

IN THE SUPREME COURT OF THE STATE OF KANSAS

Administrative Order No. 79

Re: Amendments to the Rules Relating to the
Kansas Court Personnel System

Section 9.0, the Table of Contents, and the pages of the
rules that follow Section 9.0 of the Kansas Court Personnel
Rules are hereby amended by the attached pages.

BY ORDER OF THE SUPREME COURT this 12th day of February 1991.


RICHARD W. HOLMES
Chief Justice

Attachments

9.0 POLICY PROHIBITING SEXUAL HARASSMENT

9.1 Statement of Scope and Policy

- a. The policy of the Kansas Judicial Branch is to maintain a workforce free of sexual harassment. Sexual harassment, defined in Rule 1.4 jj, will not be tolerated in the workplace and may be a violation of Title VII of the Civil Rights Act of 1964.
- b. Sexual harassment is considered conduct detrimental to court service and constitutes a serious or grievous offense. Any court employee who commits sexual harassment shall be subject to discipline or termination pursuant to Rules 6.5 and 6.6.

9.2 Prohibited Conduct

- a. No employee shall commit, encourage or condone any act of sexual harassment either at the worksite during work hours, or at any time while on duty, official business, or stand-by duty.
- b. No Administrative Authority, Appointing Authority, or Supervisor shall make employment or job-related decisions based on an employee's response to any sexual advances.
- c. No Administrative Authority, Appointing Authority, or Supervisor shall fail promptly to investigate or report a complaint of sexual harassment or any incident of sexual harassment observed.
- d. No Administrative Authority, Appointing Authority, or Supervisor shall discipline or retaliate against an employee who complains about sexual harassment, nor threaten or imply that an employee's complaint or refusal to submit to harassment will affect the employee's job.
- e. Prohibited acts of sexual harassment include but are not limited to sexual flirtations, touchings, advances, propositions, verbal abuses of a sexual nature, graphic verbal commentaries about any individual's body, using sexually degrading words to describe any individual, and displays of sexually suggestive objects or pictures. Sexual harassment does not include personal compliments welcomed by the recipient, or social interaction or relationships freely entered into by employees.

- f. No employee complaining of alleged sexual harassment shall be subject to any interference, coercion, restraint, or reprisal.

9.3 Complaint Procedure

- a. Any incident of sexual discrimination, insult, intimidation, or harassment in any form should be promptly reported to any level of supervision or to the Personnel Officer. All complaints shall be taken seriously and a confidential investigation conducted promptly.
- b. The formal complaint shall be in writing, and shall state as specifically as possible: the names of the persons involved; the time(s), date(s), hour(s), and location(s) of the incident(s); a detailed description of the incident(s); the names of any witnesses; and shall be signed and dated by the complainant. If the complainant cannot or desires not to complain in writing, the person receiving the complaint shall write out the complaint. A copy of the complaint will be retained by the person receiving the complaint, the local official with administrative or appointing authority, and the Personnel Officer. No complaint or copy of a complaint shall be given or reported to an accused person until a formal investigation is commenced.

9.4 Investigation

- a. The Personnel Officer shall promptly cause an investigation to commence upon receipt of a formal complaint alleging sexual harassment by an officer or employee of the Kansas Judicial Branch. Investigations shall be conducted in as confidential manner as is consistent with the rights of the persons involved.
- b. If the investigation results in a finding that no violation of the sexual harassment policy occurred, or that the evidence of sexual harassment is inconclusive, or that the complaint lacks merit, both the complainant and the accused shall be notified in writing that the investigation has been completed and that, upon the facts presented, a determination has been made that no further proceedings are warranted. The Personnel Officer should restate the absolute prohibition against sexual harassment. The complainant shall be offered the opportunity to

provide additional information. If the complainant does so, the additional facts shall be thoroughly investigated.

- c. If the investigation results in a finding that the complainant is a victim of sexual harassment and that a violation did occur, disciplinary action shall be taken. With the cooperation of the Personnel Officer, the local official with administrative or appointing authority shall, pursuant to the Kansas Court Personnel Rules, take prompt remedial action reasonably calculated to end the harassment.
- d. The complainant shall be notified in writing of the results of the investigation and the action taken.
- e. If the person complained of is a judge or justice, the complaint shall be initially investigated as set forth herein. If, during the investigation, it is determined that there is probable cause to believe the complaint has merit, the entire matter shall be forthwith transmitted to the Commission on Judicial Qualifications and all further proceedings shall be conducted pursuant to the Rules Relating to Judicial Conduct, Supreme Court Rule 602, et seq. (1990 Kan. Ct. R. Annot. 321). The complainant shall be notified that the complaint has been referred to the Commission on Judicial Qualifications for further consideration.

9.5 Confidentiality

Due to the sensitivities associated with this subject and due to the damage that can result to the career and reputation of any person accused falsely or in bad faith of sexual harassment, all investigations and hearings surrounding such matters shall be conducted to the maximum extent possible so as to protect the privacy of both the accused and the complainant, and to minimize suspicion pending the outcome of the investigation. Only those persons directly responsible for carrying out this policy will have access to confidential communications.

10.0 GRIEVANCE PROCEDURES

10.1 Scope

- a. A full-time or permanent part-time employee, except a newly hired employee still in a probationary status, a confidential employee, or an employee who serves at the pleasure of an administrative authority, who is aggrieved by an action relating to working conditions, which is not appealable under subsection 5.24 of these rules, shall have the right to file a grievance. Grievances may include, but are not limited to, such matters as employee-supervisor relationships, extended duty assignments not reasonably associated to job specification, hours worked, overtime, working facilities and conditions, policies for granting leave, and similar matters.
- b. The restrictions on filing grievances in section 10.1a shall not apply to charges of sexual harassment which shall be filed directly in writing to any level of supervision or to the Personnel Officer in accordance with 9.0.

10.2 Grievance Resolution

A grievance shall be filed in writing with the appropriate supervisor who shall immediately notify the appointing authority or designee. The grievance shall be filed within 5 working days of the incident or complaint. The appointing authority or designee shall consider such evidence as may be offered by the affected employee and any other affected parties within 10 calendar days of the filing of the grievance. A written decision shall be given by the appointing authority or designee to the affected employee or employees within 10 calendar days of the grievance hearing.

10.3 Right of Appeal

If a solution satisfactory to the employee is not reached, the employee may appeal in accordance with the procedure set forth in Section 11.0.

11.0 APPEAL PROCEDURES

11.1 Right to Appeal

- a. An employee who is dissatisfied with a disciplinary action (Section 6.0), or who is aggrieved (Section 10.0), may file an appeal. Such appeal shall be in writing and filed with the administrative authority within 10 calendar days of the action being appealed. The administrative authority shall then forward the appeal and answer, if any, to the Judicial Administrator.
- b. Except as provided in 11.3, the filing of an appeal shall not affect the operation of the action from which the appeal is taken.
- c. The employee's appointing authority may file an answer within 10 calendar days with the Judicial Administrator.

11.2 Appeal Board

The Judicial Administrator shall forward the notice of appeal and answer, if any, to the Chief Justice who shall convene an appeal board. Board members shall be selected from judicial departments or appellate court offices other than the one in which the appeal to be heard originated. The board shall consist of:

- a. A justice, judge of the court of appeals, or judge of the district court;
- b. one supervisory employee; and
- c. one nonsupervisory employee.

11.3 Appeal Process

- a. The employee shall be entitled to a hearing on the appeal. The board shall convene the hearing in a timely and expeditious manner.
- b. The appeal board shall be entitled to consider both the written record as well as oral testimony in arriving at its decision. The employee may waive the right to an oral hearing, in which case the board may consider the appeal based on the record.
- c. Upon application, the board may stay the operation of any appealed action until the appeal is determined.
- d. If a hearing is conducted, the employee shall be entitled to counsel at his or her own expense. Strict rules of evidence need not be followed in

conducting the hearing. No verbatim record of the hearing shall be required.

- e. In determining an appeal, the board shall not substitute its judgment for the judgment of the administrative authority but rather the board shall determine whether action taken by the administrative authority was reasonable under the circumstances.
- f. The decision will be in writing and a copy shall be forwarded to the administrative authority, appointing authority, and employee. The original appeal, answer, and decision of the board shall be placed in the employee's personnel record.
- g. Decisions of the appeal board shall be final.