

ADMINISTRATIVE DIRECTIVE NO. 171 (Revised)

This 28th day of April, 2010:


IT APPEARS THAT:

1. Administrative Directive No. 171 on February 24, 2009 adopted a revised version of the Judicial Branch Personnel Rules governing all non-judicial, non-Merit Judicial Branch employees in all courts and agencies, the Administrative Office of the Courts and the Arms of the Supreme Court, effective April 1, 2009.
2. In *Superior Court v. State of Delaware Public Employment Relations Board*, Del. Supr., No. 518, 2009, Berger, J. (Jan. 19, 2010), the Supreme Court found that the Public Employment Relations Board had violated the constitutional doctrine of separation of powers by certifying a union for Superior Court employees.
3. In order to ensure that these Superior Court employees as well as other Judicial Branch employees are able to exercise their right to collective bargaining, the Supreme Court stated in the foregoing opinion that it would use its constitutional authority to establish administrative rules for the Judicial Branch setting forth its own process and procedures regarding employment relations for the Judicial Branch.

NOW THEREFORE, IT IS DIRECTED, with the unanimous approval of the Justices of the Supreme Court (Del. Const., Art. IV, § 13), that:

1. The Judicial Branch Personnel Rules adopted in Administrative Directive 171 shall be amended to add a new Chapter 20 containing Employment Relations Rules for non-judicial, non-merit¹ Judicial Branch employees and an Appendix B containing Employment Relations Procedures for these employees, as well as related forms, and to amend Rule 1.4 of the Judicial Branch Personnel Rules. The Judicial Branch Personnel Rules, as amended, are attached.
2. This amendment to the Judicial Branch Personnel Rules will become effective immediately.
3. Presiding judges/agency heads shall ensure that these Rules are distributed to affected employees in their courts/agencies.

BY THE COURT:



Chief Justice

¹ Although the rules adopted today apply only to non-judicial, non-merit employees, the Supreme Court may, in the future, exercise its authority pursuant to Art. IV, § 13 of the Delaware Constitution, to provide for a uniform system of employment relations for all non-judicial Judicial Branch employees.

c: The Honorable Jack A. Markell
The Honorable Randy J. Holland
The Honorable Carolyn Berger
The Honorable Jack B. Jacobs
The Honorable Henry duPont Ridgely
Members of the Judicial Conference
The Honorable Joseph R. Biden, III

The Honorable Brendan O'Neill
State Court Administrator
Court Administrators
Clerk of the Supreme Court
Counsel to the Governor
Chair Senate Judiciary Committee
Chair House Judiciary Committee

Supreme Court of Delaware

Judicial Branch



Personnel Rules

April 1, 2009

Revised April 28, 2010

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Chapter 1. Introduction

1.1. Scope. These Rules are promulgated by the Chief Justice of the Delaware Supreme Court pursuant to Article IV §13(1), Del. Const. and are applicable to all non-judicial employees in the Judicial Branch holding job titles which are categorized as exempt from the State of Delaware Merit Rules, except as otherwise specified. A master listing of job titles that are exempt from the State of Delaware Merit Rules is available from the Administrative Office of the Courts for the following courts/agencies: Supreme Court, including the Arms of the Court; Court of Chancery; Superior Court; Family Court; Court of Common Pleas; Justice of the Peace Court; Administrative Office of the Courts, including the Judicial Information Center and the Office of State Court Collections Enforcement; Law Libraries; and all Judicial Branch agencies including the Office of the Public Guardian; Child Placement Review Board; Office of the Child Advocate; Child Death, Near Death, and Stillbirth Commission; Delaware Nursing Home Residents Quality Assurance Commission; and Violent Crimes Compensation Board. All non-judicial employees (including full-time, part-time, temporary, contractual, and casual/seasonal employees) employed within the Delaware Court System are required to also comply with the provisions of Delaware Supreme Court Administrative Directive Number 115, Code of Conduct for Court Employees.

1.2. Amendment. These Rules shall continue in effect as adopted and amended until or unless repealed. The Chief Justice, with the concurrence of a majority of the Justices of the Supreme Court of the State of Delaware, may amend these Rules as necessary.

1.3. Classification of Employees.

1.3.1. Classified Employee. Those Judicial Branch employees categorized as exempt from the State of Delaware Merit Rules holding a budgeted position assigned to pay grade 15 or below, excluding individuals or groups compensated on a contractual basis; temporary employees; casual/seasonal employees; or other positions identified in another category. All rights and requirements outlined within each Chapter of these Rules apply to this classification of employee.

1.3.2. Non-Classified Employee. Those Judicial Branch employees categorized as exempt from the State of Delaware Merit Rules and who are in a position assigned to a pay grade from 16 through 19 who are conferred policy-making, administrative, or managerial authority, unless such position is identified in another category. Employees holding positions so categorized serve at the pleasure of the appointing authority and are subject to all of the rights and requirements outlined within each Chapter of these Rules with the exception of those stated in Chapters 12, 13, and 18, except that such employees have the right to a pre-termination hearing pursuant to Sections 12.4 through 12.6.

1.3.3. Confidential Employee. Those Judicial Branch employees categorized as exempt from the State of Delaware Merit Rules who hold a position that is directly selected by and serves at the pleasure of a justice or judge, which includes judicial secretary, master, law clerk, junior staff attorney, staff attorney, chief staff

attorney, the state court administrator, court administrators, deputy state court administrators; those positions which provide direct secretarial support to the State Court Administrator and each court administrator; other employees in a position assigned to pay grade 20 or above; a line item position; or those positions within Family Court categorized as Administrative Management and assigned to pay grade 16 or above. With the exception of Chapters 1, 2, 3 (Section 3.3.2 only), 4, 5, 14, 15, 16, 17, and 19, confidential employees are not covered by these Rules.

1.3.4. Casual/Seasonal Employee. Those employees serving in positions pursuant to 29 *Del.C.* §5903(17) are not covered by these Rules; however, such employees are covered by the Delaware Supreme Court Administrative Directive Number 115, Code of Conduct for Court Employees, and may be covered by collective bargaining agreements and by other State and Federal laws such as the Fair Labor Standards Act (FLSA), Title VII of the Civil Rights Act, and the Family Medical Leave Act (FMLA).

1.4. Conflict with Delaware Code. In the event of a conflict with the Delaware Code, the Delaware Code takes precedence over these Rules except that Chapter 20 and Appendix B of these Rules shall take precedence over the Delaware Code.

1.5. State Court Administrator's Interpretations. In order to implement, facilitate, or clarify these Rules, the State Court Administrator may issue interpretations, subject to the approval of the Chief Justice, that are not inconsistent herewith.

1.6. Effective Date. These Rules are effective as specified upon adoption as are any subsequent amendments. Amendments are not retroactive, unless specifically mandated by the Chief Justice.

Section. 1.6.1. In the event of a challenge to the classification of an individual employed by the Judicial Branch as of the effective date of these Rules, the Chief Justice shall have exclusive authority to determine such employee's classification status.

Chapter 2. Non-Discrimination

This Chapter applies to all non-judicial employees of the Judicial Branch regardless of the classification of their position.

2.1. Discrimination in any action covered by these Rules because of race, color, national origin, sex, religion, age, disability, sexual orientation, and genetic information is prohibited.

Chapter 3. Classification of Positions

This Chapter applies to all non-judicial employees of the Judicial Branch regardless of the classification of their position, except for Section 3.3.2, which applies to Classified employees only.

3.1. Classification of Positions. A list of classifications with current pay grade assignments approved by the Office of Human Resource Management pursuant to 29 Del.C. §5903 shall be maintained by the Administrative Office of the Courts.

3.1.1. Class Titles and Codes. Class specifications shall contain the title and code identifying the class, give examples of the characteristics, and indicate duties and responsibilities that may be assigned to positions of the class and set forth uniform job related requirements and the knowledge, skills, and abilities required to do the work. Working titles, which describe the specific duties of the position, may be used for the purposes of external relations or any purpose not related to personnel administration.

3.1.2. Class Specifications. Class specifications shall be mainly descriptive and not restrictive. References to particular characteristics or examples of duties shall not exclude others of similar kind and quality.

3.2. Employees may be required to perform any of the duties described in the class specification, any other duties of a similar kind and difficulty, and any duties of similar or lower classes. Employees may be required to serve in a higher position; however, if such service in the higher position continues beyond 30 calendar days, the rules for promotion or temporary promotion shall apply, and the employee shall be compensated appropriately from the first day of service in the higher position.

3.2.1. Position Authorization. No hiring in excess of the number of authorized positions will be allowed. All revisions to authorized position complements must be accomplished in a standard manner as prescribed by the Office of Human Resource Management.

3.3. Reclassification of Position. If a significant change is made in the duties and responsibilities of a position, or if there is an alleged position classification or reclassification error, a request for review of the position shall be submitted to the Chief Justice, through the State Court Administrator. Upon recommendation by the Chief Justice, the court/agency may then submit the request to the Office of Human Resource Management for approval. If the position is reclassified, the incumbent shall receive a pay increase consistent with the provisions of Section 4.12.

3.3.1. Status of Incumbent Upon Reclassification of Position. When a position occupied by an employee is reclassified, the employee shall not be required to serve a probationary period if he or she meets the minimum qualifications for the

new class and has successfully completed an initial probationary period. No examination shall be required unless that examination is part of the job requirements or is related to the employee's physical ability to perform the essential functions of the job.

3.3.2. Should the incumbent in a classified position not qualify for the position as reclassified, he or she shall be transferred to a vacant position for which he or she is qualified within the classified service. In the event extenuating circumstances exist, the appointing authority may request approval of the Chief Justice, through the State Court Administrator, to retain the incumbent in the position for a reasonable period, in an underfill capacity, pending qualification at the higher level or pending a transfer.

3.3.3. When a position is reclassified into a career ladder, placement of the position incumbent is based on promotional standards approved by the Administrative Office of the Courts, with the concurrence of the affected courts/agencies. Movement from one level to another within approved career ladders is a promotion, not a reclassification.

Chapter 4. Pay Plan

This Chapter applies to all non-judicial employees of the Judicial Branch regardless of the classification of their position.

4.1. Pay Grades and Pay Rates. Uniform pay schedules based on current legislation are issued by the Office of Human Resource Management. Each position classification has assigned to it a pay grade for pay purposes or a salary as otherwise established for such position in the Budget Act. The pay of employees occupying positions in a set pay grade shall follow the published rates set for the assigned pay grade.

4.2. Standard Work Week. The standard work week for all full-time employees shall be 37.5 hours as provided in the Budget Act. Employees shall be paid on the appropriate legislated pay scale. Work schedules shall be established by the appointing authority to meet operational needs.

4.2.1. Permanent Part-Time Employees. Permanent part-time employment means the filling of an established position at less than 37.5 hours per week on a consistent basis. This definition does not apply to casual, seasonal, temporary, or emergency positions. Permanent part-time employees shall be paid the hourly rate on the appropriate pro-rata basis for hours worked consistent with the pay grade of the duties of a comparable full-time classification.

4.3. Dual Employment. Dual employment is the holding of more than one State of Delaware position. Employees shall be permitted to accept additional employment in another court or State agency with prior written consent of the affected court(s) or Judicial Branch agency and consistent with Delaware Supreme Court Administrative Directive Number 115, Code of Conduct for Court Employees and 29 *Del.C.* §5821 et. seq. Overtime eligibility shall be based on the FLSA.

4.3.1. Compensation Received From Other Sources. Employees on approved annual leave may receive additional compensation from another State agency, court/Judicial Branch agency, or other employer for work performed during normal duty hours, consistent with Delaware Supreme Court Administrative Directive Number 115, Code of Conduct for Court Employees and 29 *Del.C.* §5821 et. seq. When not on such leave, any additional compensation for work performed during normal duty hours shall be deducted from the employee's normal compensation and, if appropriate, disciplinary action may be taken.

4.4. Starting Rate on Initial Appointment.

4.4.1. Upon initial appointment, employees shall be paid a salary equal to the minimum (80% of the midpoint) for their assigned pay grade, except as hereinafter provided.

4.4.2. The appointing authority may approve a starting rate upon initial hire (as specified in Table 1 below) at or above 80% of the midpoint up to 100% of the midpoint where an applicant’s qualifications are clearly over and above those required as minimum pursuant to the class specification.

The appointing authority may recommend a starting rate upon initial hire above 100% of the midpoint (advanced starting salary) where an applicant’s qualifications are substantially over and above the job requirements as stated in the class specification with appropriate approval as specified in Table 1 below. An advanced salary request upon initial appointment above 100% of midpoint shall be submitted to the Chief Justice for approval, through the State Court Administrator. The request shall contain substantial documentation as to the applicant's exceptional qualifications, and budgetary integrity must be assured if a higher starting salary is requested.

Note that initial appointments to positions within the Judicial Branch which are covered by the State of Delaware Merit Rules will require appropriate approvals, including that of the Chief Justice, as shown in Table 1, when the salary requested exceeds 85% of the midpoint.

Table 1. Approvals Required for An Advanced Salary Request On Initial Appointment.

Initial Appointment	Chief Justice Approval, through the State Court Administrator	Office of Management and Budget/ Human Resource Management Approval
Movement to a State of Delaware Merit Rules position from outside employment or from a Judicial Branch position categorized as exempt from the State of Delaware Merit Rules.	Approval required when salary upon initial appointment exceeds 85% of the midpoint of the pay grade. <i>(Administrative Directive 123 with Merit Rule 4.4.2)</i>	Approval required when salary upon initial appointment exceeds 85% of the midpoint of the pay grade. <i>(Merit Rule 4.4.2)</i>
Movement to a Judicial Branch position categorized as exempt from the State of Delaware Merit Rules from a State of Delaware Merit Rules position or from outside employment.	Approval required when salary upon initial appointment exceeds 100% of the midpoint of the pay grade.	No approval required.

4.4.3. The appointing authority may request the Chief Justice's approval, through the State Court Administrator, for a starting rate above the minimum for the pay grade where a critical shortage of applicants exists and may request that all lower paid, equally qualified employees in the same class within the same geographic area receiving a lower rate shall also have their pay rates set as stated above if their performance is satisfactory. Upon approval by the Chief Justice, the court/agency may then submit the request to the Office of Human Resource Management for approval.

4.5. Any employee movement to a class of the same pay grade shall be considered a transfer. Employees who transfer shall be paid at the same percentage of midpoint, unless their current salary is below the Selective Market Variation (SMV) range or approved alternative pay plan for the class, in which case their salary shall be increased to the minimum of the SMV range. Selective Market Variation is a process used to increase the salary range for job classifications where severe market competition makes it difficult for the State to recruit and retain qualified employees.

4.6. Promotion. Any employee movement to a higher pay grade is a promotion. Upon promotion, employees shall receive either the minimum salary of the higher pay grade or an increase of 5%, whichever is greater. When an employee clearly exceeds the job requirements, the appointing authority may authorize a salary increase greater than 5% up to 85% of the promotional pay grade.

Where an applicant's qualifications are substantially over and above the job requirements as stated in the class specification, a written request may be submitted to the Chief Justice, through the State Court Administrator, for a salary increase above 85% of the pay grade. The request shall contain substantial documentation as to the applicant's exceptional qualifications, and budgetary integrity must be assured if a higher starting salary is requested. Upon approval by the Chief Justice, the court/agency may then submit the request to the Office of Human Resource Management for approval.

4.6.1. Career Ladder. A career ladder is a hierarchy of classes within a class series, established and approved by the Office of Human Resource Management, which permits employee movement along a career path without competition upon meeting all promotional standards. Movement from one level to another within approved career ladders is a promotion, not a reclassification. When an employee is promoted in accordance with authorized career ladder promotional standards, the salary rate shall be determined pursuant to Section 4.6. The procedure used to process career ladder requests for courts/agencies shall be approved by the Administrative Office of the Courts, with concurrence of the affected courts/agencies.

4.7. Demotion. Any employee movement to a lower pay grade is considered a demotion. The rate of pay for employees demoted for reasons other than just cause shall be recommended by the court/agency and submitted to the Chief Justice, through the State Court Administrator, for approval. The rate of pay for employees demoted for just cause shall be set by the court/agency

within the pay range of the lower pay grade, and such pay shall be a part of the demotion action and, as such, is subject to the application of the grievance procedure.

4.8. Starting Rate On Reinstatement. When an employee is rehired into the same or different class after separation from State service of less than two years, and when separation was not due to discreditable circumstances, such employee shall receive the same salary as at the time of separation, plus any general salary increases. Any request for a higher salary shall be made pursuant to Section 4.6 regarding advanced salary requests at the time of promotion. When the separation from State service exceeds two years, the starting rate shall be determined as if it were an initial appointment.

4.9. Pay Rate Upon Return From Military Leave. Employees returning from active military duty leave shall receive the rate of pay which they would have otherwise received but for their military duty leave.

4.10. Omitted.

4.11. Pay Rate After Hiring Preference. Omitted.

4.12. Pay Rate After Reclassification or Pay Grade Change.

4.12.1. Any employee movement to a higher pay grade is a promotion. Any employee movement to a class of the same pay grade shall be considered a transfer. Employees moving to a lower class and/or pay grade shall retain their former pay as long as they remain in that position.

4.12.2. Employees in positions reclassified to a lower class not qualifying for Selective Market Variation (SMV) where their former class qualified for a SMV shall retain, for pay purposes, the SMV pay range assigned annually by the State budget process to the former class for as long as they remain in that position and the former class continues to qualify for SMV.

4.12.3. Employees whose positions were reclassified to classes in lower pay grades and who retain their former pay grade shall not retain the pay grade upon voluntary transfer or promotion.

4.12.4. Pay Increases. Employees shall receive the pay increase provided in the Budget Act unless their latest performance review is unsatisfactory. If the unsatisfactory performance has already resulted in a reduction in pay grade, however, the employee shall receive the pay increase. Employees who are denied such increase shall become eligible for it when, as evidenced by a performance review, their performance is no longer rated as unsatisfactory. Such an increase is not retroactive.

4.13. Pay for Overtime Service.

4.13.1. Compensation for Overtime Service for FLSA Covered Employees.

FLSA covered employees with a standard work week of 37.5 hours who are authorized to perform overtime service shall be paid at 1.5 times their regular rate for each one hour worked after 37.5 hours per week consistent with the overtime provisions of the FLSA. The form of pay, compensatory time off or cash, is at court/agency discretion and shall be agreed to in advance, subject to availability of funds. The regular rate of pay shall include all payments (e.g., shift differential and hazardous duty pay). Courts/agencies may assign reasonable periods of overtime to meet operational needs, subject to availability of funds.

4.13.2. Overtime Service. Any authorized service in excess of the standard work week or work schedule allowed by the FLSA shall be overtime service. Employees working flexible schedules shall be paid for overtime service in accordance with that schedule and not the standard schedule of 37.5 hours per week. An appointing authority may prescribe, normally in advance, reasonable periods of overtime work to meet operational needs.

4.13.3. A workweek is a period of 168 hours during seven consecutive 24-hour periods.

4.13.4. Hours worked include paid leave plus hours actually worked by the employee.

4.13.5. Accrual and Usage of Overtime Service for FLSA Covered Employees. The use of earned FLSA compensatory time off is dependent upon the operational needs of the court/agency and must be approved in the same manner as requests to use annual leave. FLSA compensatory time off may be accrued up to 240 hours unless the employee is engaged in work in a public safety activity or an emergency response activity in which case the employee may accrue not more than 480 hours of FLSA compensatory time off. FLSA hours in excess of the 240 hours FLSA maximum shall be paid overtime.

Authorization to perform overtime service should be received in writing prior to the work being performed. Such authorization should include an estimate of how many hours of overtime service are being requested and the reason why the service is required. In the event of an employee transfer, any unused FLSA balance accrued within the last 180 days is transferable to the receiving court/agency within the Judicial Branch. If the employee moves outside of the Judicial Branch, these hours shall be paid to the employee.

4.13.6. Compensation for and Usage of Overtime Service for FLSA Exempted Employees. Employees who are exempt from the FLSA are exempt from the FLSA overtime provisions. In such cases, the appointing authority may grant credit hours for work authorized beyond the 37.5 hour work week on an

hour-for-hour credit to be used at a later date. The use of these credits must be approved in the same manner as requests to use annual leave. FLSA exempt employees are encouraged to use these credits as soon as possible since these credits are not transferable to another court/agency and will not be paid to the employee upon separation.

4.13.7. In unusual circumstances of overtime service by employees normally not eligible for overtime pay in FLSA exempted classes, the appointing authority may recommend, with approval by the Chief Justice through the State Court Administrator, that such employees be compensated for overtime services at straight time rates subject to availability of funds.

4.13.8. Agencies may request the Chief Justice, through the State Court Administrator, to review the prevailing overtime rates for one or more FLSA exempted classes where external market pressures including excessive turnover rates, recruitment problems, and high vacancy rates necessitate that such employees be paid at the rate of 1.5 times the regular rate of pay for any authorized overtime service.

4.14. Compensation For Holidays.

4.14.1. If the holiday falls on a day employees would not have been scheduled to work, they shall receive equivalent time off on a pro-rated basis.

4.14.2. Employees eligible for holiday pay and overtime compensation who are authorized to work on a holiday shall be compensated for the hours actually worked on the holiday at 1.5 times their regular rate of pay and shall be credited for the holiday on a pro-rata basis. Employees eligible for holiday pay, but not normally eligible for overtime compensation, and who are required to work on a day observed as a legal holiday, shall be credited for the holiday on a pro-rata basis and may be credited for the hours actually worked on the holiday at straight time, except as otherwise approved by the Chief Justice through the State Court Administrator. Employees' compensation for any additional hours beyond those for which they are routinely compensated, which have accumulated as a result of working the holiday, may be either in cash, compensatory time, time off, or a combination of these at court/agency discretion.

4.14.3. To qualify for pay for a holiday not worked, employees shall be required to be in a paid status, for any portion of the day, on their last scheduled work day prior to the holiday and on their next scheduled work day after the holiday.

4.14.4. Employees working in seven-day per week functions shall receive holiday pay for hours worked on the actual holiday rather than hours worked on the day observed as the legal holiday.

4.15. Shift Differential Pay.

4.15.1. Shift differential is pay for working inconvenient hours and schedules authorized at court/agency discretion. Shift differential is not authorized for flexible or compressed schedules established at the request of, and for the convenience of, employees even if the requirements of 4.15.2 are met.

4.15.2. Employees authorized by a court/agency to work night shifts, which include four or more hours of work between the hours of 6:00 p.m. and 8:00 a.m. the following day, shall receive supplemental pay for the entire shift equal to 5% of the midpoint of their pay grade.

4.15.3. Courts/agencies may approve employees on a rotating shift schedule to receive shift differential pay during the whole time they are assigned to the rotating shift.

4.15.4. Shift differential is payable for single shift assignments as well as recurring shift assignments. Employees on fixed night or rotating shifts receive shift differential for all periods of overtime service. For employees not on fixed or rotating shifts, shift differential is payable for entire periods of overtime service once the minimum four hour requirement of 4.15.2 is met. For purposes of shift differential eligibility, each period of work during an employee's regular schedule and each period of overtime service will be considered separately.

4.15.5. Employees on a fixed night shift or rotating shift shall continue to receive such adjusted pay while on paid holidays or other authorized leave with pay; provided that the night shift or rotating shift assignment occurs both before and after such leave; and further provided that sick leave of more than five consecutive work days shall terminate the shift differential for the entire period of absence. Courts/agencies may assign employees who are receiving shift differential pay to the day shift for a period of 30 days or less without loss of shift differential.

4.15.5.1. Compensatory time in lieu of payment for shift differential is not authorized.

4.15.6. An appointing authority may request a review of the prevailing shift differential rates for one or more classes where external market pressures including excessive turnover rates, recruitment problems, and high vacancy rates necessitate that such employees receive shift differential payments which exceed the amounts allowed. This written request shall be submitted to the Chief Justice, through the State Court Administrator. Upon approval by the Chief Justice, the court/agency may then submit the request to the Office of Human Resource Management for approval.

4.15.7. Employees authorized and required by a court/agency to work split shifts shall receive supplemental pay for their entire shift equal to 5% of their pay grade midpoint.

4.16. Call Back Pay.

4.16.1. FLSA covered employees who have left the worksite at the end of their scheduled shift and are called back for overtime service, shall be paid for such service in accordance with the provisions for overtime pay, provided that the minimum total payment is equivalent to four times their regular straight time hourly rate. Employees shall be paid according to this call-back provision or the overtime provision, whichever is greater, not both.

4.17. Stand-by Pay. Omitted.

4.18. Hazardous Duty Pay.

4.18.1. Determination as to the positions eligible for hazardous duty pay shall be requested by the courts/agencies for the Chief Justice's approval, through the State Court Administrator. Upon approval by the Chief Justice, the court/agency may then submit the request to the Office of Human Resource Management for approval. The court/agency shall notify the Chief Justice, through the State Court Administrator, when a substantive change occurs in the duties or work conditions of any position receiving hazardous duty pay. Compensation shall be set by the State Budget Act.

4.19. Supervisory Pay. Omitted.

4.20. Computing Overtime Pay. For the purpose of computing overtime pay, the employee's base pay is defined as the employee's regular salary within his or her assigned pay grade plus applicable shift differential and hazardous duty pay.

4.21. Limitation of Available Funds. No provision of these Rules shall be construed as authorizing any expenditure of funds in excess of those appropriated by the General Assembly for the fiscal year.

Chapter 5. Employee Benefits

This Chapter applies to all non-judicial employees of the Judicial Branch regardless of the classification of their position.

5.1. Holidays.

5.1.1. The following days are legal holidays for employees:

- New Year's Day
- Martin Luther King, Jr. Day
- Presidents' Day
- Good Friday
- Memorial Day
- Independence Day
- Labor Day
- Columbus Day
- Veterans' Day
- General Election Day
- Thanksgiving Day
- Day After Thanksgiving
- Christmas Day
- Return Day* (the second day after the General Election -- 3.75 hours for 37.5 hour work week schedule for employees who live or work in Sussex County)
 - *Living in Sussex County shall mean the employee's official residency as reflected in the State-wide computerized payroll system. Working in Sussex County shall mean that the employee's work location is in Sussex County, without regard to where that employee may be assigned on a particular day.
- Any other day or part of the day proclaimed as a holiday by the Chief Justice.

5.1.2. When a legal holiday falls on a Saturday, the prior business day shall be the legal holiday. When a legal holiday falls on a Sunday, the next business day shall be the legal holiday.

5.2. Annual Leave.

5.2.1. Employees shall accrue annual leave at the rate of 13.25 hours for each completed calendar month of service. Accrual shall be on a pro-rata basis, when applicable for work schedules totaling other than 37.5 hours per week. Accrued leave is credited as of the last business day of the calendar month.

5.2.1.1. Partial Month Accrual. If only a partial month is completed, the following table shall be used to compute annual leave accrual for that month:

<u>Total Days Worked</u>	<u>Monthly Accrual By Hours</u>
1	.75
2	1.25
3	2.00
4	2.75
5	3.25
6	4.00
7	4.75
8	5.25
9	6.00
10	6.75
11	7.25
12	8.00
13	8.50
14	9.25
15	10.00
16	10.50
17	11.25
18	12.00
19	12.50
20 or more	13.25

5.2.1.2. Absences for Fractional Annual Leave Hours. Absences for a fraction of an hour shall be charged as indicated. However, nothing herein shall prevent a supervisor from using discretion and providing a flexible work arrangement to accommodate an employee's needs, consistent with FLSA provisions.

<u>Duration of Absence</u>	<u>Amount Charged</u>
1 - 15 minutes	.25 hour
16 - 30 minutes	.50 hour
31 - 45 minutes	.75 hour
46 - 60 minutes	1.00 hour

5.2.2. Usage. All leave requests are subject to court/agency approval, taking into consideration employee requests, operating requirements, and seniority and shall be answered as soon as practicable. Leave may not be taken in excess of hours earned. Absences for a fraction of an hour shall be rounded up to .25 hour increments except that within the quarter hour, absences of less than seven minutes shall be rounded down.

5.2.3. Accrual continues during absence from work on a legal holiday; on paid leave with the exception of when using sick leave to travel out of the United States for the purpose of adopting a child from a foreign country pursuant to 29 *Del.C.* §5116 (b) (adoption leave); while on paid Military Serious Illness/Injury leave; on unpaid leave of 30 days or less and while receiving a salary supplement pursuant to 29 *Del.C.* §5933 (workers' compensation); and while receiving a short-term disability supplement from the State sponsored disability insurance program pursuant to 29 *Del.C.* §5253 (b) (short-term disability). Accrual is credited to the employee leave account on the first day of the month following accrual. Accrual shall be on a pro-rata basis.

5.2.3.1. Leave does not accrue when using sick leave to travel out of the United States for the purpose of adopting a child from a foreign country pursuant to *Del.C.* §5116(b) (adoption leave) see 5.3.3.

5.2.3.2. Leave does not accrue when on paid Military Serious Illness/Injury leave pursuant to 29 *Del.C.* §5933(e) see 5.3.3.

5.2.4. Annual leave carried over into a new calendar year may not exceed twice the employee's annual accrual rate. This determination shall be made as of December 31 of each calendar year, although it shall be possible to accrue and carry in excess of twice the annual accrual rate during the course of a calendar year, consistent with 29 *Del.C.* §5905 (b)(1). Upon separation only, employees shall be paid for their accumulated annual leave at their current amount, excluding all supplemental and premium pays.

5.2.5. Omitted.

5.2.6. Employees approved for workers' compensation may request to use accrued annual leave when they are less than fully paid under workers' compensation. Such leave shall be charged as the difference between workers' compensation pay and their regular pay.

5.2.7. Employees who move into the Judicial Branch from a State of Delaware Executive Branch or Legislative Branch agency or who move within the Judicial Branch shall be credited with any unused annual leave for which they were not paid. Employees who move to a position outside of the Judicial Branch may transfer accrued annual leave to the extent the receiving State of Delaware Executive Branch or Legislative Branch agency agrees. Such employees shall be paid by the former court or Judicial Branch agency for any annual leave the receiving State of Delaware Executive Branch or Legislative Branch agency refuses to accept.

5.2.8. Payment. If an employee resigns or is terminated for any reason including dismissal, or dies with unused annual leave credit, the employee or the employee's estate, as applicable, shall be paid for any unused annual leave.

5.2.9. Employees may utilize earned annual leave to supplement short term disability benefits to equal 100% of pre-disability creditable compensation for the maximum period of 182-calendar-days pursuant to 29 *Del.C.* §5253 (b)(4) (short term disability).

5.2.10. Recording. All annual leave credit and use shall be recorded in the human resources records of the court/agency and shall be subject to review by the appointing authority. Pertinent data shall be available for inspection by the respective employee.

5.3. Sick Leave.

5.3.1. Accrual. Employees shall accrue sick leave at the rate of 9.50 hours for each completed calendar month of service. Accrual shall be on a pro-rated basis, when applicable for work schedules totaling other than 37.5 hours per week. Accrued leave is credited as of the last business day of the calendar month.

5.3.1.1. Partial Month Accrual. If only a partial month is completed, the following table shall be used to compute sick leave for that month:

<u>Total Days Worked</u>	<u>Monthly Accrual By Hours</u>
1	.50
2	1.00
3	1.50
4	2.00
5	2.50
6	2.75
7	3.25
8	3.75
9	4.25
10	4.75
11	5.25
12	5.75
13	6.25
14	6.75
15	7.25
16	7.50
17	8.00
18	8.50
19	9.00
20 or more	9.50

5.3.1.2. Absences for Fractional Sick Leave Hours. Absences for a fraction of an hour shall be charged as indicated. However, nothing herein shall prevent a supervisor from using discretion and providing a flexible work arrangement to accommodate an employee's needs, consistent with FLSA provisions.

<u>Duration of Absence</u>	<u>Amount Charged</u>
1 - 15 minutes	.25 hour
16 - 30 minutes	.50 hour
31 - 45 minutes	.75 hour
46 - 60 minutes	1.00 hour

5.3.2. Sick leave shall be requested in advance. In instances of an unanticipated need to use sick leave, employees must notify their supervisor within the first hour of absence or as soon as practicable or as specified by the court/agency. Failure to do so or otherwise obtain approval shall result in leave denial. A court/agency may require documentation which justifies absences or verifies the ability to return to work. Absences for a fraction of an hour shall be rounded up to .25 increments except that within the quarter hour, absences of less than seven minutes shall be rounded down.

5.3.3. Accrual continues during absence from work on a legal holiday; on paid leave other than while using sick leave to travel out of the United States for the purpose of adopting a child from a foreign country pursuant to 29 *Del.C.* §5116 (b) (adoption leave); while on paid Military Serious Illness/Injury leave; on unpaid leave of 30 days or less and while receiving a salary supplement pursuant to 29 *Del.C.* §5933 (workers' compensation) and while receiving a short-term disability supplement from the State sponsored disability insurance program pursuant to 29 *Del.C.* §5253 (b) (short-term disability). Accrual is credited to employee leave accounts on the first day of the month following accrual. Accrual shall be prorated.

5.3.3.1. Leave does not accrue when using sick leave to travel out of the United States for the purpose of adoption a child from a foreign country pursuant to 29 *Del.C.* §116(b) (adoption leave) see 5.2.3.

5.3.3.2. Leave does not accrue when on paid Military Serious Illness/Injury leave pursuant to 29 *Del.C.* §5933(e) see 5.2.3.

5.3.4. Payment. Employees shall be paid for accumulated sick leave at their current salary, excluding all supplemental and premium pays, under the following conditions:

5.3.4.1. At retirement under the State Pension Law, upon commencement of long-term disability [29 *Del. C.* §5253 (c) (5)], or if laid off without prejudice for lack of work, at the rate of one hour's pay for each two hours of sick leave. The maximum payment is 337.5 hours (37.5 hour weekly schedule).

5.3.4.2. At the death of the employee, payment shall be made to the employee's estate at the rate of one hour's pay for each hour of sick leave. The maximum payment is 675 hours (37.5 hour weekly schedule).

5.3.5. Omitted.

5.3.6. Usage. Upon supervisory approval, which shall not be unreasonably denied, employees may use paid sick leave for the following reasons:

5.3.6.1. Employee illness, injury, temporary disability, or exposure to contagious disease.

5.3.6.2. Employee appointments with doctors, dentists, or other similar practitioners or to accompany the following individuals when their personal attendance is required: employee's spouse or domestic partner; parent, stepparent, or child of the employee, spouse, or domestic partner. In exceptional circumstances, courts/agencies may approve the use of sick leave for someone not specifically listed. Whenever possible, such appointments should be scheduled outside of the employee's normal working hours. Domestic partner is defined as the person with whom the employee's life is interdependent, with whom the employee maintains a committed relationship, and with whom the employee shares a mutual residence.

5.3.6.3. Serious illness or injury of the following individuals when their personal attendance is required: spouse or domestic partner; and parent, step-parent, or child of the employee, spouse, or domestic partner. In exceptional circumstances, courts/agencies may approve the use of sick leave for someone not specifically listed.

5.3.6.4. Employees approved for workers' compensation may request sick leave when they are less than fully paid under workers' compensation. Such leave shall be charged at the difference between workers' compensation pay and their regular pay.

5.3.6.5. Employees may utilize earned sick leave to supplement short-term disability benefits to equal 100% of pre-disability creditable compensation for the maximum period of 182-calendar days pursuant to 29 *Del.C.* §5253 (b)(4)(short-term disability).

5.3.6.6. Employees who have been continuously employed on a full-time basis for at least one year at the time of application for leave may utilize accumulated sick leave to travel out of the United States for the purpose of adopting a child from a foreign country. Before the leave will be granted, the employee must provide documentation that he or she has applied for the adoption, and that the travel is required for the adoption to be approved. Once the adoption has been approved, the leave will be pursuant to the Family and Medical Leave Act, 29 U.S.C. §2601 et seq./, see also 29 *Del.C.* §5116 (b).

5.3.6.7. In accordance with Delaware Code Title 29, §5120 eligible employees may use up to twelve weeks accumulated sick leave upon the birth of a child of the employee or the employee's spouse, or adoption by the employee of a pre-kindergarten age child. Leave for these purposes shall be used during the year immediately following the birth or adoption and be scheduled in advance whenever possible. Employees shall use such leave in accordance with the Family and Medical Leave Act (FMLA).

