IN THE CIRCUIT COURT OF THE SEVENTEENTH JUDICIAL CIRCUIT IN AND FOR BROWARD COUNTY, FLORIDA

Administrative Order No. 2018-15-Gen

ADMINISTRATIVE ORDER REGARDING SEXUAL HARASSMENT POLICY AND PROCEDURES FOR SEXUAL HARASSMENT COMPLAINTS AGAINST JUDGES

(a) On February 16, 2018, the Supreme Court of Florida issued AOSC18-6, *In re: Sexual Harassment Policy and Procedures for Complaints against Justices and Judges*, adopting the Sexual Harassment Policy and Procedures for Sexual Harassment Complaints against Justices and Judges and directing chief judges of the circuit courts to adopt and implement this policy and procedures for complaints in their respective courts.

(b) Pursuant to the authority vested in the Chief Judge by Florida Rule of Judicial Administration 2.215 and under mandate from the Supreme Court of Florida in *In Re: Sexual Harassment Policy and Procedures for Complaints against Justices and Judges*, it is hereby **ORDERED** as follows:

(1) The Sexual Harassment Policy and Procedures for Sexual Harassment Complaints against Justices and Judges attached hereto and incorporated herein is adopted and shall be immediately implemented in the Seventeenth Judicial Circuit Court of Florida.

(2) The Office of the Trial Court Administrator shall, as soon as practicable, distribute the attached policy to all court personnel of the Seventeenth Judicial Circuit and obtain signed confirmations of receipt of said policy from all employees, excluding constitutional officers.

(3) This Administrative Order supersedes and vacates Administrative Order I-04-D-4A.

DONE AND ORDERED in Chambers, Fort Lauderdale, Florida, this 23rd day of February, 2018.

/s/ Jack Tuter
Jack Tuter, Chief Judge

SEXUAL HARASSMENT POLICY AND PROCEDURES FOR SEXUAL HARASSMENT COMPLAINTS AGAINST JUSTICES AND JUDGES

1. Policy

The chief justice's implementation of this policy is under his or her authority as the administrative officer of the judicial branch and of the supreme court pursuant to rule 2.205(a)(2)(B), Florida Rules of Judicial Administration.

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

1. Submission to such conduct is either explicitly or implicitly a term or condition of employment; or

2. Submission to or rejection of such conduct by an individual is used as the basis for employment decisions affecting such individual or as the basis for any official action; or

3. Such conduct has the purpose or effect of interfering with an individual's work performance or creates a persistently intimidating and hostile environment, as that term is defined in state and federal law.

Sexual misconduct is any behavior of a sexual nature that is committed without consent or by force, intimidation, coercion, or manipulation. Sexual misconduct can occur between strangers or acquaintances, including people involved in an intimate or sexual relationship, and is not necessarily actionable sexual harassment.

The Florida Supreme Court and the entire state court system condemn any sexual harassment or sexual misconduct and advance the position that anyone in contact with the state courts system should feel empowered to bring any such inappropriate activity to the attention of all proper authorities, including and especially the Florida Supreme Court. Anyone authorized to investigate or pursue a complaint of sexual harassment or sexual misconduct hereunder must always maintain an open-door policy that fosters the free expression of any complaint. The chief justice or chief justice's designee has the authority to take any administrative action necessary to protect the complainant from further sexual harassment or sexual misconduct and from retaliation related to a complaint hereunder.

It is the policy of the Florida Supreme Court that all complaints of sexual harassment or sexual misconduct against any justice or judge within the state courts system will be treated seriously and acted upon promptly. The following procedures apply to complaints against justices or judges made by employees of the court system, applicants for employment with the court system, and when applicable attorneys, litigants, or other members of the public. Compliance with these procedures by the chief justice, the chief justice's designee, or a chief judge constitutes a presumption of compliance with the disciplinary responsibilities under Canon 3(D)1 of the Code of Judicial Conduct.

