate Workplace Conduct Based on a Protected Classification.</p> <p>The Work Group agrees with the commenter’s sentiments regarding informal complaint resolution and Recommendation 7 – Informal Complaint Resolution will be helpful in this regard.</p> <p>The Work Group agrees with the commenter’s statement that harassment prevention training should be provided to all court employees, and not only managers and supervisors. The California Legislature recently passed Senate Bill 1343 (Stats. 2018 Ch. 956), which requires employers to provide sexual harassment prevention training to all employees, with similar content that has long been mandated for managers and supervisors in California. Judicial branch entities are in the process of creating and providing those trainings.</p>
8.	Sharon Perlmutter Attorney Second District Court of Appeal	<p>Thank you for circulating this draft, the opportunity to comment, and the efforts of the Work Group.</p> <p>I have four comments:</p> <p>(1) I have to report a bit of disappointment that so many of the recommendations appear to have given greater weight to “the autonomy of the courts” over “the need for consistency and [standardization] throughout the judicial branch to prevent harassment and</p>	<p>1. The Work Group understands the concern that providing deference to the courts will result in a lack of consistency, but also recognizes the unique structural and operational circumstances of the California judicial branch. Each court is its own separate entity and has the autonomy to manage their employees and operations. In addition, most court</p>

	Commenter	Comment	Work Group Response
		<p>discrimination.” For example, the very first proposal is a new Rule of Court which adopts no policies of its own, but simply “clarifies the responsibility of the courts to adopt updated policies” With respect, past experience has shown that the individual courts are not up to the task. The Judicial Council can no longer “punt” on this one in the name of court autonomy.</p> <p>(2) I am particularly pleased to see the section on data gathering; I am disappointed to see nothing is to be done with that data. Perhaps the data from employees should be gathered before you develop these policies, so that you learn where the problems and concerns are.</p> <p>(3) I would like to see the work group address a possible change to the ethical rules for judicial officers regarding their duty to investigate/report/address suspicions of harassment which may not rise to the level of formal complaints.</p> <p>(4) The unique problem faced by the courts in this arena is, and has always been, judicial autonomy. When a corporate employee is accused of harassing a subordinate, an investigation is conducted and, if the charges are substantiated, a wide variety progressive discipline options are available: further anti-harassment training for the supervisor; informal “talking to” by the supervisor’s supervisor; further supervision of the supervisor’s interaction with subordinates; possible demotion; possible reassignment; suspension; and so forth. What do we have when the accused supervisor is a judicial officer? Charges brought by the CJP or nothing. If you want to really make an impact, think outside of the box and come up with a wholly new procedure, so that an employee harassed by a judge is not forced to choose between the “nuclear” option and suffering in silence.</p>	<p>employees are represented by unions and have bargained memorandums of understanding covering many terms and conditions of employment. The Work Group’s recommendations propose a California Rule of Court that will standardize minimum requirements for policies on the prevention of harassment, discrimination, retaliation, and inappropriate workplace conduct based on a protected classification; intake, investigatory, and follow-up processes; and complaint reporting procedures. The recommendations also promote standardization through creation of model policies and procedures that can be adopted by courts, with or without modification. The recommendations also require consistent training throughout the branch.</p> <p>2. The Work Group notes that it did gather data from branch employees as part of its development of these recommendations, both in confidential and public comment periods. Employees will have further opportunity to comment on the proposed California Rules of Court as part of the rulemaking process.</p> <p>3. The comment that the Work Group consider possible changes to the ethical rules for judicial officers is outside the charge of the Work Group, and the Work Group has referred the comment to the</p>

	Commenter	Comment	Work Group Response
			<p>Supreme Court Advisory Committee on the Code of Judicial Ethics.</p> <p>4. When implemented by the courts, many of the Work Group’s recommendations will provide employees with further information about how to make complaints about harassment, discrimination, retaliation, and inappropriate workplace conduct based on a protected classification. The recommendations, taken together, will: provide a proposed California Rule of Court that mandates that courts create certain procedures to make complaints against judicial officers and court leadership, including clearly delineating who will receive those complaints; create model policies to help clarify those reporting options; provide training to educate on those reporting options; recommend creation of informal complaint procedures at the local court level; and emphasize the ability to report complaints to the California Department of Fair Employment and Housing, United States Equal Opportunity Commission, and Commission on Judicial Performance.</p>
9.	Hon. Stephen Murphy Judge Superior Court of San Francisco County	As a former plaintiff’s employment attorney for nearly three decades, I read with interest the Work Group’s proposed new California Rule of Court. Conspicuously absent from the proposed rule is a definition of “inappropriate workplace conduct based on a protected classification.” While the law defining harassment, discrimination, and retaliation is fairly well established, I’m not aware of law defining inappropriate –	The Work Group agrees that the phrase “inappropriate workplace conduct” is difficult to define. The recommendations seek to address that concern in two ways: First, the recommended California Rule of Court requires that courts adopt

	Commenter	Comment	Work Group Response
		<p>though apparently legal – workplace conduct. If one goal of the rule is to prevent judicial misconduct, then judges need some guidance on what constitutes inappropriate workplace conduct. As phrased, the rule allows some workplace conduct based on a protected classification. Without guidance on what type of conduct is “inappropriate,” judges will have no firm basis on which to modulate their conduct. One issue may be whether conduct that may be considered appropriate in Los Angeles County would be considered inappropriate in a small county. Is the “inappropriate” conduct judged on a state-wide or local level? We don’t have that problem with harassment, discrimination, and retaliation since all are defined by state law.</p> <p>Reading the proposed rule as a whole, it feels like the phrase “inappropriate workplace conduct based on a protected classification” was an afterthought. It does not appear consistently with harassment, discrimination, and retaliation. For example, the headings at Recommendation 1.A., 2, and 7.A.4.a. do not mention inappropriate workplace conduct.</p> <p>I am also on the faculty for qualifying ethics and note that the proposed rule recommends that CJER “Consider including content on the prevention of harassment and discrimination at additional in-person educational venues.” Recommendation 7A.4.a. Is retaliation intentionally omitted? Is inappropriate workplace conduct intentionally omitted? What specific recommendations does the Work Group have for training judges on “inappropriate workplace conduct based on a protected classification?” As you can see, these are not mere academic concerns but real-life concerns.</p> <p>I appreciate your taking the time to consider my comments.</p>	<p>harassment prevention policies that include definitions and examples of prohibited conduct, including inappropriate workplace conduct. The model policy included in Recommendation 3 – Model Policy on the Prevention of Harassment, Discrimination, Retaliation, and Inappropriate Workplace Conduct Based on a Protected Classification provides further examples and definitions of such conduct. Second, the recommended changes to training programs include specific training for employees and judicial officers on the proposed California Rule of Court and expand existing education to include training on courtroom interactions, appropriate workplace conduct, workplace civility training, and other related topics.</p> <p>The omission of “retaliation” and “inappropriate workplace conduct” from some sections of the recommendations was unintentional. The language in all recommendations has been reviewed and updated to ensure consistency.</p>
10.	Deborah Carlyle Procurement Technician Superior Court of Sonoma County	<p>In reading 1:A.4.b, and 1:A.4.c, I am thinking to myself if I had a discrimination or harassment claim I would not want ANYONE in my court to do the investigating. I’ve seen what this court does to people who complain about harassment. Allowing an entity to investigate itself has always been a bit of a [sic]</p> <p>1) I am suggesting that anyone who has a complaint of harassment or</p>	<p>The Work Group appreciates that having an investigation done by a court employee can raise various concerns about impartiality and confidentiality. The proposed California Rule of Court will require that courts develop investigation protocols that include</p>