5.3.7. Request to Borrow Sick Leave. Employees may not take sick leave with pay in excess of the hours actually accrued. In extreme cases, courts/agencies may allow employees with more than five years of service, who have not abused sick leave, to "borrow ahead" up to 112.5 hours (37.5 hour weekly schedule) of sick leave after their sick and annual leave is exhausted. "Borrowed" sick leave shall be repaid immediately by charging all sick leave as it accrues until the deficit is eliminated. Any deficit balance is payable upon any type of separation of employment.

5.3.8. Workers' Compensation. Employees who are injured on the job and approved for workers' compensation will not be charged with sick leave for any portion of the day of injury.

5.3.8.1. If an employee becomes ill or injured while on approved annual leave, the period of such illness or injury shall be charged to the employee's accumulated sick leave if it is documented to the satisfaction of the appointing authority.

5.3.9. Employees who move into the Judicial Branch from a State of Delaware Executive Branch or Legislative Branch agency or who move within the Judicial Branch shall be credited with any unused sick leave. Employees who move to a

position outside of the Judicial Branch may transfer accrued sick leave to the extent the receiving State of Delaware Executive Branch or Legislative Branch agency agrees.

5.4. Compassionate Leave.

5.4.1. A full-time employee may be granted up to 37.5 hours of leave with pay for circumstances surrounding the death of an immediate family member. This may apply to a situation where death is imminent and the employee's presence is necessary during the period immediately preceding death. Under exceptional circumstances, the appointing authority may approve the use of compassionate leave on nonconsecutive days or for the death of a person not specified in the definition of immediate family. Necessary travel time is included. Leave shall be pro-rated for part-time employees. Immediate family member is defined as the employee's spouse or domestic partner; parent, stepparent, or child of the employee, spouse or domestic partner; employee's grandparent or grandchild; employee's sibling; spouse of employee's child; or any minor child for whom the employee has assumed and carried out parental responsibilities.

5.4.2. Employees shall be granted 7.5 hours (37.5 hour weekly schedule) leave with pay, on a pro-rata basis, to attend memorial services or related activity of the following: aunt, uncle, niece, nephew, brother/sister-in-law, grandparent-in-law, first cousin, or any other relative or friend living in the employee's household.

5.4.3. Recording. All sick leave credit and use shall be recorded in the human resources records of the respective court/agency, shall be subject to review by the appointing authority, and pertinent data shall be available for inspection by the employee concerned. Appointing authorities will review sick leave records to reveal discernible patterns of repeated use of sick leave which may be construed as possible abuse. In such cases, supervisors should counsel and take other appropriate action, when necessary.

5.4.4. Return to Work after Paid or Unpaid Leave. In the case of an employee's absence of more than three consecutive work days due to an employee's illness or accident, or upon the request of the appointing authority, an employee may be required to provide a certificate from a doctor documenting the ability of the employee to return to work and perform the essential functions of the job.

5.5. Other Leaves With Pay.

5.5.1. Full-time employees shall be excused from work with pay for the following reasons:

5.5.1.1. Military Reserve Duty. To attend training camp or special duty on orders as a member of the military reserves or the

United States or the National Guard, not to exceed 112.5 hours, on a pro-rata basis, in any calendar year.

5.5.1.2. Olympic Competition. To train and participate as a member of the United States team in any competition sanctioned by the United States Olympic Committee, in the capacity of coach, athlete, official, trainer, or group leader not to exceed 90 working days.

5.5.1.3. To donate bone marrow, not to exceed seven days of leave in any calendar year.

5.5.1.4. To donate an organ not to exceed 30 days of leave in any calendar year.

5.5.1.5. To serve on one veteran funeral detail per calendar year if a veteran or a member of the National Guard Reserve.

5.5.1.6. To undergo a medical procedure or operation for a serious illness/injury suffered in the line of duty that is caused or contributed to by war or act of war (declared or not), not sooner than 30 calendar days of return to active State employment nor following one year of return from active military duty and not to exceed six months of absence. Employee must be a member of the United States Military or National Guard. This leave is to run concurrent with FMLA (see 5.7).

5.5.2. Other Leaves With Pay. Employees shall be excused from work with pay for the following reasons, however, they shall return to work within a reasonable time after the conclusion of the following activities. The court/agency shall, if possible, make shift changes to accommodate non day-shift employees for their involvement in the following:

5.5.2.1. Appearance as a Witness. To appear under subpoena to testify, unless the employee is one of the parties in the proceeding or the subpoena arises from other employment or volunteer activities.

5.5.2.2. Jury Duty. To report to serve on a jury. Employees serving on jury duty are permitted to accept and retain both their State salary and the compensation paid through the Court. Employees are not required to turn the additional compensation earned over to the State.

5.5.2.3. Hearings. To appear on their own behalf before a hearing officer or other designated authority in relation to a grievance as

outlined in these Rules. Excusal from work with pay is not authorized for preparation of a grievance or consultation with employees' representatives.

5.5.2.4. Participating in Scheduled Examinations or Interviews.

To participate in a scheduled examination or interview for a full-time position within the Judicial Branch or the State of Delaware. Documentation that the employee has been requested to participate in such examination or interview shall be presented to the immediate supervisor. The excused time shall include a reasonable period for reporting to and returning from the site of the examination or interview.

5.5.3. Employees may be excused from work with pay, at court/agency discretion, for the following reasons:

5.5.3.1. Leave for Employee Organizations. To serve as a delegate to conventions of unions or employee organizations or to engage in similar job related activities, not to exceed 37.5 hours on a pro-rata basis in any calendar year.

5.5.3.2. To serve as a volunteer on an advisory board or commission or similar group sponsored by local or State government or a statewide organization to programs benefiting diverse segments of Delaware citizens.

5.5.3.3. To respond to volunteer emergency fire duty, if the employee is an active firefighter or auxiliary member.

5.5.3.4. Disaster Relief. To respond to disaster relief, not to exceed 15 working days in any calendar year, if the employee is a Certified Disaster Service Volunteer of the American Red Cross.

5.5.3.5. Recognition. As part of a recognition program approved by the Chief Justice, not to exceed 7.5 hours per award. Such leave must be used within one year of being awarded and is not subject to cash payment.

5.6. Leave Without Pay.

5.6.1. Military Leave – Extended Service. Employees shall be granted leaves of absence without pay to serve a tour of active duty in the United States military, plus 90 calendar days beyond the end of active duty. When such employees notify the court/agency of their intent to return to work, with evidence of honorable release from military service, they shall be returned to a position in the same or comparable class for which they qualify.

5.6.2. Personal Leave. Employees may be granted leaves of absence without pay at court/agency discretion for personal reasons up to one year. In exceptional circumstances, additional six-month periods may be granted, but in no case shall continuous leave exceed two years. Employees may return to duty before the expiration of the leave only with court/agency approval. Employees returning from a leave of absence of six months or less shall be returned to the duty assignment previously held. Employees returning from a leave of absence greater than six months shall be returned to a position in the same class or comparable class when leave was granted. The appointing authority shall not normally approve a leave of absence for an employee who has not completed the probationary period except to meet an extraordinary situation where it appears to be for the good of the service. Use of annual leave may be required before a leave without pay is granted.

5.7. Family and Medical Leave Act (FMLA). FMLA eligible employees will be provided with FMLA leave in accordance with the Family and Medical Leave Act of 1993. Employees shall be required to use available accrued annual leave and sick leave while on FMLA with the exception of one work week of annual leave and one work week of sick leave, which they may elect to retain for use upon return to work. Usage of accrued sick leave shall only be in accordance with Section 5.3. Employees on approved Military Serious Illness/Injury leave shall be eligible for wages under Military Serious Illness/Injury leave only in accordance with Section 5.5.1.6.

5.7.1. FMLA leave shall not be charged to an employee for time missed from work as a result of illness or injury covered by workers' compensation, unless requested by the employee.

5.7.2. Unauthorized Absences. An absence from duty that is not in compliance with the rules governing authorized leave shall be considered an absence without leave and cause for disciplinary action. No employee may be absent from duty without authorization, except in case of emergency illness, accident, or serious unforeseen circumstances. Such emergency conditions should be brought to the attention of the immediate supervisor as soon as practical. An employee who is absent from duty without a valid leave of absence for three consecutive working days, may be deemed to have abandoned the position and to have resigned from employment unless, in the period of three working days succeeding such a three day absence, the employee proves to the satisfaction of the appointing authority that such absence was excusable. If the employee's excuse does not satisfy the appointing authority, the employee may be considered to have resigned by abandonment of position. In the event of abandonment, the employee shall be notified in writing that such abandonment constitutes voluntary resignation. Nothing contained herein shall be construed as preventing an appointing authority from taking disciplinary actions against an employee because of an unauthorized absence.

5.8. Educational Leave. The appointing authority may approve educational leave with or without pay. The request for approval of educational leave with pay shall include specific

funding verification. The purpose of such leave is to permit employees to pursue education or training directly related to Judicial Branch employment and is training which is not readily available through in-service training.

5.8.1. Educational Assistance. Educational assistance shall be offered by courts/agencies consistent with their budgetary allowances and shall be on a reimbursement basis at the conclusion/completion of the course/class. Prior approval must be granted, in writing, by the appointing authority.

5.8.1.1. Only permanent full-time and permanent part-time employees are eligible.

5.8.1.2. The employee must have successfully completed the initial probationary period, if applicable, within the Judicial Branch at the time of application and have a recommendation from his or her supervisor.

5.8.1.3. Primary consideration will be given to those courses that will directly improve the employee's performance in his or her present position. Courses leading to the attainment of an Associate's or Bachelor's Degree shall be reviewed but priority will be given to courses that are directly job related. Courses leading beyond a Bachelor's Degree must be directly job related.

5.8.1.4. Reimbursement shall be limited to the cost of tuition or course fee and required laboratory or program charges. No reimbursement will be made for travel, mileage, meals, lodging, books, parking or other fees associated with the employee's course.

5.8.1.5. Reimbursement shall require satisfactory documentation of successful completion of the course with a passing grade which shall be verified by submission of a copy of an actual transcript, certificate, or diploma.

5.8.1.6. Any employee who leaves the employment of the State of Delaware within six months following the successful completion of the course shall return full payment of the amount of the reimbursement.

5.9. Employee Recognition. The first full week in May shall be designated Public Service Recognition Week. Employee recognition programs shall not, however, be confined to this week. Each court/agency may establish a mechanism to formally recognize the diligence and excellent achievement of employees. The selection of outstanding employees and recognition methods are the purview of the respective court/agency. Statutory provisions allow for the modest expenditure of state funds, including the award of one day off with pay pursuant to Section

5.5.3.5. On an annual basis, each court/agency may recommend to the Chief Justice, through the State Court Administrator, one individual for consideration as the Judicial Branch Employee of the Year. The Chief Justice may nominate that employee as the Judicial Branch's recommendation for the State of Delaware's Employee Recognition Award, where applicable.

5.10. Other Leave Related Benefits.

5.10.1. Short-Term Disability (STD). Employees participating in the STD program shall not be eligible to utilize paid leave in lieu of application for short-term disability.

5.10.2. An employee on approved STD, who does not supplement the 75 percent STD payment with 25 percent leave for a period greater than 30 calendar days, will accrue leave on a pro-rata basis.

Chapter 6. Recruitment and Application Policies

This Chapter does not apply to non-judicial employees who are categorized as Confidential under these Rules.

6.1. Recruitment. It is the policy of the Judicial Branch to search widely and vigorously for the most qualified persons to fill positions while providing diversity and equal employment opportunity. A court/agency may post a vacancy for positions either publicly, intra-agency, and/or inter-agency.

6.1.1. When a vacancy exists or is anticipated, the respective court/agency shall initiate the recruitment process. The court/agency may review all applications on file for a similar vacancy and make a selection or initiate a new recruitment effort.

6.2. Vacancy Announcement. The court/agency shall post all positions for a minimum of seven calendar days. Vacancy announcements shall contain all pertinent information about the position being filled and shall be given as wide a distribution as the court/agency determines necessary.

6.2.1. In order to assure receipt of a sufficient number of qualified applicants, the court/agency may continue to accept applications after the originally announced closing date, provided the closing date is extended and the extension is appropriately publicized.

6.2.2. The court/agency may also decide to accept applications for certain job postings without any closing date.

6.2.3. The court/agency may announce a vacancy with selective requirements, provided the justification for such requirement is job-related.

6.3. Applications for Employment. Applications shall be made on a standard form established by the Administrative Office of the Courts. Such form shall require information concerning the applicant's past employment, education, training, and other pertinent qualifications.

6.3.1. No question on the application form or during an interview shall be so framed as to require information concerning the race, color, religion, national origin, sex, age, sexual orientation, or disability of the candidate, except where there are bona fide occupational requirements, or such information is required by law for statistical purposes. No question shall elicit or require information about the individual's political affiliations or beliefs.

6.3.2. The application must be signed by the candidate or verified that it has been submitted electronically. Any misrepresentation or falsification may result in rejection of the application, dismissal, and disqualification of future applications. Applicants are required to notify the court/agency of any changes to their contact information.

6.4. Rejection of Application. Applications may be rejected if any of the following is established about the applicant:

6.4.1. The applicant has made false statements or misrepresentations that appear on the application.

6.4.2. The applicant has cheated on an examination or has violated the confidentiality of an examination.

6.4.3. The applicant is physically, mentally, or otherwise unable to perform the essential functions of the job duties of the position to which he or she seeks appointment.

6.4.4. The applicant has failed to comply with the Military Selective Service Act, 50 U.S.C.A. Sections 451-73 et. seq.

6.4.5. The applicant has criminal court convictions which render him or her unsuitable for the position for which the application is made.

6.4.6. The applicant is or has been a member of an organization which advocates the overthrow of the government of the United States or the State of Delaware.

6.4.7. The applicant does not meet related requirements of these Rules.

6.4.8. The applicant is unavailable.

6.4.9. The applicant has been separated from any branch of the armed forces under conditions other than honorable.

6.4.10. The applicant has been dismissed from State service within the preceding three years.

6.4.11. The applicant fails to meet the job requirements as stated on the job announcement of the position for which the applicant has applied.

6.5. Notification of Rejection. Whenever an application is rejected, pursuant to Section 6.4, notice of such rejection with a statement of the reason shall be provided to the applicant in writing within 10 days of the closing date of the job announcement. An applicant may appeal this decision to the head of the respective court/agency within 10 days of the rejection notice; however, after final review, the decision of the court/agency head shall be final. A correction in a rating or a reversal of an applicant's minimum qualification decision shall not affect an appointment which may have already been made from a list of qualified applicants.

Chapter 7. Screening Applicants

This Chapter does not apply to non-judicial employees who are categorized as Confidential under these Rules.

7.1. Any examination or interview used in the recruitment and selection process shall fairly measure the relative capacities of the applicant to execute the duties and responsibilities of the positions concerned, or, where appropriate, to learn to perform the duties and responsibilities thereof.

7.2. Eligibility. The individual court or Administrative Office of the Courts human resources personnel shall review all applications received to determine whether an applicant meets the minimum qualification requirements as stated in the job announcement. The assessment is to be made from the information submitted on the employment application. Skill level proficiencies and/or written tests, when required, shall be administered under the auspices of the respective court/agency human resources representative.

7.3. Applicants who meet the minimum qualifications shall have their applications forwarded to the appointing authority for further review and possible selection.

7.4. Applicants shall be notified in writing whether they have been selected for the position.

7.5. Application Records. The respective court/agency human resources representative shall be responsible for the maintenance of all records pertinent to the application process for each vacancy. Applications and other related records shall be kept for two years from the closing date of the job posting. If any type of appeal is filed, all related records must be maintained for the length of the appeal process. Applications are active only for the life of the specific recruitment process.

7.6. Inspection of Application Record. Applicants shall have the right to inspect their application record within 10 calendar days after the date on which the official notice of the results was mailed. This time period may be extended by the respective court/agency human resources representative.

7.6.1. Inspection of application records shall be permitted only during regular business hours. The respective court/agency human resources representative will determine what records may be inspected, taking into account such factors as security, privacy, and any other pertinent information.

7.6.2. Appeal. Any error in the application of uniform rating procedures, if called to the attention of the respective court/agency human resources representative, within 10 calendar days after the date on which the application results were mailed, shall be corrected.

Chapter 8. Referral Lists

This Chapter does not apply to non-judicial employees who are categorized as Confidential under these Rules.

8.1. Referral Lists. The respective court/agency human resources representative shall establish and maintain referral lists as are necessary for filling positions.

8.2. In filling a vacancy, the court/agency shall consider all names from the layoff list that exists for the class, names of former employees approved for reinstatement, current employees eligible for transfer in the same classification, and eligible candidates who have applied. Any employee who has been displaced from employment for reason of lack of work or funds, or abolition of the position, shall be placed on the list of qualified applicants for the next position vacancy in the same classification. Such placement may continue for a period of one year from the date of separation from State employment.

8.2.1. Any candidate whose name appears on a referral list may be considered to fill the vacancy for which the list was requested. Should the list be determined unsatisfactory by the appointing authority, it may be returned and subsequent lists may be requested, provided the reasons for rejection are in writing and accompany the returned list.

8.2.2. Referral Lists. For this purpose, related lists of qualified applicants are determined to be those for which minimum qualifications are the same or similar to those required for the existing vacancy. If a vacancy exists in a position for a class where there is no existing list of qualified applicants, a list may be prepared from related lists of qualified applicants.

8.3. Veteran's Preference. Where two eligible applicants have equal qualifications, preference shall be given to the applicant who is a veteran, disabled veteran, or an unremarried widow or widower of such veteran provided he or she meets the minimum qualifications. The preference applies only to initial employment, not subsequent promotional opportunities. Preference may not be applied to attain the minimal required qualifications. An individual claiming status under one of these categories may be required to present proof of honorable discharge, and in the case of a disabled veteran, proof of disability.

8.4. Notice of Availability. At the time of application and as appropriate thereafter, information about availability shall be obtained from each applicant providing a current address and conditions under which appointment will be accepted, including areas of the state in which they are available. Whenever an applicant submits a written statement restricting availability, his or her name may be withheld from consideration of vacancies which do not meet the specified conditions.

8.5. Removal of Names from Referral Lists. Names may be removed from referral lists by the respective court/agency human resources representative for any of the reasons listed below:

8.5.1. One of the causes for rejection of applicants specified in Section 6.4. Such applicants shall be sent written notification to their last known address.

