

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

1. General Provisions

1.1. Scope.

The Procedures shall apply to:

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

(1) employees who are in the Merit system;

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

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

(b) Judicial Branch employers; and

(c) Employee organizations representing Judicial Branch employees.

1.2. Computation of Time

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

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

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

1.3. Form of Documents

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

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

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

1.4. Service and Filing of Documents: Proof of Service

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

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

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

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

1.5. Records and Dockets

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

1.6. Appearances

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

1.7. Joinder of Parties

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

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

1.8. Intervention

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

1.9. Consolidation or Severance

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

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

1.10. Construction of the Procedures

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

1.11. Timeliness

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

2. Definitions

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

(a) “Act”

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

(b) “Administrator”

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

(c) “Hearing Officer”

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

(e) “Judicial Branch Employee”

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

(f) “Judicial Branch Employer”

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

(g) “Party”

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

3. Representation Proceedings

3.1. Bars to Petitions for Recognition

A representation petition shall be barred if:

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

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

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

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

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

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

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

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

(d) Any other relevant facts;

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

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

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

3.3. Contents of Petition for Decertification

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

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

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

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

3.4. Petition Validation

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

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

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

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

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

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

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

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

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

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

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

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

(i) The name of the employer;

(ii) The name of the exclusive representative;

(iii) A description of the bargaining unit;

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

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

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

3.5. Posting of Notice of Petition

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

3.6. Employee Organization

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

3.7. Showing of Interest

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

4. Election Procedures

4.1. Ballots

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

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

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

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

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

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

4.2. Notice of Election

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

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

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

4.3. Voter Eligibility/Lists of Voters

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

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

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

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

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

4.4. Challenged Voters/Challenge Procedures

At the time of the elections:

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

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

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

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

4.5. Observers

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

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

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

4.6. Counting of Ballots

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

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

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

4.7. Voting Results

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

4.8. Challenges and Exceptions

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

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

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

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

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

5. Unfair Labor Proceedings

5.1. Pleadings

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

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

5.2. Filing of Charges

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

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

(c) The charge shall include the following information:

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

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

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

5.3. Answer to Charge

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

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

5.4. Response to Answer

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

5.5. Stipulation of Facts

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

5.6. Decision or Probable Cause Determination

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

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

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

5.7. Informal Conference

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

5.8. Amendment of Complaint and/or Answer

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

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

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

5.9. Prosecuting Authority

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

5.10. Hearing

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

5.11. Unfair Labor Practice Determination

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

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

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

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

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

6. Formal Hearings

6.1. Hearings Generally

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

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

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

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

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

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

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

6.2. Decisions and Orders

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

6.3. Briefs/Oral Argument

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

6.4. Review of the Hearing Officer's Decision

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



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Judicial Branch Employment Relations
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Petition for Bargaining Unit Determination and
Certification of Exclusive Bargaining Representative

PETITIONER'S NAME: _____

Affiliation: _____

Address: _____

Telephone #: _____

JUDICIAL BRANCH EMPLOYER: _____

Contact Person: _____

Address: _____

Telephone #: _____

DESCRIPTION OF BARGAINING UNIT APPROPRIATE FOR REPRESENTATION:

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

Approximate Number of Employees in the Petitioned for Unit: _____

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

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

DATE OF MOST RECENT REPRESENTATION ELECTION, IF ANY: _____

ANY OTHER RELEVANT FACTORS: _____

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

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

Signature of Authorized Representative
Petitioner

Name: _____

Address (if different from that on Page 1)

Phone: _____

DATE: _____



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

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

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

_____ Create a bargaining unit of employees represented by _____

_____ Discontinue representation by the current bargaining representative _____

_____ Discontinue current representative and be represented by _____

PLEASE PRINT:

NAME: _____

SS#: _____

ADDRESS: _____

PHONE: _____

JOB TITLE: _____

EMPLOYER: _____

SIGNATURE: _____

DATE: _____



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DECERTIFICATION PETITION

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

Name of Employer: _____

Address: _____

Telephone No.: _____ Employer Representative to Contact: _____

Description of Bargaining Unit: _____

Number of Employees in Unit: _____

Currently Certified Bargaining Representative: _____

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

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

(Petitioner name and affiliation, if any)

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

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

Telephone No.: _____ Date: _____

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

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



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

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

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

Purpose of Petition: (Check one)

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

Employer: _____

Employer's Address: _____

Employer's Phone No.: _____

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

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

Certified Bargaining Representative: _____

Address: _____

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

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

Petitioner: _____ Date: _____

Signature and Title (if any): _____

Address/Phone: _____

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

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

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

Petitioner seeks to amend the bargaining unit consisting of: _____

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

If Adding Positions:

Is the classification a new position? _____

If yes, when was it created? _____

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

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

Have any job duties changed: _____

If yes, please explain: _____

If Deleting Positions:

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

Date: _____

Signature: _____



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NOTICE OF ELECTION

PURPOSE OF ELECTION

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

SECRET BALLOT

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

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

A copy of the official ballot is included below.

AUTHORIZED OBSERVERS

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

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

ELIGIBILITY RULES

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

CHALLENGE OF VOTERS

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

ABSENTEE BALLOTS

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

INFORMATION CONCERNING ELECTION

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

VOTING UNIT

[BARGAINING UNIT DEFINITION PRINTED HERE]

TIME AND PLACE OF ELECTION

DATE:

TIME:

PLACE:

OFFICIAL SECRET BALLOT

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

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

Labor Organization Name

Labor Organization Name

No Representative

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



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

RE: Representation Petition No. _____

CERTIFICATE OF POSTING

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

Signature

Name & position (please print or type)

Date

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



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DESIGNATION OF ELECTION OBSERVERS

(Name of employee organization or Judicial Branch employer)

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

NAME

POSITION

Location and balloting time

Observer: _____

Mailing Address: _____

Alternate: _____

Mailing Address: _____

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

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

Designated Rep: _____

Organization: _____

Date: _____

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



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INSTRUCTIONS TO ELECTION OBSERVERS

DUTIES (General):

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

THINGS TO DO (General):

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

THINGS NOT TO DO (Specific):

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

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

Administrator or Designee



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INSTRUCTIONS FOR ELECTION OFFICIALS
APPOINTED BY THE ADMINISTRATOR

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

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

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

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

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

Administrator or Designee

Dated: _____



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DESIGNATION OF COUNT OBSERVER

(Name of employee organization or Judicial Branch employer)

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

NAME

POSITION

Observer: _____

Mailing Address: _____

Observer: _____

Mailing Address: _____

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

Designated Rep: _____

Organization: _____

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



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NOTICE OF ELECTION RESULTS

Representation Petition No. _____

Type of Election:

Date of Election:

Employer:

Bargaining Unit :

Exclusive Representative:

ELECTION RESULTS:

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

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

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

Administrator/Designee

DATED: _____



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ANNUAL EMPLOYEE ORGANIZATION REGISTRATION REPORT

YEAR _____

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

ORGANIZATION NAME: _____

ADDRESS: _____

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

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

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

I. OFFICERS:

(Name) _____ **Office Held** _____

Address: _____

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

E-Mail Address: _____

(Name) _____ **Office Held** _____

Address: _____

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

E-Mail Address: _____

(Name) _____ **Office Held** _____

Address: _____

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

E-Mail Address: _____

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

II. PRINCIPAL PLACE OF BUSINESS:

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

III. AFFILIATED ORGANIZATIONS:

IV. DESCRIPTION OF BARGAINING UNIT:

NUMBER OF EMPLOYEES IN BARGAINING UNIT: _____

EXPIRATION OF CURRENT AGREEMENT: _____

V. FEE SCHEDULES:

INITIATION FEE: _____

DUES: _____

OTHER FEES (specify): _____

VI. QUALIFICATIONS/RESTRICTIONS ON MEMBERSHIP: _____

Signature of President or other authorized officer required:

PRESIDENT

AUTHORIZED OFFICER

DATE: _____



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

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

Party Name :

CERTIFICATE OF SERVICE

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

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

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

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

List the names and addresses of individuals served:

Name: _____

Address: _____

Telephone Number: _____

DATED: _____



State of Delaware
Judicial Branch Employment Relations
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Wilmington, Delaware 19801

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

Name of Respondent :

VERIFICATION AFFIDAVIT

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

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

Signature

Dated: _____

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

Notary Public (Seal)

My Commission Expires: