

# **Delaware**

## **Judicial Branch Personnel Rules**



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## **Chapter Index**

### Contents

|                                                                                                   |    |
|---------------------------------------------------------------------------------------------------|----|
| Definitions.....                                                                                  | 1  |
| Chapter 1. Introduction .....                                                                     | 7  |
| Chapter 2. Non-Discrimination.....                                                                | 9  |
| Chapter 3. Classification of Employees and Positions .....                                        | 10 |
| Chapter 4. Other Appointments .....                                                               | 14 |
| Chapter 5. Pay Plan.....                                                                          | 17 |
| Chapter 6. Payroll .....                                                                          | 24 |
| Chapter 7. Human Resource Records .....                                                           | 25 |
| Chapter 8. Employee Benefits .....                                                                | 26 |
| Chapter 9. Recruitment Process .....                                                              | 39 |
| Chapter 10. Probation .....                                                                       | 43 |
| Chapter 11. Employee Performance Plan, Performance Review, and Performance Improvement Plan ..... | 45 |
| Chapter 12. Employee Development and Communications .....                                         | 46 |
| Chapter 13. Employee Accountability .....                                                         | 47 |
| Chapter 14. Disciplinary Process .....                                                            | 48 |
| Chapter 15. The Grievance Procedure .....                                                         | 51 |
| Chapter 16. Layoff Procedures .....                                                               | 54 |
| Chapter 17. Employment Relations .....                                                            | 55 |
| Appendix A: Employment Relations Procedures for the Judicial Branch.....                          | 1  |
| Appendix B: Conversion Table .....                                                                | 18 |
| Appendix C: Chapter 14 Flowchart .....                                                            | 19 |
| Appendix D: Chapter 15 Flowchart.....                                                             | 20 |
| Appendix E: Acknowledgement Page .....                                                            | 21 |

## Definitions

**Administrative Office of the Courts (“AOC”)**. The administrative staff who assist the Chief Justice in carrying out their administrative responsibilities as the constitutional head of the Judicial Branch. The AOC includes the Judicial Information Center, the Filing and Payment Center, the Office of State Court Collections Enforcement, and the Law Libraries.

**Appointing Authority**. Individually or collective, 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 and Arms of the 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 Judicial Officers of the Court of Chancery ([10 Del. C. § 329](#)).
  - (b) Judicial secretaries: the Judicial Officer 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. Office of the Public Guardian
  - (a) The Public Guardian: appointed by the Governor for a term of six years ([12 Del. C. § 3981\(c\)](#)).

- (b) All other Employees: the Public Guardian ([12 Del. C. § 3984](#)).
- 9. Maternal and Child Death Review Commission
  - (a) Executive Director: the Executive Committee of the Commission ([31 Del. C. § 321\(b\)](#)).
  - (b) All other Employees: the Executive Director.
- 10. 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.
- 11. Delaware Nursing Home Residents Quality Assurance Commission
  - (a) All Employees: the Commission ([29 Del. C. § 7907\(e\)](#)).

**Appointment.** The conferring and accepting of an offer to occupy an established position from an Appointing Authority.

**Arms of the Supreme Court.** The regulatory agencies, consisting of employees and appointed volunteers, that assist the Chief Justice and Supreme Court in carrying out the responsibilities of governing all matters affecting the practice of law in Delaware. The Arms of the Supreme Court are the Office of Disciplinary Counsel, the Board on Professional Responsibility, the Continuing Legal Education Commission, the Board of Bar Examiners, the Lawyers Fund for Client Protection, and the Commission on Law and Technology.

**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 Delaware Department of Human Resources, which permits movement along a career path, without competition, upon meeting all promotional standards.

**Casual/Seasonal Employee.** An Employee who is employed on a temporary basis in the following situations:

1. *Casual assistance.*

Employee is needed on a sporadic or on-call basis where hours cannot be predetermined and vary greatly from week to week. Such employees may be used as needed.

2. *Seasonal assistance.*

Employee is needed for peak operating seasons not to exceed 9 months.

3. *Institutional assistance.*

Employee is needed to provide optimum staffing levels for clients or to maintain security in an institution. Such employees may be used as needed.

*4. Part-time assistance.*

Employee works less than 30 hours per week on a consistent basis. Such employees may be used as needed.

*5. Project assistance.*

Employee performs duties related to a specific project that has defined objectives and an established time period of completion that does not exceed 1 year.

*6. Primary incumbent replacement.*

Employee is needed to fulfill the job responsibilities of the primary incumbent who is unable to perform such responsibilities for an extended period of time. Such employees may be used for a maximum of 9 months or the length of time the incumbent is unable to perform the job responsibility, whichever is less.

*7. Intern.*

Employee is a college student enrolled in an academic program and working to gain job-related experience. Such employees may be used for a maximum of 9 months.

*8. Co-op student.*

Employee is a high school or college student enrolled in an academic program who is working to gain job-related experience. Such employees may work part time during the school year and full-time during times when school is not in session and may be used as needed.

*9. Summer/School break assistance.*

Employee is hired for a specific time period and uses this employment as an introduction to government and its services. Such employees may be used for a maximum of 9 months.

**Class.** Positions that are sufficiently similar in duties, responsibilities, and job requirements to use the same salary range and title.

**Classification or classification of job responsibilities.** The analysis of the duties and responsibilities of a position and its assignment by Delaware Department of Human Resources or the Chief Justice, through the State Court Administrator, to a class.

**Classification of Employee.** Categories of Judicial Branch Employees based on job responsibilities or pay grade. There are three categories of Employees – Classified, Non-Classified, or Confidential. These Rules may apply in whole or in part to an Employee based on the category to which they belong.

**Classified Employee.** See “Classification of Employee” or refer to Chapter 3.

**Confidential Employee.** See “Classification of Employee” or refer to Chapter 3.

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

**Contractor.** An individual providing service through a contractual relationship with the State either directly or via another employing organization. A Contractor is not a Judicial Branch Employee.

**Delaware Department of Human Resources (“DHR”).** The operational unit and employees reporting to the Director of Human Resources in the Executive Branch

**Disability.** A physical or mental impairment that substantially limits one or more of the major life activities of an individual, a record of such impairment, or being regarded as having such an impairment.

**Domestic Partner.** 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.

**Duty Hours.** The hours in which an Employee is expected to work based on operational needs or through an agreement with the Employee’s manager, such as flex-time or remote working hours.

**Employee.** An individual working for the Judicial Branch in a State budgeted position. Judicial Officers and Contractors are not Employees for purposes of these Rules.

**Employer.** Individually or collectively, a Court, Administrative Office of the Courts, or Nonjudicial agency.

**Essential Functions.** The fundamental job duties of an employment position that an Employee must be able to perform with or without a reasonable accommodation.

**FLSA Exempt Employee.** Employees that are not subject to the overtime or minimum wage requirements of the federal Fair Labor Standards Act (FLSA).

**FLSA Non-Exempt Employee.** Employees that are subject to the overtime or minimum wage requirements of the FLSA.

**Judicial Branch Former Merit Employee.** Judicial Branch Employees who were regulated by the Merit Rules on May 1, 2023 before the effective date of [S.B. 318](#), 151<sup>st</sup> Gen. Assembly (2022) on May 2, 2023. As a result of S.B. 318, all Judicial Branch Former Merit Employees are now categorized as Judicial Branch Classified Employees as of May 2, 2023, are regulated by the Judicial Branch Personnel Rules, but are provided additional rights under Chapters 14 and 15 of these Rules for as long as the Employee holds their position. Additional rights under Chapters 14

and 15 end when the Employee experiences a change in their position, such as a promotion, a transfer, a demotion, or a separation from Judicial Branch employment.

**Judicial Officer.** Individually or collective, a Judge, Magistrate, or Commissioner of any Court.

**Just Cause.** Just Cause is conduct by an Employee that is sufficient to justify the disciplinary action imposed by the Employer.

**Non-Classified Employee.** See “Classification of Employee” or refer to Chapter 3.

**Nonjudicial Agency.** A statutorily-created body that receives administrative support from the Administrative Office of the Courts but over which the Judicial Branch has no substantive supervisory authority. Nonjudicial Agencies include the Office of the Child Advocate; the Office of the Public Guardian; the Maternal and Child Death Review Commission; and the Delaware Nursing Home Residents Quality Assurance Commission.

**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 by the annual Budget Appropriation 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 2 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 more than 30 calendar days, except in the case of approved military leave.

**Select Market Variation (SMV).** Select 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.

**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 Rules 1.3.1, 1.3.2, and 1.3.3, who recommends hiring, separation, 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 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; service between December 7, 1941 to July 1, 1955; 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).

**Working Days.** The days on which the court is open for business Monday through Friday. Working days exclude Saturdays, Sundays, holidays and state closures (e.g. snow days).



## Chapter 1. Introduction

*This Chapter applies to all Judicial Branch Employees.*

**1.1. Scope.** The Judicial Branch Personnel Rules (“Rules”) are issued by the Chief Justice of the Delaware Supreme Court pursuant to Article IV § 13(1) of the Delaware Constitution. These Rules, and applicable provisions of the *Code of Conduct for Judicial Branch Employees*, statutory requirements, court rules, and other policies and procedures adopted by the Judicial Branch, apply to all Judicial Branch Employees working within the Branch, including: full-time Employees; part-time Employees; temporary Employees; and Casual/Seasonal Employees. These Rules do not apply to Judicial Officers or Contractors.

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

**1.3. Conflict with Delaware Code.** In the event of a conflict with the Delaware Code, the Delaware Code takes precedence over these Rules except for the rules outlining Employee Relations in Chapter 17 and Appendix A, which takes precedence over the Delaware Code.

**1.4. Collective Bargaining Agreements.** Collective Bargaining Agreements negotiated with the Employer take precedence over the Judicial Branch Personnel Rules as set forth. These Rules, *Code of Conduct for Judicial Branch Employees*, and all other court rules, policies, procedures, and statutory requirements apply to any item not covered by Collective Bargaining Agreements.

**1.5. Operating Procedures.** The Judicial Branch has the exclusive right to manage its operations and direct Employees as specifically outlined in these Rules.

**1.6. Limitation of Available Funds.** These Rules may not be used to justify spending more money than is appropriated by the General Assembly for the fiscal year.

**1.7. State Court Administrator’s Interpretations.** With the approval of the Chief Justice, the State Court Administrator may issue interpretations to implement, facilitate, or clarify these Rules.

**1.8. Judicial Branch Employee Relations Board.** The Chief Justice or their designee will appoint five members to serve on the Judicial Branch Employee Relations Board. The Board’s responsibilities will include hearing grievances and appeals submitted by Judicial Branch Former Merit Employees categorized as Judicial Branch Classified Employees on May 2, 2023, as a result of the passage of [S.B. 318](#), 151<sup>st</sup> Gen. Assembly (2022). The right of a Judicial Branch Former Merit Employee categorized as a Judicial Branch Classified Employee to appear in front of the Board ends when the Employee is promoted, demoted, transferred, or separated from Judicial Branch employment.

**1.9. Rule Clarifications.** Employees who have questions about these Rules should speak to their Supervisor or their Human Resources representative.

**1.10. 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.

## **Chapter 2. Non-Discrimination**

*This Chapter applies to all Judicial Branch Employees.*

**2.1.** Discrimination in any action covered by these Rules because of race, marital status, genetic information, pregnancy, disability, color, age (over 40), religion, sex, sexual orientation, gender identity, reproductive health decision, family responsibilities, military service, protective hairstyle, national origin, or any other legally recognized protected class or activity is prohibited.