8.5.2. The applicant requests, in writing, that his or her name be removed.

8.5.3. The applicant fails to respond to correspondence mailed to his or her last known address. The name may be restored to the referral list if a satisfactory explanation is given to the appointing authority for failure to respond.

8.5.4. When the applicant has declined three offers of consideration or appointment.

8.5.5. The applicant fails without valid reason to report for interview, testing, or work.

Chapter 9. Probation

This Chapter does not apply to non-judicial employees who are categorized as Confidential or Non-classified under these Rules.

9.1. Duration of Probationary Appointment. After successful completion of an initial, one-year probationary period, a person filling a classified position shall become a classified employee. Upon approval of the Chief Justice, through the State Court Administrator, probationary periods may be extended.

9.2. Unsatisfactory Probationary Period. Employees may be dismissed at any time during the initial probationary period. Except where a violation of Chapter 2 is alleged, probationary employees may not appeal the decision. The appointing authority shall notify the employee in writing with reasons for the action.

9.3. Employees in the initial probationary period who move from one classified position to another must satisfactorily complete the probationary period for the new class but shall become classified employees upon satisfactory completion of probation for the new class or two years of service, whichever occurs first.

9.4. Expiration of Initial Probationary Period. If the probationary employee's services were unsatisfactory, the probationary employee shall be dropped from the payroll, except in the case of promotional probation in which case the employee shall be handled pursuant to Section 9.7. If the probationary employee's services were satisfactory or no action has been taken within the probationary period, the employee shall be deemed to have passed the required probationary period. The determination of the appointing authority shall be final and conclusive.

9.5. Probationary Status Upon Reinstatement. Upon reinstatement, employees who left the Judicial Branch may be required to serve an initial probationary period at the discretion of the appointing authority.

9.6. Probationary Status Upon Promotion or Demotion. Any classified employee who is promoted, demoted for cause, or demoted not due to discreditable circumstances outside of the employee's class series, maintains classified status but is subject to a probationary period in the new class for one year. An employee demoted not due to discreditable circumstances within the employee's class series maintains classified status and shall not be subject to a probationary period within the new classification. The appointing authority's decision concerning appointment to the new position for which the employee has served a probationary period is not subject to appeal.

9.7. Probation After Promotion. In the case of a promotion, if the employee fails to satisfactorily complete the probationary period in the new position, the appointing authority shall notify the employee in writing, giving the reasons for this action, and the appointing authority, with the approval of the Chief Justice through the State Court Administrator, may choose from the options below:

9.7.1. The employee may be returned to his or her former classification and salary, without any loss of benefits, provided a vacancy exists; or

9.7.2. The employee may be placed in an available position for which the employee qualifies, without loss of benefits; or

9.7.3. The employee may elect to be laid off in accordance with the lay-off procedures outlined in these Rules.

9.8. Probationary Status Upon Transfer. A classified employee who is transferred to a different classified position (same classification, pay grade, and substantially the same job duties) shall not be subject to a probationary period in the new position.

Chapter 10. Other Appointments

This Chapter applies to all non-judicial employees of the Judicial Branch regardless of the classification of their position.

10.1. Limited-Term Appointment. Limited-term appointments are permitted when a vacancy exists that is not of a continuing nature, but is projected to exceed 90 days. Such vacancies may be filled for a period of up to one year. The appointing authority, with notice to the State Court Administrator, may approve a longer time period. Established selection procedures shall be followed for filling the vacancy.

10.2. Emergency Appointment. When there is immediate need to prevent stoppage of public business or serious impairment to the public service, and it is not possible to secure such persons from appropriate competitive recruitment, the appointing authority may make emergency appointments. Such appointments shall not exceed 30 days.

10.3. Exceptional Appointment. Appointing authorities may employ individuals with disabilities through a special program such as the Agency Aide or Selective Placement Program administered by the Office of Human Resources Management. If utilized, this type of employment shall occur without competitive recruitment or a referral list. Exceptional appointees shall successfully complete a trial work period, or pass a screening process, before being considered for a classified position within the Judicial Branch.

10.4. Promotion. Candidates selected for promotion shall meet the position's job requirements. Vacancies shall be filled by promotion wherever practical and in the best interest of the court/agency. Consideration shall be given to qualifications, performance record, seniority, conduct and, where applicable, the results of the screening and ranking process. No grievance may be filed concerning a promotion except where it is asserted that: (1) the person who has been promoted does not meet the job requirements, (2) there has been a violation of Chapter 2 or any other procedures of these Rules, or (3) there has been a gross abuse of discretion in the selection process.

10.4.1. Temporary Promotion. A temporary promotion may be granted by an appointing authority for a period not to exceed six months. Temporary promotions exceeding six months shall be approved by the Chief Justice, through the State Court Administrator. Such promotional appointment shall be limited to special circumstances where the court/agency has no certainty of continuation of the position in its present form or of the continuation of the vacancy to which the employee is being temporarily promoted. Should the position become permanent, the appointing authority must post the vacancy through the procedures outlined in these Rules. Substitution during vacation and other similar short term assignments is not to be construed as temporary promotion.

10.5. Demotion.

10.5.1. Voluntary Demotion. Employees may be placed in a position in a lower pay grade upon voluntarily requesting such action, when subject to lay off, or for just cause, if they meet the job requirements for the lower pay grade position. When courts/agencies agree to employee requests for voluntary demotions that cross court/agency lines, job posting requirements may be waived with approval of the appointing authority.

10.5.2. Involuntary Demotion. When an employee is demoted for cause, the employee shall be notified, in writing, by the appointing authority as to the reason for demotion. Such notice shall include information regarding appeal rights, as outlined in these Rules. The rate of pay at the time of the demotion shall be determined pursuant to Section 4.7. Such pay shall be a part of the demotion action and, as such, is subject to the application of the grievance procedure.

10.6. To promote efficiency, unrelated to employee performance, employees may be transferred to another position for which they meet job requirements in the same pay grade within the same court/agency with or without competition. A transfer of an employee from one court/agency to another must have the prior approval of the present and proposed appointing authorities. Such approval shall not be unreasonably withheld.

10.7. Underfilling of Positions.

10.7.1. Temporary underfilling of positions is permitted for operational necessity, demotion, or other valid reasons, with notice to the State Court Administrator.

10.7.2. Underfilling of Authorized Career Ladder Positions. An authorized position may be underfilled at any level in a career ladder in accordance with the approved criteria. The position incumbent may be promoted through the career ladder based on the promotional standards approved by the Administrative Office of the Courts. An employee becomes eligible for consideration for the next level in a career ladder once he or she meets the minimum qualifications and performance requirements for the higher level, and possesses the ability to perform at that level. Employees may not skip a level in a career ladder.

10.8. Dual Incumbency. Dual incumbency is the concurrent occupancy of a single, budgeted position by two individuals. A request for a dual incumbency shall be submitted to the Chief Justice through the State Court Administrator. Upon recommendation by the Chief Justice, the court/agency may then submit the request to the Office of Human Resource Management for approval. The request must include a designated period of time, specific reasons justifying the need, and verification that funding is available to accommodate the request.

10.9. Resolution of Issues. To resolve litigation issues, grievances, or disputes between courts/agencies about the placement of employees, the appointing authority, with the approval of the Chief Justice through the State Court Administrator, may move employees from one position

to another position for which they qualify in the same or lower pay grade within the Judicial Branch without competition.

10.10. Alternate Duty Assignments. Courts/agencies shall make every effort, based on organizational needs, to place a temporarily disabled employee in an alternate duty assignment, subject to medical restrictions, for a period of 90 days. Extensions may be granted contingent upon the expectation that such employee's release to full duty is within a time frame that meets the court/agency operational needs. Such request for extension shall not be unreasonably denied.

10.11. Casual/Seasonal and Temporary Part-Time Appointments. Casual/seasonal and temporary part-time employees are those employees serving in positions pursuant to 29 *Del.C.* §5903(17). Such employees are not covered by these Rules but may be covered by collective bargaining agreements and by other State and Federal laws such as the Fair Labor Standards Act (FLSA), Title VII of the Civil Rights Act, the Family Medical Leave Act (FMLA). This category of employee does not accrue leave credit, may be used as needed, and selection need not be made from a referral list. The acceptance or refusal of an appointment in this category shall not affect a particular person's standing for a permanent position.

10.12. Permanent Part-Time Appointments. Permanent part-time employment means the filling of an established position at less than 37.5 hours per week, on a consistent basis. This definition does not apply to casual, seasonal, temporary part-time, or emergency positions. Permanent part-time appointments shall accrue leave credit on a prorated basis. The acceptance or refusal of a permanent part-time appointment shall not affect a particular person's standing for a full-time position.

Chapter 11. Layoff Procedures

This Chapter does not apply to non-judicial employees who are categorized as Confidential under these Rules.

11.1. Layoff Procedures. The Chief Justice may choose to lay off employees for legitimate, substantiated reasons unrelated to their conduct or performance, e.g., loss of funding, abolishment of the position.

11.2. The Chief Justice, with the recommendation of the court/agency through the State Court Administrator, shall determine the boundaries of the layoff field.

11.3. Employees who have been identified as layoff candidates shall be given at least 30 days written notification by the court/agency, unless an emergency condition exists.

11.4. No permanent employee shall be laid off while another employee remains employed on an emergency, temporary, or probationary basis in the same classification within the court/agency.

11.5. Employees who have been laid off shall be placed in any vacancy for which they qualify in their class or occupational series, which is equal to or no more than three pay grades lower than their current pay grade within the layoff field. Employees may choose to be placed in a vacancy that is more than three pay grades lower.

11.6. Employees shall be presumed to exercise bumping rights in their county of employment only, unless they provide notice to the appointing authority within 10 calendar days of receiving the lay off notice. Employees may waive their bumping rights.

11.6.1. All employees on probationary promotion in the affected class(es) will be returned to their previous class, provided a vacancy exists and prior to the initiation of any layoff.

11.7. If placement is not possible in accordance with Section 11.5, bumping shall begin. Employees may only bump employees having less seniority. Employees, in order of seniority, shall bump the least senior employee in their present class and, as necessary, bump the least senior employee in each succeeding lower class until there are no positions within the same occupational series into which employees may bump.

11.7.1. Career ladder employees shall bump employees within their career ladder who are at the same or lower pay grade and have the least seniority.

Chapter 12. Employee Accountability

This Chapter does not apply to non-judicial employees who are categorized as Confidential or Non-classified under these Rules. The opportunity for a pre-termination hearing pursuant to Sections 12.4 through 12.6 is conferred upon Non-classified employees whose disciplinary sanction involves dismissal or termination. Although provided the right to a pre-termination hearing, Non-classified employees do not have a right to an appeal. Confidential employees have no rights under this Chapter.

12.1. Employees shall be held accountable for their conduct. Disciplinary measures up to and including dismissal, shall be taken only for just cause. “Just cause” means that management has sufficient reasons for imposing accountability. Just cause requires: showing that the employee has committed the charged offense; offering specified due process rights specified in these Rules; and imposing a penalty appropriate to the circumstances. Violations should be followed by constructive criticism, and where necessary, employee counseling.

12.1.1. Reasons for Disciplinary Action and Possible Sanctions. Disciplinary action may be imposed as a result of violations of the Delaware Supreme Court Administrative Directive Number 115, Code of Conduct for Court Employees, or any other conduct of an employee which is not in keeping with standards applicable to such employee in the performance of his or her work. The penalty will vary according to the severity of the offense. Appendix A to these Rules provides examples of the types of conduct for which disciplinary action may be taken. This listing is not intended to be all inclusive. Disciplinary action may be appealed in accordance with the procedures set forth in Chapter 18 for a grievance and/or direct appeal.

12.1.2. Oral Reprimand. An oral reprimand is generally the initial step of discipline in which the supervisor verbally warns the employee concerning his or her unsatisfactory behavior or work performance and counsels the employee of the requirement to correct the problem.

12.2. Written Reprimand. Employees may receive a written reprimand where appropriate based on specified misconduct or where a verbal reprimand has not produced the desired improvement.

12.2.1. Suspension Without Pay. Suspension may be used when a written reprimand has not resulted in satisfactory corrective action on the part of the employee or when an oral or written reprimand is determined to be insufficient for the offense. An employee may be suspended without pay not to exceed 30 calendar days unless court action has been filed and is pending in a matter that led to the suspension. In no case shall suspension with pay be utilized, but retroactive pay may be granted should the suspension prove unfounded.

12.2.2. Dismissal. Dismissals may be initiated when all previous progressive corrective disciplinary procedures have failed to correct the employee's conduct, or when the appointing authority determines that lesser action is insufficient due to the seriousness of the offense.

12.3. Prior to finalizing a dismissal, suspension, fine, or demotion action, the employee shall be notified in writing that such action is being proposed and provided the reasons for the proposed action.

12.4. Pre-Termination Hearing. Employees shall receive written notice of their entitlement to a pre-termination hearing in dismissal cases. If employees desire such a hearing, they shall submit a written request for a hearing to their court/agency designated personnel representative within 14 calendar days from the date of notice. Employees may be suspended without pay during this period provided that a management representative has first reviewed with the employee the basis for the action and provides an opportunity for response. Where employees' continued presence in the workplace would jeopardize others' safety, security, or the public confidence, they may be removed immediately from the workplace without loss of pay.

12.5. Scheduling the Pre-Termination Hearing. The pre-termination hearing shall be held within a reasonable time not to exceed 14 calendar days after the employee has requested the hearing in compliance with Section 12.4. The hearing shall be held with the employer's designee who shall not be the person that recommended the disciplinary action.

12.6. Procedures for the Pre-Termination Hearing. Pre-termination hearings shall be informal and shall provide employees an opportunity to respond to the proposed action and offer any reasons why the proposed penalty may not be justified or is too severe. The employer's designee shall issue a written decision after the hearing within five working days.

12.7. Fines. Fines of not more than 10 days pay may be imposed provided they do not cause employees to be paid less than the federal minimum wage as set forth in the Fair Labor Standards Act.

12.8. Adverse documentation shall not be cited by courts/agencies in any action involving a similar subsequent offense after two years, except if employees raise their past work record as a defense or mitigating factor.

12.9. Direct Appeal to the Chief Justice. Classified employees who have been dismissed may file an appeal directly to the Chief Justice. An appeal filed directly to the Chief Justice shall follow the procedures outlined for a Step 3 appeal pursuant to Section 18.8 except that instead of documents from previous steps, the appeal filing shall include the:

- (1) Chapter and Section number(s) of the alleged violation of the Rules;
- (2) Argument that the employee wishes to present to the Chief Justice, or designee, and the relief sought; and
- (3) Legal authority the employee intends to rely upon, if any.

Alternatively, classified employees who have been dismissed, demoted, or suspended may file a grievance pursuant to the procedures contained in Chapter 18.

12.10. A direct appeal is the final administrative remedy available under these Rules. However, nothing contained herein shall be deemed to abrogate the right of any employee to judicial review of disciplinary action pursuant to 10 *Del.C.* §545.

12.11. Severance Payment As a Result of a Dismissal. An employee who is dismissed is entitled to payment for days actually worked and for unused vacation days, but not for unused sick leave.

12.12. If an employee is not dismissed following the pre-termination hearing, the employee shall be made whole for any days for which there had been a suspension, pending the hearing, less the pay for any action resulting from the hearing.

Chapter 13. Performance Review

This Chapter does not apply to non-judicial employees who are categorized as Non-classified and Confidential under these Rules.

13.1. Purpose of Performance Review. Each court/agency shall follow a process for systematic performance reviews to communicate expectations and responsibilities, recognize achievement, and identify areas for skill development and work performance improvement.

13.2. Changes in Performance. Recognition of effort, accomplishment, improvement, or the need for further skill development shall be addressed as needed by verbal discussions, written communication, and/or formal documentation.

13.3. Unsatisfactory Performance. When an employee's work performance is considered unsatisfactory, the performance must be documented in writing, and the specific weaknesses must be made known to the employee. The employee shall be given documented assistance to improve by the designated supervisor. An opportunity for reevaluation will be provided within a period of three to six months.

13.4. Review Appeal. The employee shall have the right to discuss any performance review or documentation with the next level of authority and may submit written comments.

13.5. Required Minimum Rating for Promotion. An employee must receive at least a "meets expectations" performance review in order to be eligible for a promotion.

13.6. Performance Review and Dismissal. Once an employee receives an unsatisfactory performance review, a reevaluation no sooner than three months but absolutely no later than six months is mandatory. A second unsatisfactory performance review may result in dismissal. In any event, a third unsatisfactory performance review shall result in dismissal.

Chapter 14. Employee Development and Communications

This Chapter applies to all non-judicial employees of the Judicial Branch regardless of the classification of their position.

14.1. Employee Development. The respective courts/agencies are encouraged to initiate and develop programs to improve the work effectiveness and morale of the employees of the Judicial Branch, including training, safety, health, welfare, recreation, counseling, and employee and labor relations.

14.2. Employee Communications. The State Court Administrator and the courts/agencies are authorized by the Chief Justice to publish and maintain updated employee information to be made available electronically or otherwise as appropriate.

Chapter 15. Employee Responsibilities

This Chapter applies to all non-judicial employees of the Judicial Branch regardless of the classification of their position.

15.1. Attendance. Appointing authorities shall be responsible for the attendance of all employees in their court/agency. No employee shall be paid unless he or she is at work in accordance with these Rules and/or internal court/agency rules or he or she is on authorized paid leave.

15.1.1. Every employee is required to report to work on time each day. When, because of emergency or sudden illness, employees cannot report for work, they shall notify their supervisor within the first hour of absence, or as soon as practical thereafter, giving reason for their absence.

15.1.2. Resignation. Employees who resign their position shall provide a minimum of two weeks advance notice, in writing.

15.2. Code of Conduct. In order to maintain the integrity, independence, and impartiality of the Judicial Branch, all employees of the Judicial Branch are expected to act in a manner that promotes public confidence in the integrity of the Judiciary, and to perform their duties in accordance with statutory requirements, court rules, and other applicable policies. All Judicial Branch employees shall familiarize themselves with Delaware Supreme Court Administrative Directive Number 115, Code of Conduct for Court Employees.

15.3. Employees in Federally funded programs subject to Intergovernmental Merit System Standards (IMSS) are restricted in political activity according to provisions of the Hatch Act. IMSS are those standards "promulgated by the U.S. Office of Personnel Management to implement statutory and regulatory provisions requiring the establishment and maintenance of personnel standards on a merit basis in the administration of various Federal Grant-in-Aid programs."

Chapter 16. Human Resource Records

This Chapter applies to all non-judicial employees of the Judicial Branch regardless of the classification of their position.

16.1. Human Resource Records. A master personnel record for each employee shall be established and maintained by each court/agency. The records shall include copies of: applications for employment; each human resource transaction; attendance and leave records; employee performance review documents; grievance records; verification of education and employment; and any other records or information considered appropriate. These records may be either physical (hard) copies or computer-stored data. Personnel records are confidential and shall be maintained as necessary to ensure their confidentiality. These and other employee records shall be readily available for review by the employee's appointing authority or designee. Unauthorized disclosure of any portion of a State employee's records shall be grounds for dismissal.

16.2. Employee Access to Records. Employees shall have controlled access to their records. After obtaining permission of the appointing authority, employees shall be scheduled to examine their records under the supervision of those charged with maintaining such records.

16.3. Human Resource Transactions. All appointments, separations, and other human resources transactions shall be made as specified by these Rules.

Chapter 17. Payroll

This Chapter applies to all non-judicial employees of the Judicial Branch regardless of the classification of their position.

17.1. Payroll Change. An appointing authority may add an employee to the payroll or change his or her salary or status only upon prior execution of the properly completed human resource transactions as specified by these Rules.

17.2. Review of Payrolls. No person shall make or approve payment for personal services to any employee unless the appropriate documents are certified by the appropriate State officer to the effect that the individual is an employee in accordance with the Delaware Code and these Rules.

17.3. Audit. The Chief Justice, through the State Court Administrator, shall request audits of the Judicial Branch payrolls and such other investigations as deemed necessary to assure compliance with the Delaware Code.

17.3.1. Any violations shall be called immediately to the attention of the management of the appropriate court/agency and to the Auditor of Accounts and State Treasurer, as appropriate.

17.3.2. Thereafter, no payment shall be made to any employee whose salary rate has been questioned until the rate has been adjusted to the satisfaction of the Chief Justice.

17.3.3. If certification of the payroll account of any employee is wrongfully withheld, such employee may take court action to compel such payment.

17.4. Recovery of Salaries Improperly Paid. In accordance with the provisions of the Delaware Code, officials may be held liable for the return of any salaries they wrongfully authorize.

Chapter 18. The Grievance Procedure

This Chapter does not apply to non-judicial employees who are categorized as Confidential or Non-classified under these Rules.

18.1. To promote positive working relationships and better communications, employees and their supervisors shall informally meet and discuss employee claims of Rule violations prior to filing a formal grievance. Employees have the right to use this grievance procedure free of threats, intimidation, or retaliation, and may have union, where applicable, or other representation throughout the process.

18.2. Definition of a Grievance. A grievance is an employee complaint about the application of these Rules or relevant statutes which remain unresolved after informal efforts at resolution have been attempted. A grievance shall not deal with the substantive policies embodied in these Rules or statutes.

18.3. An employee who is in a bargaining unit covered by a collective bargaining agreement shall process any grievance through the grievance procedure outlined in the collective bargaining agreement. However, if the subject of the grievance is determined to be nonnegotiable then it shall be processed according to this Chapter.

18.4. Failure of the appointing authority to comply with time limits shall automatically move the grievance to the next step unless the parties have a written agreement to delay or the employee has opposed, in writing, moving the grievance automatically to the next step. Failure of the employee to comply with time limits shall void the grievance. The parties may agree to the extension of any time limits or to waive any grievance step.

18.4.1. Grievances Regarding Demotion for Just Cause, Suspension, or Dismissal. Grievances regarding demotions for just cause, suspensions, or dismissals shall start at Step 2 within 14 calendar days in the manner set forth in Section 18.7.

18.5. Grievances Regarding Promotions. Grievances regarding promotions are permitted only where it is asserted that: (1) the person who has been promoted does not meet the job requirements; (2) there has been a violation of Chapter 2 or any other procedures of these Rules; or (3) there has been a gross abuse of discretion in the promotion process.

18.6. Step 1 – Supervisor. Employees shall file, within 14 calendar days of the date of the grievance matter or the date they could reasonably be expected to have knowledge of the grievance matter, a written grievance which details the complaint and relief sought with their immediate supervisor. The following shall occur within 14 calendar days of receipt of the grievance: the parties shall meet and discuss the grievance, and the Step 1 supervisor should issue a written reply.

18.7. Step 2 – Designated Management Official. Any appeal shall be filed in writing to the top court/agency human resources official or representative within seven calendar days of receipt of the reply. The following shall occur within 30 calendar days of the receipt of the appeal: the designated management official and the employee shall meet and discuss the grievance, and the designated management official shall issue a written response.

18.8. Step 3 – Hearing Officer. Any appeal shall be filed in writing to the Chief Justice, through the State Court Administrator, within 14 calendar days of receipt of the Step 2 reply. This appeal shall include copies of the written grievance and responses from the previous steps. The Chief Justice shall designate a hearing officer and the State Court Administrator shall assist the Hearing Officer in scheduling and conducting the hearing. The Hearing Officer shall hear the grievance and issue a written decision within 45 calendar days of the appeal's receipt. The Step 3 decision is final and binding upon court/agency management. The decision of the Hearing Officer shall include, where appropriate: (1) a brief summary of the evidence; (2) findings of fact based upon evidence; and (3) conclusion of law.

18.8.1. Procedure for the Hearing. The Step 3 hearing will follow an informal format, although a verbatim record will be made of the proceedings. Attendance will be limited to persons having a direct connection with the particular grievance. Either side may be represented by counsel, provided the State Court Administrator has been notified of such representation prior to the hearing date. All testimony shall be taken under oath. Either side may call witnesses and present probative evidence, except that evidence which is plainly irrelevant, immaterial, or unduly repetitive shall be excluded. The burden of proof shall be upon the employee. The Hearing Officer shall be empowered to issue subpoenas, administer oaths, and make evidentiary rulings. Technical rules of evidence shall not apply.

18.9. The above stated appeal process is the final administrative remedy available under these Rules. However, nothing contained herein shall be deemed to abrogate the right of any employee to judicial review of disciplinary action pursuant to 10 *Del.C.* §545.

18.10. Retroactive Remedies. Retroactive remedies shall apply to the employee only and, for a continuing claim, be limited to 30 calendar days prior to the grievance filing date. Any financial settlement shall be reduced by the amount of the employee's earnings during the period covered by the settlement regardless of source, excluding part-time income which was received prior to separation.

18.11. Employees may attend any meeting held pursuant to this Chapter without loss of pay; provided, however, grievance preparation and investigation time, and any discussion time with their grievance representative shall not be done during employee work time.

Chapter 19. Definitions

Agency. A non-judicial office, other than a court or the Administrative Office of the Courts, which is part of the Judicial Branch.

Aggregate Service. The total length of employment with the State of Delaware, minus breaks in service.

Appointing Authority. The official, or designee, who has the authority to make appointments to, or dismiss employees from, an authorized position. The appointing authorities are as follows:

1. Supreme Court
 - (a) Law clerks and judicial secretaries: the Justice whom each serves; 10 *Del.C.* §124.
 - (b) All other employees: a majority of the Justices; Art. IV §27 Del. Const.; 10 *Del.C.* §123.
2. Court of Chancery
 - (a) Law clerks: the Judges of the Court of Chancery; 10 *Del.C.* §329.
 - (b) Judicial secretaries: the Judge whom each serves; 10 *Del.C.* §323.
 - (c) Chief Register in Chancery: the Court of Chancery; 10 *Del.C.* §2509.
 - (d) All other employees: the Chancellor; 10 *Del.C.* §§322, 326.
3. Superior Court
 - (a) Judicial secretaries: the Judge whom each serves; 10 *Del.C.* §526.
 - (b) All other employees: the President Judge; 10 *Del.C.* §§522, 523, 525.
4. Family Court
 - (a) Masters: the Chief Judge; 10 *Del.C.* §913.
 - (b) All other employees: the Chief Judge; 10 *Del.C.* §908(6).
5. Court of Common Pleas
All employees: the Chief Judge; 10 *Del.C.* §1311(a).
6. Justice of the Peace Court
 - (a) Constables: the Chief Magistrate; 10 *Del.C.* §2801.
 - (b) All other employees: the Chief Magistrate; 10 *Del.C.* §9202.
7. The Administrative Office of the Courts
 - (a) State Court Administrator: the Chief Justice; 10 *Del.C.* §128.
 - (b) All other employees: the State Court Administrator; 10 *Del.C.* §128.

8. Law Librarians
Law Librarians: Judges of the Court of Chancery and Superior Court resident in the respective counties in which the Library is located; 10 *Del.C.* §1941.
9. Office of the Public Guardian
 - (a) The Public Guardian: the Chancellor; 12 *Del.C.* §3991.
 - (b) All other employees: the Public Guardian; 12 *Del.C.* §3995.
10. Child Placement Review Board
 - (a) Executive Director: a majority of the members of the Executive Committee; 31 *Del.C.* §3808(6).
 - (b) All other employees: the Executive Director; 31 *Del.C.* §3809.
11. Violent Crimes Compensation Board
 - (a) Executive Secretary: the Board; 11 *Del. C.* §9004.
 - (b) All other employees: the Board; 11 *Del. C.* §9004.
12. Office of the Child Advocate
 - (a) Child Advocate: Executive Committee of the Child Protection Accountability Commission; 29 *Del. C.* §9003A.
 - (b) All other employees: the Child Advocate.
13. Nursing Home Residents Quality Assurance Commission
 - (a) Administrative Specialist: the Board; Budget Epilogue, Budget Appropriations Act.
14. All other Judicial Branch Agencies
 - (a) Director; the Board.
 - (b) All other employees; the Director, unless the Board has mandated otherwise.

Appointment. The conferring and accepting of an offer to occupy an established position from an appointing authority.

Benefits. The various plans covering compensation, holidays, leave, health insurance, dental insurance, life insurance, pension, uniforms, education, and similar privileges enjoyed by virtue of employment.

Career Ladder. A hierarchy of classes within a class series, established and approved by the Office of Human Resource Management, which permits movement along a career path, without competition, upon meeting all promotional standards.

Classified Employee. Refer to Chapter 1.

Confidential Employee. Refer to Chapter 1.

Court. Supreme Court, Court of Chancery, Superior Court, Family Court, Court of Common Pleas, or Justice of the Peace Court.

Exempt. Exempt status includes such non-judicial classifications and/or categories or groups of employees as outlined in 29 *Del.C.* §5903.

Non-Classified Employee. Refer to Chapter 1.

Office of Human Resource Management. The operational unit and employees reporting to the Director of Human Resource Management within the State of Delaware Office of Management and Budget.

Pay Grade. One of the horizontal pay ranges designated on the pay plan consisting of a series of percentage of midpoint columns identifying specific values.

Pay Plan. The salary and wage schedules authorized pursuant to the annual Budget Act and the specific assignment of classes to pay grades.

Pro-Rata Basis. A proportional share based on the percent of full-time employment at which a permanent, part-time position is filled, with a 100% share being the maximum allowable share. A 100% share of a week is 37.5 hours. The calculation of pro-rated leave shall be rounded up to the nearest quarter hour.

Rule. Any governing paragraph or regulation contained herein.

Rotating Shift. A change in a work schedule (1) for at least two days in a work week which includes four or more hours of work daily, or (2) that involves different schedules with no more than 30 continuous days on a shift which does not qualify as night shift.

Selective Requirement. Any education, training, and/or experience not specifically indicated in the minimum qualifications of a class specification that are required and considered job related and essential for effective performance in a specific position at the time of hire.

Seniority. Total length of employment in full-time positions within the Judicial Branch. This time shall be adjusted whenever an unpaid leave of absence exceeds 30 calendar days, except in the case of approved military leave.

Separation. Any removal from the payroll for voluntary or involuntary reasons, including resignation, layoff, dismissal, retirement, or death.

Supervisor. A full-time employee, as defined in Sections 1.3.1, 1.3.2, and 1.3.3, who recommends hiring, termination, and promotion decisions and is responsible for planning, assigning, reviewing, and disciplining subordinate employees on a regular and continuing basis.

Suspension. An enforced leave of absence without pay for disciplinary purposes or pending investigation of charges made against an employee.

Veteran. Those individuals who have been honorably separated from the Armed Forces after one of the following events: service between April 6, 1917 to July 2, 1921; or December 7, 1941 to July 1, 1955; or service of more than 180 consecutive days after January 31, 1955 (not counting service under an initial period of active duty for training under the “6 month” Reserve or National Guard programs); or service in a campaign for which a campaign badge has been authorized. Disabled veterans are those individuals, as above, who have established the present existence of a service-connected disability or who are receiving compensation, disability retirement benefits, or a pension by reason of public laws administered by the Veteran’s Administration or the Department of Defense, requiring the assignment of a claim number. (Edited 7 DE Reg. 799 – 12/31/03)

Chapter 20. Employment Relations

Preamble.

In *Superior Court v. State of Delaware Public Employment Relations Board*, Del. Supr., No. 518, 2009, Berger, J. (Jan. 19, 2010), the Supreme Court found that in exercising its statutory authority over Judicial Branch employees, the Public Employment Relations Board violated the constitutional doctrine of separation of powers. In order to permit Judicial Branch employees to exercise their rights to collective bargaining within the framework of the Delaware Constitution, the Judicial Branch Personnel Rules and the Judicial Branch Employment Relations Procedures provide for the right of Judicial Branch employees to: organize, form, join or assist an employee organization; negotiate collectively through representatives of their own choosing; engage in other concerted activities for the purpose of collective bargaining or other mutual aid or protection insofar as any such activity is not prohibited by law; and be represented by their exclusive representative, if any, without discrimination.

20.1. Relation to the Delaware Code

Judicial Branch employment relations shall be governed by Chapter 13 of Title 19 of the Delaware Code except as provided in this Chapter and the Employment Relations Procedures contained in Appendix B of these Rules. To the extent that there is a conflict between these Judicial Branch Employment Relations Rules (including the Procedures contained in Appendix B of these Rules) and the Delaware Code, these Rules shall prevail. The Administrator and any appointed Hearing Officer shall have, in the manner directed in these Rules and the Judicial Branch Employment Relations Procedures, the authority provided to the Executive Director and Public Employment Relations Board in Chapter 13 of Title 19 of the Delaware Code.

20.2. Scope of Judicial Branch Employment Relations Rules

These Rules apply to:

20.2.1. All non-judicial employees in the Judicial Branch except the following:

20.2.1.1. employees who are in the Merit system;

20.2.1.2. confidential and non-classified employees as defined in Section 1.3 of the Judicial Branch Personnel Rules;

20.2.1.3. supervisory employees as defined in 19 *Del. C.* § 1302.

20.2.2. Judicial Branch employers; and

20.2.3 Employee organizations representing Judicial Branch employees.

20.3. Definitions

For purposes of this Chapter, the following definitions shall apply:

Administrator

The State Court Administrator or his or her designee who shall provide administrative functions necessary to implement these Rules.

Hearing Officer

An attorney appointed by the Administrator from a panel created by the Chief Justice of attorneys knowledgeable about employment law who are willing to be appointed to hear Judicial Branch employment relations matters.

Judicial Branch Employee

Those employees to whom this Chapter apply pursuant to Rule 20.2 of this Chapter.

Judicial Branch Employer

A court or Judicial Branch agency which employs one or more Judicial Branch employees.

20.4. Responsibilities and Authority of the Administrator

The State Court Administrator or his or her designee (“Administrator”) shall administer employment relations for the Judicial Branch and shall have the authority to undertake all responsibilities necessary to the furtherance of Judicial Branch employment relations in accordance with the Procedures set forth in Appendix B to the Judicial Branch Personnel Rules and may recommend to the Supreme Court amendments to this Chapter as they may become necessary. The Administrator shall have the authority to amend the forms referenced in the Procedures contained in Appendix B at any time.

20.5. Annual Report

At the end of each fiscal year, the Administrator shall make a report on Judicial Branch Employment Relations matters in writing to the Supreme Court, including any cases that were decided. Such report shall be filed with the Supreme Court by July 31st of each year.

20.6. Prior Matters

Any certification of an employee organization, or other employment relations matter, affecting Judicial Branch employees covered by these Rules and undertaken by the Public

Employment Relations Board prior to the adoption of this Chapter shall not remain in effect under these Rules.

20.7. Appeals and petitions for enforcement

(a) Any party adversely affected by a decision of a hearing officer or by a decision relating to binding arbitration may appeal the decision to the Chief Justice or his or her designee. Such an appeal must be filed within 15 days of the date upon which the decision was rendered and shall not automatically act as a stay. There shall be no further appeal.

(b) The Administrator may petition the Court of Chancery for enforcement of any order issued in regard to unfair labor practices or binding interest arbitration.

20.8 Scope of Bargaining- non-discretionary subjects

The following items are governed by the Delaware Code and/or the Judicial Branch Personnel Rules and are not subject to collective bargaining: classification; appeal of classification; hazardous duty pay; competitive recruitment; promotions; referral lists; rejection for unfitness; appointment and selection of candidates; leaves; Veterans' preference; accrued leave, health care and insurance benefits, and retirement.

20.9 Scope of Bargaining- discretionary subjects

(a) The following items are governed by any collective bargaining agreement which covers these items in whole or in part: probation; emergency employment; transfers; reinstatement; performance records; layoffs; reductions; fines; discharge; demotion; grievances; work schedules; and working conditions.

(b) The scope of bargaining shall also include compensation, which shall be defined as the payment of money in the form of hourly or annual salary, and any cash allowance or items in lieu of a cash allowance to a Judicial Branch employee by reason of that employee's employment by the Judicial Branch employer, whether the amount is fixed or determined by time, task or other basis of calculations. Position classification, health care and other benefit programs established pursuant to Chapters 52 and 96 of Title 29 of the Delaware Code, workers compensation, disability programs, pension programs, and provisions of Chapter 4 of the Judicial Branch Personnel Rules, shall not be deemed to be compensation for purposes of this Chapter.

Judicial Personnel Rules

Discipline Matrix

Appendix A

Disciplinary action shall be taken only for just cause. All employees of the Judicial Branch are expected to act in a manner that promotes public confidence in the integrity of the Judiciary, and to perform their duties in accordance with statutory requirements, court rules, and other applicable policies, and procedures including Delaware Supreme Court Administrative Directive Number 115, Code of Conduct for Court Employees.

This Appendix is designed to provide notice of proscribed conduct and that violation of such rule could result in progressive, corrective disciplinary action. The penalties as noted may, after thorough review of the incident, be modified depending upon the circumstances surrounding the conduct or act. In those instances of major misconduct or major unsatisfactory behavior, more severe discipline shall be taken, depending on the degree of seriousness of the misconduct. Accumulation of multiple offenses of more than one type may result in cumulative progressive discipline, as deemed necessary. The offenses and disciplinary steps outlined below are not intended to be all inclusive.

	Offense	1 st Offense	2 nd Offense	3 rd Offense	4 th Offense
1.	Failure to report to work following the expiration of an approved leave of absence. <i>(Formerly 6.0600)</i>	Employee shall be considered as having terminated employment (voluntary resignation).	--	--	--
2.	Absence for which leave has been disapproved or withdrawn. <i>(Formerly 15.0208)</i>	Considered an unauthorized absence; employee will not be paid.	Suspension with review for dismissal.	--	--
3.	Unauthorized absence including: failure to report to work on time or leaving without prior approval;	1 st Offense: Oral warning and loss of pay for time not	3 rd Offense: One-day suspension.	5 th Offense: Five-day suspension.	7 th Offense: Suspension with review for dismissal.

	absence during work hours which has not been excused for emergency or medical reasons; unauthorized extension of lunch period or break; taking sick time without having any sick leave available. <i>(Formerly 6.0600; 15.0208; 15.0216)</i>	at work. 2 nd Offense: Written reprimand and loss of pay for time not at work.	4 th Offense: Three-day suspension.	6 th Offense: Ten-day suspension.	
4.	Incompetence or inability to perform assigned work. <i>(Formerly 15.0203)</i>	Oral warning.	Written reprimand.	Suspension.	Suspension with review for dismissal.
5.	Negligence, carelessness and/or neglect of job duties and responsibilities or failure to follow court/agency or related State policies and procedures. <i>(Formerly 15.0203)</i>	Oral warning.	Written reprimand.	Suspension.	Suspension with review for dismissal.
6.	Negligence, carelessness, or failure to comply with designated safety or security rules, procedures, and/or practices which may result in a safety hazard or breach of security. <i>(Formerly 15.0203; 15.0222; 15.0224)</i>	Written reprimand.	Suspension.	Suspension with review for dismissal.	--
7.	Insubordination -- deliberate refusal to obey proper orders or to follow directives, policies, and/or procedures. <i>(Formerly 15.0204)</i>	Suspension with review for dismissal.	--	--	--
8.	Sleeping on the job. <i>(Formerly 15.0218)</i>	Oral warning.	Written reprimand.	Suspension.	Suspension with review for dismissal.

9.	Discourteous treatment of the public or any other conduct which violates the public confidence. <i>(Formerly 15.0207)</i>	Oral warning.	Written reprimand.	Suspension.	Suspension with review for dismissal.
10.	Participating in gambling on State property or during working hours. <i>(Formerly 15.0212)</i>	Oral warning.	Written reprimand.	Suspension.	Suspension with review for dismissal.
11.	Failure to provide medical documentation, when requested or as required, to include absences covered by the FMLA and the Statewide Disability Insurance Program covering short-term disability, long-term disability, and pension disability. <i>(Formerly 6.0311; 6.0380; 14.0300)</i>	Oral warning.	Written reprimand plus no pay for the absence.	Suspension with review for dismissal.	--
12.	Failure to report any accident or injury suffered at work as soon as possible. <i>(New)</i>	Oral warning.	Written reprimand.	Suspension.	Suspension with review for dismissal.
13.	Conducting personal business during working hours. <i>(Formerly 15.0213)</i>	Oral warning.	Written reprimand.	Suspension.	Suspension with review for dismissal.
14.	Inappropriate conduct in the work place and/or inability to get along with coworkers which adversely affects operational efficiency. <i>(Formerly 15.0201; 15.0214; 15.0220; 15.0225)</i>	Oral warning.	Written reprimand.	Suspension.	Suspension with review for dismissal.
15.	The use of abusive or threatening language or otherwise threatening.	Written reprimand.	Suspension.	Suspension with review for dismissal.	--

	intimidating, coercive, or harassing conduct towards a superior or employee. <i>(Formerly 15.0201; 15.0214; 15.0220; 15.0225)</i>				
16.	Fighting or engaging in a physical altercation and/or provoking a fight or physical altercation. <i>(Formerly 15.0201)</i>	Suspension with review for dismissal.	--	--	--
17.	Engaging in intentional acts while on duty which result, or could result, in damage and/or injury to self or others, State property, or citizens. <i>(Formerly 15.0202; 15.0203)</i>	Written reprimand.	Suspension with review for dismissal.	--	--
18.	Unauthorized use and/or removal of State property, records, or any other materials from State premises. <i>(New)</i>	Written reprimand.	Suspension with review for dismissal.	--	--
19.	Possession of, consumption of, or being under the influence of intoxicating beverages or illegal drugs during working hours, on State property, or in a State-owned vehicle. <i>(Formerly 15.0211)</i>	Suspension with review for dismissal.	--	--	--
20.	Selling or distributing illegal drugs and/or intoxicants on State property and/or during working hours. <i>(Formerly 15.0211)</i>	Suspension with review for dismissal.	--	--	--

21.	Soliciting or accepting any gift, loan, favor, or other compensation under circumstances from which it could reasonably be inferred that a significant purpose of the donor was to influence the employee in the performance of his or her official duties. This provision does not prohibit those items permitted in Delaware Supreme Court Administrative Directive Number 115, Code of Conduct for Court Employees. <i>(Formerly 15.0209)</i>	Suspension with review for dismissal.	--	--	--
22.	Theft or other misappropriation of State property. <i>(Formerly 15.0202)</i>	Suspension with review for dismissal.	--	--	--
23.	Falsification of State forms or records, including employment applications, daily work sheets, attendance records; willful misrepresentation of facts; forging another person's signature. <i>(Formerly 15.0210)</i>	Suspension with review for dismissal.	--	--	--
24.	Conviction of a criminal offense; conviction of a felony or Class A misdemeanor. <i>(Formerly 15.0205)</i>	Suspension with review for dismissal.	--	--	--

25.	Unlawful political or other activity contrary to the laws of the State of Delaware or the Delaware Supreme Court Administrative Number 115, Code of Conduct for Court Employees. <i>(Formerly 15.0217)</i>	Suspension with review for dismissal.	--	--	--
26.	Failure to comply with the Military Selective Service Act. <i>(Formerly 15.0206)</i>	Suspension with review for dismissal.	--	--	--
27.	Failure to pay legal debts or to reimburse the State for funds due (see 29 Del.C. §5103). <i>(Formerly 15.0215)</i>	Suspension with review for dismissal.	--	--	--
28.	Abuse or mistreatment of those charged to the care or responsibility of an employee. <i>(Formerly 15.0219)</i>	Suspension with review for dismissal.	--	--	--

APPENDIX B
EMPLOYMENT RELATIONS PROCEDURES FOR THE JUDICIAL BRANCH
(Applicable to non-judicial, non-merit employees)

1. General Provisions

1.1. Scope.

The Procedures shall apply to:

(a) All non-judicial employees in the Judicial Branch except the following:

(1) employees who are in the Merit system;

(2) confidential and non-classified employees as defined in Section 1.3 of the Judicial Branch Personnel Rules;

(3) supervisory employees as defined in 19 *Del. C.* § 1302.

(b) Judicial Branch employers; and

(c) Employee organizations representing Judicial Branch employees.

1.2. Computation of Time

(a) In computing any period of time prescribed by or allowed by the Act, these Procedures or an Order of the Hearing Officer, the day of the act or event after which the designated period of time begins to run shall be included. The last day of the period so computed is to be included, unless it is a Saturday, Sunday or legal holiday, in which event the period shall run until the end of the next day which is neither a Saturday, Sunday or legal holiday.

(b) Whenever a party has the right or is required to do some act or take action within a prescribed period after service of a notice or other paper, and the notice or other paper is served by mail, three (3) days shall be added to the prescribed period; provided, however, that three additional days shall not be added to any extension of such time that may have been granted.

(c) When these Procedures require the filing of any document with the Administrator, such document must be received by the Administrator or the officer or agent designated to receive such document before the close of business on the last day of the time limit, if any, for such filing.

1.3. Form of Documents

(a) All documents shall clearly show the title of the proceeding and the case number.

(b) Any document or papers filed with the Administrator shall be filed with two (2) copies in addition to the original.

(c) The original of each document shall be signed by the filing party, by an attorney or representative of record for the party, or by an officer of the party, and shall contain the addresses and telephone numbers of the person signing it.

1.4. Service and Filing of Documents: Proof of Service

(a) Every document filed with the Administrator shall be served by the filing party upon all other parties to the proceedings, and shall include an affidavit of service naming all other parties and attorneys or representatives, if any, upon whom concurrent service was made. Service is defined as any method reasonably intended to provide timely written notice to those required by the Act to be so notified and includes, but is not limited to, mail and/or personal delivery.

(b) Service upon an attorney or representative of record described in section 1.6 shall constitute service upon the party.

(c) Filing with the Administrator shall be complete when the document is received in the office of the Administrator.

(d) Service shall be complete upon personal delivery or depositing the message with the United States mail, properly addressed and stamped.

1.5. Records and Dockets

The official dockets and all original papers pertaining to proceedings under this Chapter shall be maintained at the principal office of the Administrator.

1.6. Appearances

Any attorney or other representative of a party desiring to participate in any proceeding before a Hearing Officer and who wishes to be served with all papers shall file an appearance either by letter or by oral request at a hearing.

1.7. Joinder of Parties

(a) No proceedings shall be dismissed because of nonjoinder or misjoinder of parties.

(b) Upon motion of any party or upon motion of the Hearing Officer, parties may be added, dropped or substituted at any stage of the proceedings, upon such terms as the Hearing Officer, may deem just and proper. Such motions shall be made at or prior to the first hearing in any such proceeding unless good and sufficient cause is shown why it could not have been made at such time. Failure to so move will be deemed a waiver of all objections to a nonjoinder or misjoinder.

1.8. Intervention

Any party desiring to intervene shall make a motion for such intervention, stating the grounds upon which such party claims to have an interest in the petition. The party desiring to intervene shall send a copy of the motion to intervene to all parties who are named in the petition.

1.9. Consolidation or Severance

(a) Any two or more proceedings may be consolidated by the Hearing Officer in his or her discretion, or upon the motion of either party, with the approval of the Hearing Officer.

(b) Any proceeding may be severed by the Hearing Officer in his or her discretion, or upon the motion of either party, with the approval of the Hearing Officer.

1.10. Construction of the Procedures

The Procedures set forth are to be liberally construed for the accomplishment of these purposes and may be waived or suspended by the Hearing Officer or Administrator at any time and in any proceeding unless such action results in depriving a party of substantial rights.

1.11. Timeliness

Notwithstanding the provisions of section 1.10, the Hearing Officer shall strictly construe all time limitations contained in the Act and in these Procedures.

2. Definitions

The following words and terms, when used in these Procedures shall have the following meanings. In addition the definitions contained in 19 *Del. C.* § 1302 are incorporated herein by reference, except if there is a conflict between the definitions, then the definition contained within these Procedures shall apply.

(a) “Act”

The Public Employment Relations Act, 19 *Del. C.* Chapter 13.

(b) “Administrator”

The employment relations administrator for the Judicial Branch, who shall be the State Court Administrator or the designee of the State Court Administrator.

(c) “Hearing Officer”

An attorney appointed by the Administrator from a panel created by the Chief Justice of attorneys knowledgeable about employment law who are willing to be appointed to hear employment relations cases for the Judicial Branch.

(e) “Judicial Branch Employee”

An employee to whom these Procedures apply in accordance with section 1.1 of these Procedures.

(f) “Judicial Branch Employer”

A court or Judicial Branch agency which employs Judicial Branch employees.

(g) “Party”

Any Judicial Branch employee, group of Judicial Branch employees, employee organization or Judicial Branch employer filing or named in any proceeding under this Chapter.

3. Representation Proceedings

3.1. Bars to Petitions for Recognition

A representation petition shall be barred if:

(a) A valid majority status determination has been conducted for substantially the same appropriate bargaining unit during the previous twelve (12) months, or a certification of representative has been issued.

(b) There is an existing labor management agreement of three (3) years or less covering the employees in the proposed bargaining unit, provided that, a petition may be filed during the period between the 180th and 120th days before the expiration of the existing agreement.

(c) For contracts with a fixed term longer than three (3) years, the existing contract shall act as a bar only for the first three (3) years and a petition may be filed during the period between the 180th and 120th days before the expiration of the third year of the agreement.

3.2. Filing and Contents of Petition for Bargaining Unit Determination and Certification

A petition for bargaining unit determination and/or certification of exclusive bargaining representative may be filed by an employee organization subject to 19 *Del.C.* §1311(e)([Attachment A](#)). Any such petitions shall contain the following:

(a) Name, address and telephone number of the Judicial Branch employer and the name and title of the person to contact, if known;

(b) In case of petitions seeking a bargaining unit determination under 19 *Del.C.* §1310, a description of the bargaining unit claimed by the petitioner to be appropriate for the purpose of exclusive representation. Such descriptions shall indicate the general classifications of employees sought to be included and those sought to be excluded, and the approximate number of employees in the unit claimed to be appropriate;

(c) Name, address and telephone number of the recognized or certified exclusive representative, if any, that represents all or part of the employees within the bargaining unit claimed to be appropriate. If the exclusive representative is currently certified, the date of such certification and expiration of any applicable contract, if known to the petitioner;

(d) Any other relevant facts;

(e) Name and affiliation, if any, of the petitioner and its address and telephone number;

(f) The signature of the petitioner or the petitioner's representative, including title and telephone number; and

(g) A petition for bargaining unit determination and/or certification shall be accompanied by the showing of interest required by 19 *Del.C.* §1310 ([Attachment B](#)).

3.3. Contents of Petition for Decertification

A petition for decertification may be filed by a Judicial Branch employee or group of Judicial Branch employees with the Administrator, subject to 19 *Del.C.* §1311(b) ([Attachment C](#)). An employee organization or a Judicial Branch employer may not file a petition for decertification. A petition for decertification shall contain the following:

(a) A statement that the employee organization presently certified as the exclusive representative is no longer the choice of the majority of the Judicial Branch employees in the appropriate bargaining unit;

(b) A showing of interest required by 19 *Del.C.* §1311(b);

(c) Conform to the time periods required by 19 *Del.C.* §1311(b).

3.4. Petition Validation

(a) Validation of Petition: The Administrator shall review the petition for the purpose of determining whether the petition satisfies the requirements of sections 3.1, 3.2 and/or 3.3. If the petition is not properly filed and/or if it is not accompanied by the requisite number of valid signatures, the Administrator shall dismiss the petition. Upon request of

the Administrator, the Judicial Branch employer shall, within ten (10) days from the date of such request, supply the following:

(i) Written verification of the total number of employees in the proposed bargaining unit and a list of all employees in the proposed bargaining unit, including their classifications and work sites. This verification shall include the names of those employees who did not work during the most recent payroll period because they were ill, on vacation or otherwise on leave of absence. If the employer fails to supply the requested information within the time specified, the Administrator shall assume the petitioner has submitted the requisite number of valid signatures.

(ii) In the case of a certification petition, the employer shall also file, in writing, any objections it may have to the bargaining unit requested in the petition. Such objections are to be made with specific reference to the basis for each objection.

(b) Review of the Administrator's Petition Validation Decision: Any objections to the validation process shall be filed with the Administrator, in writing, within five (5) days of the date upon which the Notice of Petition Validation is received. Any objections filed will be resolved by the Administrator within fourteen (14) days of their receipt. Any such decision issued by the Administrator in response to objections to the validation process shall be interlocutory and shall be subject to appeal to a Hearing Officer once a final determination is made on the petition itself.

(c) Notice to the Parties: Upon validating the petition, the Administrator shall notify the petitioner, the employer and, in the case of a decertification petition, the exclusive bargaining representative. A Notice of Certification/Decertification Petition shall be issued by the Administrator and the employer shall be required to immediately post copies of this notice in a conspicuous place in each building or area where affected employees work and in the primary administrative office of the Judicial Branch employer.

(d) Stipulation of the Parties: If the employee organization and the Judicial Branch employer agree on the appropriate bargaining unit, the parties shall submit to the Administrator a stipulation setting forth the agreement of the parties which may then be approved by the Administrator unless the Administrator objects to the stipulated bargaining unit definition. The Administrator may object to the stipulation only if the stipulation is contrary to law or otherwise violates applicable Procedures. If necessary, the Administrator shall notify the parties of his/her objections within seven (7) days of the receipt of the stipulation. If there are no objections, the Administrator shall issue a Bargaining Unit Determination. The employer shall be required to immediately post copies of this notice in a conspicuous place in each building or area where affected employees work and in the primary administrative office of the Judicial Branch employer.

(e) Hearings: Whenever bargaining unit appropriateness is properly at issue in a petition, the Administrator shall appoint a Hearing Officer from the panel of attorneys

established by the Chief Justice to conduct a hearing for the purpose of receiving evidence necessary for resolution of the appropriateness issue(s). This hearing, when necessary, shall be convened within twenty-one (21) days of the filing of an objection to the proposed bargaining unit. Such hearing shall be conducted in accordance with the Procedures set forth in section 6.

(f) Bargaining Unit Determination: In making a determination as to the appropriate bargaining unit, the Hearing Officer shall consider community of interests including such factors as the similarity of duties, skills and working conditions of the employees involved; the history and extent of organization; the recommendations of the parties involved; the effect of overfragmentation of bargaining units on the efficient administration of government; and such other factors as the Hearing Officer may deem to be relevant. Such consideration must include any other statutory requirements set forth in 19 *Del.C.* §1310. Upon reaching his/her decision, the Hearing Officer shall issue a Notice of Bargaining Unit Determination, and where appropriate, order a representation election be held within thirty (30) days. The employer shall be required to immediately post copies of this notice in a conspicuous place in each building or area where affected employees work and in the primary administrative office of the Judicial Branch employer.

