



FREEDOM FROM SEXUAL VIOLENCE

August 9, 2022

Interim Committee on Judicial Discipline

Colorado General Assembly

## RECOMMENDATIONS FOR PREVENTING AND RESPONDING TO SEXUAL MISCONDUCT IN THE STATE JUDICIAL BRANCH

### BACKGROUND:

The Colorado Coalition Against Sexual Assault (CCASA) works to prevent and end sexual violence in our state, including sexual harassment and assault. Sex-based harassment is pervasive, making up nearly half of all harassment complaints received by the Equal Employment Opportunity Commission (EEOC). Studies have found between a quarter to 85 percent of women experience sexual harassment in their lifetimes and up to 94% of people do not report it.<sup>i</sup> According to the EEOC, Black women are the most likely of all groups to have filed a sexual harassment charge, often reporting racial discrimination as well.

Workplace harassment, discrimination, and other offensive conduct based on one's identity is detrimental to an employee's performance, professional advancement, and/or physical and mental health. Research correlates experiencing workplace harassment with career interruptions, lower earnings, discouragement from professional advancement, and restricted access to learning or mentoring opportunities, thereby leading to unemployment, financial stress, wage loss, economic instability, and leaving their fields entirely.<sup>ii</sup> Additionally, victims of sexual harassment are more likely to report symptoms of depression, general stress and anxiety, post-traumatic stress disorder (PTSD), increased use of alcohol and drugs, disordered eating, self-blame, reduced self-esteem, emotional exhaustion, anger, fear, and lower satisfaction with life in general.<sup>iii</sup> Further, there are high costs for employers with turnover, decreased victim and workgroup productivity, reputational damage, and direct payouts or settlements.

Moreover, the Judicial Branch contains several of the risk factors identified by the EEOC Task Force Study on Workplace Harassment:

- Significant Power Disparities – High-status workers can feel emboldened to exploit low-status workers, who may be more economically vulnerable and less likely to understand internal complaint processes. Studies find that when these power disparities are gendered, more harassment may occur. Judges represent both a formal and informal power in the Judicial Branch. Extreme power imbalances without clear protections and accountability measures can disempower victims.
- Control over Careers – Fear of and actual adverse job repercussions leave employees to reasonably conclude that not reporting is the best course of action. Clerks and interns/externs

are dependent upon judges for recommendations that can open or close career doors depending on the judge's recommendation, creating a massive power imbalance and giving judges too much control over a clerk's career. Attorneys may fear hostility, negative bias, and/or unfair rulings.

- Decentralized Workplaces – Limited communication or supervision between organizational levels can allow harassment to go unchecked.

Senate Bill 22-201 created the Legislative Interim Committee on Judicial Discipline to study a range of issues, including a victim-centered approach to judicial misconduct complaints. CCASA offers the following recommendations to address risk factors for workplace harassment and changes to protect and support victims and complainants.

## **RECOMMENDATIONS:**

### **1. SAFE REPORTING**

According to investigative reports, Colorado Judicial Branch employees report strong distrust in the existing reporting structures in place. A safe reporting system offers multiple avenues for reporting with transparent processes, communication, and timely follow-up. Further, it must avoid conflicts of interest and generate trust in the system for complainants.

- A. Maintain an accessible, clearly explained process for confidential formal and informal reporting options that are communicated at least annually to all employees throughout the organization.
- B. Explicitly permit anonymous complaints that can be investigated and provide the option to be informed if other complaints are made against same person to allow for a change to formal reporting.
- C. Permit complaints to be reported out of chain of command.
- D. Permit complaints from former employees, interns, and volunteers.
- E. Establish strong and enforceable protections from retaliation or continued abuse or harassment.
- F. Establish an independently managed hotline/helpline (separate from Human Resources) to accept complaints and provide confidential information about the process for filing a complaint for all state employees.

### **2. TIMELY INDEPENDENT INVESTIGATIONS**

The Court must improve the legitimacy of the process for handling complaints against employees and reports of fraud, waste, abuse, or other misconduct within the State Judicial Branch, including judicial officers, court employees, clerks, and interns. Conducting prompt, thorough, and independent investigations assures employees and others who make complaints that they are being taken seriously and will be resolved in a fair and impartial manner.

- A. Assure complainants, witnesses, and others who participate in the investigation that they will be protected against retaliation. Establish policies and practices to determine whether retaliation

has occurred, and if so, what remedies are available for the victim and what disciplinary action may be applied to those who retaliated.

- B. Ensure the independence of staff within the investigatory unit or utilize a third-party to conduct investigations. Provide the resources, access to information, and authority to effectively investigate complaints.
- C. Establish clear rules for how, when, and by whom investigations will occur and communicate that information to employees, clerks, volunteers, and interns.
- D. Conduct prompt investigations and inform complainants of process and timelines throughout the investigation.
- E. Continue investigations even after a complainant or accused employee resigns or retires.

### **3. SUPPORT FOR VICTIMS/COMPLAINANTS**

When a victim of harassment or misconduct makes a report, they enter into a system shrouded in secrecy. There are no support mechanisms in place, no one working on their behalf, providing guidance or resource referral, and no way of accessing information on the status of their complaint. The current system makes it difficult and professionally risky to report harassment and misconduct, and then leaves complainants isolated, uninformed, and unsupported. Further, victims are deposed as witnesses, where legal advice or counsel may be appropriate, but are on their own to find and pay for it.

- A. Create an Office of Employee Advocate modeled after that in the Federal Judicial Accountability Act<sup>iv</sup> to provide:
  - i. Confidential support and information about the process of reporting, investigations, supportive measures for complainants, and corrective measures for the accused;
  - ii. Referrals to medical and mental health care, community-based advocacy services, and other resources;
  - iii. Guidance in navigating options, such as formal and informal complaints, and law enforcement reporting and medical reporting for sexual assault;
  - iv. No-cost, privileged legal assistance, consultation, and representation in personal civil legal matters related to the initiation of or participation in proceedings either through staff attorneys or pro-bono program;
  - v. Regular status updates on cases and inform victim of results at critical stages.
- B. Define and communicate supportive measures for victims and witnesses, even if a complainant does not pursue formal reporting, including:
  - i. Individualized services to protect complainant safety or deter further harassment or discrimination;
  - ii. Transfers, reassignments, or changes in work location, phone number, email address, supervision, or parking spot both during and after investigations;
  - iii. A one-way no-contact order to prohibit the harasser from directly communicating with the victim;
  - iv. Escort or security services when walking to parking lots, through buildings, or other spaces where the accused may be encountered;

- v. Temporary leave for employees, clerks, volunteers, or interns with a guarantee to return at the same level and pay.
- C. Create a system to issue letters of recommendation or provide references for clerks, interns, volunteers, or employees who have made a complaint, especially if it was against a supervisor.

#### **4. ENSURE ACCOUNTABILITY AND TRANSPARENCY**

Inconsistent accountability measures communicate that harassment, discrimination, and other misconduct are tolerated. Accountability is not only an acknowledgement of harm and an accepting of responsibility, but also a change of behavior and repair of harm. Sanctions must be proportionate to the inappropriate conduct that had been substantiated and standardized to avoid implicit or explicit bias.

- A. Establish a Corrective Action Matrix to ensure consistency in corrective action including for people in positions of power. Lay out and communicate throughout the organization the type of disciplinary actions that each type of misconduct would warrant and who decides the sanctions.
- B. Develop a process for judicial recusal or reassignment of district in cases where an attorney or party to the case has reported the judge for misconduct.
- C. Require the Colorado Commission on Judicial Discipline to establish a publicly accessible and searchable judicial misconduct database.
- D. Track anonymized data on complaints (formal and informal), investigations, and remedies, including district locations, patterns, and themes and report publicly on an annual basis. Require an annual report to the Governor, Legislature, and the public from the Chief Justice on steps taken to address and prevent judicial misconduct and harassment and discrimination in the Courts.

#### **5. PRIORITIZE PREVENTION**

Regaining public and employee trust must come through a commitment to transparency, accountability, and prevention efforts. A history of silence must be addressed by shining a light on issues of harassment, discrimination and misconduct through policies, trainings, and assessments.

- A. Establish or update workplace misconduct policies to be comprehensive and communicate a commitment to maintaining a workplace that encourages ethical conduct, mutual respect, professionalism, and collegiality throughout the organization.
  - i. Apply policies and communicate them to all individuals working within the courts, including interns, clerks, and volunteers.
  - ii. Explicitly state that confidentiality policies do not apply to misconduct or unethical behavior.
  - iii. Include abusive and bullying behavior as prohibited conduct.
- B. Require annual training for all Judicial Branch employees on workplace behavior and interventions. Successful anti-harassment training must be:
  - i. Comprehensive and customized to the Judicial Branch, including hypothetical scenarios and workplace realities that employees may actually witness;

- ii. Standardized to communicate consistent mission, values, policies, and procedures across the organization;
  - iii. Treating all participants as allies and bystanders, rather than perpetrators and victims, and encourages participants to stand up for each other and create a culture that is safe;
  - iv. Hybrid or self-guided interactive modules with check-in points to ensure engagement and retention.
- C. Establish separate training specifically for judges to demonstrate positive workplace culture and create a safe space to ask questions and learn.
- D. Conduct anonymous workplace culture assessments to help to identify potential areas of risk and underreporting and build employee trust in the commitment of the leadership to changing the culture.
- i. Results should be shared with employees and included in reports to the legislature, Governor, and public.
  - ii. Include responses from current and former employees, including a mix of focus groups, interviews, and surveys.
  - iii. Utilize a third-party to administer to minimize distrust and fear of retaliation.

## CONCLUSION:

Sexual violence and other misconduct thrive in systems with secrecy, power disparities, and a lack of oversight. The Judicial Branch, like many other workplaces and institutions, has reckoned with its inadequacies and now has an opportunity to create an environment and climate that enables respect, accountability, and credibility within the organization and to the broader public. We urge the Interim Committee and the Judicial Branch to implement these recommendations to create a more victim-centered process for responding to and preventing misconduct, including sexual harassment and discrimination.

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<sup>i</sup> Select Task Force on the Study of Harassment in the Workplace, "[Report of Co-Chairs Chai R. Feldblum and Victoria A. Lipnic](#)" June 2016.

<sup>ii</sup> Institute for Women's Policy Research, "[Sexual Harassment and Assault at Work: Understanding the Costs](#)" October 2018.

<sup>iii</sup> Cortin, L.M. and Leskinen, E.A., "[Workplace Harassment Based on Sex: A Risk Factor for Women's Mental Health Problems](#)" 2013.

<sup>iv</sup> [Judiciary Accountability Act of 2021](#), SEC. 7. OFFICE OF EMPLOYEE ADVOCACY.