	Commenter	Comment	Work Group Response
		<p>discrimination be able to choose someone OUTSIDE of their court to complain to and TO DO THE INVESTIGATION, at the Court’s expense.</p> <p>While you point out in 1:B.3 that the following agencies can also be used to lodge a complaint: <i>Identify the <u>Commission on Judicial Performance</u>, the <u>Department of Fair Employment and Housing</u>, and the <u>U.S. EEOC</u> as additional avenues for employees to lodge complaints. What authority and/or motivation do they have to complete a thorough investigation???</i></p> <p>2) I suggest any procedure that calls out these entities as an avenue to lodge a complaint also <u>provide a contact number, person, and guarantee the agency will follow the complaint through to the end.</u></p>	<p>certain baseline requirements about conducting investigations. In addition, the Work Group also recommends that model investigation protocols are created so that courts can adopt those protocols, with or without modification. As outlined in Recommendation 4 – Investigation Protocol, this protocol includes guidance for courts on when to conduct a formal investigation and how to select an appropriate investigator, which would necessarily include when to choose an external or internal investigator.</p> <p>The Work Group notes that the proposed California Rule of Court includes specific reference to the Commission on Judicial Performance, the California Department of Fair Employment and Housing, and the United States Equal Employment Opportunity Commission, and agrees that contact information should be included for these organizations. The recommendations have been revised to reflect that change.</p>
11.	Wendell Phillips Information Technology Software Analyst Superior Court of Sonoma County	*My name is Wendell Phillips and I would like to provide my comments and opinions on this policy to the work group. I, and other employees here at the Sonoma Court had to endure years of everything this policy is attempting to address. I personally have firsthand experience of many of the issues to be addressed so I feel I will have some valuable input, opinions and comments. I have been employed at the Sonoma Superior Court since 2006 as a Software Analyst in the Information Technology department.	<p>The commenter indicates agreement with the Work Group’s recommendations on communication, data gathering, and informal complaint resolution.</p> <p>The commenter also indicates agreement with Recommendation 4 – Investigation Protocol and asks who will determine whether an investigation is necessary. The Work Group notes that the</p>

	Commenter	Comment	Work Group Response
		<p>My first comment on this is: Why did this take so long to address? It would seem like the Judicial Branch would have always put equality, respect and civility of trial court employees first and foremost.</p> <ul style="list-style-type: none"> • New California Rule of Court for Harassment, Discrimination, and Retaliation Prevention Policy and Complaint Reporting Procedure <ul style="list-style-type: none"> A. Harassment, Discrimination, and Retaliation Prevention Policy <p>“The new rule would require courts to adopt updated policies prohibiting harassment, discrimination, retaliation, and inappropriate conduct in the workplace based on a protected classification that contain, at a minimum:”</p> <p>Why “a protected classification”? Are not all court employees due the same respect and civility?</p> B. Complaint Reporting Procedure <p>This procedure will need a clear reporting procedure escalation process. What I mean by that is not only a reporting process within, for example, just the Sonoma Court. If there is no response or resolution from court HR or court administration what are the next escalation contacts to report to? An example I would use is my own. [Information redacted as a specific complaint/concern raised by individual] Basically, the report was made to everyone who had the ability to address the issue and they chose to do nothing. So what would be the next steps after that?</p> • Model Harassment, Discrimination, and Retaliation Prevention Policy <p>This is a noble goal but what good do policies do when the policies are not followed by top court administration? There needs to be some sort of check and balance by a third party to ensure policies are being followed. This may be addressed in the Model Investigation Protocol</p> • Model Investigation Protocol <p>This is probably the best recommendation! My only question would be who determines if an investigation is necessary? This should be clearly spelled out. If this was in place already a huge amount of issues could have been avoided at Sonoma Court.</p> 	<p>recommendation states that the protocol will include specific guidance on conducting the preliminary review of the complaint to determine if a formal investigation is warranted or an informal complaint resolution process is appropriate.</p> <p>The Work Group appreciates the commenter’s concern that policies should apply to all employees and not just those in “protected classifications.” The phrase “protected classification” is used throughout the recommendations and does not limit the scope of these recommendations to only certain groups of employees. “Protected classifications” apply to and protect all employees, not just those of a particular status within the classification. As an example, the protected classification of sex/gender protects all employees based on their sex, gender expression, and gender identification, regardless of whether they are male or female, identify or express as a gender other than their sex assigned at birth, or identify as gender nonbinary. This applies to other protected classifications as well; the recommendations apply equally to all groups within that classification. The phrase “protected classification” is used to ensure both that all employees are protected and treated equally, and that courts are aware that they have legal</p>

	Commenter	Comment	Work Group Response
		<ul style="list-style-type: none"> • Communication Communication is key. • Data Gathering Being a Software Analyst I find Data Gathering to be the key in ensuring this whole policy is effective, as long as someone is analyzing the data and enforcing the policy when the data says something is wrong. • Informal Complaint Resolution This is another great avenue to address issues if and only if someone with authority will address the issue or have an escalation policy to seek out another authority to address the issue. • Improve/Expand and Promote Training This does not work if court management is not held to a higher standard. An example I have is that [Information redacted as a specific complaint/concern raised by individual]. He was trained on prevention but was the worst perpetrator of these exact violations. • Follow-Up I think there needs to be a follow up every year with the court employees by an external work group to ensure this is working. My experience is that internal court administration would not do it or just glaze over it. <p>I hope these comments and opinions help. Many employees at Sonoma Court were subjected to abuse for so long this policy is way overdue.</p>	<p>obligations to investigate and resolve complaints that involve issues related to classifications that are specifically enumerated by statute.</p> <p>As to the comments on complaint reporting procedure, the model harassment policy, and training, the Work Group notes the unique structural and operational circumstances of the California judicial branch. Each court is its own separate entity and has the autonomy to manage its employees and operations. In addition, most court employees are represented by unions and have bargained memorandums of understanding covering many terms and conditions of employment. The Work Group’s recommendations propose a California Rule of Court that will standardize minimum requirements for policies on the prevention of harassment, discrimination, retaliation, and inappropriate workplace conduct based on a protected classification; intake, investigatory, and follow-up processes; and complaint reporting procedures. The recommendations will also promote standardization through creation of model policies and procedures that can be adopted by courts, with or without modification. The recommendations will also require consistent training throughout the branch. The recommendations also require that court</p>

	Commenter	Comment	Work Group Response
			<p>processes identify outside organizations such as the California Department of Fair Employment and Housing, the United States Equal Employment Opportunity Commission, and the Commission on Judicial Performance, as possible reporting options who can provide oversight of the courts.</p>
12.	<p>Hon. Mary Ann Murphy Judge Superior Court of Los Angeles County</p>	<p>Staff should not be assigned to investigate judges.</p>	<p>The Work Group understands the need for appropriate due process not just for complainants and victims of harassment, discrimination, retaliation, and inappropriate workplace conduct based on a protected classification, but for respondents and witnesses as well, whether court employees or judicial officers. The Work Group also notes that investigations against judicial officers may involve sensitive issues likely to be considered by the Commission on Judicial Performance.</p> <p>As a result, the recommended California Rule of Court requires that courts create investigatory processes that include fair, timely, and thorough fact-finding; documentation and tracking of the investigation; timely investigation and complaint closure; and an emphasis of maintaining confidentiality consistent with the obligation to fairly investigate the complaint. Likewise, Recommendation 4 –Investigation Protocol, will create protocols to mirror industry standards on performing</p>

	Commenter	Comment	Work Group Response
			workplace investigations, and will assist courts with implementing investigation processes, including guidance on selecting an appropriate investigator for both employee and judicial officer investigations.
13.	Martin Graff Child Custody Recommending Counselor Superior Court of Sonoma County	<p>Dear Work Group Members:</p> <p>Thank you for your work on this important issue. The recommendations all seem very solid from my perspective.</p> <p>I was pleased to see the section “Recommendation 6: Informal Complaint Resolution.” I respectfully suggest that the Work Group consider adding a related recommendation of creating an organizational ombudsperson function to support and promote informal complaint resolution. You may find the International Ombudsman Association to be a useful resource if this idea is off further interest.</p> <p>Thank you,</p>	<p>While the Work Group appreciates the ability of an ombudsperson to ensure consistency throughout the branch, there are currently no plans for creation of an organizational ombudsperson to promote informal complaint resolution. The Work Group must recognize the unique structural and operational circumstances of the California judicial branch. Each court is its own separate entity and has the autonomy to manage its employees and operations. In addition, most court employees are represented by unions and have bargained memorandums of understanding covering many terms and conditions of employment. The Work Group’s recommendations propose a California Rule of Court that will standardize minimum requirements for policies for the prevention of harassment, discrimination, retaliation, and inappropriate workplace conduct based on a protected classification; intake, investigatory, and follow-up processes; and complaint reporting procedures. The recommendations will also promote standardization through creation of model policies and procedures that can be adopted by courts, with or without</p>

	Commenter	Comment	Work Group Response
			<p>modification. The recommendations will also require consistent training throughout the branch. It is the Work Group’s expectation that courts will adopt the consistent message set by the proposed California Rule of Court, improvements to training, and model policies and procedures, and use those tools to implement creative informal complaint resolution processes that are practical for their own courts.</p>
14.	<p>Arnold Lara Superior Court of Ventura County</p>	<p>Page 4 Recommendation 1: A. 1. A list of all protected classifications under applicable state and federal laws. Change to: A list of all protected classifications as described in state, federal, senate bills, and assembly bills enacted through the legislative process.</p> <p>* I say this because SB179 “Gender Category” nonbinary is neither a state or federal law.</p> <p>Page 7 Continuation of Recommendation 4: Routinely publicizing the policy and associated complaint procedures.... Encourage a change so that the word “routinely” is identified. Perhaps start off with, Every two years publicize..... or Barring any new legislation, every two years publicize.....</p> <p>Why? You have to make all judicial personnel (Judges and Branch Employees) aware of any legislative changes as it arises.</p>	<p>The Work Group agrees with the need to broadly protect all employees from harassment, discrimination, retaliation, and inappropriate workplace conduct based on a protected classification. The phrase “protected classification” is used throughout the recommendations and does not limit the scope of these recommendations to only certain groups of employees. “Protected classifications” apply to and protect all employees, not just those of a particular status within the classification. As an example, the protected classification of sex/gender protects all employees based on their sex, gender expression, and gender identification, regardless of whether they are male or female, identify or express as a gender other than their sex assigned at birth, or identify as gender nonbinary. This applies to other protected classifications as well; the recommendations apply equally to all groups within that classification. The</p>

	Commenter	Comment	Work Group Response
			<p>phrase “protected classification” is used to ensure both that all employees are protected and treated equally, and that courts are aware that they have obligations to investigate and resolve complaints that involve issues related to classifications that are specifically enumerated by statute.</p> <p>The Work Group agrees that courts should continuously publicize their harassment policies and associated complaint procedures. As a result, the recommendations have been revised to eliminate the word “routinely” to avoid any confusion on this issue.</p>
15.	<p>Victoria Heslin Court Calendar Coordinator/Supervisor Superior Court of Shasta County</p>	<p>To Whom It May Concern:</p> <p>Thank you for the opportunity to respond to the Work Group for the Prevention of Discrimination and Harassment.</p> <p>I received the Invitation to Comment provided by Corey Rada on March 27, 2019. After significant contemplation of the draft proposal, I would like to bring forth a few issues for your consideration.</p> <p>The proposal refers to “conduct based on a protected classification” in several segments. <i>All</i> individuals should be free from harassment, discrimination, retaliation, and inappropriate conduct. While preference appears to be afforded protected classifications, the judicial branch should be unbiased and champion absolute equality. I do understand the directive as charged by Chief Justice Tani Cantil-Sakauye and request the Work Group consider omitting “<i>based on a protected classification</i>” to provide an all-inclusive procedure. I also recognize the possible impact that recent high profile situations in the media related to this</p>	<p>The Work Group agrees with the need to broadly protect all employees from harassment, discrimination, retaliation, and inappropriate workplace conduct based on a protected classification. The phrase “protected classification” is used throughout the recommendations and does not limit the scope of these recommendations to only certain groups of employees. “Protected classifications” apply to and protect all employees, not just those of a particular status within the classification. As an example, the protected classification of sex/gender protects all employees based on their sex, gender expression, and gender identification, regardless of whether they are male or female, identify or express as a gender other than their sex assigned at</p>

	Commenter	Comment	Work Group Response
		<p>topic may have on decision making and am concerned the process be structured to guard against false allegations.</p> <p>I note the proposal is quite thorough with regard to establishing protections for the complainant. In contrast, there are no recommendations stated for safeguarding the accused/defendant from false allegations and disenchanted individuals seeking financial gain who intentionally malign others in their destructive path. The accused individual should be provided the same protections and treated with fairness, respect, and be given the presumption of innocence throughout the process.</p> <p>I suggest the Work Group structure the complaint procedure as follows:</p> <ul style="list-style-type: none"> • With clarity to provide a prompt review of the allegations within a specified period • The grievance be in written form providing specific allegations – not generalizations • Establish a reasonable timeframe to read and respond to the contents of all allegations • Conduct the investigation and provide report findings within a specified period <p>The investigation should be conducted without defamation or compromise to individual reputations should the allegations be found without merit and/or justification.</p> <p>I strongly suggest that all complaints be required to be in written form <i>under penalty of perjury</i>.</p> <p>I appreciate your consideration of my personal response which is not submitted on behalf of the court.</p>	<p>birth, or identify as gender nonbinary. This applies to other protected classifications as well; the recommendations apply equally to all groups within that classification. The phrase “protected classification” is used to ensure both that all employees are protected and treated equally, and that courts are also aware that they have legal obligations to investigate and resolve complaints that involve issues related to classifications that are specifically enumerated by statute.</p> <p>The Work Group understands the need for appropriate due process not just for complainants and victims of harassment, discrimination, retaliation, and inappropriate workplace conduct based on a protected classification, but for respondents and witnesses as well, whether court employees or judicial officers. The language of the recommendation has been revised to reflect that fairness, consistency, and transparency are important for all parties to the complaint.</p> <p>Further, the recommended California Rule of Court requires that courts create investigatory processes that include fair, timely, and thorough fact-finding; documentation and tracking of the investigation; timely investigation and complaint closure; and an emphasis of</p>

	Commenter	Comment	Work Group Response
			<p data-bbox="1493 240 1974 670">maintaining confidentiality consistent with the obligation to fairly investigate the complaint. Likewise, Recommendation 4 – Investigation Protocol, will create protocols to mirror industry standards on performing workplace investigations, and will assist courts with implementing investigation processes. This will include guidance on communicating with the parties, overseeing the investigation, creating appropriate documentation, and closing out the investigation.</p> <p data-bbox="1493 711 1990 1266">Consistent with industry standards to encourage victims of harassment to come forward with complaints, the Work Group is not recommending that complaints must be in writing or signed under penalty of perjury. Pursuant to the proposed California Rule of Court and Recommendation 4 – Investigation Protocol, the expectation of the Work Group is that all investigations will be conducted with fairness, consistency, and transparency for all involved parties, and with efforts to maintain confidentiality and limit disclosure of information about the investigation to the extent possible, consistent with conducting a fair, effective, and thorough investigation.</p>
16.	Dorothy Gustafson Judicial Attorney First District Court of Appeal	Recommendation 7: While expanding and promoting harassment and discrimination training is laudable, this training should be a requirement for all court employees, as it is in most corporations and law firms. The judicial branch should be a leader in this regard. Any additional	The Work Group agrees with the commenter’s statement that harassment prevention training should be provided to all court employees, and not only

	Commenter	Comment	Work Group Response
		workload imposed by this training would be more than offset in reduction of payments made pursuant to settlement agreements or lawsuits arising out of harassment and/or discrimination.	managers and supervisors. The California Legislature recently passed Senate Bill 1343 (Stats. 2018, Ch. 956) that requires employers to provide sexual harassment prevention training to all employees, with similar content that has long been mandated for managers and supervisors in California. Judicial branch entities are in the process of creating and providing those trainings.
17.	Laurie Taylor Lead Senior Appellate Attorney Second District Court of Appeal	<p>To the Work Group for the Prevention of Discrimination and Harassment:</p> <p>Thank you for the draft recommendations from the Work Group. I appreciate and applaud many of the recommendations, including a new Rule of Court requiring the adoption of updated policies, incorporating a more effective reporting procedure, and the creation of a model policy to guide courts. A few specific suggestions follow. I especially appreciate the Work Group’s attention to the Federal Judiciary and Ninth Circuit’s work, including the briefing from Judge McKeown.</p> <p>My specific suggestions follow.</p> <p>Recommendation 1(B): Complaint Reporting Procedure. The draft requires effective reporting procedures, but does not include as an option the creation of a position to be filled by an individual solely responsible for receiving reports of sexual harassment and other inappropriate conduct. The simpler and clearer the reporting procedure, the better.</p> <p>Recommendation (3): Model Investigation Protocol. The protocol should also provide some information about the Commission on Judicial Performance’s investigatory procedure and how it interacts with the workplace investigation, in the event that a judicial officer is the subject of the investigation.</p>	While the Work Group appreciates the desire to create a position solely responsible for receiving reports of harassment, discrimination, retaliation, and inappropriate workplace conduct based on a protected classification, there are currently no plans for creation of such a position. The Work Group must recognize the unique structural and operational circumstances of the California judicial branch. Each court is its own separate entity and has the autonomy to manage its employees and operations. In addition, most court employees are represented by unions and have bargained memorandums of understanding covering many terms and conditions of employment. The Work Group’s recommendations propose a California Rule of Court that will standardize minimum requirements for policies for the prevention of harassment, discrimination, retaliation, and inappropriate workplace conduct based on a protected classification; intake,

	Commenter	Comment	Work Group Response
		<p>Recommendation (4): Communication. The resources made available on the court’s website/intranet should include direct links to the contacts and resources identified. The court’s website should also provide more easily accessible information and updates on the Work Group’s efforts, as does the Ninth Circuit’s website, by providing a link on the first page (currently, one must click through the Chief Justice’s link to reach a link to a general description of the Work Group).</p> <p>Recommendation (5): Data Gathering. The Model Policy should include among its recommendations on best practices the conducting of a comprehensive climate survey focusing on sexual harassment and discrimination, and the results should be available to employees.</p> <p>Recommendation 7: Improve/Expand and Promote Training. Expanded and improved training should consider involving judicial officers and employees as presenters, rather than a designated trainer with judicial officers and employees as observers only. The training should encourage, and incorporate, interaction.</p> <p>Thank you for considering these suggestions.</p>	<p>investigatory, and follow-up processes; and complaint reporting procedures. The recommendations will also promote standardization through creation of model policies and procedures that can be adopted by courts, with or without modification. The recommendations will also require consistent training throughout the branch.</p> <p>The Work Group notes that the Judicial Council, as the human resources provider for the Supreme Court and Courts of Appeal, staffs a hotline for employees of those courts to call and report issues of harassment, discrimination, retaliation, and inappropriate workplace conduct based on a protected classification. The Work Group anticipates that trial courts will consider their own reporting alternatives as part of their policies, reporting guidelines, and investigation procedures, and encourages each court to adopt reporting procedures that reflect the needs of its employees and the organizational structure of the court.</p> <p>The Work Group appreciates the desire for employees to better understand the process undertaken by the Commission on Judicial Performance. That process, however, is outside the scope of the charge of this Work Group. The Work Group directs the commenter and others</p>

	Commenter	Comment	Work Group Response
			<p>with similar concerns to the website for the Commission on Judicial Performance.</p> <p>With respect to the comment on communication, the Work Group agrees that courts should be encouraged to utilize information and feedback that is gathered from employees in a number of ways to better promote the prevention of harassment, discrimination, retaliation, and inappropriate workplace conduct based on a protected classification.</p> <p>The Work Group appreciates feedback on the training recommendations. The Work Group has provided these suggestions to CJER and encourages CJER to consider including judicial officers and employees as presenters. It should be noted that “do-it-yourself/DIY training kits on this topic are already available on CJER Online for any court that wishes to have qualified employees or judicial officers lead a class on this subject. With regard to encouraging interactivity, CJER strives to make every educational event and product offered to the courts as learner-centered and interactive as possible. For example, the sexual harassment prevention webinar that is offered quarterly features eight interactive polls and the opportunities for every participant to ask questions, and the facilitators of this training often answer fifty or more</p>

	Commenter	Comment	Work Group Response
			questions submitted by court staff over the course of a two-hour class.
18.	Hon. Nancy Shaffer Judge Superior Court of Sonoma County	<p>Dear Working Group:</p> <p>Thank you for your work on this very important issue. My comments pertain more to the emphasis of the recommendations than the specifics of any of the recommendations. I co-developed a course in Implicit Bias with the Hon. Randa Trapp, San Diego which we have taught together a number of times. I realized as I was reading through the recommendations that they all seemed to pertain in some way to punishment. (1: New CA Rule of Court A. <i>Prohibiting...</i>; B. <i>Complaint reporting</i> procedure; 2. <i>Model Prevention Policy</i>; 3. <i>Model Investigation Protocol</i>; 4. <i>Communication</i> (of policy, etc. to new employees and third parties doing business with the court); 5: <i>Data Gathering</i>; 6. <i>Informal Complaint Resolution</i>.) It was not until the seventh recommendation that improving and expanding training and education was addressed.</p> <p>I support adoption of the new rule of court and implementation of the procedures noted.</p> <p>Reversing the priority of the recommendations, placing education and training first, would establish an emphasis on promoting awareness and good conduct over punishing bad conduct. Overt harassment does occur and that should be expressly prohibited by rule and not tolerated or condoned in any part of the court system.</p> <p>Publishing six recommendations pertaining to punishment, followed by one recommendation for education and training implies a view that the bench officers and employees of the courts, statewide, are not generally good people with sometimes imperfect understandings of other races, cultures, sexual orientations (etc., to include all protected groups) but rather that they need to be coerced into good behavior under threat of punishment for bad behavior. I would argue that is not true. Better for the court to positively recognize the successes the courts have achieved in this area and focus on providing education and training to build on</p>	<p>The Work Group appreciates the comment on changing the emphasis of its recommendations. The Work Group agrees that training is important to changing the culture of the branch and wishes to emphasize its commitment to training and education. The order of recommendations has been changed to reflect training as the second recommendation, to immediately follow the proposed California Rule of Court that sets consistent harassment and discrimination prevention standards and procedures for all courts.</p>

	Commenter	Comment	Work Group Response
		<p>those successes. The rule and the punishment protocols are necessary. The most important work is to create a welcoming, collegial, and productive working environment for all of the bench officers and other court employees and non-discriminatory treatment of those who have matters before or other business with the courts, whether or not they are members of any protected class. A rule and procedures to prevent and punish harassment, discrimination, and retaliation then sends a message that while the court system focuses on positive measures, members of protected classes will be protected from mistreatment.</p> <p>A more positive message would lead with education and training as a way to support the good and well-intentioned people, who comprise the great majority of our bench officers and court employees, in their efforts to achieve a high level of intelligent, informed, supportive relations with all members of the court system, and especially members of protected classes. That approach would expressly encourage and give all “permission” to engage in the self-monitoring and introspection necessary to discover and address implicit or explicit biases through education and training. Backing that up with a new court rule and procedures that would make it clear that harassment, discrimination, and retaliation against a member of a protected class will not be tolerated is also important.</p>	
19.	Janine Threet Legal Processing Assistant II Superior Court of San Bernardino County	<p>Selection Process</p> <p>This e-mail, in response to Invitation to Comment, is regarding the current selection process for new/hires and candidates seeking promotion within the courts. More often than not, when a staff member is seeking promotion an interviewer and a candidate have had prior contact with each other as co-workers, a supervisor- subordinate relationship, students, or other social and professional organizations.</p> <p>If the interviewer or candidate know they have had previous contact, the current selection process within the [court] system has the impropriety of unfair and subjective interviews. Because of previous contact, the interviewer may not be able to conduct an objective interview giving the</p>	The comment is not responsive to the recommendations. The comment has been referred to the court executive officer at the appropriate court.

	Commenter	Comment	Work Group Response
		<p>candidate(s) a fair interview.</p> <p>It is with concern that the current selection process be discussed and refined to decrease the level of impropriety within each district in the San Bernardino Superior Courts. The current process allows for staff to be interviewed by prior supervision, previous co-workers, staff working in the same unit and does not allow nor provide disclosure to the candidate to express concern or request the interviewer to be excused to promote a fair and objective selection process.</p> <p>Interviewers should be instructed to excuse themselves from any interview in which prior knowledge would prevent an unfair and subjective interview. In return candidates should have the right to request an interviewer be excused. To create a fair and equal selection process, [it's] also suggested the staff interview at an alternative district, or be interviewed by HR staff to promote an objective selection process. Other alternatives may also be discussed to assist with making the selection process; this e-mail was written out of a concern regarding the current selection process in hopes that it is refined to, again, decrease the appearance of impropriety and promote unbiased, fair and objective interviews for new hires and candidates seeking promotion.</p>	
20.	Eric Steverson Legal Processing Assistant Trainee Superior Court of San Bernardino County	<p>As a Legal Processing Assistant Trainee,</p> <p>I feel there should be adequate time to learn the process of becoming an LPA.</p> <p>There are certain standards that are set forth for trainees that are equal to an LPA I or LPA II.</p> <p>As a trainee, you are trying to learn the job but there is daily pressure to produce as though you are already an LPA I or II.</p> <p>In the SBJC, there have been numerous complaints of trainees not [being] able to pass probation as supervisors appear to create their own</p>	The comment is not responsive to the recommendations. The comment has been referred to the court executive officer at the appropriate court.

	Commenter	Comment	Work Group Response
		<p>standards that are not equal to other supervisors. This has caused a high turnover I the SBJC.</p> <p>Training and Development should also have manuals created for each department which includes step by step instructions on how to process the work done in that particular area. Taking notes is great, but to have a set of standards already written out would give new employees, and senior employees a better picture of his/her job requirements.</p>	

Attachment A: Educational Materials Reviewed by Work Group

Work Group for the Prevention of Discrimination and Harassment

Judicial Council of California

Educational Material Document List with Links

Document Title/Source	Document Link
U.S. Equal Employment Opportunity Commission Select Task Force on the Study of Harassment in the Workplace	https://www.eeoc.gov/eeoc/task_force/harassment/report.cfm
Report of the Federal Judiciary Workplace Conduct Working Group to the Judicial Conference of the United States	https://www.uscourts.gov/sites/default/files/workplace_conduct_working_group_final_report_0.pdf
Ninth Circuit Court of Appeals' Workplace Environment Committee: News Release	http://cdn.ca9.uscourts.gov/datastore/ce9/2018/05/21/R2_Judicial_Council_Workplace_Initiative.pdf
California Legislature's Subcommittee on Sexual Harassment Prevention and Response	https://www.assembly.ca.gov/sites/assembly.ca.gov/files/joint_rules_committee_agenda_and_materials_-_june_25_2018.pdf
Select Task Force on the Study of Harassment in the Workplace: Rebooting Workplace Harassment Prevention	https://www.eeoc.gov/eeoc/task_force/harassment/upload/rebooting_harassment_prevention.pdf
U.S. Equal Employment Opportunity Commission Discrimination Types	
Age	https://www.eeoc.gov/laws/types/age.cfm
Disability	https://www1.eeoc.gov//laws/types/disability.cfm?renderforprint=1
Equal Pay/Compensation	https://www1.eeoc.gov//laws/types/equalcompensation.cfm?renderforprint=1
Genetic	https://www1.eeoc.gov//laws/types/genetic.cfm?renderforprint=1
Harassment	https://www1.eeoc.gov//laws/types/harassment.cfm?renderforprint=1

Educational Material Document List with Links	
Document Title/Source	Document Link
National Origin	https://www1.eeoc.gov/laws/types/nationalorigin.cfm?renderforprint=1
Pregnancy	https://www.eeoc.gov/laws/types/pregnancy.cfm
Race/Color	https://www.eeoc.gov/laws/types/race_color.cfm
Religious	https://www.eeoc.gov/laws/types/religion.cfm
Retaliation	https://www1.eeoc.gov/laws/types/retaliation.cfm?renderforprint=1
Sex-Based	https://www1.eeoc.gov/laws/types/sex.cfm?renderforprint=1
Sexual Harassment	https://www1.eeoc.gov/laws/types/sexual_harassment.cfm?renderforprint=1
Chart of Risk Factors and Responses	https://www1.eeoc.gov/eeoc/task_force/harassment/risk-factors.cfm?renderforprint=1
U.S. Equal Employment Opportunity Commission Checklists for Employers	
Checklist 1: Leadership and Accountability	https://www1.eeoc.gov/eeoc/task_force/harassment/checklist1.cfm?renderforprint=1
Checklist 2: An Anti-Harassment Policy	https://www1.eeoc.gov/eeoc/task_force/harassment/checklist2.cfm?renderforprint=1
Checklist 3: A Harassment Reporting System and Investigations	https://www1.eeoc.gov/eeoc/task_force/harassment/checklist3.cfm?renderforprint=1
Checklist 4: Compliance Training	https://www1.eeoc.gov/eeoc/task_force/harassment/checklist4.cfm?renderforprint=1
California Department of Fair Employment and Housing: Employees and Job Applicants are Protected from Bias	https://www.dfeh.ca.gov/employment/

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Document Title/Source	Document Link
California Department of Fair Employment and Housing: Workplace Harassment Guide	https://www.dfeh.ca.gov/wp-content/uploads/sites/32/2017/06/DFEH-Workplace-Harassment-Guide-1.pdf
New Jersey Public Website	https://njcourts.gov/public/access/eeo.html?lang=eng
Colorado Branch Equal Employment Opportunity & Diversity Plan	https://www.courts.state.co.us/Administration/Custom.cfm?Unit=EEO&Page_ID=136
Florida Standing Committee on Fairness and Diversity Website	https://www.flcourts.org/Administration-Funding/Court-Administration-About-Us/Diversity
Florida Standing Committee on Fairness and Diversity Administrative Order	https://www.floridasupremecourt.org/content/download/241157/2131773/AOSC16-43.pdf
Florida Best Practices Guide	https://www.flcourts.org/content/download/426373/4627902/Fairness-and-Diversity-Best-Practices-Guide.docx
Florida Fairness and Diversity Repository	https://www.flcourts.org/Administration-Funding/Court-Administration-About-Us/Fairness-Diversity-Repository
Massachusetts Plan for Equal and Fair Employment	https://www.mass.gov/files/documents/2016/08/ok/plan-for-equal-and-fair-employment.pdf
New Jersey Judiciary Policy Statement	https://njcourts.gov/public/assets/policystatement.pdf
Judiciary of the State of New Jersey	https://www.njcourts.gov/public/assets/eeomastr.pdf?c=QDE
New Jersey Judiciary Formal Discrimination Complaint Form	https://njcourts.gov/forms/10493_eeo_formal_complaint.pdf
New York Office of Workforce Diversity Website	http://ww2.nycourts.gov/careers/diversity/index.shtml
New York Discrimination Claim Policy and Procedure Manual	http://ww2.nycourts.gov/sites/default/files/document/files/2018-07/DiscClaimBklet.pdf

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Document Title/Source	Document Link
New York Anti-Discrimination Panel Program Website	http://ww2.nycourts.gov/CAREERS/diversity/bias-free-enviro.html
New York Sexual Harassment Policy and Procedure Manual	http://ww2.nycourts.gov/sites/default/files/document/files/2018-07/SHarassmenthandbook.pdf
Pennsylvania Policy on Non-Discrimination and Equal Employment Opportunity	http://www.pacourts.us/assets/files/setting-435/file-214.pdf?cb=1d0a4c
Pennsylvania Interbranch Commission for Gender, Racial, and Ethnic Fairness Annual Report	http://www.pacourts.us/assets/files/setting-792/file-736.pdf?cb=cace03
Pennsylvania Creating a Diverse Workforce in the Pennsylvania Courts Manual	http://www.pa-interbranchcommission.com/_pdfs/Interbranch_DiversityManual_2010.pdf
Pennsylvania Achieving Fairness through Bias-Free Behavior Pocket Guide	http://www.pa-interbranchcommission.com/_pdfs/achieving_fairness.pdf
Pennsylvania Supreme Court Committee on Racial and Gender Bias in the Justice System	http://www.pa-interbranchcommission.com/_pdfs/FinalReport.pdf
You Can't Change What You Can't See: Interrupting Racial & Gender Bias in the Legal Profession	http://www.abajournal.com/news/article/race_and_gender_is_bias_rampant_in_law_says_new_report_that_also_offers_too
American Bar Association Journal: Model Rule 8.4(g)	http://www.abajournal.com/magazine/article/ethics_model_rule_harassing_conduct
American Bar Association: Rule 2.3: Bias, Prejudice, and Harassment	https://www.americanbar.org/groups/professional_responsibility/publications/model_code_of_judicial_conduct/model_code_of_judicial_conduct_canon_2/rule2_3biasprejudiceandharassment.html/
Conference of Chief Justices Resolution 2	https://www.ncsc.org/~media/microsites/files/ccj/resolutions/01312018-support-commitment-awareness-training-workplace.ashx

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Document Title/Source	Document Link
Wilson Turner Kosmo LLP: Legislative Summary of New Harassment Laws	https://www.wilsonturnerkosmo.com/tasks/sites/wtk/assets/Image/020389111.PDF
Petition to Consider Harassment Prevention in the Appellate Courts	https://www.surveymonkey.com/r/8lnlkvm
Executive Summary of the Report of the Federal Judiciary Workplace Conduct Working Group	https://www.uscourts.gov/sites/default/files/executive_summary_of_federal_judiciary_workplace_conduct_working_group_0.pdf
Draft Rules for Judicial Conduct and Judicial Disability Proceedings	https://www.uscourts.gov/sites/default/files/judicial_conduct_and_disability_rules_effective_march_12_2019_0.pdf
Code of Conduct for U.S. Judges	https://www.uscourts.gov/sites/default/files/code_of_conduct_for_united_states_judges_effective_march_12_2019.pdf
Draft Model Ninth Circuit Employment Dispute Resolution Policy and Commitment to a Fair and Respectful Workplace	http://cdn.ca9.uscourts.gov/datastore/general/2019/05/16/NinthCircuitEDRPolicyApproved-122718.pdf
Committees on Codes of Conduct and Disability Public Hearing on October 30, 2018	https://www.uscourts.gov/rules-policies/judiciary-policies/proposed-changes-code-conduct-judges-judicial-conduct-disability-rules
City of Los Angeles Sexual Harassment Policy and Procedures	https://per.lacity.org/eeo/sexharas.pdf
Ninth Circuit Press Release Feb. 28, 2018	http://cdn.ca9.uscourts.gov/datastore/ce9/2018/02/28/Rev_Workplace_Environment_Review_Begins.pdf
Harvard Business Review: The Omissions that Make So Many Sexual Harassment Policies Ineffective	https://hbr.org/2017/05/the-omissions-that-make-so-many-sexual-harassment-policies-ineffective
New York Times: Sexual Harassment Training Doesn't Work. But Some Things Do.	https://www.nytimes.com/2017/12/11/upshot/sexual-harassment-workplace-prevention-effective.html?searchResultPosition=3

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Educational Material Document List with Links	
Document Title/Source	Document Link
National Women’s Law Center Resource: Sexual Harassment Prevention Strategies for Employers	https://nwlc.org/resources/sexual-harassment-prevention-strategies-for-employers/
Katz, Marshall, and Banks: How Can We Challenge Sexual Harassment in the Federal Judiciary?	https://www.kmblegal.com/employment-law-blog/how-can-we-challenge-sexual-harassment-federal-judiciary
Stanford Law Review Online: Sexual Harassment and the Bench	https://www.stanfordlawreview.org/online/sexual-harassment-and-the-bench/
Wall Street Journal: Sexual Harassment on the Hill	https://www.wsj.com/articles/sexual-harassment-on-the-hill-11546037597
United States Courts: Judicial Conference Receives Status Report on Workplace Conduct Review	https://www.uscourts.gov/news/2018/03/13/judicial-conference-receives-status-report-workplace-conduct-review
Harvard Business Review: Breaking the Silence	https://hbr.org/2018/01/breaking-the-silence
Judicial Conduct Reporter: Professional Boundaries in the Courthouse	https://www.ncsc.org/~media/Files/PDF/Topics/Center%20for%20Judicial%20Ethics/JCR/JCR_Summer_2018.ashx
Judicial Conduct Reporter: Sexual Harassment	https://www.ncsc.org/~media/Files/PDF/Topics/Center%20for%20Judicial%20Ethics/JCR/JCR_Winter_2018.ashx
2007 ABA Model Code of Judicial Conduct: Blueprint for a Generation of Judges	https://www.ncsc.org/~media/Files/PDF/Publications/Justice%20System%20Journal/2007ABAModelCode.ashx
Calif. Legislature Sexual Harassment Prevention Subcommittee Releases Draft Recommendations for Transforming Capitol Culture	https://californianewswire.com/calif-legislature-sexual-harassment-prevention-subcommittee-releases-draft-recommendations-for-transforming-capitol-culture/
Society for Human Resource Management: EEOC Guidance on Harassment Calls for Civility Training	https://www.shrm.org/resourcesandtools/legal-and-compliance/employment-law/pages/eec-harassment-guidance-civility-training.aspx
Ninth Circuit Director of Workplace Relations Job Announcement	https://static1.squarespace.com/static/549830d3e4b0bff4592d9a16/t/5b4e02176d2a7319ee5f5749/1531838999867/18-04-Dir-of-Workplace-Relations.pdf

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Educational Material Document List with Dates and Sources (no links available)		
Document Title	Document Source	Document Date
Ethical Standards for Judges 2009	American Judicature Society	Developed in 1999, updated/revised in 2009
Sample Policy Prohibiting Harassment	American Bar Association Commission on Women in the Profession	No date available
Comparison of ABA Model Judicial Code and State Variations of Rule 2.3	American Bar Association CPR Policy Implementation Committee	August 31, 2016
State Appellate Court Employees Renew Push for Harassment Policy	Daily Journal	August 24, 2018
Public Hearing Transcript on Proposed Changes to Judges Code and Rules, and Full Report	Committee on Codes of Conduct & Committee on Judicial Conduct and Disability	October 30, 2018

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Attachment B: Center for Judicial Education and Research (CJER) Training and Events for Judicial Officers on the Prevention of Harassment, Discrimination, Retaliation, and Inappropriate Workplace Conduct Based on a Protected Classification

Work Group for the Prevention of Discrimination and Harassment Judicial Council of California

Preventing and Responding to Sexual Harassment for Commissioners, Referees, Supervisors, and Managers

This two-hour, live, interactive webinar meets the mandate of Government Code section 12950.1 for training required for all court personnel who serve in a management or supervisory role. This includes all individuals who perform any duties customarily identified as supervisory, such as assigning work, monitoring progress, or contributing to or influencing performance evaluations. Commissioners, referees, court executive officers, managers, supervisors, lead staff, and all other supervisory employees must complete sexual harassment training every two years.

Preventing and Responding to Sexual Harassment for Commissioners, Referees, Supervisors, and Managers

This is a set of materials that allows appropriate court staff to provide the training listed above as classroom experience to their peers.

Preventing and Responding to Sexual Harassment

This video provides an update of the statutes, regulations, and decisions involving sexual harassment law and discusses sexual harassment prevention for judges and justices. The video covers the duty of judges and justices to undergo sexual harassment prevention training, liability under the California Fair Employment and Housing Act (FEHA) and important FEHA decisional authority, and federal title VII antidiscrimination statutes and decisional authority relating to sexual harassment.

New Judge Orientation

This is held approximately 10 times during the year and is required for all new judicial officers. Subjects covered include social cognition, implicit bias, and judicial ethics.

Judicial College: Ethics and Fairness

This two-hour course at the Judicial College includes discussions of implicit bias in judicial decisions and other ethical issues.

Qualifying Ethics 7 Core Course

This is held 20 to 30 times during the year across the state, and contains education on the prevention of sexual harassment, cultural responsiveness, implicit bias, and judicial ethics.

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Implicit Bias and Judicial Decisionmaking

A one- to two-hour course that explores how unconscious biases can impact the impartiality and integrity of judicial decisions. The course helps judges become more comfortable in identifying potential biases and provides suggestions and tools for mitigating them. The course was offered at all CJER Institutes in fiscal year 2016–17 and fiscal year 2017–18, including: Criminal Law Institute, Family Law Institute, Juvenile Law Institute, Cow County Judges Institute, Probate and Mental Health Institute, Trial Court Attorneys Institute, Appellate Judicial Attorneys Institute, Appellate Management Institute, and Appellate Staff Institute.

Implicit Bias in a Time of the Resurgence of White Supremacy

A 90-minute course that highlights that, although most but (significantly) not all Americans feel revulsion at manifestations of racism and white supremacy, disparities based on race persist. This presentation at the 2019 Appellate Judicial Attorney Institute addressed the phenomenon of implicit bias and unequal access to justice, and provided methods for minimizing implicit bias.

Unconscious Demotion

Dr. Suzanne Wertheim, a linguistic anthropologist and expert in how bias is expressed through language, discusses unconscious demotions—encounters when someone is mistakenly assumed to have a role different from the one he or she actually has; for example, when counsel is greeted as a court reporter or as a defendant. Dr. Wertheim explains how implicit bias is often behind these mistaken assumptions, the damage they can do, and how to keep those encounters from happening in your courtroom.

Real World Judicial Ethics: Parts I–IV

This series of four, one-hour, online courses involves a number of video vignettes of judges engaging in activities that raise ethical issues, including examples of implicit bias and the appearance of bias.

Continuing the Dialogue: Indian Civil Rights Act: Fifty Years Later

This video will feature a panel discussion from judges and leaders in the Native American community and focus on the history of the Indian Civil Rights Act (Act), the effects of the Act, and tribal courts 50 years after enactment of the Act.

Continuing the Dialogue: Mendez et al. v. Westminster School District of Orange County

This video features a panel discussion from judges across the state and focuses on the seminal school desegregation case in California.

Continuing the Dialogue: Redlining, Restrictive Covenants, and the Fair Housing Act

The Fair Housing Act of 1968 prohibited discrimination concerning the sale, rental, and financing of housing based on race, religion, national origin, or sex. This video features a panel discussion about the history of the Act, the effects of the Act, and the impact the law has had on communities.

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Continuing the Dialogue: From Oscar Grant to Trayvon Martin—a Dialogue about Race, Public Trust, and Confidence in the Justice System

This video focuses on the role that courts may play in reducing racial bias, disparity, and disproportionality in the criminal justice system.

Neuroscience and Psychology of Decisionmaking, Part 1; a New Way of Learning

In this video, experts discuss both emerging and well-settled research in neuroscience and social psychology, describing how unconscious processes affect our decisions.

Neuroscience and Psychology of Decisionmaking, Part 2; the Media, the Brain, and the Courtroom

A group of nationally recognized experts discuss exciting, emerging research on how the brain reacts when different images are presented to us.

Neuroscience and Psychology of Decisionmaking, Part 3; Dismantling and Overriding Bias

This show highlights neuroscientific and psychological evidence that we can dismantle and override bias using specific techniques.

Access, Fairness, and Diversity; Toolkit of Educational Resources for California Courts

The toolkit provides links to high-quality, educational materials relevant to making it easy for courts to access the information they may need in their ongoing efforts to make California courts accessible and fair to everyone, available at:

<http://jrn.courts.ca.gov/reference/documents/accessfairnessdiversity-toolkit.pdf>.

Handling Cases Involving Self-Represented Litigants: a Benchguide for Judicial Officers

Planned updates for this publication include revisions to the section on “Counteracting Unconscious Bias” and developing a new section titled, “Cultural and Diversity Awareness.” The most recent version is available at:

http://www2.courtinfo.ca.gov/protem/pubs/self_rep_litigants.pdf.