(g) Review of the Hearing Officer's Decision: The Hearing Officer's decision as to the appropriate bargaining unit shall be subject to review by the Chief Justice or his or her designee in accordance with the procedures set forth in section 6.4. There shall be no further appeal.

(h) Modification of a Bargaining Unit: In the event that there is a substantial modification in the nature of the duties and working conditions of a position within the bargaining unit, or a new position is created which is not covered by the existing bargaining unit definition, or there is some other compelling reason for the Administrator to consider modifying the designated bargaining unit, the Judicial Branch employer and/or the exclusive bargaining representative may file a petition with the Administrator which shall include the following:

(i) The name of the employer;

(ii) The name of the exclusive representative;

(iii) A description of the bargaining unit;

(iv) A brief statement explaining the reasons for a modification of the bargaining unit;

(v) A petition for modification of the designated bargaining unit shall be decided in accordance with the relevant Procedures contained within section 3 of these Procedures. ([Attachment D](#)).

(i) Joint petition to transfer positions: Joint petitions to transfer certain positions between their units may be filed by two or more certified exclusive representatives of the same Judicial Branch employer with the Administrator, consistent with 19 *Del.C.* §1310(g). The Administrator shall appoint a Hearing Officer from the panel of attorneys established by the Chief Justice to make a determination as to the appropriateness of the bargaining unit into which the Judicial Branch employees are to be transferred. If the Hearing Officer determines that the bargaining unit into which the employees are to be transferred is not appropriate, the joint petition shall be denied and the status quo ante shall remain. If the Hearing Officer determines that the bargaining unit is appropriate, the Administrator shall hold an election on such joint petitions to transfer, consistent with 19 *Del.C.* §1310(g). The exclusive bargaining representative that receives the majority of the votes of those voting in the election shall be declared the exclusive bargaining representative for those positions.

3.5. Posting of Notice of Petition

Upon receipt of a petition under 19 *Del. C* § 1310 or 1311, the Administrator shall furnish the Judicial Branch employer with Notices of the filing of the petition, which shall be posted in all places where notices affecting Judicial Branch employees involved in the proceeding are normally posted. The Notice shall remain posted for a period of ten (10) days from the date of receipt by the Judicial Branch employer.

3.6. Employee Organization

If, under the provisions of 19 *Del.C.* §1311(c), an employee organization other than the petitioner seeks to be included on the election ballot, it must submit the required ten percent (10%) showing of interest within ten (10) days from the date the Notice of Petition or Notice of Bargaining Unit Determination is posted by the Judicial Branch employer. In the case of a decertification election, the incumbent exclusive representative shall automatically be placed on the ballot, subject to the provisions of section 4.1(b) concerning runoff elections.

3.7. Showing of Interest

The signatures constituting the showing of interest under 19 *Del.C.* §1310 or §1311, shall not be disclosed to any of the parties. The Administrator shall determine the adequacy of the showing of interest as part of his or her investigation of the petition ([Attachment B](#)).

4. Election Procedures

4.1. Ballots

(a) All elections shall be by secret ballot, at times, places and in such manner as the Administrator may direct. Such elections shall be conducted by the Administrator, whose determination of all questions arising shall be final, subject, however, to review

by the Hearing Officer who shall be appointed by the Administrator if needed, and act in accordance with the Procedures set forth in section 6.

(b) Ballots shall be prepared and issued by the Administrator. Ballots shall contain the name of each representative and a choice of "No Representative". The place of priority on the ballot shall be determined by lot. In a runoff election, the choices listed shall be in the same places on the ballot with respect to each other as they were on the ballot for the prior inconclusive election.

(c) Elections shall be conducted within thirty (30) days after the issuance of either a Petition for Bargaining Unit Determination and Certification of Exclusive Bargaining Representative ([Attachment A](#)) or Notice of Decertification Petition ([Attachment C](#)). The date and time of an election shall be established by the Administrator who will consider any mutual agreement by the parties. Unless otherwise designated by the Administrator, elections shall occur on a work day between hours mutually agreed upon by the parties. A list of the voting locations and the designation of which employees will vote at those locations will be available at each location.

(d) Campaigning shall be controlled under 19 *Del. C.* §1307.

(e) Prior to the commencement of the election the Administrator shall designate the polling area and no electioneering of any kind shall take place within this area during the election period.

4.2. Notice of Election

(a) A Notice of Election ([Attachment E](#)) shall be posted in a conspicuous place in each building where affected employees work and in the primary administrative office of the Judicial Branch employer. The Notice of Election shall be posted at least ten (10) days prior to the election.

(b) The Administrator shall supply the Judicial Branch employer with the Notice of Election at least seventeen (17) days prior to the election. It shall be the responsibility of the employer to post the Notice of Election.

(c) The Judicial Branch employer shall complete and return the Certification of Posting form ([Attachment F](#)) to the Administrator.

4.3. Voter Eligibility/Lists of Voters

(a) Within seven (7) days after the Administrator has issued a Bargaining Unit Determination or a Notice of Decertification Petition, or otherwise directed that a representation election be conducted, the Judicial Branch employer must file with the Administrator an election eligibility list, containing the names and addresses of all eligible voters. The employer shall simultaneously provide copies of this list to all other

parties to the election. Failure by the employer to comply with this requirement may be grounds for setting aside the election whenever proper objections are filed.

(b) All Judicial Branch employees who are included within the designated bargaining unit and who were employed as of the end of the pay period which immediately precedes an election or who were on approved leave of absence shall be eligible to vote.

(c) At least seven (7) calendar days prior to the date of an election, the Judicial Branch employer shall submit to the Administrator and other parties appearing on the ballot, an alphabetical list of the names and classifications, and work sites of all eligible voters.

(d) Any challenges to the validity or completeness of the employee eligibility list must be received, in writing, by the Administrator not later than three (3) days prior to the date of the election. The writing shall set forth the reasons for the challenge. Listed employees who are not challenged as provided for above shall be eligible to vote and no further challenges to their eligibility will be honored at the polls.

4.4. Challenged Voters/Challenge Procedures

At the time of the elections:

(a) Any prospective voter may be challenged for cause.

(b) Any employee whose name does not appear upon the list certified by the Administrator as being a complete list of employees within the defined appropriate unit shall be challenged by the Administrator.

(c) A challenged voter shall vote but his ballot shall not be cast. It shall instead be sealed in a separate, unmarked envelope under the supervision of the Administrator and then inserted in a specially identifiable form envelope provided by the Administrator and retained by the Administrator.

(d) The challenged ballots shall only be referred to if they could affect the outcome of the election. If challenged ballots must be referred to, then each challenge shall first be resolved. Upon resolution of the challenge, if the ballots are legitimate, they shall be counted.

4.5. Observers

(a) The Judicial Branch employer and each employee organization which appears on the ballot shall be permitted to appoint one election observer and one alternate for each voting location. The Judicial Branch employer and each employee organization which appears on the ballot shall complete [Attachment G](#) and return it to the Administrator

seven (7) days prior to the election. Detailed instructions for the election observers are found in [Attachments H & I](#).

(b) The Judicial Branch employer and each employee organization which appears on the ballot shall also be permitted to appoint one representative to observe the official counting of the ballots by completing [Attachment J](#) and returning it to the Administrator seven (7) days prior to the election.

4.6. Counting of Ballots

(a) In certification elections, an exclusive representative must receive a majority of the valid votes cast to be certified as the employee representative designated or selected by the employees in the defined appropriate unit.

(b) In decertification elections, an exclusive representative is decertified when a majority of the valid votes cast are for decertification.

(c) The Administrator will conduct runoff elections not more than forty-five (45) days nor less than fifteen (15) days after an inconclusive election. The ballot in a runoff election shall contain the two choices on the original ballot that received the largest number of votes. Only one additional election shall be conducted pursuant to this section.

4.7. Voting Results

Upon completion of the counting of the ballots, the Administrator shall advise the authorized representatives of the parties of the voting results in writing ([Attachment K](#)).

4.8. Challenges and Exceptions

(a) Within five (5) days after receipt of the results of the voting, as provided for in 4.7 above, any party may file with the Administrator the original and two copies of objections to the conduct of the election or conduct affecting the results of the election. Such objections shall contain a statement of the reasons therefore. Copies of such objections shall simultaneously be served upon each of the other parties by the filing party and proof of service shall be filed with the Administrator.

(b) The original and two (2) copies of an answer to any filed objection may be filed with the Administrator within five (5) days from the date of service of the objections. Copies of any such answer shall simultaneously be served by every other party, by the responding party, with proof of service being filed with the Administrator. Any answer submitted shall contain a statement of facts upon which the refutation of the objection is based.

(c) If objections are filed to the conduct of an election or to conduct affecting the results of an election, or if challenged ballots are sufficient in number to possibly affect

the results of an election, the Administrator shall appoint a Hearing Officer to investigate such objections or challenges and to hold a hearing, if necessary, in accordance with the provisions of section 6. The Hearing Officer shall order the Administrator to certify the results of the election, or to set aside the previous election and order a new election.

(d) The decision of the Hearing Officer shall be subject to review by the Chief Justice or his or her designee in accordance with the procedures set forth in section 6.4. There shall be no further appeal.

5. Unfair Labor Proceedings

5.1. Pleadings

(a) The primary purpose of pleadings is the formation of issues. Consequently, all Procedures pertaining to pleadings shall be liberally construed towards effecting that end.

(b) All paragraphs of pleadings shall be individually numbered.

5.2. Filing of Charges

(a) A Judicial Branch employer, labor organization, and/or one or more employees may file a complaint alleging a violation of 19 *Del.C.* §1307. Such complaints must be filed within one hundred and eighty (180) days of the alleged violation. This limitation shall not be construed to prohibit introduction of evidence of conduct or activity occurring outside the statutory period, if the Hearing Officer finds it relevant to the question of commission of an unfair labor practice within the limitations period.

(b) All charges shall be filed with the Administrator in writing in the form of complaints and shall be signed and sworn to before any person authorized to administer oaths.

(c) The charge shall include the following information:

(1) The name, address, telephone number and affiliation, if any, of the charging party, and the title of any representative filing the charge.

(2) The name, address, and telephone number of the respondent or respondents, and any other party named in the charge.

(3) A clear and detailed statement of the facts constituting the alleged unfair labor practice, including the names of the individuals involved in the alleged unfair labor practice, the time, place of occurrence and nature of each particular act alleged, and reference to the specific provisions of the statute alleged to have been violated. Each fact shall be alleged in a separate paragraph with supporting documentation where applicable.

5.3. Answer to Charge

(a) The respondent shall have seven (7) days within which to file a written Answer. Such Answer shall be specific as to each allegation set forth in the complaint and contain supporting documentation, where applicable. Answers shall be signed by the persons filing them, sworn to before any person authorized to administer oaths and shall then be filed with the Administrator. A party who fails to file an Answer or to specifically deny allegations in the complaint shall be deemed to have admitted the averments contained in the complaint that are not denied.

(b) All new matter, including but not limited to affirmative defenses such as jurisdiction and the statute of limitations, shall be pleaded in the Answer under a separate heading entitled "New Matter".

5.4. Response to Answer

As to New Matter which is pleaded in the Answer in accord with Procedure 5.3(b) above, the Charging Party shall have five (5) days within which to file a written Response. Such Response should be specific as to each paragraph of new matter set forth in the Answer and contain supporting documentation where applicable. Responses shall be signed by the persons filing them and shall be filed with the Administrator. A party who fails to file a Response or to specifically deny allegations of new matter in the Answer shall be deemed to have admitted the new matter contained in the Answer that was not denied.

5.5. Stipulation of Facts

Following the filing of a Complaint, an Answer by the Respondent and a Response by the Petitioner, the parties may jointly submit to the Administrator a signed stipulation of facts, without a hearing. The request shall state whether the parties desire to present oral argument and/or file briefs.

5.6. Decision or Probable Cause Determination

(a) Upon receiving the Complaint, the Answer and the Response, the Administrator shall appoint a Hearing Officer. The Hearing Officer has the authority to prevent any unfair labor practice described in 19 *Del.C.* §1307, and to issue appropriate remedial orders. The Hearing Officer shall determine whether there is probable cause to believe that an unfair labor practice may have occurred. If the Hearing Officer determines that there is no probable cause to believe that an unfair labor practice has occurred, the party bringing the complaint may file an appeal to the Chief Justice or his or her designee in accordance with the procedures set forth in section 6.4. There shall be no further appeal.

(b) If the Hearing Officer determines that an unfair labor practice has, or may have occurred, he/she shall, where possible, issue a decision based upon the pleadings;

otherwise the Hearing Officer shall issue a probable cause determination setting forth the specific unfair labor practice which may have occurred. Each of the parties shall receive a copy of this determination and a notice of hearing containing the date and place of the hearing, which shall be conducted in accordance with the provisions of section 6. A decision of the Hearing Officer may be appealed to the Chief Justice or his or her designee in accordance with the procedures set forth in section 6.4. There shall be no further appeal.

5.7. Informal Conference

At any time during the processing of a Complaint, the Hearing Officer may, at his or her discretion, arrange for an informal conference of the parties for purposes such as clarifying issues, reviewing facts, or taking other steps deemed necessary for the fair and expeditious resolution of the issue.

5.8. Amendment of Complaint and/or Answer

(a) At the discretion of the Hearing Officer, upon due notice to all parties, any complaint may be amended, in such manner as the Hearing Officer may deem just and proper, at any time before the issuance of a final decision and order, as long as no new cause of action is added after the statute of limitations has run.

(b) Any complaint, amended complaint, or any part thereof, may be dismissed by the Hearing Officer on his or her own motion or any charge may, with the approval of the Hearing Officer, be withdrawn by motion of the complainant at any time before issuance of a final decision and order, upon due notice to all parties.

(c) Subject to the approval of the Hearing Officer, an Answer may be amended in a timely manner, upon motion of the party filing it. Such motion shall be in writing, unless made at the hearing and before commencement of the testimony. In the event the Complaint is prejudiced by the amendment, a motion for continuance will be granted.

5.9. Prosecuting Authority

All cases in which complaints are brought in a hearing shall be prosecuted by the representative of the party filing the charge.

5.10. Hearing

If, based upon the pleading, a hearing is determined to be necessary, the Hearing Officer shall, wherever possible, schedule a hearing to be held not later than thirty (30) days from the close of the pleadings. Such hearings shall be conducted in accordance with the provisions of section 6.

5.11. Unfair Labor Practice Determination

If the Hearing Officer determines that a party has engaged or is engaging in any unfair practice, the Hearing Officer shall state his/her findings of fact and conclusions of law and issue and cause to be served on such party an order requiring such party to cease and desist from such unfair practice and to take such reasonable affirmative action as will effectuate the policies of this Chapter, such as payment of damages and/or the reinstatement of an employee; provided, however, that the Hearing Officer shall not issue:

(a) Any order providing for binding interest arbitration on any or all issues arising in collective bargaining between the parties involved; or

(b) Any order, the effect of which is to compel concessions on any items arising in collective bargaining between the parties involved.

5.12. In addition, the Hearing Officer may issue orders providing such temporary or preliminary relief as he/she deems just and proper subject to the limitations of section 5.11.

5.13. The Administrator may petition the Court of Chancery for enforcement of any order issued under section 5.

6. Formal Hearings

6.1. Hearings Generally

(a) The Procedures set forth in this section shall apply to all hearings.

(b) All hearings shall be open to the public unless otherwise ordered by the Hearing Officer.

(c) All hearings shall be conducted by a Hearing Officer appointed by the Administrator from a panel established by the Chief Justice of attorneys who are knowledgeable in employment relations and are willing to serve as hearing officers for Judicial Branch employment relations matters. Payment for hearing officers shall be at a rate to be set by the Supreme Court. The Hearing Officer in any matter shall also be responsible for writing the decision on the matter heard.

(d) An official record shall be made of all formal hearings. If no objections to such transcript are filed with the Administrator within five (5) days of its issuance, the transcript shall become part of the record. Objections shall specify the matter objected to, the basis for the objection and the relief sought. The Hearing Officer may, in his or her discretion, order a hearing on the objections. The Hearing Officer shall make such changes as may be necessary to conform the transcript to the occurrences at the hearing and the conformed transcript shall then be duly certified by the Hearing Officer and shall

be filed as a part of the record in the case. The certified transcript shall be treated as official and a part of such record for purposes of review upon appeal and shall be considered as prima facie accurate whenever thereafter offered in evidence.

(e) The cost of the official record of the proceedings and the transcript required for the Chief Justice or his/her designee on appeal shall be the responsibility of the Supreme Court. Additional transcripts obtained from the Administrator shall be at the expense of the requesting party.

(f) The Hearing Officer shall have full authority to control the conduct of the hearing, including authority to admit or exclude evidence, question witnesses, rule upon motions and objections, and determine the order in which evidence shall be presented. The Hearing Officer in conducting a hearing shall not be bound by common law or statutory rules of evidence or by technical or formal rules of procedure. The Hearing Officer may exclude plainly irrelevant evidence, unduly repetitive evidence, rebuttal and cross examination. The testimony of witnesses shall be under oath and witnesses shall be sworn by the Hearing Officer, who shall also have the authority to take any action during the progress of the hearing which will properly effectuate the policy of the Act.

6.2. Decisions and Orders

Within thirty (30) days after the close of the record, the Hearing Officer shall issue a decision. The decision shall be in writing and contain a statement of the case, findings of fact, conclusions of law, and the appropriate remedy. A copy of the decision will be served upon each of the parties and the Administrator.

6.3. Briefs/Oral Argument

Prior to the issuance of a decision, the Hearing Officer may require the parties to submit briefs or present oral argument as to questions of law and appropriate remedies. A copy of any required brief shall be sent to the Administrator as well as to the Hearing Officer. The Hearing Officer shall establish, when necessary, appropriate guidelines for briefs, including schedule and length.

6.4. Review of the Hearing Officer's Decision

The Hearing Officer's decision shall be subject to review by the Chief Justice or the designee of the Chief Justice at the request of any party. A request for review must be filed with the Administrator within 15 days of the date upon which the decision was rendered. The Chief Justice or his or her designee shall render a decision within thirty (30) days from the date of the official close of the appeal record, or the receipt of briefs, or the receipt of the official transcript, or from the date of its receipt of the appeal, whichever is appropriate. There shall be no further appeal.