2. Notification

The chief justice may designate any court system officer or employee to be responsible for receiving and documenting complaints of sexual harassment or sexual misconduct against justices of the Supreme Court, judges of the district courts of appeal, or judges of any of the trial courts.

Any employee or applicant for employment with the court system who believes that he or she is the subject of sexual harassment by a justice of the Supreme Court, a judge of any of the district courts of appeal, or a judge of any of the trial courts should submit his or her complaint in writing, or if the person prefers he or she may submit the complaint orally. The complaint may be submitted to any of the following: the chief justice or his or her designee; a local administrator, such as a Trial Court Administrator, human resource manager or Marshal; or the Chief of Human Resources at the Office of the State Courts Administrator (OSCA). If the person receiving the complaint is not the chief justice, the chief justice's designee hereunder, or a chief judge, the person receiving the complaint should forward it to the chief justice, the chief justice's designee hereunder, or the chief judge of the court in which the subject judge serves for an investigation pursuant to section 4, below. Student interns working for the state courts system who believe they are the subject of sexual harassment may use these complaint procedures, but in all instances, should submit a complaint to their college or university in accordance with school sexual harassment complaint procedures.

If any person has difficulty writing out the complaint and the person requests assistance in reducing the complaint to writing or if the person prefers to submit the complaint orally, the chief justice, local administrator, or OSCA Chief of Human Resources, as appropriate, shall designate a person, who will not be involved in the investigation or adjudication of the complaint, to aid the person in reducing the complaint to writing.

If the chief justice is the subject of a complaint, the employee or applicant should submit the complaint to the inspector general of the Supreme Court, who will refer the complaint to the most senior justice, excluding the chief justice. The justice to whom such a complaint is referred

will assume all complaint investigation and resolution duties for which the chief justice otherwise would be responsible. The justice to whom such a complaint is referred also will be responsible for maintaining records pertaining to the complaint.

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

3. Time for Filing Complaints

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

4. Investigations

A complaint of sexual harassment or sexual misconduct against a justice or judge will be investigated promptly and thoroughly. If a complaint has been made, the chief justice, the chief justice's designee hereunder, or the chief judge of the court in which the subject judge serves may designate another person to make an initial inquiry into the complaint.

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

If the chief justice, chief justice's designee, or the chief judge of the court in which the subject judge serves determines the complaint is unfounded or is insufficient to constitute sexual harassment, he or she may decline to pursue any action on the complaint.

If the chief justices, chief justice's designee, or the chief judge of the court in which the subject judge serves determines the complaint is facially sufficient to constitute sexual harassment, the chief justice, chief justice's designee, or the chief judge of the court in which the subject judge serves may appoint an investigating officer or officers to formally investigate the complaint, or may take any other action appropriate under the circumstances.

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

The chief justice, chief justice's designee, the chief judge of the court in which the subject judge serves, or investigating officer will interview the complainant, the justice or judge implicated, and witnesses, if any, and will review relevant documents. If any investigating officers have been appointed, they will submit a written report to the chief justice, chief justice's designee, or the chief judge of the court in which the subject judge serves within thirty days of the submission of the complaint for formal investigation.

5. Resolution

The chief justice, or pursuant to rule 2.205(a)(2)(D), Florida Rules of Judicial Administration, the other most senior justice if the chief justice is the subject of a complaint, shall determine the course of action for internal resolution of the complaint, and may appoint another person, other than the subject of the complaint, to recommend the course of action for internal resolution.

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

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

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

6. Documentation and Confidentiality

All information pertaining to a complaint of sexual harassment must be documented and maintained by the chief justice, chief justice's designee, or the chief judge of the court in which the subject judge serves whichever officer took final action on the resolution of the complaint.

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

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

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

7. Referral to the Judicial Qualifications Commission

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

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

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

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

For anyone wishing to file such a complaint, the Florida Commission on Human Relations (FCHR) is located at: 4075 Esplanade Way Room 110 Tallahassee, FL32399. The telephone number for the FCHR is: 850-488-7082 or 1-800-342-8170.

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

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

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