

IN THE SUPREME COURT OF THE STATE OF KANSAS

Administrative Order 306

CORRECTED

FILED

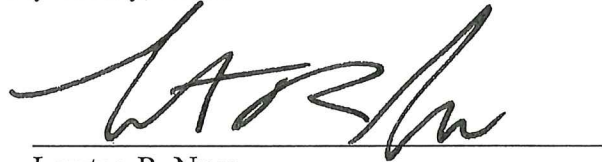
JUL 31 2019

**DOUGLAS T. SHIMA
CLERK OF APPELLATE COURTS**

Re: Amendments of the Rules Relating to Kansas Court Personnel

Effective the date of this order, Rules 9.0 and 1.4 of the Rules Relating to the Kansas Court Personnel System are hereby rescinded and replaced by the attached pages. Rule 8.16, authorized by Administrative Order 299, effective December 28, 2018, is added as a new section and is attached.

BY ORDER OF THE COURT this 31 day of July, 2019.



Lawton R. Nuss
Chief Justice

Attachments

9.0 POLICY PROHIBITING SEXUAL AND OTHER WORKPLACE HARASSMENT

9.1 Scope and Policy Statement

- a. The Kansas Judicial Branch prohibits discrimination against and harassment of any employee because of sex, race, color, religion, national origin, ancestry, age, or disability. Discrimination, harassment (including sexual harassment), and retaliation, as defined in KCPR 1.4, are considered conduct detrimental to court service. The policy described in KCPR 9.0 applies to recruitment, hiring, compensation, promotions, transfers, discipline, demotions, terminations, layoffs, access to benefits, and all other workplace conditions. See also KCPR 5.1 (equal employment opportunity).
- b. All officers and employees, including supervisors and other management personnel, are required to abide by KCPR 9.0. If the accused is an administrative hearing officer, a judge, or justice, a complaint made under KCPR 9.0 will be immediately transmitted to the Commission on Judicial Conduct and all further proceedings will be conducted pursuant to the Rules Relating to Judicial Conduct, Supreme Court Rule 602, et seq.
- c. Violation of KCPR 9.0 may result in discipline pursuant to KCPR 7.0.
- d. All complaints submitted under KCPR 9.0 will be taken seriously and dealt with promptly.
- e. Discrimination, harassment, and retaliation are also prohibited by a variety of federal, state, and local laws, including Title VII of the Civil Rights Act of 1964, as amended, the Americans with Disabilities Act, the Age Discrimination in Employment Act, and the Kansas act against discrimination, K.S.A. 44-1001, et seq. KCPR 9.0 is intended to comply with the prohibitions stated in these anti-discrimination laws.
- f. For purposes of KCPR 9.0, "manager" includes any supervisor, appointing authority, administrative authority, the director of personnel, and their designees.

9.2 Complaint Procedure

The Kansas Judicial Branch encourages reporting of all perceived incidents of discrimination, harassment, or retaliation, regardless of the offending person's identity or position.

- a. An employee who believes the employee or another employee has been the target of discrimination, harassment, or retaliation should inform the employee's manager of the alleged discrimination or harassment. The employee is also

encouraged to inform the offending person that the offending person's behavior is unwelcome and to request that it be discontinued.

- b. A manager who observes, is informed of, or reasonably suspects a violation of KCPR 9.0 must provide a copy of KCPR 9.0 to any affected employee and take steps to prevent future harassment or retaliation. Documentation of these actions must be forwarded to the director of personnel who will cause it to be filed in the affected employee's official personnel file.
- c. A manager who reasonably suspects a violation of KCPR 9.0 has occurred must report the incident to the director of personnel whether or not the affected employee makes a complaint.
- d. A complaint must be put into writing either by the person making the complaint or the manager receiving it. The complaint should state as specifically as possible:
 - 1. the names of the persons involved;
 - 2. the time(s), date(s), and location(s) of the incident(s);
 - 3. a detailed description of the incident(s);
 - 4. the names of any witnesses;
 - 5. any other information necessary to describe the incident; and
 - 6. the time and date when the complainant reported the incident to a manager.
- e. The manager who receives a complaint must:
 - 1. immediately submit the complaint to the director of personnel; and
 - 2. provide a copy of the complaint to the affected employee's administrative authority if the accused is not the employee's administrative authority. See KCPR 1.4(a) (administrative authority).
- f. The director of personnel, and any management personnel who receives or submits a report, must take the necessary steps to protect from retaliation an employee who in good faith reports an incident of discrimination or harassment.

9.3 Initial Review

- a. The director of personnel will review each complaint received. On conclusion of the initial review, the director of personnel will determine whether an

investigation is warranted based upon the facts presented in the complaint. The director of personnel must notify the complainant in writing of the director's determination.

- b. The director of personnel may request the complainant to provide additional information. If the complainant does so, the additional facts will be considered and a subsequent written determination will be provided.
- c. If the accused is an administrative hearing officer, judge, or justice, the director of personnel will notify the complainant that the complaint has been referred to the Commission on Judicial Conduct for further consideration and investigation. No further action by the director of personnel will be taken on these complaints.

9.4 Investigation

If an investigation is determined to be warranted, the director of personnel may personally conduct the investigation or appoint a suitable person or persons to conduct the investigation. Investigations will be conducted in as confidential manner as possible, consistent with the rights of the persons involved.

9.5 Action to be Taken upon Completion of the Investigation

- a. If it is determined that no violation of KCPR 9.0 has occurred, or that the evidence of a violation is inconclusive, the director of personnel must notify the complainant, the accused, and the appropriate administrative authority in writing that:
 - 1. the investigation has been completed and that, upon the facts presented, no violation of 9.0 has been found;
 - 2. discrimination, harassment, and retaliation are prohibited under KCPR 9.0; and
 - 3. the complainant has the opportunity to provide additional information. If the complainant does so, the additional facts will be considered and, if appropriate, an additional investigation will be conducted. A subsequent written determination will be provided.
- b. If it is determined that there has been a violation of KCPR 9.0,
 - 1. the director of personnel must notify the complainant, the accused, and the appropriate administrative authority in writing that:
 - a. the investigation has been completed and that, upon the facts presented, a violation of KCPR 9.0 has been found;

- b. discrimination, harassment, and retaliation are prohibited under KCPR 9.0; and
 - c. remedial action to end or correct the behavior is being taken or has been taken; and
2. with the assistance of the director of personnel, the appropriate administrative authority must take prompt remedial action reasonably calculated to end the discrimination, harassment, or retaliation.

9.6 Confidentiality

- a. To the extent possible, all investigations and hearings under KCPR 9.0 will be conducted to protect the privacy and rights of both the accused and the complainant, and to minimize suspicion pending the outcome of the investigation.
- b. All information, except that provided to the Commission on Judicial Conduct pursuant to this rule, pertaining to a complaint or investigation under KCPR 9.0 will be maintained in secure files within the Office of Judicial Administration. These records are not subject to disclosure under the Kansas Open Records Act, K.S.A. 45-215, et seq.

9.7 Protection from Retaliation

- a. There will be no retaliation against any employee for making a good-faith complaint under KCPR 9.0 or for participating in any investigation conducted pursuant to KCPR 9.0. Violation of this prohibition may result in discipline pursuant to KCPR 7.0.
- b. An adverse employment action against an employee is not deemed a violation of KCPR 9.0 if:
 1. the employee knowingly made a false allegation, provided false or misleading information in the course of an investigation, or otherwise acted in bad faith; or
 2. the employee whose conduct or performance warrants such action for reasons unrelated to the reporting of a concern.

1.4 Definitions

- a. Administrative Authority. Officials with primary administrative responsibility including the following or their designees: the Chief Justice, the Chief Judge of the Court of Appeals, and the chief judges of the district court.
- b. Appointing Authority. The person or persons authorized by statute or by these rules to make human resources decisions as assigned by the appropriate administrative authority.
- c. Appointment. The act of filling a position.
- d. Classification. One or more positions sufficiently similar in duties and responsibilities that the same descriptive title is used, the same qualifications for entrance are needed, and the same pay grade may be applied with equity. E.g., Trial Court Clerk II is an example of an employment classification.
- e. Class Series. A sequence of classifications, alike in kind but not in level, starting with an entry level position and advancing upward in duties, complexity, authority, and responsibility. E.g., Trial Court Clerk II, III, and IV constitute a class series.
- f. Confidential Employee. An employee who serves at the will of the employer. The employment of confidential employees may be terminated at any time. They have no right to appeal performance evaluations, discipline or termination.
- g. Demotion. Movement of an employee from a position in one classification to a position in another classification having a pay grade lower than that of the employee's original position.
- h. Discrimination. Discrimination in the workplace occurs when an adverse employment action is taken or threatened because of a person's sex, race, color, religion, national origin, ancestry, age, or disability.
- i. Employee's Family Member. An employee's spouse, child, sibling, parent, grandparent, grandchild, mother-in-law, or father-in-law, whether by blood, marriage, adoption, or foster care. As used in these rules, foster care means placement of a minor in an employee's home by court order or authority.
- j. Equal Employment Opportunity. As used herein, the term includes all relevant federal and state laws prohibiting employment discrimination, including but not limited to Title VII of the Civil Rights Act of 1964, as amended, the Americans with Disabilities Act, the Age Discrimination in Employment Act, and the Kansas Act Against Discrimination, K.S.A. 44-1001, et seq.

- k. Exempt Positions. Positions which under the Fair Labor Standards Act are defined as executive, administrative, professional, or professional computer positions. Employees in these positions are ineligible for overtime compensation due to the nature of their positions which involve increased responsibility, the exercise of discretion and independent judgment, supervision of employees, and pay levels exceeding FLSA requirements.
- l. Fair Labor Standards Act (FLSA). The 1938 enactment by Congress which established various labor standards including minimum wage, overtime compensation requirements, and record keeping requirements for employers and employees in the private sector; the Fair Labor Standard Amendments of 1985 extended FLSA coverage to employees of state and local governments, effective April 15, 1986.
- m. Furlough. Leave without pay for a specified number of hours during one or more pay periods.
- n. Grade. A range of pay at which classifications in the Judicial Branch system are paid.
- o. Grievance. Complaint pertaining to employment conditions filed by an employee in accordance with KCPR 10.0.
- p. Harassment. Unwelcome conduct based on sex, race, color, religion, national origin, ancestry, age, or disability if:
1. enduring the offensive conduct becomes a condition of continued employment; or
 2. the conduct is severe or pervasive enough to create a work environment that a reasonable person would consider intimidating, hostile, or abusive.
- See also, KCPR 1.4(h) (discrimination) and 1.4(gg) (sexual harassment).
- q. Job Specification. A generalized listing of work defining some of the more typical tasks of the classification and identifying the training, education, and experience required for the job.
- r. Layoff. The involuntary termination of employment due to abolishment of a position due to lack of work, lack of funds, or reorganization.
- s. Length of Service. An employee's total amount of regular service calculated from the effective hire date adjusted as necessary for leave without pay of 31 or more consecutive days and breaks in service.

- t. Nonexempt Positions. Positions identified under the Fair Labor Standards Act as eligible for overtime which are not executive, administrative, professional, or professional computer positions and which have few if any discretionary, supervisory, or managerial responsibilities. E.g., entry-level clerical positions are nonexempt.
- u. Overtime. Hours worked in excess of a standard 40-hour workweek. Generally, overtime is compensated through compensatory (or “comp”) time.
- v. Pay Period. The two-week period between paychecks.
- w. Pay Plan. The array of pay grades and steps applying to the Judicial Branch classification system. A step is a defined unit of pay as specified on the pay plan.
- x. Position. An individual job within the Judicial Branch.
- y. Position Description. A written description developed and used by an appointing authority summarizing the duties and responsibilities assigned to a particular position and used to evaluate job performance.
- z. Probationary Period. A 12-month period following initial appointment, promotion, demotion, or transfer during which the employee may be fired at will and without appeal rights.
- aa. Promotion. Appointing a qualified and eligible employee from one class to another class with a higher pay grade.
- bb. Reclassification. The reassignment of a position to a classification with a higher or lower pay grade based upon a change in the position description and assigned responsibilities.
- cc. Regular Position. A position scheduled for 1,000 or more work hours per fiscal year. A federally-funded position is considered regular only during the duration of the federal funding, unless subsequently state-funded.
- dd. Rehire. The right of a tenured employee who terminates employment with the Judicial Branch in good standing to retain pay status and sick leave if reemployed within one year from the effective date of separation.
- ee. Reinstatement. The right of a tenured employee, involuntarily terminated because of a layoff, to be considered for reemployment within one year after separation.
- ff. Retaliation. Retaliation occurs when an employer takes a materially adverse employment action because a person asserted the right to be free from discrimination, including harassment.

- gg. Sexual Harassment. Sexual harassment includes unwelcome sexual advances, requests for sexual favors, or verbal or physical conduct of a sexual nature when:
1. submission to or rejection of such advances, requests or conduct is made either explicitly or implicitly a term or condition of employment or as a basis for employment decisions; or,
 2. such advances, requests or conduct have the purpose or effect of unreasonably interfering with an individual's work performance by creating an intimidating, hostile, humiliating or sexually offensive work environment.
- hh. Step Increase. Movement to the next step on the Judicial Branch pay plan. Step increases are subject to funding and approval of the appointing authority and are based on the time-on-step requirement of the pay plan.
- ii. Supervisor. An employee designated by the appointing authority who directs, evaluates, and coordinates the activities of another employee or employees.
- jj. Temporary Employee. An employee holding a temporary position requiring 999 hours or less of work per fiscal year. Employees assigned to temporary positions are not eligible for any benefits except workers' compensation and unemployment benefits.
- kk. Table of Organization. Documents maintained by appointing authorities showing the number of positions authorized for each location, the grade and title of each position, and other related information as prescribed by these rules.
- ll. Workweek. The seven-day period between 12:01 a.m. on Sunday and 12:00 a.m. the following Sunday.

8.16 Paid Parental Leave

The Kansas Judicial Branch will provide paid parental leave to eligible employees for the purpose of giving a parent time to bond with the parent's new child under the following terms and conditions:

- a. A regular employee is eligible to receive up to six weeks of paid parental leave following the birth of the employee's child or the placement of a child who is 17 years old or younger with the employee in connection with adoption. The fact that a multiple birth or adoption placement occurs does not increase the six-week total amount of paid parental leave granted for that event. An employee will not receive more than six weeks of paid parental leave in a rolling 12-month period, regardless of whether more than one birth or adoption placement event occurs within the 12-month time frame. For the purpose of this rule, a "week" of leave is equal to the number of hours an employee is regularly scheduled to work in a week. A temporary employee is not eligible to receive parental leave under this rule.
- b. An employee must provide a written request for parental leave to the employee's appointing authority at least 30 days in advance of the need for parental leave, where practical, for approval. The appointing authority will determine whether the employee meets the eligibility requirements of the parental leave policy, and may deny the request. The appointing authority's decision is final and not subject to appeal. At any time during the use of parental leave, the appointing authority may require additional documentation. If the employee fails to provide the documentation, the use of parental leave may be terminated.
- c. Approved parental leave must be taken within the 12 weeks immediately following the birth or placement of the child. Intermittent leave or leave on a reduced work schedule may be given for parental leave only if the appointing authority finds it to be in the best interest of the judicial branch and documents that finding in writing. An employee is not eligible for payment of any unused paid parental leave at the end of the 12-week time frame or upon termination.
- d. Parental leave is compensated at 100 percent of the employee's regular, straight-time pay. Parental leave will be paid on a biweekly basis on regularly scheduled pay dates.
- e. Parental leave must run concurrently with FMLA leave if the employee is eligible for FMLA leave under KCPR 8.13. An employee who takes parental leave and who does not qualify for FMLA leave will be afforded the same level of job protection for the period of time that the employee is on paid parental leave as if the employee was on FMLA-qualifying leave.