State of Delaware
Judicial Branch Employment Relations
Office of the Administrator
500 N. King Street, Suite 11600
Wilmington, Delaware 19801

Telephone: (302) 255-0096
Facsimile: (302) 255-2482

Petition for Bargaining Unit Determination and
Certification of Exclusive Bargaining Representative

PETITIONER'S NAME: _____

Affiliation: _____

Address: _____

Telephone #: _____

JUDICIAL BRANCH EMPLOYER: _____

Contact Person: _____

Address: _____

Telephone #: _____

DESCRIPTION OF BARGAINING UNIT APPROPRIATE FOR REPRESENTATION:

(Please indicate the general classifications of employees you are petitioning to include in the unit, as well as any you specifically intend to exclude)

Approximate Number of Employees in the Petitioned for Unit: _____

TERM OF ANY EXISTING COLLECTIVE BARGAINING AGREEMENT
AFFECTING EMPLOYEES IN THE PROPOSED UNIT: _____

(If applicable, please attach one copy of such agreement)

DATE OF MOST RECENT REPRESENTATION ELECTION, IF ANY: _____

ANY OTHER RELEVANT FACTORS: _____

This petition must be accompanied by authorization cards bearing the uncoerced signatures of thirty percent (30%) of the employees in the bargaining unit described by this petition. Authorization cards must be dated and are valid only for twelve (12) months following the signature date. The cards are confidential and will only be reviewed by the Administrator or designee in order to determine the adequacy of the showing of interest as part of the investigation of the petition.

Please forward this petition with the accompanying authorization cards to the Office of the Administrator.

Signature of Authorized Representative
Petitioner

Name: _____

Address (if different from that on Page 1)

Phone: _____

DATE: _____



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The purpose of this card is to represent to the Administrator of Judicial Branch Employment Relations that the requisite number of employees in the proposed or existing bargaining unit support the petition to:

_____ Create a bargaining unit of employees represented by _____

_____ Discontinue representation by the current bargaining representative _____

_____ Discontinue current representative and be represented by _____

PLEASE PRINT:

NAME: _____

SS#: _____

ADDRESS: _____

PHONE: _____

JOB TITLE: _____

EMPLOYER: _____

SIGNATURE: _____

DATE: _____



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DECERTIFICATION PETITION

Employees in the bargaining unit desire either to be represented by another bargaining representative or no longer wish to be represented by any bargaining representative.

Name of Employer: _____

Address: _____

Telephone No.: _____ Employer Representative to Contact: _____

Description of Bargaining Unit: _____

Number of Employees in Unit: _____

Currently Certified Bargaining Representative: _____

Expiration Date of Current Contract, if any: _____ (month, year)

I DECLARE THAT THE STATEMENTS CONTAINED HEREIN ARE TRUE TO THE BEST OF MY KNOWLEDGE AND BELIEF.

(Petitioner name and affiliation, if any)

BY: _____
(Signature of Person Filing Petition) (Title, if any)

Address: _____
(Street, City, State and Zip Code)

Telephone No.: _____ Date: _____

REQUIRED SHOWING OF INTEREST: In accordance with 19 *Del.C.* § 1311, the petition must be accompanied by the uncoerced signatures of at least 30% of the employees within the bargaining unit and allege that the employee organization currently certified is no longer the choice of the majority of the employees in the unit.

A decertification petition will only be entertained if filed not more than 180 days nor less than 120 days prior to the expiration of any existing collective bargaining agreement. 19 *Del.C.* § 1311(b).



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**PETITION FOR MODIFICATION OR CLARIFICATION OF
EXISTING CERTIFIED BARGAINING UNIT**

Petitioner must submit the original and one (1) copy of this petition to the Employment Relations Administrator.

The Petitioner alleges the following circumstances exist and requests that the Administrator proceed under his/her authority.

Purpose of Petition: (Check one)

- Modification of Certification** Petitioner seeks Amendment or Modification of the existing certified bargaining unit.
- Bargaining Unit Clarification** Petitioner alleges that there exists a question as to whether certain positions are included or excluded from currently certified unit.

Employer: _____

Employer's Address: _____

Employer's Phone No.: _____

Describe requested bargaining unit: (Positions to be included/excluded)

of Employees in Unit: **PRESENT** _____ **REQUESTED** _____

Certified Bargaining Representative: _____

Address: _____

Phone No.: _____ Expiration Date of Collective Bargaining Agreement: _____

I declare that the statements contained herein are true to the best of my knowledge and belief.

Petitioner: _____ Date: _____

Signature and Title (if any): _____

Address/Phone: _____

Please complete the questions on the reverse side of this form.

**QUESTIONNAIRE TO ACCOMPANY PETITION
FOR AMENDMENT OF CERTIFICATION**

This form must be completed by the Petitioner and submitted to the Administrator with the Amendment Petition.

Petitioner seeks to amend the bargaining unit consisting of: _____

by _____ adding _____ deleting the following classification(s):

If Adding Positions:

Is the classification a new position? _____

If yes, when was it created? _____

If it is not a new position, why was it omitted from earlier petitions involving this bargaining unit?

If this Amendment reflects a title change only, what was the former position title?

Have any job duties changed: _____

If yes, please explain: _____

If Deleting Positions:

Explain changes in circumstances which warrant a modification in the bargaining unit composition.

Date: _____

Signature: _____



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NOTICE OF ELECTION

PURPOSE OF ELECTION

AN ELECTION BY SECRET BALLOT WILL BE CONDUCTED, under the supervision of the Administrator of Employment Relations among eligible voters of the _____ bargaining unit, to determine the representative, if any, desired by them for the purpose of collective bargaining with their employer.

SECRET BALLOT

The election will be by SECRET ballot. Voters will be allowed to vote without interference, restraint or coercion. Electioneering will not be permitted at or near the polling places. Violations of these rules should be reported immediately to the Administrator, or agent of the Administrator in charge of the election.

An agent of the Administrator will hand a ballot to each eligible voter at the voting place. The voter will then mark his/her ballot in secret and fold it. The voter will then personally deposit the folded ballot in a ballot box under the supervision of an agent of the Administrator. A majority of the valid ballots cast will determine the results of the election.

A copy of the official ballot is included below.

AUTHORIZED OBSERVERS

Each of the interested parties may designate one observer and one alternate for each voting location. The observers shall be persons who are familiar with the employees normally assigned to the voting location. These observers will (a) act as checkers at the voting place; (b) assist in the identification of voters; (c) challenge voters and ballots; and (d) otherwise assist the Administrator or his/her agents.

Each of the interested parties shall also be permitted to appoint one representative to observe the official counting of the ballots.

ELIGIBILITY RULES

Employees defined under VOTING UNIT in this Notice of Election who did not work during the designated payroll period because they were ill or on vacation or temporarily laid off and employees in the military service of the United State who appear in person at the polls shall be eligible to vote.

CHALLENGE OF VOTERS

The challenge of a voter MUST be made before the voter has deposited his ballot in the ballot box.

ABSENTEE BALLOTS

Absentee ballots may be requested no later than five days prior to the scheduled election by eligible voters who are unable to participate in the election due to circumstances beyond their control. Such ballots will be mailed directly to the voter and votes so cast must be received in the office of the Administrator no later than twenty-four (24) hours prior to the scheduled election.

INFORMATION CONCERNING ELECTION

The ballot shall contain the name of any bargaining representative showing written proof of at least 10% representation of the Judicial Branch employees within the unit and, in every instance, a provision for a marking of no representation. Any employee who desires to obtain any further information concerning the terms and conditions under which this election is to be held or who desires to raise any question concerning the holding of an election, the voting unit, or eligibility rules may do so by communicating with the Administrator of Employment Relations, or his/her agent in charge of the election.

VOTING UNIT

[BARGAINING UNIT DEFINITION PRINTED HERE]

TIME AND PLACE OF ELECTION

DATE:

TIME:

PLACE:

OFFICIAL SECRET BALLOT

The purpose of this election is to determine whether the bargaining unit employees of (*Judicial Branch Employer name*) desire to be represented for the purpose of collective bargaining.

DO YOU WISH TO BE REPRESENTED FOR THE PURPOSE OF COLLECTIVE BARGAINING BY:

Labor Organization Name

Labor Organization Name

No Representative

Mark only one X on your ballot, inside one square.
Do not sign your name.
Fold your ballot and deposit it personally in the ballot box.



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Office of the Administrator
500 N. King Street, Suite 11600
Wilmington, DE 19801

RE: Representation Petition No. _____

CERTIFICATE OF POSTING

This is to advise you that, per your request a copy of the Notice of Election in the above-referenced matter was posted in a conspicuous place at every place of employment of affected employees and in the offices of the employer on _____
_____ (date).

Signature

Name & position (please print or type)

Date

The employer is requested to complete this form designating the date upon which the posting of the named Notice was completed and return this form to the Administrator on or before _____ (date). You may file this document by facsimile transmission at (302) 255-2482 or by e-mail to: patricia.dienno@state.de.us



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DESIGNATION OF ELECTION OBSERVERS

(Name of employee organization or Judicial Branch employer)

The below named observers are hereby designated to serve as election observers to witness the casting of the ballots in the location noted below on _____.
(Day and Date)

NAME

POSITION

Location and balloting time

Observer: _____

Mailing Address: _____

Alternate: _____

Mailing Address: _____

This form is to be completed, signed by the official designated below and received in the Office of the Administrator no later than 4:30 p.m. on _____.
(Date)

Instructions will be mailed directly to the observers and alternates named above:

Designated Rep: _____

Organization: _____

Date: _____

You may file this form with the Administrator by facsimile at (302) 255-2482.



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INSTRUCTIONS TO ELECTION OBSERVERS

DUTIES (General):

1. Act as checkers and watchers.
2. Challenge voters and ballots. Voters may be challenged only for good cause.
3. Otherwise assist as requested by the agent(s) of the Administrator.

THINGS TO DO (General):

1. Check off votes on master eligibility list.
2. Observe that only one voter occupies the voting area at any one time.
3. Observe that each voter deposits a ballot in the ballot box.
4. Observe that each voter leaves the voting room immediately after depositing his/her ballot.
5. Observe that the ballot box is sealed before it leaves the polling place.
6. Report any irregularities to the Administrator's agent as soon as noticed.
7. BE ON TIME. Observers are required to report to the polling area fifteen (15) minutes prior to the scheduled election period.

THINGS NOT TO DO (Specific):

1. Do not give any help to any voter.
2. Do not leave the polling place without the Administrator's agent's consent.
3. Do not wear any indication of the public employer or employee organization which you represent. This includes badges, buttons, placards, electioneering devices, etc., including advertising on any article of clothing. The Administrator's agent is the sole arbiter as to the type of identification to be worn during the election.
4. Do not bring a list of voters. The Administrator's agent shall have the only list of voters allowed in the polling area.

You should enter upon this task with a fair and open mind. Conduct yourself so that no one can find fault with your actions during the election. You are here to see that the election is conducted in a fair and impartial manner, so that each eligible voter has a fair and equal chance to express himself/herself freely and in secret.

Administrator or Designee



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INSTRUCTIONS FOR ELECTION OFFICIALS
APPOINTED BY THE ADMINISTRATOR

The election official appointed by the Administrator is responsible for the conduct of this election. The Judicial Branch employer and each employee organization which appears on the ballot shall be permitted to appoint one election observer and one alternate for each voting location. Observers shall be persons who are familiar with the employees normally assigned to the working sites voting in a particular polling location.

1. Voting shall take place on _____.
(date, times and polling locations)
2. Each of the parties can designate a representative who may be present in the polling area and remain so during the course of the election. All other persons must remain outside the designated polling area while the polls are open.
3. There is to be no electioneering of any kind within the designated polling areas during the election period.
4. At the start of the election, the election official and the observers will check the ballot box to be sure it is empty. The election official will then seal the box. The election official, along with each observer, will sign the seal. Any absentee ballots received by the election official will be removed from their envelopes and deposited unread into the sealed ballot box.
5. Voters will report to the election official and identify themselves. Each voter will sign beside his/her printed name on the certified voter list. The election official will initial the signature. Except for challenged ballots, marked ballots are to be placed in the ballot box by the voting employee.
6. All employees appearing on the certified list are eligible to vote and challenges as to eligibility will not be honored. Challenges for cause are permitted.
7. Any prospective voter may be challenged for cause. Any employee whose name does not appear in the eligible voter list certified by the Administrator or hearing officer as being

the complete list of employees within the defined appropriate unit, shall be challenged by the agent of the Administrator. A voter challenged for cause shall vote but his/her ballot shall not be cast. It shall instead be sealed in a separate unmarked envelope under the supervision of the designated agent of the Administrator and then inserted in a specially identifiable form envelope provided by the Administrator and retained by its agent.

The challenged ballots shall only be referred to if they could affect the outcome of the election. If challenged ballots must be referred to, then each challenge shall first be resolved. Upon resolution of the challenge, if the ballots are legitimate, they shall be counted.

8. At the conclusion of the election, the ballot box is to be sealed and the seal is to be signed by the election official and each observer.
9. At the conclusion of the election, the Administrator or designee will supervise the counting of the ballots. The counting of the ballots will occur in the same location immediately following the closing of the polls.
10. The Judicial Branch employer and each employee organization which appears on the ballot shall be permitted to appoint one representative to observe the counting of the ballots.
11. (*Petitioning Labor Organization*) must receive a majority of the valid votes cast in order to be certified as the exclusive representative of the employees in the defined bargaining unit. Upon completion of the counting of the ballots, the Administrator shall advise the authorized representatives of the parties of the voting results in writing.
12. Any questions or problems arising during the election are to be resolved by the election official, who may request assistance, where necessary, from the Administrator.

Administrator or Designee

Dated: _____



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DESIGNATION OF COUNT OBSERVER

(Name of employee organization or Judicial Branch employer)

The below named observer is hereby designated to serve as election count observer to witness the counting of the ballots in the _____ (*Certification or Decertification*) election involving the _____ (bargaining unit description) on _____ (date). The counting of the ballots will be conducted in _____ at _____.
(location and address) (time of count)

NAME

POSITION

Observer: _____

Mailing Address: _____

Observer: _____

Mailing Address: _____

This form is to be completed and signed by the official designated below and must be received in the offices of the Administrator no later than 4:30 p.m. on _____ (date).

Designated Rep: _____

Organization: _____

You may file this form with the Administrator by facsimile at (302) 255-2482.



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NOTICE OF ELECTION RESULTS

Representation Petition No. _____

Type of Election:

Date of Election:

Employer:

Bargaining Unit :

Exclusive Representative:

ELECTION RESULTS:

HAVING RECEIVED A MAJORITY OF THE VALID BALLOTS CAST,
_____*(Name of Labor Organization)*, IS CERTIFIED
AS THE EXCLUSIVE BARGAINING REPRESENTATIVE OF THE BARGAINING UNIT OF ALL
EMPLOYEES IN THE BARGAINING UNIT DEFINED ABOVE.

Any objections to the conduct of this election or to conduct affecting the results of this election must be filed with the Administrator of Employment Relations, at the address above, within five (5) days of the posting of this Notice.

19 *Del.C.* §1311(e) provides that no election shall be held within twelve months from the date of a preceding valid election.

Administrator/Designee

DATED: _____



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ANNUAL EMPLOYEE ORGANIZATION REGISTRATION REPORT

YEAR _____

Every employee or organization and affiliates, which have or seek recognition as a representative of employees covered under the Judicial Branch Employment Relations Rules, is required as a condition of recognition, to file a registration report signed by its president or other appropriate and authorized officer. This registration report must be updated on an annual basis. Each employee organization and affiliates is also required to maintain with the Administrator a copy of its current constitution and by-laws, and any changes or amendments to these documents must be promptly reported.

ORGANIZATION NAME: _____

ADDRESS: _____

PHONE NUMBER: _____ **FAX NUMBER:** _____

E-MAIL ADDRESS: _____ **WEB SITE:** _____

FREQUENCY OF ELECTIONS: _____ **DATE OF NEXT ELECTIONS:** _____

I. OFFICERS:

(Name) _____ **Office Held** _____

Address: _____

Telephone Number: _____ **Fax Number:** _____

E-Mail Address: _____

(Name) _____ **Office Held** _____

Address: _____

Telephone Number: _____ **Fax Number:** _____

E-Mail Address: _____

(Name) _____ **Office Held** _____

Address: _____

Telephone Number: _____ **Fax Number:** _____

E-Mail Address: _____

(Name) _____ Office Held _____
Address: _____
Telephone Number: _____ Fax Number: _____
E-Mail Address: _____

II. PRINCIPAL PLACE OF BUSINESS:

Address: _____
Telephone Number: _____ Fax Number: _____
E-Mail Address: _____
Subsidiary Office Address & Telephone: _____

III. AFFILIATED ORGANIZATIONS:

IV. DESCRIPTION OF BARGAINING UNIT:

NUMBER OF EMPLOYEES IN BARGAINING UNIT: _____

EXPIRATION OF CURRENT AGREEMENT: _____

V. FEE SCHEDULES:

INITIATION FEE: _____

DUES: _____

OTHER FEES (specify): _____

VI. QUALIFICATIONS/RESTRICTIONS ON MEMBERSHIP:

Signature of President or other authorized officer required:

PRESIDENT

AUTHORIZED OFFICER

DATE: _____



State of Delaware
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Party Name
v. _____ No. _____

Party Name

CERTIFICATE OF SERVICE

Please take notice that the undersigned certifies that one copy of the

(Name the document being served: Unfair Labor Practice Charge, Answer, Petition, Motion)

was served on _____, on _____
(Name the party/individuals served) (date)

via _____
(name method of service: First Class U.S. Mail, Postage Prepaid, Hand Delivery, etc.)

List the names and addresses of individuals served:

Name: _____

Address: _____

Telephone Number: _____

DATED: _____



State of Delaware
Judicial Branch Employment Relations
Office of the Administrator
500 N. King Street, Suite 11600
Wilmington, Delaware 19801

Name of Party :
 :
 :
 v. : No. _____
 :
 :

Name of Respondent :

VERIFICATION AFFIDAVIT

Before me, a Notary Public, personally appeared _____,
who being duly sworn according to law, deposes and states that the facts set forth in the foregoing

(Name of document: unfair labor practice charge, motion, answer, etc.)
are true and correct, either of his/her own knowledge, or based on facts supplied to him/her.

Signature

Dated: _____

Sworn to and subscribed before me this _____ day of _____, 20__.

Notary Public (Seal)

My Commission Expires: