



JUDICIAL COUNCIL OF CALIFORNIA

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REPORT TO THE JUDICIAL COUNCIL

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For business meeting on July 9, 2021

Title

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

Submitted by

Work Group for the Prevention of
Discrimination and Harassment
Hon. Brad R. Hill, Cochair
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Executive Summary

On July 19, 2019, the Work Group for the Prevention of Discrimination and Harassment made five recommendations 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 included that the Rules Committee develop a California rule of court setting forth minimum requirements for court policies on these topics; that the Center for Judicial Education and Research Advisory Committee engage in rulemaking regarding required education for judicial officers in these areas, and revise its 2020–2022 Education Implementation Plan to enhance education offerings; that courts take actions designed to improve existing court procedures in these areas; and that Judicial Council staff be directed to support courts in these efforts. The Judicial Council approved these recommendations and directed the work group to report back in July 2021. The work group is pleased to share the success of the committees, courts, and staff in completing these recommendations.

Relevant Previous Council Action

In April 2018, Chief Justice Tani G. Cantil-Sakauye asked the Judicial Council to take immediate action to amend rule 10.500, the rule of court on public access to judicial administrative records, to clarify that settlement agreements to resolve sexual harassment and discrimination complaints against judicial officers must be publicly disclosed in response to public records requests. She also created the Rule 10.500 Working Group to develop the necessary rule changes required to achieve this goal. Through developing its proposals, the Rule 10.500 Working Group identified other related issues that were beyond its scope, including harassment and discrimination prevention by the courts.

In October 2018, the Chief Justice appointed the Work Group for the Prevention of Discrimination and Harassment to examine these issues and further support the judicial branch's commitment to a workplace free of harassment and discrimination. The work group was cochaired 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, and consisted of eight members comprised of judicial officers, court executive officers, and attorneys drawn from Judicial Council membership. The work group ultimately proposed five recommendations to the Judicial Council,¹ and those recommendations were approved by the council on July 19, 2019.²

Analysis/Rationale

This report provides an update on the five recommendations approved by the Judicial Council on July 19, 2019. The approved recommendations are included below and can also be viewed by accessing Link A at the end of this report.

Recommendation 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.

This recommendation was intended to improve and standardize how courts prevent and address harassment, discrimination, retaliation, and inappropriate workplace conduct based on a protected classification, by establishing mandatory baseline requirements for court policies on the prevention, reporting, and resolution of these complaints. In response, the Rules Committee

¹ Judicial Council of Cal., Adv. Body Rep., *Judicial Branch Administration: Prevention of Discrimination, Harassment, Retaliation, and Inappropriate Workplace Conduct Based on a Protected Classification* (June 12, 2019), pp. 2–3.

² Judicial Council of Cal., mins. (July 19, 2019), item 19-150, p. 10, <https://jcc.legistar.com/View.ashx?M=M&ID=640299&GUID=79BFCCF3-78C5-45FE-909E-190F0A45083B>.

drafted and recommended rule 10.351 (Judicial branch policies on workplace conduct). This rule was adopted by the Judicial Council on January 17, 2020, and became effective immediately.

Rule 10.351 requires courts to adopt updated policies on the prevention, reporting, and resolution of complaints of harassment, discrimination, retaliation, and inappropriate workplace conduct based on a protected classification. Those policies must include, at minimum, a list of all protected classifications under applicable state and federal laws; a non-exhaustive list of definitions and examples of prohibited conduct; a complaint reporting procedure; and complaint intake, investigatory, and follow-up processes. These requirements are consistent with the goals of recommendation 1. While courts were originally required to comply with rule 10.351 by June 30, 2020, the deadline was extended to December 31, 2020, due to COVID-19 considerations.

Recommendation 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.*³

The Center for Judicial Education and Research (CJER) Advisory Committee engaged in the rulemaking process to amend rule 10.469 (Judicial education recommendations for justices, judges, and subordinate judicial officers). The amendment added the requirement that justices, judges, and subordinate judicial officers participate in education on unconscious bias, as well as the prevention of harassment, discrimination, retaliation, and inappropriate workplace conduct based on a protected classification. Creating and proposing the amendment to rule 10.469 was a collaborative process, including input from the Advisory Committee on Providing Access and Fairness, the Appellate Advisory Committee, the Administrative Presiding Justices Advisory Committee, the Trial Court Presiding Judges Advisory Committee, and the Court Executives Advisory Committee, and the proposal was circulated for public comment. The Judicial Council approved this amendment on September 25, 2020, effective on January 1, 2021.

In addition, CJER began developing new training opportunities and products on harassment, discrimination, retaliation, and inappropriate workplace conduct based on a protected classification for qualifying ethics elective credit, including an unconscious bias product that will be guided by Government Code section 68088(b)(1), expected for release at the end of 2021. The development process for a civility training for court staff has begun and CJER is planning on delivering the first session early in the 2021–22 fiscal year.

³ Recommendation 2 is summarized for the purposes of this report; for the full recommendation, see Link A.

CJER also implemented the work group's recommendations concerning demeanor training for judicial officers. Demeanor and unconscious bias have long been central themes at the New Judge Orientation and B. E. Witkin Judicial College, in addition to classes solely dedicated to these topics. Efforts continue to expand the New Judge Orientation curriculum to include more content on the social science and psychology behind unconscious bias; a judicial officer's duty to intervene and take corrective action in situations of harassment, discrimination, retaliation, or inappropriate conduct based on a protected classification; and reporting requirements.

All in-person colleges and institutes include content on the prevention of harassment, discrimination, retaliation, and inappropriate workplace conduct based on a protected classification, including the New Judge Orientation, B.E. Witkin 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 courts. Other planned events that will incorporate anti-bias elements include the Court Clerk Training Institute and the Core series of management training courses.

Finally, CJER is enhancing its already robust efforts of tracking and incorporating new developments and best practices by keeping informed of the latest research and academic developments in the field. The CJER Advisory Committee also will continue to discuss opportunities for publicizing courses, outreach, and awareness of existing educational products at specific, in-person programs to ensure they are fully utilized by judicial officers and court staff.

Recommendations 3 and 4

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.

Direct Judicial Council staff to develop resources to aid courts in the above objectives, such as model policies, processes, procedures, and toolkits.

These recommendations asked courts to make changes to their harassment prevention procedures consistent with rule 10.351, to consider drafting or revising informal complaint policies, investigation protocols, and best practices for communicating policies and procedures with employees, and to reevaluate best methods for gathering employee feedback. To support courts, Judicial Council staff were directed to develop a model policy that complied with rule 10.351, and other aids to assist courts. In response, Judicial Council Legal Services developed a privileged sample harassment, discrimination, and retaliation policy that complied with the

requirements of the rule, and provided courts with several other privileged templates, toolkits, and model policies that were specifically tailored to help courts meet the suggested actions outlined in recommendation 3.

Judicial Council Legal Services presented these materials to court leadership in August 2020 and, as part of those and other privileged discussions, staff attorneys answered various questions, discussed ideas for implementation, and assisted courts with drafting or reviewing policies. These actions are consistent with and satisfy the suggestions and directions outlined in recommendations 3 and 4.

Recommendation 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.

In addition to providing courts with the model materials discussed above, and working with courts to satisfy these recommendations, Judicial Council Legal Services followed up with court leadership in several privileged meetings and communications from January through April 2021 to solicit feedback, discuss the recommendations, and assess progress. In those conversations, courts acknowledged the requirements and many courts worked closely—and in a privileged capacity—with Judicial Council Legal Services to comply with the requirements. While court leadership did not express substantive difficulties in complying with rule 10.351, raise issues with the effectiveness of the recommendations, or identify further areas for improvement or other issues for future consideration by the work group, some courts noted delays in completing these recommendations based on the need to immediately prioritize their COVID-19 response. Judicial Council staff remains committed to assisting courts with achieving these recommendations as the pandemic eases and court operations return to normal.

Fiscal Impact and Policy Implications

The recommendations made by the work group and approved by the Judicial Council have been completed. The directives to the Rules Committee and the CJER Advisory Committee have been satisfied, resulting in:

- a new rule setting minimum standards for policies on the prevention of discrimination, harassment, retaliation, and inappropriate workplace conduct based on a protected classification;
- an amended rule addressing required judicial education; and
- numerous revisions to existing judicial education programs.

The directive to Judicial Council staff to create model policies, procedures, and toolkits has been satisfied, resulting in a robust collection of materials to assist courts with harassment prevention, communication, gathering employee feedback, and best practices to address and resolve complaints. The recommendation that courts revise existing policies and procedures has been communicated to courts along with the model policies and templates, and courts have worked to

achieve these goals. Courts have not reported issues with implementing these suggestions other than some delays associated with the COVID-19 pandemic response.

The work group does not anticipate extensive future fiscal impacts or policy implications for courts. Judicial Council staff will continue to assist courts with drafting and revising policies and procedures that are consistent with the recommendations discussed above.

Attachments and Links

1. Link A: Judicial Council of Cal., Adv. Body Rep., *Judicial Branch Administration: Prevention of Discrimination, Harassment, Retaliation, and Inappropriate Workplace Conduct Based on a Protected Classification* (June 12, 2019), pp. 2–3, <https://jcc.legistar.com/View.ashx?M=F&ID=7336325&GUID=6B7E4EDA-1AEF-457E-8045-CA0439798302>