## Chapter 3. Classification of Employees and Positions

*This Chapter applies to all Classified and Non-Classified Judicial Branch Employees. Confidential Employees are only covered by Rules 3.1.3 and 3.4.2.*

### **3.1. Classification of Employees.**

**3.1.1. Classified Employee.** Classified Employees are Judicial Branch Employees holding a budgeted position assigned to pay grade 15 or below. Classified Employees do not include:

- Contractors
- Temporary Employees.
- Casual/Seasonal Employees.
- Other positions identified in another category, such as Non-Classified or Confidential.

All Chapters of these Rules apply to Classified Employees except Rules 14.10 and 15.10 that only apply to Classified Employees who are Judicial Branch Former Merit Employees.

**3.1.1.2. Judicial Branch Former Merit Employee.** Judicial Branch Former Merit Employees are categorized as Classified Employees upon adoption of these Rules on May 2, 2023, **regardless of pay grade**. Rights to a final appeal to the Judicial Branch Employee Relations Board under Rules 14.10 and 15.10 end when the Employee is promoted, demoted, transferred, or separated from Judicial Branch employment and the Employee will be regulated like any other Judicial Branch Employee. Unionized Judicial Branch Former Merit Employees will continue to be regulated by the provisions of their Collective Bargaining Agreement unless they assume a non-unionized position, at which time the Employee will be regulated like any other Judicial Branch Employee.

*Example 1: Employee was hired by Family Court on February 1, 2022, as a judicial case processor I. At the time of hire, Employee was an employee to whom the Merit Rules applied. On May 2, 2023, Employee is still a Family Court judicial case processor I but is now a Judicial Branch Former Merit Employee categorized as a Classified Employee regulated by these Rules, not the Merit Rules. As a Judicial Branch Former Merit Employee, Employee has additional rights provided under Chapters 14 and 15 of these Rules that other Classified Employees do not have. On September 2023, Employee is promoted by Family Court to a judicial case processor II position. Employee no longer has the right to a final appeal under Rules 14.10 and 15.10 and is regulated like any other Judicial Branch Employee. A unionized Judicial Branch Former Merit Employee will continue to be regulated by the provision of their negotiated Collective Bargaining Agreement unless the Employee assume a non-unionized position, at which*

*time the Employee will be regulated like any other Judicial Branch Employee.*

*Example 2: Employee was hired by the Justice of the Peace Court on August 1, 2021, as a judicial case processor I. Employee is promoted by the Justice of the Peace Court to the position of judicial case processor II on February 2023. At the time of hire and promotion, Employee was an employee to whom the Merit Rules applied. On May 2, 2023, Employee is still a judicial case processor II with the Justice of the Peace Court but is now a Judicial Branch Former Merit Employee categorized as a Classified Employee regulated by these Rules, not the Merit Rules. As a Judicial Branch Former Merit Employee, Employee has additional rights provided under Chapters 14 and 15 of these Rules that other Classified Employees do not have. On November 2023, Employee accepts and transfers over to a judicial case processor II position in the Court of Common Pleas. Employee no longer has the right to a final appeal under Rules 14.10 and 15.10 and is regulated like any other Judicial Branch Classified Employee. A unionized Judicial Branch Former Merit Employee will continue to be regulated by the provision of their negotiated Collective Bargaining Agreement unless the Employee assume a non-unionized position, at which time the Employee will be regulated like any other Judicial Branch Employee.*

**3.1.2. Non-Classified Employee.** Judicial Branch Employees assigned to a pay grade 16 through 19 who have policy making, administrative, or managerial authority, unless such position is identified in another category. Non-Classified Employees serve at the pleasure of the Appointing Authority. All chapters of these Rules apply to Non-Classified Employees with the exception of Chapters 10, 11, 14, 15, and 17. Non-Classified Employees have a right to a pre-decision hearing pursuant to Rules 14.4. through 14.6.

**3.1.3. Confidential Employee.** Judicial Branch Employees who hold a position that is directly selected by and serves at the pleasure of a Judicial Officer or an Appointing Authority. This may include but is not limited to: judicial secretary, Magistrate in Chancery, 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; a line item position; or any other position as specified within an offer letter. With the exception of Chapters 1, 2, 3 (Rules 3.1.3. and 3.4.2. only), 5, 6, 7, 8, 12, and 13, confidential Employees are not covered by these Rules.

**3.2. Classification of Positions – Job Titles and Responsibilities.** This is a list of job classifications with current pay grade assignments maintained by the Delaware Department of Human Resources on its [classifications and compensation](#) webpage.

**3.2.1. Class Titles and Codes.** Class specifications contain the title and code identifying the Class, give examples of the characteristics of the Class, 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.

**3.2.2. Class Specifications.** Class specifications are mainly descriptive and not restrictive. References to specific job characteristics or examples of duties do not exclude other responsibilities of similar kind and quality.

**3.3. Duties.** 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 apply, and the Employee will be compensated appropriately from the first day of service in the higher position.

**3.3.1. Position Authorization.** The Judicial Branch will not hire more than the number of authorized positions through the Budget Appropriation Act. Revisions to the number of authorized positions must be accomplished in a manner set by the Chief Justice in accordance with guidelines established by the Delaware Department of Human Resources.

**3.4. Reclassification of Position.** A request for review of a position must be submitted to the Chief Justice through the State Court Administrator if one of these conditions exists:

1. There was a significant change in the duties and responsibilities of a position.
2. There was an alleged position classification or reclassification error.

The Chief Justice has exclusive authority to determine an Employee's classification status. If approved by the Chief Justice, the Administrative Office of the Courts will submit the reclassification request to the Delaware Department of Human Resources for approval. If the position is reclassified, the incumbent will receive a pay increase consistent with the provisions of Rule 5.10.

**3.4.1. Status of Incumbent Upon Reclassification of Position.** When a position occupied by an Employee is reclassified, the Employee is not required to serve a probationary period if they meet the minimum qualifications for the new Class and they have successfully completed an initial probationary period. No examination is required unless that examination is part of the job requirements or is related to the Employee's ability to perform the essential functions of the job.

**3.4.2.** Should the incumbent in a position not qualify for the position as reclassified, they will be transferred to a vacant position for which they are qualified. 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.

**3.4.3.** 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 agreement of the affected Employer. Movement from one level to another within approved Career Ladders is a promotion, not a reclassification.

## Chapter 4. Other Appointments

*This Chapter applies to all Judicial Branch Employees.*

**4.1. Casual/Seasonal Appointments.** Casual/Seasonal Employees are not covered by these Rules but are covered by the *Code of Conduct for Judicial Branch Employees*. They may be covered by collective bargaining agreements and by other State and Federal laws. 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 will not affect a particular person's standing for a permanent position.

**4.2. Permanent Part-Time Appointments.** Permanent part-time employment means the filling of an established benefit-eligible position at less than 37.5 hours per week, on a consistent basis. This definition does not apply to Casual/Seasonal positions. Permanent part-time Appointments accrue leave credit on a prorated basis. The acceptance or refusal of a permanent part-time Appointment does not affect a particular person's standing for a full-time position.

**4.3. 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 calendar 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.

**4.4. Emergency Appointment.** The Appointing Authority may make an emergency Appointment when there is an 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. Such Appointments cannot exceed 30 calendar days.

**4.5. Exceptional Appointment.** Appointing Authorities may employ individuals with disabilities through special programs administered by other State of Delaware agencies. If utilized, this type of employment will occur without competitive recruitment or a referral list. Exceptional appointees must successfully complete a trial work period, or pass a screening process, before being considered for a position within the Judicial Branch.

**4.6. Promotion.** Candidates selected for promotion must meet the position's job requirements. Vacancies will be filled by promotion wherever practical and in the best interest of the Employer. Consideration will 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 the rules of discrimination as outlined in Chapter 2 or any other procedures of these Rules, or (3) there has been a gross abuse of discretion in the selection process.

**4.6.1. 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 must be approved by the Chief Justice, through



the State Court Administrator. Such promotional Appointment will be limited to special circumstances where the Employer 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.

#### **4.7. Demotion.**

**4.7.1. Voluntary Demotion.** Employees may be placed in a lower pay grade position upon voluntarily requesting such action, when subject to lay off, for operational necessities, or for Just Cause, if they meet the job requirements for the lower pay grade position. When the Employer agrees to an Employee's requests for voluntary demotions that cross Employer lines, job posting requirements may be waived with approval of the Appointing Authority.

**4.7.2. Involuntary Demotion.** When an Employee is demoted for Just Cause, the Employee will be notified, in writing, by the Appointing Authority as to the reason for demotion. Such notice will include information regarding appeal rights, as outlined in these Rules. The rate of pay at the time of the demotion will be determined pursuant to Rule 5.7. Such pay will be a part of the demotion action and, as such, is subject to the application of the grievance procedure.

**4.8. Internal Transfer.** 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 Employer with or without competition. An Employee who wants to transfer from one Employer to another Employer must have the prior approval of the present and proposed Appointing Authorities. Such approval will not be unreasonably withheld.

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

**4.10. Dual Incumbency.** Dual incumbency is the concurrent occupancy of a single budgeted position by two individuals. A request for a dual incumbency must be submitted to the Chief Justice through the State Court Administrator. Upon recommendation by the Chief Justice, the Administrative Office of the Courts will submit the request to the Delaware Department of Human Resources for approval. The request must include a designated period of time for the dual incumbency, specific reasons justifying the need, and verification that funding is available to accommodate the request.

**4.11. Resolution of Issues.** To resolve litigation issues, grievances, or disputes between Employers within the Judicial Branch 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.

**4.12. Alternate Duty Assignments.** Consistent with applicable state and federal law, the Employer will 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 calendar 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 Employer's operational needs. Such request for extension will not be unreasonably denied.

## Chapter 5. Pay Plan

*This Chapter applies to all Judicial Branch Employees.*

**5.1. Pay Grades and Pay Rates.** Uniform pay schedules based on current legislation are issued by the Delaware Department of Human Resources. Each position classification has an assigned pay grade or a salary attributed to the position through the Budget Appropriation Act. The pay of Employees occupying positions in the Judicial Branch must follow the published rates set for the assigned pay grade or the salary attributed to the positions through the Budget Appropriation Act.

**5.2. Standard Work Week.** The standard work week for full-time Judicial Branch Employees is 37.5 hours as provided in the Budget Appropriation Act. Employees will be paid on the appropriate legislated pay scale. Work schedules will be established by the Appointing Authority to meet operational needs. Any future changes with FLSA implications must be approved by the Chief Justice.

**5.2.1. Permanent Part-Time Employees.** Permanent part-time benefit-eligible Employees will be paid the hourly rate on the appropriate pro-rata basis for hours worked consistent with the pay grade of the duties of the comparable full-time classification.

**5.3. Dual Employment.** Dual employment is the holding of a Judicial Branch position and another State of Delaware position or outside employment in the non-profit or private sectors, including self-employment. Prior written consent of the affected Employer is required for dual employment consistent with the *Code of Conduct for Judicial Branch Employees* and [29 Del. C. § 5821 et. seq.](#)

**5.3.1. Dual Employment Compensation From Another State of Delaware Position.** Employees on approved annual leave may receive additional compensation from another State agency or Employer within the Judicial Branch for work performed during normal duty hours, consistent with the *Code of Conduct for Judicial Branch Employees* and [29 Del. C. § 5821 et. seq.](#) When not on such leave, any additional compensation for work performed during normal duty hours will be deducted from the Employee's normal compensation and, if appropriate, disciplinary action may be taken. Overtime eligibility will be based on the FLSA and its implementing regulations.

**5.3.2. Dual Employment Compensation From Outside Employment.** Judicial Branch employment is the Employee's primary employment consistent with the *Code of Conduct for Judicial Branch Employees*. An Employee approved for dual employment cannot engage in outside employment during the Employee's normal duty hours or when on medically related paid leave.

