



COLORADO JUDICIAL BRANCH INVESTIGATION REPORT AND ASSESSMENT OF WORKPLACE CULTURE

INVESTIGATIONS LAW GROUP, LLC

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*Injustice anywhere is a threat
to justice everywhere.*

- Martin Luther King, Jr.

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OBJECTIVE & INTRODUCTION

On April 22, 2021, the Colorado Judicial Branch issued a Request for Proposal (“RFP”) seeking bids from independent investigators to examine allegations of misconduct at the Branch. These allegations included sixteen separate misconduct allegations, general allegations of a hostile work environment for women, and an allegation related to the procurement of a contract for services, awarded to former Chief of Staff, Mindy Masias. Investigations Law Group (ILG) submitted a bid in response to the RFP and was chosen on November 3, 2021, to conduct the investigation of the individually listed instances of alleged misconduct, and the allegations of a hostile work environment for women. The deadline for completing the work was initially set for April 15, 2022 but was extended to July 29, 2022 to accommodate the volume of interviews necessary to accommodate everyone who wanted to meet with us.

The scope of ILG’s work was threefold. First, ILG was commissioned to investigate each of the allegations raised in a two-page document prepared by former Human Resources Director Eric Brown and published in a Denver Post piece dated February 2021 by David Migoya.¹ These allegations included sixteen separate instances of alleged misconduct by judges, finance division employees, and probation division employees. Thirteen of these sixteen allegations were separately investigated and individual Report Summaries, corresponding to these allegation, follows in the first substantive section of this Report.²

The second component of ILG’s work was to conduct a comprehensive assessment of the workplace environment in the Judicial Branch, with a special focus on issues of hostile work environment based on sex / gender. We approached this component of the project using a holistic set of tools, including a culture survey that was sent out to each of the 4,133 employees in the Judicial Branch across Judicial Districts and Divisions. In addition to the culture survey, we conducted interviews with individuals who reached out to voluntarily share additional information relating to the workplace culture. We also gathered information about best practices in Judicial workplaces around the country and used that to inform our assessment of the judicial workplace here in Colorado.

Finally, we were asked to propose recommendations for improvement based upon the data we gathered in our culture assessment, as well as in our investigations. These recommendations, informed by our professional experience, were also to include consideration of the unique nature of the Judicial workplace as an organization. We have examined best practices in other Judicial Branches around the country and incorporated ideas from them, as well as from the many internal stakeholders we met with who expressed ideas about ways to improve the Judicial workplace in Colorado.

¹ See Migoya, David: “Colorado Supreme Court Releases memo citing examples of sex-discrimination, judicial misconduct that led to alleged contract for silence,” The Denver Post (February 9, 2021), available at: <https://www.denverpost.com/2021/02/09/colorado-supreme-court-memo-sex-discrimination-harassment-lawsuit/>

² Three allegations were not investigated, as described below.

ACKNOWLEDGEMENT

We would like to acknowledge the many members of the Judicial workplace who took the time to participate in our investigations, our survey, and our voluntary interviews. We interviewed front-line employees and staff members, directors, and employees in all but one of the Branch's 24 Judicial Districts and divisions. We interviewed Judges, Chief judges, Justices, staff, and appointed personnel. We received thoughtful feedback to our questions, and evidence that allowed us to reach firm findings in nearly all the separate investigations that were part of this project.

We would also like to thank our team at ILG who worked tirelessly to ensure that this project was done thoroughly, respectfully to all participants, and mindfully in terms of time and resources. None of this would have been possible without your assistance. We thank you.

INVESTIGATION REPORT SUMMARIES

Elizabeth R. Rita, Esq.

The individual Report Summaries of each of the separate issues we were tasked to examine follows in the next section of the report. Each investigation had elements of its own methodology – or set of steps that were followed to conduct the investigation. However, some aspects of the methodology were consistent across all of the investigations:

A. Methodology

The allegations that we investigated come from a document drafted in 2019 by former Human Resources Director, Eric Brown, containing a list of sixteen (16) distinct allegations of misconduct in the Judicial Branch (“the Eric Brown List”), as well as general allegations of a discriminatory workplace for women.³ Mr. Brown stated to colleagues at the time that the source of these allegations was former Chief of Staff, Mindy Masias. Mr. Brown verbally presented at least some of these allegations to the presiding Chief Justice and SCAO leadership in a meeting in late December 2018 or early January 2019.

Over the course of this project, one hundred sixty-eight people were interviewed, seven people submitted substantive written statement in lieu of interviewing, and at least twenty witnesses were interviewed two times (or more). Some individuals were identified as potential witnesses and were affirmatively contacted for interviews. Others reached out themselves and asked to participate in the process. We accommodated every witness who requested an interview.

I reached out to both Ms. Masias and Mr. Brown,⁴ via their counsels, to request interviews to obtain additional information on all the allegations in the Eric Brown List. Both Ms. Masias and Mr. Brown declined to meet.⁵

We collected and reviewed hundreds of documents for these investigations, specific to each individual matter. Some materials were provided by the Judicial Branch, some materials were provided by witnesses, and I searched for materials myself – both from witnesses I met with and in a database containing thousands of documents that have been gathered and produced for this and other investigations. Several allegations were decades old, making document gathering more difficult. Other allegations were well documented.

Pursuant to the contract for services, ILG committed to finishing work on all 16 investigations and the workplace assessment project no later than July 28, 2022. All investigations were completed, and all work was done prior to that deadline.

I prepared full reports, as well as Report Summaries, for 13 of the 16 separate allegations. Three allegations were not investigated for the following reasons:

³ Eric Brown List.

⁴ Where “I,” “me” or “my” is used in this section of our report, it is intended to refer to Ms. Rita.

⁵ Mr. Brown’s counsel directly declined a meeting. Ms. Masias’s counsel did not respond to schedule an interview. I provided a one-month window during which counsel could reach out to schedule, and informed counsel I would interpret a non-response as a decision to decline the interview. I did not receive a response to schedule a meeting.

- Allegation 5: “Current pending EEOC complaint against two Justices”: ILG was directed to remove this item from the scope of work, because the matter was in current litigation at the time we were retained. The matter was resolved during the pendency of our work.
- Allegation 13: Court Administrator accused of asking an employee to backdate a document, no disciplinary action taken”: We attempted to investigate this allegation but could find no data on it. Our work on this matter was hampered by the fact that the allegation contained little information, and no one we interviewed knew what event or events it referred to.
- Allegation 14: Director of Court Services and FSD Director”: This appears to be an incomplete statement, and as such it was not investigated.

As part of our agreement, we agreed to produce a final work product suitable for public disclosure. Accordingly, I created Report Summaries from the full reports for each investigation I conducted. These Report Summaries retain the important substantive data I relied upon in reaching my findings, but present the data without as much quotation and in a more abbreviated format. This was done to ensure that confidential information, such as material that would identify witnesses or disclose matters prohibited from disclosure by state law or privilege, could be protected. This was also done so that the results of the investigation could be more easily read and digested than would be the case with the full reports, some which exceed 20 pages in length. Any data that the Judicial Branch considers to be confidential or privileged information, and that I included in my Report Summaries, may appear below as redacted portions within my Report Summaries. The Judicial Branch was responsible for any such redactions pursuant to its independent assessment of confidentiality and/or privilege.

Consistent with my role as an impartial third-party investigator, I determined the list of witnesses, the documents, and any other data required to investigate each separate allegation. No one at the Judicial Branch attempted to, or in fact did, influence or steer the fact-finding or preparation of my full reports or Report Summaries. While the Judicial Branch was provided the opportunity to identify factual errors or typographical issues prior to reports and report summaries being finalized, this review was explicitly limited to proofing and accuracy. Matters of substance, style and ultimate conclusions were not reviewable and were not revised.

I weighed and considered evidence on both sides of each issue to reach findings in each case. Because Report Summaries are, by definition, not full reports, they do not contain all the evidence I gathered and evaluated in each case. They summarize the material evidence and contain my analysis of that evidence, and my findings.

In reaching my findings, I used a preponderance of the evidence standard. This means that an allegation was substantiated if it was more likely than not to have occurred. Conversely, an allegation was not substantiated if it was less likely than so to have occurred.

B. Overview of the investigations of the Eric Brown List of misconduct

The misconduct set forth in the Eric Brown List falls into three categories: allegations of Judicial misconduct; allegations of finance department employee misconduct; and allegations of probation

department employee misconduct. I investigated each set of facts as a separate matter, and individual Report Summaries of that work follows, under these three categories. While each matter is unique, there were some important patterns that arose from this assignment.

In each of the 13 matters I individually investigated, there was at least a grain of truth in the allegation, or the allegation was substantiated on some level. In other words, these were not fictitious events that my investigation disproved.

However, in many of these matters, I also found two important additional things to be true. First, the majority of these instances was responded to in some way by the Judicial Branch. In most instances, Ms. Masias and Mr. Brown were the individuals responding. They investigated many of these allegations and in some cases, recommended actions to be taken (or in some cases recommended no personnel action). These were not generally instances where misconduct was ignored without some response. In many cases, there is significant documentation in the files about what happened. In one instance, the Colorado Commission for Judicial Discipline was notified of the situation, became involved, and acted to assess the situation and impose discipline.

Second, many of the allegations leave out important context, or misstate some facts. The allegation may say, for instance, that “no discipline occurred,” but leaves out the fact that HR did not recommend discipline or the situation did not really merit it. For this reason, the ultimate findings in most of these cases were more nuanced than simply findings that the allegation was – or was not – substantiated.

Finally, it should be noted that the Eric Brown List contains allegations that span more than 20 years of history at the Judicial Branch and encompass 24 separate Judicial Districts, containing more than 4,000 employees and judicial officers. Sixteen allegations of wrongdoing over 20 years and in the context of thousands of employees is not a statistically significant number. It, on its own, does not suggest a systemic problem of harassment within the Branch.

That said, my investigations revealed some problems in how some of these matters were handled (or not handled appropriately) by the Judicial Branch. There are instances where proper investigations were not done, or discipline that was recommended was not proportionate, or that other failures of process and accountability occurred. I point these problems out, directly, in my Report Summaries, below.

Report Summaries of Allegations

Allegations of Judicial Misconduct (1-4, 6, 7, and 16)

Allegation One: Anonymous Letter

“No investigation was held when the anonymous allegations of sexism and harassment were made against the Chief Justice and [an IT leader]. She was told to destroy the letter.”

A. Methodology

I determined that these events occurred in 2017 when an anonymous letter appeared in the mailboxes of the Justices of the Supreme Court. The letter included allegations of sexism and harassment from the Chief Justice and allegations of poor leadership by an IT leader. These allegations were not investigated by HR or anyone else. My investigation did not corroborate that Ms. Masias or any other “she” was told to destroy the letter.

I interviewed fourteen (14) people with knowledge about this situation. These included the former Chief Justice who was the subject of the letter; the IT leader whom the letter was about; other members of the Supreme Court at the time; attorneys from Judicial who had recollections of this situation; the State Court Administrator at the time of these events and his predecessor; and several people who were present at the IT Standing Committee Meeting in question.

There were almost no documents about these events. I sought out documents from SCAO’s HR department, the Judicial Legal Department, and members of the Supreme Court at the time. I also personally searched through databases of materials produced in response to subpoenas issued in related proceedings. There are no copies of “the letter,” no HR records and no investigation or other “files” on the matter. There are several records relating to IT Standing Committee Meetings, which became relevant to these allegations.

I submitted a full report on this investigation to counsel for the Judicial Branch on May 10, 2022. On May 24, 2022, I was directed to prepare Report Summaries on all matters for public release. I completed this Report Summary pursuant to this requirement.

B. Summary of Material Evidence

1. The Anonymous Letter

In August 2017,⁶ each of the sitting Justices on the Supreme Court received an anonymous letter in hard copy form. The letter was delivered to their mailboxes at the Supreme Court. According to witnesses who remember this letter, it contained allegations against the Chief Justice and a member of leadership in the IT Department. The allegations arose in large part from two IT Standing Committee Meetings in January and February 2017, both of which the Chief Justice attended. Witnesses (and perhaps the allegation) have conflated these two meetings into a single meeting,

⁶ One Justice remembered getting the letter right after returning from a family vacation that ended on July 15, 2017. This person’s specific timeframe assisted in determining the timeframe of these events.

but the minutes set forth an overview of what occurred at each meeting:

[January 2017 Meeting Minutes]: . . . [during presentation on Two-Factor Authentication] The Chief Justice expressed strong concern that several judges have told her that technology has made doing their jobs more and more difficult. She added that the more complicated we make it to sign-on, the less likely that they will do it when working from home. She said she believes that productivity has reduced as these technological demands have increased.

[February 2017 Meeting Minutes]: . . . [The Chief Justice] asked what the history of the committee was and who set the priorities for ITS until now. [The State Court Administrator] answered that he worked with and set the priorities for ITS but with so many groups with opposing agendas, prioritizing projects can be difficult. The Chief Justice suggested that the members of the committee introduce themselves and share their reason for being on it.

Several of the (then) Justices had a strong recollection of the letter and what it contained. Primarily, the letter complained about the Chief Justice’s remarks at both meetings. “It mentioned [the Chief Justice] being rough on IT staff.” It said that she “focused her ire on the women in the room in an IT meeting where [the Chief Justice] was upset.” One Justice described it as “a hostile, screaming letter.”⁷

There were also allegations relating to other sex-based misconduct in the letter. It contended that the Chief Justice “appointed more men than women to chief judge spots,” that she was holding women back in leadership opportunities, and that she had chosen a man instead of a woman for the State Court Administrator’s position. It also alleged that a female clerk left because she felt mistreated.

Regarding the IT leader, witnesses remember that the letter complained he was a poor leader and “incompetent.” However, the gist of the letter was focused on the Chief Justice.

The Chief Justice did not have a strong memory of the letter but does remember an IT meeting she described as “disruptive.” At the meeting she recalled asking people “why they were there,” and whether they wanted to work on the tasks the IT group was facing.

2. The IT Standing Committee Meetings and Other Concerns Noted in the Letter

Five people present at the IT Standing Committee Meetings had detailed recollections of what transpired. They remember the Chief Justice being “so angry at our team,” and asking people why they were on the committee. One person remembered the Chief Justice interrupting a woman employee who was presenting on “2FA”⁸ to tell her “You are focusing on the wrong things. You need to make our judges’ jobs easier, not harder.”

Aside from that example regarding the 2FA presentation, none of the witnesses from the meetings stated a belief that the Chief Justice focused her frustration on the women in the group more so than the men. In fact, they all shared the Chief’s frustration with the direction and leadership in

⁷ Throughout this report, I cite to some witness statements in quotations. These remarks are taken from my notes our meetings. While my notes are not verbatim transcripts, they are materially accurate records of what was said.

⁸ Two Factor Authentication.

the IT group. As one individual put it, “I found her frustration something that I resonated with in terms of being frustrated at not understanding, are the courts driving technology or is technology driving the courts?” This person continued, “I actually thought the meeting was useful and it really did spur some structural and leadership changes at ITS.” The Chief’s remarks “were not personal,” but were her “trying to motivate people.” When I asked one witness if they thought the Chief was focusing more on the women in the group than on the men, they said, “That is ludicrous.” Another person said, “I thought a lot of it was pointed at the [male IT leader] . . . and honestly, she was right.”

This frustration with the performance of the IT group is corroborated by draft memoranda I found, showing that the State Court Administrator was contemplating comprehensive written performance plans for at least two leaders in the IT department later in 2017. While these lengthy memoranda are not signed and do not appear to have been finalized, they set forth four single-spaced pages of criticisms of the performance in the IT group. These criticisms included a “lack of a clear vision for the future of our case management system,” a “lack of forecasting regarding the sustainability of certain programs,” a “lack of vision and long-range plans,” and poor communication.

With respect to the other concerns in the letter, I found no corroboration for allegations that the Chief deprived women colleagues of opportunities, mistreated women colleagues specifically, or purposefully chose more men than women for chief judge roles.

No one I interviewed provided examples indicating that the Chief Justice deprived women in leadership of opportunities. Several witnesses said that she treated her women clerks well and her favorite clerks were women. I could not find evidence to corroborate this portion of the allegation.

Most of her colleagues – men and women – described the Chief Justice as difficult to work with at times. However, no one I interviewed said they observed her being hard only on women colleagues. Instead, men as well as women described receiving negative attention, from the Chief, at times. The Chief Justice was described as having extremely exacting standards, working quickly, and being tough on those who did not (or could not) act as decisively and quickly as she wanted them to. Her demeanor was described as blunt, direct, and harsh at times in expressing frustration or impatience with both men and women colleagues. Men and women gave specific examples where they felt the brunt of this kind of attention from the Chief.

With respect to her decisions to appoint chief judges, records show the Chief Justice appointed three men and one woman to chief judge positions during her tenure. As an initial matter, it should be noted that the roster of individuals who are interested in the chief judge position is relatively slim. The position is limited to those judges in a District who express an interest in serving. The position involves significant additional work – taking on responsibility for all the administration of the District, attending meetings, and being responsible for budget and personnel – for no additional pay. More than one person I interviewed identified this position as one of the hardest jobs in the entire Branch. For these reasons, people were not universally enthusiastic about being considered for this job.

In every appointment she made, the Chief Justice reached out to the Districts for feedback. She sought feedback from other judges, professional staff, and employees in each District. This

feedback was a heavy component of each choice and in one instance, the Chief Justice appointed a judge who was not her pick because he was the clear preference of the District personnel.

In the available records and witness memories, I found two women candidates who were interested in chief judge roles but who were not chosen by the Chief Justice. One woman judge was described by the State Court Administrator, who assisted with the process at the time, as not having as much support from the District as the successful male candidate did. The second woman candidate was not chosen because she was under a judicial performance management plan at the time. Of the seven judges who expressed interest in the last two picks the Chief made, six were men and one was a woman. The Chief chose one man in the District where no women applied and selected the woman for the second open position she filled.

All these decisions involved a significant degree of collaboration between the Chief Justice, her administrative staff, and the Districts themselves. No appointment was made without soliciting input from the District where the new chief judge would serve. The evidence suggests that this feedback was of primary importance to the Chief Justice in these decisions.

3. Response to the Letter

At some point, Ms. Masias and the HR department were made aware of the letter, but it is not clear how this occurred. She and Mr. Brown reached out to the IT leader named in the letter to ask him about it. They “handed [him] the letter” and asked him if he knew who had written it. He had never seen it before, so answered that he did not know who wrote it. The IT leader did not have a strong memory of what the letter contained but like other witnesses, remembered that it focused on an IT Standing Committee Meeting (or Meetings) and the Chief Justice’s remarks to the IT group.

Four Justices remembered that there was some discussion of the letter among the Chief Justice and Associate Justices after the letter was received. “[The Chief] got us together to talk about it. I don’t remember very much. . . . I am pretty sure she presented this and said, ‘What do you think?’ I think it was agreement of the Court that there was not anything there.”

Ultimately, there was no investigation conducted or any other response to the letter. As one Justice recalled, “We left it with the Chief Justice to determine the response. This was consistent with our practice at the time.” Another remembered, “[A]s was typical at the time, we deferred to the Chief as to any response.”

With respect to the allegation that Ms. Masias was directed to destroy the letter, no one had any direct evidence on this point. One Justice recalled, “[The letter] went to everyone including the Chief. Mindy was made aware of it . . . [the Chief Justice] might have instructed Mindy to throw it away because the Chief Justice was dismissive of it, not that she felt there was anything to it. To the contrary. It was someone overreacting to her speaking tough with IT.” Another Justice said, “[The Chief Justice] was dismissive of the letter and may have conveyed the same to Mindy.”

An attorney in the Legal Department remembered speaking to someone at the time (they could not remember who) about a possible investigation of this matter. This attorney recommended that no

investigation be conducted. “These were random allegations I heard about, and the Chief Justice was not investigated because there was nothing to investigate. I just remember it was anonymous, nothing factual, that’s all I remember. I told this person, ‘You can’t investigate a complaint with no facts.’”

I asked the Justices (both current and former) if they believed the letter ought to have been investigated. With the benefit of hindsight, many said they wished it had been managed differently. As summarized by one Justice, “In a general view, I don’t think you should ask the person who is accused to investigate themselves.” Another said, “I wish [the Chief Justice] had taken it more seriously.”

C. Analyses and Finding(s)

1. Analysis

The Judicial Branch anti-harassment and Anti-Discrimination policy at the time of these events reads:

(4) Investigation. Reports of harassment and discrimination from employees warranting an investigation **shall be referred to the Human Resources Division of the State Court Administrator’s Office for investigation.** In some instances, an initial inquiry will be completed as a primary review by the Human Resources Division to determine whether there is cause to conduct a full investigation. A full investigation, at a minimum, will include conferences with the complainant, the alleged perpetrator, and any witnesses to the incident. Any party involved in a harassment complaint may submit any documentation they believe to be relevant to the matter at issue to the investigating authority.

(Emphasis added.)

My investigation revealed evidence that corroborates many elements of this allegation. It is corroborated that members of the Supreme Court each received a hard copy anonymous letter in their mailbox in the summer of 2017. It is substantiated that it contained allegations of sexism and harassment by the sitting Chief Justice and to a lesser extent, a leader in the IT department. It is substantiated that the complaint arose from the Chief Justice’s actions during two IT Standing Committee meetings in early 2017. At these meetings, the Chief Justice directed frustration at the group for their failure to meet the needs of their primary clients – the courts. This includes one example of the Chief stopping a presentation by a woman on 2FA. It is also substantiated that no investigation of the allegations in the letter occurred, despite Branch policy requiring one. Instead of treating this letter as a complaint that required an investigation, it was largely discounted. Matters were left to the Chief Justice—the person complained about—to manage.

Conversely, I did not find evidence to corroborate that the Chief Justice likely mistreated anyone, whether in the IT meetings or elsewhere, because of sexism or unlawful harassment. While witnesses described the Chief Justice’s frustration with IT and her brusque demeanor, no one stated a belief that her behavior was focused on anyone because of sex. The volume of evidence suggests that the Chief could be direct and brusque with men as well as women.

In addition, the evidence suggests that filling the chief judge roles is not easy and there is not a

wide variety of candidates to select from. I found that the Chief Justice employed a collaborative process in making her appointments to chief judge positions, heavily weighing District feedback. There is insufficient evidence to suggest that there was any sex-based pattern to those choices.

There is likewise insufficient evidence to corroborate the allegation that Ms. Masias was told to “destroy” the letter. That said, it is likely that she received a clear message that the Chief was dismissive of the letter and what it contended. Certainly, no one told Ms. Masias to investigate this letter or treat it as a serious matter.

This dismissiveness leads to my final point. Regardless of whether the Justices found the allegations credible on first reading or not, the letter should have been investigated. It set forth an employee complaint of potentially unlawful behavior by the Chief Executive of the Branch. The Branch’s policy clearly states that such matters “shall be referred to the Human Resources Division of the State Court Administrator’s Office for investigation.” Even without such a clearly worded policy, the decision not to investigate this matter fails to meet basic standards for HR, legal, and/or investigation best practices. Complaints about any respondent, no matter how highly placed, should be independently assessed and investigated if they implicate the organization’s legal obligations to maintain a harassment free workplace for employees. This is particularly true where, as here, an organization intends to send the message that no one employee or judicial officer is above the law.

2. Findings

For the reasons set forth above, I find:

- The allegation that an anonymous letter stating sexism and harassment complaints against the Chief Justice and IT leader was received by the Supreme Court is **Substantiated**. I note that the underlying contentions in the anonymous letter, that the Chief Justice behaved in a way that implicates sexism and prohibited harassment, are **Not Substantiated**.
- The allegation that the letter was not investigated is **Substantiated** and this is problematic under the Branch’s Anti-Harassment and Anti-Discrimination policy.
- The allegation that Ms. Masias (or another “she”) was directed to destroy the complaint letter is **Not Substantiated**. While I found no material evidence to corroborate this contention, the letter was discounted – if not physically destroyed – by leadership.

Allegation Two: Pornographic Images

Judge sent pornographic video over judicial email; nothing happened to him; he was appointed chief judge less than two years later. Judge sent a video over Judicial Branch email to another judge. The video depicts a woman performing sexual acts on a bald man's head. The judge suffered no repercussions for sending the video, and in fact, was promoted to chief judge a few months later. Turned the matter over to the Chief Justice who took no action.

A. Methodology

I determined that between 2000 and 2002, a judge in the Branch received a 5-10 second “GIF” showing two people, large breasts, and a bald head.⁹ Ms. Masias and Mr. Brown did an initial HR inquiry into this matter. However, the evidence does not support the allegation that the judge in question sent the GIF to another judge over judicial email. Moreover, I found no evidence to show that Ms. Masias and Mr. Brown recommended that discipline occur or that they reported this situation to the Commission on Judicial Discipline, as would have been required if this had occurred as stated. I located no evidence suggesting that the Chief Justice was made aware of this matter and failed to act. The judge in question was eventually promoted to chief judge in his District.

I interviewed eight (8) people who had knowledge about this situation, including both the Judge who allegedly sent this material and the Judge who allegedly received it. I also interviewed personnel from legal, who remembered this situation, and two people from the Commission on Judicial Discipline who were able to search for records (and did not find any). I was able to determine what likely happened from these interviews.

I did not locate any documents that were relevant to the allegation. I sought out documents from the State Court Administrator’s Office (“SCAO”) HR department, Judicial’s Legal Department, the Commission on Judicial Discipline, and by personally searching through databases of materials produced in response to subpoenas issued in related proceedings. There were no copies of any investigation materials, the image(s) in question, or other records.

I submitted a full report on this investigation to counsel for the Judicial Branch on May 10, 2022. On May 24, 2022, I was directed to prepare Report Summaries on all matters for public release. I completed this Report Summary pursuant to this requirement.

B. Summary of Material Evidence

I found and interviewed the Judge who is alleged to have sent this material. He remembered this situation well:

⁹ An animated GIF is an image encoded in graphics interchange format (GIF), which contains a number of images or frames in a single file and is described by its own graphic control extension. The frames are presented in a specific order to convey animation. An animated GIF can loop endlessly or stop after a few sequences.

I remember this situation. I did receive an email with some kind of video in it, unsolicited. Because I knew the person who sent it and I thought it was just an email, I opened it and low and behold there it was. I can tell you that it did involve a man and a woman in a bathtub and that is the only thing I saw because I turned it off and deleted it. The person who sent it to me passed away this year. He did not work for Judicial.

According to the Judge, Ms. Masias and Mr. Brown came to speak to him about this material sometime after he received it. They had the video on Ms. Masias's laptop and when she showed it to the Judge, he told her he wondered how she had that material because he had deleted it. She told him, "You sent it to [another judge, same first name as me]" and the Judge replied, "That is not true... What I did do was I wrote an email to the person who sent it to me and said please don't do that again." The Judge said, "[H]e never did ever send me anything like that again. I told him I didn't appreciate him sending me stuff like that. I gave them [Masias and Brown] a copy of that email that I sent him. I assume Ms. Masias and Mr. Brown still have it. And they left." The Judge heard nothing further about this, and I could not find any investigative file, investigation report or documentation of any report to the CCRD on this matter.

I also interviewed the Judge who allegedly received this material. He shares the same first name as the judge who received this video from the outside sender. He denied receiving such material or ever talking to Ms. Masias or Mr. Brown about it:

I do not recall ever getting something like that. I would have immediately emailed the chief judge and said this is inappropriate. I don't believe I was sent that. I would have been offended. I knew Mindy she was great. We talked at judicial conference. I don't know who Eric Brown is. I never had a conversation with her about that. . . . I not only do not remember, this did not happen. I did not talk to Mindy about this.

The Judge who was accused of sending this material said that it could be possible that he accidentally forwarded this material to the judge whose name he shares. He indicated that months later, he was trying to forward some material to himself at home, and this other judge's name auto populated in his outlook message. "I thought I'll be darned, maybe that happened – and maybe I did accidentally send it to [the other judge] when what I was trying to do was send it to my home computer so I could send it back to the guy who sent it to me. I didn't want to use my judicial email to do that. I never got the email on my home computer. That is the only thing I can figure out."

The Commission on Judicial Discipline has no records of this situation. I interviewed two Executive Directors, both of whose tenure occurred after these events. The first said that the records prior to his tenure were not well kept and it was possible that a complaint came in and the documents were lost. He conducted a thorough search but could not locate any records of this situation being reported to the Commission. The second Executive Director undertook a search as well and could not locate any materials relating to this situation.

At the time of these events, there was a Memorandum of Understanding (the "MOU") between the HR department and the Commission on Judicial Discipline that imposed an obligation on HR to report such matters to the Commission. Here, it does not appear that Ms. Masias or Mr. Brown made such a report.

I found no evidence to corroborate that this matter was brought to the attention of a Chief Justice. All the former Chief Justices I interviewed were asked about this situation and none of them remembered hearing about it.

C. Analyses and Finding(s)

1. Analysis

The evidence does not support a finding that this set of events took place as framed in the allegation. This is true for three reasons. First, the statement of the sending Judge (the alleged sender of the GIF) is credible, and he denied sending the GIF to any judicial colleague, particularly purposefully. Second, the ostensible recipient Judge denied receiving the GIF and credibly denied having any conversation with Ms. Masias about it. Third, the absence of an investigation report, or a report of misconduct to the CCJD, indicates that Ms. Masias and Mr. Brown did not see this event as necessitating a serious response. This suggests that the transmission did not occur, as alleged. The sum of this evidence does not support a substantiated finding on a preponderance of the evidence basis.

The alleged sending Judge, who retired some years ago, agreed to speak to me while under no obligation to do so. In his interview, he admitted that he received this GIF without diminishing its inappropriateness, affecting a poor memory about the event, or trying to minimize the situation. He owned that he received this material, that it was not the kind of material that should have been coming into his judicial email, and that he spoke to Ms. Masias and Mr. Brown about it. The Judge did not adamantly deny that he sent this material, and in fact acknowledged that he could have accidentally sent it because of an autofill mistake with his email. He could have denied this. Instead, he voluntarily had a difficult conversation with an investigator tasked with looking into judicial misconduct and in doing so, directly admitted somewhat embarrassing facts. He acknowledged he might have inadvertently done something problematic, while providing a believable reason why this could have occurred. The Judge demonstrated that he was not trying to evade responsibility or hide anything. The sum of this evidence strengthens his credibility.

The alleged sending Judge's credibility is further enhanced by the statement of the alleged recipient judge, who is firm that he did not receive this material and even more adamant that he never spoke to Ms. Masias about it. This suggests one of two things: the material was never sent to the alleged recipient, as the purported sending judge contends; or it was sent inadvertently and somehow HR intercepted it without the alleged recipient's knowledge. Without speaking to Ms. Masias, I cannot determine which of these is more likely to have occurred. Either way, the alleged recipient firmly denied receiving this material and this was a strong piece of evidence weighing against this allegation.

Finally, the evidence suggests that whatever information Ms. Masias and Mr. Brown gathered in looking into this situation, it was not enough to trigger a full investigation or a report of judicial misconduct to the CCRD. Ms. Masias and Mr. Brown did not interview the alleged recipient, which would have been a critical step in a full-fledged investigation into this event. They did not create an investigation report. Further, Ms. Masias knew how to report judicial misconduct to the CCRD because she had done it before, but no records were found indicating that a report was made. If Ms. Masias and Mr. Brown elected not to move forward with a full investigation or CCRD

report, as evidence indicates, this suggests that they did not believe they had cause to do so. Ms. Masias was an experienced HR practitioner and investigator at the time, and she completed comprehensive reports of other misconduct allegations I am investigating. The absence of such a report here supports a finding that Ms. Masias thought this matter insufficiently significant to fully investigate or to notify the CCJD about.

2. Findings

For the reasons set forth above, I find

- The allegation that a Judicial Officer transmitted inappropriate material to another Judicial Officer over Judicial email is **Not Substantiated**.
- It is **Substantiated** that no discipline against the alleged sending judge ensued here but as noted above, this was not likely inappropriate. Discipline does not appear to have been recommended by HR and was likely not called for under these facts.

Allegation Three: Release Agreement with Law Clerk

“Negotiated a release agreement with a law clerk who accused her COA judge of harassment in order to keep the COA judge ‘safe’ during the selection Supreme Court Justice selection process per the Chief Justice.”

A. Methodology

My investigation determined that these events happened during the period of September 2013 to August 2014. While the investigation corroborated certain portions of the allegation, I did not find that the evidence supports a conclusion that a release agreement was signed to keep a Court of Appeals judge “safe” in a Supreme Court selection process. This allegation misstates certain facts and omits essential information.

I interviewed seventeen (17) people with knowledge about this situation and received written response to questions from an 18th individual. I interviewed the (then) Court of Appeals Judge involved in this situation, members of the Judicial Nominating Commission at this time, the Chief Justice at that time, and members of the legal and HR teams who were aware of this situation and assisted in its resolution. I met with the HR representative who interviewed the woman law clerk—on whose behalf her male co-clerk went to HR with the harassment complaint. This HR representative also interviewed the male co-clerk at the time of these events. I interviewed attorneys who weighed in on the situation and helped advise on next steps at the time.

I reached out to the woman law clerk and her male co-clerk for interviews. The woman law clerk did not respond to four attempts to reach her, including reaching out via a family member. The male co-clerk responded through his attorney and declined an interview but provided answers in writing to questions posed via email.

I sought out records relating to this situation and found a large amount of documentary evidence from both the Court of Appeals Judge this relates to and the Office of the State Court Administrator. These records included email and other communication, audio recordings of interviews with the woman law clerk as well as her male co-clerk, records from the Judicial Nominating Commission for the Supreme Court nomination process at issue, records relating to the law clerk’s leave of absence, records relating to the law clerk’s compensation, an Agreement and Release of Claims entered into between Judicial and the woman law clerk, and correspondence from Ms. Masias indicating the allegations of harassment made by the woman law clerk were “unfounded.”

I submitted a full report on this investigation to counsel for the Judicial Branch on May 10, 2022. On May 24, 2022, I was directed to prepare Report Summaries on all matters for public release. I completed this Report Summary pursuant to this requirement.

B. Summary of Material Evidence

The woman law clerk was hired on August 19, 2013. Early in her employment with the Branch, her male co-clerk invited her out socially to meet the clerk who preceded her (“her predecessor clerk”). Her male co-clerk thought it would be helpful for woman law clerk to meet the person

who had held her job previously. He also knew the woman law clerk was new in Denver and did not know many people. He invited the woman law clerk out for an evening with her predecessor clerk (and his girlfriend), and she accepted. The four went out on September 11, 2013.

There is no allegation that there was any inappropriate behavior at this social event. After the social gathering, when co-clerk was dropping woman law clerk off at home, she told him she was uncomfortable with their Judge. She said he had “touched her shoulder.” Male co-clerk was concerned by this statement.

The next day, he met with the woman law clerk and told her he would go to Human Resources with her, or for her, to report her concerns. She told him she was okay with him going to HR and he did so that day, reporting the statements woman law clerk had made to him.

HR started an immediate inquiry. An HR team member interviewed the male co-clerk and the woman law clerk on September 12, 2013. The interviews were recorded, and I listened to them. In the recording, the woman law clerk said that the Judge “touched her on the arm (once) when I first met him” and sent “jokey” texts to her and her co-clerk at night. She said she could not remember what the texts said precisely but recalled there was a joking discussion about wearing shorts in the office. She said she thought her co-clerk wanted to make it seem as though they were dating, and she objected to him making their relationship more personal. The woman law clerk also said she felt a difference in behavior towards her from the Court of Appeals Judge, starting a week before, when he “stopped talking to me about the work.” She said he and the male co-clerk would speak in the mornings and “ignore” her.

Ms. Masias interviewed the Judge on September 15, 2013. She initially asked him if he had any information about the woman law clerk’s allegations regarding her co-clerk: “She said, ‘There’s been an allegation against your clerk.’ The gist was that [the co-clerk] was showing her unwarranted attention – asking her to go out to bars- asking to walk her home from clerk happy hour.” According to the Judge, “[I]t was a really short conversation, 5-10 minutes.” The Judge said, “Toward the end she then said, ‘Was there some issue of you touching her elbow, even inadvertently?’ I remember that vividly. I said ‘No.’ That was about the size of that. [The woman law clerk] is a very nice woman, a really introverted shy person, a person who needs space. I would have been extremely careful. I was certain I had not touched her elbow. She said, ‘Thank you we will let you know if we need anything.’”

According to the Judge, Ms. Masias returned the same day about two hours later, and told him that the woman law clerk had disclaimed her allegation about him. He stated Ms. Masias told him, “I just want to let you know we have talked to [the woman law clerk] and she said you have never touched her elbow.” “That was the last I heard about anything relating to my involvement in this.” He was asked about the touch on the arm, but not about “jokey” texts, discussions of wearing shorts, or the allegation that he “ignored” woman law clerk.

The woman law clerk went out on administrative leave, which started on the date she interviewed with HR. She was out on leave for one month. It is unclear who decided upon or authorized the leave.

While the woman law clerk was out on leave, the Court of Appeals Judge interviewed for a seat on the Colorado Supreme Court. He had submitted his application on September 13, 2013, two days before he was aware of this harassment complaint. He interviewed on either October 8th or 9th, a day or two before the woman law clerk returned from leave. He was not selected as a finalist. According to the Judge and the commissioners I interviewed from the Supreme Court Nominating Commission, this matter was not raised in the interviews.

I could not find any evidence that further work was done on the HR inquiry after the initial three interviews. Neither of the clerks were re-interviewed, no additional witnesses were interviewed, and the Judge was not re-interviewed after his initial meeting with Ms. Masias on September 15, 2013. There is no investigation file or report.

When the woman law clerk returned from leave on October 10, 2013, she was placed in a different assignment. A decision was made to change her work assignment in discussions with the Human Resources department, the Legal Department, and the Chief Judge of the Court of Appeals. She was moved out of the chambers where she had been hired and was made the “Senior Judge Clerk.” She provided clerking assistance to all the Senior Court of Appeals judges and shared an office space with the clerk of the court.

This new assignment did not prove successful for the woman law clerk. According to the clerk of the court, she began exhibiting attendance problems. The woman law clerk reached out with concerns about her new role on April 10, 2014, and raised concerns of unlawful treatment in her reassignment:

It's actually illegal to have an incomparable job to your original one after reporting sexual harassment (even though someone reported it on my behalf), so I don't think I should have moved from being a lawyer to being a secretary when I came back from the administrative leave (which I think I probably shouldn't have been put on). I was trying to go along with everything to be agreeable, but it gave me a huge career problem that I didn't end up getting the legal experience that I had originally intended, and I have no job reference for legal work right now. I had actually been considering talking to human resources about it again recently anyway. . . . I feel like I need to straighten out my job situation again with human resources and was wondering if you think that would be the next best step.¹⁰

The recipient of this email had begun working with HR and the Chief Judge about a response when the woman law clerk sent an email two days later to Ms. Masias saying the situation “has resolved itself.”

Two months later, the woman law clerk sent several emails out over a 24-hour period referencing problems with her assignment, the previous concerns she had, and her belief this reassigned clerkship would hurt her career prospects. Among other things, she said, “I probably can't be a lawyer because I wouldn't go to bars with [my co-clerk] all year or he would throw me under the bus (to eliminate the job competition not because of attraction) by reporting himself and [the Court of Appeals judge] to human resources (I do not think this was sane behavior and therefore do not judge him for it), but I'm not completely sure what to do next.” She said, 19 minutes later, “And

¹⁰ Email from woman Law clerk dated April 10, 2014.

if being [her co-clerk's] fake girlfriend for a year was the price I needed to pay to be a lawyer, of course, it wasn't worth it." She accused HR of trying to "cover for" her male co-clerk and said that "[A]s long as anyone retaliates against me [] HR can't help me anyway."

The woman law clerk asked for the remainder of her clerkship to be served from home so she could look for another job. Two days later, the Chief Judge granted that request. He wrote a letter to the woman law clerk thanking her for her work and stating that she would be paid through the end of her agreed-upon clerkship. He also said, "Further, we will place you on paid administrative leave as of today's date to allow you time to explore future employment opportunities per your request."

On June 26, 2014, there was an exchange of emails about her photograph being sent to State Patrol and about restricting her ability to send emails to members of the Judicial Branch. On June 27, 2014, Ms. Masias asked for access to the woman law clerk's email saying it was a time sensitive situation because of safety concerns.¹¹

One member of the legal team stated they were "appalled" with how this situation "had come down":

She files a complaint and then she is penalized by putting her off in a corner. I know they thought that was a good idea, but I think that was traumatizing. Legal wasn't consulted about putting her in a different position. I was not involved until the [family member] reached out [to the Legal Department employee]

The referenced family member of hers, who is an attorney, reached out to the Judicial Branch about negotiating an agreement that would give the woman law clerk a clean reference for the year and the chance to put this experience behind her [according to the attorney for Judicial who negotiated the agreement]. A release agreement was negotiated between the family member (on behalf of the clerk) and the lawyer for the Judicial Branch. It was signed on August 4, 2014. The agreement provided the woman law clerk would be paid through the end of her clerkship year, which was scheduled to end on August 31, 2014, and would receive a good reference. Both these contingencies were fulfilled.

The attorney who negotiated the agreement on behalf of the Judicial Branch indicated that the main concerns during the creation of the release were the recent statements about retaliation by the woman law clerk, and not the earlier allegations of harassment, which Ms. Masias had determined were unfounded. They said:

In this case – I don't remember ever thinking it was a sexual harassment claim against the judge. There was some discomfort with the clerk and maybe the judge favored the male clerk. I can't remember any facts that he sexually harassed her. I may not have been told those facts.

But it was a really bad way to address her concerns – she was in a way arguably retaliated against. I don't think she actually was and I think instead that they didn't know what to do with her. But it was a bad call unless she asked for this different assignment and wanted to do something like that.

¹¹ No one else I interviewed remembered what the specific safety concerns were about.

In an email from July 2014, Ms. Masias made the following statement about her finding in the HR inquiry:

Jerry is out for the next week, so I will share my thoughts. . . . As far as the gag order, I don't think I feel comfortable giving on this either since she can discuss that she filed a complaint against the judge of sexual harassment, but she doesn't need to divulge **that it was unfounded**. This would be so damaging for the judge. (Emphasis added.)

Finally, the allegation states the settlement agreement with the woman law clerk was entered to “[K]eep the Court of Appeals judge ‘safe’ during the selection Supreme Court Justice selection process **per the Chief Justice.**” (Emphasis added.) I interviewed both the sitting Chief Justice at this time as well as the person who was poised to assume that position several months later. Neither one acknowledged any agreement or plan to settle this complaint, or otherwise keep it quiet to keep this Court of Appeals Judge “safe.” No other witness or document provided corroboration for this allegation.

