

*The Chief Judge of the State of New York
and
The Chief Administrative Judge*



Janet DiFiore

Lawrence K. Marks

MEMORANDUM

February 3, 2021

TO: Judges and Non-Judicial Personnel of the Unified Court System

FROM: Janet DiFiore *JDF*
Lawrence K. Marks *LM*

SUBJECT: Further Addressing Bias in the Court System

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As you know, last October we received a report from former U.S. Secretary of Homeland Security Jeh Johnson, acting as the Chief Judge's Special Adviser on Equal Justice in the Courts, that presented a broad, independent, in-depth review of court system policies, practices, rules and programs as they relate to issues of racial and other bias. The Johnson Report contained a set of practical recommendations aimed at advancing diversity and inclusion within the court system and ensuring equal justice under the law. We are pleased to report that Deputy Chief Administrative Judge Edwina Mendelson has been overseeing our day-to-day efforts to implement and expand upon the Report's recommendations to the fullest extent possible.

One important recommendation in the Johnson Report is to strengthen current court system practices investigating bias complaints against court personnel. Recently a matter was brought to our attention that strongly illustrated this point. Last spring our Inspector General's Office received a complaint alleging that a court employee had posted an extraordinarily insensitive comment to a widely publicized photo of George Floyd in police custody -- with a police officer kneeling on his neck -- shortly before his death. Following an IG investigation, disciplinary charges were filed against the employee; and thereafter, the matter was settled through stipulated penalties and without a hearing. This was a mistake. While settlement of disciplinary matters can serve appropriate goals, settlement of cases involving allegations of racial or other bias inevitably fosters a perception that such conduct, though penalized, is nonetheless tolerated within our ranks. It is not. As the Johnson Report underscores, the perception of such tolerance is pernicious and long-lasting, and seriously impacts the court system's ability to conduct its public mission in a manner that truly honors the dignity of all who serve it and appear before it.

Consequently, and commencing immediately, we will require a full disciplinary hearing in all matters where an Inspector General investigation has substantiated a claim of discriminatory conduct by a UCS employee. Those disciplinary proceedings will be conducted in full conformity with the procedures set forth in our collective bargaining agreements, and will comport with all dictates of due process. Upon a finding by a hearing officer sustaining a charge of discriminatory conduct, the respective Deputy Chief Administrative Judge (either inside or outside of New York City, depending on the employee's location) responsible for reviewing the hearing officer's findings and recommendations shall consult with a special panel consisting of the other Deputy Chief Administrative Judge, the Deputy Chief Administrative Judge for Justice Initiatives and the Director of the court system's Office of Diversity and Inclusion. The special panel will advise on the appropriate penalty to be imposed. This will promote both statewide consistency and the broadest possible scope of collective wisdom and experience in this critical area.

Another of the Johnson Report's central recommendations is mandatory anti-bias training for all court system personnel. Such training is currently being developed, and you will be receiving more information about this in the coming weeks. In the meantime, however, those court officials who participated in the ill-advised decision to settle the aforesaid disciplinary matter will be participating in immediate anti-bias training.

In addition to these developments, we are issuing today the attached anti-discrimination and anti-harassment policy applicable to all non-judicial and judicial UCS personnel. This policy prohibits communication that demeans or disparages others on the basis of race, sex, gender identity, and a host of other personal attributes. The policy restates and reemphasizes an undeniable truth: service in the court system carries concomitant responsibilities of public conduct, including the responsibility to maintain the reputation of the courts as a forum where all participants are treated with equal dignity and respect, both inside and outside the workplace, both in person and on social and other media. Where comment projects racist or other offensive sentiments, its impact upon the courts is immediate, irreparable and completely unacceptable. As we have stated in the past, our approach toward such behavior must be "zero tolerance". Our policy will help to detail the expectations and standards that all court personnel must meet.

We will be sharing additional details with you in the coming weeks as we further proceed with implementation of the Johnson Report recommendations. As we move forward, we thank you for your support and assistance in fulfilling our court system's most important and fundamental responsibility: the assurance of equal justice under law.

Attachment

UCS Anti-Discrimination and Anti-Harassment Policy

The New York State Unified Court System (UCS) affirms its zero tolerance for any and all forms of bias, discrimination or harassment. We hereby renew our collective commitment to ensuring equal employment opportunities and a bias-free environment for all UCS personnel, litigants, lawyers, job applicants and other members of the public. UCS embraces its duty to promote a court system free from all forms of discrimination and bias based upon race, color, national origin, religion, creed, sex (including sexual harassment), sexual orientation, age, marital status, disability, genetic status, gender identity or expression, or domestic status. UCS recognizes and will uphold every individual's right to be treated with respect and dignity, and to work in a professional atmosphere that promotes fairness and equality.

UCS personnel must conduct themselves in a manner consistent with UCS policies and Rules, and with an understanding of their duties and responsibilities as public servants. Accordingly, all UCS personnel should take time to revisit the provisions of the UCS Employee Handbook, Sexual Harassment Policy & Procedure, Discrimination Claim Policy & Procedure, E-Mail and Internet Policies, as well as the Rules of the Chief Judge and Rules of the Chief Administrator, e.g. Part 50 and Part 100, as may be applicable to their position with the UCS, and which further maintain standards to promote public confidence in a fair, impartial, and independent court system and judiciary.

All UCS personnel are hereby reminded that engaging in conduct that is threatening, harassing, demeaning, bullying, or disparaging on the basis of race, color, national origin, religion, sex, sexual orientation, age, marital status, disability, genetic status, gender identity or expression, or domestic violence status, whether in-person, online or through any other verbal, written or electronic means, is a violation of UCS policies and Rules. Such discriminatory, harassing, threatening, or disparaging communications or materials include, but are not limited to, epithets, slurs, negative stereotyping, demeaning jokes, and vulgar, profane, insulting, or offensive language or content showing hostility or aversion toward an individual or group on the basis of the above.

UCS personnel who are found to have engaged in conduct that violates UCS policies and/or Rules against harassment and discrimination will be subject to appropriate administrative, remedial and/or disciplinary action, including termination.

Bias, discrimination, or harassment by or against UCS judicial or nonjudicial personnel will not be tolerated.