**5.4. Starting Rate on Initial Appointment with the Judicial Branch.**

**5.4.1.** Upon initial Appointment with the Judicial Branch, an Employee must be paid a salary equal to at least the minimum 80% of the midpoint for their assigned pay grade, unless as provided by Rules 5.4.2., 5.4.3., 5.4.4., and 5.4.5.

**5.4.2.** The Appointing Authority may approve a starting rate upon initial hire at or above 85% of the midpoint up to 100% of the midpoint when an applicant's qualifications are clearly over and above those required as minimum pursuant to the class specification. For positions listed on the Selective Market Variation (SMV) Pay Table see Rule 5.4.4.

**5.4.3.** The Appointing Authority may approve an advanced salary request upon initial hire above 100% of the midpoint with approval from the Chief Justice, through the State Court Administrator. The request must contain substantial documentation submitted on the Delaware Department of Human Resources' Advanced Starting Salary Request Form, as to the applicant's exceptional qualifications. Budgetary integrity must be assured if a higher starting salary is requested.

**5.4.4. SMV Pay Table.** The Appointing Authority may approve an advanced salary request upon initial hire above 85% of midpoint of the SMV Pay Table with approval from the Chief Justice, through the State Court Administrator. The request must contain substantial documentation submitted on the Delaware Department of Human Resources' Advanced Starting Salary Request Form, as to the applicant's exceptional qualifications, and budgetary integrity must be assured if a higher starting salary is requested.

**5.4.5. Critical Shortage.** 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 will also have their pay rates set as stated above if their performance is satisfactory. Upon approval by the Chief Justice, the Administrative Office of the Courts will submit the request to the Delaware Department of Human Resources for approval.

**5.5. Transfers.** Any Judicial Branch Employee movement to a Class with the same pay grade is considered a transfer. Employees who transfer will be paid at the same percentage of midpoint.

**5.5.1. Transfer within SMV Pay Table.** Those Employees who transfer within the SMV Pay Table or approved alternative pay plan for the Class will have their salaries increased to the minimum of the SMV Pay Table.

**5.6. Promotion.** A promotion is the movement of a Judicial Branch Employee from their current pay grade to a higher pay grade within the Judicial Branch. Upon promotion, an Employee will 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 will 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 Administrative Office of the Courts will then submit the request to the Delaware Department of Human Resources for approval.

**5.6.1. Career Ladder Promotion.** Movement from one level to another within approved Career Ladders is a promotion, not a reclassification.

An Employee is eligible for consideration for the next level in a Career Ladder once they meet the minimum qualifications and performance requirements for the higher level and possess the ability to perform at that level. Once an Employee has entered a Career Ladder, they may not skip a level when progressing through the Career Ladder.

When an Employee is promoted in accordance with authorized Career Ladder promotional standards, the salary rate will be determined pursuant to Rule 5.6. The procedure used to process Career Ladder requests for an Employer will be approved by the Administrative Office of the Courts, with concurrence of the affected Employer.

**5.7. 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 will be recommended by the Employer and submitted to the Chief Justice, through the State Court Administrator, for approval. The rate of pay for Employees demoted for Just Cause will be set by the Employer within the pay range of the lower pay grade, and such pay will be a part of the demotion action and, as such, is subject to the application of the grievance procedure.

**5.8. Starting Rate On Reinstatement.** When an Employee is rehired into the same job classification after separation from State service of less than two years, and when separation was not due to discreditable circumstances, such Employee will receive the same salary as at the time of separation, plus any general salary increases. Any request for a higher salary will be made pursuant to Rule 5.6. regarding advanced salary requests at the time of promotion. When the separation from State service exceeds two years, the starting rate will be determined as if it were an initial Appointment.

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

## **5.10. Pay Rate After Reclassification or Pay Grade Change.**

**5.10.1.** Any Employee movement to a higher pay grade is a promotion and will be treated in accordance with Rule 5.6. Any Employee movement to a Class of the same pay grade is considered a transfer. Employees moving to a lower Class or pay grade will retain their former pay as long as they remain in that position.

**5.10.2.** Employees in positions reclassified to a lower Class not qualifying for SMV where their former Class qualified for a SMV will 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.

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

**5.10.4. Pay Increases.** Employees will receive the pay increase provided in the Budget Appropriation Act unless their latest performance review is unsatisfactory. If the unsatisfactory performance has already resulted in a reduction in pay grade, the Employee will receive the pay increase. Employees who are denied such increase will 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.

## **5.11. Pay for Overtime Service.**

**5.11.1. Compensation for Overtime Service for FLSA Covered Employees.** Employees classified as non-exempt under the FLSA, with a standard work week of 37.5 hours or an approved flex schedule and who are authorized to perform overtime service will be paid at 1.5 times their regular rate for any time worked over 37.5 hours per week. The form of pay, i.e. compensatory time off or additional pay, is at the Employer's discretion and will be agreed to in advance, subject to availability of funds. The regular rate of pay used to calculate an Employee's overtime rate will include all payments (e.g., shift differential). The Employer may assign reasonable periods of overtime to meet operational needs, subject to availability of funds.

**5.11.1.1. Overtime Service.** Any authorized service in excess of 37.5 hours by Employees in FLSA non-exempted Class under the FLSA will be overtime service. Employees working flexible schedules will be paid for overtime service in accordance with applicable regulations governing the fluctuating workweek method. [29 CFR 778.114.](#)

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

**5.11.1.3.** Hours worked include paid leave plus hours actually worked by the Employee.

**5.11.1.4. Prior Authorization to Accrue Overtime.** An Appointing Authority may prescribe, normally in advance, reasonable periods of overtime work to meet operational needs. An FLSA Non-Exempt Employee requesting overtime must obtain written authorization before the work is 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.

**5.11.1.5. Use of Compensatory Time for FLSA Non-Exempted Employees.** Compensatory time must be used within 180 calendar days of accrual or be forfeited unless failure to use the compensatory time off is due to an Employer exigency beyond the Employee's control. Under extenuating circumstances, the Chief Justice through the State Court Administrator may approve exceptions to this rule.

Compensatory time off is dependent upon the operational needs of the Employer and must be approved in the same manner as requests to use annual leave. Notwithstanding the foregoing, an Employee who has requested the use of such compensatory time, will be permitted by the Employee's manager to use such time within a reasonable period after making the request if the use of the compensatory time does not unduly disrupt the Employer's operations.

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 compensatory time off. Hours in excess of the 240 hours FLSA maximum will be paid overtime.

In the event of an Employee transfer within the Judicial Branch, any unused FLSA balance accrued within the last 180 days is transferable to the receiving Judicial Branch Employer. If the Employee moves outside of the Judicial Branch, these hours will be paid to the Employee.

**5.11.2. 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 Judicial Branch Employer and will not be paid to the Employee upon separation.

## **5.12. Compensation For Holidays.**

**5.12.1.** If the holiday falls on a day Employees would not have been scheduled to work, they will receive equivalent time off on a pro-rated basis.

**5.12.2.** Employees eligible for holiday pay and overtime compensation (FLSA non-exempt) who are authorized to work on a holiday will be compensated for the actual hours worked on the holiday at 1.5 times their regular rate of pay and will be granted credit hours for the actual holiday hours worked, not to exceed 7.5 hours.

Employees eligible for holiday pay, but not normally eligible for overtime compensation (FLSA exempt), who are required to work on a day observed as a legal holiday, will be awarded credit hours, in an amount equal to the number of hours worked during the holiday, not to exceed 7.5 hours.

Employees are encouraged to use these credits hours as soon as possible.

**5.12.3.** To qualify for pay or credit hours for a holiday not worked, Employees will be required to be in a paid status, for any portion of the day, on their last scheduled workday prior to the holiday and on their next scheduled workday after the holiday.

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

## **5.13. Shift Differential Pay.**

**5.13.1.** Shift differential is pay for working inconvenient hours and schedules authorized at the Employer's 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 Rule 5.13.2. are met.

**5.13.2.** Employees authorized by an Employer 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, will receive supplemental pay for the entire shift equal to 5% of the midpoint of their pay grade.

**5.13.3.** Employer may approve Employees on a rotating shift schedule to receive shift differential pay during the whole time they are assigned to the rotating shift.



**5.13.4.** 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 Rule 5.13.2. 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.

**5.13.5.** Employees on a fixed night shift or rotating shift will 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 workdays will terminate the shift differential for the entire period of absence. An Employer 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.

**5.13.6.** 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 must be submitted to the Chief Justice, through the State Court Administrator. Upon approval by the Chief Justice, the Administrative Office of the Courts will submit the request to the Delaware Department of Human Resources for approval.

**5.13.7.** Employees authorized and required by an Employer to work split shifts will receive supplemental pay for their entire shift equal to 5% of their pay grade midpoint.

**5.14. Call Back Pay.** FLSA Non-Exempt Employees who have left the worksite at the end of their scheduled shift and are called back for overtime service will be paid the greater of:

- Overtime pay under the FLSA or
- Four times their regular straight time hourly rate.

**5.15. Hazardous Duty Pay.** Employees may be eligible for hazardous duty pay, as determined by the Department of Human Resources and the Delaware Code. Compensation shall be set by the Budget Appropriation Act.

**5.16. Computing Overtime Pay.** For the purpose of computing overtime pay, the Employee's regular rate of pay is defined as the Employee's regular salary within their assigned pay grade, plus applicable shift differential, holiday pay, and call-back pay.

**5.17. Limitation of Available Funds.** These Rules may not be used to justify spending more money than is appropriated by the General Assembly for the fiscal year.

## Chapter 6. Payroll

*This Chapter applies to all Judicial Branch Employees.*

**6.1. Payroll Change.** An Appointing Authority may add an Employee to the payroll or change their salary or status only upon prior execution of the properly completed human resource transactions.

**6.2. Review of Payrolls.** No person will 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.

**6.3. Audit.** The Chief Justice, through the State Court Administrator, can request audits of the Judicial Branch payrolls and such other investigations as deemed necessary to assure compliance with the Delaware Code. An individual Employer may also perform audits on their individual payrolls.

**6.3.1.** Any payroll violations will be called immediately to the attention of the management of the appropriate court/Judicial Branch agency and may be reported to any of the following, as appropriate: Payroll Compliance Group, Division of Accounting; State Treasury; or the Office of the Auditor.

**6.3.2.** Thereafter, no payment will be made to any Employee whose salary rate has been questioned until the rate has been adjusted to the satisfaction of the Chief Justice.

**6.3.3.** An Employee may request a copy of their audited payroll and related documents.

**6.4. 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 7. Human Resource Records**

*This Chapter applies to all Judicial Branch Employees.*

**7.1. Human Resource Records.** Each Employer will establish and maintain a master personnel record for each Employee, including full-time, part-time, Casual/Seasonal, paid and unpaid interns, etc. The records will 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 stored either in physical (hard) copies or as electronically stored data. Personnel records are confidential and must be maintained as necessary to ensure their confidentiality. These and other Employee records will be readily available for review by the Employee's Appointing Authority or designee. Unauthorized disclosure of any portion of a State Employee's records is grounds for dismissal.

**7.2. Employee Access to Records.** Current Employees can access their records under the supervision of their Employer's Human Resources office. Employees must request an appointment in writing to examine such records. After obtaining approval from their Employer's Human Resources office, a date and time will be scheduled within 30 calendar days of the Employee's request. The Employee will be scheduled to examine their file under the supervision of the Employer's Human Resources representative. An Employee is not permitted to remove their personnel file, or parts of their personnel file, and make copies of their file's content.

**7.2.1. Former Employee Access to Records.** Per [19 Del. C. §§ 731 and 733](#), former Employees cannot remove their employment records from the premises or request a copy of such records.

**7.3. Human Resource Transactions.** All Appointments, separations, and other human resources transactions will be made as specified by these Rules.

## **Chapter 8. Employee Benefits**

*This Chapter applies to all Judicial Branch Employees.*

### **8.1. Holidays.**

**8.1.1.** The following days are legal holidays for Employees:

- New Year's Day
- Martin Luther King, Jr. Day
- Good Friday
- Memorial Day
- Juneteenth
- Independence Day
- Labor 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 Employees who live or work in Sussex County)
  - \*Living in Sussex County means the Employee's official residency as reflected in the State-wide electronic payroll system. Working in Sussex County means 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.

**8.1.2.** When a legal holiday falls on a Saturday, the prior business day will be the legal holiday. When a legal holiday falls on a Sunday, the next business day will be the legal holiday.

### **8.2. Annual Leave.**

**8.2.1. Accrual.** Full-time Employees accrue annual leave at the rate of 13.25 hours for each completed calendar month of service. Permanent part-time Employees accrue annual leave on a pro-rata basis, when applicable for work schedules totaling other than 37.5 hours per week. Accrual is credited to the Employee's leave account throughout the month but is not available for use until the first day of the following month.

*Example: Employee is hired on January 1<sup>st</sup>. On January 15<sup>th</sup>, they wish to take leave. Leave is denied because the 13.25 hours that they accumulate during the month of January is not available until February 1<sup>st</sup>.*

**8.2.1.1. Partial Month Accrual for Full-Time Employees when hired or separated from Judicial Branch employment.** The following table is to be used solely to calculate a full-time Employee's leave when an Employee is hired or is separated from Judicial Branch employment without completing a 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                           |

**8.2.1.2. Absences for Fractional Annual Leave Hours.** Planned absences in accordance with Annual Leave for a fraction of an hour will be charged as indicated. However, nothing prevents a Supervisor from using discretion and providing a flexible work arrangement to accommodate an Employee's needs, consistent with FLSA provisions and Delaware law. An unpaid meal break of at least thirty (30) consecutive minutes will be provided to Employees who work seven and one-half (7 ½) consecutive hours. The break must be given some time after the first two hours of work and before the last two hours of work.

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

**8.2.2. Usage.** All leave requests are subject to Employer's approval, taking into consideration Employee requests, operating requirements, and seniority and will be answered as soon as practicable. Leave may not be taken in excess of hours earned. Approved absences in accordance with Annual Leave for a fraction of an hour must be rounded up to .25 hour increments except that within the first quarter hour, absences of less than seven minutes will be rounded down.

**8.2.3.** Accrual continues during absence from work on a legal holiday; on paid leave with the exceptions of Rules 8.2.3.1. and 8.2.3.2.; on unpaid leave of 30 calendar days or less; while receiving a workers' compensation salary supplement pursuant to [29 Del. C. § 5933\(a\)](#); and while receiving a short-term disability supplement from the State sponsored Disability Insurance program pursuant to [29 Del. C. § 5253\(b\)](#). Accrual is credited to the Employee's leave account throughout the month but is not available for use until the first day of the following month. Accrual is on a pro-rata basis.

**8.2.3.1.** 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 [29 Del. C. § 5116\(b\)](#) (adoption leave).

**8.2.3.2.** Leave does not accrue when on paid Military Serious Illness/Injury leave pursuant to [29 Del. C. § 5933\(e\)](#).

**8.2.4.** Annual leave carried into a new calendar year may not exceed 318 hours. An Employee may request approval from the Appointing Authority, through the Court Administrator or Employer's Human Resources office, to carry over annual leave in excess of the maximum amount. Upon separation only, Employees will be paid for their accumulated annual leave at their current amount, excluding all supplemental and premium pays.

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

**8.2.6.** 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 will be credited with any unused annual leave for which they were not paid, unless the annual leave was accrued in advance. 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 will be paid by the former Judicial Branch Employer for any

annual leave the receiving State of Delaware Executive Branch or Legislative Branch agency refuses to accept.

**8.2.7.** 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, will be paid for any unused annual leave.

**8.2.8.** 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).

**8.2.9. Recording.** All annual leave credit and use will be recorded in the Employer's human resources records and are subject to review by the Appointing Authority. Pertinent data will be available for inspection by the respective Employee.

### **8.3. Sick Leave.**

**8.3.1. Accrual.** Employees accrue sick leave for each completed month's service at the rate of 9.50 hours. Accrual is on a pro-rated basis, when applicable for work schedules totaling other than 37.5 hours per week. Accrual is credited to the Employee leave account throughout the month but is not available for use until the first day of the following month.

*Example: Employee is hired on January 1<sup>st</sup>. On January 15<sup>th</sup>, they wish to take sick leave. Leave is denied because the 9.5 hours that they accumulate during the month of January is not available until February 1<sup>st</sup>.*

**8.3.1.1. Partial Month Accrual for Full-Time Employees when hired or separated from Judicial Branch employment.** The following table is to be used solely to calculate a full-time Employee's leave when an Employee is hired or is separated from Judicial Branch employment without completing a 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 |

**8.3.1.2. Absences for Fractional Sick Leave Hours.** Documented absences as a result of use of Sick Leave for a fraction of an hour will be charged as indicated. However, nothing prevents 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             |

**8.3.2.** Sick leave must be requested in advance whenever the need for sick leave is foreseeable. In instances of an unanticipated need to use sick leave, Employees must notify their Supervisor prior to the start of their scheduled shift or as soon as practicable, unless otherwise specified by the Employer's policy. Failure to do so or otherwise obtain approval will result in leave denial. An Employer may require documentation which justifies absences or verifies the ability to return to work. Documented absences as a result of use of Sick Leave for a fraction of an hour will be rounded up to .25 increments except that within the first quarter hour, absences of less than seven minutes will be rounded down.

**8.3.3.** Accrual continues during absence from work on a legal holiday; on paid leave with the exceptions of Rules 8.3.3.1. and 8.3.3.2.; on unpaid leave of 30 calendar days or less; while receiving a workers' compensation salary supplement pursuant to [29 Del. C. § 5933\(a\)](#); and while receiving a short-term disability supplement from the State sponsored Disability Insurance program pursuant to [29 Del. C. § 5253\(b\)](#). Accrual is credited to the Employee's leave account throughout the month but is not available for use until the first day of the following month. Accrual will be on a pro-rata basis.



**8.3.3.1.** 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 [29 Del. C. § 5116\(b\)](#).

**8.3.3.2.** Leave does not accrue when on paid Military Serious Illness/Injury leave pursuant to [29 Del. C. § 5933\(e\)](#).

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

**8.3.4.1.** 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.

**8.3.4.2.** At the death of the Employee, at the rate of one hour's pay for each hour of sick leave to the Employee's estate. The maximum payment is 675 hours.

**8.3.5. Usage.** Upon approval from their Supervisor, which will not be unreasonably denied, Employees may use paid sick leave for the following reasons:

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

**8.3.5.2.** Employee appointments with doctors, dentists, or other similar practitioners or to accompany the following individuals when their personal attendance is required: Employees' spouse or domestic partner; and parent, stepparent, or child of the Employee, spouse, or domestic partner. In exceptional circumstances, an Employer 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 duty hours.

**8.3.5.3.** 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, an Employer may approve the use of sick leave for someone not specifically listed.

**8.3.5.4.** Employees approved for workers' compensation may request sick leave when they are less than fully paid under workers'

compensation. Such leave will be charged at the difference between workers' compensation pay and their regular pay.

**8.3.5.5.** 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).

**8.3.5.6.** 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, Employees must provide documentation that they have 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. (FMLA); *see also* [29 Del. C. § 5116\(b\)](#).

**8.3.5.7.** In accordance with [29 Del. C. § 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 must be used during the year immediately following the birth or adoption and be scheduled in advance whenever possible. Employees will use such leave in accordance with Rule 8.8.

**8.3.5.8.** Employees may utilize earned sick leave to make regular membership blood bank donations for themselves, on behalf of another State Employee, or in the case of a special call for an emergency donation (such as occurred for the 9/11 disaster).

**8.3.6. Request to Borrow Sick Leave.** Employees may not take sick leave with pay in excess of the hours actually accrued. In extreme cases, an Employer 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 must be repaid immediately by charging all sick leave as it accrues until the deficit is eliminated. Any deficit balance must be repaid to the Employer upon any type of separation of employment.

**8.3.7. 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.

**8.3.7.1.** If an Employee becomes ill or injured while on approved annual leave, the period of such illness or injury will be charged to the Employee's accumulated sick leave if it is documented to the satisfaction of the Appointing Authority.

**8.3.8.** 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 will 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. All sick leave hours not accepted by the receiving agency will be reported to the Pension Office to escrow the hours until the Employee retires.

**8.3.9. Recording.** All sick leave credit and use will be recorded in the Employer's human resources records, will be subject to review by the Appointing Authority, and pertinent data will be available for inspection by the Employee concerned. Appointing Authorities will review sick leave records that reveal possible patterns of abuse of sick leave. In such cases, a Supervisor should counsel Employee and take other appropriate action when necessary.

**8.3.10. Return to Work after Paid or Unpaid Leave.** In the case of an Employee's absence of more than three consecutive workdays 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, with or without a reasonable accommodation.

#### **8.4. Compassionate Leave.**

**8.4.1.** 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. Leave will be pro-rated for permanent part-time Employees. 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. Immediate family member is defined as the Employees' spouse or domestic partner; parent, stepparent, or child of the Employee, spouse or domestic partner; Employees' grandparent or grandchild; Employee's sibling; spouse of Employees' child; or any minor child for whom the Employee has assumed and carried out parental responsibilities. Documentation may be required.

**8.4.2.** A full-time Employee may be granted up to 7.5 hours of leave with pay to attend memorial services or related activity upon the death 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 Employees' household. Leave will be pro-rated for permanent part-time Employees. Documentation may be required.

**8.5. Bereavement Leave.** Employees may be granted up to 37.5 hours of leave with pay in accordance with 29 Del. C. § 5125 for the miscarriage, stillbirth, or other pregnancy-related loss. This includes a diagnosis that negatively impacts pregnancy and the loss of a pregnancy, including termination, regardless of medical necessity.

#### **8.6. Other Leaves With Pay.**

**8.6.1.** Benefit eligible Employees will be excused from work with pay for the following reasons:

**8.6.1.1. Military Reserve Duty.** To attend training camp or special duty on orders as a member of the military reserves of the United States or the National Guard, not to exceed 112.5 hours, on a pro-rata basis, in any calendar year.

**8.6.1.2. 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.

**8.6.1.3. Bone Marrow Donation.** To donate bone marrow, not to exceed 7 days of leave in any calendar year.

**8.6.1.4. Organ Donation.** To donate an organ not to exceed 30 days of leave in any calendar year.

**8.6.1.5. Veteran Funerals.** To serve on one veteran funeral detail per calendar year if a veteran or a member of the military reserves, i.e. National Guard Reserve.

**8.6.1.6. Military-Related Medical Care.** 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 in addition to any other form of leave that may be available to the Employee, including but not limited to FMLA leave. This leave is to run concurrent with FMLA (see Rule 8.8).

**8.6.2. Leave with Pay; Returning to Work.** Employees will be excused from work with pay for the following reasons, however, they must return to work within a reasonable time after the conclusion of the following activities. The Employer will, if possible, make shift changes to accommodate non day-shift Employees for their involvement in the following:

**8.6.2.1. 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.

**8.6.2.2. 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 their Employer. Employees are not required to turn the additional compensation earned over to the State.

**8.6.2.3. 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.

**8.6.2.4. 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 will be presented to the immediate Supervisor. The excused time will include a reasonable period for reporting to and returning from the site of the examination or interview.

**8.6.3. Discretionary Leaves with Pay.** Employees may be excused from work with pay, at the Employer's discretion, for the following reasons:

**8.6.3.1. 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.

**8.6.3.2. Volunteer Service.** 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.

**8.6.3.3. Volunteer Fire Duty.** To respond to volunteer emergency fire duty if the Employee is an active firefighter or auxiliary member.