C. Analyses and Finding(s)

1. Analysis

The Judicial Branch Anti-Harassment and Anti-Discrimination Policy in effect at the time of these events reads:

(4) Investigation. Reports of harassment and discrimination **from employees warranting an investigation shall be referred to the Human Resources Division of the State Court Administrator’s Office for investigation.** In some instances, **an initial inquiry** will be completed as a primary review by the Human Resources Division to determine whether there is cause to conduct a full investigation. **A full investigation, at a minimum, will include conferences with the complainant, the alleged perpetrator, and any witnesses to the incident.** Any party involved in a harassment complaint may submit any documentation they believe to be relevant to the matter at issue to the investigating authority.

(Emphasis added.)¹²

The credible evidence in this investigation does not support the allegation. This is so for three primary reasons. The timeline does not support a substantiated finding; the evidence does not corroborate that the harassment complaint, which was ultimately unfounded, was concealed; and the release agreement was more likely than not motivated by the later concerns the woman law clerk raised.

First, the allegation that a settlement agreement was negotiated to protect the Court of Appeals Judge in his application for a seat on the Colorado Supreme Court is refuted by the timeline. The Court of Appeals Judge applied for the Supreme Court seat on August 13, 2013, and a final decision was reached in the nomination process on October 25, 2013. The Branch began negotiating a release agreement with the clerk no earlier than June 26, 2014 – eight months after

¹² Chief Justice Directive: 08-06, Attachment A (Amendment date July 2017).

the selection process was complete. The timing is persuasive evidence that the agreement was not negotiated to protect the Court of Appeals Judge in his Supreme Court selection process.

Second, there is no credible evidence that the harassment complaint was improperly concealed during the Supreme Court nomination process. On the date the Court of Appeals Judge interviewed for the Supreme Court, he credibly did not believe there was any ongoing HR investigation involving him. He had been interviewed by HR on September 15, 2013 and was told the same day that the woman law clerk was disclaiming her allegations against him. He heard nothing further about it.

I looked to additional evidence to determine whether or not the Judge's statements here are credible. As the person accused I could not rely on his statements alone. Here, his credibility is strengthened by corroboration from other evidence. First there is no record showing that a "full investigation" took place here. There is no evidence of additional investigative work after September 15th, 2013. The Court of Appeals judge was not interviewed about several other statements the woman Law clerk made, there is no evidence that HR interviewed additional witnesses, and there is no record of an investigation report. This suggests that HR did an "initial inquiry," per Chief Justice Directive 08-06 but did not believe there was enough evidence to proceed to a full investigation. Furthermore, the timing of the woman Law clerk's return to work – the day after Supreme Court interviews – suggests the initial inquiry was likely over before the Court of Appeals judge interviewed. The sum of this evidence suggests, consistent with Ms. Masias's statement in the July 19, 2014, email, that the allegations were promptly determined to be unfounded.

Finally, the evidence suggests the release was ultimately negotiated and executed because of later complaints from the clerk, implicating retaliation concerns but not involving the Court of Appeals Judge. The timeline strongly supports this finding.

Starting in April 2014, more than seven months after the initial harassment inquiry, the clerk made a series of statements that she felt retaliated against by the new job placement she received when she came back to work after her leave. She complained about this with urgency and some hyperbole. Her statements raised retaliation concerns on their face. Upon receiving these concerns, the woman law clerk was permitted to take leave for the remainder of her term and negotiations on a Release Agreement commenced thereafter.

The lawyer for Judicial who drafted the release had these later allegations in mind when they negotiated the agreement. This attorney believed that a Release Agreement was not only necessary under these facts but also fair to the clerk. They had no recollection of any concern about sexual harassment allegations involving the Court of Appeals Judge being the motivator for the Release. Instead, they remembered the motivation being these later allegations. I found their memory of the events persuasive because it is consistent with the other evidence, which shows direct connections between these retaliation concerns and the release agreement.

Finally, I note that throughout this chronology, the woman law clerk's concerns were objectively mishandled. Initially, a decision was made to place the woman law clerk on leave after her harassment concerns were raised, with no evidence that she requested this. Neither Respondent

was placed on leave from the workplace. Moreover, the woman law clerk was returned to an objectively different and arguably less prestigious job placement when she returned. When she complained about this new posting, in language clearly raising retaliation concerns, no investigation was conducted. She was placed on leave (again) while her departure was negotiated. Someone should have investigated this situation, but no one did. These decisions failed to meet the requirements of Chief Justice Directive 08-06 or best practices from an HR, legal, and/or investigative standpoint.

2. *Findings*

For the reasons set forth above, I find:

- The allegation that a settlement agreement was negotiated with a law clerk to keep a Court of Appeals Judge ‘safe’ during a Supreme Court nomination process is **Not Substantiated**.
- The allegation that this agreement was negotiated, and/or this situation was concealed, by the Chief Justice or anyone else is **Not Substantiated**.
- The processes that HR and Court Administration utilized to address the concerns raised by this clerk were not managed appropriately or consistently under applicable policy or standards for HR, legal or investigations best practices.

Allegation Four: Hairy Chest

“Judge exposed and rubbed his hairy chest on a female employee’s back; no action taken against the judge; Judge is currently being considered for the Senior Judge Program.”

A. Methodology

My investigation determined that the events referenced in this allegation occurred in 2007. I substantiated that this episode of misconduct took place, however, I did not substantiate that “[N]o action [was] taken against the judge.” He was referred to the Colorado Commission on Judicial Discipline and was privately admonished. I substantiated that this Judge was selected for participation in the Senior Judge Program. He served in that role for approximately two years until the Judicial Branch learned about the specific misconduct referenced above. Upon learning this information, the Judge’s contract was terminated.

To investigate this matter, I sought out witnesses who were likely to have evidence about this allegation and interviewed ten (10) individuals who had recollection of this incident. Most witnesses were present or former Judicial Branch employees or judges two witnesses work or worked with the Commission on Judicial Discipline, and one witness I met with has deep knowledge of the Senior Judge Program. Five witnesses provided substantial direct evidence about what took place and five had a more attenuated recollection of the events.

I also sought out any existing documentation from the State Court Administrator’s Office’s Human Resources department, the Commission on Judicial Discipline, and the Senior Judge Program. I was provided with documentation from the Commission on Judicial Discipline and the Senior Judge Program. I located other materials in the State Court Administrator’s Office’s files, which enabled me to identify the judge and the timeframe. I reviewed confidential documents from the Commission on Judicial Discipline pertaining to this matter, which were provided to me by its Executive Director under an exception to the Commission’s strict confidentiality rules.¹³

I submitted a full report on this investigation to counsel for the Judicial Branch on May 10, 2022. On May 24, 2022, I was directed to prepare Report Summaries on all matters for public release. I completed this Report Summary pursuant to this requirement.

B. Summary of Material Evidence

In late November or early December 2007, the Chief Judge of the District where this episode occurred was made aware of a complaint from an employee of the District. The Chief Judge notified the Human Resources department of the State Court Administrator’s Office (“the State Court Administrator’s Office”) and according to the Chief Judge, “they took over the investigation.” The Chief Judge had no direct conversation with either the employee or the Judge involved and “no one from State Judicial ever talked to [him] about it . . . before, during or after.”

¹³ The Colorado Constitution provides that records of proceedings before the Commission “shall be confidential,” and the Colorado Rules of Judicial Discipline echo this requirement. I have not included quotations from these materials, or confidential matters contained therein, because these matters must be maintained confidentially pursuant to Colorado State law.

Ms. Masias conducted an inquiry into this allegation. As noted above, the State Court Administrator's Office's Human Resources division had an MOU between itself and the Commission on Judicial Discipline, which stated that Human Resources would "inform the [Commission on Judicial Discipline] immediately if it became aware of conduct by a judge has occurred which "may have violated the Judicial Branch's Anti-Harassment Policy or otherwise engaged in conduct in violation of federal civil rights laws." The MOU also stated that if the allegations involve a Judicial Branch employee, Human Resources "will conduct an investigation" and will forward its results to the Commission on Judicial Discipline for its consideration in initiating its own proceedings.

Ms. Masias interviewed witnesses on November 28, 2007 and prepared a report to the Chief Judge of the District, dated December 5, 2007. Her key findings were that:

- The judge unbuttoned his shirt, exposed his chest hair, and touched a female employee with his chest;
- The judge made a remark to the employee to "come sit on [his] lap;" and
- The judge engaged in inappropriate adult banter in the workplace.¹⁴

In her report, Ms. Masias made the following "Intermediate Recommendations:" that the Chief Judge discuss with the Judge the severity of the complaint made against him; inform the Judge that he should not touch staff with any part of his body including, hugging, tapping, or positioning to move past in tight proximity; warn the Judge that banter that is deemed unprofessional should not continue; and require the Judge to attend Anti-Harassment training and review the Colorado Judicial Department Anti-Harassment policy. She also made the following "Recommendation:" that Human Resources would assist the Chief Judge in "drafting a letter detailing the bullet points found in this letter," which "will be sent to the [Commission on Judicial Discipline] for their review."

It is not clear whether this unsigned report was ever sent to the Chief Judge, who had no memory of receiving it. He denied speaking with Ms. Masias, speaking with the Judge, or writing a letter to the Commission on Judicial Discipline. He also denied receiving any Human Resources guidance on doing any of these things.

Ms. Masias prepared a draft letter to the Executive Director of the Commission on Judicial Discipline, dated "Decemeber [sic] the State Court Administrator's Office, 2007." It contained her findings and intermediate recommendations, set forth above. She described this letter as "an official letter of complaint." Because this is not dated or signed, it is unclear if this letter was the final transmission of the information to the Commission on Judicial Discipline.

On March 17, 2008, Ms. Masias wrote another letter to the Executive Director of the Commission on Judicial Discipline. In this communication, she informed him that the Judge in question was enrolled in an Anti-Harassment course, as directed in her report.

¹⁴ A fourth allegation was not substantiated. It stated that the Judge made physical contact with the employee on the hips while passing her in close proximity in a copy room in the chambers. Ms. Masias did not substantiate this allegation.

On March 6, 2008, the Executive Director of the Commission on Judicial Discipline brought this matter before the Commission for its consideration. He included the data from Ms. Masias's Human Resources investigation. The Commission instituted its own case pursuant to Rule 12 of the Colorado Rules of Judicial Discipline. It conducted its own investigation, sought a response from the Judge, and deliberated upon the matter. The Commission on Judicial Discipline issued a private admonishment to the Judge in May 2008.¹⁵

On March 17, 2010, the State Court Administrator's Office drafted a notification to the Commission on Judicial Discipline that there were allegations of further misconduct by the same Judge. The letter states, "[T]hat judge [Name Redacted] has been seen kissing a female employee on the "lips" and on "top of there [sic] heads." This letter is not dated or signed, and the Executive Director of the Commission on Judicial Discipline stated that he could not find any record that it was received by the Commission. The State Court Administrator at the time has no memory of sending this letter or of the allegations it describes.

This Judge applied for the Senior Judge Program in 2018. As part of the process at the time, the State Court Administrator's Office reaches out to the Commission on Judicial Discipline, Attorney Regulation Counsel to determine if there have been any previous disciplinary matters. The Commission on Judicial Discipline disclosed the 2008 private admonishment, without detail, to the State Court Administrator's Office in response to this outreach. The Chief Justice, State Court Administrator, Senior Judge Program Administrator and Director of Court Services all signed off on this judge's application. However, none of them followed up on this notification from Commission on Judicial Discipline. None of them asked the Judge what the private admonishment related to, and none of them reached out to the Commission on Judicial Discipline for further details.¹⁶

The Judge was selected for the Senior Judge Program and served in that program for approximately two years. When the Eric Brown List was made public and personnel at the Judicial Branch realized that this Judge's behavior was described in Allegation Four, this Judge's tenure as a Senior Judge was terminated.

C. Analyses and Finding(s)

1. Analysis

My investigation revealed straightforward facts on this issue. The credible evidence confirmed that there was a situation from 2007 involving a male judge behaving inappropriately toward women (one in particular) on his staff. The documentary and witness evidence are undisputed on that point. The behavior involved serious misconduct including displaying naked skin, the physical touching/rubbing of his chest on a woman's back, and inappropriate commentary. Moreover, it is

¹⁵ This discipline was disclosed to SCAO as part of the judge's later application for the Senior Judge Program. For that reason, I am including this data in the Report Summary as non-confidential data.

¹⁶ Recent changes to the Senior Judge Program, effective May 4, 2021, by House Bill 21-1136 render any judge who has received "private admonishment, private reprimand, private censure, public reprimand, public censure, suspension, or removal" from the Commission on Judicial Discipline, ineligible for participation in the Senior Judge Program.

corroborated that this Judge applied and was selected for the Senior Judge Program after these events transpired.

Although it is inaccurate to state that “no action was taken” as a result of this Judge’s behavior, it is accurate to conclude that insufficient action occurred.

On the one hand, the situation was investigated, and findings were reached. Ms. Masias conducted an investigation pursuant to her authority under the MOU cited above. She also reported this matter to the Commission on Judicial Discipline for their handling and the Commission on Judicial Discipline conducted its own investigation. The Commission on Judicial Discipline issued private discipline. Moreover, the Judge enrolled in Anti-Harassment training recommended by Ms. Masias.

On the other hand, the Judge was given the mildest sanction possible under the Commission on Judicial Discipline Rules and went on to serve as a Senior Judge for the Judicial Branch. The sanction this Judge received, by definition, admonishes the Judge privately for “an appearance of impropriety even though the judge’s behavior otherwise meets the minimum standards of judicial conduct.” Unbuttoning clothing to naked skin, physical contact with another person, and remarks including the solicitation “come sit on my lap,” clearly do not meet the “minimum standards of judicial conduct.” Objectively, they do not meet the conduct expected of any person in any work environment, let alone a workplace charged with effecting justice for the people of the State of Colorado.

It is important to note that there are no set of fixed rules that govern what kind of response the Commission on Judicial Discipline takes in any given matter. The Commission on Judicial Discipline has broad discretion to determine when matters should be treated as serious enough for formal proceedings, or when they necessitate more heightened private discipline. While it is reasonable to view the consequences imposed here as tepid, I cannot find that the decisions made by the Commission on Judicial Discipline violated any rule or standard requiring more rigorous treatment. Simply put—there was and is no such set of rules.¹⁷

From the perspective of Judicial administration, this Judge was allowed to serve as a Senior Judge after these events, despite at least four senior leaders at the State Court Administrator’s Office being notified that he had been the subject of a private admonition in the past. None of these four individuals investigated what had taken place before approving him for the Senior Judge Program. Although I found no evidence to suggest that any of these individuals had actual knowledge of the facts underlying the admonition, it is striking that none of them asked any questions about it. Any one of these four could have, and should have, done more to unearth the facts underlying the private admonition the Commission on Judicial Discipline disclosed.

Finally, there were failures of process at other junctures in this case. It does not appear that Human Resources notified the Chief Judge in the District of the findings or recommendations from Human Resource’s investigation. It does not appear that Human Resources told the Chief Judge to have a discussion with the Judge or to ensure he got the trainings recommended by Human Resources. It also does not appear that Human Resources or the State Court Administrator’s Office notified the

¹⁷ One of our recommendations is that there should be some written guidance around the exercise of this discretion.

Commission on Judicial Discipline about a subsequent complaint involving the same Judge. A notification was drafted to that effect but does not appear to have been sent.

On balance, this case from 15 years ago demonstrates failures in process and oversight as well as a failure to provide serious consequences on both the Commission on Judicial Discipline's and Judicial Administration's accounts. The Branch and the Commission on Judicial Discipline can and should do better to treat this kind of misbehavior seriously.

2. *Findings*

For the reasons set forth above, I find:

- The portion of Allegation Four contending that inappropriate behavior took place is **Substantiated**, essentially as stated in the allegation.
- The portion of the Allegation stating that no action was taken against the judge in question is **Not Substantiated**.
- Finally, the portion of the Allegation stating that this judge was being considered for the Senior Judge Program is **Substantiated**, and the judge in fact participated in this program after these events.

Allegations Six and Seven: “Leave the Courthouse and Drive Slowly Out of Town” and Requirement That HR Seek Permission from Chief Judges Prior to Investigating Misconduct in their Districts

6: *“Mindy recommended to Chief Judge Kuenhold that it was in the best interest of the Branch to terminate Mr. Duarte due to the sexual relationships he had with his staff. Chief Judge Kuenhold stated that Mindy needed "to leave the courthouse and drive slowly out of town."*

7: *“Was told by chief judges she needed to seek their permission to conduct harassment and discrimination investigations in Districts and seek their permission to visit Districts before coming after an intense investigation of a judge and Court Administrator for sexual harassment. This directive was given in order to suppress complaints. Recollection of this event occurred in the 2018 Judicial Conference by a chief judge in the audience who was questioning if that matter [was] ever resolved and recognizing that this was wrong.”*

A. Methodology

Through my investigation, I determined that Allegations Six and Seven relate to one another and for that reason I decided to include them in a single Report Summary. I found that the events alleged in Allegation Six took place in late 2009 and early 2010 and the events described in Allegation Seven took place in 2011. I substantiated some portions of what appeared in these two allegations and did not substantiate other parts.

There were several individuals who had good memories of these events. I interviewed former Chief Judge Kuenhold, Mr. Duarte, and others about Allegation Six. I also interviewed a number of chief judges from this time who could speak to Allegation Seven. Altogether, I interviewed twelve (12) people who had knowledge about one or both situations. This included the named parties, other individuals who worked in this Judicial District, witnesses from the Legal Department, other chief judges who served at the time, two Justices with recollections of this set of events, and the State Court Administrator at the time.

I also located a number of documents relevant to Allegations Six and Seven. These included: drafts of the Human Resources investigation reports of the Allegation Six matter [one set of drafts of a report to Chief Judge Kuenhold and a separate set of drafts for the Chief Justice]; email traffic between Ms. Masias and Mr. Brown on this subject; and minutes from chief judge meetings discussing the request for notification and emails on that subject. I also found a document entitled “Talking Points re Kuenhold matter” that is undated and unsigned.

I submitted a full report on this investigation to counsel for the Judicial Branch on May 11, 2022. On May 24, 2022, I was directed to prepare Report Summaries on all matters for public release. I completed this Report Summary pursuant to this requirement.

B. Summary of Material Evidence

1. *Material Evidence on the Events of Allegation Six*

The evidence is clear that there was a Human Resources investigation in Chief Judge Kuenhold's District in late 2009. It is equally clear that Chief Judge Kuenhold was unhappy with the process. Ms. Masias received an anonymous letter dated December 9, 2009, contending misconduct in this Judicial District. The report describes the scope of the allegations in the anonymous letter as having two components: "sexual misconduct" and "bribery or 'hush money.'" More specifically, the letter alleges:

I am writing to complain about the fact that three staff in the 12th District are receiving taxpayer money to leave the employment for judicial. These employees don't deserve money any more than I do, unless you must consider the fact that it is payoff money for sleeping with your boss. What you don't know is that this District is so willing to approve voluntary separation incentives because our administrator has screwed almost every clerk in the District. You don't get ahead if you don't. Consider this hush money. The court report [sic] to our supposed "chief judge" is no better. It's a well-known fact that she screws the judge to keep her job. This is a culture that is only exaggerated when these programs come up. I plead for someone to recognize the overuse of power and sex to control in this District.

At some point, four additional issues were added to the investigation scope:¹⁸ religious harassment; reverse ethnic discrimination; threats of retaliation for participation in the complaint process; and creation of a quid pro quo sexual harassment environment. Ms. Masias explained these additions in the reports she wrote on this investigation: "To gain an accurate assessment of the culture in the 12th Judicial District as it is perceived by those involved, each interviewee was specifically asked to give their own personal assessment of the 'culture and workings of the 12th Judicial District.' This led to the new allegations that are reported in the bullet points above that were not alleged in the original letter."

According to Chief Judge Kuenhold and another Judicial officer who worked in the District, Ms. Masias and Mr. Brown conducted their investigation without appropriate due process and improperly from start to finish. Both Judges said that Ms. Masias and Mr. Brown pulled employees out of the workplace, which upset them, and asked some employees "if they had heard rumors" of misconduct. Chief Judge Kuenhold objected to the air of secrecy around the investigation. Moreover, according to Chief Judge Kuenhold, the investigation "dragged on for 9 months" with no communication from Human Resources.¹⁹ Chief Judge Kuenhold had to "deal with crying staff" and "a change in the culture from open doors and gathering around a coffee pot to everyone behind closed doors." He said "[I]t was a very unpleasant thing. It has negatively impacted the 12th Judicial in ways I can't describe." His colleague Judge said, "I remember being appalled" by the process.

¹⁸ It is not clear when this happened, but the addition is referenced in both the 1/7/10 and 1/14/10 report drafts.

¹⁹ I could not corroborate this timeline. According to the documents I could find, it appears that interviews in this investigation took place from December 21, 2009, through January 13, 2010 (Notes of Interviews Relativity Doc JDJD011020). The reports appear to have been in the drafting process contemporaneously with the interviews, as I found drafts dated January 7, 2010, and January 14, 2010. I do not have final signed reports or any email correspondence confirming when Chief Judge Kuenhold was summoned to Denver. Chief Judge Kuenhold feels certain that he was presented with the findings "in the Fall."

According to Chief Judge Kuenhold, several months went by after the interviews before Ms. Masias reached out to him to say she would be back in his District to provide the results of the investigation. According to Chief Judge Kuenhold, Ms. Masias told him, “[T]hey had concluded their investigation, and it showed the initial allegations were unsupported and a report would be provided to me.” However, according to Chief Judge Kuenhold, more months went by, and he expressed his dissatisfaction with the process during this time. He conveyed this to Ms. Masias: “I made it very clear that I was not happy with the harm that had been done in the District and why it had taken so long. I said that I was not pleased with the outcome. I may have said something [to Ms. Masias] like, ‘You really are not welcome here,’ because of how this was handled.”

During this time, Chief Judge Kuenhold and a Judge colleague drafted an email to members of his District, commenting negatively on the investigation process. In the draft I found, which reflects his Judicial colleague’s feedback, it says that the investigation was a “dark cloud on the horizon” for the District.²⁰ The email describes the “harm the investigation is causing to our District,” noting that employees were “interrogated” and stating that the damage done was “a direct result of the manner in which Human Resources chose to conduct this investigation.” The email asks the District to “[S]top the gossip, rumors and talking behind other people’s backs and focus on the important role our courts play in the communities we serve.”

Two months after Ms. Masias’s report to him on the investigation,²¹ Chief Judge Kuenhold was contacted to come to Denver to meet with the Chief Justice on the matter. He arrived and was given the report for the first time. He read it right before his meeting with the Chief Justice. He remembered that the report echoed “what [Ms. Masias] had told me months before – that the allegations were unproven.” However, the report also stated that, after finding the allegations were not substantiated, Human Resources found a former employee “who alleged a consensual relationship 10 years before (so approximately 1996)” with Mr. Duarte. There were no rules at the time prohibiting the relationship and Chief Judge Kuenhold was upset about this allegation being added as he felt it raised concerns about due process.

Ultimately, the Chief Justice recommended to Chief Judge Kuenhold that he terminate Mr. Duarte based on these facts. Chief Judge Kuenhold declined to do this, “because of the illegitimate process.”

An attorney in Judicial’s Legal Department expressed concerns about the recommendation of termination in this case before the reports were finalized. In this person’s view, the investigation had not substantiated conduct that violated policy and the termination recommendation had no precedent under such facts.

Several witnesses remember Chief Judge Kuenhold, and other chief judges being upset about the way this investigation was handled:

²⁰ This draft document was located (JDJD012568 in the Judicial Relativity database), but no email could be found showing that it was sent.

²¹ The timing is based on Chief Judge Kuenhold’s memory of events. I could not find any email showing dates of meetings.

That was very ugly on a lot of different plains. . . . Human Resources went down and did exactly what they are supposed to do, they went to the District and did interviews. Mindy did her investigation and she felt there was an inappropriate relationship there. She suggested to Kuenhold that they both be fired. He really didn't want to do that. Ben Duarte had been there a long time, and Kuenhold was really angry about it. He was angry that he wasn't told about investigation. Mindy was pretty heavy handed. It was like "I am in charge of this Human Resources world" and she didn't like it when people didn't agree with her. A lot of what is in this memo is about people not agreeing with her or she didn't get what she wanted.

Mr. Duarte said that he never saw any report from this investigation, and he felt "blindsided" by what happened. According to him, "[Ms. Masias and Mr. Brown] were asking about a relationship from 12 years ago. I was livid and I moved on." Mr. Duarte said that no one called him after the investigation was completed to talk to him about additional information. He said, "It was like a secret investigation. Like the Gestapo. I did Human Resources for seven years and it was not right to me."

One witness remembered hearing from Ms. Masias and Mr. Brown that Ms. Masias had been "kicked out of [Chief Judge Kuenhold's] District." Another person remembered, specifically, that Ms. Masias reported to him the statement, "[L]eave the courthouse and drive slowly out of town."

Ms. Masias prepared two reports of this investigation: a 9-page report for Chief Judge Kuenhold and a 13-page report for the Chief Justice at the time. We do not have a "Final" of either report, but have multiple drafts of each one, some dated January 7, 2010, and some dated January 14, 2010. Interviews were ongoing as of January 13, 2010, which suggests that the January 14 document was finalized after that last interview was done.

The reports corroborate that the allegations of improper behavior by Chief Judge Kuenhold and payment of "hush money" were not substantiated. Similarly, the allegation that Mr. Duarte had slept with almost all the clerks was not substantiated. They also show that Ms. Masias found that Mr. Duarte had had a relationship with an employee more than ten years before the investigation, during a time when there was no policy prohibiting such a relationship.²² There were some allegations that this relationship was "overbearing and controlling," but it does not appear that Ms. Masias asked Mr. Duarte about this aspect of the prior relationship.

Ms. Masias's reports reference rumors of other possible misbehavior in her investigation. She states that there were rumors and a perception among employees that Mr. Duarte treated young women differently/flirtatiously; that he may have promoted the person he had a relationship with despite her not having a college degree; that he helped one woman pay for college; and that he may have had other relationships with employees. Ms. Masias also states that a number of witnesses said they were afraid of retaliation and some witnesses described being interviewed by leadership in the District about what they said in the investigation. There was some contention that the Chief Judge (and possibly others) tried to find out what was said and tried to interfere in the investigation.

From the face of the reports, it does not appear that Ms. Masias sought out information that would

²² One of the later-raised allegations was also substantiated – that an employee distributed religious information to others at work.

have revealed important information on these claims. It does not appear that she asked Mr. Duarte for his side of the story on the rumors and perceptions, or about the contention that the relationship from ten years ago was coercive. It also does not appear that she asked Chief Judge Kuenhold about the allegations of interference in the investigation.²³ It does not appear that Ms. Masias sought out documentation on the promotion decision or the allegation that Mr. Duarte (or the District) helped pay for college for an employee.

The report to the Chief Justice recommends several courses of action, including that discipline be issued against Mr. Duarte because of his “efforts to isolate employees, exploit his position of authority, and his failure to promote an atmosphere of fairness.” It also recommends that “the efforts by leadership in the 12th to prevent, undermine and interfere with the investigation by Human Resources should be discussed with Chief Judge Kuenhold.”²⁴

2. Material Evidence on the Events of Allegation Seven

Multiple witnesses remembered a shift taking place in the relationship between the chief judges and Human Resources/the State Court Administrator’s Office following this investigation. Witnesses said this shift occurred primarily in response to the different vision the new Chief Justice had for the role of the SCAO vis-à-vis the trial courts. According to many, the Chief Justice wanted to move the focus away from SCAO being the compliance monitor of the Districts, to the SCAO being a service provider in support of the work of the Districts. This new approach included better communication from SCAO when employees would be out in the Districts, including for Human Resources investigations. There was concern that “SCA ‘investigations’ or involvement in Districts were happening without any notification to the chief judge about what was happening, or that they would be in the District. There was concern about that. The consensus of the chief judges was that they expect the courtesy of being notified when Human Resources was going to be in the District.”

While there was not agreement among the chief judges about whether Human Resources ought to notify them when doing investigations in their Districts, there was some consensus that Human Resources under Ms. Masias overstepped at times, and this violated the autonomy of the Districts. As Chief Judge Kuenhold put it, “[G]overnance was an issue. . . . What I would call the weaponization of Human Resources was possible because there was such deference and because Human Resources was tasked with doing things that maybe should have gone to judicial discipline.”

That said, the State Court Administrator at the time views this allegation as “a misrepresentation.” As he recalled it”

There was not a directive to seek permission to conduct investigations – this is way narrower than what the request from the Districts was. It was, anytime you come to my District I need to know you are in my District. You need to notify me for any reason that you are in my District. This goes back to 2010 when they were told to get permission to go into the District. This was after Kuenhold

²³ I do not have the witness interviews, which were apparently recorded, so I cannot be sure what questions were asked of these witnesses. There is no reference to this information, if it was gathered, in the report.

²⁴ No recommendations appeared in the draft report addressed to Chief Judge Kuenhold.

but there was also an investigation in Pueblo about a District Administrator being nasty – and Mindy and Eric went down to investigate. [The judge in Pueblo] agreed with Judge Kuenhold – we want to know what is going on. It is my District I need to know there is an investigation. It wasn't to stop harassment and discrimination investigations.

Minutes from chief judge meetings during this period, and email correspondence, corroborate that there was a focus on improving the relationship between SCAO and the Districts. There was also an emphasis on the service-provider role of SCAO and Human Resources. This included a request that Human Resources – and other Divisions – notify the Chiefs when they would be in their Districts.

C. Analyses and Finding(s)

1. *Allegation Six*

This allegation states that Ms. Masias recommended termination of Mr. Duarte because of sexual relationships he had with staff and that Chief Judge Kuenhold responded by telling her to “[L]eave the courthouse and drive slowly out of town.” In part, the allegation is corroborated, but it also conflates several details and contains inaccuracies.

On the one hand, there are some portions of the allegation that are substantiated. Chief Judge Kuenhold acknowledged that he may have told Ms. Masias she was “not welcome in [his] District” because of the manner and timing of this investigation. This part of the allegation, while worded differently from “[D]rive slowly out of town,” is not in dispute. A person in a position as powerful as a Chief Judge making statements like this to Human Resources personnel investigating alleged harassment is problematic.

Moreover, the evidence suggests that Chief Judge Kuenhold may have intervened improperly in the investigation in other ways. Ms. Masias’s reports state that he wanted to fire the person who wrote the anonymous complaint and that he pulled in at least one employee to ask her what questions were being asked. He may have referred to the interviews taking place as “interrogations” of his employees. For a high-level respondent in a position of leadership, particularly the top job in a Judicial District, to engage in these behaviors during an investigation is at least disruptive, if not coercive. It can dissuade people from coming forward, harm the data the investigator is trying to gather, and increase fears of retaliation. From Ms. Masias’s vantage point, it was reasonable for her to conclude that Chief Judge Kuenhold was trying to obstruct a legitimate harassment investigation. This would be concerning to any competent HR investigator.

In addition, this investigation was done right in some respects. Ms. Masias followed proper protocol in not talking to a respondent about the allegations ahead of time, interviewing witnesses away from the workplace (and confidentially), and not sharing information about the investigation with the respondent during the investigation. These general rules apply in every case, even in those where powerful people are respondents. In fact, they are most important in just such cases.

That said, some aspects of the investigation were not done properly. First, Ms. Masias or the State Court Administrator could have notified the Chief Probation Officer, the Court Executive, or some other person in leadership in the District, about the investigation. It is unusual in any setting for an

investigation to begin with no one being apprised, because of exactly the kind of reaction that occurred here. In a workplace like the Judicial Branch, with twenty-two independently run Districts, this sort of approach is even less acceptable. Investigations must be conducted confidentially but this does not mean in secrecy. Ms. Masias or the State Court Administrator could have discussed the process with someone in leadership within the District, to explain what was going on, answer questions, and alleviate any concerns.

Chief Judge Kuenhold and other witnesses felt that employees were surprised and stressed. They also felt the District was disrupted by this “secret” approach. From their perspective, the Chief Judge’s interventions were an effort to support his employees and provide guidance. Appropriate communication could have helped avoid what may have been inadvertent interference, as Chief Judge Kuenhold was making decisions in an information vacuum.

Second, Ms. Masias expanded the scope of her findings but did not concurrently expand the scope of her work. Expanding the scope can be a proper decision. However, when it is made, the investigator must thoroughly investigate the new allegations. Here, the report reflects that Ms. Masias took some rumor and speculation at face value without testing it. It does not appear that she gathered corroborative or countervailing evidence. For example, Ms. Masias did not ask Chief Judge Kuenhold about his obstructive behaviors and did not ask Mr. Duarte about most of the rumors and speculations about him. It does not appear that she did a credibility assessment where there was not any corroborative data. It is unclear if she sought additional documentation – like records on the promotion decision or on the allegation that District funds were used to pay for an employee’s education. None of this data appeared in the record.

Rumor and speculation sometimes play a role in investigations because they can be leads. If an investigator follows these leads, it can take them to credible evidence. An essential part of the process in following leads is giving important witnesses the opportunity to know what is being said about them and to hear, as well as test, their side of the story. It requires that the investigator do follow up interviews, credibility assessments, and additional data gathering. This comports with fairness and impartiality requirements. It helps reveal both sides of the issue and resolves conflicts in the data. Ms. Masias may have undertaken these steps and the documentation is simply lost. However, the report shows only one side of the story in evidence, so this fulsome process cannot be corroborated here.

Finally, if the timeline of this investigation was over nine months in duration as Chief Judge Kuenhold recalled, this was an objective problem. The work was done by January 2010 and the report appears to have been completed in January as well. If it took nine months to convey results to the stakeholders, this is an unacceptably long time for a single investigation in a single District.

On the evidence set forth in the report, it is unclear what the basis was for Ms. Masias’s recommendation of discipline for Mr. Duarte. This was the precise concern that the attorney for Judicial laid out in her email: “Considering that the allegations in this letter were not substantiated, I would move cautiously to impose actions based on the witness statements alone.” (Emphasis added.) There was not credible evidence identified in the report upon which to substantiate that wrongdoing implicating policy took place. From that vantage point, Chief Judge Kuenhold’s decision to not impose termination was a reasonable choice.

2. *Allegation Seven*

With respect to the contention that Ms. Masias was told not to travel to Districts to conduct investigations without permission, there was clearly a directive from the chief judges to Human Resources and the State Court Administrator's Office to be more communicative. This includes a request that Human Resources notify the chief judges if they were going to be in the District for any reason, including an investigation.

The evidence corroborates that there was bad blood between the Chiefs and Human Resources during this time. This stemmed in part from the Kuenhold matter and from another Human Resources investigation in Pueblo. Ms. Masias was described as "pretty heavy-handed" in doing her investigations. These investigations were described as the "weaponization of Human Resources." The Chief Judge's directive was likely based, at least in part, on dissatisfaction with Ms. Masias and her methods.

That said, the directive came from a larger discussion of cooperation and support from the State Court Administrator's Office for the operations of the Districts. This was a global concern at the time. The meeting notes, emails, and witness recollections suggest that a larger effort was being made to get the State Court Administrator's Office to begin seeing itself as a service provider to the Districts and not a compliance arm. This was in keeping with the Chief Justice's vision at the time—the movement to a more cooperative and collaborative relationship between the State Court Administrator's Office and the 22 Districts it serves. It is this focus on cooperation, evident in contemporaneous records from the time, and not an effort to suppress investigations that most persuasively explains the Chief Judge Directive.

3. *Findings*

For the reasons set forth above, I find:

- The allegation that Ms. Masias found substantiated wrongdoing in an investigation in (former) Chief Judge Kuenhold's District, and recommended termination because of that substantiated wrongdoing, is **Not Substantiated**.
- The allegation that Chief Judge Kuenhold told Ms. Masias, in so many words, to leave his District and that she was not welcome there is **Substantiated** because of Chief Judge Kuenhold's acknowledgement of what he said.
- The allegation that after the Kuenhold matter, Human Resources was directed to notify the Districts before commencing investigations there, or visiting for any other reason, is **Substantiated**.
- The allegation that this directive was made to dissuade proper complaints and investigations is **Not Substantiated**.

Allegation Sixteen: Mindy Masias Not Selected for State Court Administrator Position Because of Her Sex

“Report from a Justice about why MM was not selected for the position: Insinuates the entire Supreme Court made the decision she did not get the SCA position based on her gender.”

A. Methodology

This allegation relates to the selection process for the State Court Administrator position that took place in 2017. Ms. Masias was a candidate for the position and was not selected. Ultimately a male candidate got the job. My investigation did not substantiate that this decision happened because of sex, but it did substantiate that the person who ultimately got the job never applied, was not interviewed, and received the job via an irregular process.

I interviewed sixteen (16) witnesses who were involved in or had information about this promotion decision—seven (7) women and nine (9) men. These witnesses included members of the Supreme Court who were the decision makers on this promotion at that time, individuals from HR and the Legal Department who were involved in the process, the two prior State Court Administrators, and a representative from the organization that ran the search for this position.

There are many documents and materials related to this allegation. They include the announcements of the position and job description, the application materials for all the applicants for this position, notes on interviews, emails, references (for Ms. Masias) for the position, applicant screening spreadsheets, and a recorded meeting between Ms. Masias and the Chief Justice at the time of these events. I reviewed all these materials and considered them in reaching my finding.

I submitted a full report on this investigation to counsel for the Judicial Branch on May 11, 2022. On May 24, 2022, I was directed to prepare Report Summaries on all matters for public release. I completed this Report Summary pursuant to this requirement.

B. Summary of Material Facts

1. Chronology of Events

In February 2017, then State Court Administrator Gerald “Jerry” Marroney announced his retirement effective June 30, 2017.²⁵ This set into motion the process at issue here, to select his successor. At the time of this announcement, Ms. Masias was serving as Chief of Staff and had been, in the opinions of many, running SCAO at the end of Mr. Marroney’s tenure. From the vantage point of several witnesses interviewed, Ms. Masias was groomed by Mr. Marroney for the role of State Court Administrator. More than one person described her as the “heir apparent.”

The National Center for State Courts (“NCSC”) was retained to run the recruitment effort and

²⁵ See Ryan Severance, “Former Pueblo Judge Gerald “Jerry” Marroney set to retire,” THE PUEBLO CHIEFTAIN (2/23/17): available at: <https://www.chieftain.com/story/news/2017/02/24/former-pueblo-judge-gerald-jerry/9254823007/>.

promotion process. NCSC worked with Christopher Ryan as the internal contact in doing this work. Mr. Ryan ultimately received the State Court Administrator position. He was the clerk of the Colorado Supreme Court and Colorado Court of Appeals at the time recruitment began.

Ms. Masias applied for this position on April 11, 2017 and was one of nine candidates who applied. The Committee interviewed candidates and selected four to send on to the members of the Supreme Court for final interviews. One was an external male candidate, one was an external woman candidate and there were two internal candidates: Ms. Masias and a male colleague.

As part of the process, the Chief Justice asked each Division leader from SCAO to come to the Court and provide a presentation on their Division. This was done to provide the Associate Justices with some insight into SCAO and leaders that they did not frequently work with. This took place before candidates for the position were interviewed.

The four finalists were interviewed by the Justices of the Supreme Court on Monday May 15, 2017, but no successful candidate was selected at that time. In short, the Court could not reach consensus on a candidate, so the recruitment process was extended.

According to Mr. Ryan, he was first approached by the Chief Justice before the process was underway and she “implored” him to apply for the position. Moreover, he said, the Chief Justice sent other Justices to pressure him in a friendly way to consider applying. He thought about it but declined. He said, “I was interested in the work, but not in the job. I had a good job where I was.”

According to Mr. Ryan, the Chief Justice came to him after the interviews to ask what options they had. She asked him if she could put Ms. Masias in the role in an interim capacity and he said he did not think that was fair, or a good idea, if the Court was not united in favor of her as the candidate. He offered to do the job for a six-month period and the Chief Justice accepted that offer. On May 18, 2017, the Court announced it was extending its search and announced that Mr. Ryan would serve in the role in an acting capacity.

Over the summer, Mr. Ryan started the job and realized he enjoyed it. When the Court came out of recess in September, the Chief Justice asked him what his thoughts were, and he said he really enjoyed it and was interested in doing the job. The Chief Justice brought this back to the Court. According to colleagues on the Court at the time, the Chief Justice told her fellow jurists she believed it was in the best interests of the Branch to get this position settled and to go with Mr. Ryan. According to Mr. Ryan, he was appointed as the State Court Administrator the next day. There was no application or interview process for Mr. Ryan and no one else had the opportunity to apply (or re-apply) for the position.

2. Supreme Court Justices Were Split in Support of Two Candidates for the Position

According to all the Justices I spoke with about this decision, the Court was divided about the candidates for the position. No one was particularly impressed by the internal male candidate or the external female candidate. Instead, the Justices were split between Ms. Masias and the external male candidate. The support broke down around gender lines, with the women Justices (3) in favor of Ms. Masias and the men (4) favoring the external male candidate. Justices I interviewed, both

men and women, expressed concern about whether Ms. Masias had “the vision to lead the whole Branch,” and indicated there was concern whether the external male candidate had “a solid grasp of what the role was going to entail.” As summarized by one Justice, “We were very divided.” The male candidate was described as having “a ton of gravitas,” but “had no idea what the job was about.”

The Justices remarked that the presentations they received from SCAO leadership were enlightening, but not in a way that was helpful for Ms. Masias’s candidacy for the State Court Administrator position. The presentations revealed “weird and bitter rivalries” between HR and other Divisions at SCAO. As one Justice put it, “[W]hat we came to learn there was a ton of dysfunction in the SCAO. The other thing we came to learn was that HR was at war with IT, finance and legal. It was very concerning to me if Mindy got the position that there would be a split down the middle in SCAO. . . . Mindy was terrific and I considered her a friend. Nonetheless I had concern about the HR piece. She never stopped being ‘HR Mindy,’ she and Eric were inseparable, and she was still considered HR.” Another Justice said, “My concerns were the infighting going on, could she rise above it and lead the Branch without dragging the HR piece into it.” Another Justice said, “There are minders, finders, and grinders Mindy was a quintessential grinder. In the weeds, the worker bee. . . . That was the issue, was she ready to step into that high level policy role.”

The decision was made that, in the absence of consensus, the Court would open the position back up to more applicants and the Chief would encourage Ms. Masias to apply again. “My thinking in supporting Mindy – I was hopeful she could overcome these concerns we had. It was clear to me she had solid relationships with the Districts and that counted for a lot.” As noted by another Justice, the Court asked the Chief Justice to speak to Ms. Masias and convey, “You need to disengage HR Mindy and be Chief of Staff Mindy If we could separate her [from HR and tactics] she could become a viable candidate.”

The Chief Justice mentioned Ms. Masias’s demeanor as well as gossip about her in discussing the lack of consensus around her candidacy. While she voted for Ms. Masias as the best candidate, she said there was concern because, “[S]he was a different person with different people. She was someone who was flirtatious / provocative with the men, and trial judges would gossip about that . . . From the SCAO perspective, something I do know, there were a lot of complaints about her from the other department heads. . . . There was a mini campaign against her - some gossip about some of her relationships and whatnot.” The Chief “[D]iscounted all that stuff – maybe a little more than I should have in retrospect.” She added, “[T]he weakest aspect she had, she was just much too wed to HR.” “[S]he had some real positives in my point of view . . . I wanted her to get the job.”

The Justices did not agree that sex or sex stereotyping motivated the decision. “There was certainly no discussion that she was a woman and not up to the task. I liked the idea of appointing a woman. I came into that thinking she would probably be the person for the job given all the accolades she had received, given her experience in SCAO in various roles, she seemed like a logical successor. I figured that was where we would end up landing.”

3. The Decision to Offer the Position to Mr. Ryan

Mr. Ryan indicated that it was his idea to offer to serve in the interim role when it became clear that the Court was deadlocked and could not reach a consensus. He took this suggestion to the Chief Justice, who immediately agreed with this idea.

Once he had served in the role for several months, Mr. Ryan realized he liked the job. “When the Court came out of recess in September, [the Chief Justice] asked what my thoughts were, and I said I really enjoyed it and am interested in doing it. She said, ‘Great I will talk to Court, and they will appoint you,’ and it happened the next day.”

Mr. Ryan did not apply or interview for the position. Instead, he was appointed as the Interim and then made the permanent SCA several months into his interim tenure.

A number of witnesses expressed concern about the appropriateness of appointing Mr. Ryan into this position without him participating in a competitive process. As one Justice put it, “I was really torn about that. On the one hand I was thrilled, I wish he had applied from the beginning . . . On the other hand, I was really bothered by the way this went down. He had chosen not to apply and had run the search committee. How optically weird this was, given how this all unfolded. I said as much.”

This Justice added that it was the Chief Justice who drove the ultimate decision and the Associate Justices were expected to ratify it. “So yes, technically, we all agreed and got on board. But I was deeply uncomfortable. Chris came to the court again. I said, ‘Chris, I am thrilled you are in this role, but I am uncomfortable with how this went down, I don’t feel like this was at all transparent. It feels icky how it happened.’ I was concerned at the optics.”

Others at SCAO had similar concerns. “The court handled it terribly – appointing Chris was a terrible idea. He didn’t apply for the job; he evidently didn’t want the job. . . . This violated all the rules about competitive selection.” Another witness noted, “I can tell you the way that they did that hire was not consistent with our rules. . . . So many things went wrong that created more animus than necessary. When there is an employee who was groomed and didn’t get it.”

4. The Surreptitiously Recorded Statement

At some point after the promotion decision was made, Ms. Masias met with the Chief Justice, who had agreed to give her feedback about the decision. Ms. Masias decided to surreptitiously record the meeting without the Chief Justice’s knowledge or agreement.

The meeting was approximately 47 minutes in length. During the meeting, the Chief Justice offered feedback to Ms. Masias that was primarily consistent with the feedback I received from the decision-makers quoted above. This included advice on cultivating her leadership, separating from HR, developing more of a strategic rather than a tactical mindset, and defining herself as a leader with vision. The Chief Justice asked Ms. Masias to think about the military and how Officers and Master Sergeants serve leadership versus tactical roles, respectively. She also mentioned “line” and “staff” in the military, as examples of strategic leaders and tactical “doers.” The Chief

Justice discussed “classist” issues, describing some on the Court as believing the position needed to be filled with a lawyer or judge. She also talked about her own career as an example and said that she was hiring people, giving raises, firing people, settling cases, and exerting authority in an effort to be “line” and not “staff.” “I had the power, and that’s what I think you and Chris need to negotiate. You don’t want to be staff. Staff makes the operation move more smoothly but it doesn’t make it move.”

The Chief Justice attempted to end the meeting at several points over the 47 minutes. The first time was approximately 20 minutes in. “So, I don’t know Mindy what more I can say. I guess that’s sort of it. Does any of that make sense to you?” Ms. Masias responded, “It does.”

The meeting continued, and at around 28 minutes, the meeting appeared to be ending again. Ms. Masias told the Chief Justice, “I appreciate you taking the time.” Instead of ending the meeting, the Chief Justice noted that while “the men in particular appreciate the person who is sort of secretarial and helpful . . . that is not the person who is going to get promoted. So don’t be.” Ms. Masias said she appreciated that advice because she was not a secretary and had never done that job. The Chief Justice noted that Ms. Masias had a “habit of [being] a little bit of a caretaker . . . but other people can do that.”

At around 39 minutes, Ms. Masias said she had always “been underestimated” and during this last part of the meeting, the Chief Justice made additional remarks implicating sex-based stereotyping. Ms. Masias said she had been underestimated because she is not pushy and has a positive attitude. The Chief responded, “You’re a small woman [*Ms. Masias: Small in stature, yes*], big hair still. You don’t look the part of... you don’t look like the women partners on 17th Street. You don’t look like [the women on the Supreme Court] or the women on the Court of Appeals.” Ms. Masias asked, “[S]hould I change my hair?” and the Chief responded, “[Y]ou might want to think about it. I mean, I am not kidding. You need to do something to make yourself not be underestimated.” The Chief went on to reference the “generation” of men in the court who are “used to women who are the partners at the law firms or older women.” She added, “[Y]ou know there is sexism out there still and I think that to pretend like there isn’t, even in government . . . the only way you can make the sexism go away I’ve noticed is to be the boss.” The meeting ended with Ms. Masias saying, “[T]hank you Chief I really appreciate it,” and the Chief responding, “[T]hank you, Mindy. You’re doing great. I’m very glad you’re my friend.”

I asked the Chief Justice about the statements made at the end of the recording. She had not listened to the recording but shared some observations regarding the statements. She said, “[H]istorically the people that the court hires as the State Court Administrator were judges. That is who the judges really want, in that sense that they want someone who looks more like a judge than someone who doesn’t.” She said Ms. Masias was “like the opposite of that,” and sometimes dressed in “tight clothing and short skirts – the antithesis of the traditional lawyer / judge look – right wrong or indifferent.” The Chief Justice said, “I was telling her to dress for the job you want.” With respect to the statement, “[T]here is sexism – we can’t pretend that there isn’t,” the Chief Justice did not remember saying this, but noted, “[O]f course there is sexism in the world. We spend a huge amount of dollars trying to educate judges on all aspects of discrimination. Implicit bias, training on that. Oh my God, and of course I have experienced it myself in lots of ways. It is out there and to pretend that it is not is sort of silly.”

When I asked the Chief Justice if she had anything else to offer, she said, “I don’t think anyone deserves a job like that. It is a big deal job. I think Mindy thought she would get it and was kind of stunned when she didn’t. . . . I was surprised she didn’t get the four votes. I voted for her. I don’t think she was entitled to it, but I thought she was going to get it.”

C. Analyses and Finding(s)

1. Analysis

On the one hand, there is credible evidence of sex stereotyping, and potentially a sex-based decision with respect to this promotion decision. First, there are the words used by decision makers to characterize the two leading candidates. Second, there are the words the Chief Justice used in discussing the situation with Ms. Masias.

The decision makers characterized the two leading candidates as “HR Mindy,” and the external male candidate with “gravitas.” On its face, these descriptions implicate sex stereotyping; a woman cast in a typically female job (HR) versus a male candidate’s presence described using a strong, male-oriented adjective. However, the fact is that at the time, Ms. Masias was tightly connected to the HR operation because of her history in the position and her close working relationship to Eric Brown. Moreover, the male candidate was objectively a person with professional gravitas because of his accomplishments in the bar and in the legal community. For these reasons, I did not weigh these remarks heavily in my finding.

In contrast, I closely considered the remarks that the Chief Justice made in the surreptitious recording and in her interview. The Chief Justice was the most powerful decision maker in this promotion process. She was the Chief. She wanted Mr. Ryan to apply for the position and accepted his offer to step into the role temporarily. Most importantly, she likely drove the decision to move him into the permanent role without initiating a competitive process. For these reasons, I weighed her statements carefully as they are particularly important to my analysis.

There is no dispute that the Chief Justice made remarks that implicate sexism. They include remarks that invoke sex stereotyping about Ms. Masias’s small stature, appearance, hair, and clothing. They include statements about the “type” of woman the male members of the Court are most accustomed to – women partners in 17th Street firms and judges and Justices on the highest courts of the State. They include commentary about Ms. Masias caretaking as well as advice to her to not be “secretarial.”

That said, the context and timing of these remarks is important. The Chief Justice spent most of the first 42 minutes of a 47-minute meeting giving Ms. Masias advice about how to position herself more favorably to win the State Court Administrator promotion after Mr. Ryan’s six-month acting period. In doing so, she echoed the concerns voiced by the other Justices discussed above. These centered around Ms. Masias’s perceived focus on tactics, HR, and operations rather than strategy, vision, and leadership. The Chief Justice ended the meeting two times during the recording – at minute 20 and at minute 39. In both cases, she said that was all she had to say. By these points in the meeting, she had said nothing about Ms. Masias’s stature, hair, or clothes. From a fair reading of the timing, the reasons for the decision that mattered most to the Chief Justice were the non-

sex-based reasons described above. Ms. Masias needed to take on more visible leadership, distance herself from HR, and be firm in developing herself as a visionary leader. All of that had been said by minute 42 of this meeting.

Moreover, the remarks about stature, hair, and clothing happened after Ms. Masias said she had “always been underestimated” and the discussion that followed relates to that statement. In that sense, the remarks are distanced from feedback about the reasons for the decision.

Finally, one additional piece of evidence stands out as strongly persuasive against this allegation. There is compelling evidence that, according to the SCAO Directors the Court invited to present, the HR function under Ms. Masias had developed toxic relationships across SCAO. This surprised many Justices and caused credible concerns for them about what might transpire if Ms. Masias were promoted to the State Court Administrator position. This evidence of poor relationships bolsters the non-discriminatory reasons given for not awarding Ms. Masias the promotion.

Finally, it is not contested that the Chief Justice, despite her remarks, was a champion for Ms. Masias in the promotion process. She voted for her candidacy and gave the other Justices the clear impression that she wanted Ms. Masias to get the job.

On balance, the evidence of credible non-sex-based reasons for the decision outweigh the remarks of one decision maker, even the most important one. The concerns about Ms. Masias’s tactical focus, the infighting in SCAO that appeared to revolve around HR, and questions about her strategic vision were broadly shared and corroborated by the weight of the evidence in this investigation. These factors were the reasons, more likely than not, for the decision not to award Ms. Masias the position.

In closing, while I do not find that sex-based discrimination is the likely reason for this promotion decision, I do find that this process deviated in important ways from the standard SCAO promotion process. The evidence is not contested on the point that there was no competitive process for Mr. Ryan. There was no second chance for Ms. Masias, despite that being the plan. There was no application, no interview and no process required for Mr. Ryan. This was described by both attorneys and HR witnesses as violating the accepted processes within SCAO at the time, particularly for such a prominent position. This decision – to just award the job to a favored candidate – echoes a theme I found throughout this process. In a number of these cases, individuals operated as if the rules, procedures and processes just did not apply to them. If this attitude still exists, those holding it must be swiftly disabused of this notion if the public is to regain trust in the Branch.

2. Findings

For the reasons set forth above, I find:

- Allegation Sixteen, contending that Ms. Masias was not selected for promotion to State Court Administrator because of her sex and/or sex stereotyping, is **Not Substantiated**.
- However, it is **Substantiated** that this promotion decision was made as the result of an irregular process that deviated significantly from SCAO standards for fair promotions within the Branch.

Allegations of Finance Department Misconduct (8-10)

Allegation Eight: Financial Manager Impermissibly Using Accurint

Evidence a financial manager accessed personal information on various leaders throughout the state using Accurint for no business reason; no discipline taken on him and he was promoted less than two years later to deputy director.

A. Methodology

As background, Accurint is a system operated by LexisNexis that allows users to access public and non-public information about individuals. It is widely used by law enforcement and other government agencies to obtain detailed personal information including assets, relatives, associates, arrest records, corrections records, and sexual offender records. It is a powerful tool with access to sensitive information.²⁶ The Colorado Judicial Branch has used Accurint since 2009 for specifically delineated and limited purposes.

My investigation determined that the events in this allegation likely occurred at some point between 2009 and 2011. This allegation was raised by Mr. Brown in 2018 before he left the Judicial Branch. According to employees at the Branch, Mr. Brown raised this allegation as an example of leadership misconduct. Mr. Brown thought was as serious as the misconduct Ms. Masias was being accused of at the time, with respect to her expense reimbursements.

I substantiated that some episode of improper access to Accurint likely took place, but I could not determine with certainty the date of that access. I substantiated that it is more likely than not that at least one target of the access was Ms. Masias, based on the financial manager's (described hereafter as "Finance Manager") recollections as conveyed to me in his interview. I corroborated that there was no discipline of this Finance Manager, but I could not corroborate that this situation was ever formally investigated or that Human Resources made any recommendation of discipline. It is true that this person was ultimately promoted to Deputy Director after these events.

I interviewed nine (9) people with knowledge about this situation. The Finance Manager did not remember any specifics but offered speculations about what this could be about. Other witnesses had recollections of his explanations at the time this instance was complained about. The people I interviewed included the Finance Manager, his supervisor at the time, members of the finance and legal teams, and an individual who is responsible for the management of the Accurint system for Judicial. This witness likely would have been aware of any formal complaint or investigation into Accurint use because of their responsibility for the program.

I attempted to locate any relevant documents, images, or records relating to this alleged complaint about Accurint use. I also requested and reviewed the Finance Manager's performance evaluations and promotion history. I reviewed the rules around Accurint use and requested a search for any complaints about this Finance Manager's use of Accurint (there are none). I reviewed audit files relating to two audits done under Finance Manager's tenure as Audit Manager because of his recollection that there may be some connection between that work and his use of Accurint to check on property records relating to Ms. Masias. Review of these records, including handwritten notes,

²⁶ Accurint: <https://www.accurint.com>.

revealed no connection. I could not locate any investigation file relating to Accurint use. If this was investigated by HR at the time, the files have not been retained.

I submitted a full report on this investigation to counsel for the Judicial Branch on May 23, 2022. On May 24, 2022, I was directed to prepare Report Summaries on all matters for public release. I completed this Report Summary pursuant to this requirement.

B. Summary of Material Evidence

The Judicial Branch obtained Accurint in 2009 and authorizes its use only in circumscribed instances:

Official Use of Databases:

All searches on the database are electronically logged along with the user conducting the search. These search logs are maintained by Accurint and are subject to review and monitoring by Accurint, the District Customer Administrator, and the Central Customer Administrator. **No searches may be conducted that do not directly relate to court cases being worked by Judicial staff in their official capacity.** In other words, any searches not concerning Judicial official business, such as requests for data on celebrities and other public figures, relatives, acquaintances, Judicial employees, etc., ARE PROHIBITED. Violations will result in immediate termination of access and could result in disciplinary and other action.

Keep the following rules in mind as you use Accurint:

- 1) Do not conduct person or property (or other) searches on yourself, your own social security number (SSN), last name or former name, your spouse or former spouse (incl. significant others), co-workers or other employees, friends, relatives, neighbors, acquaintances, officials, celebrities, public figures, or any other person, business, or entity (or related SSN, ID number, phone number, address, etc.) that is not directly tied to a court case and official Judicial matter *that needs your attention in your official capacity*. **No personal use is authorized.** Our contract with LexisNexis for the use of Accurint is predicated on the agreement and understanding that searches will be conducted for official Judicial business only.

(Emphasis in original.)²⁷ The Judicial Accurint Use Policy contains a written User Agreement and Acknowledgement that every user must sign. This document states that the user has read and understands the policies pertaining to Accurint use.²⁸ Finance Manager, who was Audit Manager at the time, signed his User Agreement on July 1, 2009.²⁹

The investigation revealed two possible chronologies around the alleged improper use of Accurint by Finance Manager. The first is that Finance Manager made some improper searches, using real Judicial Branch personnel, when he was testing the Accurint system in 2009. According to one employee at the Judicial Branch, they recalled that Finance Manager tested Accurint “on live people” and this caused a credit check to enter on those individuals’ credit reports:

²⁷ Colorado Judicial Branch Policies and Procedures Concerning the Use of Accurint.com, updated December 2011.

²⁸ *Id.*

²⁹ This date, before the execution of the contract, would make sense as in his role of Audit Manager at the time, he was the individual tasked with trying the system out to determine if Judicial would buy it or not.

[Finance Manager] was testing [Accurint] and he tested it on live people – I don’t think he knew it would cause a credit check thing. He had to have a real person to check. He didn’t know it would cause a credit hit. I don’t know how he picked who to look up. . . . It was more than one person. I don’t remember who it was. I remember it was completely an innocuous effort to make sure we were going to get our money’s worth. . . . When that happened, we looked into it. He felt terrible it impacted anyone.

Three other witnesses remember that when they asked Finance Manager about these allegations in 2018, he speculated that “[M]aybe it was when he was testing the system” or it was when he was training on the system.

However, in his interview with me, Finance Manager speculated that he may have used Accurint to examine Ms. Masias’s real estate transactions in connection with an audit he was doing in the Probation Department. According to Finance Manager, the State Court Administrator at the time raised the prospect that there may have been some connection between Ms. Masias and the subject of the audit. He said, “I might have looked on something at Accurint to find something on the two of them.” He said that there were contentions that Ms. Masias and the subject of the audit were personal friends and worked together. He also said he did this review “in talking with [the State Court Administrator]. He was aware of what I was doing in that audit.”

The State Court Administrator at the time adamantly denied this. He said, “That never happened. We did investigate issues on [the person in Probation] but there were never allegations about a connection between [them] and Mindy. . . . I never authorized any use of that tool for any judicial employee. [It was] only to be used for those defendants who owed money via fines, fees, and restitution.”

When I asked the Finance Manager why a friendship or working relationship – without any other evidence of wrongdoing – would subject a person to being searched on Accurint, he did not have a logical explanation as this exchange reflects:

Why was Mindy involved? She had a pretty close relationship with them down there. She was involved in a lot of what they were doing. Her and [the person] had been working together for a while. . . As an auditor I have to run down a lot of different scenarios, different things you have to look at to see if there is any trail there.

How would Accurint have come in? I don’t even know. Seeing if there was any sort of real estate transactions and property transactions, different things like that. *Did you have a lead that they owned property together?* No. That’s the point you are trying to follow leads and disprove things. I don’t know if I even did that or not. The whole allegation is based on something - I don’t know what it is based on. . . This came about because [the former SCA] said there was a connection. I remember a general conversation with [him] about the [Probation person] and potential collusion or corruption. *With Mindy?* Maybe. It might have been other people I don’t recall specifically . . .

Were Mindy and this person personal friends? That is what I understood yes. *What was the connection between that and what you were looking at in the audit?* [The Probation person] had a consultant she had used without going thru procurement. That is a red flag.

A red flag for Mindy? I don’t even remember if that is what we used that for. It was because of the

relationship that they had as a possible red flag. . . . *If you are looking at someone for audit purposes do you look at all the people they are friends with or work with at Judicial? Most don't get to this level. They don't have the aspects of what [the Probation person]'s position was in judicial. No I wouldn't think that is a common practice. . . . Have you done that before in other audits? I don't recall specifically.*³⁰

Finance Manager provided me with a copy of the referenced audit report, and I also obtained access to the working papers relating to this audit. Neither the report, nor the work papers, mention Ms. Masias in connection with the audit issues of compliance or other misconduct.

The person who oversees Accurint use for Judicial described what this program is used for at the Judicial Branch and said they were unaware of any complaint of misuse of Accurint by Finance Manager: "I know I was never asked to look at his use. While I was Administrator of the program, prior to being the Manager, I would have been the one to do that search."

There were no records of such a complaint or any investigation. There were likewise no discipline or performance plans in this Finance Manager's personnel file on this or other matters. This person was promoted three times since being hired and was promoted to a Deputy Director position in 2013.

D. Analyses and Finding(s)

1. Analysis

This investigation did not reveal hard evidence about the complaint—specifically, how Accurint was misused or who it impacted. We have no HR records, interviews, or investigation report. It does not appear that anyone sought out information from the individual responsible for Accurint and they were unaware of any complaint. While some records at Judicial have been difficult to locate during this project, I have typically unearthed some documentation in those cases where there was an HR investigation. I would expect the person responsible for the system to have been interviewed. The absence of such data here suggests that this situation was not considered serious enough at the time to justify an investigation.

Instead, I found two possible explanations from six people with some recollection that there was a complaint from Mr. Brown about this topic. Four people remembered some issue around Finance Manager testing or training on the system. One witness, who has offered credible data in other investigations, remembered this with a degree of particularity. They remembered that credit checks popped up, signaling to management that Accurint had been improperly used. In contrast, Finance Manager believes this may be about an audit he did and the State Court Administrator's request to run Ms. Masias's name as part of that audit.

Ultimately, whether Finance Manager used Accurint on "live" coworkers while testing the program or whether he used it to look at Ms. Masias's real estate transactions, it appears that the usage would have been improper under either scenario. The terms of the User Agreement he signed are clear. Finance Manager agreed not to conduct searches that did not "relate to court

³⁰ The two people who met with Finance Manager to ask him about the complaint issue did not have any recollection of him mentioning Ms. Masias as being involved in an audit in some way.

cases being worked by Judicial staff in their official capacity.” As clearly stated, “any searches not concerning Judicial official business, such as requests for data on . . . Judicial employees, etc., ARE PROHIBITED” (emphasis in original removed.) Whether his usage was innocent, as recalled by one employee in remembering the credit checks, or more purposefully illegitimate, as suggested by the implausible audit explanation, it was improper either way.

It should be noted that the version of events Finance Manager put forward in this investigation regarding the audit is implausible and not corroborated by any other evidence. The idea that Finance Manager would have run Ms. Masias’s name in a Probation audit because of her friendship with the subject is farfetched. Finance Manager did not satisfactorily explain why a leader in one operational group would be audited on the mere fact of a working or personal relationship - without some evidence of potential wrongdoing. There is nothing in the work papers to suggest a legitimate reason to include Ms. Masias in the audit. The person Finance Manager identified as directing this activity, the State Court Administrator, adamantly denied it. The State Court Administrator firmly stated that he gave no such direction and the audit in question had nothing to do with Ms. Masias. It is notable that Finance Manager’s statements around the audit also exhibited poor credibility because of the change from his first explanation for this situation, his audit explanation’s inherent illogic, and inconsistency with other data.

Given other data unearthed in the investigation about the toxic relationship between HR and Finance, this improbable explanation is even less credible. If anything, the bitterness between Ms. Masias and this group might suggest that the improper Accurint use had improper motives as well.

Ultimately, there is no documentation that details what the complaint was specifically about, but there is sufficient evidence under a preponderance of the evidence standard to conclude that Finance Manager engaged in some improper use of Accurint.

2. Findings

For the reasons set forth above, I find:

- The allegation concerning the inappropriate Accurint use is **Substantiated**.
- The allegation contending that Finance Manager was not disciplined is **Substantiated**, with the caveat that it does not appear that any formal investigation was done, or that any discipline was recommended.

Allegation Nine: Financial Manager Investigated Twice for Harassment

“Financial manager investigated twice for harassing behavior. Receives more staff and a better office. No mention of the complaints in his 2017 performance appraisal.”

A. Methodology

Through this investigation, I determined that the financial manager (described hereafter as “Finance Manager”) was investigated three times for harassing behavior. These investigations occurred in 2015, 2017, and 2021 and involved two different complainants. I also confirmed that the Finance Manager received more staff and a better office, and there was no mention of these harassment complaints in his evaluations.

I interviewed eleven (11) people with knowledge about this situation. These included Finance Manager, his present supervisor, one of the two individuals who had filed complaints about harassment, and members of the HR and Legal Department teams who were aware of and involved in this situation. People had strong recollections of what happened.

I sought out documents, images, or records relating to the alleged harassment complaints and investigations. These included Finance Manager’s performance evaluations, discipline, and trainings as well as documentation of his staffing and office situation. There was a great deal of documentation on these events, which helped the investigation proceed. This consisted of investigation interviews and reports, email communication, texts, performance evaluations and other material.

I submitted a full report on this investigation to counsel for the Judicial Branch on May 10, 2022. On May 24, 2022, I was directed to prepare Report Summaries on all matters for public release. I completed this Report Summary pursuant to this requirement.

B. Summary of Material Evidence

1. The First Complaint and Investigation - 2015

On September 30, 2015, a woman employee in the Legal Department spoke with her supervisor and made statements which the supervisor interpreted as raising a complaint of potentially discriminatory comments. She stated that Finance Manager had told her there were concerns about the quality of her work because she was “young, blond and female.” The supervisor reported these comments to her supervisor on October 1, 2015 and requested that HR assist in an investigation.

The woman employee said she did not see herself as stating a complaint of discrimination and did not want these concerns investigated. She described herself as “venting” to her supervisor. The investigation proceeded against her wishes.

The Human Resources investigator interviewed three individuals in conducting this investigation: the woman employee, her supervisor, and the Finance Manager. The investigation found that the allegations of harassment were not substantiated. This was so because the investigator found that Finance Manager was not stating his own views when he made the statement about concerns with

her work being because she was “young, blond, and female.” Instead, it was determined that he was sharing his perceptions of what other male finance employees believed about this woman employee. In short, he was sharing this information with the woman attorney to help her figure out why she was feeling disrespected for her work.

The HR investigator recommended no disciplinary action or punitive consequence for Finance Manager. She recommended that he be “reminded that discussions about age, gender and other personal characteristics are unsuitable for the work environment.” Finance Manager’s supervisor said that he followed these recommendations and spoke to the Finance Manager about these topics.

2. The Second Complaint and Investigation - 2017

On April 21, 2017, an employee in the Finance organization (described hereafter as “Complainant”) met with HR to file a complaint against this same Finance Manager. She provided a written complaint on April 24, 2017. The Complainant stated that Finance Manager engaged in “public shaming and belittling on multiple occasions,” and discriminated against her based on “socioeconomic status.” She stated she was resigning because of this treatment.

The Complainant provided examples of this behavior. It included Finance Manager “shush[ing]” her in meetings, interrupting her, and becoming red in the face during meetings. The Complainant reported this behavior to Finance Manager’s supervisor. She said the behavior was not as blatant or reoccurring after this report, however Finance Manager continued to “become irate and turn[] red in the face, shake[] [h]is head and become[] real short and dismissive.”

The examples also included statements around her career progression and performance. The woman employee stated that Finance Manager dissuaded her from applying for a promotion, saying, “While I cannot tell you not to apply, I will tell you that if anyone else has more experience in either IT or procurement you will not get the job.” Further, Finance Manager told her he did not like employees who marked themselves at the top or close to the top in their self-evaluations, and “[She] should remain modest.” In the meeting on that performance evaluation, Finance Manager allegedly told her, “I lowered your scores across the board because you had displayed your frustration out loud and I do not feel that you communicate effectively.” He went on, “[Y]ou have a problem with remaining positive, but I scored you high on teamwork because you’re the first to jump in and see if anyone needs help.” At the end of the review he said, “[C]ommunication is the largest skill you need to improve on, you just want to be heard.” The Complainant responded that “[M]ay be a little unreasonable” but she could understand, adding, “a lot of millennials get a bad rap for that but we just communicate differently.” He replied, “Off the record no it is not because you’re a millennial . . . it is clear that you are from a lower socioeconomic background and you’ve had to fight to get to where you are and because of that you just want to be heard.”

These statements caused the Complainant to feel “judged, prosecuted and profiled.” She was highly upset, went home, cried, and “was truly hurt and baffled.”

Two HR investigators interviewed six additional employees and substantiated that the Finance Manager subjected the woman employee to unprofessional behavior that violated the Code of Conduct, Standards of Conduct, which stated: “[E]mployees shall ‘demonstrate high standards of

professionalism in the workplace that includes interacting with the public, co-workers and management in a civil, courteous, and respectful manner.”” They did not substantiate that the Finance Manager dissuaded the woman employee from applying for an open position or that he discriminated against her because of her socioeconomic status.

The HR team recommended corrective action against Finance Manager for violating the Judicial Department Code of Conduct. They also recommended that he take mandatory trainings in the Code of Conduct, Introduction to Cultural Competency, STAR workshop, HR Law, Anti-Harassment for Supervisor, Performance Management for Supervisors and My Role As: Team Leader.

However, no discipline was imposed, and Finance Manager did not do any of the training at the time. Training records show that Finance Manager failed to complete any of the recommended training within two years of the report and most of it remained incomplete until 2021:

- Code of Conduct: started in 2017 but incomplete; completed 6/14/19.
- Intro to Cultural Competency: started six times but dropped four times and incomplete two times.
- STAR Workshops: started eight times but dropped four times, incomplete three times, one time in progress.
- HR Law: started in 2018 but dropped; Completed in 2021.
- Anti-Harassment for Supervisors: Completed in 2021.
- Performance Management for Supervisors: never taken.
- My role as: Team Leader: never taken.

The cadence and lack of progress on these trainings does not suggest that there was any urgency around Finance Manager doing this training from him or from his management.

Finance Manager’s 2017 evaluation contains no direct reference to this substantiated complaint. It states, with respect to Finance Manager’s communication skills, “[Finance Manager] communicates effectively and uses acceptable language in the workplace.” It ranks him 4/6 in the category that includes “Uses Good Judgement.” It states (incorrectly) that “[Finance Manager] has completed assigned training . . .” The evaluation contains several veiled references that might relate to this investigation:

- Under “Professionalism,” for which Finance Manger received a 3/6, it states, “[Finance Manager] is quick to accept accountability for his and his department’s actions.” It goes on to say, “[Finance Manager] demonstrates the appropriate level of professionalism for [his] position.”
- Under “Teamwork,” for which he is scored 4/6, it says “[Finance Manager] can continue to improve by always fully listening to others.”
- Under “Supervision” which is ranked 3/6, it says “[Finance Manager] adequately supervises the [] unit. . . . [Finance Manager] should continue to improve on listening to staff in the unit and letting them express themselves.”

Finance Manager is described as an “asset to the Judicial Department and SCAO” and he received an overall positive evaluation for 2017.

3. The Third Complaint and Investigation - 2021

The same woman employee referenced under “the first complaint” raised the third complaint. During her exit interview prior to leaving Judicial, she said that she was uncomfortable with the male Finance Manager and found herself subjected to inappropriate behaviors in the years following the first complaint. She did not come forward with these behaviors because of the negative experience of going through an investigation against her wishes the first time.

Her complaint included that:

- The Finance Manager was “creepy” to herself and others, including speaking in a sort of creepy voice.
- He made comments when she was wearing stretchy pants that they made her thighs look thinner.
- He would frequently look at the zipper on her pants and comment when it was down.
- He frequently commented about her appearance including about her nails, her earrings, the color of her shift and her overall appearance.
- He made a comment about a string on her back pocket, which made her think he was looking at her butt.
- When they went on a run together, he talked about taking a woman friend to a movie about swingers.
- He made statements giving her the impression that his marriage was, at some point, an “open marriage.”
- He would abruptly switch directions in a professional conversation to talk about something personal.
- He frequently opened doors and invited her to walk through them before him, she suspected so he could look at her butt.
- He changed the way he interacted with her after she became more assertive, being disrespectful and demeaning.
- Following the Finance Manager’s request to the employee to “vouch” for him with respect to the “memo that was published by the Denver Post,” this woman employee decided to leave the Judicial Branch.

HR investigated these allegations. Two investigators conducted interviews with three individuals, which included the two mentioned parties and one additional witness from another department.

Finance Manager denied making comments about the woman attorney’s appearance or body and said that from his perspective, the two were friends. He provided friendly text messages the two exchanged, including one congratulatory email he sent her upon her decision to leave Judicial where she asked him to “[P]lease stay in touch!” as evidence of their collegial relationships.

The investigators found that the allegations were not substantiated. Their report, dated July 2, 2021, provides the reasons for this finding: that the woman attorney never told Finance Manager that his behavior or comments were inappropriate or made her uncomfortable; and that while the woman employee said these behaviors caused her to avoid Finance Manager, she continued to

exchange friendly text messages with him, including asking him to stay in touch after she left Judicial.

The HR investigators recommended that Finance Manager's supervisor meet with him to go over the expectations of professionalism and supervisor/Finance Manager conduct pursuant to Branch policies. They recommended that this meeting be documented, and a copy of this documentation be placed in his file. They recommended that Finance Manager immediately read and comply with policy and personnel rules and confirm that he had read these policies by email. They proposed additional training, including mandatory classes he had not completed following the second investigation such as Introduction to Cultural Competency and Basic Management STAR Workshops 1-3 and 4. They also directed him to take an Anti-harassment for Supervisors and Code of Conduct training, which he was "due to retake in 2022."

Finance Manager's supervisor remembered talking with Finance Manager but did not recall that he documented the discussion. He said he did not recall that discipline was considered. He said he thought that Finance Manager had completed all the training that was required.

I found that Finance Manager did receive a better office and an additional staff person in 2018 and 2017, respectively. The additional staff person joined after the first investigation but before the second one in March 2017. Finance Manager moved into his supervisor's office in 2018. Finance Manager's supervisor said that expanding workload explained the additional staff person Finance Manager was allocated. He also said that an office remodel resulted in him getting a better office, so Finance Manager backfilled the office his supervisor had previously occupied.

C. Analyses and Finding(s)

1. Analysis

There were three substantiated incidents where Finance Manager was accused of inappropriate statements and conduct toward female teammates. The 2017 investigation substantiated a Code of Conduct violation not based on sex; and the 2013 and 2021 investigations did not substantiate the allegations. However, both the 2017 and 2021 investigations are problematic in terms of management's failure to respond to them and because neither investigation appears to have been sufficiently thorough.

The 2017 investigation substantiated a Code of Conduct violation and recommended documented discussions between Finance Manager and his supervisor, policy review, and training. None of those steps were taken at the time. Two years later in 2019, one training was done and four years later in 2021, several more were completed. Some recommended training remains incomplete as of the date of this report. There is no direct mention of this substantiated finding in Finance Manager's Performance Evaluation that year and no discipline ensued. Management apparently discounted what happened and moved on.

Moreover, the 2017 investigation data reveals some evidence of possible gender stereotyping that appears to have been missed by the investigator. Finance Manager told the female complainant not to express her frustrations "out loud," to "remain positive," and to "remain modest," among other things. This kind of commentary can be coded stereotyping for asking women to "smile more" and

to be more pleasant – a requirement that is often not asked of men. It does not appear that the investigators evaluated these remarks as potential indicators of gender bias.

The investigation into the third complaint was likewise not thorough. The complainant raised concerns about comments regarding her appearance, inappropriate personal commentary, and “creepy” interactions that spanned at least eleven (11) different topic areas over the course of six years. To fully investigate this set of allegations, HR should have interviewed more than just the parties and one additional witness (who does not appear to be someone who worked closely with either party). With at least eleven incidents over six years, this was a substantial investigation. The approach should have started with interviewing other coworkers who were in positions to observe behavior—particularly women who worked closely with Finance Manager.

In shortening this investigation, the investigators appeared focused on the facts that complainant never told Finance Manager that his behavior was offensive and that she continued to send him friendly texts. However, it is not an employee’s responsibility to notify a coworker when their behavior is problematic. While direct conversations are one way for workplace conflict to be resolved, they are not the only (or even the recommended) way to deal with workplace harassment. It is not a requirement that someone tell a person they are offended or to stop. Further, the friendly texting could be motivated by several things including fear of conflict, avoidance, welcomeness, or an absence of negative impact from the behavior. More data is needed to determine what was going on in this situation. The texting does not negate the alleged behaviors, which do not appear to have been fully examined.

A more robust investigation would have comported with best practices and would have addressed the fact that this was the third complaint in seven years from female employees about this male employee. Three complaints from women could suggest a pattern requiring a closer look than the investigation that was done. There may be no pattern but without a thorough investigation, there is no way to make that assessment.

Finally, it should be noted that Finance Manager was given an additional direct report and a nicer office between the second and third investigations. The explanations are innocuous and do not suggest that Finance Manager was “rewarded” for inappropriate behavior. Moreover, the additional staff person was added after a completed investigation that did not substantiate misconduct.

However, the office move happened a year after the substantiated finding in the second investigation. At the very least, the optics are not good where Finance Manager received a better office a year after he was found to have violated the Code of Conduct. This, together with the indifferent response to the finding from management, does not convey that concerns about Finance Manager’s behavior were deemed serious in the minds of management.

In conclusion, the facts suggest that HR and Finance Management should have taken a more deliberate approach to the issues raised about Finance Manager, including acting upon the findings in the second investigation, taking a closer look at Finance Manager in the most recent HR investigation, and ensuring proper training and consequences were implemented. The facts suggest

that leadership in the Finance organization has been reluctant to take these kinds of claims against Finance Manager seriously.

2. Finding

For the reasons set forth above, I find:

- The allegation is **Substantiated** on all accounts.

Allegation Ten: Director of FSB Complained of “Not Working Even Banker’s Hours”

“Director of FSD complained about not working “even banker’s hours” by staff. Staff of other division follow him to his bar, home, and track that he does not place time in PTO system and is seen at home at 3:00 pm often or at bar.”

A. Methodology

My investigation did not substantiate the allegations here. There is some data to suggest that the Director of FSD (described hereafter as “Finance Manager”) worked less than some colleagues and was not in the office as much as people expected. However, the investigation into his whereabouts and performance was not appropriately thorough or impartial. Moreover, while there may have been performance areas Finance Director needed to improve upon, these were not serious enough in the eyes of his supervisor to justify termination. Finally, the timing of these events strongly suggests that there could have been a retaliatory motive for the investigations into the Finance Director and these motives were not investigated. On this record, I cannot substantiate the allegations claimed.

I interviewed ten (10) witnesses who had recollection of this incident and obtained additional information from a transcribed interview conducted in another investigation. I reached out to Finance Director, who is no longer with the Branch, several times to seek an interview. After initially agreeing to meet for an interview, he stopped responding to my requests. I was able to find his recorded interview from the investigation of this incident, which provided useful information.

While an in-person interview with Finance Director would have been ideal in my investigation, even without it, I believe I have received enough evidence to reach firm findings on this allegation under a preponderance of the evidence standard. This is particularly so because of the volume of documentation on this set of issues.

I sought out existing documentation from the Supreme Court Administrator’s Office, HR, and Legal Department. There is significant documentary data that is relevant to this allegation. Some documents were provided to me and others, I personally located by searching through databases of material that were made available to me.

The full report on this investigation was submitted to the Judicial Branch on June 9, 2022. On May 24, 2022, I was directed to prepare Report Summaries on all matters for public release. I completed this Report Summary pursuant to this requirement.

B. Summary of Material Evidence

1. *The Timeline of Relevant Events*

- **Investigation into Alleged Reimbursement Misconduct by Ms. Masias**

According to witnesses who were involved in this incident, as well as documents I reviewed, it is accurate that allegations were raised about the Director of the Financial Services Division in

January 2019. However, the relevant chronology of events goes further back in time and is important in understanding what took place.

In July 2018, Ms. Masias submitted receipts and requests for reimbursement to the Controller of Judicial. Her receipts indicated that the expense occurred in FY19, but Ms. Masias submitted them for FY18. The Controller pointed this out to Ms. Masias and told her to resubmit the forms.

Ms. Masias did so but submitted the forms to the general accounting email and not to the Controller directly. The forms still requested reimbursement for FY19, and the invoices were altered to reflect different expense dates.

This concerned the Controller, who got the Director and other members of management involved. An investigation ensued and the external investigator concluded that the second invoice was fabricated, although he stated he could not reach a finding as to who altered the invoice.

As a result of the investigation, the State Court Administrator notified Ms. Masias on November 7, 2018, that he would be terminating her employment, effective November 15, 2018. Ms. Masias requested FMLA leave on November 12th and informed the Branch that she had retained counsel.

Initially, the State Court Administrator had not planned to terminate Ms. Masias because of this situation. However, Finance Director and Controller informed him that they refused to sign off on documents required for a pending audit unless Ms. Masias was terminated. The State Court Administrator had little choice but to proceed with termination.

According to both Finance Director and Controller, the State Court Administrator told Finance Director words to the effect of, “[W]atch your back.” Further, according to Finance Director, the State Court Administrator was instructed by the Chief Justice to get rid of both Finance Director and Controller for insubordination. The Chief Justice (from that time) has denied that he gave this instruction.

- **Human Resources inquiry into alleged wrongdoing by Finance Director**

Less than a month later, Human Resources Director Eric Brown began an HR inquiry into wrongdoing by Finance Director. This inquiry culminated in a January 22, 2019 memorandum from a Senior Human Resources Manager to the State Court Administrator, setting forth allegations of misconduct by Finance Director in five areas: email usage that showed Finance Director was hardly using email, suggesting he was not working at his job; time theft in that his hours at work were insufficient for a full-time executive of the Branch; a lack of appropriate leadership in the division; “sexual harassment” concerns based on Finance Director being “creepy,” asking women questions about their married life “out of the blue,” and invading the investigator’s personal space in a manner that was “unnerving”; and the fact of falling morale in the division. The investigator concluded that Finance Director was performing minimal work, stealing time, failing to engage, failing to lead, and engaging in potentially sexually harassing interactions with female staff. The memorandum, which explicitly states it is “cursory” and “not an exhaustive and complete review,” sets forth investigative efforts HR had already undertaken, starting as early as December 7, 2018, to investigate these concerns.

The State Court Administrator received this report, and nothing further appears to have happened for two months. During this timeframe between February and March 2019, negotiations occurred amongst Ms. Masias, her counsel, and SCAO regarding the terms of her departure and the leadership contract. Ms. Masias resigned on March 15, 2019.

- **External Investigation into Alleged Wrongdoing by Finance Director**

One week after Ms. Masias's departure, on March 22, 2019, Finance Director was placed on administrative leave while the allegations raised in the January 22nd memorandum were investigated by an outside investigator hired by HR. According to several witnesses, the investigator was previously known to, and connected with, Ms. Masias and Mr. Brown through their presentation work with the National Center for State Courts.

The investigator relied in part on the previous investigation done by HR, interviews with seven individuals including Finance Director, a review of records of activity in Finance Director's building access badge, Finance Director's email files, his performance reviews, and FSD employee satisfaction surveys. The investigator also examined Finance Director's hard drive to determine the number of working files actively being accessed and his VPN to determine how much remote access was taking place.

I listened to the one hour and 45-minute recorded interview that the investigator conducted with Finance Director. In that interview, the investigator spent the first 40 minutes asking questions about Finance Director's leadership style and practices. Following this, the investigator asked direct, and at times adversarial, questions of Finance Director about his time at work, use of email and overall professional commitment to his position.³¹ The investigator also discussed the connection that Finance Director was making between the investigation of him, and his role in the inquiry of Ms. Masias. At one point, the investigator said (inaccurately), "I don't believe your individual productivity is at issue." At the end, the investigator told Finance Director, "I'm not seeing a good strategy that leads to your continued employment, I gotta be honest with you. I think there are just things beyond repair."

The investigator gathered and reviewed documentary evidence about Finance Director's time spent in work or on work activities. He reviewed Finance Director's building access and PTO records from the period of October 1, 2018, through March 22, 2019, indicating that Finance Director's time in the office amounted to approximately 32 hours per week. When considering holidays, PTO and early closure days, the investigator concluded that 4.8 hours each week was "unaccounted for" based on a nine-hour workday (eight hours work and one hour lunch). He also reviewed Finance Director's computer files on his hard drive and found 33 work files that showed activity during this five-month timeframe. Finally, the investigator reviewed Finance Director's access to the network via VPN, which showed only one occasion where Finance Director was logged on remotely for a measurable period of time.

The investigator reviewed some slight evidence relating to Finance Director spending time on

³¹ The one exception to this statement was the allegation that Finance Director left work frequently to go work at a bar he co-owns with a family member. This subject was not raised by the investigator in his interview.

personal matters during the workday. He found evidence that Finance Director worked on volunteer boards, including one spreadsheet. His report does not reflect that he reviewed any data relating to work time allegedly spent at the bar that Finance Director and a family member owned.³²

Finally, the investigator reviewed evidence relating to leadership accountability and employee satisfaction. He cited his surprise that Finance Director, as “an individual who expressed such an enlightenment as [he] described,” would not remember the details of a personnel action memo he received directing him to engage more with his staff. However, in the interview it was the investigator who used the word “enlightenment,” not Finance Director. Investigator described the receipt of this memo as, “A pretty significant period of enlightenment . . . in your career.” He also noted that it was concerning that Finance Director did not ensure that HR’s recommendations were followed with respect to the employee in his group who had a substantiated harassment complaint. Moreover, he found that employee satisfaction was low and “unhealthy” in the division.

The investigator reached findings in his investigation report, dated April 8, 2019. These included that Finance Director’s time in the office was “substandard” for a person in his position, that his use of “state time and equipment” for personal business was problematic, that his leadership “lack[ed] accountability,” and that his organization was “unhealthy.” In his conclusion, the investigator noted Finance Director had “failed the division and SCAO.”

The State Court Administrator responded to this investigation report by drafting a termination notice to Finance Director on April 14, 2022, which he finalized and sent to Finance Director on April 24, 2019. The termination took effect on April 26, 2019.³³

- **Finance Director Appealed the Termination Decision**

Finance Director appealed his termination and hired counsel. Negotiations between counsel and SCAO commenced, with the parties settling upon allowing Finance Director to depart as part of a layoff instead of departing as a result of a termination of employment.

2. *Witnesses’ Recollection of Events*

Witnesses generally stated that it was known throughout the Branch that Finance Director did not work in the office with as much regularity as might be expected for a person in his position and that he would go to a bar owned by his family to help with the books (or do other tasks on behalf of that business). However, the previous State Court Administrator, for whom this Finance Director worked, said that this was done with his knowledge and permission, and he never found Finance Director unavailable when he needed him:

[Finance Director] had talked to me about his brother running this bar in Aurora and he needed to help with the books, they were trying to sell it. He asked me if he could go there and I said sure if it was on his time. In addition, [Finance Director] not only had permission but had the responsibility

³² It is possible that the investigator asked other witnesses about this issue but did not include it in his investigation report. I was not provided with, and could not locate, the other recorded interviews done in this investigation.

³³ Finance Director appealed his termination and hired counsel.

to meet with the Chief Justice when the Chief was meeting with budget committee members. . . . He not only had permission, but he [had] responsibility to do this. . . . The role is not just an 8-5 job. I can tell you there was never a time, I had [Finance Director]'s cell phone number, when I would ask him for documents/budget data that he didn't answer my phone call and get me the information I needed immediately. When they are talking about bankers hours – issues that were there but I considered them all professionals.

A number of witnesses confirmed that Finance Director's job required him to be off site to work periodically, particularly during budget season in the Colorado Legislature (which overlaps with the timeframe that the outside investigator evaluated as insufficient).

Seven (7) witnesses stated their concern that the HR investigation into Director was retaliatory, based on Director's role in the Mindy Masias expense reimbursement situation. One person said, “[T]his looks like they just wanted to get rid of him . . . they were working toward a defined end. This was not an investigation it was a justification.” Another noted, “[W]hen the whole thing with Mindy first occurred and [Controller] and [Finance Director] said, '[W]e are not signing off on the audit,' [the State Court Administrator] told me that he had told [Finance Director], '[Y]ou better watch your own house.' He threatened him and then he made good on it by sic-ing Eric on him. Timing looked very suspicious.” Several employees said they heard that Ms. Masias drove by Finance Director's house on a workday when she was out on leave and saw his car in the driveway. This surveillance was identified as the instigating factor that started the HR investigation going. The well-known animosity between Ms. Masias and Finance Director exacerbated these concerns about retaliation.

The State Court Administrator from this time contends that it was the Chief Justice who was driving the investigation of Finance Director. According to the State Court Administrator, the Chief Justice had said to him, “These two [Finance Manager and his staff person] need to go for insubordination,” for their refusal to sign off on the judicial audit. The former Chief Justice strenuously disagreed with this contention and denied being behind the investigation or ultimate personnel action.

Neither the HR inquiry nor the investigation report contains any data on what the State Court Administrator's expectations were for Director's time in the office or how he viewed the conduct that was being examined. The investigators did not interview the State Court Administrator or any fellow Directors about expectations. The State Court Administrator said that he “didn't necessarily have [in-the-office] expectations for Division Directors or for Staff.” To the State Court Administrator, what was important was getting the work done, and not necessarily where it was being done. He said that his leadership team “did a lot of things outside of the office.” Directors I interviewed from that time said that there was flexibility in people's work schedules and some people were in the office more than others.

The State Court Administrator said he that he was aware that Finance Director “had attendance issues,” but acknowledged that he did not “check[] people's desks” to see who was in or not. He described Finance Director as responsive to him when he needed him.

With respect to Finance Director's performance, the State Court Administrator said he told Finance Director to engage “more on a department-wide level” and stop focusing just on the budget. “His

work performance was generally fine. For what it's worth, [Finance Director] is one of the most knowledgeable people about the state budget that I ever encountered over my entire career. I just didn't know until investigation got going was how little he was doing." The State Court Administrator said he was concerned when he saw how few emails the Finance Director sent and received, and also by what the investigation revealed in the way of odd personal documents on his computer.³⁴ This made the State Court Administrator concerned that he did not know what the Finance Director was doing. All the directors I met with said they would expect to be sending and receiving many dozens of emails a day, not the 5-8 emails per day that the Finance Director was handling.

With respect to the allegations of personal use of email and equipment, Judicial's Electronic Usage Policy, Chief Justice Directive 701, does not prohibit personal use, but allows for some incidental use of Judicial's electronic resources:

Limited personal use of the Department's electronic communication technologies [with some exceptions] is permissible when it does not consume more than a minimal amount of resources, interfere with employee productivity, conflict with this policies goals or any other judicial department policy, or preempt any work-related activity, in accordance with the Colorado judicial department code of conduct.³⁵

This policy, and the "limited personal use" allowed, was not discussed, or apparently considered by the investigator.

The State Court Administrator at the time did not agree with the decision to move to termination of this individual. "I would have looked at options like putting someone on a plan. A whole year of performance plans were put on IT when there were issues there. [Finance Manager] for all of the realization of what he wasn't doing, was extremely talented and was very good at what he did. He would have been someone who warranted another chance." The State Court Administrator said that the move to termination was not his call but was directed by the Chief Justice at the time, who wanted Finance Director gone. The Chief Justice denied this contention.

C. Analyses and Finding(s)

1. Analysis

Based on these facts, there is insufficient evidence to substantiate the claim about Finance Manager's behaviors. First, the investigation into this behavior was inadequate and appears biased (based on the existing reports and records). As such it is a not reliable foundation to establish evidence of wrongdoing by Finance Director. Second, while there were likely some performance areas Finance Director needed to improve upon, they were not so serious that his supervisor agreed he should be terminated. Finally, the timeframe strongly suggests retaliatory motives for investigating Finance Director were a possibility, and this possibility was not investigated.

³⁴ The State Court Administrator mentioned spreadsheets correlating his salary to his weight, as one example. I could not confirm that this material existed as neither investigator mentioned it in their report.

³⁵ CJD 07-01 (Amended April 2014).

- ***The Investigation Was Not Thorough***

The investigation report and materials raise many questions that ought to have been answered in the investigation. There is a large body of important data that the investigator should have gone after but did not apparently seek.

First, despite his statement in the report that Finance Director “indicated acceptance of [the attendance concern],” this is an inaccurate characterization. Finance Director indicated it would be “correctable” if there was a perception that he could not be reached. He said “If there are concerns about my behavior and practices, I will be all over it. I will correct that.” Finance Director did not acknowledge that he committed time theft or spent less than full-time in pursuing his job. He acknowledged that if there was a perception that he was not around enough, he would work to fix that.

Secondly, more specific questions would have resulted in more concrete data on Finance Director’s work activities, which was particularly important to gather in analyzing the work schedule of a salaried exempt employee. But the investigator did not ask many of the questions that could have elicited this evidence. The investigator did not ask Finance Director about his time out of the office at the Capitol for budget season. This is despite the fact that the timeframe for budget season overlaps with the timeframe the outside investigator examined. The investigator did not ask Finance Director if he stored documents in OneDrive. He did not ask about the time allegedly spent at the family bar, working on that enterprise. In fact, at one point the investigator told Finance Director, “*I don’t believe your individual productivity is at issue,*” when in fact, it was a central issue in the investigation. In other words, it does not appear that Finance Director was given a full opportunity to understand and answer the specific allegations against him, which is a necessary part of a thorough, impartial process.

Critically, the investigator did not interview the State Court Administrator to ask him what his expectations were for Finance Director in terms of time in the office, hours per week of computer/office work, personal use of email and computer, or work performance in general. Instead, the investigator relied on general statements like “In today’s office environment” in describing what the expectations ought to be. There is likewise no evidence that the investigator asked other SCAO executives about their time in the office, how many files they worked on in a five-month period, or whether it is prohibited to ever use state email or resources of personal reasons (even for de minimus use). It is not clear that the investigator reviewed the policies that exist on these issues.

There is no evidence showing that the “drive-bys” of Finance Director’s home, which instigated the HR inquiry, were corroborated by evidence other than an unnamed person’s word. There is no indication that either investigator confronted or tested any bias that could have been present in that person’s surveillance efforts. If, as reported, this person was Ms. Masias, the investigator ignored an inquiry into an ostensible retaliatory motive for the investigation.

Certainly, the data raised in the HR inquiry and investigation raised concerns about Finance

Director's work habits. A full investigation may or may not have borne those concerns out. The point is, only part of the necessary work was done.

- ***The Inquiry and Investigation Contain Indicia of Bias Against Finance Director and Others Who Were Involved in the Investigation of Ms. Masias***

In addition, there are indicators of bias against Finance Director in both the HR inquiry and the investigation report. Both documents include personally pejorative statements about Finance Director, often without a factual foundation. The investigator characterized Finance Director's work schedule as constituting "egregious time theft," even though he was a salaried exempt employee, and the investigator failed to ask enough questions to understand Finance Director's work schedule, work production or work engagement. The external investigator described Finance Director as "aloof and defensive." He cited his surprise that Finance Director, as "an individual who expressed such an enlightenment as [he] described," would not remember the details of an action memo he received directing him to engage more with his staff. However, as noted above it was the investigator who used the word "enlightenment," not Finance Director. Investigator described this timeframe as, "A pretty significant period of enlightenment . . . in your career." The investigator's use of the word in the report, as though Finance Director was describing himself with this word, is inaccurate and sarcastic.

Second, the external investigator was aggressive at the end of his interview with Finance Director. He used leading questions, with significant characterization of evidence, in a confrontational manner. At the end of the interview, he said "I'm not seeing a good strategy that leads to your continued employment, I gotta be honest with you. I think there are just things beyond repair." An impartial investigator would not question in this manner and would not make a pronouncement about someone likely losing their job.

Moreover, both the HR inquiry and the investigation report include detailed data about behaviors of two of Finance Director's employees, both of whom were involved in the Mindy Masias expense reimbursement issue. The HR inquiry requests permission to do a full investigation of Finance Manager and his two staff members – in other words, of all three people primarily involved in investigating the expense reimbursement situation. These staff members are characterized pejoratively as well. One person's work cadence is described as "an embarrassment." The other was described as perpetuating "perceptions of [] hostile and discriminatory behavior towards staff," despite no investigative finding of discriminatory behavior by this person.

It is not likely an accident that these two individuals appear in a negative light in reports written by two individuals who have been described as having alliances with Ms. Masias. Their behaviors had no central relevance to the purpose of the investigations, which was to examine Finance Director's work habits. The inclusion of such tangentially relevant evidence, to the detriment of two additional people who were instrumental in the Mindy Masias matter, adds to the air of bias (and potential retaliation) permeating these investigations.

- ***Finance Director Was Not Disciplined, or Even Admonished Verbally, About Attendance and Work Performance Problems Prior to the Investigations***

There apparently was a written discipline issued to Finance Director about his leadership and engagement with staff. I asked for but was not provided with this document, so I cannot assess how seriously these issues were treated.

I was provided with no record of verbal counseling, disciplines, performance plans or other serious disciplinary action against Finance Director for his attendance, use of email, diligence, or work task engagement. In fact, the State Court Administrator thought he was doing a decent job, was worthy of rehabilitation and would have given him another chance. The State Court Administrator was not aware of these concerns until the investigation occurred.

On this record, there does not appear to be enough factual support to sustain an action as drastic as termination, particularly on problems described in the HR inquiry as “long existing concerns.” This raises the question that, if concerns were so long-existing, why were they investigated when they were? This question was not asked, or seriously considered, by the investigator here.

- ***The Report Shows That the Investigation Ignored the “Elephant in the Room” – the Possibility That the Investigation Was Retaliatory***

This leads to my last point. Finance Director strenuously claimed that HR’s scrutiny of his work performance was retaliation for his involvement in Ms. Masias’s fraudulent receipt investigation. He raised this with the investigator, but the investigator did not seriously investigate this possibility.

This is notable as the timing, alone, raises the possibility of a retaliatory investigation. Only one month transpired between Ms. Masias receiving her termination notice, and the HR investigation into Finance Director beginning. Only one week transpired between Ms. Masias’s resignation, and the outside investigation into Finance Director. This is close temporal proximity that would have been worth exploring in the investigations.

Moreover, the State Court Administrator contends that the investigation occurred under the direction of the (then) Chief Justice. He stated that the Chief Justice wanted to terminate Finance Director and one of his staff for “insubordination” in refusing to sign off on the agency’s audit. The investigator did not talk to the State Court Administrator or the Chief Justice to explore this possibility.

Whether either of these scenarios would have been substantiated or not, the failure of the investigator to take a serious look at them is a glaring omission of directly relevant data. It suggests that the investigator was focused on one ultimate resolution: documenting the case for termination. It makes the investigation appear to be, as one witness put it, “justification” and not investigation. Had this issue been fully vetted, it may or may not have shown a foundation for Finance Director’s claims. However, the reader of the report is left wondering because this critical issue was never considered.

In summary, the failures of this investigation render it an unreliable foundation upon which to substantiate the misconduct alleged.

2. Finding

For the reasons set forth above, I find:

- The allegations are **Not Substantiated.**

Allegations of Probation Department Misconduct (11 and 12)

Allegations Eleven and Twelve: CPO Sending Penis Pictures and CPO Having Sex on State Time and on State Property

“CPO takes picture of penis and sends to vendor; no disciplinary action taken; CPO has sex with a vendor on state time and on state property who later complains she felt she had to in order to keep her job; no disciplinary action taken.”

A. Methodology

I determined that these events pertain to the same people and sets of facts and accordingly, I am combining them into one Report Summary. These events occurred in 2012, shortly after the dissolution of a consensual relationship between this Chief Probation Officer (described hereafter as “CPO”) and a woman he was dating. The relationship began before the CPO’s promotion when he was a Probation Officer and the woman in question provided services to the Probation Division through a local vendor. He did not supervise her. While the parties disputed the chronology of events around the photo, they agreed that their relationship was consensual, non-coercive, and outside of the office. My investigation found that Ms. Masias and Mr. Brown conducted a full investigation of these allegations, and no disciplinary action was recommended.

I interviewed eight (8) people who had knowledge about this situation. This included the CPO, the female “vendor” in question, the Chief Judge of this District, an individual from the Legal Department, and coworkers in this Judicial District. People had strong recollections of what happened.

I searched for any relevant documents, images, or records relating to the incidents. I located very few documents that were relevant to the allegation. I sought out documents from SCAO’s HR department, the Judicial Legal Department, and this CPO’s chief judge in databases of materials produced in response to subpoenas issued in related proceedings. There were no copies of any investigation materials, the image, or any other records. I discovered one email sent by this CPO’s Chief Judge to the CPO after the investigation of the incident, which I will discuss below. I also located and reviewed this CPO’s evaluations during this timeframe to determine if any discipline was issued (it was not).

I submitted a full report on this investigation to counsel for the Judicial Branch on May 11, 2022. On May 24, 2022, I was directed to prepare Report Summaries on all matters for public release. I completed this Report Summary pursuant to this requirement.

B. Summary of Material Evidence

There is no dispute that the CPO in this allegation had a relationship, before his promotion, with a woman who was working for a local agency that provides probation services to the Division on a contract basis. Both the woman involved, and the CPO characterized the relationship as long-term, consensual, and happy. No one I interviewed expressed any concern about coercion or inappropriateness based on their respective roles. The (then) PO did not supervise the woman or have any impact on her employment

At some point near the end, or after the end, of the relationship (the parties disagreed on this timing), the CPO sent a penis picture to the woman. The woman recalled that he sent it to her after she had begun dating someone else and the CPO stated that he sent it to her when they were still dating. Neither party contended that the photo was sent or received at work.

Ms. Masias and Mr. Brown “showed up” at the probation office in this District and told the CPO that he was accused of “extorting” this woman “for sex.” He met and provided them with an interview. They also interviewed the woman involved. After her interview, the Ms. Masias and Mr. Brown returned to the CPO and told him, “[H]er story is the same as yours – a mutual relationship, two consenting adults.”

The woman remembered this chronology fairly consistently. She recalled getting a call from Ms. Masias and Mr. Brown and recalled meeting with them. She told them that her relationship with the CPO was consensual and not coerced.

Her version of events differs, however, with respect to the image in question. She said that the CPO sent her the penis picture after they broke up when she was dating someone else and the two had conflict about this at a local bar when they both showed up with their new partners. While she was upset that he sent the picture, she said that the workplace had nothing to do with this exchange and she never felt pressured or coerced into the relationship by the CPO’s position.

The Chief Judge in this Judicial District remembered this situation and the HR investigation by Ms. Masias and Mr. Brown. The Chief Judge reported the situation to HR, after an employee in the District brought the photo to his attention. This triggered the HR investigation. According to the Chief Judge, HR concluded that this was a consensual relationship, and the CPO was not in a position of authority or supervision over the woman. According to the Chief Judge, Ms. Masias and Mr. Brown did not write a report, but made verbal recommendations to reinstate the CPO and issue no discipline. The Chief Judge sent the CPO an email on January 11, 2013, reflecting Ms. Masias’s and Mr. Brown’s recommendations. They reviewed this email before he sent it to the CPO:

I am pleased to formally reinstate you to your position as CPO effective 1/9/2013. This outlines the expectations I have for you in light of the recent investigation conducted by HR.

First, as was suggested to you by HR, I strongly suggest that you obtain personal counseling. Although I am confident you are capable of finding your own counseling resources, you may want to contact CSEAP for finding resources. http://www.co_lo_rado.gov / cs/Sate 11 lte/ D PA-EO /D EO/1214905946179

I believe it is critical to impress upon you the importance of your adherence to ethical guidelines established by the Code of Conduct and other Judicial Department policies. It is my expectation that you error on the side of caution. The recent circumstances that led to the investigation into your behavior are a result of the fact that your behavior and performance are closely inspected by employees, business partners and community members. . . .

It is my concern that your recent behavior will open you to significant scrutiny. Because of this, it is my expectation that you use extreme diligence and conservative decisions personally as well as

professionally. I ask that you continue to work with the Division of Human Resources and use them as a sounding board for any ethical dilemmas you encounter.

The Chief Judge said, “[T]he bottom line – it was astonishing to me to know that a memo drafted by Eric was reciting this as an example of problem culture in the Judicial Department. Everything that was done was done at Mindy’s and Eric’s direction. I am utterly exasperated.”

I found no corroborating evidence for the claim that the CPO and vendor had sex on state time or on state property. The CPO denied that the two ever had sex in the office or on state time. The woman involved was adamant that the two never had sex on state property or on state time: “I can’t think of a single time when we were even alone in the office. We were never in the office with the door shut, ever.”

The corroborated fact that Ms. Masias and Mr. Brown recommended no discipline in this matter suggests that they did not substantiate any abuse of power or position in the CPO having sex on state time, on state property, or otherwise.

Finally, I found no record that the CPO in question was disciplined for this event. His 2013 evaluation was all positive, with scores of four (primarily) and one five (for professionalism). I requested records of any discipline that was issued, and nothing was located.

C. Analyses and Finding(s)

1. Analysis

The sum of this data reveals a consensual relationship and an unwanted photo that was sent. There was no inappropriate impact on the workplace and in fact, no connection to the workplace as far as the photo is concerned. Moreover, Ms. Masias’s and Mr. Brown’s investigation nine years ago appear to have found the same thing.

There is no evidence that this conduct arose out of or impacted the workplace. The (then) PO had no position of authority over his girlfriend. If this situation had, indeed, involved an abuse of power like “sex with a vendor on state time and on state property,” it is unlikely Ms. Masias and Mr. Brown would have recommended no discipline. Yet, that was what they did. If this woman later “complain[ed] she felt she had to in order to keep her job,” it would be inappropriate for them to have recommended reinstatement. But it appears that Ms. Masias and Mr. Brown recommended just that.

In fact, the woman involved in this relationship told me she felt no pressure or coercion about engaging in the relationship, and said the same thing to the HR investigators. While she did not appreciate the photo and was angry about it at the time, she was clear that this had nothing to do with the workplace. She did not report this situation to Judicial, but a coworker she showed the photo to did.

There is nothing in the evidence to suggest that the CPO should have been disciplined as stated in this allegation. This allegation of serious (and embarrassing) workplace wrongdoing, and the implication that this person got away with something, is not supported by any credible evidence.

2. *Findings*

For the reasons set forth above, I find:

- The allegation of the photo is **Substantiated**; however, I find that the allegation is misleading because this was not a workplace situation, and the HR investigation determined no policy violation had taken place.
- It is **Not Substantiated** that there were instances of sex with this vendor on state time and on state property.
- It is **Substantiated** that no discipline occurred; however, HR did not recommend discipline in this matter.

Allegation Fifteen: Chief Probation Officer Instructing All Staff to Swat Female on the Backside

CPO directing all staff to swat a female on the backside, no disciplinary action taken.

A. Methodology

It took significant work to find out who this allegation was about. Unlike other matters we investigated, no one at SCA had an idea about who this Chief Probation Officer (described hereafter as “CPO”) or woman Probation Officer (described hereafter as “female PO”) are. I finally located one document that referenced this matter, which had names in it. By this, I was able to identify the parties.

I determined that this event happened in 2018 when the CPO in question made a statement to the effect of directing attendees at a meeting to “spank” the female PO on her way out as she was leaving the District to work for another Judicial District. The female PO in question construed this as an awkward and unwelcome attempt at a joke but was otherwise unbothered by the comment. She liked the CPO and characterized their relationship as friendly and supportive.

I interviewed four (4) people with direct knowledge about this situation: the CPO involved, the woman about whom the remarks were allegedly made, the person who raised the complaint, and the chief judge of this District. These individuals had a strong memory of these events and together with the few documents that were located, they provided enough information for me to reach firm findings in the case.

There were only two documents located on this incident, including notes from a phone call someone in HR had taken with a team member from this probation department. These notes reflect an initial inquiry into the event. I also found an undated, unsigned draft letter from the HR Department to the Chief Judge in this District, laying out the concerns that had been raised. This letter was likely not sent. I also reviewed this CPO’s evaluations and asked for discipline records (none were located).

I submitted a full report on this investigation to counsel for the Judicial Branch on May 18, 2022. On May 24, 2022, I was directed to prepare Report Summaries on all matters for public release. I completed this Report Summary pursuant to this requirement.

B. Summary of Material Evidence

The witnesses who remembered this situation identified it happening in 2018 and identified the specific Judicial District where it took place. A woman PO was transferring to another Judicial District. The CPO called an all-staff meeting to announce her departure to the department and allegedly made remarks that were later reported to HR. As described by the woman PO:

It was at my last All Staff – and [the CPO] was saying a few words about me. He said, “Okay everyone line up behind [name redacted],” and he insinuated slapping my behind on my way out. I do not remember the date. It was the beginning of July. . . . He acted it out (witness raised her hand high up and swung it around). He didn’t actually hit my butt but he did the arm movement. I

don't remember exactly what he said. *Who all was there?* The whole department - probably around 100 people.

She indicated that she "really liked" this CPO, and "felt I had a good relationship with him." She said, "I felt it was inappropriate for anyone, especially a chief to do. But I didn't feel I was being harassed in any way. I didn't make any type of complaint. I don't want to minimize how it made my colleagues feel. It should have been taken seriously and was. I didn't really feel that I was offended in any way." She said she did not experience any other instance of inappropriate behavior or commentary from the CPO.

The CPO did not remember this and said that no one from HR (or anywhere else) talked to him about it. He said he did not recall saying this but "it wouldn't be unlike me to tease [this woman PO]. She was a great PO and is still working in [another District]. I supported her. It would have been like me to tease her about being a traitor to our District. I was not aware of this and no one questioned me about it."

My standard joke when someone left was to say, "You're dead to me now" – I teased anyone like that, at the same time wishing them well. It doesn't always work when moving one District to another, it's a risk. I thought the world of [this woman PO]. I certainly meant no disrespect. . . . I think I would remember this. And no one came to talk to me.

The event was raised by a coworker, who went to another person in the Probation department because they were offended by the comment. This person forwarded the complaint along to HR for its handling.

The Chief Judge in this District said that he was never informed about this allegation, the inquiry, any findings, or any recommended consequences. No one from HR reached out to discuss the situation with him and he was not interviewed as part of any investigative process.

HR did a preliminary inquiry of the matter, interviewing the staff member who had been offended and the woman PO. The individual from HR drafted a letter for the Chief Judge of this District, with the data she found. It contains references to the spanking comment and another remark that was alleged by the CPO that a woman PO had a lot of experience "under the belt, I mean skirt." It also notes the allegations of poor morale and a poor work environment. This letter is not denominated an investigation report, likely because no full investigation was done. It is unsigned and undated and the chief judge in question said he never received it. He said he knew nothing about this situation at the time or thereafter.

I reviewed this CPOs performance evaluation from 2019. There was no mention of this incident as might be expected if his supervisor was unaware of the incident. There was no discipline located in the file.

D. Analyses and Finding(s)

1. Analysis

This investigation did not reveal a complicated set of facts. An all-hands meeting occurred in 2018 and the CPO in question made a remark about a female subordinate, who was leaving to work in another District. He made a remark, which she construed as an attempted joke, about everyone lining up and “spanking” her on the way out.

An initial HR inquiry took place in which the HR investigator spoke to the woman PO and a couple of other individuals. The CPO was not interviewed, there was no investigation file, and no investigation report was located. No one notified the Chief Judge in the District and no discipline was recommended.

The female PO has not been impacted by this situation and said she really liked (and likes) this CPO. She felt he was trying to be funny “in a distasteful way.”

The person who raised this complaint had some motivations that went beyond identifying wrongful behavior. He felt upset that his own actions were called into question in an investigation where he was the respondent. He felt leaders in the Probation Department were saying inappropriate things and he wanted to raise this remark when he heard about it, in part because of this disparity in his own actions being called into question versus this leader’s actions. While his motives may not have been entirely “pure” in raising the situation, the fact is that the remark was made in front of almost a hundred people, and it was objectively offensive.

The HR professional who did the initial inquiry appears to have determined, perhaps with feedback from Ms. Masias and/or Mr. Brown, that this case did not rise to the level requiring a full investigation. Without interviewing one of (or all) these witnesses, I cannot know with certainty why this decision was made. However, it does suggest that the situation was not deemed serious enough to require a full investigation. Relatedly, I found no recommendation for discipline and no discipline ultimately was issued in this case.

Moreover, no inquiry appears to have been done into the “experience under the skirt” remark. This is additional evidence suggesting that the event was not deemed important enough by HR to merit a full investigation and disciplinary recommendations.

2. Findings

For the reasons set forth above, I find:

- The allegation about the spanking comment is **Substantiated**.
- The allegation that no discipline was issued is **Substantiated**, with the caveat that the chief judge was likely not notified and there is no documentation that discipline was recommended.

ASSESSMENT OF THE WORKPLACE CULTURE IN THE COLORADO JUDICIAL BRANCH

Anne R. McCord, SPHR, SHRM-SCP, PI, AWI-CH

Report of Data on Workplace Culture

The Survey

We used a survey to solicit information from as many people in the Colorado Judicial Branch's (CJB's) workplace as possible. This was our primary tool to gather data to help us understand the present state of the Colorado Judicial Branch's culture. Our goal was to better understand the culture across the Colorado Judicial Branch as a whole and to understand the workplace culture of the specific Districts that make up the CJB. The survey was augmented by voluntary interviews from employees and appointed officials from most Districts. We then evaluated whether, and to what extent, the culture has encouraged, normalized, or failed to deter sexual harassment, sex-based discrimination, and retaliation.

Investigations Law Group (ILG) worked with Survey Design & Analysis (SDA) on the design of a climate survey as a part of the overall evaluation of the climate at the Colorado Judicial Branch. The survey went through several iterations of edits and tests to produce the final survey. We implemented two versions of the Survey—one for appointed officials and one for employees of the CJB.

The Workplace Culture Survey was designed to provide all members of the Colorado Judicial Branch an opportunity to provide anonymous feedback on the current culture in their workplace(s), observations and experiences regarding sexual harassment, sex-based discrimination, and retaliation, as well as the culture on reporting these issues, knowledge of CJB policies, and more general observations about the work environment. We collected a range of demographic data to allow detailed analysis by role, age, gender, and ethnic/racial background.³⁶ The breadth and depth of information collected from the survey provided comprehensive input to our recommendations to improve the current culture.

A five-point Likert scale was used for all satisfaction and agreement questions. For this report, "Satisfaction Level" is defined as the percent of respondents selecting "Very satisfied" or "Satisfied" to a satisfaction question; the top two boxes of the 5-point scale. Similarly, "Agreement Level" is defined as the percent of respondents selecting "Strongly agree or Agree" to an agreement question; the top two boxes of the 5-point satisfaction scale.

We sent the Workplace Culture Survey to 4,133 individuals who work in Colorado Judicial Branch workplace(s). This included administration, directors, magistrates, managers, supervisors, staff, and various other roles with the CJB. The survey was sent to participants via email and invited all

³⁶ Participants were afforded the opportunity to not provide demographic information if they were concerned about confidentiality.

employees and appointed officials within the CJB to participate in the study. The survey opened January 5, 2022 and closed at midnight on January 19, 2022.

The Colorado Judicial Branch is split up among twenty-four (24) Districts, including Districts 1 through 22, as well the State Court Administrators Office (SCAO), and the Supreme Court and Colorado Court of Appeals or SC/COA. The individual Districts operate separately, with centralized support from SCAO. As such, the survey identified that there is no centralized culture at the Colorado Judicial Branch. While we assessed the survey results for the CJB and the same two versions of the survey were sent out to every District of the CJB, the results that are most significant for this project were informed by the survey data collected from each District.

The results of our survey efforts were enlightening and offer a rich set of data to draw upon in understanding the Colorado Judicial Branch's culture as it relates to issues of sexual harassment, sex-based discrimination, and retaliation. The survey also provides information on the confidence employees have in their leadership, specifically around reporting issues related to these concerns.

Out of 4,133 survey recipients, ILG received two-thousand five-hundred and sixty-six (2,506) completed responses and one-hundred and eighteen (118) partially complete responses between January 5, 2022, and January 19, 2022. Two-hundred and sixty-three (263) appointed officials and two-thousand three-hundred and fifty-five (2,355) employees responded to the survey for a strong response rate of 63%. Seventy-five of survey participants are female, who make up 41% of appointed officials and 75% of employees. Ninety percent of participants are under sixty (60) years of age and 15% of participants are under 30 years of age. Fifty-three percent of participants work in Court Services, while 37% work in Probation Services. Seventy-four percent of participants are staff. Fifty-five percent of the appointed officials who participated in the survey have been with CJB for more than six (6) years, and 43% of employee participants have been with the CJB for more than 10 years.

The Interviews

An essential part of the information gathering process was hearing directly from voluntary stakeholders about their firsthand experiences and insights into the culture and environment at the Colorado Judicial Branch. It was important that our conversations with stakeholders encouraged open and honest dialogue. As such, we conducted one-on-one interviews in a manner that would guarantee anonymity and ensure comfort with the process.

We interviewed self-selected individuals³⁷ (voluntary interviews), who we asked a general set of questions about the working environment at the Colorado Judicial Branch. We also reached out to specific individuals for interviews (targeted witnesses) who we asked questions that were specific to allegations and / or their role and experiences while working at CJB. Below is a discussion of the interview process for the voluntary witnesses and what we learned.

³⁷ Given the nature of our project for the CJB, we expected that there would be more concerning or negative feedback provided by the voluntary interviews. As will be highlighted in below sections, the work environment at the CJB overall is quite positive. Some Districts rated lower in the survey, and it was from those Districts that the more negative and concerning voluntary interview feedback was provided.

Culture Feedback from Voluntary Interviews

One-hundred and three (103) witnesses reached out to ILG asking to be interviewed. Out of this number, six (6) witnesses provided written statements and 97 witnesses were interviewed over telephone or video conference. Voluntary interviews included witnesses from various backgrounds, roles, and Districts within the CJB. Twenty-two Districts were represented among the nearly hundred voluntary witnesses. The only District not represented was District 20 (Boulder). Districts 1, 2, 17, and 18 were the top four represented Districts among voluntary witnesses. These were also the Districts that received the most negative scores in terms of survey results. Voluntary interviewees included both current and former employees and most of the stakeholder groups at the CJB, including probation, attorneys, judges, court executives, clerks, judicial assistants, Human Resources, trainers, supervisors, and support staff.

We followed the same outline of questions in most of the interviews we conducted, although we allowed people to stray from this and direct the dialogue elsewhere if they wished. Additionally, there were certain questions we asked only if witnesses raised issues of discrimination or harassment outside of the scope of our investigation. Questions consisted of both “Yes/No” and open-ended answers. The “Yes/No” questioning allowed us to quantify answers numerically so that we could analyze answers both as a whole and broken down by stakeholder group. Interviewees were allowed and encouraged to expand upon their “Yes/No” answers to provide more explanation and deeper insight into their experience at the Colorado Judicial Branch workplace.

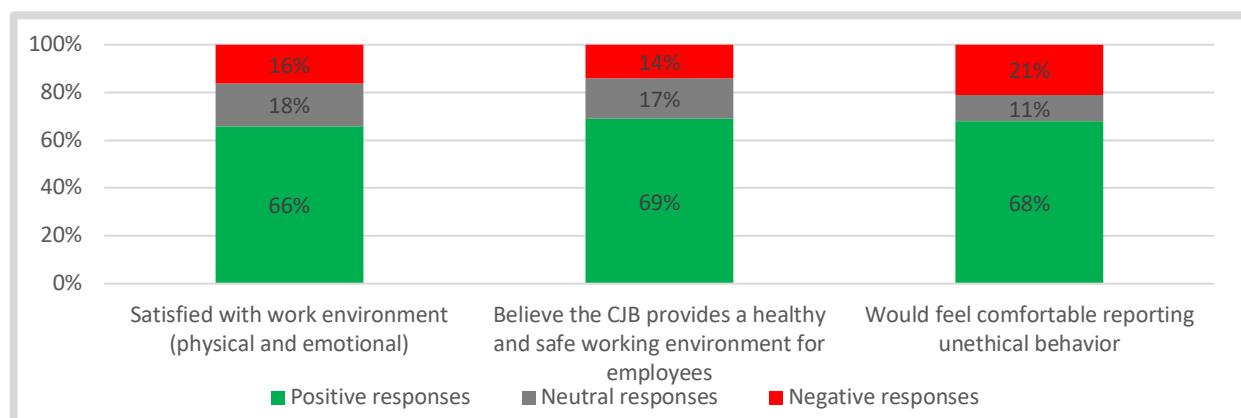
Pursuant to our contract with the Judicial Branch, we were empowered to identify other issues of discrimination or harassment – outside the matters identified in the Eric Brown List – for further investigation. Issues that were raised in the survey were done so anonymously, but witnesses in individual interviews raised additional matters that implicate the Branch’s anti-discrimination and anti-harassment policies. We asked these witnesses whether they wanted their matter investigated further. For those who answered in the affirmative, we provided their data to the Judicial Branch for further investigation. We offered to conduct this work, or provide referrals to other local investigators to do so. As of the date of this report we have not been asked to conduct any of these additional investigations, but understand that the Branch will be making determinations about these investigations following the publication of this report.

Summary of the Colorado Judicial Branch Workplace Assessment

Given that the CJB is decentralized, made up of twenty-four (24) distinct and individual workplaces, there is not one consistent, overall workplace. In this section we provide the general survey results and information we gathered from the interviews. Later, we dive into the top and bottom Districts³⁸ within the CJB, which reported substantially different results on the culture of the CJB.

Overall, the survey results indicated that the Colorado Judicial Branch is a positive place to work. A majority, 72%, of participants, said they were satisfied with their job at CJB, with satisfaction level for Court Services at 76% and Probation Services division at 67%. Overall satisfaction for appointed officials was higher, at 89% (47% reported being “very satisfied” and 42% reported being “satisfied”).

Most of the individuals who participated in the survey were satisfied with their work environment and their work relationships. Overwhelmingly, survey participants feel respected by their supervisors (86%), coworkers (89%), and appointed officials (77%). Most survey participants believe that the CJB provides a healthy and safe work environment and agree they would feel safe reporting any concerns they have about unethical behavior. However, with 14%-21% of participants giving negative responses to these questions, there is still work to be done.

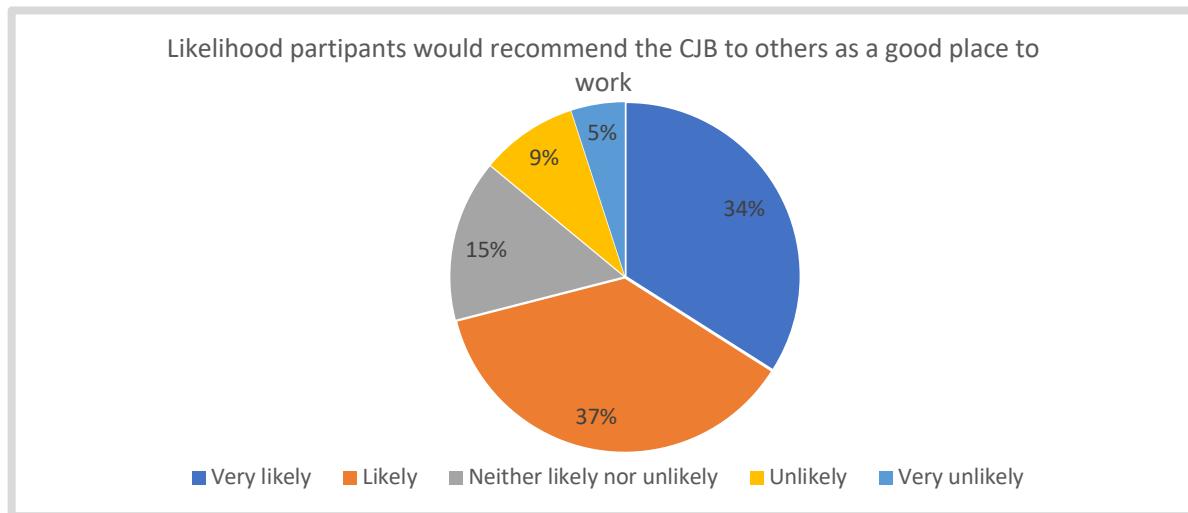


Responses are skewed by gender, with men answering more positively than women in these areas across the board.

- 77% of men are satisfied with their work environment at CJB, while 66% of women are satisfied with their work environment.
- 81% of men agree that the CJB provides a healthy and safe work environment, while 69% of women agree that the CJB provides a healthy and safe work environment.
- 81% of men agree they would feel comfortable reporting unethical behavior, while 69% of women agree they would feel comfortable reporting unethical behavior

³⁸ In determining the top and bottom performing Districts, we considered data from Districts with more than 80 participants to ensure statistically relevant information.

Seventy-one percent of participants said they would be likely to recommend the CJB to others as a good place to work, if a qualified colleague or acquaintance was interested and/or looking for a position. In the detailed section below, we will highlight how this question relates to the Districts that have fewer issues and those that have more issues with respect to gender discrimination, sexual harassment, and retaliation.

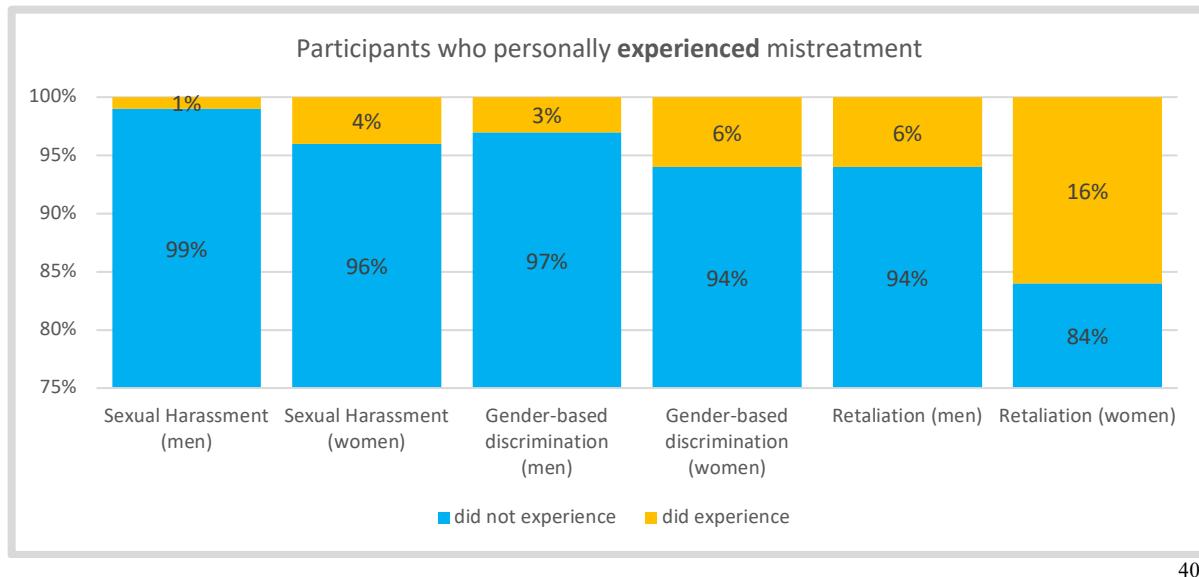


Respectful Workplace Behavior

We were tasked with understanding whether there is an environment at CJB where sexual harassment, gender discrimination and / or retaliation is prevalent. Ninety-five percent of survey participants said they understand the policies on acceptable behavior in their department. Ninety-two percent of participants said they know how to locate personnel rules and 91% had received training on anti-retaliation in the past five years. Finally, 64% indicated they know how to file a grievance against an employee while 62% stated that they know how to file a grievance against an appointed official.

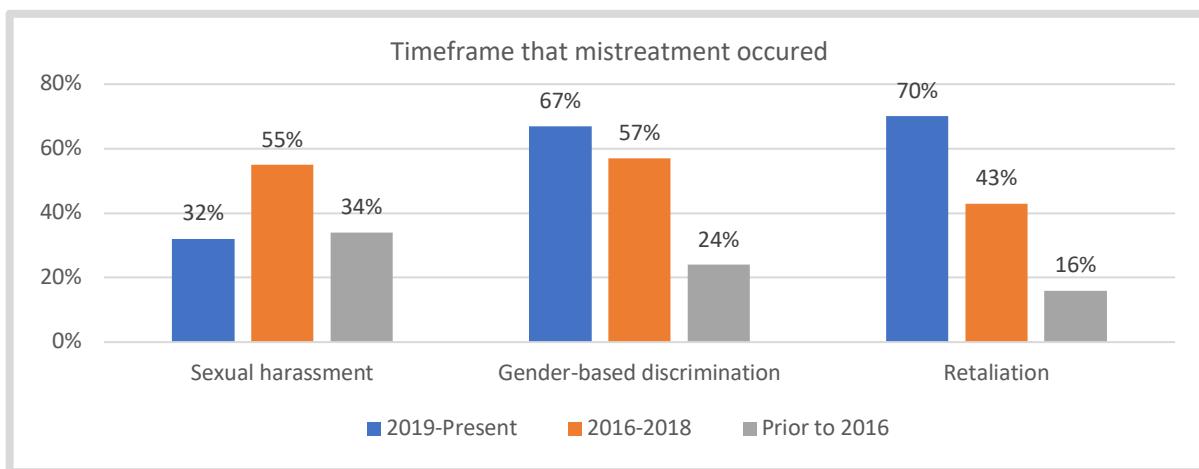
While it is positive that most participants indicated that they understand acceptable workplace behavior, there continues to be some misconduct that is witnessed and / or experienced. Overall, 17% of those who responded to the survey **experienced**, and 21% **witnessed**, one or more of the mistreatments that we assessed (gender-based discrimination, sexual harassment, or retaliation).³⁹ Those who have been with the CJB longer were more likely to have experienced or witnessed incidents of mistreatment. Only 2% of those in their first year at CJB experienced any of the three areas of mistreatment. Additionally, a greater percentage of women reported experiencing mistreatment in every area. Of the categories we surveyed, retaliation was the most frequently witnessed or experienced misconduct and we found this was consistent across most Districts.

³⁹ It is important to note that the same survey participant could answer yes to experiencing and witnessing all three types of problematic behavior. Thus, 17% does not equate to an exact number of participants in the survey.



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The survey prompted participants to qualify the timeframe in which mistreatment occurred within three time periods: 2019 to present, between 2016 and 2018, and prior to 2016. In terms of gender-based discrimination and retaliation, a greater number of participants experienced incidents after 2019. Participants indicated that more incidents of sexual harassment occurred prior to 2019, particularly in the period from 2016 to 2018.⁴¹ The CJB has focused on training and education on Sexual Harassment in recent years and this data may indicate that the training has had an impact given the lower numbers 2019 to present.⁴²



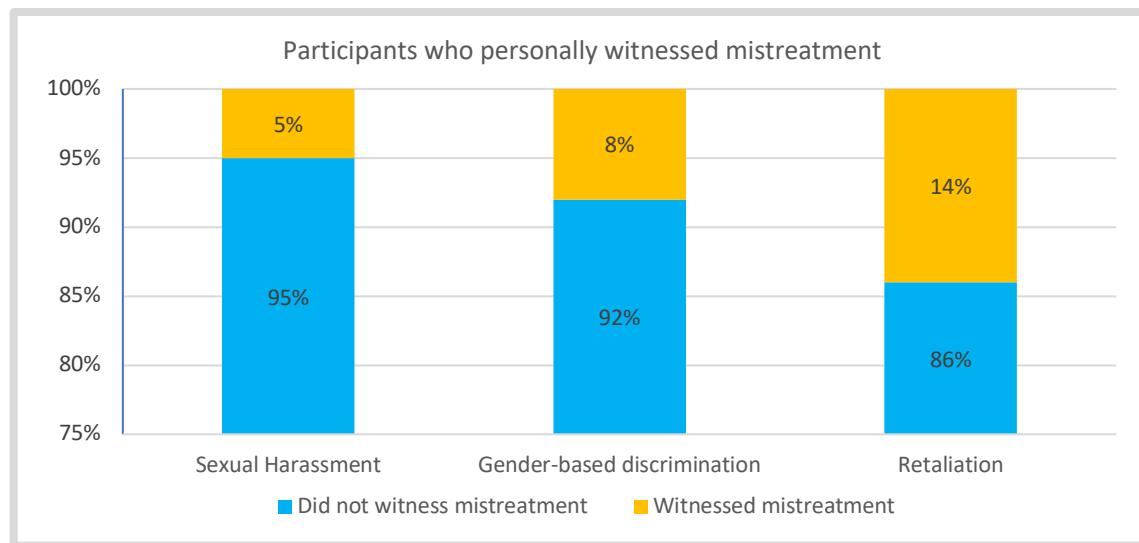
As mentioned above, 21% of participants said they observed one of the three forms of mistreatment. There was overlap between participants who said they personally experienced

⁴⁰ As stated in a previous footnote, the same participant could have answered yes to both witnessing and experiencing the misbehavior, which could give the impression that the issues are more prevalent than they are.

⁴¹ The below chart shows a percentage total that totals greater than 100%. This indicates that a number of participants reported their experiences to have occurred during multiple of these timeframes, or over a longer period.

⁴² There are also multiple societal issues that have brought sexual harassment into the forefront in that timeframe, namely the #METOO movement.

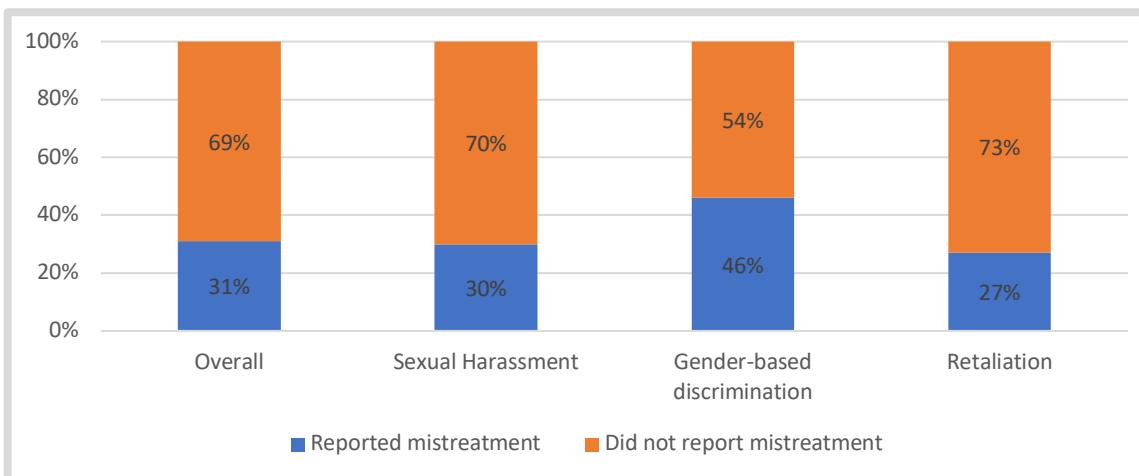
mistreatment and those who said that they observed it, but these participants did not specify whether the incidents they observed were the same as those they experienced.



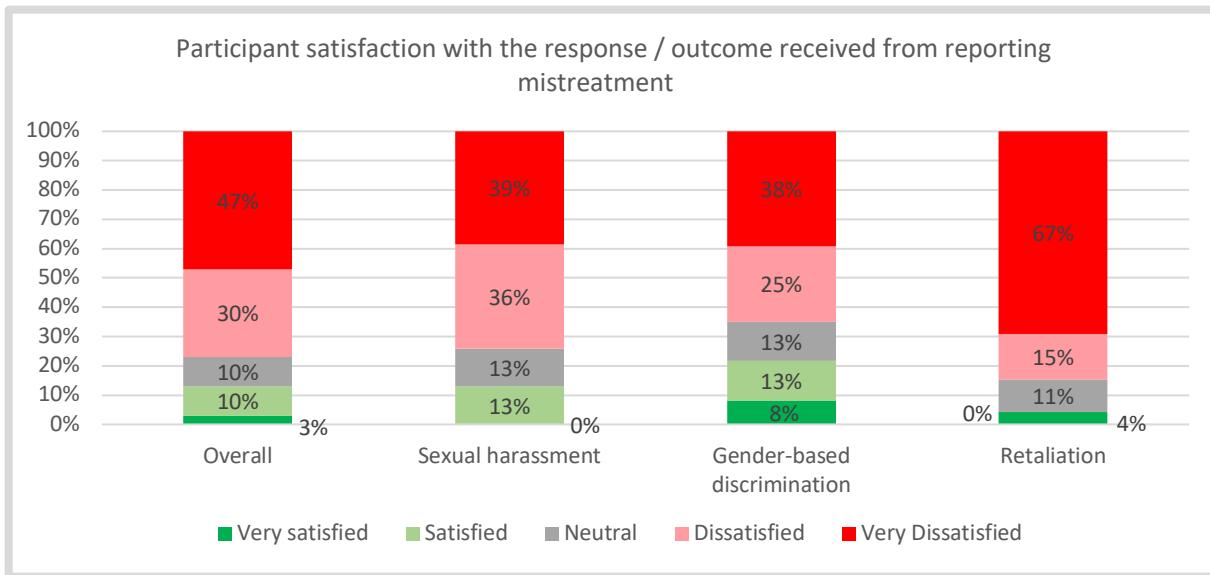
Reporting Misconduct

The survey highlights the participants' lack of confidence that anything would result from reporting mistreatment at the CJB. While 61% of participants said that leadership takes reports of sexual harassment seriously, and 63% said they would be comfortable reporting misconduct by an Appointed Official, only 39% agreed that Appointed Officials would be held accountable when allegations of sexual harassment are raised against them.

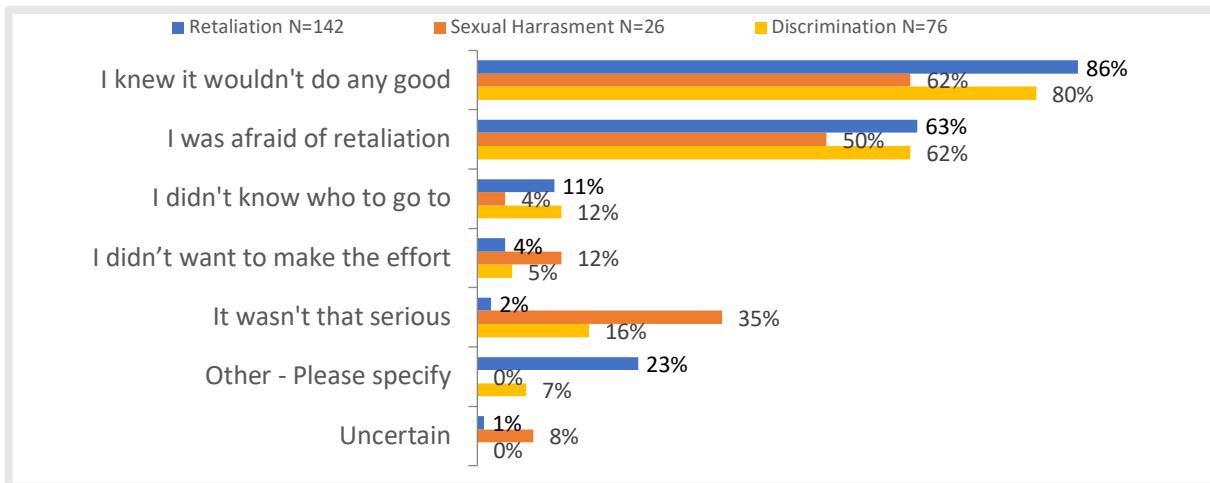
Among survey participants who experienced mistreatment, 69% did not report it.



Out of those who chose to report, 77% indicated they were not satisfied with the response or outcome they received from doing so. Those who reported retaliation were the least satisfied with the response from management.



The top reasons provided⁴³ for not reporting an incident were “I knew it wouldn’t do any good” and “I was afraid of retaliation.”



Other comments about why participants did not report included:

- “I discussed it with the person who did it but not that person’s superior.”
- “I spoke to my direct supervisor about it who told me that if I continued to talk about it, she would have to report it.”
- “HR still has bullies working there and they don’t help employees when they are being mistreated by their supervisors.”
- “It involved the chief judge.”
- “The behavior is not always “concrete” enough to report- like I notice that my male colleagues treat me differently than they treat each other.”
- “Came from the top.”

⁴³ Participants were given the opportunity to select multiple reasons for not reporting, thus the totals exceed 100%.

- “HR was friends with the chief judge so I could not go to HR.”
- “I generally experience this behavior from older male colleagues and recognize that I just have to wait until they retire and hope their spots are filled with someone who is different.”
- “It was the chief judge at the time and I knew he was known for retaliation.”

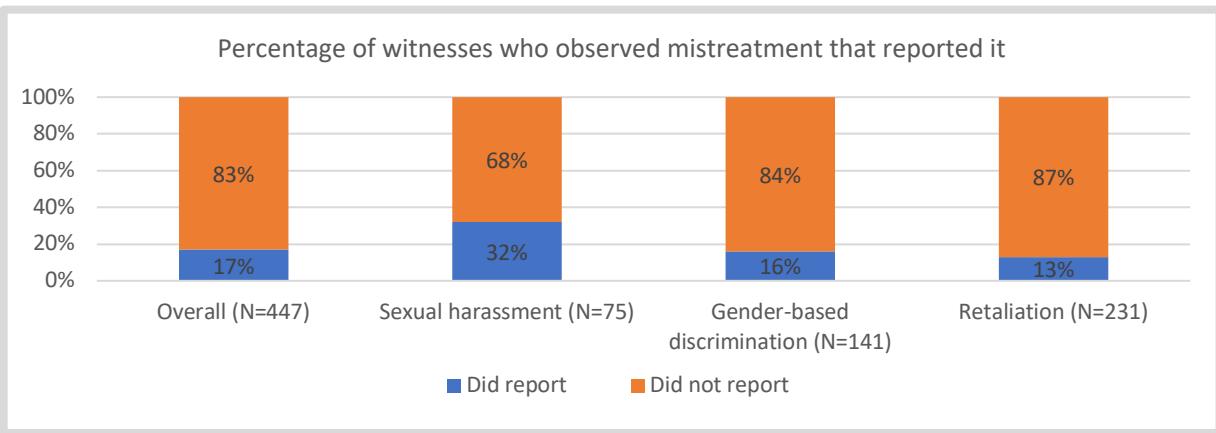
As mentioned above, 63% of total participants said they would feel safe reporting sexual misconduct by an appointed official. For those who said they would not feel safe doing so, the top reasons provided were “nothing would be done” and “afraid it would end my career.”

Other reasons given for not reporting misconduct by an appointed official included:

- “Administrative authorities work to protect appointed officials from Judicial Performance Evaluators to the detriment of employees (and voters).”
- “Appointed Officials (i.e., judges) have an enormous amount of power and influence in the Branch. They are often “worshipped” by many as they have worked so “hard” to get where they are at, which is demeaning to everyone else who works hard. Since they have such a strong knowledge of Law and judicial practices it would be silly for anyone to file a complaint against them. At the end of the day the Branch only cares about its judges, so what would be the point? They are not held to the same standards. They are held to lesser standards.”
- “There is zero trust with the current HR team. Further, they rarely take actionable steps with complaints.”
- “CJA’s are told to move if not happy with Judicial Officer or direct supervisor. The supervisor remains in their position, and we’re told we won’t see what if any action is taken.”
- “HR is in the same bed as officials, they don’t have loyalty beyond Administration.”
- “From past experience (more than five years ago): These incidents are kept quiet within departments/the Branch and the victim is rarely made aware of what, if any, action is taken. The secrecy of the whole process protects the perpetrators and allows them to further victimize. Additionally, once a report is filed, the victim/reporting party is directed to not speak to anyone about the matter; furthering the secrecy and often isolating the victim/reporting party to deal with what happened and their feelings about it alone.”

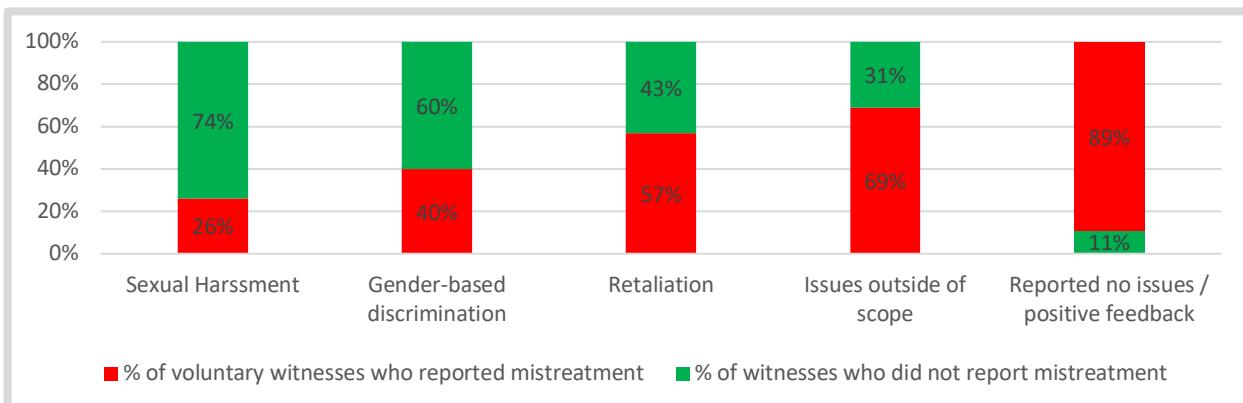
The numbers are different among appointed officials—81% of whom said they would feel safe reporting sexual misconduct by another appointed official.

Out of those who reported they had witnessed one of the areas of mistreatment (sexual harassment, gender-based discrimination, retaliation), 83% did not report it, suggesting concern around the reporting culture at the CJB.



Fifty percent of those who reported observing sexual harassment, 91% of those who reported observing gender-based discrimination, and 78% of those who reported having observed retaliation were dissatisfied with the response they received. For those who chose not to report, the most prevalent reasons provided were “I knew it wouldn’t do any good” and “I was afraid of retaliation.”

Out of the witnesses interviewed, a significant number⁴⁴ experienced or witnessed one of the three forms of mistreatment being investigated (sexual harassment, gender-based discrimination, retaliation).⁴⁵



Sexual Harassment

Seven percent (175)⁴⁶ of survey participants reported that they had either observed or witnessed sexual harassment in the CJB workplace. More women than men answered “Yes” to this question. Overall, the majority of those who participated in the survey **did not** indicate that sexual harassment is prevalent at the CJB or enabled by its leadership. However, 20% of participants did not agree and 42% were neutral on the statement that appointed officials are held accountable

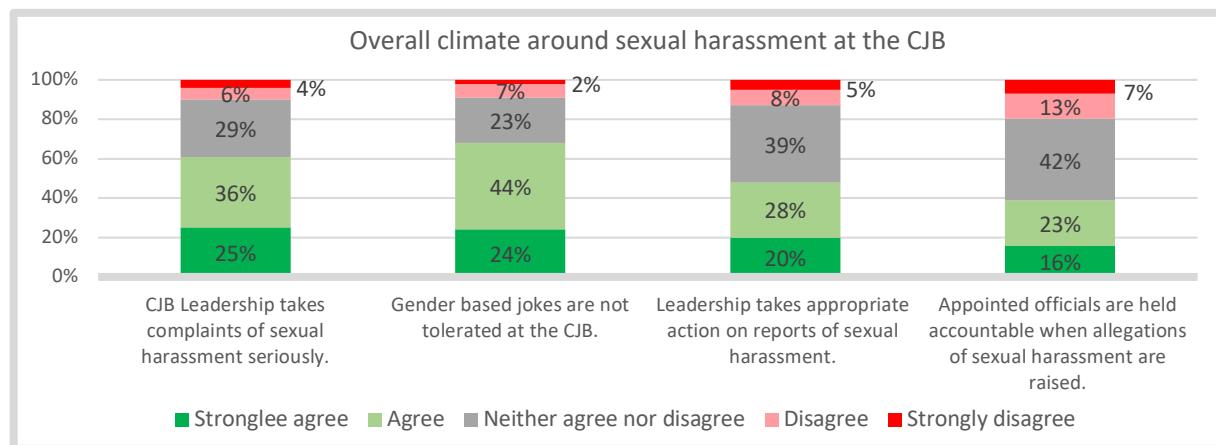
⁴⁴ Again, this is to be expected given the voluntary nature of the interviews.

⁴⁵ Witnesses raised issues that were outside of the scope of our project, including bullying, favoritism, age discrimination, harassment, hostile work environment and other perceived misconduct at CJB.

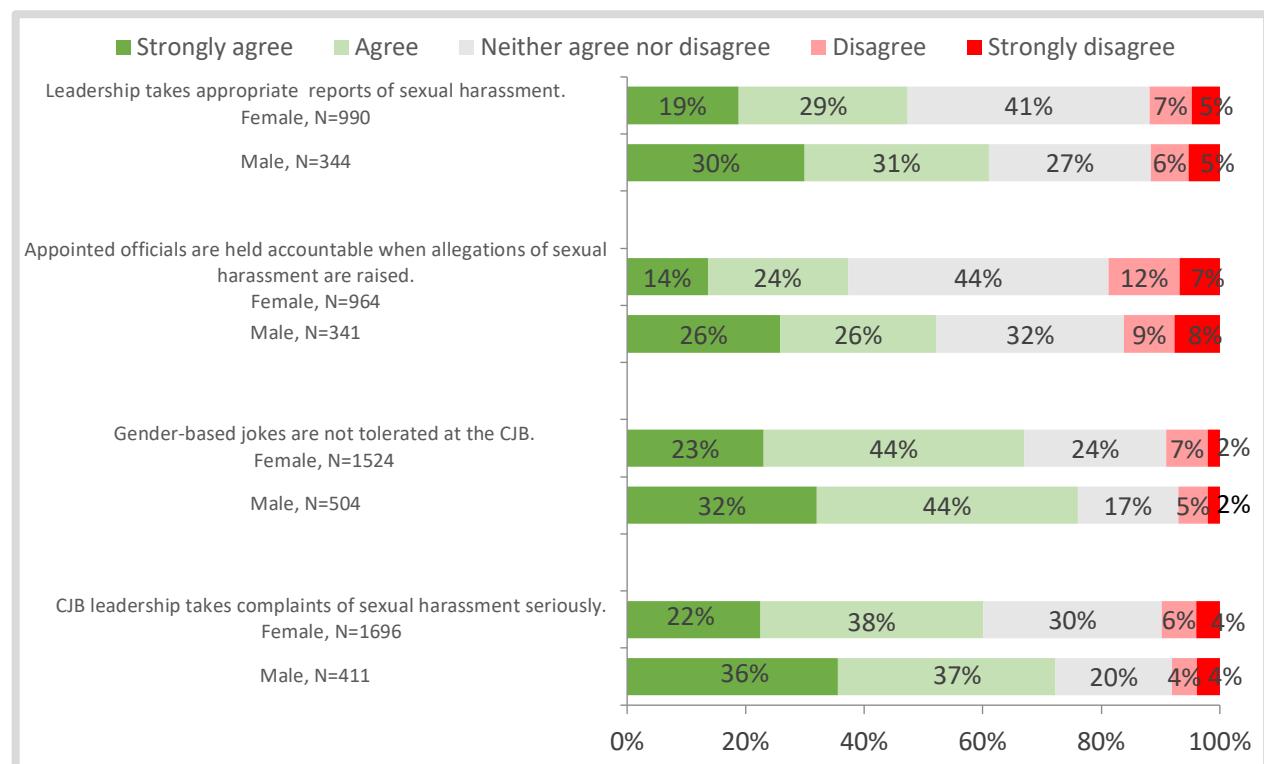
⁴⁶ Because survey participants could indicate that they both witnessed and observed sexual harassment, the 175 responses may not represent 175 different participants.

when allegations of sexual harassment are raised. Thirteen percent indicated that leadership does not take appropriate action on reports of sexual harassment where an additional 39% were neutral on this topic.

Twenty-seven (27) voluntary witnesses reported experiences of sexual harassment at the CJB. This number includes witnesses subjected to sexual harassment and those who witnessed others being subjected to sexual harassment. Voluntary witnesses who reported sexual harassment included appointed officials, supervisors, and employees.

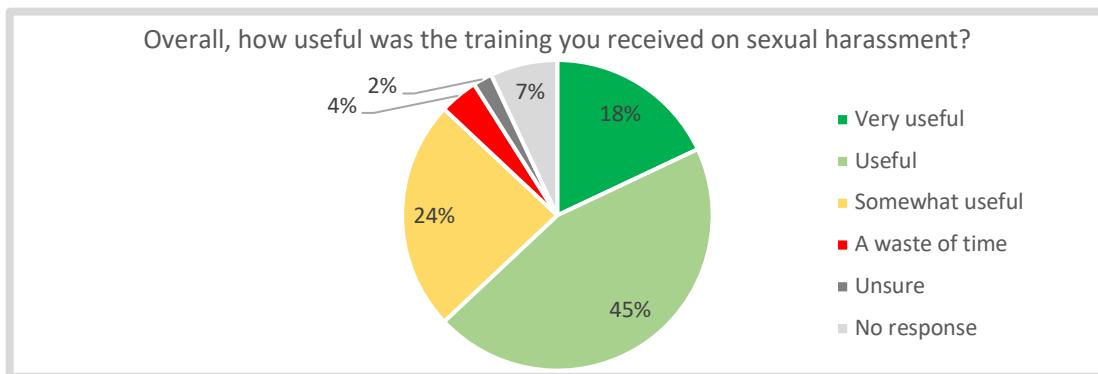


When broken down by gender, the survey results show that in terms of sexual harassment, a greater percentage of women negatively characterized the climate at the CJB.



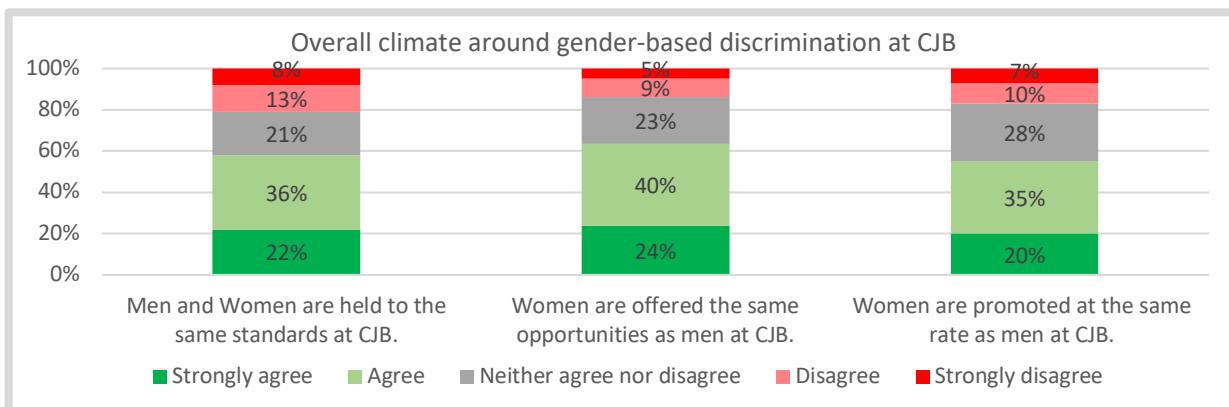
Only 3% of employees who participated in the survey reported they have been told within the past year that their style of dress was not appropriate; 70% of these participants said their supervisor told them this. Seventy-one percent of participants said it was a woman who told them their dress was not appropriate; and 27% said they heard it from a man.⁴⁷

Eighty-two percent of survey participants answered that they received training on sexual harassment at the CJB within the past 5 years; 11% of participants said they had not received this training; and 7% said they were not sure if they had received training. Out of those who received training, most found it useful.



Gender-based Discrimination

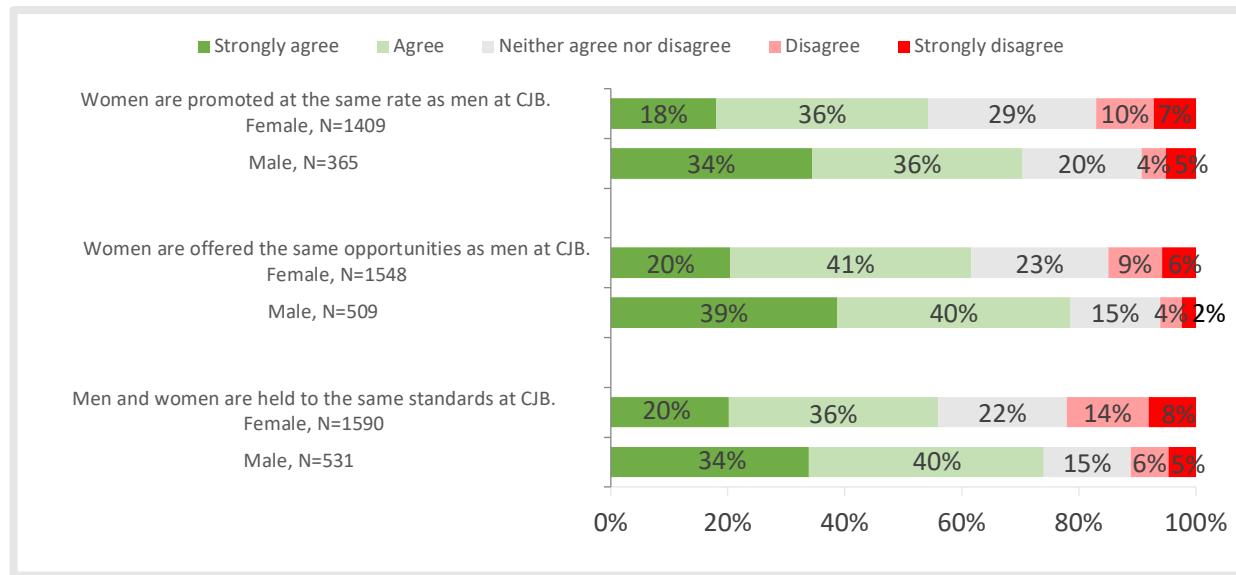
Ten percent (257) of survey participants said that within the past five years, they either experienced or observed gender-based discrimination at the Colorado Judicial Branch. Ten percent (170) of women participants reported they experienced or witnessed gender-based discrimination, whereas 7% (39) of male participants reported experiencing or observing gender-based discrimination. Overall, the belief that gender-based discrimination occurs in the CJB is more prevalent than reported experiences— personal or observed. Twenty-one percent of participants believe that women versus men are not held to the same standards at the CJB; 14% of participants believe that women are not offered the same opportunities as men at the CJB; and 17% of participants believe that women are not promoted at the same rate as men at the CJB.



⁴⁷ Two percent said they preferred not to answer whether a man or a woman had told them their dress was inappropriate.

Forty-one (41) voluntary witnesses reported gender-based discrimination at the CJB. This number included those subjected to gender-based discrimination as well as those who witnessed it more generally or described an environment in which it was prevalent.

Across the board, a greater percentage of women in the survey provided negative responses to questions on gender-based discrimination than did male participants.



More generally, a substantial number of survey participants did not agree that all employees are treated equally at the Colorado Judicial Branch. Thirty percent (568) of participants did not agree that all employees are treated equally at the CJB. Again, the responses varied between women and men; 29% (434) of female participants do not agree that all employees are treated equally at CJB, while 20% (79) male participants do not agree.

We reviewed the statistics on promotions and separations for men versus women at the CJB between the years 2017 and 2021 and did not find evidence of systemic gender bias. In fact, statistics showed that women have been promoted at the same rate as men since 2019.

The data included 2,629 separations and 676 promotions during the five-year period, 2017 to 2021.⁴⁸ The analysis looked at overall rates across the five-year period and the rates for each individual year. See the table below.

⁴⁸ Because complete data was not available for each year on the total number of employees and the total numbers of men and women within the CJB, it was assumed that 4,000 people were employed at the CJB for each of the five years in question. Further the current survey with 2,272 responses from CJB personnel, showed there to be 25% men and 75% women. This information was used to compare promotion and separation rates for men versus women.

Promotion and Separation Rates for Men and Women, 2017-2021

Results in blue denote significant differences at the 95% confidence level.

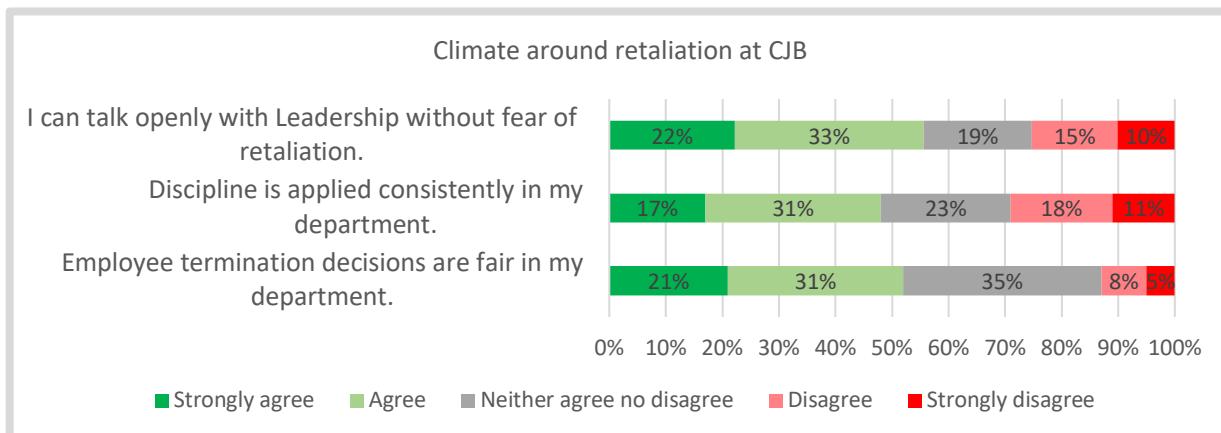
Year	Promotion Rates	Separation Rates
Overall	Men – 17.6% Women – 16.7%	Men – 72.5% Women – 63.1%
2021	Men – 2.9% Women – 4.7%	Men – 15.9% Women – 14.1%
2020	Men – 2.6% Women – 2.6%	Men – 14.5% Women – 14.7%
2019	Men – 4.2% Women – 2.9%	Men – 14.3% Women – 12.3%
2018	Men – 4.5% Women – 3.6%	Men – 13.1% Women – 11.3%
2017	Men – 3.4% Women – 2.9%	Men – 14.7% Women – 10.7%

Miscellaneous Result - Reasons for Separation Overall:

- Accepted New Job Outside State – Men – 38%, Women – 29%
- Personal Reasons – Men, 10%; Women 16%

Retaliation

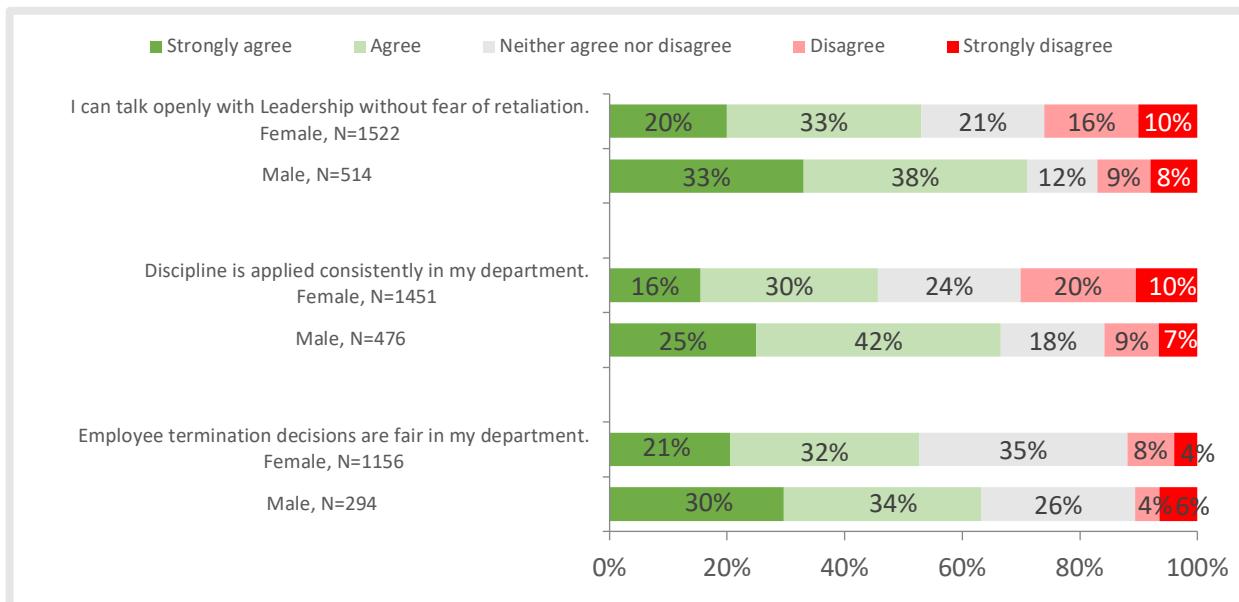
Eighteen percent (460) of survey participants reported they either witnessed or observed retaliation at the Colorado Judicial Branch within the past 5 years. This is by far the largest area of misconduct in the survey. Twenty percent (326) of female participants either witnessed or experienced retaliation at CJB; whereas 10% (54) of male participants either witnessed or experienced retaliation.⁴⁹ Twenty-five percent of survey participants do not feel they can talk openly with leadership without fear of retaliation. Twenty-nine percent of participants do not have confidence that discipline is applied consistently in their department. Thirteen percent of survey participants do not believe that employee terminations are fair in their department.



⁴⁹ The total number of participants (460) who witnessed or observed retaliation at the CJB include a majority of participants who identified as male or female, but there were also participants that provided feedback who preferred not to specify their gender and a smaller number who identified as transgender or non-binary.

Fifty-eight (58) witnesses interviewed described instances of retaliation or a fear of retaliation from leadership at the CJB. This includes both those who experienced retaliatory incidents, as well as those who witnessed retaliation or expressed a fear of retaliation for coming forward.

The trend continued in that there was a greater ratio of negative survey responses from women participants regarding retaliation. Twenty-six percent (384) of women participants did not feel they are able to talk openly with leadership without fear of retaliation, while only 17% (87) of male participants expressed the same fear of retaliation.



Given the data presented in the “Reporting Misconduct” section above, a majority of those who experienced sexual harassment, gender-based discrimination, and/or retaliation did not report it. Among those who did not report sexual harassment they experienced, 50% said they did not do so because they were afraid of retaliation. Of those who did not report experiencing gender-based discrimination, 62% said fear of retaliation kept them from doing so. The numbers were highest regarding those who did not report the retaliation they experienced, with 63% not reporting due to a fear of retaliation.

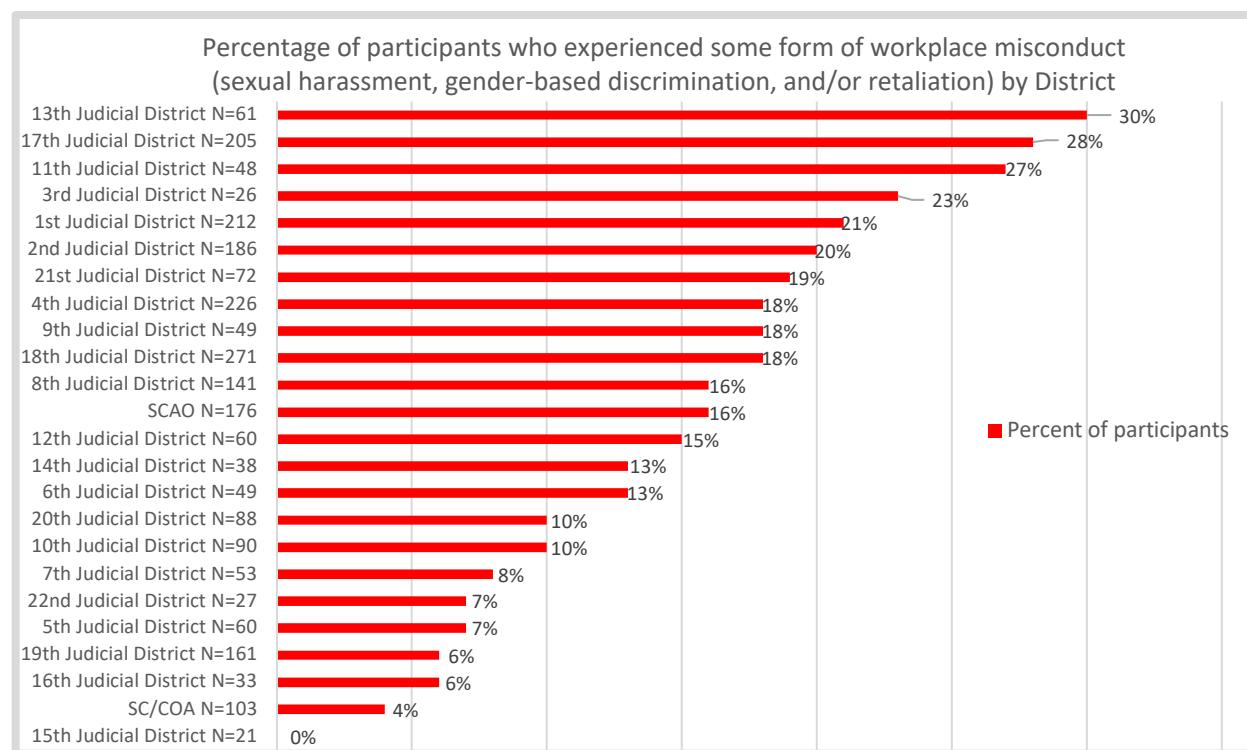
Survey Results by Judicial District

Due to the decentralized structure of the Colorado Judicial Branch, the data showed that each District had its own individual climate around employee satisfaction and the prevalence of sexual harassment, gender-based discrimination, and retaliation. While data from some Districts indicated problems exist, the data for others showed healthier climates.

Out of Districts that had more than eighty survey participants,⁵⁰ we analyzed five with more positive results and four with more negative results. Data on the prevalence of sexual harassment, discrimination based on sex, and retaliation remained consistent with these top and bottom performing Districts. Districts with less reported misconduct were the Supreme Court & Court of Appeals (“SC/COA”), District 19, District 10, SCAO and District 8 in that order.⁵¹ Districts with more misconduct reported included District 17, District 2, District 1, and District 18, in that order.

Information from the voluntary interviews mirrored that of the survey in that Districts that scored lower in the survey had more voluntary interviewees who reported misconduct they had either witnessed or experienced while working there. This information is highlighted in the appropriate sections below.

The charts that follow provide a macro level view of the misconduct witnessed or experienced across all Districts. Again, to ensure a statistically sound analysis by District in the sections that follow, we focused on only those Districts with 80 or more participants.

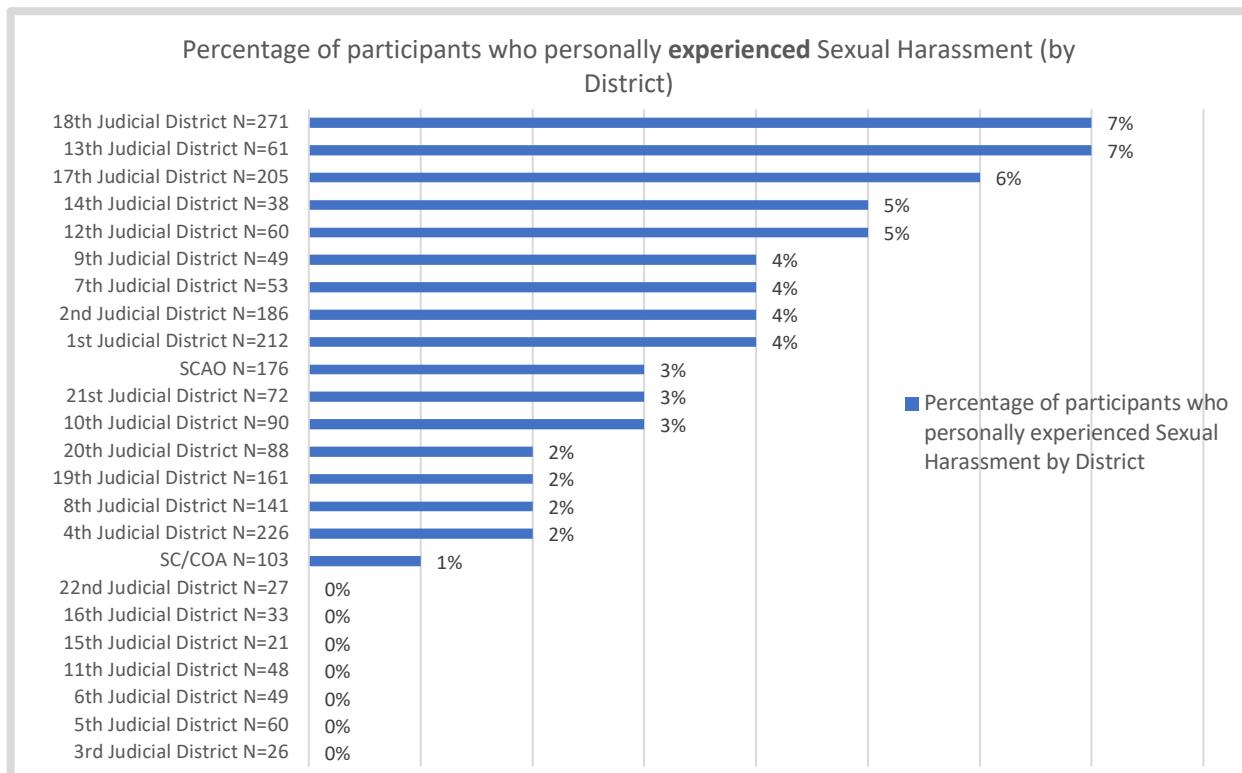


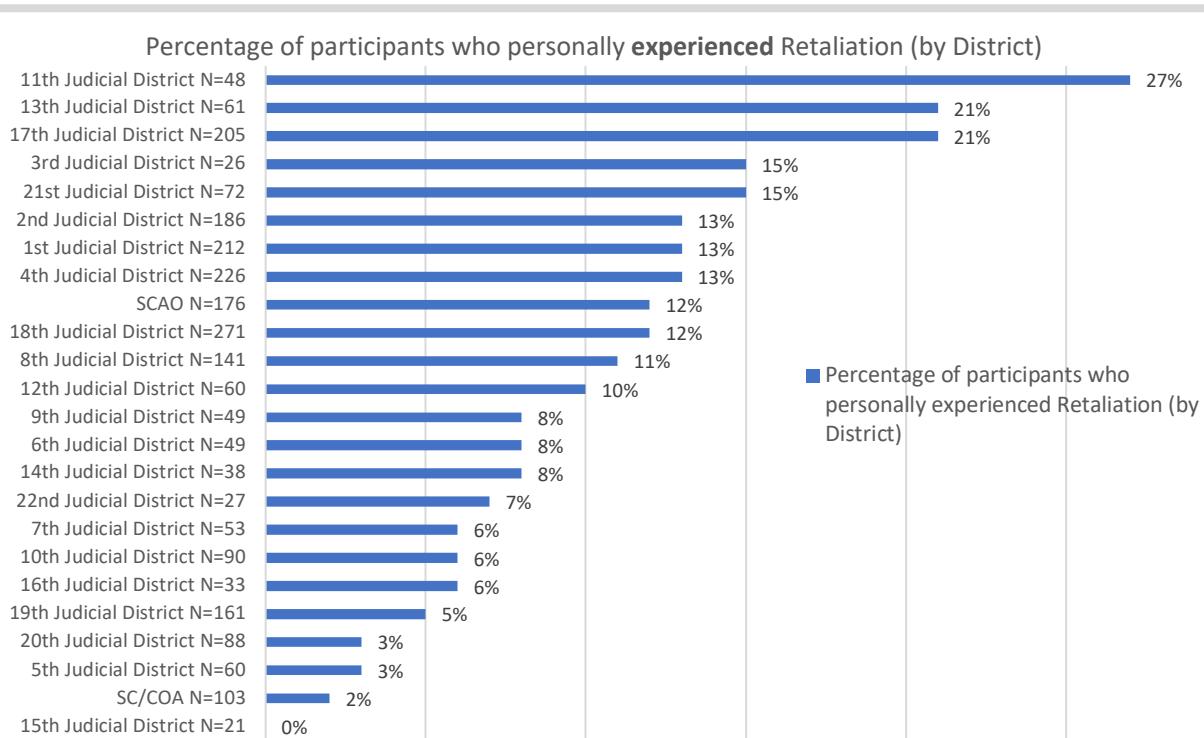
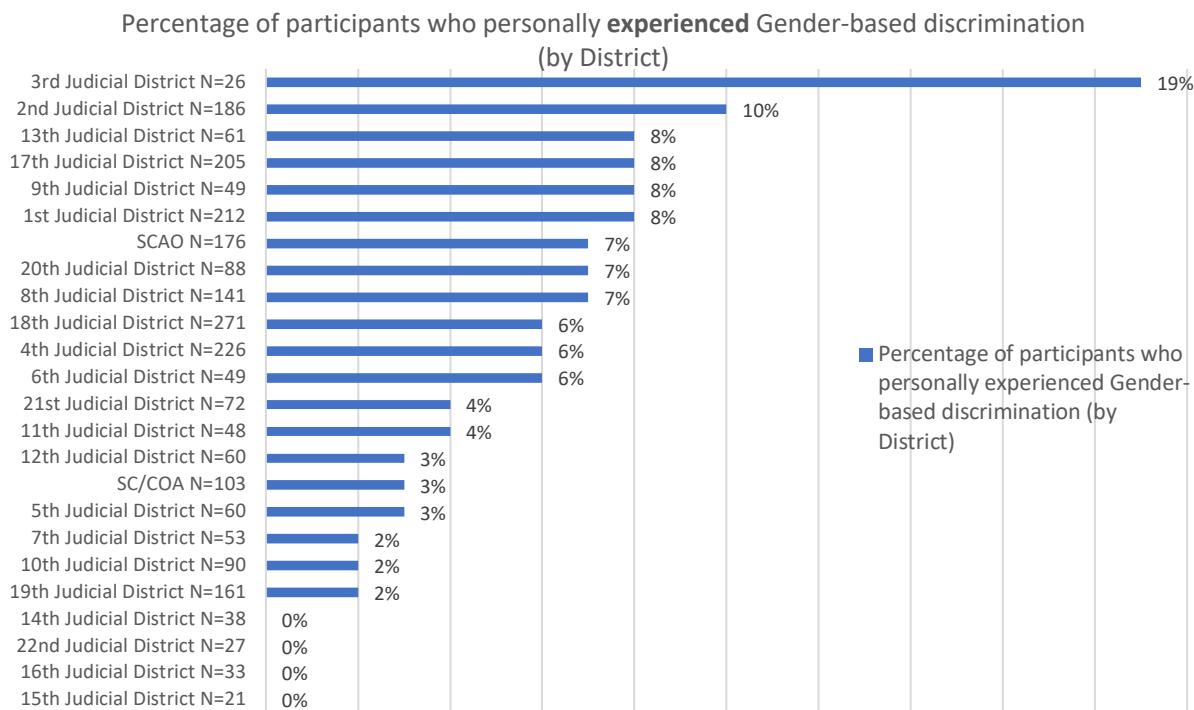
⁵⁰ We analyzed the information from Districts with more than 80 participants to ensure more statistically relevant data. There were Districts with fewer than 80 participants that performed well and had negative results.

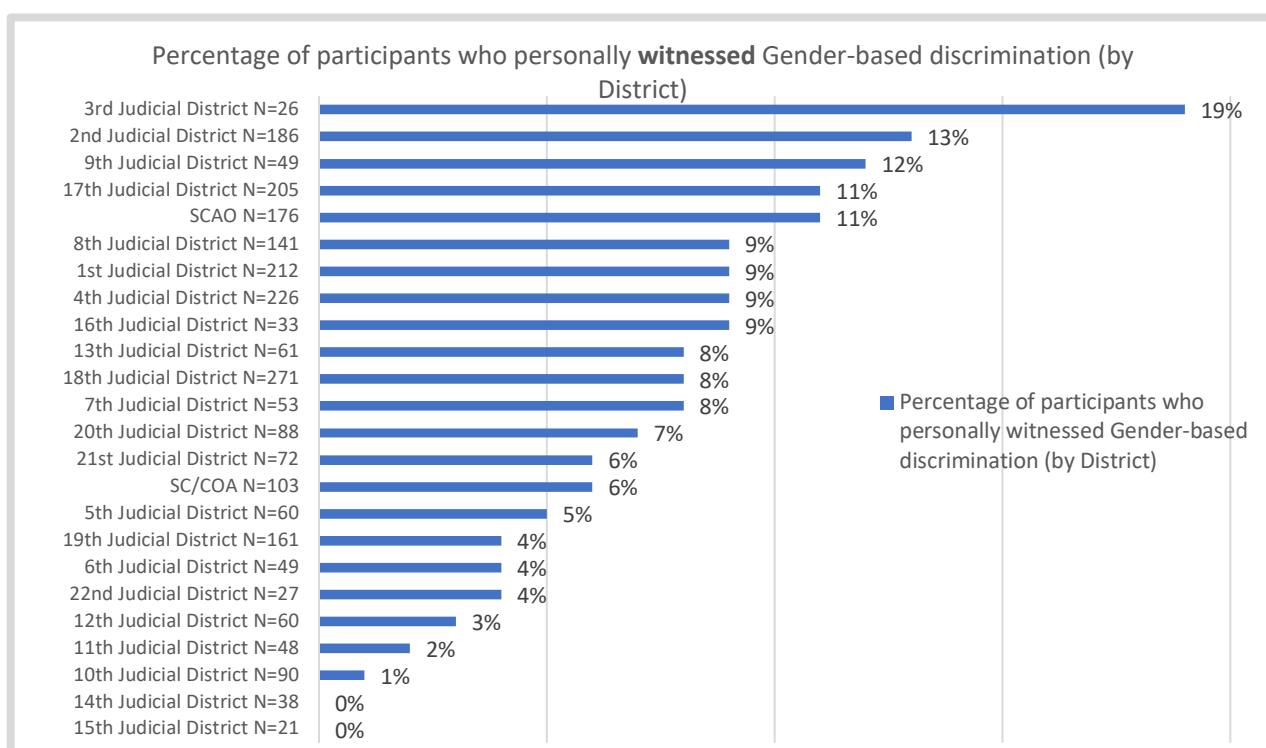
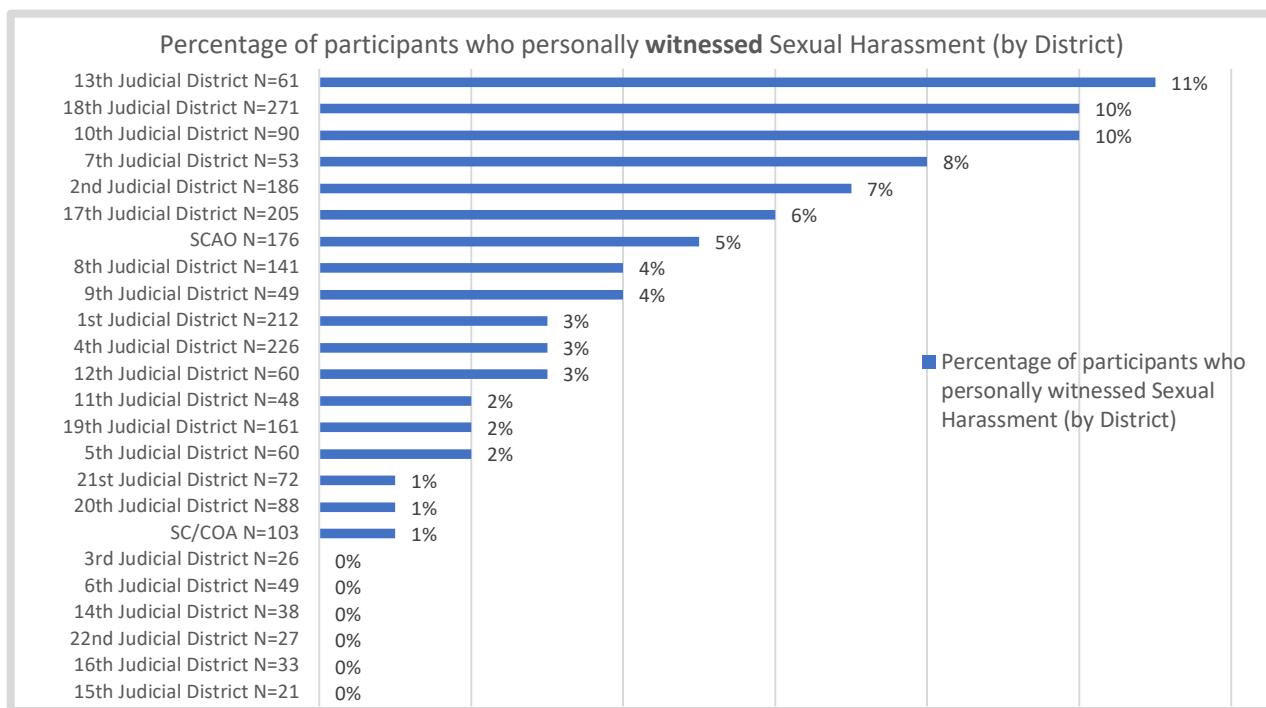
⁵¹ Across the board, the Supreme Court and Court of Appeals ranked at number one for the most part.

The previous chart illustrates the percent of participants from each District who reported experiencing some form of misconduct (sexual harassment, gender discrimination and / or retaliation).

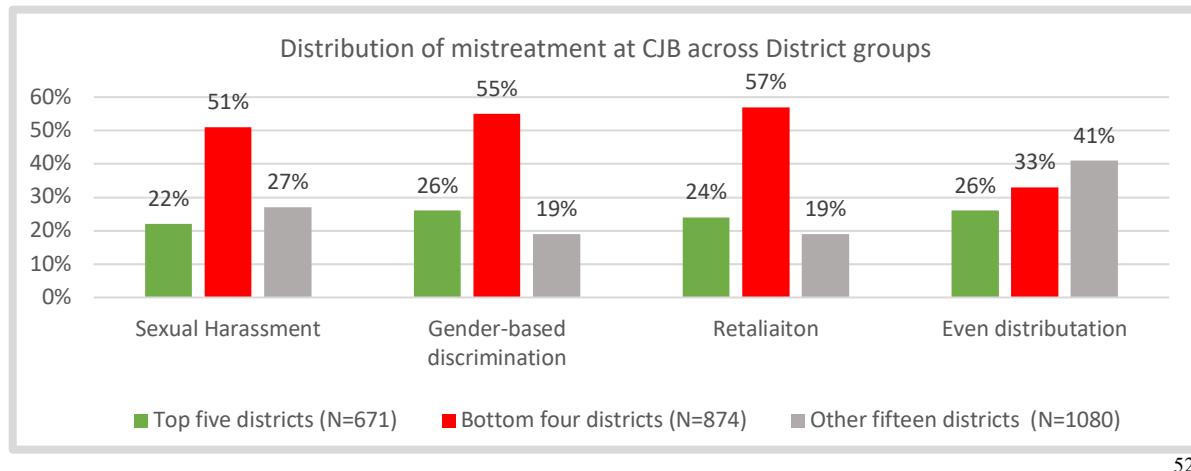
We then looked at each category of misconduct by District. This data reinforces the thesis that there were Districts that had significantly less misconduct in each category and those that had greater issues with misconduct.







Of those who participated in the survey, 60% (1,455) belonged to one of the nine Districts we analyzed (five top performing and four with more issues). Out of that number, 60% (874) participants were among those in the bottom for Districts.



52

The bottom four Districts accounted for 51% (88) of sexual harassment, 55% (113) of gender-based discrimination, and 57% (204) of retaliation survey participants either experienced or witnessed at the CJB. The top five Districts accounted for 22% (39) of sexual harassment, 26% (53) of gender-based discrimination, and 24% (87) of retaliation survey participants either experienced or witnessed at the CJB.

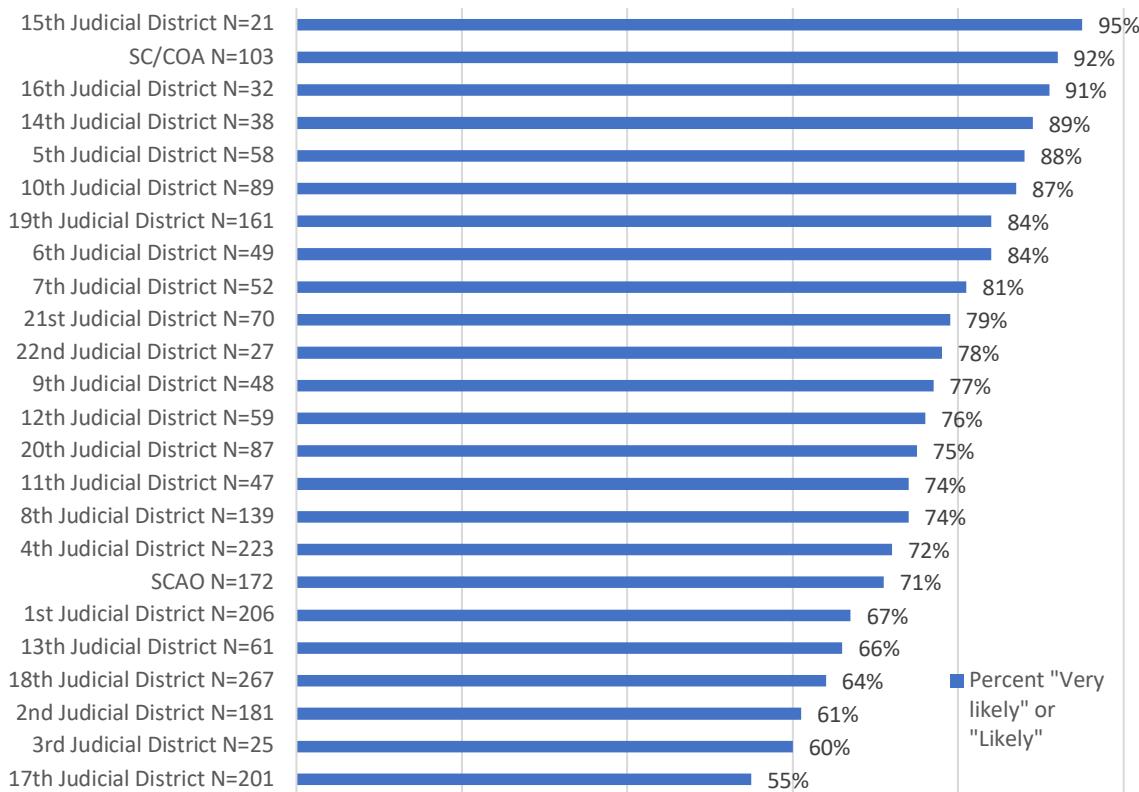
Although the bottom four Districts made up for 33% of survey participants, more than half of the instances of mistreatment (sexual harassment, gender-based discrimination, retaliation) occurred in these Districts, across all three areas. The top five Districts, comprising 26% of survey participants, hit the mark or below in terms of an even distribution in incidents. Importantly, had the top five Districts included Districts with less than 90 participants, some of the larger Districts included would fall closer to the middle of the pack. Out of the other fifteen Districts, not included in the top five or bottom four with more than 80 participants, fourteen (14) had less than 90 participants take part in the survey.

Similarly, voluntary interviewees who reported misconduct tended to fall into one of the bottom Districts with 80 or more survey participants.

Further illuminating is the data collected from the survey about whether participants would recommend their District as a good place to work to others. Again, the top performing Districts tend to rank highest on this question and lower performing Districts rank lower.

⁵² The fourth set of columns in the above table shows a hypothetical set of complaints, were the complaints distributed evenly between the three groups (top five Districts, bottom four Districts, and other 15 Districts). We include this even distribution to provide a clearer picture of the actual distribution of complaints given the different number of participants from each group. As the chart shows, both the top five Districts and the other 15 Districts fall below an even distribution of complaints. The bottom four Districts were far above an even distribution, as would be expected given the nature of being the bottom four.

How likely would you be to recommend the CJB to others as a good place to work?
 (By District)

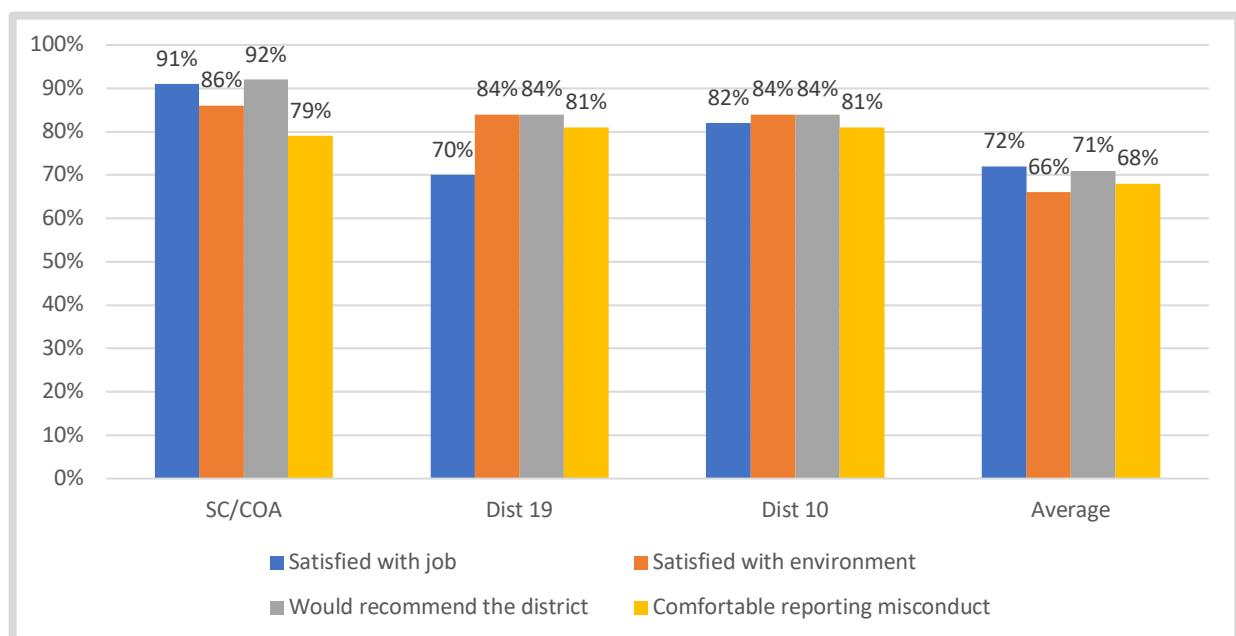


Although there is currently not a centralized system in place to build a cohesive and shared culture at CJB, the survey data highlights an opportunity to learn from the top performing Districts as to what they are doing to minimize misconduct and create an environment that supports employee engagement and happiness.

Top three Districts with over 80 participants: Supreme Court / Court of Appeals (“SC/COA”), District 19 & District 10

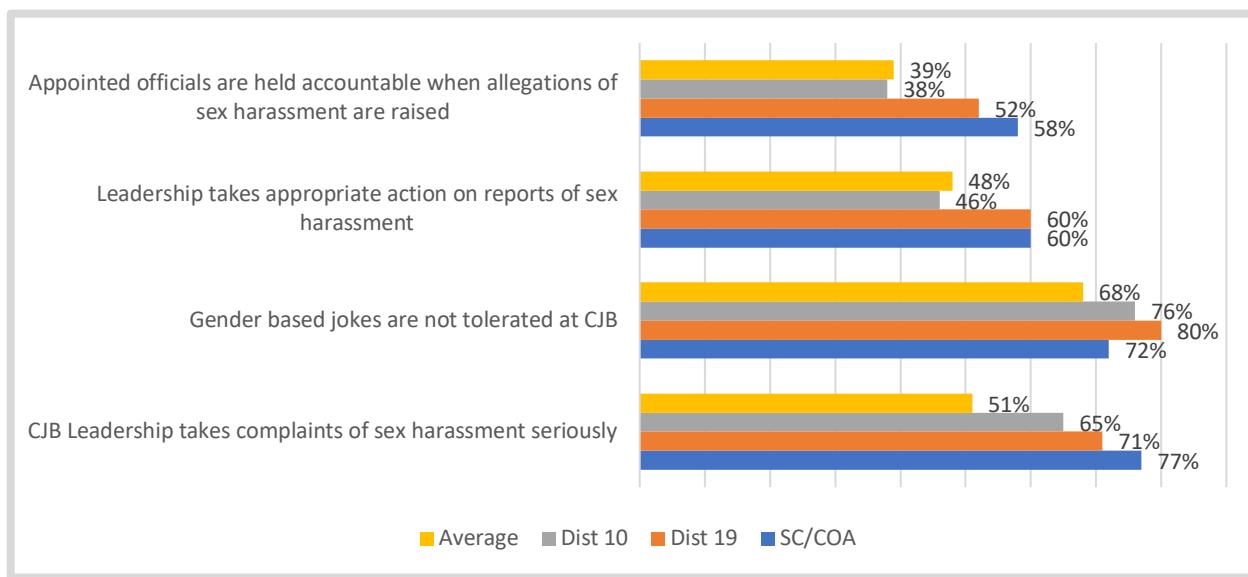
Given that SCAO and District 8 did not perform much above the average with respect to workplace satisfaction, we focused our detailed analysis on the top three performing Districts to highlight positive themes. Common subjects from the top performing Districts included employee satisfaction with their job, lesser witnessed or experienced misconduct, higher willingness to recommend the District as a good place to work, and a higher likelihood that experienced misconduct was reported. However, participants who reported misconduct were generally dissatisfied with the response. Additionally, the belief that appointed officials are held accountable was low, consistent with all other Districts.

The top three Districts had higher levels of job satisfaction and participants indicated they were more comfortable reporting misconduct than the survey average.

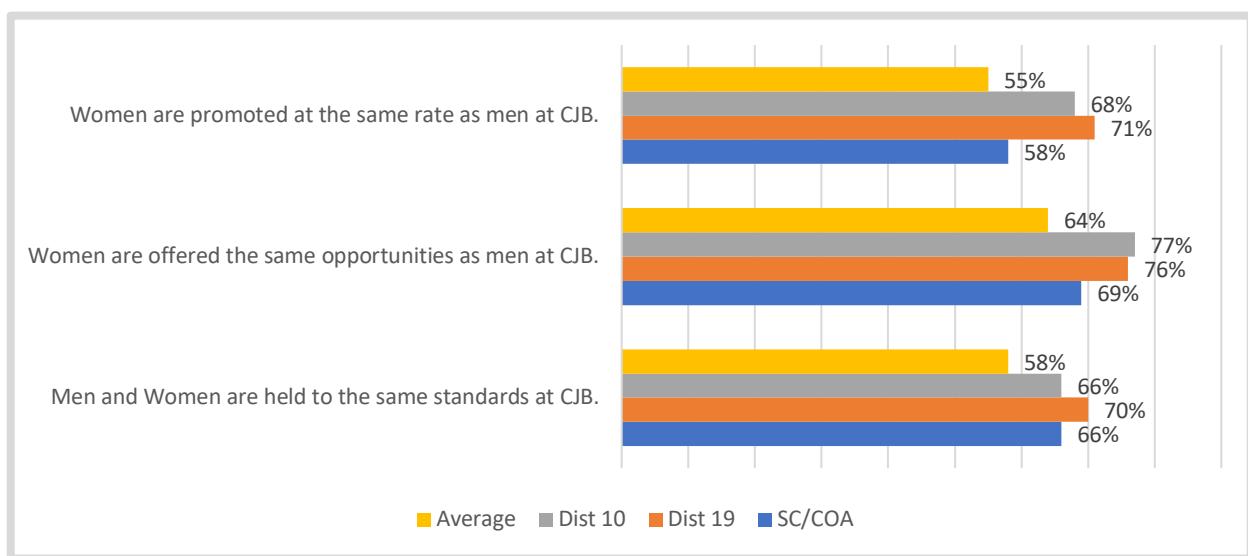


Similarly, the top three Districts were generally⁵³ more confident that leadership would take reports of sexual harassment seriously, would act on sexual harassment reports, and indicated that gender-based jokes were not tolerated. However, like the survey in general, participants in these Districts had lower scores on the statement that appointed officials would be held accountable when reports of sexual harassment are made.

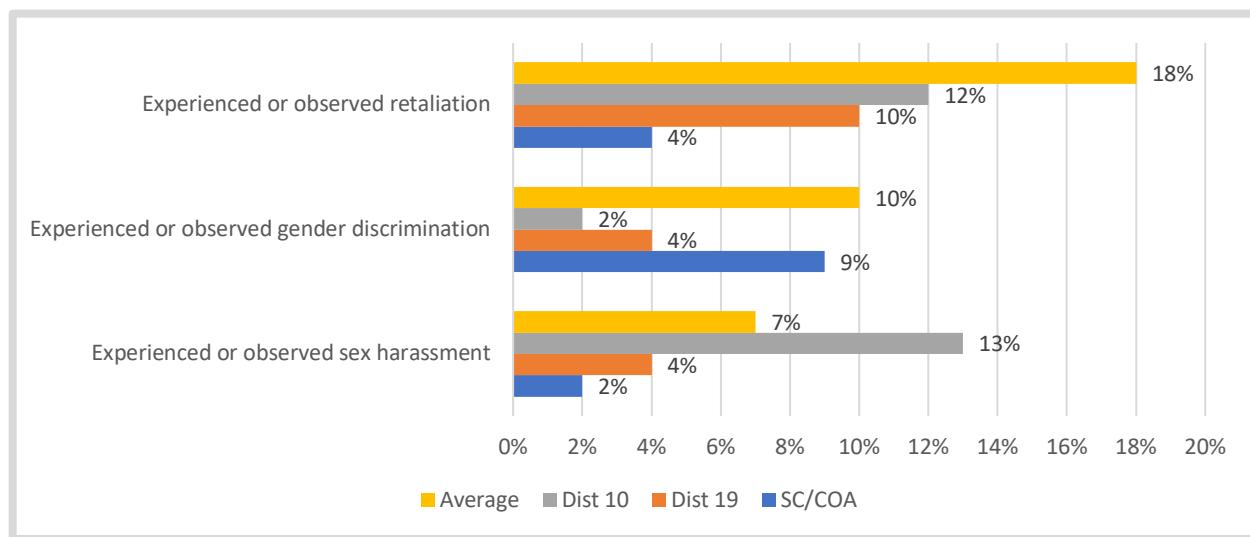
⁵³ District 10 scored just below the average for two of the questions specifically related to appointed officials.



Once again, the top three large Districts reported more favorably about the treatment of men versus women than the average found in the survey. However, in this set of questions, the SC/COA scored lower than Districts 10 and 19.



Compared to the survey average, the top three performing Districts had less witnessed and observed mistreatment, with the exception that District 10 had more incidents of experienced or witnessed sexual harassment than the survey average.



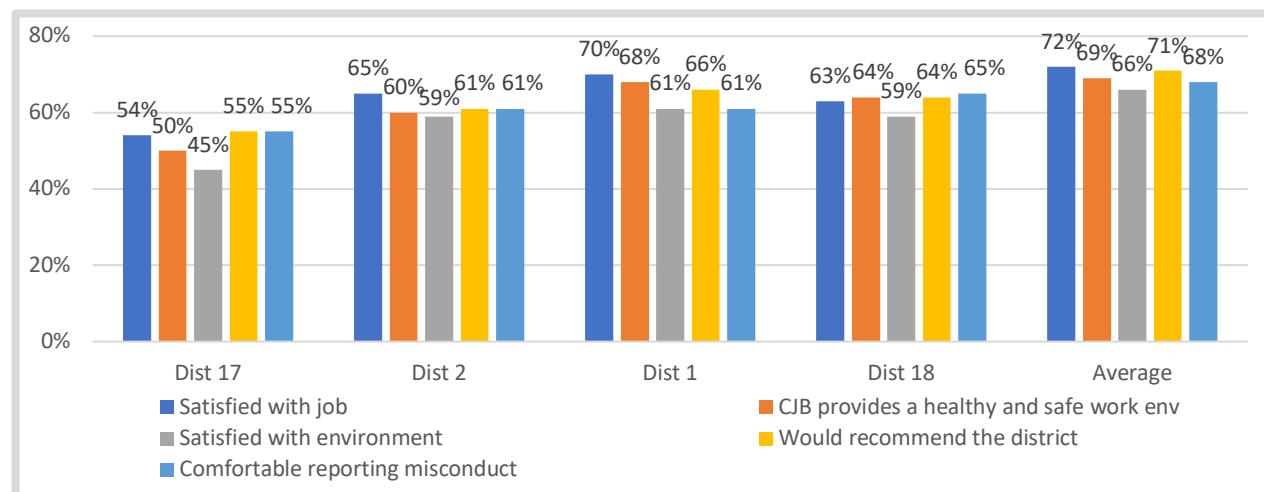
The positive data collected about SC/COA is meaningful given the power in those courts and the prominence of the roles that support them. That level of power and influence may be a contributing factor in workplace misconduct, yet the SC/COA has done well in this regard to rate at the top of the survey. Similarly, Districts 10 and 19 warrant additional evaluation by CJB to identify best practices that can be replicated across the CJB.

Even in the top performing three Districts, there were anomalies that warrant additional follow up. These include that much of the reported misconduct at SC/COA occurred since 2019 (83% of the 6 responses) and District 10 has more reports of experienced or witnessed sexual harassment than the survey average (13% or 12 affirmative responses). While more participants indicated they reported the misconduct they experienced at the SC/COA (75%), none of those who reported the misconduct were dissatisfied with the outcome. This contrasts with Districts 19 and 10 where a majority of those who reported experienced misconduct were satisfied with the outcome (75% each), yet a much lower percentage reported the experienced misconduct in these Districts (43% and 57% respectively).

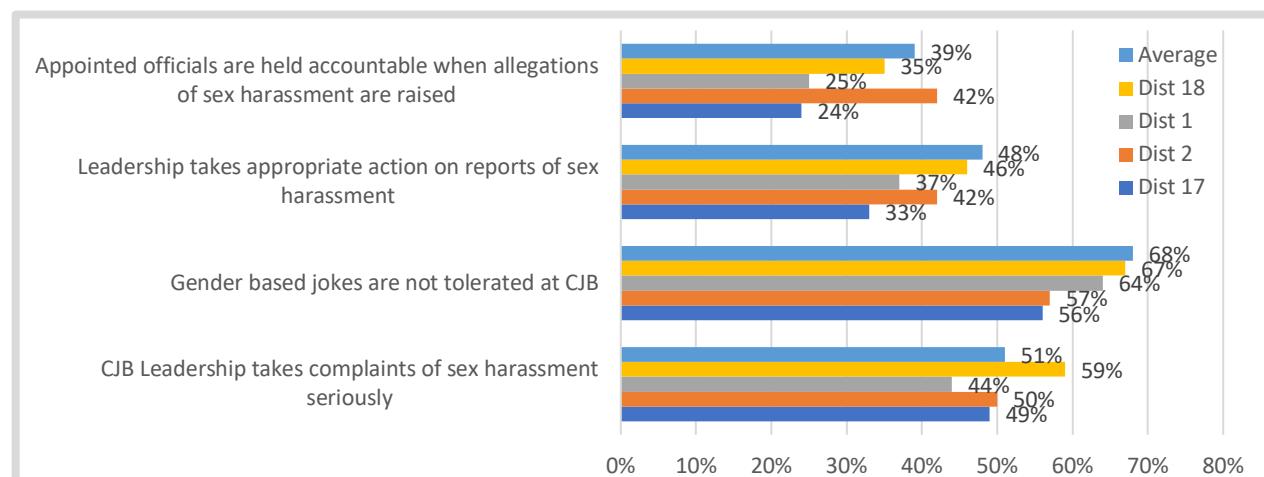
Four lowest rated Districts with over 80 participants: District 17, District 2, District 1, District 18

The four Districts with over 80 participants that rated lowest in the survey highlight an opportunity for the CJB to focus efforts and resources. This will have an impact on the employee experience in those Districts as a first step to address workplace issues. The lower performing Districts had consistently lower employee satisfaction and more instances of experienced or witnessed misconduct.

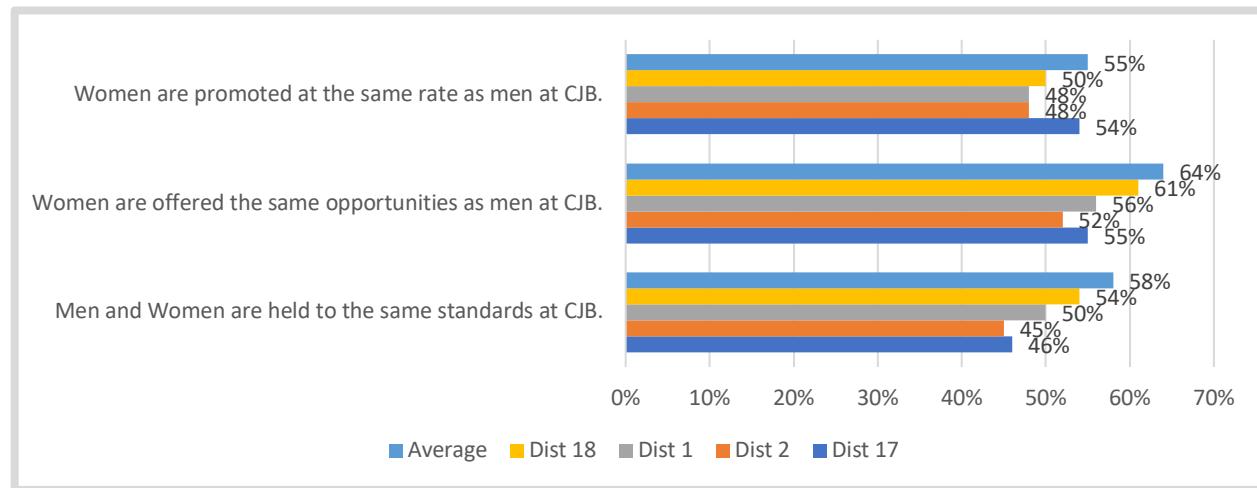
The survey statements used to assess employee engagement and satisfaction rated lower than the average in all four of these Districts. District 17 was much lower than the other three Districts evaluated in this section as well as the average of the survey.



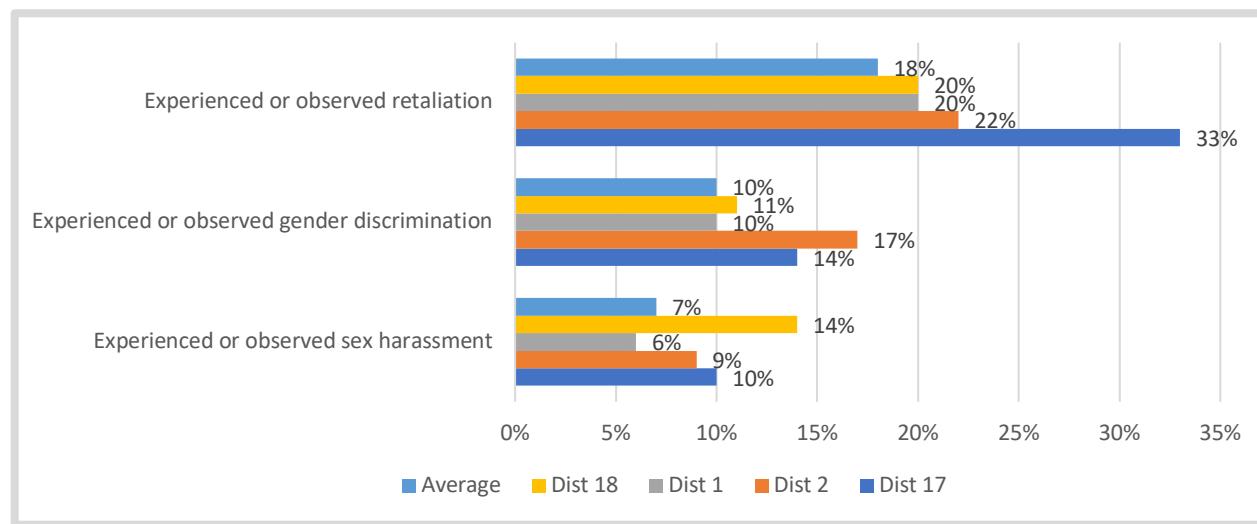
These Districts highlighted concerns about the environment to support a respectful workplace where sexual harassment and gender-based jokes occur as compared to the survey average.



Similarly, the four Districts examined showed that participants had concerns about equal treatment of men versus women, with District 2 scoring the lowest overall.



Retaliation was a big concern in these Districts, especially in District 17 where 33% of survey participants indicated they experienced or observed retaliation while working there. District 2 had more participants who experienced or observed gender discrimination (17%) and District 18 had the most experienced or observed sexual harassment (14%).



The voluntary interviews provided additional context in these four Districts. Reports of sexual harassment were most prevalent amongst witnesses from District 18, with eight (8) witnesses raising issues of sexual harassment. District 1 was second, with four (4) witnesses raising issues of sexual harassment.

With respect to gender-based discrimination, voluntary interviewees reported more issues from District 18 and District 1, with six (6) witnesses from each District raising issues of gender-based discrimination. District 2 (along with two other Districts) followed this with three (3) reports of gender-based discrimination from each. Voluntary witnesses who reported gender-based discrimination included appointed officials, supervisors, and employees. Nine (9) judges from eight (8) Districts reported concerns with gender-based discrimination.

Reports of retaliation were most prevalent among voluntary interviewees from District 18, with 11 witnesses from that workplace reporting issues of retaliation. District 17 came second, with nine (9) witnesses raising issues of retaliation. District 2 came next, with seven (7) witnesses raising issues of retaliation, followed by District 1, where six (6) witnesses raised issues of retaliation. Concerns about retaliation came from appointed officials, supervisors, and employees.

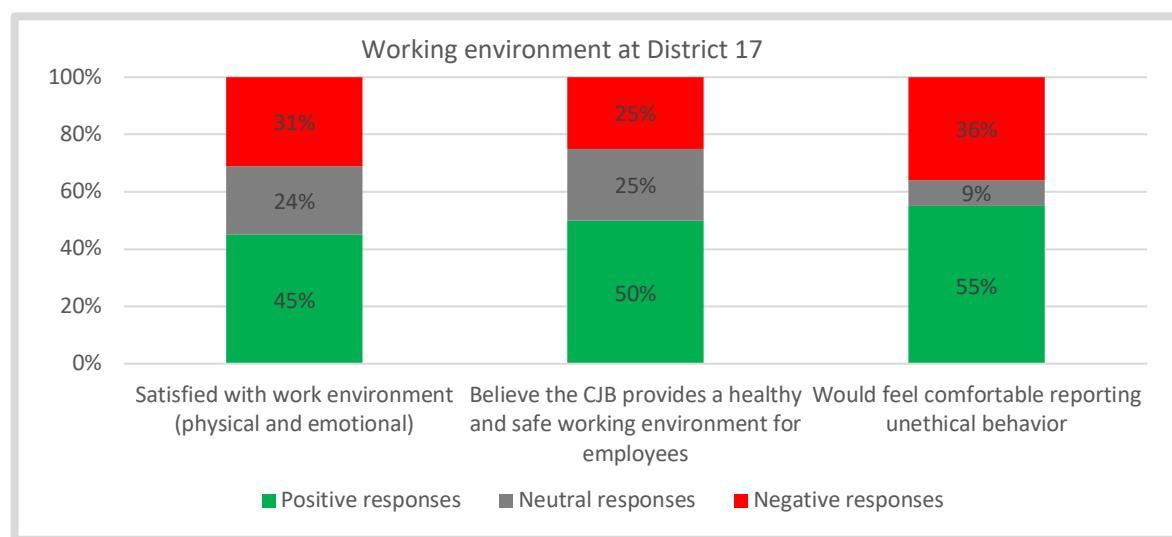
Finally, participants from these Districts all indicated that they did not feel comfortable talking openly with leadership without fear of retaliation. The survey average showed that 55% of participants answered that statement positively. District 1 was the lowest at 25%, followed by District 2 at 30%, District 17 at 38% and District 18 closer to the average at 52%. This concern likely contributes to a lack of reporting misconduct.

Detailed information about each of the lower performing Districts provides better context and information about employees' experiences and how they differ from higher rated Districts.

1. District 17 – Adams, Broomfield

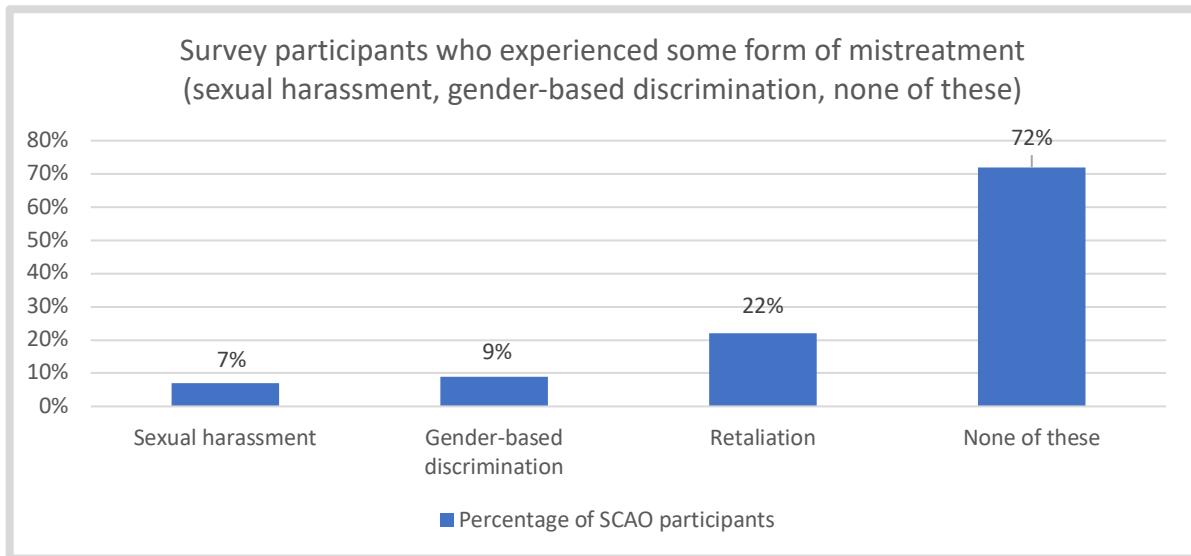
Out of three-hundred and fifty-four (354) District 17 employees who took the survey, two-hundred and five (205) participated at a rate of 58%. Ninety-one percent (186) identified themselves as employees of the Colorado Judicial Branch, while 9% (8) identified as appointed officials. Seventy-six percent (155) of participants at District 17 identified as female and 11% (22) identified as male.⁵⁴

Job satisfaction in District 17 was lower than in any other District, with 24% (28) of those who responded to the question saying they were either "Dissatisfied" or "Very dissatisfied" with their job at the CJB. Only 55% said they would be "Very likely" or "Likely" to recommend the CJB to others as a good place to work. Overall, a significant number (around a third) of participants from District 17 do not feel it is a healthy working environment.



⁵⁴ This does not equal 100% as some participants elected not to provide this information or selected non-binary or transgender as a category.

Forty percent (83) of participants⁵⁵ from District 17 either **experienced** or **witnessed** one or more of the forms of mistreatment we assessed (gender-based discrimination, sexual harassment, or retaliation) within the past five years. Twenty-eight percent (57) of participants from District 17 **experienced** one or more forms of mistreatment, while 25% (71) **witnessed** one or more forms of mistreatment.



The survey prompted participants to qualify the timeframe in which mistreatment occurred within three time periods: 2019 to present, between 2016 and 2018, and prior to 2016. Out of the experiences of mistreatment reported by participants, 53% reported mistreatment from 2019-present, 60% reported mistreatment 2018 and 2016, and 34% reported mistreatment prior to 2016.

Reporting Misconduct

Only 30% of those participants who experienced mistreatment at District 17 reported it. The 70% of participants who did not report provided the following reasons for that decision:

- I knew it wouldn't do any good. (94%)
- I was afraid of retaliation. (65%)
- It wasn't that serious. (13%)
- I didn't know who to go to. (7%)
- I didn't want to make the effort. (3%)

Other reasons for not reporting included, "I was blackballed," "The behavior is not always concrete enough to report – like I notice that my male colleagues treat me differently than they treat each other," "I generally experience this behavior from older male colleagues and recognize that I have to wait until they retire and hope their spots are filled with someone who is different," "It was a [redacted] at the time and I knew he was known for retaliation," "Since it was the [redacted] I felt

⁵⁵ Participants can select more than one category in this section; thus, the total exceeds 100%.

powerless,” and “Too many bad people involved in the whole process, it wouldn’t make a difference. I would probably be the one who pays the price.”

Out of those who did report, 77% were not satisfied with the response/outcome they received, while only 8% were satisfied with the response/outcome they received.

Out of those who observed mistreatment, 86% chose not to report it. Reasons provided for not reporting included:

- I knew it wouldn’t do any good (76%).
- I was afraid of retaliation. (60%)
- I didn’t know who to go to. (12%)
- It wasn’t that serious. (4%)

Other answers included, “Felt that people involved would be protected by higher ups,” “I was not involved,” “Since it was [title redacted], I felt powerless,” “Supervisors forced an employee to quit,” “Favoritism is strong in our dept. Management is ‘never wrong’,” and “People who sexually harass are in high levels of authority.”

All the participants who reported observed mistreatment were dissatisfied with the response/outcome they received.

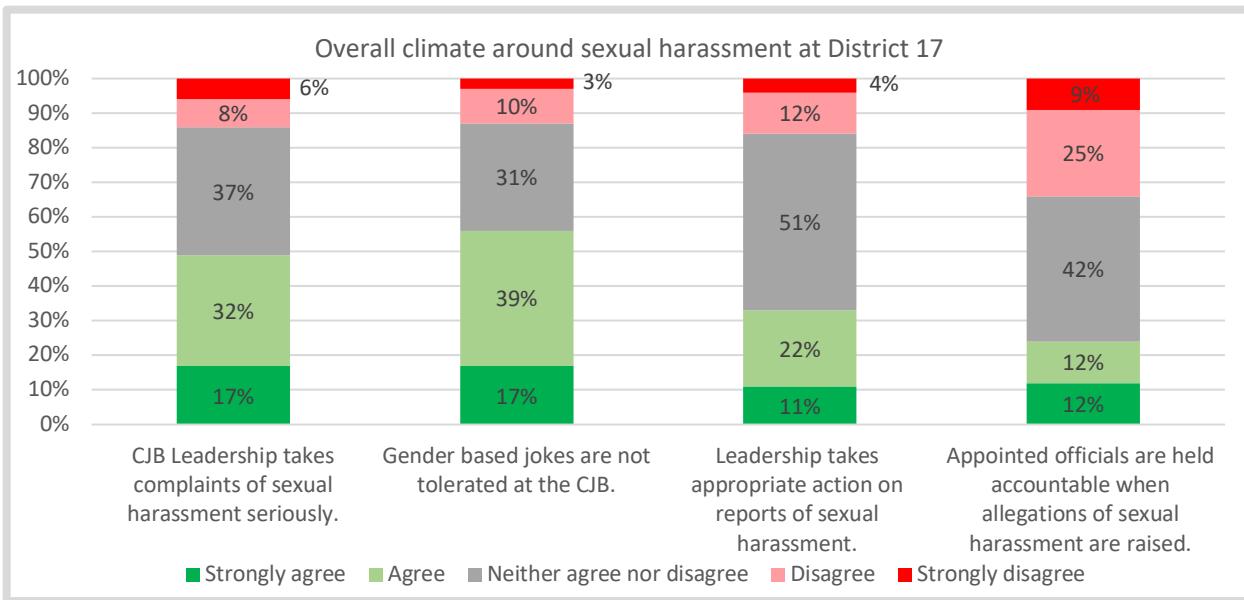
Fifty-two percent of total participants said they would feel safe reporting sexual misconduct by an appointed official. For the 18% who said they would not feel safe doing so, the top reasons provided were “Nothing would be done about it” (85%), “I would be afraid of retaliation at work” (85%), and “I would be afraid of losing my job.” (70%).

The numbers among participants who were appointed officials were better, with 68% reporting they would feel safe reporting sexual misconduct by another appointed official and 16% reporting they would not.

When asked to rate the likelihood that CJB leadership will act on the results from this assessment, 36% of participants from District 17 believe leadership is unlikely to do so.

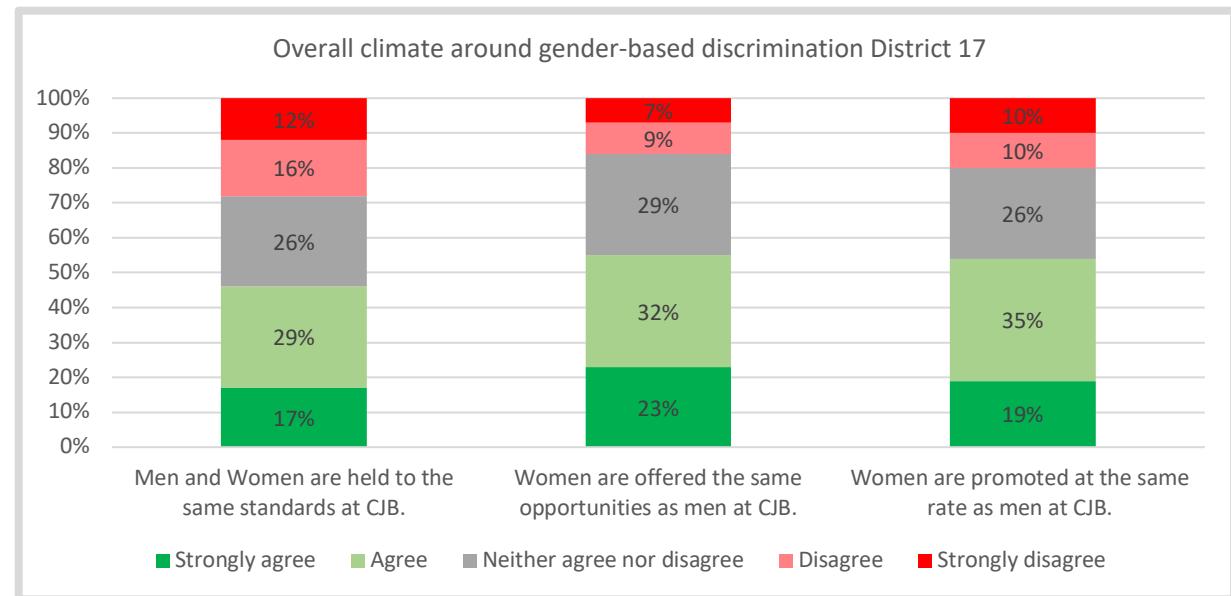
Sexual Harassment

Ten percent (21) of survey participants reported that they either observed or witnessed sexual harassment in District 17’s workplace. Survey results were mixed on the environment of sexual harassment at District 17 and a considerable number (34%) of participants expressed a lack of faith that appointed officials are held accountable when allegations of sexual harassment are raised. Sixteen percent believe that leadership does not take appropriate action on reports of sexual harassment. Fourteen percent feel that CJB leadership does not take complaints of sexual harassment seriously, and 13% said gender-based jokes are tolerated at District 17.



Gender-based Discrimination

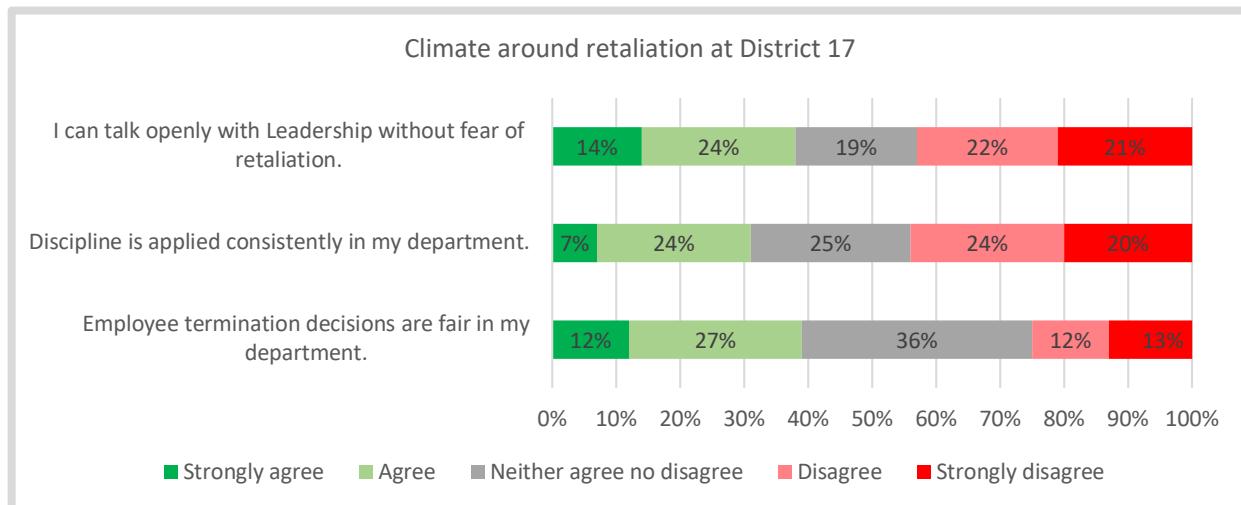
Fourteen percent (29) of survey participants said they either experienced or observed gender-based discrimination at District 17 within the past five years. Overall, the belief that gender-based discrimination is a problem at District 17 is more prevalent than reported experiences—personal or observed. Twenty-eight percent of participants believe that women versus men are not held to the same standards at the CJB; 16% of participants believe that women are not offered the same opportunities as men at the CJB; and 20% of participants believe that women are not promoted at the same rate as men at the CJB.



More generally, nearly half (48%) of survey participants from District 17 **did not** agree that all employees are treated equally at District 17.

Retaliation

Thirty-three percent (68) of survey participants from District 17 reported they had either witnessed or observed retaliation at District 17 within the past 5 years. At District 17, more participants fear retaliation from leadership and do not trust leadership to apply fair discipline than those who trust leadership and do not fear retaliation. Forty-three percent of survey participants do not feel they can talk openly with leadership without fear of retaliation. Forty-four percent of participants do not have faith that discipline is applied consistently in their department. Twenty-five percent of survey participants do not believe that employee termination decisions are fair in their department.



Retaliation was the biggest issue raised by voluntary interviewees from District 17. Out of twelve (12) interviews from District of 17, nine (9) raised issues of retaliation. Several comments we heard from the voluntary interviews reinforced the survey data about retaliation:

- “There is a huge concern regarding retaliation in District 17. When problems are presented to the management team, that team is “never wrong.” Instead, they will begin to focus on the person who raised the concern.”
- “I brought my concern to HR because my coworkers and I filed a complaint about a judge and nothing was happening with the Judicial Review Committee. Instead, the judge started retaliation against us.”
- “My main concern is that the Judicial system states they do not tolerate retaliation. I filed complaint against my co-worker, and instead of addressing the issue, my supervisor gave me a poor performance review.”

Voluntary witnesses from District 17 suggested that an anonymous process for victims to report misconduct would help reduce retaliation and would solicit more feedback from employees. These witnesses stressed the importance of leadership training and accountability. Witnesses said that training would help leaders address issues, better manage conflict, and improve morale.

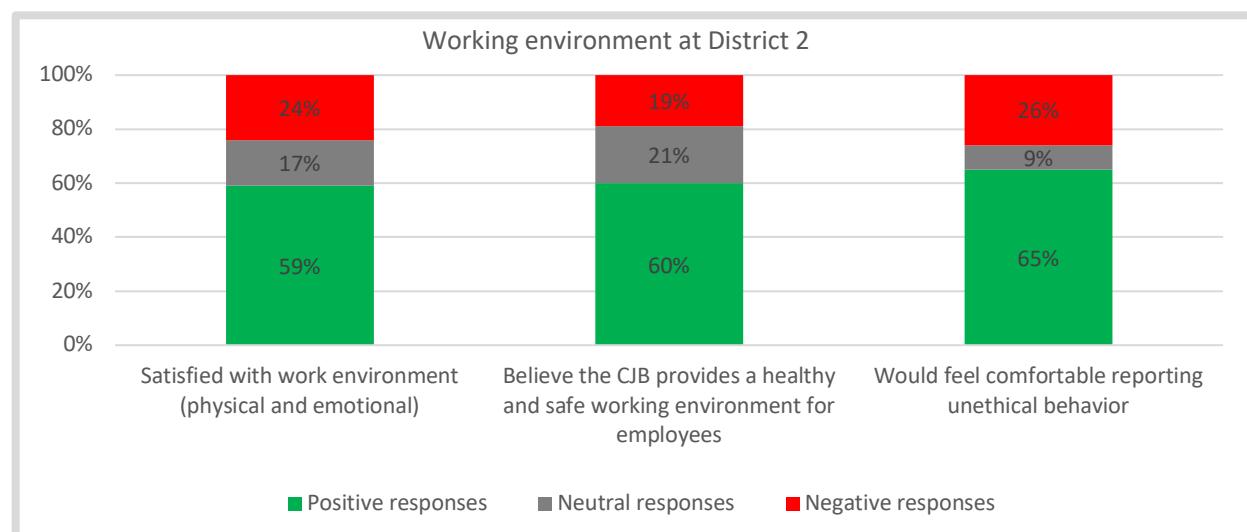
Given the data presented in the “Reporting Misconduct” section above, a majority of those who experienced sexual harassment, gender-based discrimination, and/or retaliation in District 17’s

workplace chose not to report it. Out of this number, 65% indicated they chose not to report the mistreatment because they were afraid of retaliation.

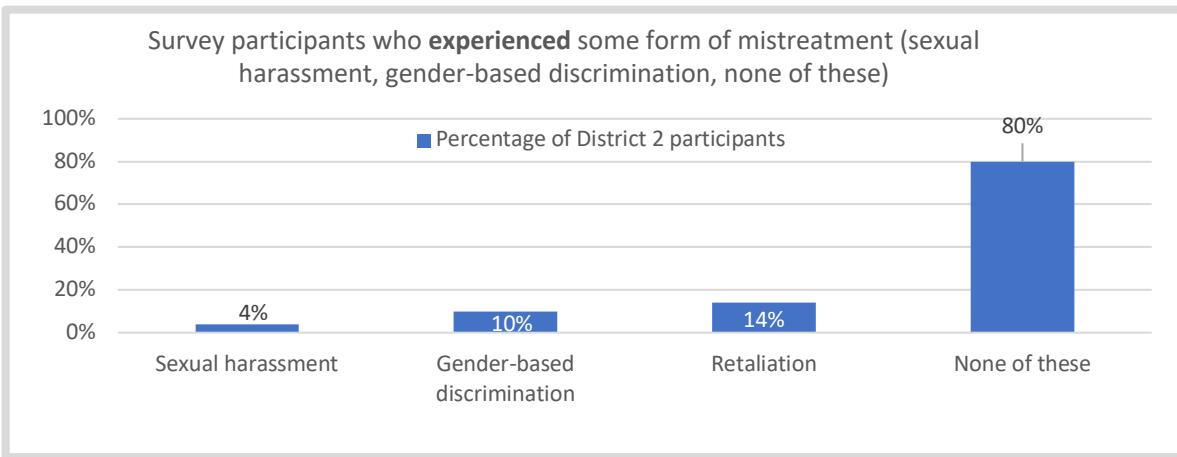
2. District 2 – Denver

Out of three-hundred and fifty-three (353) District 2 employees who took the survey, one-hundred and eighty-six (186) participated, at a rate of 53%. Eighty-nine percent (165) identified themselves as employees of the Colorado Judicial Branch, while 11% (21) identified as appointed officials. Sixty-five percent (121) of the participants at District 2 identified as female and 23% (43) identified as male.

Job satisfaction at District 2 was more positive than many other Districts, with 65% (77) of those who responded to the question saying they were either “Satisfied” or “Very satisfied” with their job at the CJB. Sixty-one percent (111) said they would be “Very likely” or “Likely” to recommend the CJB to others as a good place to work, whereas 22% (39) would not be likely to recommend it. Overall, a substantial number (around a quarter) of participants from District 1 did not feel it is a healthy working environment. Twenty-six percent of participants reported they would not feel comfortable reporting unethical behavior and 24% reported they were not satisfied with the physical and emotional work environment at District 2.



Thirty-two percent (59) of participants from District 2 either **experienced** or **witnessed** one or more forms of mistreatment (gender-based discrimination, sexual harassment, or retaliation) within the past five years. Twenty percent (37) of participants from District 2 **experienced** one or more forms of mistreatment, while 28% (52) **witnessed** one or more forms of mistreatment.



The survey prompted participants to qualify the timeframe in which mistreatment occurred within three time periods: 2019 to present, between 2016 and 2018, and prior to 2016. Out of the experiences of mistreatment reported by participants, 68% reported mistreatment from 2019-present, 50% reported mistreatment 2018 and 2016, and 18% reported mistreatment prior to 2016.

Reporting Misconduct

Thirty-eight percent of participants who experienced mistreatment at District 2 reported it. The 62% of participants who did not report provided the following reasons for that decision:

- I knew it wouldn't do any good. (86%)
- I was afraid of retaliation. (52%)
- It wasn't that serious. (10%)
- I didn't know who to go to. (10%)
- I didn't want to make the effort. (10%)

Other reasons for not reporting the mistreatment include, "My department knows how to use policy to protect themselves" and "It would only result in further personal scrutiny."

Out of those who did report, 100% were **not** satisfied with the response/outcome they received.

Out of those who observed mistreatment, 85% chose not to report it. Reasons provided for not reporting include:

- I knew it wouldn't do any good (73%).
- I was afraid of retaliation. (53%)
- I didn't know who to go to. (3%)
- It wasn't that serious. (3%)

Other answers include, "Information found out a couple of years after. Hard to prove in other instances. I spoke out years ago, was basically told to look the other way," "It was a 'disparate impact' situation, i.e., not intentional, and had to do with courtroom assignments of new judges, and has been and continues to be in the process of being resolved," "The co-worker filed multiple

grievances, nothing happened to management, and the worker was further scrutinized,” and “Did not affect me and if the other person wanted to make a complaint they could. I would not start a complaint that the person involved did not want to be an issue.”

All participants who reported the mistreatment they observed were dissatisfied with the response/outcome they received.

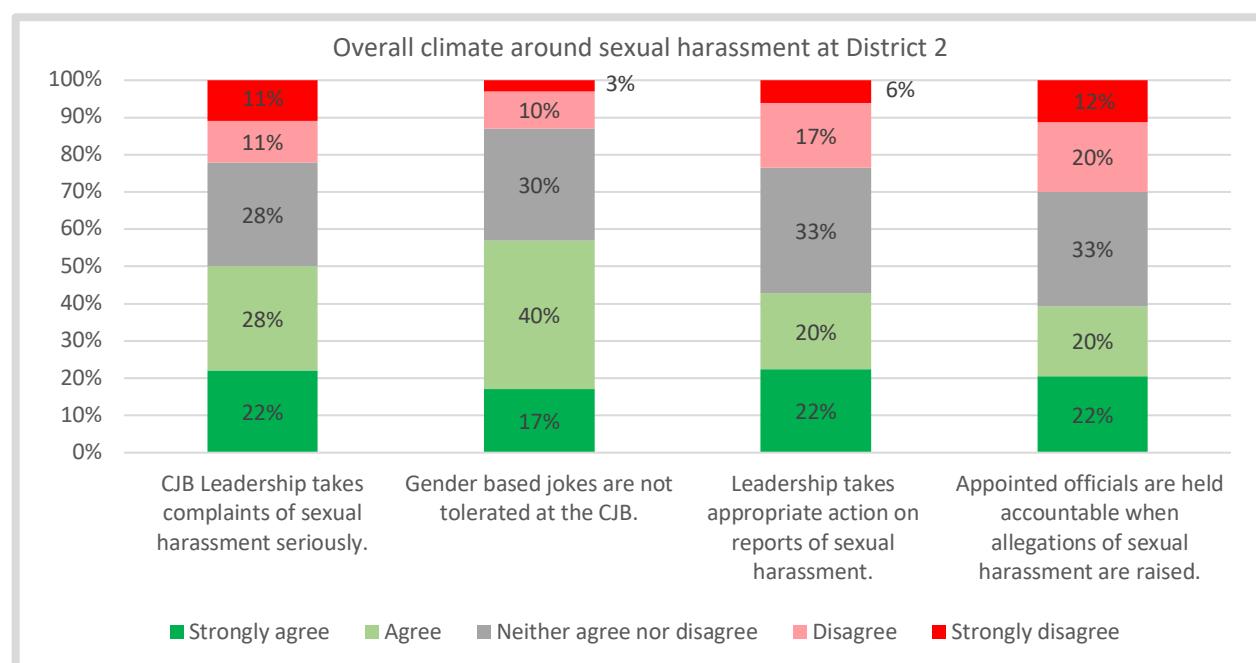
Sixty-one percent of total participants said they would feel safe reporting sexual misconduct by an appointed official. For the 16% who said they would not feel safe doing so, the top reasons provided were “I would be afraid of retaliation at work” (78%), “I would be afraid of losing my job” (72%), and “Nothing would be done about it” (56%).

The numbers among participants who are appointed officials were better, with 81% reporting they would feel safe reporting sexual misconduct by another appointed official and 10% reporting they would not.

When asked to rate the likelihood that CJB leadership will act on the results from this assessment, 32% of participants from District 2 believe leadership is unlikely to do so.

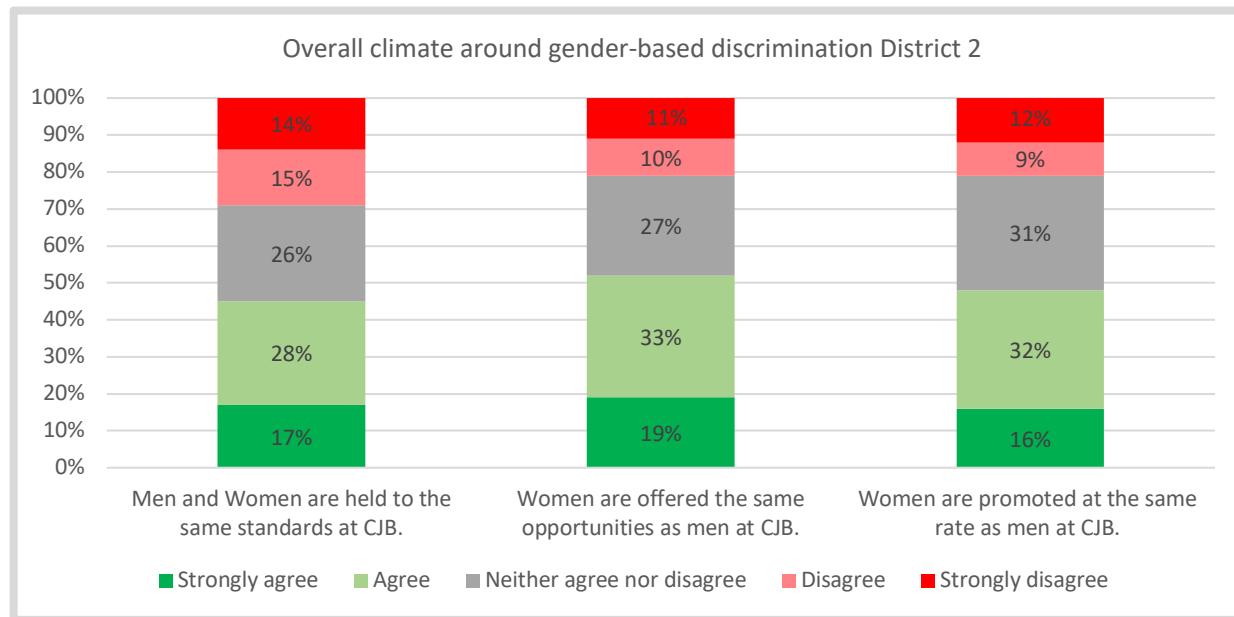
Sexual Harassment

Nine percent (16) of survey participants reported that they had either observed or witnessed sexual harassment in District 2’s workplace. Thirty-two percent of participants **did not** believe that appointed officials are held accountable when allegations of sexual harassment are raised. Twenty-three percent **did not** believe that leadership takes appropriate action on reports of sexual harassment. Twenty-two percent **did not** feel that CJB leadership takes complaints of sexual harassment seriously, and 13% said gender-based jokes are tolerated at District 2.



Gender-based Discrimination

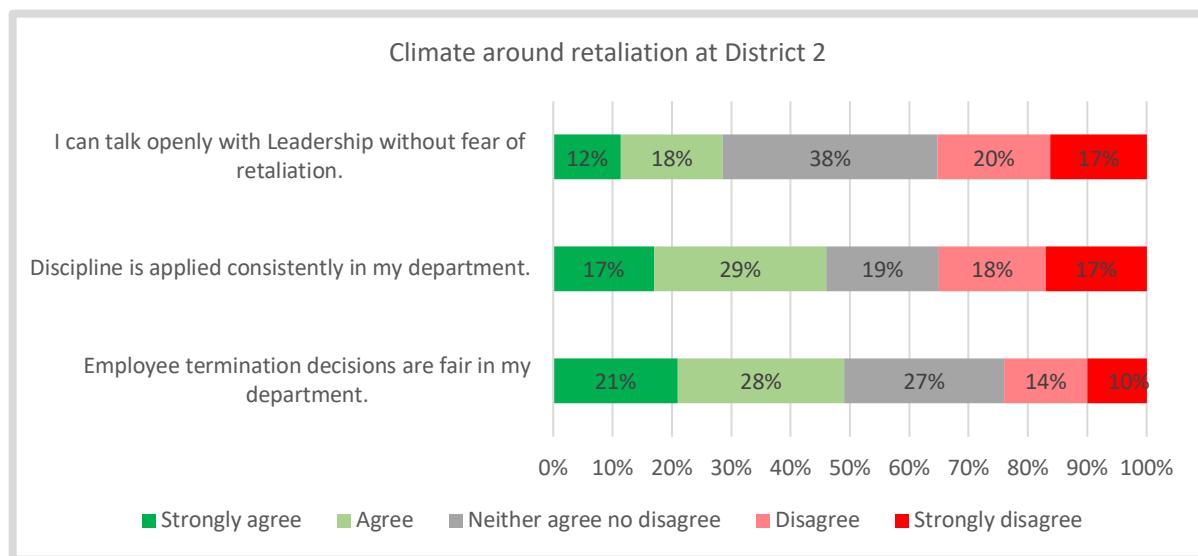
Seventeen percent (32) of survey participants said they either experienced or observed gender-based discrimination at District 2 within the past five years. Overall, the belief that gender-based discrimination is a problem at District 2 is more prevalent than reported experiences—personal or observed. Twenty-nine percent of participants believe that women versus men are not held to the same standards at the CJB; 21% of participants believe that women are not offered the same opportunities as men at the CJB; and 21% of participants believe that women are not promoted at the same rate as men at the CJB.



More generally, 40% of survey participants from District 2 **did not** agree that all employees are treated equally at District 2.

Retaliation

Twenty-two percent (40) of survey participants from District 2 reported they either witnessed or observed retaliation at District 2 within the past 5 years. At District 2, many participants did not feel they could go to leadership with concerns without retaliation. A quarter or more of participants did not trust leadership to make fair disciplinary or employee termination decisions. More participants (37%) did not feel they could talk openly with leadership without fear of retaliation than those who do (30%). Thirty-five percent of participants did not have faith that discipline is applied consistently in their department. Twenty-four percent of survey participants did not agree that employee termination decisions are fair in their department.



Retaliation was the biggest issue reported by voluntary interviews from District 2, with seven (7) out of ten (10) voluntary witnesses reporting concerns of retaliation. Quotes from the interviews highlight this issue:

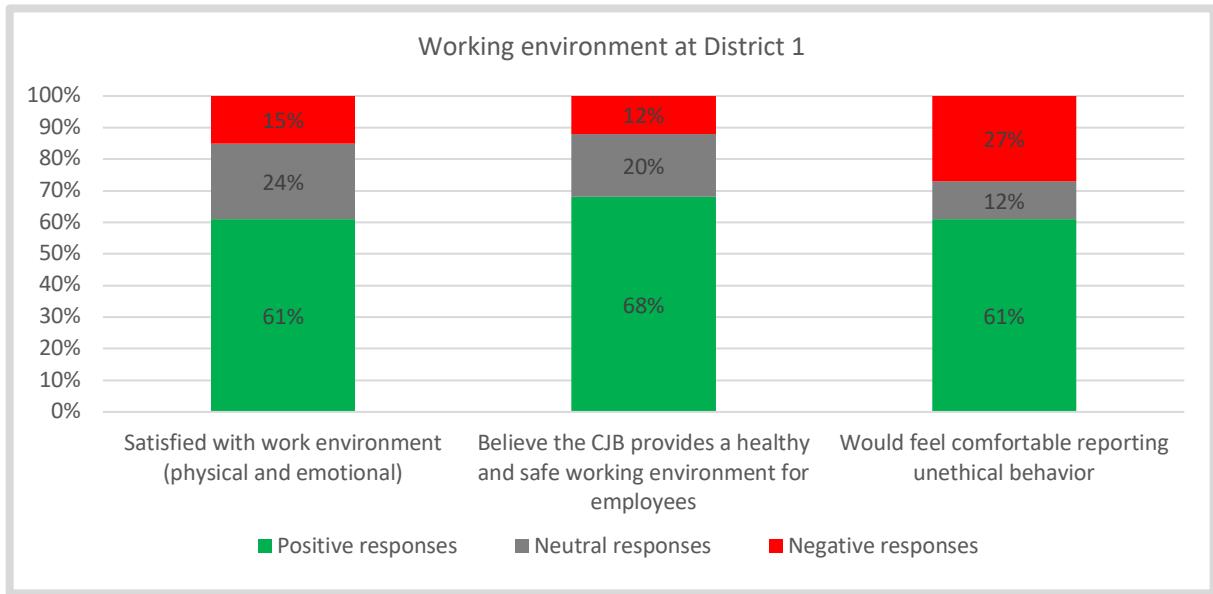
- “I was offered opportunity to meet with HR and [redacted] regarding my supervisor’s behavior but refused for fear of retaliation. My supervisor then gave me the lowest performance rating I have ever received in [number redacted] years with Judicial and was put on a performance plan.”
- “People are unable to speak up without consequences, even if you are found to be right and justified you are still given questionable treatment.”

Given the data presented in the “Reporting Misconduct” section above, a majority of those who experienced sexual harassment, gender-based discrimination, and/or retaliation in District 2’s workplace chose not to report it. Out of this number, 52% indicated they did not report the mistreatment because they were afraid of retaliation.

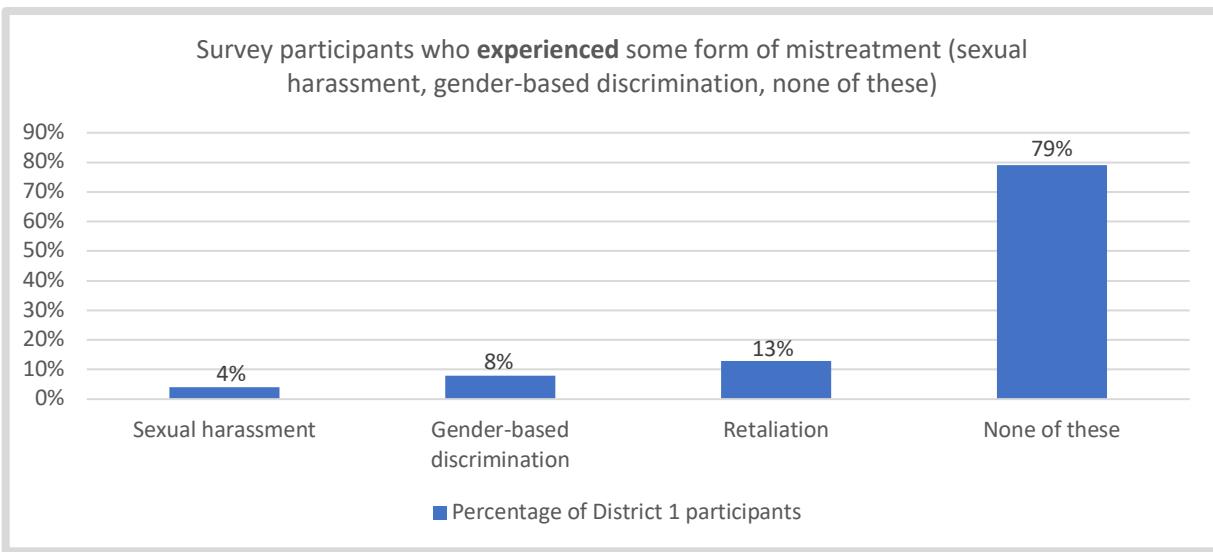
3. District 1 – Gilpin, Jefferson

Out of three-hundred and forty-three (343) District 1 employees who took the survey, two-hundred and twelve (212) participated, at a rate of 62%. Eighty-nine percent (188) identified themselves as employees of the Colorado Judicial Branch, while 11% (24) identified as appointed officials. Sixty-nine percent (145) of participants at District 1 identified as female and 22% (46) identified as male.

Job satisfaction at District 1 was more positive than many other Districts, with 70% (93) of those who responded to the question saying they were either “Satisfied” or “Very satisfied” with their job at the CJB. Sixty-six percent (139) said they would be “Very likely” or “Likely” to recommend the CJB to others as a good place to work. Overall, most participants from District 1 agreed it is a healthy working environment, although 27% of participants would not feel comfortable reporting unethical behavior.



Twenty-nine percent (62) of participants from District 1 either **experienced** or **witnessed** one or more forms of the mistreatment we investigated (gender-based discrimination, sexual harassment, or retaliation) within the past five years. Twenty percent (43) of participants from District 1 **experienced** one or more forms of mistreatment, and 22% (46) **witnessed** one or more forms of mistreatment



The survey prompted participants to qualify the timeframe in which mistreatment occurred within three time periods: 2019 to present, between 2016 and 2018, and prior to 2016. Out of the experiences of mistreatment reported by participants, 55% reported mistreatment from 2019-present, 47% reported mistreatment 2018 and 2016, and 21% reported mistreatment prior to 2016.

Reporting Misconduct

Only 28% of participants who experienced mistreatment at District 1 reported it. The 72% of participants who did not report provided the following reasons for that decision:

- I was afraid of retaliation. (61%)
- I knew it wouldn't do any good. (57%)
- It wasn't that serious. (17%)
- I didn't know who to go to. (13%)
- I didn't want to make the effort. (9%)

Other reasons for not reporting included, "Entire team was yelled at in a meeting for reporting concerns to [name redacted]," "Retaliation is difficult to prove when it is subtle," and "I was threatened that I would be fired."

Out of those who did report, 67% were **not** satisfied with the response/outcome they received, while only 11% were satisfied with the response/outcome they received.

Out of those who observed mistreatment, 87% chose not to report it. Reasons provided for not reporting included:

- I knew it wouldn't do any good (67%).
- I was afraid of retaliation. (42%)
- I didn't know who to go to. (30%)
- It wasn't that serious. (9%)
- I didn't want to make the effort. (6%)

Other answers included, "The police were involved and I wasn't the one it happened to, I just observed it between other people, and while it was something I felt was inappropriate, the persons involved did not seem to be bothered and so I let it go," "The individual it happened to did not want to report and that is not my decision to make for them," "Wasn't toward me directly," "Sometimes the retaliation is very subtle. I feel we sometimes get a clear message that no one really wants to hear about it or deal with the conflict if it's not that important enough to them," and "The initial incident was reported and then the retaliation was clearly supported."

Eighty percent of participants who reported the mistreatment they observed were dissatisfied with the response/outcome they received.

Fifty-five percent of total participants said they would feel safe reporting sexual misconduct by an appointed official. For the 13% who said they would not feel safe doing so, the top reasons provided were "Nothing would be done about it" (79%), "I would be afraid of retaliation at work" (79%), "I would be afraid it would ruin my career prospects" (47%), and "I would be afraid of losing my job" (47%).

The numbers among participants who are appointed officials were better, with 79% reporting they would feel safe reporting sexual misconduct by another appointed official and only 4% reporting they would not.

When asked to rate the likelihood that CJB leadership will act on the results from this assessment, 23% of participants from District 1 believe leadership is unlikely to do so. This is lower than in other Districts.

Sexual Harassment

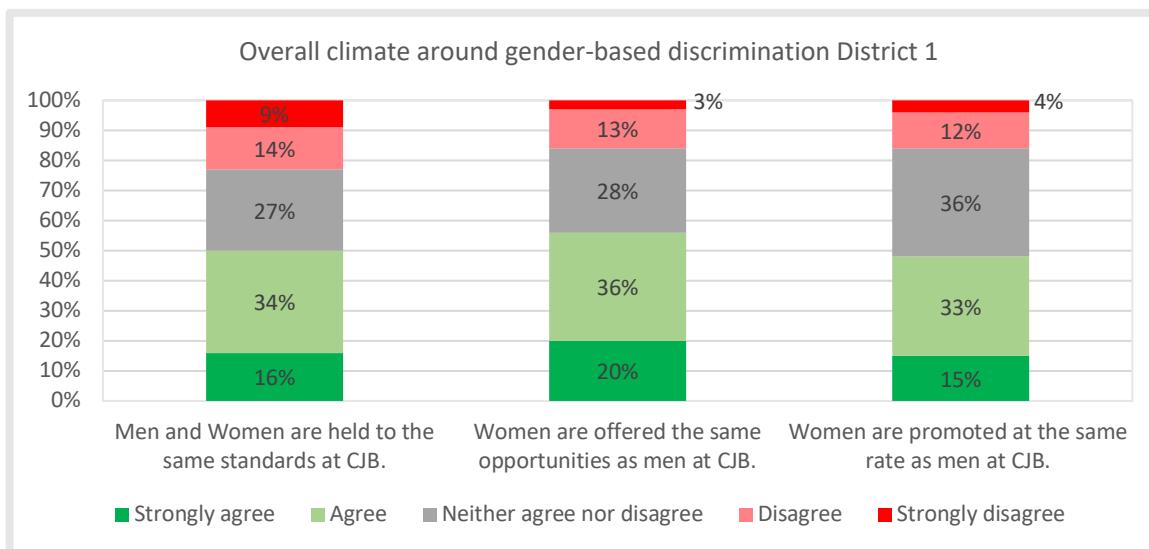
Six percent (13) of survey participants reported that they either observed or witnessed sexual harassment in District 1's workplace. Survey results were mixed on the environment of sexual harassment at District 1, and only 25% of participants believe that appointed officials are held accountable when allegations of sexual harassment are raised. Thirty-seven percent believe that leadership takes appropriate action on reports of sexual harassment. Less than half, 44% feel that CJB leadership takes complaints of sexual harassment seriously, while 64% said gender-based jokes are not tolerated at District 1.

There were ten (10) voluntary interviews from District 1, with 4 reporting concerns about sexual harassment at the District.

Gender-based Discrimination

Ten percent (22) of survey participants said they had either experienced or observed gender-based discrimination at District 1 within the past five years. Overall, the belief that gender-based discrimination is a problem at District 1 is more prevalent than reported experiences—personal or observed. Twenty-three percent of participants believe that women versus men are not held to the same standards at the CJB; 16% of participants believe that women are not offered the same opportunities as men at the CJB; and 16% of participants believe that women are not promoted at the same rate as men at the CJB.

Of the ten (10) voluntary interviews from District 1, 6 reported concerns about gender-based discrimination.



More generally, 35% of survey participants from District 1 **did not** agree that all employees are treated equally at District 1.

Retaliation

Twenty percent (42) of survey participants from District 1 reported they had either witnessed or observed retaliation at District 1 within the past 5 years. At District 1, most participants were ambivalent about whether they could go to leadership with concerns without retaliation. They were also unsure if leadership is fair about employee termination decisions. Eighteen percent of survey participants did not feel they can talk openly with leadership without fear of retaliation. Twenty-nine percent of participants did not have faith that discipline is applied consistently in their department. Fifteen percent of survey participants did not agree that employee termination decisions are fair in their department.

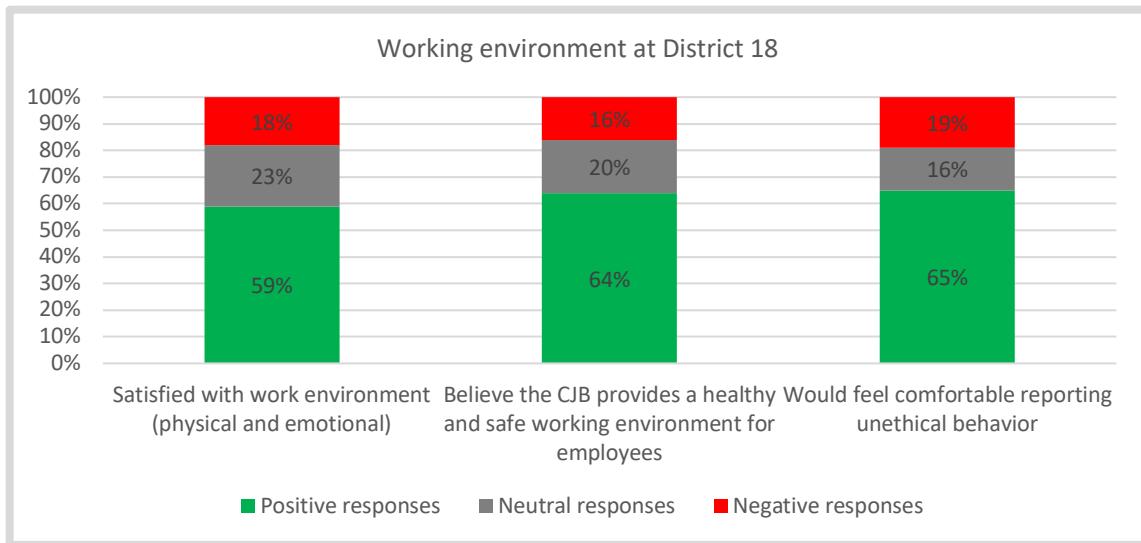
Six (6) of the ten (10) voluntary interviews from District 1 reported concerns about retaliation while working there.

Given the data presented in the “Reporting Misconduct” section above, a majority of those who experienced sexual harassment, gender-based discrimination, and/or retaliation in District 1’s workplace chose not to report it. Out of this number, 61% indicated they chose not to report the mistreatment because they were afraid of retaliation.

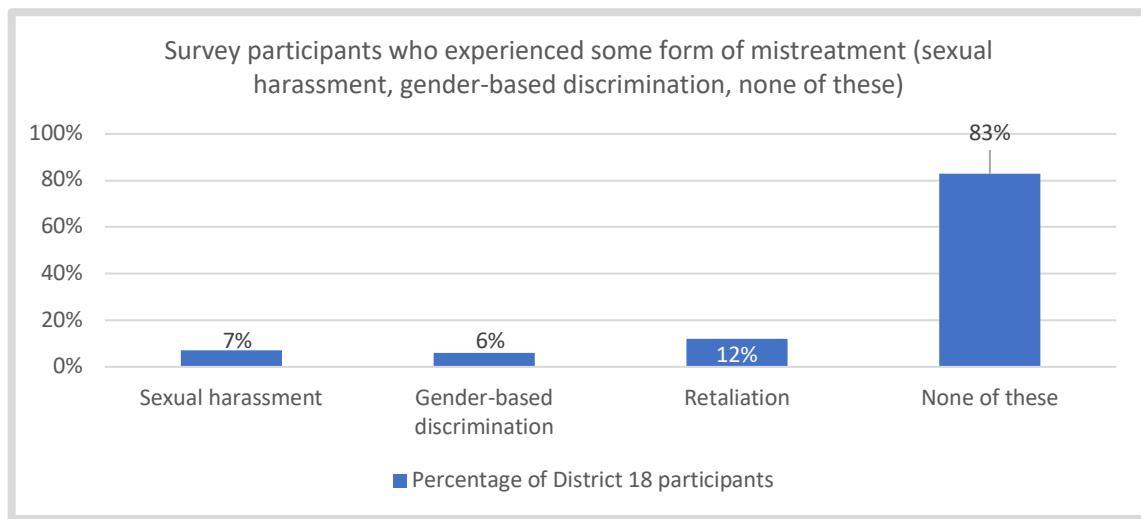
4. District 18 – Arapahoe, Douglas, Elbert, Lincoln

Out of four-hundred and fifty-four (454) District 18 employees who took the survey, two-hundred and seventy-one (271) participated, at a rate of 60%. Ninety-one percent (246) identified as employees of the Colorado Judicial Branch, while 9% (25) identified as appointed officials. Seventy-three percent (199) of participants at District 18 identified as female and 18% (48) identified as male.

Job satisfaction at District 18 was more positive than in many Districts, with 63% (113) of employees who responded to the question saying they were either “Satisfied” or “Very satisfied” with their job at the CJB. Sixty-four percent (172) said they would be “Very likely” or “Likely” to recommend the CJB to others as a good place to work, whereas 17% (86) would not be likely to recommend. Most participants from District 18 feel it is a healthy working environment. However, 19% of participants reported they would not feel comfortable reporting unethical behavior, 18% reported they were not satisfied with the physical and emotional work environment, and 16% do not believe the CJB provides a healthy and safe working environment for employees.



Thirty percent (82) of participants from District 18 have either **experienced** or **witnessed** one or more forms of the mistreatment being investigated (gender-based discrimination, sexual harassment, or retaliation) within the past five years. Seventeen percent (47) of participants from District 2 **experienced** one or more the forms of mistreatment and 24% (66) have **witnessed** one or more forms of mistreatment in the workplace.



The survey prompted participants to qualify the timeframe in which mistreatment occurred within three time periods: 2019 to present, between 2016 and 2018, and prior to 2016. Out of the experiences of mistreatment reported by participants, 71% reported mistreatment from 2019-present, 51% reported mistreatment 2018 and 2016, and 6% reported mistreatment prior to 2016.

Reporting Misconduct

Thirty-five percent of participants who experienced mistreatment at District 18 reported it. The 65% of participants who did not report provided the following reasons for that decision:

- I knew it wouldn't do any good. (70%)
- I was afraid of retaliation. (58%)
- It wasn't that serious. (15%)
- I didn't know who to go to. (6%)
- I didn't want to make the effort. (6%)

Other reasons for not reporting the mistreatment included, "I convinced myself that it was my perspective," "I would have been laughed at. It would not have been seen as retaliation," "Afraid of being fired," "Higher person in charge and if you're not a favorite you are looked upon as a trouble-maker or whiner," and "The retaliation came from upper management, reporting it would have made it worse."

Out of those who did report, 83% were **not** satisfied with the response/outcome they received.

Out of those who observed mistreatment, 76% chose not to report it. Reasons provided for not reporting included:

- I knew it wouldn't do any good (56%).
- I was afraid of retaliation. (38%)
- It wasn't that serious. (9%)

Other answers included, "Couldn't prove it was discrimination or just politics within the department," "Damage was already done and dealt with not appropriately," Higher person in charge is guilty and then you are targeted and labeled a problem employee," and "Someone else reported."

Among those who reported the mistreatment they observed, satisfaction with the response/outcome they received was even, with 41% of participants dissatisfied and 41% satisfied with the response.

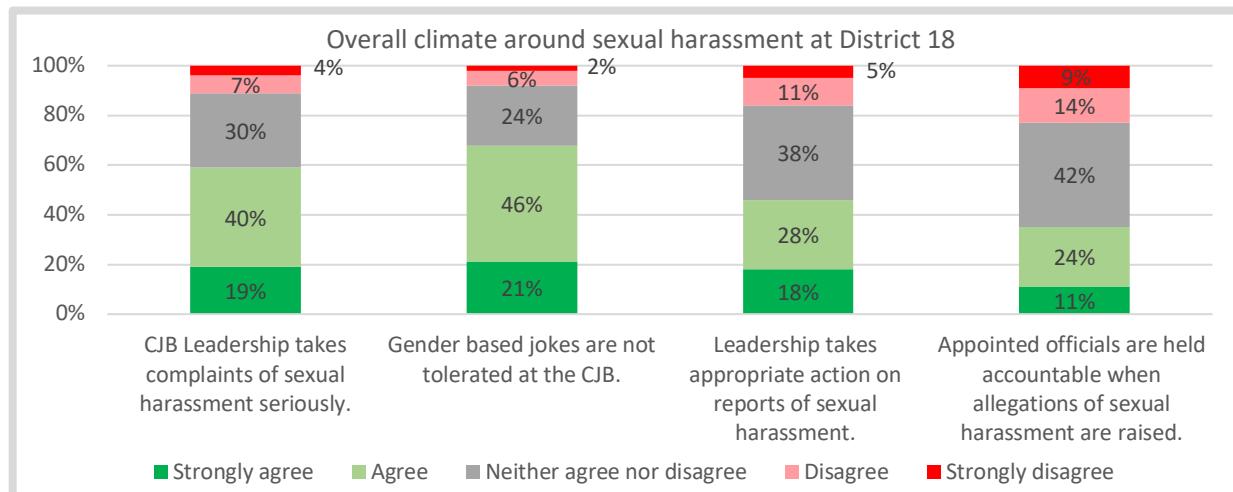
Sixty-eight percent of participating employees said they would feel safe reporting sexual misconduct by an appointed official. For the 9% who said they would not feel safe doing so, the top reasons provided were "Nothing would be done about it" (72%), "I would be afraid of retaliation at work" (56%), "I would be afraid it would ruin my career prospects" (44%), and "I would be afraid of losing my job" (44%).

The numbers among participants who are appointed officials were slightly better, with 72% reporting they would feel safe reporting sexual misconduct by another appointed official, and 4% reporting they would not.

When asked to rate the likelihood that CJB leadership will act on the results from this assessment, 22% of participants from District 18 believe leadership is unlikely to do so.

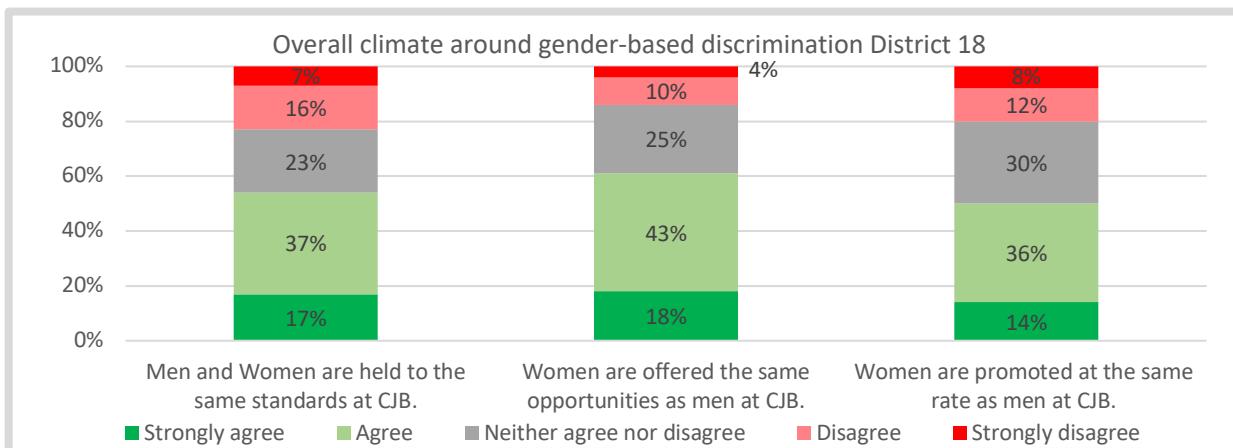
Sexual Harassment

Fourteen percent (37) of survey participants reported that they had either observed or witnessed sexual harassment in District 18's workplace. Survey results were mixed on the environment of sexual harassment at District 18. Twenty-three percent of participants **did not** believe that appointed officials are held accountable when allegations of sexual harassment are raised and 16% **did not** believe that leadership takes appropriate action on reports of sexual harassment. However, 59% feel that CJB leadership takes complaints of sexual harassment seriously, and 67% said gender-based jokes are not tolerated.



Gender-based Discrimination

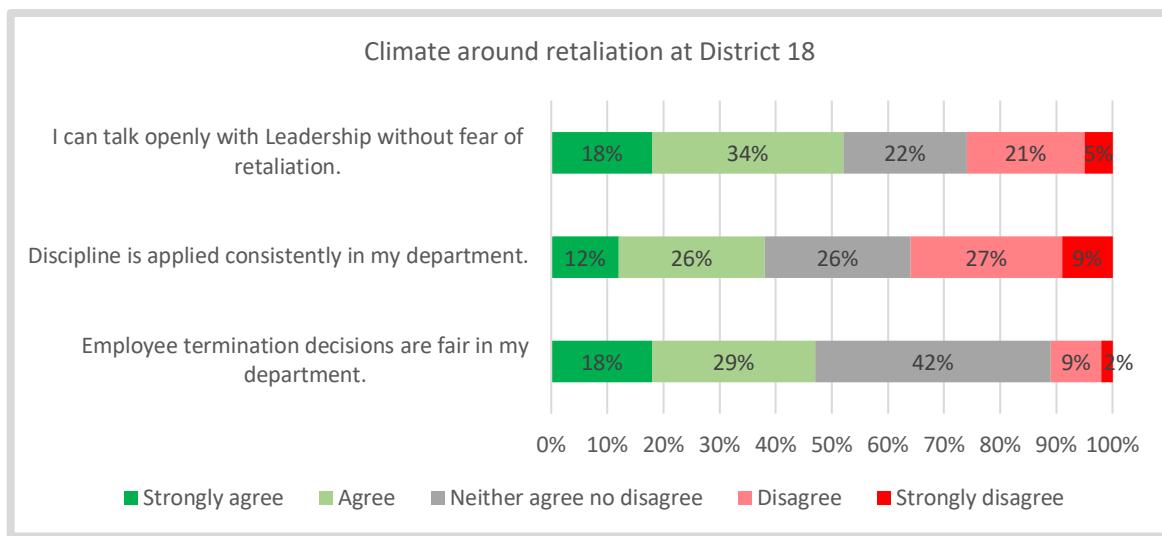
Eleven percent (29) of survey participants from District 18 said they either experienced or observed gender-based discrimination at District 18 within the past five years. Overall, the belief that gender-based discrimination is a problem at District 18 was more prevalent than reported experiences—personal or observed. Twenty-three percent of participants believe that women and men are not held to the same standards at the CJB; 14% of participants believe that women are not offered the same opportunities as men at the CJB; and 20% of participants believe that women are not promoted at the same rate as men at the CJB.



More generally, 30% of survey participants from District 18 **did not** agree that all employees are treated equally at the CJB.

Retaliation

Twenty percent (54) of survey participants from District 18 reported they either witnessed or observed retaliation at District 18 within the past 5 years. At District 18, more than a quarter of participants did not feel they could go to leadership with concerns without retaliation. Additionally, they did not believe that discipline is applied consistently in their department. Twenty-six percent did not feel they could talk openly with leadership without fear of retaliation. Thirty-six percent of participants did not have faith that discipline is applied consistently in their department. Eleven percent of survey participants did not agree that employee termination decisions are fair in their department.



Given the data presented in the “Reporting Misconduct” section above, a majority of those who experienced sexual harassment, gender-based discrimination, and/or retaliation in District 18’s workplace chose not to report it. Out of this number, 58% indicated they chose not to report the mistreatment because they were afraid of retaliation.

RECCOMENDATIONS

***Anne R. McCord, SPHR, SHRM-SCP, PI, AWI-CH
Elizabeth R. Rita, Esq.***

In the last part of this report, we set forth our recommendations for the Judicial Branch to address the problems identified in our assessment, leverage its strengths, and rebrand itself moving forward. These recommendations are based upon our work assessing the Judicial workplace; meeting with employees, judicial officers, and other stakeholders; and the results of our comprehensive workplace survey. Our research on best practices in judicial workplaces around the country informs these recommendations, including the comprehensive work being done on the federal bench. We also bring our experience assessing cultures and investigating misconduct in workplaces in Colorado and around the nation.

The Colorado Judicial Branch has already begun to act in some of these areas. Our recommendations are in alignment with much of what has already begun. Our Supreme Court has recognized an opportunity to join the growing number of judicial institutions around the country who are critically examining their policies and practices, considering their own allegations of misconduct.

There is a special risk for harassment occurring in workplaces like the Judicial Branch. There are significant disparities of power between appointed officials and employees. Many judges supervise staff and run their individual courtrooms without any background in management or legal compliance. Some employees in rural Districts work in relative isolation. Many employees fear retaliation and are confused about their reporting avenues. All these factors can increase the likelihood of harassment in a workplace. The EEOC's 2016 Select Task Force Report identified these and other factors as contributing to higher incidents of harassment in a workplace.⁵⁶ We heard about all these areas while meeting with employees in the Branch.

Our work in the Colorado Judicial Branch revealed several primary weaknesses in the workplace:

- The absence of shared cultural values, to which everyone is held accountable, as the driver for decisions;
- Insufficient avenues for confidential and safe reporting;
- Broadly stated fears of retaliation, and concerns that nothing is done in response to complaints of misconduct;
- A need for more transparency and accountability; and
- Insufficient (and insufficiently modern) training on workplace conduct issues.

⁵⁶ See *Select Task Force on the Study of Harassment in the Workplace*, available online at: https://www.eeoc.gov/eeoc/task_force/harassment/upload/report.pdf.

We propose recommended action to address these weaknesses. Our recommendations focus on the employee experience, accountability and transparency, and best practices in the modern workplace. These recommendations are specifically tailored to the Colorado Judicial Branch, while also reflecting state-of-the-art approaches to creating an environment where employees and judicial officers can do their best work for their communities and the State of Colorado. These five areas are interwoven in some ways but are set forth separately to emphasize the importance of each one.

These recommendations begin at the most important part: redefining the importance of culture in the Judicial workplace. Strong policies, procedures, and training are important but without a solid culture, they are simply a window dressing. The data we have gathered in this project overwhelmingly suggests that focusing on creating a shared set of cultural values – emphasizing respect, collegiality, and inclusion – is essential for the Judicial Branch.

Our Five Areas of Focus Are:

1. Recommended **STRUCTURAL** changes that we believe will help provide the resources and expertise the Colorado Judiciary will need as it moves forward in this endeavor, including the creation of the Office of People and Culture. This recommendation touches on many areas of life within the Judicial workplace.
2. Next, we outline the importance of institutionalizing a commitment to **DIVERSITY, EQUITY, AND INCLUSION** as a tangible demonstration of Judicial's commitment to a **CULTURE** where respectful, inclusive, and supportive behaviors are encouraged and rewarded.
3. Third, we recommend specific mechanisms that will allow the Judicial Branch to maximize employee's access to **SAFE REPORTING** of issues that arise in the Judicial workplace.
4. Fourth, we discuss the importance of creating mechanisms for more **ACCOUNTABILITY** for leadership, particularly judicial officers, as a core tenant of the Colorado Judicial Branch's culture.
5. Finally, we include recommendations aimed toward prompt **SUPPORT and RESOURCES** for Districts needing immediate attention.

One foundational recommendation drives all others. It is that the Colorado Judicial Branch must transform its workplace through building a strong culture that manifests in every Judicial District and administrative department. This evolution will drive everything else that must be done. For this to be successful, investments of time, money, and resources must take place. The first recommendation is the creation of a new Division: The Office of People and Culture. This organization will build and own the foundational culture that will support all other recommended actions.

Recommended Structural Changes

Office of People and Culture

Our first recommendation is that the Judicial Branch create an **Office of People and Culture** (the “OPC”). This Division will house a small team responsible for creating the structures and programs necessary to produce impactful changes in the culture. This OPC will own many pieces of the new approach we are recommending:

We believe that a commitment to a healthy culture begins with committing resources to provide the necessary expertise and services to do so. The essential first step is hiring or appointing a **Director of People and Culture** (the “DPC” or “Director of OPC”) to lead this effort. This person will head up the OPC. This Director should be experienced, respected, and independent. They need to have deep expertise on the building blocks of organizational culture and DEI, with the ability to engage all stakeholders around the fundamentals of a respectful, inclusive, and collegial workplace. This person will be, in effect, the ambassador of Judicial Culture across the organization.

The DPC may require the help of an administrator, and as described below, we recommend that the OPC also house an impartial Ombudsperson. In future years, as funding and needs dictate, a deputy director position may be required to meet the workload of the Division.

The Office of People and Culture will not replace or duplicate Human Resources, which will continue to provide operational HR support, talent acquisition, compensation, benefits, and employee relations services to the Branch. Instead, OPC will work in tandem with HR, and will take on the task of building and leading culture initiatives in five areas:

- **Diversity, Equity, and Inclusion**

The DPC will be responsible for providing tools, programs, and resources to support DEI strategies across the Branch. We will say more about the importance of DEI below.

- **Creation and support of an Ombudsperson and other Safe Reporting mechanisms**

We recommend that the Director of OPC hire an impartial Ombudsperson to provide a safe reporting venue for employees and judicial officers. The Ombudsperson should be empowered to provide a confidential space for reporting; ideas, and advice; information about policies and procedures; resources for informal resolution including mediation and restorative justice; and referrals for formal investigations within Judicial and by the Colorado Commission on Judicial Discipline (“CCJD”), where necessary. This person should retain sufficient autonomy in their interactions with employees, staff, and judges to maintain credibility and independence in the eyes of all stakeholders.

- **Culture Development across the Branch**

The Director of OPC should begin their tenure with a comprehensive listening tour of the Branch. Those Districts identified as needing immediate attention should come first, but every District

should be part of this tour. The “Why?” behind this effort is to get a comprehensive understanding of the challenges and strengths that exist, to build collegial relationships with stakeholders, and to re-brand the people experience.

Alongside this fieldwork, the DPC should design a program for Town Halls, Summits, and Listening Sessions particularly geared toward the development of a shared institutional culture upon which to base all other initiatives. This collaborative development of a set of shared values should ask the fundamental question, “What are the Judicial Branch’s non-negotiable values? What should drive the employee experience, the relationship between judicial officers and their staff, and the resolution of conflict?”

Another important preliminary effort should be the creation of an intensive development program for the court executives in all twenty-two Judicial Districts. These individuals should be tasked with acting as the conduits of culture in their respective locations. In our outreach to this group of employees, we found they are underutilized and eager to help as instrumental parts of the culture development across the Branch.

- **Training**

The Director of OPC should be responsible for all training that drives and reinforces the culture for the Judicial Branch. This includes next generation training programs around Diversity, Equity, and Inclusion; Respectful Workplace; Anti-Bullying; Bystander Awareness and Assertiveness; Management Training for employees and judicial officers; Leadership Development; Managing Conflict; and Communication. These trainings should be geared towards employees and judicial officers, as equally important constituencies in the Judicial workplace.

This does not mean that OPC should be tasked with providing all this training. The Judicial Branch has distinct groups that already focus exclusively on training for employees and for judicial officers, and much of this is effective. However, there is no one organization that evaluates training system-wide or assesses it for priorities and maximum effectiveness. We do not recommend dismantling effective training that is already being used. However, the Director of OPC should take on assessing the training resources that exist, determining in collaboration with their peers what works, and figuring out what needs to be changed, added, enhanced, or discontinued.

The last part of training we believe is imperative is the creation of a training program for judicial officers, specifically focused on enhancing their skills as managers of their organizations. Leadership training is important, but without the fundamentals of people management, it gilds a lily that may be languishing in a fallow garden. This training should leverage the management training Judicial already uses for employee managers. Ideally this training should be required but at the least, it should be highly recommended. Records of training should be made public so they can be considered as part of a judge’s performance scoring for retention. The Director of OPC should own and help weigh in on the components of this training.

There should be required training on an annual basis for all employees and all judicial officers.

- **Mentoring**

Mentorship programs are a low-cost resource that can and should be leveraged in a workplace as rich in experience as the Judicial workplace. Mentorship is directly tied to employee satisfaction and retention. The Director of OPC should identify where this is already happening across the Branch and determine if larger more formalized program would be beneficial to the organization.

Next Generation Policy

The Judicial Branch should create a **Next Generation Policy**. This set of written policies should reflect a commitment to maintaining a workplace that encourages mutual respect, professionalism, and collegiality across ranks and divisions within the Branch. The citizens of Colorado expect judges and judicial leaders to behave in a manner befitting the honor and privilege of their roles. Disrespectful behavior and harassment, even when not unlawful or directed at someone because of a protected class, diminishes the dignity and stature of the Branch and can lead to unlawful harassment.

We recommend that the Colorado Judicial Branch adopt a formal Respectful Workplace Policy, as an adjunct to the work the SC/COA has already done in amending the Code of Judicial Conduct. The SC/COA has already determined that judges must abide by the values of civil, professional, and respectful treatment. We advise that the Branch's policies be amended to support these expectations for employees, judicial officers, and staff.

In June of 2021, the Colorado SC/COA amended its Code of Judicial Conduct in a manner designed to restore public confidence in the institution of the Colorado judiciary. These Amendments revised Code of Judicial conduct Rule 1.2, which mandates that judges behave in a manner to promote public confidence in the independence, integrity, and impartiality of the judiciary. The comment to this rule now specifies that this requirement includes avoiding harassment and other inappropriate workplace behavior. Moreover, the rules reflecting the obligations of impartiality, competence, and bias were also amended. Rule 2.3, which speaks to the prohibition of acting with bias, prejudice, and harassment, now explicitly prohibits retaliation against employees (including former employees), attorneys and members of the public. Moreover, revisions to the rule governing a judge's supervisory duties now states that a judge should practice civility, patience, respect, dignity, and courtesy with employees and their staff; should not engage in any harassment and should not retaliate against staff who report misconduct. Finally, the revisions make clear that judges should report misconduct of other judges and lawyers. "Public confidence in the integrity and impartiality of the judiciary is promoted when a judge takes appropriate action based upon reliable evidence of misconduct."

We recommend that the Judicial Branch embrace these new requirements and codify them in a Respectful Workplace Policy applicable to all personnel in the Branch. There are many good examples of Respectful Workplace Policies available, but at its heart the policy should emphasize that the expectation goes higher than just legal compliance. The goal should be fostering behavior that creates great culture and intercepting problem behavior before it becomes unlawful behavior. Policies should prohibit illegal conduct, but the standard for behavior should be set higher.

The newly revamped policy should explicitly address anti-retaliation and bystander reporting. Retaliation should explicitly be made a violation of the Judicial Branch's policies and judicial officers and all leaders should be required (and not simply encouraged) to report misconduct by others. Leaders in the Branch should be the most visible bystanders creating and maintaining the integrity of the Judicial workplace culture.

Diversity, Equity, and Inclusion

As indicated above, the new OPC will house the Judicial Branch’s programs for diversity, equity, and inclusion. However, this is an important enough focus of our recommendations that we wanted to devote specific attention to it.

At this juncture of our nation’s and state’s history, it is critical for the Judicial Branch to prioritize DEI as an institutional value. There are a multitude of studies, sociological and economic research, and news stories offering insights into why this is so critical. We cannot overstate enough the importance of fostering and supporting a diverse, equitable and inclusive workplace. Research shows the wisdom of prioritizing such a focus, in terms of improved productivity, outcomes, employee retention, and attracting and keeping top talent.

According to a cross-country study in the Harvard Business Review, organizations with better diversity ratings were more innovative and profitable, averaging “19% points higher innovation revenues.”⁵⁷ In terms of employee well-being, a 2015 study from the *Journal of Applied Social Psychology*, which utilized a sample of 4,597 health sector employees, found that “diversity practices are associated with a trusting climate that, in turn, is positively related to employee engagement.” The research article also notes that the organization’s focus on diversity practices positively correlated with not only minority group engagement, but engagement “across all employees” as well as improved employee well-being.⁵⁸

As a first step, the Director of OPC should conduct a readiness evaluation of the workplace to determine a baseline understanding of DEI, obstacles and gap analysis, and foundational data that will be used to craft a DEI strategy that is specifically tailored to the Judicial Branch. An outside consultant can help put this strategy into effect but without this first step, it is an attempt to build the right structure in an information vacuum. This would lessen the likelihood of a successful impact.

Once the strategy is in place and appropriate resources are obtained, the Director of OPC should institutionalize the priority of DEI in all aspects of the people experience from recruiting and hiring, onboarding, promotion and pay, resolution of conflict, education and training and monitoring metrics for improvement milestones over time. Evaluating success in tangible terms should be part of this strategy.

⁵⁷ See *How and Where Diversity Dries Financial Performance*, available online at: <https://hbr.org/2018/01/how-and-where-diversity-drives-financial-performance>

⁵⁸ See *The Role of Diversity Practices and Inclusion in Promoting Trust and Employee Engagement*, available at: <https://www2.deloitte.com/au/en/pages/human-capital/articles/role-diversity-practices-inclusion-trust-employee-engagement.html>

Safe Reporting

We touch on this, above, in discussing the Office of People and Culture. One theme we heard repeatedly from employees we met with is that they do not feel safe bringing forward concerns, particularly about judicial officers. This needs to be rectified by a robust system of safe reporting options.

The ombudsperson will be a principal component of the Safe Reporting System. As outlined above, employees and judicial officers will be empowered to seek out advice, resources, and support for workplace issues through this confidential reporting option. This person will provide mediation and informal resolution support as well as act as an impartial sounding-board for individuals who need someone to hear them. It will be important that this person is trained in identifying circumstances that may require further action, such as formal investigations or referrals to the CCJD.

An additional component of the Safe Reporting system should include an anonymous complaint management system managed by a third party. These systems allow for anonymous reports with the benefit of allowing communication with an anonymous reporter. This makes gathering information for investigations more effective in these circumstances. These systems also provide information on tracking, patterns, and themes. These tools can help an organization identify problem patterns in complaint types, locations, or individual personnel requiring intervention. The bottom line is that in today's workplace, employees expect that they will have the ability to bring forward complaints without identifying themselves. Many times, if this is not available, they resort to social media or lawsuits to inspire action.

Finally, in providing numerous ways of bringing forward concerns – formal investigation, informal resolution via the ombudsperson and mediation, anonymous complaints – the Judicial Branch will resolve one of the loudest criticisms we heard from employees and staff: distrust in the reporting structures in place.

Accountability and Transparency

Two themes discussed in the media as well as discovered in our interviews and from survey respondents are that most people who experienced misconduct did not report it because they felt it would not do any good. There is a deep concern that nothing will change, nothing will be done, and wrongdoing will be concealed.

To provide confidence that appointed officials and leadership at the Branch are held to the highest ethical and behavioral standards, an appropriate degree of transparency and accountability is imperative.

360 Reviews on an Annual Basis for Chief Judges

Most chief judges who participated in our assessment and investigations, and who we heard about from employees, are hardworking and dedicated individuals who go above and beyond in terms of the extra work they do for the Judicial Branch. That said, their position is uniquely powerful within their Judicial District, and we heard about instances where that power was abused. There is no real check and balance on this power except for the retention process, which historically has not taken information from staff and employees working for the Chief into its evaluations.

To correct this and provide more data upon which to assess the judicial performance of these important leaders in the Branch, we recommend that an annual 360 review be completed for each chief judge. To get a balanced perspective, we recommend that the following stakeholders are given an opportunity to provide feedback: staff and employees in the District, judicial officers in the District, peers in the chief judge community, leaders at SCAO including the State Court Administrator, the Director of HR, the Director of OPC, and the Chief Justice of the SC/COA.

These reviews should be examined by the Chief Justice of the SC/COA together with a panel of reviewers selected for an impartial assessment of the information to ensure that problem areas are identified and addressed.

Biannual Judicial District Surveys

In addition to the 360 Reviews, we recommend that the Judicial District staff and judicial officers are surveyed biannually, using the same questions each time to determine progress or decline in identified culture measurements. If surveys reveal problem areas, the Judicial Branch should consider annual surveys for those Districts and public identification of struggling Districts. These surveys should likewise be reviewed by the Chief Justice and a panel of assessors to identify and correct problem areas.

More Inclusive Data Considered and Made Public in Judicial Performance Evaluations

We recommend that the Colorado Commission on Judicial Performance (“CCJP”) consider its own mechanisms for gathering information about judicial officers’ interactions with their employees and staff. This source of information has been underrepresented in terms of relevance to performance by a judicial officer. We believe it needs to be a key component.

This could be accomplished with surveys, interviews with staff, exit interviews with departing personnel, or other methods. There could be some combination of the CCJP using its own data gathering and leveraging data compiled by the Branch.

We recommend that the CCJP consider the annual 360 reviews, the District surveys, and judicial training records described above in its reporting on each judicial officer. These metrics could be included (in some form) in the public disclosures made to provide a more holistic assessment of performance upon which voters can make their retention decisions.

Formalized Criterion for the Commission on Judicial Discipline Regarding Public Proceedings

There should be a set of agreed-upon criterion for escalating matters of formal judicial discipline to public proceedings. Presently, discretion about whether discipline proceedings will be private or public rests in the Commissioners and the Executive Director of the CCJD with no written guidance for its exercise. This discretion should be informed by written guidance, with a focus on escalating credible reports of harassment or misconduct based upon a protected class to public proceedings.

Immediate Support and Resources

To make meaningful change in the Colorado Judicial Branch, a staged approach may be required across the Branch. For this reason, we recommend focusing first on those Districts where employee satisfaction is lower and where more misconduct is experienced and witnessed.

The CJB should immediately solicit feedback from employees and appointed officials through focus groups and listening sessions to design a plan to address the issues that are most pressing. This will not be a “one size fits all” solution and will require a tailored approach for each District. As highlighted above, there may be opportunities to learn from Districts with higher employee satisfaction and less misconduct and apply that learning to the lower performing Districts.

Once a plan is established, each District should be held accountable to a strategy with milestones and metrics. A committee or workgroup should be created and empowered to follow through on the plan. The survey conducted can be easily replicated to measure the success of the efforts and focus on accountability for those in leadership positions.

These Districts may also be the right place to first introduce the Ombuds and an anonymous complaint line as well. By phasing these resources into the CJB, the Director of OPC^[1] can iron out procedural and policy hiccups before rolling out the final product to the rest of the organization.

With this as a starting point, the OPC can then partner with Human Resources and each individual Branch to develop a longer-term strategy to implement the recommendations made in the previous sections.

^[1] If a director is not immediately hired, the CJB may consider giving more resources to Human Resources to launch this effort or engage a third-party consultant.

SIGNATURES

This Colorado Judicial Branch Investigation Report and Culture Assessment is respectfully submitted to Anne Mangiardi, Esq., this 11th day of July, 2022.



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