**8.6.3.4. 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.

**8.6.3.5. 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.

## **8.7. Leave Without Pay.**

**8.7.1. Military Leave – Extended Service.** Employees will 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 their Employer of their intent to return to work, with evidence of honorable release from military service, they will be returned to a position in the same or comparable Class for which they qualify.

**8.7.2. Personal Leave.** Employees may be granted leaves of absence without pay at their Employer's discretion for personal reasons up to one year. In exceptional circumstances, additional six-month periods may be granted, but in no case will continuous leave exceed two years. Employees may return to duty before the expiration of the leave only with their Employer's approval. Employees returning from a leave of absence of six months or less will be returned to the duty assignment previously held. Employees returning from a leave of absence greater than six months will be returned to a position in the same Class or comparable Class when leave was granted. The Appointing Authority will 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.

**8.8. Family and Medical Leave Act ("FMLA").** FMLA eligible Employees will be provided with FMLA leave in accordance with the FMLA. Employees are 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 will only be in accordance with Rule 8.3. Employees on approved Military Serious Illness/Injury leave will be eligible for wages under Military Serious Illness/Injury leave only in accordance with Rule 8.6.1.6.

**8.8.1.** FMLA leave will 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.

**8.9. Educational Leave.** The Appointing Authority may approve educational leave with or without pay. The request for approval of educational leave with pay will 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 training which is not readily available through in-service training.

**8.9.1. Educational Assistance.** Employer will offer educational assistance consistent with their budgetary allowances and on a reimbursement basis at the conclusion/completion of the course/class. Prior approval must be granted, in writing, by the Appointing Authority.

**8.9.1.1.** Only permanent full-time and permanent part-time Employees are eligible.

**8.9.1.2.** 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 their Supervisor.

**8.9.1.3.** Primary consideration will be given to those courses that will directly improve the Employee's performance in their present position. Courses leading to the attainment of an Associate's or Bachelor's Degree will 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.

**8.9.1.4.** Reimbursement will 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.

**8.9.1.5.** Reimbursement requires satisfactory documentation of successful completion of the course with a passing grade as verified by submission of a copy of an actual transcript, certificate, or diploma.

**8.9.1.6.** Any Employee who leaves the employment of the State of Delaware within six months following the successful completion of the course will return full payment of the amount of the reimbursement.

## **8.10. Other Leave Related Benefits.**

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

**8.10.2.** 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.

**8.11. Employee Recognition.** The first full week in May is designated Public Service Recognition Week. Employee recognition programs will not, however, be confined to this week. Each Employer 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 Employer. Statutory provisions allow for the modest expenditure of state funds, including the award of one day off with pay pursuant to Rule 8.6.3.5. On an annual basis, each Employer 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.

**8.12. Unauthorized Absences.** An absence from duty that is not in compliance with the rules governing authorized leave will 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 3 consecutive working days, may be deemed to have abandoned the position and to have resigned from employment unless, in the period of 3 working days succeeding such a 3 consecutive working days 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 will be notified in writing that such abandonment constitutes voluntary resignation. Nothing contained herein will be construed as preventing an Appointing Authority from taking disciplinary actions against an Employee because of an unauthorized absence.

**8.13. Abuse of Leave.** Usage of any type of leave credit is subject to review by Appointing Authorities if there appears to be a possible pattern of abuse of leave. If a pattern of abuse is detected, a Supervisor should counsel the Employee and take other appropriate action when necessary.



## **Chapter 9. Recruitment Process**

*This Chapter does not apply to Confidential Employees.*

**9.1. 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 opportunities. An Employer may post a vacancy for positions either publicly, intra-agency, and/or inter-agency.

**9.1.1.** When a vacancy exists or is anticipated, the respective Employer will initiate the recruitment process. The Employer may review and select from applications on file for a similar vacancy or initiate a new recruitment effort.

**9.2. Vacancy Announcement.** Except as provided in Rule 9.1.1., the Employer must post all positions for a minimum of 7 calendar days. Vacancy announcements will contain all pertinent information about the position being filled and will be given as wide a distribution as the Employer determines necessary.

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

**9.2.2.** The Employer may also decide to accept applications for certain job postings without any closing date.

**9.2.3.** The Employer may announce a vacancy with selective requirements, provided the justification for such requirement is job-related.

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

**9.3.1.** No question on the application form or during an interview can be framed as to require information concerning the race, marital status, genetic information, pregnancy, disability, color, age (over 40), religion, sex, sexual orientation, gender identity, reproductive health decision, family responsibilities, military service, protective hairstyle, national origin, or any other legally recognized protected class or activity of the candidate, except where there are bona fide occupational requirements, or such information is required by law for statistical purposes. No question can elicit or require information about the individual's political affiliations or beliefs.

**9.3.2.** 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 Employer of any changes to their contact information.

**9.4. Disqualification of Application.** Applications may be disqualified before the interview process if any of the following is established about the applicant:

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

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

**9.4.3.** The applicant, with or without a reasonable accommodation, is unable to perform the essential functions of the job duties of the position to which they seek Appointment.

**9.4.4.** The applicant has failed to comply with the Military Selective Service Act, 50 U.S.C. Sections 451-73.

**9.4.5.** The applicant's criminal convictions make the applicant unsuitable for the position for which the application is made.

**9.4.6.** 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.

**9.4.7.** The applicant has failed to complete the application as required by these Rules.

**9.4.8.** The applicant is unavailable or does not respond to Judicial Branch communication.

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

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

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

**9.5. Notification of Rejection.** Whenever an application is rejected, pursuant to Rule 9.4., notice of such rejection with a statement of the reason will be provided to the applicant in writing, electronically or via U.S. Mail, within 10 working days of the closing date of the job announcement. An applicant may appeal this decision to the Administrative Office of the Courts

Human Resources Administrator within 10 working days of the rejection notice; however, after final review, the decision of the Human Resources Administrator is final. A correction in a rating or a reversal of an applicant's minimum qualification decision will not affect an Appointment which may have already been made from a list of qualified applicants.

**9.6. Referral Lists.** The respective Employer's Human Resources representative will establish and maintain referral lists as are necessary for filling positions.

**9.6.1.** In filling a vacancy, the Employer will 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, will 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.

**9.6.2.** Any candidate whose name appears on a referral list may be considered to fill the vacancy for which the list was requested. If the hiring manager determines that the referral list is unsatisfactory, they can provide a written objection and request a new referral list.

**9.7. Removal of Names from Referral Lists.** Names may be removed from referral lists by the respective Employer's Human Resources representative for any of the reasons listed below:

**9.7.1.** One of the causes for rejection of applicants specified in Rule 9.4. Such applicants will be sent written notice electronically or via U.S. mail to the current address on file.

**9.7.2.** The applicant requests, in writing, electronically or via U.S. Mail, that their name be removed.

**9.7.3.** The applicant fails to respond to correspondence sent electronically or via U.S. Mail. The name may be restored to the referral list if a satisfactory explanation is given to the Appointing Authority for failure to respond.

**9.7.4.** When the applicant has declined three offers of consideration or Appointment.

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

**9.8. Veteran's Preference.** Where two eligible applicants have equal qualifications, preference will be given to the applicant who is a veteran, disabled veteran, or an un-remarried widow or widower of such veteran provided they meet 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.

**9.9. Notice of Availability to Work in Designated Geographic Areas.** At the time of application and as appropriate thereafter, information about availability to work in specific locations, or statewide, will 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 willing to work. Whenever an applicant submits a written statement restricting geographic availability, their name may be withheld from consideration of vacancies that do not meet the specified conditions.

**9.10. Eligibility.** The Employer's Human Resources personnel will 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, will be administered under the auspices of the respective Employer's Human Resources representative.

**9.10.1.** All applicants will receive notification in writing, electronically or via U.S. Mail, that states whether or not they have met the job requirements of the position.

**9.10.2.** Applicants who meet the minimum qualifications will have their applications forwarded to the hiring manager for further review for an interview.

**9.11. Interview or Examination Process.** Any examination or interview used in the recruitment and selection process will fairly measure the relative capacities of applicant to execute the duties and responsibilities of the positions concerned, or, where appropriate, to learn to perform the duties and responsibilities thereof. This includes regulations as set forth by the American with Disabilities Act (ADA).

**9.11.1.** An interview is not a guarantee of an offer of employment.

**9.12. Application Records.** The respective Employer's Human Resources representatives are responsible for the maintenance of all records pertinent to the application process for each vacancy. Applications and other related records must 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 for no longer than one year.

**9.13. Inspection of Application Record.** Applicants have the right to inspect their application record during regular business hours within 10 working days after the date on which the applicant was notified of the official results. This time period may be extended by the respective Employer's Human Resources representative. The respective Employer's Human Resources representative will determine what records may be inspected, taking into account such factors as security, privacy, and any other pertinent information.

## Chapter 10. Probation

*This Chapter does not apply to Non-Classified or Confidential Employees.*

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

**10.2. 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 will notify the Employee in writing with reasons for the action.

**10.3.** 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 will become classified Employees upon satisfactory completion of probation for the new Class or two years of service, whichever occurs first.

**10.4. Expiration of Initial Probationary Period.** If the probationary Employee's services were unsatisfactory, the probationary Employee will be dropped from the payroll, except in the case of promotional probation in which case the Employee will be handled pursuant to Rule 10.7. If the probationary Employee's services were satisfactory or no action has been taken within the probationary period, the Employee will be deemed to have passed the required probationary period. The determination of the Appointing Authority is final and conclusive.

**10.5. 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.

**10.6. 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 will 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.

**10.7. 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 will 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:

**10.7.1.** The Employee may be returned to their former classification and salary, without any loss of benefits, provided a vacancy exists; or

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

**10.7.3.** The Employee may elect to be laid off in accordance with the lay-off procedures outlined in these Rules.

**10.8. 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) will not be subject to a probationary period in the new position.

## **Chapter 11. Employee Performance Plan, Performance Review, and Performance Improvement Plan**

*This Chapter does not apply to Non-Classified or Confidential Employees unless subject to a telework or alternative work schedule agreement.*

**11.1. Purpose of Performance Review.** Each Employer will follow a process for systematic performance reviews to communicate expectations and responsibilities, recognize achievement, and identify areas for skill development and work performance improvement.

**11.2. Judicial Branch Performance Policy.** Each Employer should refer to the *Delaware Judicial Branch Employee Performance Plan, Performance Review, and Performance Improvement Plan Policy* when conducting performance reviews and associated evaluations.

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

**11.4. 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 will 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.

**11.5. Review Appeal.** The Employee has the right to discuss any performance review or documentation with the next level of authority and may submit written comments.

**11.6. Required Minimum Rating for Promotion.** An Employee must receive at least a "meets expectations" performance review to be eligible for a promotion.

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

## **Chapter 12. Employee Development and Communications**

*This Chapter applies to all Judicial Branch Employees.*

**12.1. Employee Development.** Each Employer is encouraged to initiate and develop programs to improve the work effectiveness and morale of Judicial Branch Employees, including training, safety, health, welfare, recreation, counseling, and employee and labor relations.

**12.2. Employee Communications.** The State Court Administrator and each Employer are authorized by the Chief Justice to publish and maintain updated Employee information to be made available electronically or otherwise as appropriate.



## Chapter 13. Employee Accountability

*This Chapter applies to all Judicial Branch Employees.*

**13.1. Attendance.** No Employee will be paid unless they are at work in accordance with these Rules, internal Employer rules, or they are on authorized paid leave.

**13.1.1.** Every Employee is required to report to work on time each day. If an Employee cannot report to work because of emergency or sudden illness, the Employee must notify their Supervisor prior to the start of their scheduled shift of the reason for their absence.

**13.1.2.** If an employee does not report on time to work, their pay may be docked. 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 7 minutes shall be rounded down.

**13.2. Resignation.** Employees who resign their position must provide a minimum of two weeks' advance written notice to their immediate Supervisor. Failure to provide notice may result in not being rehired by their Employer.

**13.3. Transfers.** Employees who are transferring from their current position to another position in which the State of Delaware is their employer are required to notify their immediate Supervisor and their Employer's Human Resources representative of the effective transfer date. Failure of notification may result in an interruption of Benefits including but not limited to, health, dental, vision, and pension.

**13.4. Code of Conduct.** In order to maintain the integrity, independence, and impartiality of the Judicial Branch, all Employees 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 these Rules, *Code of Conduct for Judicial Branch Employees*, and all other court rules, policies, procedures, and statutory requirements. All Employees must familiarize themselves with the *Code of Conduct*.

**13.5. Federally Funded Programs.** 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 14. Disciplinary Process

*This Chapter supplements but does not supersede any rights an Employee may have under a governing collective bargaining agreement.*

*This Chapter applies to Classified Employees. Classified Employees do not have the right to a final appeal to the Judicial Branch Employee Relations Board under Rule 14.10 which only applies to those classified as Judicial Branch Former Merit Employees as of the adoption of these Rules.*

*Judicial Branch Employees categorized as Non-Classified are not covered by this Chapter unless their disciplinary sanction involves dismissal or separation. They then have a right to a pre-decision meeting pursuant to Rules 14.4. through 14.6. They do not have a right to an appeal pursuant to Rule 14.9.*

*This Chapter does not apply to Judicial Branch Employees who are categorized as Confidential.*

**14.1.** Employees will be held accountable for their conduct. Disciplinary measures up to and including dismissal, will 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 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.

**14.1.1. Reasons for Disciplinary Action and Possible Sanctions.** Disciplinary action may be imposed as a result of violations of the *Code of Conduct for Judicial Branch Employees*, statutory requirements, court rules, and other applicable policies and procedures, or any other conduct of an Employee which is not in keeping with standards applicable to such Employee in the performance of their work. The penalty will vary according to the severity of the offense.

**14.2. 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.

**14.3.** Prior to finalizing a dismissal, suspension, fine, or demotion action, the Employee will be notified in writing that such action is being proposed and provided the reasons for the proposed action.

**14.4. Pre-Decision Meeting.** Employees will receive written notice of their entitlement to a pre-decision meeting at the time of recommendation for dismissal, demotion for Just Cause, fines and suspension cases. If Employees desire such a meeting, they must submit a written request for a meeting to their Employer’s designated personnel representative within 10 working 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.

**14.5. Scheduling the Pre-Decision Meeting.** The pre-decision meeting will be held within a reasonable time not to exceed 10 working days after the Employee has requested the meeting in compliance with Rule 14.4. The meeting will be held with the Employer's designee who will not be the person that recommended the disciplinary action.

**14.6. Procedures for the Pre-Decision Meeting.** The pre-decision meeting will be informal. It will provide Employees an opportunity to respond to the allegation of misconduct and the proposed action and offer any evidence rebutting the allegations, or reasons why the proposed penalty may not be justified or is too severe. The Employer's designee will issue a written decision after the meeting within 5 working days.

**14.7. 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.

**14.8.** Adverse documentation will not be cited by an Employer in any action involving a similar subsequent offense after two years unless an Employee raises their past work record as a defense or mitigating factor.

**14.9. Appeal to the State Court Administrator.** Within 10 working days of receipt of the written decision of the Pre-Decision meeting, Classified Employees who have been dismissed, demoted, or suspended may file an appeal to the State Court Administrator or their designee. An appeal filed to the State Court Administrator, or designee, will follow the procedures outlined for a Step 3 appeal pursuant to Rule 15.8. except that instead of documents from previous steps, the appeal filing must include the:

- (1) Chapter and Rule number(s) of the alleged violation of the Rules;
- (2) Argument that the Employee wishes to present to the State Court Administrator, or designee, and the relief sought; and
- (3) Legal authority the Employee intends to rely upon, if any.

The State Court Administration or their designee will hear and issue a written decision within 45 calendar days of receipt of the appeal.

**14.10. Final Appeal to the Judicial Branch Employee Relations Board.** Judicial Branch Former Merit Employees categorized as Judicial Branch Classified Employees as a result of S.B. 318 on May 2, 2023, who have been dismissed, demoted, or suspended may file a final appeal to the Judicial Branch Employee Relations Board through the State Court Administrator. Final appeals to the Board must be filed within 15 working days of receipt of the State Court Administrator or their designee's written response under Rule 14.9. The Board will hear and issue a written decision within 45 calendar days of receipt of the request for a final appeal. The final appeal filing must include the following:

- (1) Chapter and Rule number(s) of the alleged violation of the Rules;

- (2) Argument that the Employee wishes to present to the Board and the relief sought; and
- (3) Legal authority the Employee intends to rely upon, if any.

The Board will hear and issue a written decision within 45 calendar days of receipt of the request for a final appeal.

**14.10.1.** The right of a final appeal to the Board under Rule 14.10. ends when a Judicial Branch Former Merit Employee categorized as a Judicial Branch Classified Employee as a result of S.B. 318 is promoted, demoted, transferred, or separated from Judicial Branch employment after May 2, 2023.

**14.11.** Appeals under Rules 14.9. and 14.10. are the final administrative remedies available under these Rules but an Employee still has a right to seek judicial review of a disciplinary action pursuant to [10 Del. C. § 545](#).

**14.12. Severance Payment As a Result of a Dismissal.** Pursuant to Rule 8.2.7., if an Employee is terminated for any reason including dismissal, the Employee will be paid for any unused annual leave. An Employee who is dismissed is not entitled to payment for unused sick leave.

**14.13.** If an Employee is not dismissed following the pre-decision meeting, the Employee will be made whole for any days for which there had been a suspension, pending the meeting, less the pay for any action resulting from the meeting.

## Chapter 15. The Grievance Procedure

*This Chapter supplements but does not supersede any rights an Employee may have under a governing collective bargaining agreement.*

*This Chapter applies to Classified Employees except for the right to a final appeal to the Judicial Branch Employee Relations Board under Rule 15.10. Those formerly classified as Judicial Branch Former Merit Employees as of the adoption of these Rules are covered by this Chapter, inclusive of Rule 15.10.*

*This Chapter does not apply to Non-Classified or Confidential Employees.*

**15.1.** To promote positive working relationships and better communications, Employees and their Supervisors will informally meet and discuss Employee claims of Rules violations prior to filing a formal grievance. Employees have the right to use this grievance procedure free of threats, intimidation, or retaliation. Employees may also have representation of the union or others, throughout the process.

**15.2. Definition of a Grievance.** A grievance is an Employee complaint about the application, interpretation, or alleged violation of these Rules or relevant statutes which remain unresolved after informal efforts at resolution have been attempted. A grievance does not deal with the substantive policies embodied in these Rules or statutes.

**15.3.** An Employee who is in a bargaining unit covered by a collective bargaining agreement must process any grievance regarding the interpretation or application of the collective bargaining agreement through the grievance procedure outlined in the collective bargaining agreement. However, if the subject of the grievance is determined to be nonnegotiable then it will be processed according to this Chapter.

**15.4.** Time limits set forth within these Rules may be extended by mutual agreement of the parties in writing. Grievances which are not initiated within the specified time limits will be considered terminated unless a time extension has been granted. If a grievance response is not made within the time limits, the grievance may be appealed to the next step. Working days exclude Saturdays, Sundays, holidays and state closures (e.g. snow days).

**15.5. Grievances Regarding Promotions.** Grievances about 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.

**15.6. Step 1 – Supervisor.** Employees must file a written grievance that details the complaint and relief sought with their immediate Supervisor within 10 working days of the date of the grievable conduct, or the date they could reasonably be expected to have knowledge of the grievance matter. Within 5 working days of receipt of the grievance, the parties will meet and discuss the grievance.

Within 5 working days following the meeting, the Step 1 Supervisor will issue a written response. The entire process of meeting and issuing a written response may not exceed 10 working days.

**15.7. Step 2 – Designated Management Official.** Any appeal to the Step 1 written response must be filed in writing to the top Employer’s Human Resources official or representative within 5 working days of receipt of the Step 1 Supervisor’s reply. Within 10 working days of the receipt of the appeal, the designated management official and the Employee will meet to discuss the grievance. Within 10 working days following the meeting, the designated management official will issue a written response. The entire process of meeting and issuing a written response may not exceed 20 working days.

**15.8. Step 3 – Hearing Officer.** Any appeal to the Step 2 written response must be filed in writing to the State Court Administrator or their designee within 10 working days of receipt of the Step 2 reply from the designated management official. This appeal must include copies of the written grievance and responses from steps 1 and 2. The State Court Administrator, or designee, will designate a Hearing Officer and the State Court Administrator, or designee, will assist the Hearing Officer in scheduling and conducting the hearing. The Hearing Officer will 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 the Employer. The decision of the Hearing Officer will include, where appropriate: (1) a brief summary of the evidence; (2) findings of fact based upon evidence; and (3) conclusion of law.

**15.8.1. 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 grievance. Either side may be represented by counsel, provided the State Court Administrator, or designee, has been notified of such representation before the hearing date. All testimony will be taken under oath. Either side may call witnesses and present probative evidence, except that evidence that is plainly irrelevant, immaterial, or unduly repetitive will be excluded. The burden of proof will be upon the Employee. The Hearing Officer is empowered to issue subpoenas, administer oaths, and make evidentiary rulings. Technical rules of evidence do not apply.

**15.9.** The above stated appeal process is the final administrative remedy available under these Rules, except for Employees who maintain an additional appeal right through the Judicial Branch Employee Relations Board pursuant to Rule 15.10. An Employee still has the right to seek judicial review of disciplinary action pursuant to [10 Del. C. § 545](#).

**15.10. Final Appeal to Judicial Branch Employees Relations Board.** Within 15 working days of receipt of the Step 3 written response under Rule 15.8., Judicial Branch Former Merit Employees categorized as Judicial Branch Classified Employees as a result of S.B. 318 on May 2, 2023, who wish to appeal a grievance may file a final appeal to the Judicial Branch Employee Relations Board through the State Court Administrator. A final appeal filed to the Judicial Branch Employee Relations Board will follow the procedures outlined for a Step 3 appeal pursuant to Rule 15.8. except that instead of documents from previous steps, the final appeal filing must include the following:

- (1) Chapter and Rule number(s) of the alleged violation of the Rules;
- (2) Argument that the Employee wishes to present to the Board, and the relief sought; and
- (3) Legal authority the Employee intends to rely upon, if any.

The Board will hear and issue a written decision within 45 calendar days of receipt of the request for a final appeal.

**15.10.1.** The right of a final appeal to the Board under this Rule ends when a Judicial Branch Former Merit Employee categorized as a Judicial Branch Classified Employee as a result of S.B. 318 is promoted, demoted, transferred, or separated from Judicial Branch employment after May 2, 2023.

**15.11. Retroactive Remedies.** Retroactive remedies will 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 will 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.

**15.12.** 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 will not be done during Employee work time.

## **Chapter 16. Layoff Procedures**

*This Chapter does not apply to Confidential Employees.*

**16.1. 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 or elimination of the position.

**16.2.** The Chief Justice, with the recommendation of the individual Employer through the State Court Administrator, will determine the boundaries of the layoff field.

**16.3.** Employees who have been identified as layoff candidates will be given at least 30 days' written notification by their Employer unless an emergency condition exists.

**16.4.** No permanent Employee will be laid off while another Employee remains employed by the Employer on an emergency, temporary, or probationary basis in the same classification.

**16.5.** Employees who have been laid off will 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.

**16.6.** Employees will be presumed to exercise bumping rights only in their county of employment. Employees may waive their bumping rights by notifying the Appointing Authority within 10 working days of receiving the layoff notice.

**16.6.1.** Before to the initiation of any layoff, all Employees on probationary promotion in the affected class(es) will be returned to their previous class, provided a vacancy exists.

**16.7.** If placement is not possible in accordance with Rule 16.5., bumping will begin. Employees may only bump Employees having less seniority. Employees, in order of seniority, will 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.

**16.7.1.** Career Ladder Employees will bump Employees within their Career Ladder who are at the same or lower pay grade and have the least seniority.



## **Chapter 17. Employment Relations**

### **Preamble.**

In *Superior Court v. State of Delaware Public Employment Relations Board*, Del. Supr., No. 518, 2009 (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.

### **17.1. Relation to the Delaware Code.**

Judicial Branch employment relations will 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 A of these Rules. To the extent that there is a conflict between these Judicial Branch Employment Relations Rules (including the Procedures contained in Appendix A of these Rules) and the Delaware Code, these Rules will prevail. The Administrator and any appointed Hearing Officer will 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.

### **17.2. Scope of Judicial Branch Employment Relations Rules.**

These Rules apply to:

**17.2.1.** All Judicial Branch Employees except the following:

**17.2.1.2.** Judicial Officers.

**17.2.1.3.** Confidential and Non-Classified Employees as defined in Rule 3.1.

**17.2.1.4.** Supervisory Employees as defined in [19 Del. C. § 1302](#).

**17.2.2.** Judicial Branch Employers; and

**17.2.3.** Employee organizations representing Judicial Branch Employees.

### **17.3. Definitions.**

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

#### **Administrator**

The State Court Administrator or their designee who 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 17.2 of this Chapter.

**Judicial Branch Employer**

A Court, the AOC, or a Nonjudicial Agency which employs one or more Judicial Branch Employees.

**17.4. Responsibilities and Authority of the Administrator.**

The State Court Administrator or their designee (“Administrator”) will administer employment relations for the Judicial Branch and 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 A to the Judicial Branch Personnel Rules and may recommend to the Supreme Court amendments to this Chapter as they may become necessary. The Administrator has the authority to amend the forms referenced in the Procedures contained in Appendix A at any time.

**17.5. Annual Report.**

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

**17.6. 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 will not remain in effect under these Rules.

**17.7. 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 their designee. Such an appeal must be filed within 10 working days of the date upon which the decision was rendered and will not automatically act as a stay. There will 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.

**17.8 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, uniform pay (except in the case of collective bargaining agreements reached pursuant to [19 Del. C. § 1311A](#)) and benefits, examination, screening and ranking, rejection of candidates, appointment, paid leave, promotional requirements and standards, and veteran's preference.

### **17.9 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, transfer and promotional selection processes, reinstatement, performance records, layoff, fines, discipline up to and including dismissal, 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, and pension programs will not be deemed to be compensation for purposes of this Chapter. [19 Del. C. § 1311A](#).

## **Appendix A: Employment Relations Procedures for the Judicial Branch**

### **1. General Provisions**

#### **1.1. Scope.**

The Procedures shall apply to:

- (a) All Judicial Branch Employees except the following:
  - (1) Judicial Officers;
  - (2) Confidential and Non-Classified Employees as defined in Rule 3.1 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 event that triggers the period shall be excluded but 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, 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. Three days shall not be added if the notices or other papers are sent and received electronically in addition to being served by mail.

(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 4 p.m. 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 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, electronic mail, 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 at the discretion of the Hearing Officer or upon the motion of either party with the approval of the Hearing Officer.

(b) Any proceeding may be severed at the discretion of the Hearing Officer 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.

### (d) “Judicial Branch Employee”

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

### (e) “Judicial Branch Employer”

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

### (f) “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 12 months, or a certification of representative has been issued.

(b) There is an existing labor management agreement of 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 3 years, the existing contract shall act as a bar only for the first 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 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 5 days of the date upon which the Notice of Petition Validation is received. Any objections filed will be resolved by the Administrator within 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 their objections within 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 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 over fragmentation 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 a decision, the Hearing Officer shall issue a Notice of Bargaining Unit Determination, and where appropriate, order a representation election be held within 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 their 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 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 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 their 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 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 10 days prior to the election.

(b) The Administrator shall supply the Judicial Branch employer with the Notice of Election at least 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 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 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 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 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 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 45 days nor less than 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 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 2 copies of an answer to any filed objection may be filed with the Administrator within 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 their 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 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 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 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 their 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, they 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 a designee of the Chief Justice 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 their 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 their 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 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 their 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 the Hearing Officer 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 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 their 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 their 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 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 their designee shall render a decision within 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.

#### 6.5. Contemptuous Conduct

Contemptuous conduct shall be grounds for exclusion from the hearing and the refusal of a witness to answer any question which has been ruled to be proper shall be grounds for striking out all testimony previously given by such witnesses on related matters. Misconduct of an aggravated character, when engaged in by an attorney or other representative of a party, shall be grounds, after due notice and hearing before the Chief Justice or designee, for suspension or disbarment by the Chief Justice from further practice regarding matters pursuant to this Chapter.

#### 6.6. Depositions

(a) If any witness resides outside of the State or through illness or other cause is unable to testify before the Hearing Officer, their testimony may, upon application, be taken by deposition.

(b) Application to take depositions under this section shall be in writing or may be made orally at a hearing. The application shall set forth the reasons why such deposition should be taken, the name and post office address with zip code of the witness, and the time and place proposed for taking of the deposition. Such order shall be served on all parties. The deposition may be taken before any court reporter authorized to administer oaths by laws of the State or of the United States or of the place where the examination is held. The cost of the deposition shall be borne by the party at whose request the deposition is ordered.

(c) During the deposition all objections to the form of questions or evidence shall be waived unless made at the examination of the witness. The court reporter shall note any objection on the deposition. The testimony shall be subscribed by the witness in the presence of the court reporter, who shall attach a certificate stating that the witness was duly sworn or affirmed by the court reporter, and that the deposition is a true record of the testimony and exhibits given by the witness. If the deposition is not signed by the witness because the witness is ill, dead, cannot be found, refuses to sign it, or waives the right to sign it, such fact shall be included in the certificate of the court reporter and the deposition may then be used as fully as though signed. The court reporter shall immediately deliver an original and a copy of the transcript, together with their certificate, in person or by United States mail to the Administrator and to the Hearing Officer. The Hearing Officer shall rule upon the admissibility of the deposition or any part of such deposition if offered in evidence or otherwise used at the hearing.

(d) All errors or irregularities of compliance with the provisions of this section shall be deemed waived unless a motion to suppress the deposition or some part of it is made with reasonable promptness after such defect is ascertained, or, with due diligence, might have been ascertained.

## 6.7. Witnesses and Subpoenas

The Hearing Officer shall, where they deem necessary, subpoena witnesses and issue subpoenas requiring the production and examination of books, papers, or other documents it deems relevant to the issue before it. The parties involved in a hearing may, no later than 7 days before the hearing to which the subpoena pertains, request that the Hearing Officer issue subpoenas. The Hearing Officer may decline to honor such request for a subpoena if they determine that the evidence sought does not relate to the matter to be heard, that such subpoena request does not describe with sufficient particularity the evidence whose production is requested, or that the subpoena seeks to compel the appearance of witnesses who would offer testimony which would merely be repetitive of other witnesses who will be produced.

## 7. Mediation

### 7.1. Request for Mediation

In the event mediation is requested by one or more of the parties or in accordance with 19 *Del. C.* § 1314(a), such request must be submitted in writing to the Administrator and contain at least the following information:

- (a) The name, address and telephone number of the Judicial Branch employer and the name and title of its representative;
- (b) The name, address and telephone number of the exclusive representative, and the name and title of its representative;
- (c) A description of the bargaining unit, including the approximate number of Judicial Branch Employees in the unit;
- (d) The dates and duration of negotiation sessions;
- (e) The termination date of the current agreement, if any; and
- (f) A detailed statement of the facts giving rise to the parties' failure to reach agreement, including all issues in debate.

### 7.2. Selection of Mediator

The Administrator shall appoint a mediator agreed upon by the parties, or from a list established by the Chief Justice of qualified persons, or from the American Arbitration Association.

### 7.3. Supplemental Information

If the time limits specified in 19 *Del. C.* § 1314(b) are reached, and either the Judicial Branch employer or the exclusive bargaining representative requests mediation, the parties shall jointly, within 7 days of such request, submit information supplementing that contained in the report to the Administrator under 19 *Del. C.* § 1314(a). In particular this supplemental information should contain the dates and duration of any additional negotiation sessions and a detailed statement of all outstanding issues in dispute. The Administrator must then appoint a mediator if so requested by the Judicial Branch employer or the exclusive bargaining representative.

#### 7.4 Costs

Any costs involved in retaining a mediator to assist the parties in reaching a negotiated agreement shall be paid by the Supreme Court.

### **8. Binding Interest Arbitration**

#### 8.1. Procedures for Binding Interest Arbitration

Binding interest arbitration shall be handled in accordance with the procedures prescribed in the Act with the following clarifications:

(a) If a labor dispute has not been settled after mediation has been requested, within the time limits specified in 19 *Del. C.* § 1314(c), the parties jointly or individually may petition the Administrator in writing to initiate binding arbitration. In lieu of a petition, the mediator may inform the Administrator that further negotiations between the parties, at that time, are unlikely to be productive and recommend that binding arbitration be initiated.

(b) Within 7 working days of receipt of a petition or recommendation to initiate binding interest arbitration, the Administrator, with or without a hearing, shall make a determination as to whether a good faith effort has been made by both parties to resolve their labor dispute through negotiations and mediation and as to whether the initiation of binding interest arbitration would be appropriate under [19 Del. C. § 1315](#) and in the public interest. The decision of the Administrator may be appealed to the Chief Justice or their designee in accordance with the procedures set forth in section 6.4. There shall be no further appeal.

(c) If the Administrator finds that binding interest arbitration is appropriate and in the public interest, the parties shall select an arbitrator by mutual agreement. If the parties cannot agree on an arbitrator, either party may request a list of nine (9) arbitrators from the American Arbitration Association and the arbitrator will be chosen, in accordance with the provisions of 19 *Del. C.* § 1315.

(d) The binding interest arbitrator shall have the authority to hold hearings, issue subpoenas and/or issue an order to the parties, with written findings of facts and decisions for the resolution of disputes, consistent with the provisions of [19 Del. C. § 1315](#). The written decision of the arbitrator shall become the final and binding resolution of an impasse arising out of collective bargaining.

(e) Within 30 days after the conclusion of the hearings but not later than 120 days from the day of Appointment, the arbitrator shall serve the arbitrator's written determination for resolution of the dispute on the Judicial Branch employer, the certified exclusive representative and the Administrator. The decision of the arbitrator shall become an order of the Administrator within five business days after it has been served on the parties. Either party may appeal the decision of the arbitrator to the Chief Justice or their designee within 15 days of the date the decision was rendered in accordance with the procedures set forth in section 6.4. There shall be no further appeal.

(f) If the parties are able to conclude their labor dispute with a voluntarily reached agreement, they shall notify the Administrator and the proceedings shall be forthwith terminated.

(g) The Administrator may petition the Court of Chancery for enforcement of any order under this section.

## 9. Employee Organization Report

### 9.1. Contents of Report

(a) Each Employee organization and affiliate, which has or seeks recognition as a representative of Employees covered under this Chapter shall, as a condition of recognition, file with the Administrator a registration report signed by its president or other appropriate and authorized officer ([Attachment L](#)).

(b) Registration shall be on the form prescribed by the Administrator and shall include, but not be limited to, the following:

- (i) The name and address of the organization;
- (ii) The name and addresses of all officers;
- (iii) The address and telephone number of the organization's principal place of business and all subsidiary offices;
- (iv) All affiliated organizations;
- (v) The number and nature of the bargaining unit;
- (vi) Fee schedules
  - (A) Initiation fees
  - (B) Dues
  - (C) Fees other than the above
- (vii) Two copies of the organization's current charter and by-laws; and
- (viii) Qualifications and restrictions of membership.
- (ix) Such registration report shall be updated on an annual basis, not later than July 31st, of each succeeding fiscal year.
- (x) All changes or amendments to the organization's charter or by-laws shall be promptly reported to the Administrator.

## 10. Employer Reports

### 10.1. Employer Filing Requirements

Judicial Branch employers shall file with the Administrator a copy of any agreements that have been negotiated with Judicial Branch Employee representatives following the consummation of negotiations. The Administrator shall maintain a current file of all such agreements.

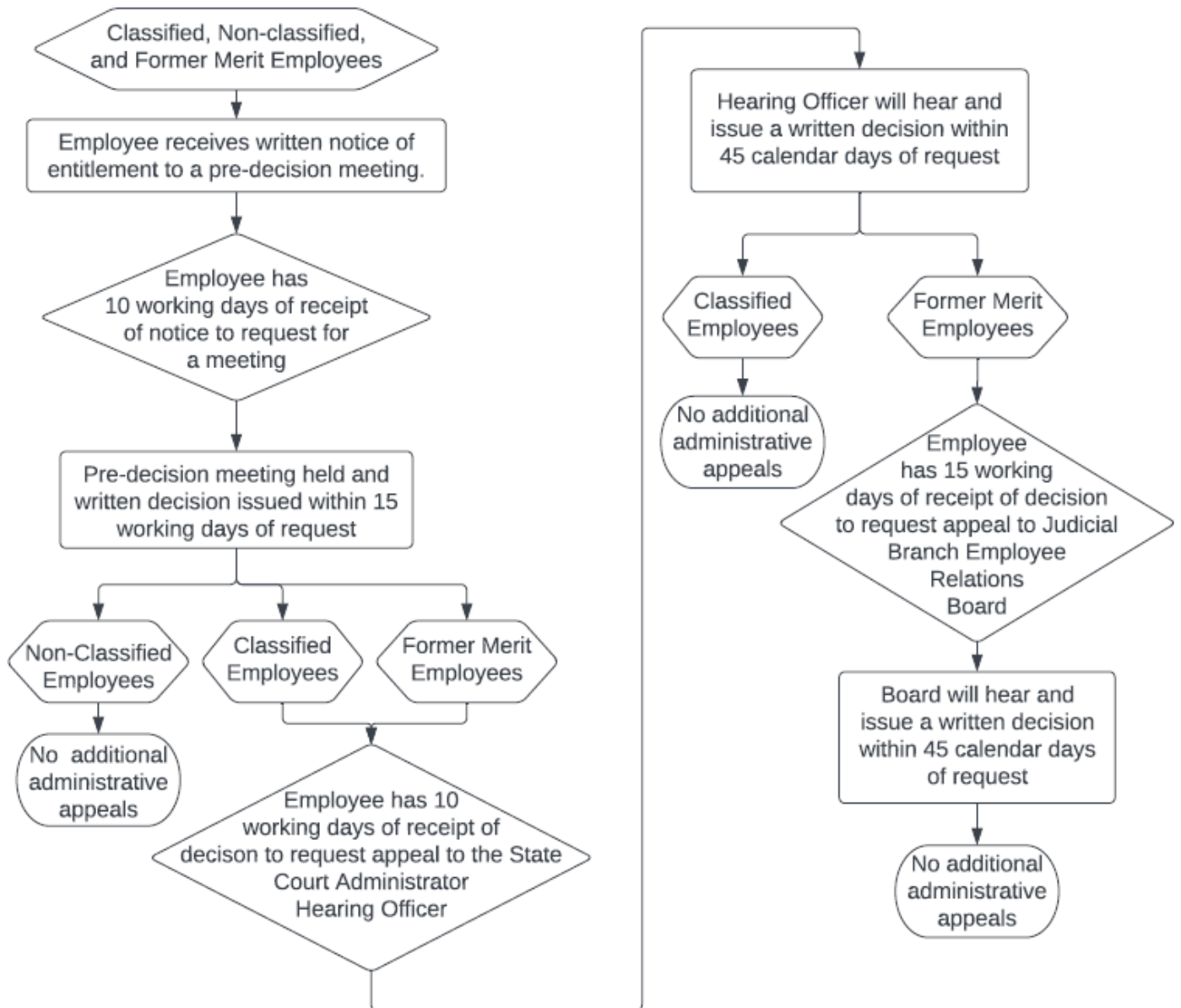
**Appendix B: Conversion Table**  
**Conversion Table – current chapter to new chapter**

| Pre-May 2023 Chapter Number                           | Post May 2023 Chapter Number                         |
|-------------------------------------------------------|------------------------------------------------------|
| Chapter 1. Introduction                               | Chapter 1. Introduction                              |
| Chapter 2. Non-Discrimination                         | Chapter 2. Non-Discrimination                        |
| Chapter 3. Classification of positions                | Chapter 3. Classification of Employees and Positions |
| Chapter 4. Pay plan                                   | Chapter 5. Pay Plan                                  |
| Chapter 5. Employee Benefits                          | Chapter 8. Employee Benefits                         |
| Chapter 6. Recruitment and application policies       | Chapter 9. Recruitment Process                       |
| Chapter 7. Screening applicants                       | Chapter 9. Recruitment Process                       |
| Chapter 8. Referral lists                             | Chapter 9. Recruitment Process                       |
| Chapter 9. Probation                                  | Chapter 10. Probation                                |
| Chapter 10. Other Appointments                        | Chapter 4. Other Appointments                        |
| Chapter 11. Layoff procedures                         | Chapter 16. Layoff Procedures                        |
| Chapter 12. Employee accountability                   | Chapter 14. Disciplinary Process                     |
| Chapter 13. Performance Review                        | Chapter 11. Performance Review                       |
| Chapter 14. Employee Development and communications   | Chapter 12. Employee Development and communications  |
| Chapter 15. Employee responsibilities                 | Chapter 13. Employee responsibilities                |
| Chapter 16. Human Resource Records                    | Chapter 7. Human Resource Records                    |
| Chapter 17. Payroll                                   | Chapter 6. Payroll                                   |
| Chapter 18. The Grievance Procedure                   | Chapter 15. The Grievance Procedure                  |
| Chapter 19. Definitions                               | No chapter number, at the front of the document      |
| Chapter 20. Employment Relations                      | Chapter 17. Employment Relations                     |
| Appendix A. Discipline Matrix                         | Stricken                                             |
| Appendix B. Employment Relations procedures and forms | Renumbered as Appendix A                             |
|                                                       | New Appendix B: Conversion Table                     |
|                                                       | New Appendix C: Chapter 14 Flowchart                 |
|                                                       | New Appendix D: Chapter 15 Flowchart                 |
|                                                       | New Appendix E: Employee Acknowledgement Page        |

## Appendix C: Chapter 14 Flowchart

### Ch 14. Disciplinary Process

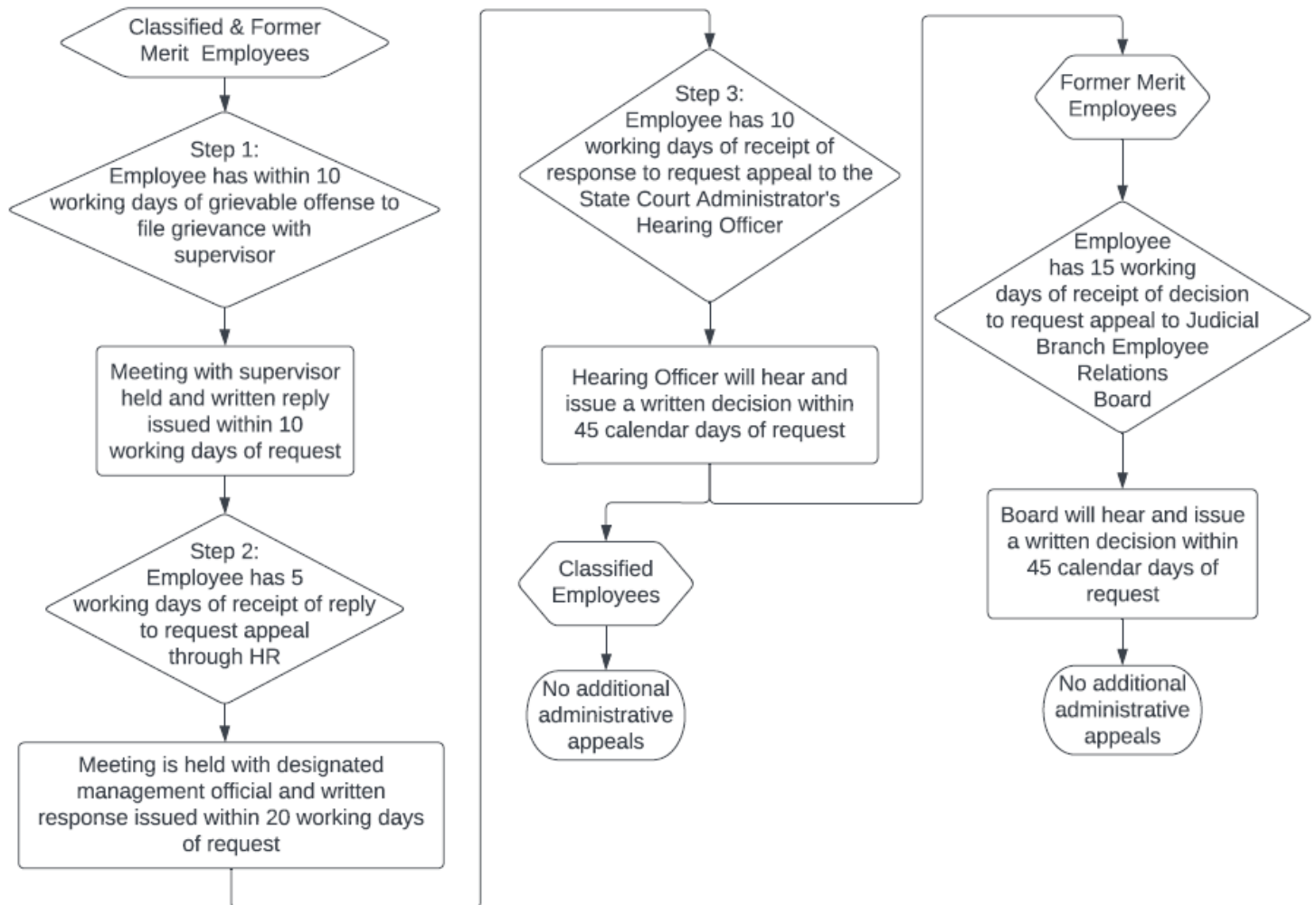
**Note: Appeals should be requested and coordinated through AOC HR.**



## Appendix D: Chapter 15 Flowchart

### Ch 15. Grievances

**Note: Appeals should be requested and coordinated through AOC HR.**



**Delaware Judicial Branch Personnel Rules**

**Appendix E: Acknowledgement Page**

This is to certify that I have read, reviewed, and understand the provisions set forth in the Delaware Judicial Branch Personnel Rules, as presented to me on the date of signature.

Employee Signature: \_\_\_\_\_ Date \_\_\_\_\_

Print Name: \_\_\_\_\_

HR Signature: \_\_\_\_\_ Date \_\_\_\_\_

Print Name: \_\_\_\_\_