



**E-FILED**  
**CNMI SUPREME COURT**  
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Filing ID: 56851661  
Case No.: ADM-2015  
Nora Borja



# **NORTHERN MARIANA ISLANDS**

# **JUDICIAL BRANCH PERSONNEL**

# **RULES**

Effective February 18, 2015



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IN THE  
SUPREME COURT  
OF THE  
COMMONWEALTH OF THE NORTHERN MARIANA ISLANDS

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IN RE THE NORTHERN MARIANA ISLANDS JUDICIAL BRANCH PERSONNEL RULES

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ADMINISTRATIVE ORDER 2015-ADM-0006-RUL

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**ORDER**

¶1 On December 19, 2014, the attached proposed *Northern Mariana Islands Judicial Branch Personnel Rules* were submitted to the Eighteenth Northern Marianas Commonwealth Legislature for approval. Sixty (60) days have elapsed since submission and neither house of the Legislature has disapproved of the proposed rules.

¶2 IT IS THEREFORE ORDERED that the *Northern Mariana Islands Judicial Branch Personnel Rules* are adopted as permanent pursuant to Article 4, § 9 of the NMI Constitution and became effective on February 18, 2015.

SO ORDERED this 3rd day of March, 2015.

/s/  
\_\_\_\_\_  
ALEXANDRO C. CASTRO  
Chief Justice

/s/  
\_\_\_\_\_  
JOHN A. MANGLONA  
Associate Justice

/s/  
\_\_\_\_\_  
PERRY B. INOS  
Associate Justice

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## **RULE 1. GENERAL PROVISIONS**

### *(a) Citation*

These rules shall be known and may be cited as the Commonwealth of Northern Mariana Islands Judicial Branch Personnel Rules, or NMI JUD. PERS. R.

### *(b) Authority*

These rules are promulgated pursuant to Article IV, § 9 of the Constitution of the Northern Mariana Islands. The Director of Courts, or other designee of the Chief Justice, shall propose such policies, codes, regulations, forms, and procedures as may be necessary to implement these rules. Such policies, codes, regulations, forms, and procedures shall be approved by the Judicial Council.

If the position of Director of Courts is vacant, all authority possessed by the Director of Courts as stated in these rules shall be exercised by the Chief Justice or his/her designee.

### *(c) Scope*

These rules shall apply to all employees of the Supreme Court and the Superior Court of the Commonwealth for Northern Mariana Islands. These rules shall apply to employees of the Law Revision Commission pursuant to the terms of their contracts and to the extent not in conflict with 1 CMC §§ 3801 – 3810.

These rules shall not apply to justices or judges, with the exception of Rule 16, the Anti-Discrimination Policy. Certain groups of employees may be excluded from certain sections of these rules if explicitly provided for in the employees' contracts. Employees currently classified as within the Civil Service System shall remain in the Civil Service, and nothing in these Rules shall be construed to enlarge, modify, limit, or abridge their employment rights and responsibilities as specified by the Civil Service System's Rules and Regulations. However, no employee of the Judiciary hired after the effective date of these rules shall be a member of the Civil Service System. Documents referenced in Rules 16 through 22 shall apply to civil service employees to the extent that there is no conflict between the rule at issue and the Civil Service System's Rules and Regulations.

As an independent and co-equal branch of government constitutionally vested with the authority to promulgate rules governing its administration, these rules and Judicial Council action taken pursuant to the grant of authority contained in these rules, supersede the application of the following statutes to Judiciary employees who are covered by these rules: 1 CMC §§ 8101 – 8153; 1 CMC §§ 8211 – 8217; 1 CMC §§ 8221 – 8228; 1 CMC §§ 8231 – 8233; 1 CMC §§ 8241 – 8253; 1 CMC §§ 8265 – 8267; 1 CMC §§ 82601 – 82605.

### *(d) Limitations*

(1) Federal Law – Federal law and future modifications to federal law including, but not limited to, maternity, veterans, family, and military law will supersede these rules.

(2) Employment Contracts – Nothing in these rules shall provide any guarantee of future employment with the CNMI Judiciary. Terms and conditions defined in these rules shall provide a basis for operation, but shall not provide greater rights to future employment than the terms found within the Employment Contract. In the event that there is a conflict between a provision in these rules and a provision in an employee's contract, the provision in the employee's contract shall control.

### *(e) Review of Personnel Rules*

(1) Review – These rules may be revised by the Judicial Council as needed to aid in the administration of the Judiciary.

(2) Personnel Rules Review – The Director of Courts, General Counsel, and Human Resources Officer shall review these rules periodically and submit their recommendations to the Judicial Council.

*(f) Authority and Responsibility for Personnel Administration*

The Chief Justice or designee is responsible for implementing these rules and handling all personnel management issues for the Judiciary. The Presiding Judge shares this responsibility with the Chief Justice for issues relating to Superior Court employees.

**RULE 2. JOB DESCRIPTIONS**

*(a) General*

The Chief Justice or designee shall maintain personnel job descriptions for all positions covered by the personnel rules. The personnel job descriptions shall establish the qualifications and duties for each position or group of positions.

*(b) Job Descriptions*

Every employee shall be assigned a job title with a complete job description. The description shall be based on sound, systematic occupational analysis and position evaluation, and shall contain elements sufficient to distinguish the various job descriptions including at the least the qualifications and general duties for each position.

*(c) Job Title*

The titles assigned shall be the official titles for every job description and position for personnel transactions and budget administration. Working or statutory titles may be used in the day-to-day operations of the Judiciary.

*(d) Modification of Job Descriptions*

The Chief Justice or designee may modify job descriptions, including but not limited to the addition or abolishment of jobs, changes in titles, and changes in descriptions, at any time following reasonable notice of proposed modifications to all employees serving in positions that would be directly affected by any proposed modifications.

*(e) Assignment of Duties*

The inclusion of specific duties in a job description shall not be construed to limit the power of the supervisor to assign other related duties to a specific position.

**RULE 3. REASSIGNMENT OF POSITIONS**

*(a) Reassignment Authority*

Whenever the Chief Justice or designee determines an employee is improperly assigned to a job description and requires a job title change, the Chief Justice or designee may reassign the employee to a position with a more appropriate job description and shall compensate the employee who occupies that position in accordance with the new duties. The Chief Justice or designee may initiate a job description review at any time and may require any employee to complete and submit a position job description questionnaire to assist in the review.

*(b) Request for Assignment Review*



- (1) Assignment review of any position may be requested by the supervisor who supervises the position or by any employee who fills the position.
- (2) Effect of Reassignment Action – For an incumbent in a reassigned position the individual salary adjustment shall be treated as a transfer, promotion, or demotion in accordance with these rules. A trial service or probationary period is not required for the action of reassignment.
- (3) Effective Date of Reassignment Action – The effective date of any position reassigned shall be the first working day following the approval by the Chief Justice or designee, except that the effective date may be deferred pending availability of funds. In no event shall an employee reassigned be given retroactive compensation.

#### **RULE 4. COMPENSATION**

##### *(a) Compensation Plan*

(1) Establishment – The Chief Justice or designee shall maintain a compensation plan that includes all job descriptions and assign a salary range minimum and maximum to each job based upon relative responsibilities of work, comparability to prevailing rates, and other pertinent salary and economic data.

##### *(2) Adjustments*

(A) Based on Salary Survey – The Director of Courts or designee shall from time to time recommend to the Judicial Council adjustments to the compensation plan for each job description. Upon approval by the Judicial Council, and availability of funding, such adjustments shall be effective on the first of the following month for all employees in the job description(s) that are being realigned, unless otherwise specified by the Judicial Council. The decision of the Judicial Council to adjust salary ranges shall be final and shall not be subject to grievance procedures set forth in these rules.

(B) Adjustments – Subject to the availability of funds, and the terms of the employment contract, the Chief Justice or designee may at any time adjust the compensation plan if justified by changed circumstances, and such change may result in an increase or decrease to existing salaries. The decision of the Chief Justice or designee shall be final and shall not be subject to the grievance procedures set forth in these rules.

##### *(b) Hiring Rates*

New Employees – The salary assigned to a new employee shall fall within the range minimum and maximum of the compensation range assigned to the job description.

##### *(c) Individual Salary Adjustment*

(1) Anniversary Date – An employee's anniversary date is the day that they first commence work as an employee of the Judiciary. If an employee assumes a different position or title within the Judiciary without a break in service, their anniversary date remains the same. If an employee leaves the Judiciary and then resumes employment with the Judiciary at a later date, their anniversary date shall be the day they commence work pursuant to their new employment contract.

##### *(2) Pay Increases*

(A) Following satisfactory performance – Subject to the availability of funds, if an employee's overall job performance rating is acceptable, the employee's salary may be increased by the Chief Justice or designee, within the assigned salary range. The annual

performance appraisal shall be evidence of acceptable performance. The Chief Justice or designee shall establish a formula for how pay will be increased based on performance when funds are available and shall create a consistent and equitable percentage increase scale for all employees, but the percentage increase may differ based upon performance ratings.

(B) Following unsatisfactory performance – If an employee’s overall job performance is unacceptable, as substantiated by written evidence in the performance appraisal, the employee shall not receive a compensation increase until satisfactory performance is achieved.

*(d) Change of Position*

(1) Transfer – When an employee is transferred, the salary and anniversary date shall not change. A transfer is defined by moving from one position to another where the compensation ranges have the same or less than a 5% difference at the minimum compensation rate.

(2) Promotion – A promotion is defined as a move between two jobs where there is at least a 5% difference between the minimum of the new compensation range in comparison to the current job. When an employee is promoted, their anniversary date shall not change.

When an employee is promoted as defined by these rules, the employee shall receive a minimum promotional increase of 5%, but shall not exceed the range maximum. When justified by unusual conditions or unusual qualifications, and subject to availability of funds, the Chief Justice or designee may authorize more than a 5% increase.

*(e) Bonuses*

(1) The Judicial Council may, in its sole discretion, award one-time lump sum merit based bonus payments to employees. The payment of any bonus is subject to the availability of funds. An employee may not utilize the grievance procedures outlined in these rules if they are not awarded a bonus. For an employee to be eligible to receive a bonus he or she must:

(A) have received at least a Satisfactory Appraisal from their supervisor on their last Appraisal Report, unless the bonus is paid in Fiscal Year 2015;

(B) not have received an Appraisal Report less than Satisfactory in the preceding twelve months, unless the bonus is paid in Fiscal Year 2015;

(C) be employed by the Judiciary for at least one full continuous year; and

(D) be an employee whose employment with the Judiciary is covered by these rules.

(2) The Judicial Council may, in its sole discretion, award bonus annual leave to employees. An employee may not utilize the grievance procedures outlined in these rules if they are not awarded bonus annual leave. Such annual leave may not be converted into cash and is subject to all of the rules, regulations, and procedures that govern earned annual leave. For an employee to be eligible to receive bonus annual leave he or she must comply with the requirements from Rule 4(e)(1)(A)-(D) above.

**RULE 5. APPOINTMENT OF EMPLOYEES**

*(a) Qualifications*

All persons hired shall meet the qualifications established by the job description or as otherwise established in accordance with these rules.

*(b) Determination of Qualification*

The determination as to whether a person meets the qualifications established by the job description to any position shall be made by the Chief Justice or designee or the supervisor after review of the person's academic credentials, work experience, examination results, if any, and other pertinent information.

*(c) Exceptions*

The Chief Justice or designee may waive qualifications established by the job description and may approve the substitution of alternative qualifications when no qualified candidates can be found to fill a position, and no such waiver or substitution shall be valid unless approved by the Chief Justice or designee. The decision of the Chief Justice or designee shall be final and shall not be subject to the grievance procedures set forth in these rules.

**RULE 6. RECRUITMENT AND APPOINTMENT**

*(a) Recruitment Process – Regular Contract Positions*

(1) Vacancy Announcement for Regular Contract Positions – When a vacancy occurs, the supervisor shall notify the Chief Justice for Supreme Court and Administration Office employees. For Superior Court employees the supervisor shall also notify the Presiding Judge. The Chief Justice or designee will internally post the position for a maximum of five business days. After the position has been internally posted, the Chief Justice or designee shall consult with the immediate supervisor to determine if the position should be publicly posted. If publicly posted, it will remain posted for a minimum of 10 business days.

(2) Exempt from Posting – These rules shall neither require nor prohibit the positions of Clerks of Supreme and Superior Courts, Chief Probation Officer, Family Court Manager, General Counsel, Law Revision Commission Executive Director, Director of Courts, Deputy Director of Courts, Law Clerk, Judicial Assistant, or Chambers' Administrator to be publicly posted.

(3) Interviews – The Chief Justice or designee shall provide applications and approved interview questions to the hiring authority in preparation for interviews. If interviews are conducted for a law clerk or judicial assistant vacancy, the justice or judge conducting the interview shall be responsible for formulating their own interview questions. Upon completion of interviews, the hiring authority or the Director of Courts shall forward the interview results identifying the final candidate considered for hiring for the appointment approval of the Chief Justice for Supreme Court and Administration Office employees or the Presiding Judge for Superior Court employees.

(4) Preparation for Hiring Regular Contract Employees – Upon receipt of approval to hire from the Chief Justice or Presiding Judge, the Director of Courts or designee will prepare and send an Intent to Hire letter, including information regarding pre-employment drug screening information and other instructions.

The Director of Courts shall route Intent to Hire documents internally to the General Counsel, Division Manager, and Chief Justice and/or Presiding Judge.

*(b) Recruitment Process – Law Clerks and Judicial Assistants*

(1) Internal Notice – If there is a vacancy in any chamber, the affected justice or judge shall notify the Chief Justice or designee of the need to fill a law clerk or judicial assistant vacancy.

(2) Posting and Interviewing – It is up to the discretion of each justice or judge to determine whether to publicly post the position vacancy. Nothing in these rules shall require law clerk or judicial assistant positions to be publicly posted or interviews conducted. If the position is

publicly posted, however, interviews shall be conducted. It is the responsibility of the justice or judge to post the vacancy and conduct interviews.

(3) Intent to Hire Law Clerk – The affected justice or judge shall provided the Chief Justice or designee with a memo of intent to hire a potential applicant. The Chief Justice or designee shall then notify the Director of Courts. The Director of Courts or designee shall prepare and hand deliver, mail, or email an Intent to Hire packet to the candidate for completion and acceptance of the position, including information regarding pre-employment drug screening information and other instructions.

The Director of Courts shall route Intent to Hire documents internally to the General Counsel, supervising Justice/Judge, and the Chief Justice and/or Presiding Judge.

*(c) Contract Renewal*

An employee's contract can be renewed or reposted for competitive recruitment as defined by Rule 6(a)(1) or 6(a)(2) above.

(1) A written recommendation shall be provided from the supervisor to the Director of Courts for contract renewals.

(2) Final determination for all contract renewals shall rest with the Chief Justice. For Superior Court employees, the Presiding Judge must also concur with the renewal, with the exception that the contract renewal of a law clerk for a Supreme Court justice must have the concurrence of all three justices.

*(d) Equal Employment Provisions for All Positions*

Positive efforts by the Chief Justice or designee shall be made in recruitment to advertise employment opportunities to protected groups and to agencies specializing in the placement of protected group members, and to seek out, contact, and employ qualified members of protected groups. At a minimum such recruitment efforts shall include local posting in a public place.

*(e) Pre-Employment Drug Screening*

All potential employees are required to submit to pre-employment drug screening. Employees may be required to submit to drug testing where reasonable suspicion exists. Specific compliance with this subsection is provided for in Rule 17.

*(f) Criminal Background Checks*

All potential employees are required to submit to pre-employment criminal background investigations. If a potential employee's criminal background check reveals contacts with the criminal justice system, it shall be at the sole discretion of the Chief Justice to determine whether the individual may be employed by the Judiciary.

*(g) Court Records Checks*

All potential employees are required to submit to a pre-employment court records check. If a potential employee's court records check reveals contacts with the court system, it shall be at the sole discretion of the Chief Justice to determine whether the individual may be employed by the Judiciary; however, this requirement shall not be interpreted to deny employment to a potential employee for exercising their rights before the courts.

*(h) Rescinding Offer of Employment*

The Chief Justice or designee may rescind an offer of employment for any candidate for any reason, including but not limited to failure to pass the drug testing, criminal background check, or court records check. The reason for rescinding an Offer of Employment shall be made in writing.

*(i) Family Members*

Whether a person is a “family member” as the term is used in these rules depends on the degree of relation between the individuals. Attached to these rules as Diagram 1 is a Kinship Chart outlining degrees of relation. For the purpose of these rules and Diagram 1, a person is synonymous with their legal spouse, and in-laws occupy the same degrees of relation as if they were blood or adopted relatives.

(1) Any justice, judge, or manager shall recuse themselves from the selection process when a family member within six degrees of relation has applied for any position in the Judiciary. An independent selection panel appointed by the Chief Justice or designee shall make the selection recommendation to the Chief Justice or Presiding Judge.

(2) After the effective date of these rules, no applicant may be hired to a position in the Judiciary if a member of the applicant’s family is within five degrees of relation and:

(A) Would directly or indirectly exercise supervisory or appointment authority or be in a position to take disciplinary action over another family member;

(B) Would audit, verify, receive, or be entrusted with moneys received or handled by another family member;

(C) Would have access to the employee’s confidential information, including payroll and personnel records.

(3) Existing employees may be promoted, demoted, or transferred to a position that they would otherwise be ineligible to occupy if they were a new hire pursuant to Rule 6(i)(2) if approved in writing by the Chief Justice.

*(j) Probation Period*

All new employees shall be placed on a probationary status for the first ninety days of their employment. After this ninety day probationary period the employee’s supervisor shall conduct a probationary performance appraisal in accordance with Rule 11. An employee who receives a Satisfactory Appraisal shall exit probationary status. An employee who receives an Unsatisfactory Appraisal shall be terminated and given ten-days notice pursuant to Rule 12. The Judicial Council may designate any position exempt from the probationary period.

**RULE 7. HOURS OF WORK AND OVERTIME**

*(a) Time Worked and Workweek*

(1) The normal workweek for a full-time employee shall be 40 hours in any established seven day period, which shall be from Friday at 5:01PM to the following Friday at 5:00PM. Court hours are established in each Judiciary Division. An employee’s supervisor will inform the employee of their expected work hours.

(2) The supervisor shall establish work schedules for all employees.

(3) Employees who are considered non-exempt under the Fair Labor Standards Act must maintain a timesheet in order to track time and attendance. Exempt employees are required to record all leave but shall not maintain timesheets. Exempt employees may be required to provide documentation of hours worked at any time by the Chief Justice or designee or the employee’s supervisor.

(4) Hours worked is defined as time that an employee is working, and does not include time off for holidays, paid leave or leave without pay. Hours worked shall be counted in fifteen minute increments for the purpose of time reporting and must be rounded to the nearest half hour.

(5) With the approval of a supervisor or the Chief Justice or designee, periods of time engaged in attendance at work-related meetings, participation in an investigation into an employee's conduct, participation in workplace mediation, participation in tests and interviews for Judiciary positions, and attendance at approved job-related trainings shall be counted as part of the normal workweek.

*(b) Overtime*

(1) Overtime is that time an employee is directed or permitted to work in excess of 40 hours in the non-exempt employee's established 7-day work period.

(2) All non-exempt employees shall obtain approval from the Chief Justice or designee prior to working overtime. Failure to request such approval prior to working overtime may result in corrective or disciplinary action pursuant to these rules.

*(c) Eligibility for Compensation at Premium Pay*

The Chief Justice or designee shall determine those groups of employees who are considered non-exempt, i.e., eligible for, and excluded from, overtime compensation at premium pay. The decision of the Chief Justice or designee shall be final, and shall not be subject to grievance.

*(d) Overtime Compensation*

Except for exempt employees, all employees shall be compensated for overtime at premium pay, which shall be the rate of time-and-one-half for each overtime hour, in compensatory time-off with the following provisions:

(1) Compensatory Time Off as Compensation

(A) Overtime for each eligible employee shall accrue as compensatory time off up to a maximum of 60 hours of compensatory time (representing 40 hours of overtime work). Compensatory time must be used prior to any other leave type.

(B) Every effort shall be made to schedule compensatory time within 60 days following the payroll period in which the overtime was worked.

(2) Cash as Compensation

(A) When 60 hours of compensatory time has been earned, subsequent overtime hours shall be compensated in cash at premium pay on the next available payroll.

(B) Upon separation from employment, the employee shall be paid in cash for any remaining unused compensatory time.

*(e) On Call Pay*

(1) Compensation for On-Call Time – Non-exempt employees are eligible for on-call pay if the employee is required to be accessible outside of normal work hours and is not able to use the time effectively for personal activities either because of the frequency of work calls received during the on-call time or because freedom of movement is significantly restricted. This includes the situation where an employee's travel is limited and where the employee is prohibited from drinking alcohol during the period of time the employee is waiting to be engaged to work. Such employees shall be compensated for on-call non-working time at a rate to be established by the Judicial Council. Time spent working shall be compensated pursuant to Rule 7.

(2) Compensation for Non-Restrictive Off-Duty Time – Non-exempt employees who are not restricted in their activities, as defined in Rule 7(e)(1), but who spend time responding to phone calls or requests for assistance during the period they are off-duty shall be compensated for time spent responding to the on-call request in accordance with Rule 7.

(3) Non-exempt employees who meet the above criteria may be compensated by receiving compensatory time off, or working a flexible schedule in the same workweek. Compensatory time shall be granted at 1 1/2 hours for each hour worked over 40 in a work week. The employee shall make every effort to use the compensatory time within 60 days following the payroll period in which the overtime was earned. The supervisor shall have discretion to require employees to work a flexible schedule so that on-call hours worked does not exceed 40 hours in a workweek. The employee's supervisor shall let them know whether they will receive the on-call rate or compensatory time.

*(f) Records*

The Chief Justice or designee shall maintain records of time worked in each workweek by all department employees in accordance with procedures established.

**RULE 8. CONFLICT OF INTEREST – CASES PENDING BEFORE THE COURT AND OUTSIDE EMPLOYMENT**

*(a) Principal Vocation of Employees*

Judiciary employment shall be the principal vocation of employees.

*(b) Conditions of Outside Employment/Volunteer Activities*

An employee may engage in outside employment and volunteer activities if all of the following conditions are met:

(1) The employee has obtained prior written approval from the Chief Justice for Supreme Court and Administrative Office employees, and the Presiding Judge for Superior Court employees, and the employment/volunteer does not violate the requirements in subsections (b)(2) through (b)(7) below;

(2) The outside employment/volunteer activity does not interfere with job performance;

(3) The outside employment/volunteer activity does not conflict with the interests of the Judiciary;

(4) The outside employment/volunteer activity is not of a type that could reasonably give rise to criticism or suspicion of conflicting interest or duties;

(5) The outside employment is not for a service provider under contract or doing business with the Judiciary;

(6) The outside employment is not for an attorney, law office, investigator, or other legal services provider; and

(7) The outside employment does not involving practicing law in the Commonwealth, another U.S. jurisdiction, or a foreign jurisdiction.

*(c) Conflict of Interest with Cases Pending before the Court*

An employee shall avoid any involvement in the processing of any matter before the courts or probation in which the employee has a personal, business, or family interest and shall immediately inform the employee's supervisor of the existence of such conflict of interest in writing within three calendar days

of the employee's discovery of the conflict. The employee's supervisor shall then notify the Chief Justice and/or Presiding Judge in writing. Failure to do so may result in corrective or disciplinary action.

*(d) Grievance Exception*

Nothing in these rules shall be interpreted to limit a Judiciary employee's right to seek redress of their personal grievances in the Commonwealth Courts.

**RULE 9. POLITICAL ACTIVITY**

*(a) Employee Classifications*

Judiciary employees are categorized as Restricted and Non-restricted with respect to the scope of their participation in political activities.

(1) Restricted Employees – restricted employees are restricted from engaging in political activity by virtue of their close association with a judicial officer or because of their identity as policy-makers within the Judiciary. These positions include: law clerks, judicial assistants, Supreme Court Clerk of Court, Supreme Court Deputy Clerks, Superior Court Clerk of Court, Superior Court Deputy Clerks, Director of Courts, Deputy Director of Courts, Chamber's Administrator to the Chief Justice, Special Assistant to the Presiding Judge, General Counsel, Chief Probation Officer, Public Information Officer, Human Resources Officer, Budget and Finance Director, Family Court Manager, Court Services Administrator, and Chief of Security and Enforcement. Other positions may be deemed "restricted" by a majority decision of the Judicial Council provided the positions are either closely associated with a judicial officer or because of their identity as judicial policy-makers.

(2) Non-restricted Employees – non-restricted employees are all Judicial Branch employees covered by these rules and not deemed Restricted as defined in Rule 9(a)(1) or by Judicial Council decision.

*(b) Activities of Non-Restricted Employees*

Employees categorized as non-restricted in Rule 9(a)(2) may engage in activities of both a partisan or non-partisan nature as individuals, except:

(1) Employees may not run for or hold any office, which requires declaration of a political affiliation, even if the employee is not affiliated with a political party.

(2) Employees must not compromise or give the appearance of compromising the integrity and independence of the Judiciary through outside activities.

(3) Employees must not engage in any partisan or non-partisan activity while on Judiciary time, Judiciary property, or using any Judiciary equipment or resources.

(4) Employees may not display buttons, stickers, pictures, or other campaign paraphernalia while at work, on Judiciary property, or on Judiciary time.

*(c) Activities of Restricted Employees*

Employees categorized as restricted in Rule 9(a)(1) or by Judicial Council decision are prohibited from the activities listed in Rule 9(b)(1)-(4) and taking an active role in partisan or non-partisan politics by:

(1) Publicly endorsing a partisan or non-partisan political candidate or organization by authorizing use of the employee's name, making speeches, or participating in a partisan or non-partisan political convention or fund-raising activity;



- (2) Publicly endorsing a partisan or non-partisan political candidate or organization by displaying a campaign picture, sign, sticker, badge or button for a partisan or non-partisan political candidate or organization whether at work or other location, including at the employee's home;
- (3) Initiating or circulating a nominating petition for a candidate in a partisan or non-partisan political election;
- (4) Participating in a campaign in support of or in opposition to a candidate in a partisan or non-partisan political election;
- (5) Soliciting funds for or contributing to a partisan or non-partisan political organization, candidate, or event;
- (6) Acting as a recorder, watcher, challenger, election judge or similar officer at the polls in a partisan or non-partisan political election; or
- (7) Initiating or endorsing referendums, petitions, recalls, and ballot initiatives.

*(d) Prohibition on Public Position Statements*

No employee may represent the Judiciary's position before members of the legislature, the executive branch, or other organizations without the permission of the Chief Justice. An employee may not take a public position on Judiciary matters in letters to the editor or in correspondence to elected officials. In political correspondence concerning non-judicial/non-probation matters, employees may not identify themselves as an employee of the Judiciary.

*(e) Prohibition on Disreputable Activities*

No employee may take actions that might be construed as being on behalf of a justice or judge, or that bring the Judiciary into disrepute.

*(f) Prohibition on Election Interference*

No employee may use their office or official influence to interfere with an election or to affect the results of an election.

*(g) Prohibition on Workplace Politics*

No employees may cause or threaten to cause a decrease in rank, pay, or other benefits of employment with the intent to discourage or encourage another employee to support any candidate for public office, any initiative or referendum, or any political party.

*(h) Leave*

Paid or unpaid leave to engage in political activity or to serve in an elected office shall not be granted.

*(i) Non-Discrimination Policy*

It is the policy of the Judiciary to prohibit discrimination based on political affiliation or choice in voting preferences.

**RULE 10. LEAVE**

*(a) Authorization*

All leave specified in this rule shall be approved or disapproved by the supervisor unless another official is explicitly mentioned. An Application for Leave Form shall be issued by the Chief Justice or designee.

*(b) Annual Leave*

Annual leave, or vacation, may be granted for the purpose of rest and relaxation. An employee may accrue up to 360 hours of annual leave. All annual leave earned excess of 360 hours shall be converted to sick leave.

- (1) First Year of Employment – An employee in the first year of employment shall not be entitled to use annual leave during the first ninety days of employment. Annual leave earned during this period will be credited to the employee upon completion of this initial period.
- (2) Leave Without Pay – If an employee takes leave without pay (LWOP) or is in an absence without leave (AWOL) status there will be no leave accrual for that pay period.
- (3) Prior Approval – Annual leave may be used only upon prior written approval of the immediate supervisor and will be scheduled based upon the needs of the employer. Annual leave requests must be made in advance, except in cases of bona fide emergencies, on the designated leave form. All annual leave requests must be approved by the immediate supervisor and division director.
- (4) Forfeiture of Annual Leave – Annual leave must be utilized during the contract period. Except as otherwise specifically stated in this rule, any annual leave not utilized will be converted to sick leave at the end of the employment term. No cash payment will be made for unused annual leave under any circumstances. If an employee's employment contract with the Judiciary is renewed, the employee shall carry over their annual leave balance into the new employment term. No more than 360 hours of annual leave may be carried over.
- (5) Accrual Rate – Employees who have less than three years of creditable service shall earn annual leave at the rate of four hours per pay period. Employees with at least three but less than six years of creditable service shall earn annual leave at the rate of six hours per pay period. Employees with six or more years of creditable service shall earn annual leave at the rate of eight hours per pay period. Supervisory employees and practicing attorneys shall earn annual leave at a rate not to exceed eight hours per pay period. Other highly qualified employees with advanced degrees and/or exceptional skills or experience shall earn annual leave at a rate not to exceed eight hours per pay period. Law clerks shall earn four hours of annual leave per pay period during the first year of creditable service, six hours per pay period during the second year of creditable service, and eight hours per pay period during subsequent years of creditable service.

*(c) Sick Leave*

Sick leave shall accrue to the employee at the rate of four hours per pay period. Sick leave may be accumulated without limit. No cash payment will be made for unused sick leave.

- (1) Leave Without Pay and Leave Accrual – If an employee takes leave without pay (LWOP) or is in an absence without leave (AWOL) status there will be no leave accrual for that pay period.
- (2) Availability of Sick Leave – The employee is entitled to use accrued sick leave from the time sick leave is first earned.
- (3) Absence of More than Three Days – Any absence on sick leave where the employee misses more than three continuous days of work must have the illness verified by a note from a medical doctor in order to claim sick leave.
- (4) Forfeiture of Sick Leave – The employee is not entitled to any payment for accrued and unused sick leave upon termination or resignation of employment.
- (5) Misuse of Sick Leave – If the employer has reasonable grounds to believe that the employee is misusing sick leave, or requesting sick leave for purposes other than illness, the employer may request proof of illness from a health care professional for any period of illness. If the certification is not provided, or is unpersuasive, the supervisor may deny the sick leave request.

*(d) Family Sick Leave*

An employee may use sick leave to attend to an immediate family member who is sick. An immediate family member is the employee's legal spouse, child (natural or adopted), or parent. For a sick leave request in excess of two consecutive workdays, the employee must provide a note from a medical doctor. Leave taken under this subsection shall be deducted from the employee's accrued/earned sick leave.

*(e) Sick Leave Bank*

The Judiciary has a Sick Leave Bank for Judiciary employee's for the purpose of providing additional job and financial protection for employees experiencing prolonged absence from the workplace due to catastrophic illness or major injury. Any Judiciary employee may contribute sick leave hours to the Sick Leave Bank, provided that, after such contribution, he or she retains at least eighty (80) hours of accrued sick leave. Employees separating from service within the Judiciary for whatever reasons, at the time of separation may contribute any or all of their accrued sick leave hours to the Sick Leave Bank. All contributions shall be made on forms prescribed by the Chief Justice or designee. The contributor may elect to contribute sick leave hours to either the General or Designated Account.

- (1) General Account – available to any eligible employee.
- (2) Designated Account – available to the eligible employee designated by the contributor. If the designated employee does not use the hours contributed to his or her designated account within four pay periods of the contribution, the remaining hours will be deposited into the General Account.

To request use of sick leave hours from the Sick Leave Bank, the employee must be aware of three things:

- (3) The request must be received by the Chief Justice or designee at least three working days before the proposed effective date, with all required approval and supporting documents.
- (4) The request must be supported by a statement of an attending physician.
- (5) No properly supported request from a qualified employee shall be denied unless in conflict with the Sick Leave Bank regulations.

The Chief Justice's designee shall propose, subject to approval by the Judicial Council, Sick Leave Bank forms and regulations. The Director of Courts shall maintain records of all hours contributed to, withdrawn from, and returned to the Sick Leave Bank. Nothing in these rules or subsequently adopted regulations shall be construed to prevent the Judiciary's sick leave bank from existing harmoniously with other CNMI government sick leave banks, or the transfer of sick leave hours between different sick leave banks.

*(f) Advanced Leave*

Advanced leave may be granted for up to one-half of the total leave credit the employee is eligible to accrue for one year from the effective date of the leave, or the remainder of the employee's contract, whichever is shorter. In order for an employee to be eligible for advanced leave they must submit a written request justifying the use of advanced leave and an Application for Leave Form to their immediate supervisor at least five days in advance of the effective date of the leave. If the immediate supervisor supports the granting of advanced leave, they shall submit a memorandum to the Chief Justice or designee recommending that advanced leave be granted. The grant or denial of advanced leave is solely at the discretion of the Chief Justice or designee. If advanced leave is granted, and upon receipt of the Application for Leave Form, the timekeeper must review the information provided on the form to ensure its proper completion, attachment of supporting documents and the correct hours of leave

requested. Before placing the employee on pay status for the period covered under the advance leave request, the timekeeper must ensure the request is supported with a memorandum from the immediate supervisor recommending and the Chief Justice or designee approving the request for advance leave.

*(g) Leave without Pay*

Leave without pay may be taken only after obtaining the written approval of the Chief Justice or designee.

*(h) Administrative Leave with Pay*

Administrative leave with pay may be granted by the Chief Justice or Presiding Judge:

- (1) To serve on government boards, councils, and commissions, provided the employee does not receive compensation from the board, council, or commission, and, if deemed for an employment related purpose, for a period of not to exceed ten days per annum;
- (2) When the court is closed due to inclement weather or other emergency reasons. Such leave may only be granted for employees who are physically present or scheduled to be physically present at the time of the closure and shall not apply to those who are either not scheduled to work or are on leave at the time of the closure;
- (3) To study for and take the CNMI Bar Examination. Such leave shall not exceed fifteen days, and the leave must be taken during the month the exam is offered;
- (4) For work-related travel; or
- (5) For any other public purpose.

*(i) Holidays*

The employee shall be released from work on all legal holidays, except during emergencies declared by the Chief Justice, without loss of pay or charge to leave account. Full-time employees shall be granted holiday leave for every designated legal holiday. Part-time employees shall be granted a prorated amount of holiday leave. To be granted holiday leave, an employee must work or be on paid leave the last scheduled working day before and the first scheduled working day after the holiday.

- (1) Working on a Holiday – An employee who is required to work on a legal holiday shall be granted an equal period of holiday leave at a time determined by the Chief Justice or designee.
- (2) Leave on a Holiday – An employee who is on paid leave as defined by these rules on a legal holiday which falls on a regular work day shall not be charged for that day.

*(j) Court Leave*

Employees are encouraged to fulfill their obligations as citizens and residents of the Commonwealth and the federal government. Thus, employees who are called upon to serve as jurors and witnesses may, at their option, be granted court leave for such period as required by the court. Employees who are called to jury duty or as witnesses shall present their summons to their immediate supervisor together with a completed request for leave for his signature and processing. Employees using court leave to cover the period of absence shall turn over to the Commonwealth Treasurer such jury or witness fees (as distinct from expense allowances) as they receive from the court or summoning party. Expense allowances paid the employee for whatever purpose may be retained by the employee to defray the expenses for which granted.

*(k) Compassionate Leave*

Employees may be granted compassionate leave of no more than five workdays, not necessarily consecutive, in cases of death in the immediate family of the employee. For the purpose of this

subsection, the term “immediate family” shall include a mother, father, brother, sister, spouse, immediate offspring (natural and culturally or legally adopted), stillborn child, miscarriage, grandfather, grandmother, grandchild, mother-in-law, or father-in-law. Compassionate leave must be taken within eighteen days after the death of the immediate family member.

*(l) Maternity/Paternity Leave*

Female employees are eligible to receive maternity leave with pay and male employees are eligible to receive paternity leave with pay of no more than fifteen workdays for the period of absence for childbirth confinement. The fifteen day period must include the delivery date, but can include days before as well as after the birth. The leave request must be accompanied by a doctor’s certification indicating the expected or exact date of delivery. If an employee requires additional leave time they must request sick leave, advanced leave, FMLA leave, or leave without pay in accordance with those respective requirements.

*(m) Military Leave*

In accordance with the Uniformed Services Employment and Reemployment Rights Act of 1994 (USERRA) 38 U.S.C. §§ 4301-4333, an employee who is a member of the National Guard or Armed Forces Reserve shall be granted military leave for training or service. Of this amount of time, a maximum of 15 working days in any calendar year shall be granted as military training leave with pay, which shall not be charged as any part of annual leave or other compensatory leave. After military leave with pay has been exhausted, military leave without pay shall be granted for the entire period of service plus any period of additional service imposed by law up to a total maximum of five years. Such leave is not a break in service.

(1) Paid Leave during Military Leave – At the request of the employee, accrued paid time off shall be used before the employee is placed on active military leave without pay, regardless of the employee’s length of service.

(2) Advanced Notice Required for Military Leave – The employee must provide to the Director of Courts reasonable advanced notice of the need for military leave, unless notice is impossible, unreasonable, or precluded by military necessity, and provide a copy of the official, written military orders in order to establish eligibility for protection under USERRA.

(3) Returning to Work from Military Leave – Prior to returning to work, an employee on military leave shall submit an application for reinstatement and provide a copy of his or her honorary discharge or other form of military release indicating the military service was satisfactory. An employee who fails to return at the time set forth below shall be deemed to have resigned:

1 to 30 days: Not later than the beginning of the first regularly scheduled work day following the end of the military duty and the expiration of eight hours, plus reasonable commuting time from the military duty station to home.

31 to 180 days: Application for reinstatement must be submitted not later than 14 days after completion of military duty.

181 or more days: Application for reinstatement must be submitted not later than 90 days after completion of military duty.

(4) Reinstatement after Military Service – An employee who is discharged from military service under honorable conditions shall be reinstated immediately and shall be entitled to the following position:

1 to 90 days: Exact job

91 or more days: Exact job or a position of like seniority, status and pay

(5) Benefits During Military Leave – An employee may continue benefits coverage or cancel benefits coverage while on leave without pay and upon reinstatement shall be entitled to reinstatement of benefits coverage as well.

*(n) Part-Time Accrual*

Part-time or intermittent employees with regular scheduled hours less than eighty hours during a biweekly period will accrue annual leave and sick leave at a pro-rated amount of the full time benefit, rounded off to the nearest quarter hour per pay period, and will be eligible for other paid leaves, provided in this rule, at this rate. Part-time or intermittent employees with regular scheduled hours of less than forty hours during a biweekly pay period will not accrue annual or sick leave or be eligible for the other paid leave benefits, with the exception of employees on FMLA. If a part-time or intermittent employee takes leave without pay (LWOP) or is in an absence without leave (AWOL) status for a scheduled duty period there will be no leave accrual for that pay period. An otherwise full-time employee who works less than eighty hours per pay period due to the implementation of austerity measures shall not be affected by this subsection.

*(o) Transfer to Other Government Entity*

If an employee transfers to another CNMI government entity, it is up to the receiving entity to assume any liability for the payment or transfer of all earned leave. Under no circumstances shall the Judiciary be liable for the cash payment of unused annual leave.

*(p) Family or Medical Leave*

Family or medical leave is a period of unpaid leave of absence that is granted to an eligible employee under circumstances and conditions specified below. Family or medical leave provides time off work, but does not provide for pay continuation during that time. Any continuation of pay during a period of family or medical leave will occur only if a pay continuation provision also applies during that time.

(1) Eligibility – To be eligible for family or medical leave, an employee must have been employed at least a total of 12 months with the CNMI on the date the leave is to commence, and must have worked at least 1,250 hours during the 12 months preceding the date on which the leave is to commence. The 12 months of total employment need not be consecutive months, and employment for any part of a week counts as a week of employment.

(2) Granting of Family or Medical Leave – Employees shall provide proper medical certification, including additional medical certificates and fitness-to-return certificates as set forth in these rules. If the employee does not provide the required medical certificates, the Family Medical Leave request may be denied. An eligible employee will be granted family or medical leave for one or more of the following reasons:

(A) Inability of the employee to perform the functions of his/her position due to a serious health condition.

(B) Attendance at birth of the employee's own child.

(C) Bonding time with the employee's child if within 12 months after birth.

(D) Placement of a child with the employee for adoption or foster care, if within 12 months after date of placement.

(E) Serious health condition of employee's child, including adult children not living in the employee's home, spouse, parent, including parents not living in the employees home, OR the serious health condition of a person living in the employee's household for whom the employee is the primary caregiver, if such leave is medically necessary for the care of that person, child, spouse or parent or to assist in their recovery.

(F) Qualifying exigency due to a spouse, child, or parent being on or being called to active duty in the Armed Forces, including the National Guard and Reserves for deployment to a foreign country in support of a contingency operation.

(G) Care of employee's spouse, child, parent, or next of kin who is a member of the Armed Service, including the National Guard and the Reserves or covered veteran within five years of service, with a serious injury or illness incurred in the line of duty while on active duty or which existed before the beginning of the service member's active duty and was aggravated by service in the line of duty while on active duty. A covered veteran is one who has been discharged or released under conditions other than "dishonorable" within five years of the day the employee first takes leave for his or her care.

(3) Maximum Length of Family or Medical Leave – With the exception of leave taken to care for an injured military service member, the maximum combined total time allowed for family and/or medical leave is 12 work weeks in an event year basis, except in certain circumstances where both spouses work for the Judicial Department. A total of 26 workweeks of leave (including any other approved family and/or medical leave in a single 12 month period) are available to care for an injured or ill family member serving in the Armed Forces, as provided under this rule.

A workweek for full-time employees is 40 hours in an established seven-day period. For part-time employees a workweek is a proportional amount of 40 hours based on the number of hours normally worked in an established seven-day period.

Where both spouses work for the Judiciary, the spouses are limited to 12 workweeks of leave in total during an event year for leave that is taken for the birth of a child, for the placement for adoption or foster care of a child, or for the care of a child after birth or placement. Spouses are limited to an aggregate total of 26 workweeks of leave in a single 12 month period (including any other family and/or medical leave during that same period) for the care of a seriously injured or ill family member serving in the Armed Forces, as provided under this rule.

(4) Substitution of Paid Leave – Periods of family or medical leave run concurrently with any applicable accrued leave and/or any payment continuation plan to which the employee is eligible. Employees are required to use all available accrued leave, prior to taking leave without pay, as provided for under the Judicial Department's accrued leave plan. Family or medical leave is without pay when available pay-continuation benefits are exhausted or not accessible.

Annual and sick leave will accrue during periods of paid family and medical leave, but will not accrue during periods of unpaid family or medical leave. Holidays are granted during unpaid family or medical leave.

(5) Request for Leave – The employee should inform the supervisor of the need for leave through the regular request and authorization for leave of absence process. If the necessity for the leave is foreseeable, the employee must notify the supervisor of the request for leave 30 days in advance, or as soon as practicable before the leave is to commence. If the leave is unforeseeable, the employee should give notice to the supervisor of the need for leave as soon as practicable under the circumstances, normally within one or two working days.

(6) The Chief Justice or designee will designate leave, paid or unpaid, as qualifying for family or medical leave based on information provided by the employee. In the event that the Chief Justice or designee does not have sufficient information about the reason for an employee's use of requested leave, the Chief Justice or designee may inquire further to ascertain whether the requested leave may qualify as family or medical leave. Family or medical leave may be approved conditionally pending receipt of required documentation.

Upon a determination that the requested leave may qualify as family or medical leave, the supervisor will so notify the employee and will request that the employee complete and submit such additional forms as are required for family or medical leave. The employee must complete the forms and provide appropriate documentation, as may be requested, to verify the reasons for the leave. Any request for leave based on a serious health condition, whether it involves the employee or a family member, must be supported by appropriate medical certification.

Failure of the employee to provide notification and appropriate medical certification within 15 days may result in delayed approval. In all cases of leave for serious health condition, the Judiciary reserves the right to request a second medical opinion at the Judiciary's expense, and may request additional certifications at 30-day intervals, if appropriate.

(7) Intermittent Leave/Reduced Work Schedule – In limited circumstances as described below, an employee who is eligible for family or medical leave may be permitted to work a reduced schedule of hours per workweek or hours per workday, or may take intermittent leave of separate blocks of time rather than one continuous period of time.

In cases of a serious health condition of the employee or a family member, such leave will be permitted only in circumstances when it is medically necessary. Appropriate medical certification will be required.

Where a reduced work schedule or intermittent leave is foreseeable based on planned medical treatment, the Judiciary reserves the right to transfer the employee temporarily to another position with equivalent pay and benefits that better accommodates the employee's recurring periods of leave.

In other cases in which employees are eligible for family or medical leave, such as the disability period following the birth of a child, and child care, adoption or placement of a child, an employee may take intermittent leave or reduced work schedule only if the Chief Justice or designee agrees. The Chief Justice or designee may review the individual circumstances involved in considering such requests, and may take into account the employee's length of service, number of requests, duties, work load and employee's job performance in making such decisions.

Any leave granted, based on a reduced work schedule or intermittent leave, will be treated in the same manner as other absences under the family or medical leave.

(8) Continuation of Benefits – An employee on unpaid family or medical leave will be retained on the Judicial Department's group insurance plans the same as active employees, except that the employee must make arrangements with the person who processes payroll for the payment of the employee's portion of the insurance premiums. The Judiciary will continue to pay the employer's share of the premiums throughout the unpaid family or medical leave period.

If the employee is able but does not return to work after the expiration of the leave, the employee will be required to reimburse the Judiciary for any payment of employee shares of insurance premiums paid on their behalf by the Judiciary during the family or medical leave.

(9) Return from Family or Medical Leave – An employee returning from leave will be reinstated to the same or an equivalent position. An equivalent position is one having virtually identical pay, benefits and working conditions and involving the same or substantially similar duties and responsibilities.

A completed and signed Fitness to Return to Work form is required to verify an employee's ability to return to work following any hospitalization, or absence of more than 3 days due to the employee's serious health condition as defined by this rule. Once a health care provider has certified that an employee on family or medical leave is physically able to perform his or her



work duties, the Chief Justice or designee may require that the employee return to work by a specific date, unless continued time away from work is authorized under other provisions of these rules. Failure to report to work at the specified date may result in disciplinary action.

(10) Definitions – The following terms shall have the stated meanings:

(A) **CHILD:** A biological, adopted (cultural or legal), foster, or step son or daughter, a legal ward or a child of a person standing in loco parentis under the age of 18, or if 18 years or older, is incapable of self-care because of a mental or physical disability.

(B) **INCAPACITY:** Inability to work, attend school, or perform other regular daily activities.

(C) **PARENT:** The biological or adoptive parent of an employee, or an individual who stood in loco parentis to an employee when the employee was a child. This term does not include parents “in law.”

(D) **PHYSICAL OR MENTAL DISABILITY:** An impairment that substantially limits one or more of the major life activities of an individual.

(E) **PRIMARY CAREGIVER:** A person who has primary responsibility for the care of another person, for attending to that person’s physical and emotional needs.

(F) **QUALIFYING EXIGENCY:** Certain activities which arise when a military spouse, child or parent of an employee is deployed to covered active duty in a foreign country including without limitation: attending military sponsored events and related activities such as official ceremonies, programs, military personnel and/or family support or assistance programs, counseling sessions, and informational and post-deployment briefings; making necessary financial and legal arrangements; arranging alternative child care and related activities; arranging alternative care of a parent who is incapable of self-care and related activities; taking leave for up to 15 calendar days to be with a covered military family member while on short-term temporary rest and recuperation leave during deployment; and other activities agreed to by the Director of Courts as a qualifying exigency, including issues arising from short notice (seven days or less) deployment.

(G) **SERIOUS HEALTH CONDITION:** An illness, injury, impairment, or physical or mental condition that involves:

(i) Inpatient care in a hospital, hospice, or residential medical care facility, including any period of incapacity or treatment in connection with or consequent to such inpatient care.

(ii) Continuing treatment by a health care provider, which includes a period of incapacity of more than three calendar days or treatment by a health care provider on at least one occasion which results in a regimen of continuing treatment under the supervision of the health care provider. Treatment includes but is not limited to diagnostic examinations to determine if a serious health condition exists and evaluations of the condition. Treatment does not include routine physical examinations, eye examinations, or dental examinations.

(iii) Any period of incapacity due to pregnancy prenatal care, or the birth of a child.

(iv) Continuing treatment by or under the supervision of a health care provider for a chronic or long-term health condition that is incurable or so serious that, if

not treated, would likely result in a period of incapacity of more than three calendar days.

(v) Any period of incapacity this is permanent or long-term due to a condition for which treatment may not be effective, but which requires continuing supervision by a health care provider.

(vi) Any period of incapacity of three calendar days or more involving continued treatments by or under the supervision of a health care provider for restorative surgery after an accident or other injury. Voluntary or cosmetic treatments which are not medically necessary are not serious health conditions unless inpatient hospital care is required.

(H) SPOUSE: Husband or wife as defined by law.

## **RULE 11. EMPLOYEE APPRAISAL AND DISCIPLINE**

### *(a) Annual and Probationary Performance Appraisals for Employees*

The designee of the Chief Justice, with the approval of the Judicial Council, shall establish a system and procedures for annual and probationary appraisal of the job performance of all employees.

(1) The annual appraisal period shall be January 1 through December 31. This period shall be considered the annual appraisal period. The probationary appraisal shall occur within fourteen days after the employee's first ninety days of employment.

(2) Supervisors shall complete annual performance appraisals on employees' performance on the designated form and shall have the month of January to complete the evaluation. Probationary appraisals shall be completed on the designated probationary appraisal forms by the employee's supervisor. The Chief Justice or Presiding Judge must concur with the probationary performance appraisal.

(3) An employee must be employed by December 31<sup>st</sup> of the appraisal year in order to be included in the annual performance appraisal process.

(4) The job performance of each employee shall be appraised in accordance with procedures established by the Chief Justice or designee.

### *(b) Appraisal Report Content*

(1) The Chief Justice or designee shall provide appraisal report forms for both annual and probationary reports, which shall include, but not be limited to, the rating of the employee's overall performance.

(2) The report shall include, but not be limited to, appraisal of the employee's performance in specific areas related to the job as measured against standards established by the Chief Justice or designee, as well as recommendations for improvement where appropriate. An evaluator shall also include comments on each scoring criteria which provides information regarding strengths and weaknesses.

(3) Failure to complete a performance appraisal – The responsibility for completing performance appraisals shall be assigned to the supervisor, except that when no performance appraisal has been completed by the supervisor, a designee of the Chief Justice shall complete the appraisal. Appropriate corrective or disciplinary action shall be considered for failure of a supervisor to complete an appraisal.

### *(c) Appraisal Procedure*

(1) Scores and any comments may be altered or eliminated after the completion of the appraisal by the supervisor if approved by the Chief Justice for Supreme Court and Administration Office employees or Presiding Judge for Superior Court employees

(2) A copy of the annual or probationary performance appraisal shall be provided to the employee.

(A) A review conference shall be held between the evaluator and the employee for the annual performance appraisal. All participants shall sign the appraisal form. The employee's signature on the appraisal, or electronic acknowledgement through the performance appraisal software, shall indicate that the employee has seen the appraisal, but not necessarily that the employee agrees with the content.

(B) A review conference shall be held between the evaluator and the employee for the probationary performance appraisal if the appraisal is Satisfactory. If the appraisal is Unsatisfactory, a review conference will also be held and shall be attended by the Chief Justice, Presiding Judge, or designee, at which time the employee shall be notified that the Judiciary is terminating their employment pursuant to Rule 11(d)(2)(C) and the reasons for the Unsatisfactory rating. All participants shall sign the appraisal form. The employee's signature on the appraisal, or electronic acknowledgement through the performance appraisal software, shall indicate that the employee has seen the appraisal, but not necessarily that the employee agrees with the content.

(3) Employee Appeal – An employee may appeal the annual appraisal in writing to the Chief Justice for Supreme Court or Administration Office employees or the Presiding Judge for Superior Court employees within five working days after the review conference. The Chief Justice or Presiding Judge shall review the appraisal and the appeal, soliciting input from the appealing party's direct supervisor, as deemed appropriate. An employee on probation may not appeal a probationary performance appraisal.

The Chief Justice or Presiding Judge shall render a decision in writing within thirty days after receipt of the appeal, which shall be final and shall not be subject to the appeal, review or grievance procedures set forth in these rules.

(4) An employee may appeal the annual performance appraisal for the following reasons:

(A) The performance appraisal comments could be construed as discriminatory in nature;

(B) The employee did not receive a performance appraisal; or

(C) The performance appraisal did not reference performance that occurred during the performance appraisal period in which the employee was to be evaluated.

*(d) Effect of Appraisal*

(1) Satisfactory Appraisal – If an employee receives a Satisfactory Appraisal or higher the employee may be recommended for a contract renewal at the expiration of the contract term if sufficient funds exist to retain the employee; however, a Satisfactory Appraisal or higher shall create no right to or presumption of their contract being renewed. A Satisfactory Appraisal shall also be required before any employee may be considered for a raise. Specific criteria for an employee to satisfy in order to obtain a Satisfactory Appraisal shall be specified in the procedures created by the Chief Justice or designee. A probationary employee must receive a Satisfactory Appraisal to exit probationary status.

(2) Unsatisfactory Appraisal

(A) Employees who receive an Unsatisfactory Appraisal shall be placed on performance probation for a period of 90 days. The employee's performance shall be re-evaluated by the supervisor, with final approval of the evaluation by the Chief Justice for Supreme Court and Administration Office employees or Presiding Judge for Superior Court employees prior to the expiration of the 90-day probationary period. An employee on performance probation shall not be eligible for a pay raise during the period of their contract or upon the renewal of their contract.

(B) If at the end of the period of performance probation an employee's performance is evaluated as Unsatisfactory, the employee shall be subject to corrective or disciplinary action up to and including termination.

(C) A probationary employee who receives an Unsatisfactory Appraisal at the review conference shall be terminated with ten (10) days notice.

*(e) Corrective and Disciplinary Actions*

(1) Responsibility

(A) The responsibility for administering corrective and disciplinary actions is vested in the employee's supervisor or the Chief Justice for Supreme Court and Administration Office employees or Presiding Judge for Superior Court employees. As the sole Administrative Authority for the Judiciary, the Chief Justice of the Supreme Court may take corrective or disciplinary action over any employee, consistent with these rules. For the purpose of Rule 11(e), the Chief Justice or Presiding Judge may designate an employee to carry-out all of their corrective and disciplinary action authority, except that they must concur in writing with any action proposed by the designee under Rule 11(e)(3) and (5).

(B) In determining whether to administer a corrective or disciplinary action the supervisor, Chief Justice, or Presiding Judge or designee may consider the nature, extent, seriousness, and effect of the act, error, or omission committed; the type and frequency of previous undesirable behavior; the period of time that has elapsed since a prior offensive act; the previous performance appraisal of the employee; an assessment of information obtained from the employee; and any mitigating circumstances. For discipline that cannot be handled by the supervisor, the Chief Justice, Presiding Judge, or designee will also consult with the employee's supervisor as appropriate before administering any corrective or disciplinary action.

(2) Corrective Action

(A) A corrective action is a written warning or reprimand that is taken to correct and improve an employee's job performance, and which does not affect the employee's current pay or status. The employee's supervisor, Chief Justice, the Presiding Judge, or designee may administer a corrective action.

(B) Corrective actions may be administered pursuant to Rule 11(e)(4)(A).

(C) Corrective actions may be administered concurrently with disciplinary actions.

(D) A supervisor may issue a written warning without notice or providing the employee the opportunity to be heard. A written warning needs to comply with all of the criteria listed in Rule 11(e)(2)(F), except for subsection (vii).

(E) Prior to administering a reprimand the supervisor shall give the employee written notice of their intent to administer a reprimand and three calendar days to submit

mitigating evidence. A supervisor may, but is not required to, hold a pre-reprimand meeting with the employee. If a pre-reprimand meeting is scheduled, the supervisor shall inform the employee in writing when the meeting is to take place, and afford the employee three calendar days to prepare. Under no circumstances shall the employee be entitled to more than three of days of preparation for both the meeting and to submit mitigating evidence regardless of whether a meeting is or is not scheduled. The employee shall not be granted administrative leave to prepare for either the meeting or to prepare and submit mitigating evidence. Any pre-reprimand meeting is not a formal hearing, and there shall be no right of representation by counsel for any participant.

(F) A reprimand shall be in writing and shall contain the following information:

- (i) The area(s) of needed improvement;
- (ii) The remedial step(s) the employee must take to make the improvement(s);
- (iii) The time allotted to the employee to make the improvement(s);
- (iv) The impact, if any, of any mitigating evidence submitted by the employee;
- (v) The consequences the employee will face for failure to improve;
- (vi) The signature of the supervisor administering the corrective action;
- (vii) The signature of the Chief Justice, Presiding Judge or designee concurring with the supervisor; and
- (viii) The signature of the employee acknowledging receipt of the corrective action.

(G) A copy of the corrective action shall be placed in the employee's official personnel file held by the Chief Justice or designee.

(H) The corrective action may, at the discretion of the Chief Justice, Presiding Judge, or designee, be removed from the employee's personnel file after a period of two years of satisfactory performance following a corrective action, including satisfactory performance in the areas identified in the corrective action, upon request of the employee. A corrective action may contain a statement that the action may be removed from the employee's personnel file after a specified period of time less than two years if the employee satisfactorily complies with the terms of the corrective action. A copy of any corrective action removed from an employee's personnel file may not be a basis for any subsequent corrective or disciplinary action, but may be considered as evidence that the employee was on notice of the problems identified therein. Any removed corrective action shall be clearly marked as such and maintained, along with the request for removal, by the Chief Justice, Presiding Judge, or designee in a supervisory administrative file. The copy of the corrective action on file in the supervisory administrative file will not be removed.

(I) The decision of the supervisor, Chief Justice, Presiding Judge, or designee with regard to corrective actions is final, and is not subject to the grievance procedures set forth in these rules.

### (3) Disciplinary Action

(A) A disciplinary action is an action taken to penalize an employee for an offensive act or poor job performance. A disciplinary action adversely affects the current pay or status of the employee (i.e., including unpaid suspension, demotion, pay adjustment to a lower

salary in the assigned pay range, dismissal, or any other appropriate action affecting the current pay or status of an employee). Only the Chief Justice, Presiding Judge, or their designee can administer a disciplinary action.

(B) Disciplinary actions may be administered concurrently with corrective actions, and may be administered whether or not any corrective action has been taken prior to the disciplinary action.

(C) The disciplinary action of dismissal may be administered whether or not disciplinary action of a lesser nature was taken prior to the dismissal.

(D) Disciplinary actions may be administered pursuant to Rule 11(e)(4)(A).

(E) Disciplinary Investigation

(i) Based on the nature of the disciplinary action being considered, the Chief Justice, Presiding Judge, or designee may order that a disciplinary investigation be conducted by a neutral third party.

(ii) Any disciplinary investigation is strictly confidential, and can only be disseminated with the written authorization of the Chief Justice or Presiding Judge.

(iii) If a disciplinary investigation shall form the basis for disciplinary action, the employee shall have a right to review the investigation's findings in preparing his or her defense.

(iv) Unless otherwise provided for in Rule 11(e)(3), an employee shall remain in an on-duty and on-pay status during the course of the investigation.

(F) Pre-disciplinary Meeting

(i) Prior to administering a disciplinary action, the Chief Justice, Presiding Judge, or designee and the employee's supervisor shall meet with the employee involved in a pre-disciplinary meeting to present information regarding the reasons for considering discipline and to give the employee an opportunity to respond or to present mitigating evidence.

(ii) This meeting is not a formal hearing, and under no circumstances shall the participants have the right to be represented by counsel.

(iii) A five-calendar day notification period shall be provided to employees before a pre-disciplinary meeting can be held.

(iv) The employee shall be allowed to use accrued paid time off or leave without pay to prepare for the pre-disciplinary meeting, but will not be granted administrative leave to prepare.

(v) An employee suspended pending a disciplinary investigation pursuant to Rule 11(e)(5)(C) shall remain on administrative leave with pay pending the outcome of the final disciplinary action.

(G) If the Chief Justice, Presiding Judge, or designee is contemplating a disciplinary action but reasonable efforts to hold the pre-disciplinary meeting fail, the Chief Justice, Presiding Judge, or designee shall send written notice to the last known residence of the employee indicating the possible need to administer disciplinary action and the reasons therefore. The Chief Justice, Presiding Judge, or designee shall specify that the employee may present written information regarding mitigating circumstances within five calendar

days. If the employee refuses to accept written notification either at their residence or at work, notice may be sent to the employee's last known post office box or private mail box, and a U.S. Post Office certified mail receipt shall be conclusive proof of attempt to deliver. The employee's ten-day period for answering shall begin on the date of the attempted delivery.

(H) If disciplinary action is imposed, the Chief Justice or Presiding Judge shall advise the employee in writing. The notice shall include:

- (i) The specific disciplinary action being imposed, and the reasons for its imposition, including specific details of the offense;
- (ii) The impact, if any, of any mitigating evidence submitted by the employee;
- (iii) The remedial action to be taken, if any;
- (iv) Notification that a second disciplinary action will result in termination, if appropriate; and
- (v) The signature of the Chief Justice, Presiding Judge, or designee administering the disciplinary action.
- (vi) The signature of the employee acknowledging receipt of the disciplinary action.

One copy of the disciplinary action notice shall be placed in the employee's official personnel file as maintained by the Chief Justice or designee and shall not be removed.

An employee who has received a disciplinary action pursuant to this rule may not be promoted for 12 months following such action.

#### (4) Causes for Corrective or Disciplinary Action.

(A) Corrective or disciplinary action may be administered for cause, which shall include, but not be limited to:

- (i) Failure to comply with requirements for acceptable job performance.
- (ii) Misconduct, which includes, but is not limited to, violation of any Judiciary rule, procedure, or policy.
- (iii) Insubordination.
- (iv) Failure or inability to perform duties assigned. For purposes of these rules, inability to perform duties assigned does not include inability due to a temporary or permanent disability.
- (v) Leave without pay without the proper authorization of the supervisor, or the abuse of paid time off or extended sick leave for an absence, or inappropriate use of extended sick leave for a non-medically certified absence.
- (vi) Commission of any crime defined by federal, state, or local law. Any corrective or disciplinary action imposed under this paragraph shall be in addition to suspension imposed under Rule 11(e)(5).
- (vii) False statement of any material fact, or practice or attempted practice of deception or fraud, including such misconduct occurring in the application, examination, or interview process for employment.

(viii) Violation of any Judiciary rule, policy, code, regulation, or procedure or Chief Justice, Presiding Judge, Supreme Court, or Superior Court Directive or Order, including but not limited to the Ethics Code, Anti-Discrimination Policy, Alcohol and Drug Free Workplace Policy, Dress Code, Time and Attendance Policy, and Computer Use Policy.

(ix) Failure to comply with a court order from a court of competent jurisdiction.

(x) Any other reason deemed by the Chief Justice, Presiding Judge, or designee to adversely affect the employee's ability or fitness to perform duties assigned or may have an adverse effect on the Judicial Branch if the employee continues employment.

(B) The employee shall be terminated upon conviction of any felony. Conviction shall include a plea of nolo contendere or acceptance of a deferred sentence.

(C) Termination for conviction of a misdemeanor, serious traffic offense, or petty offense involving drugs or alcohol, is at the discretion of the Chief Justice depending upon the type of work the employee performs and the nature of the offense committed.

(5) Suspension of Employees under Disciplinary Investigation or Charged with a Crime

(A) Notification – An employee who is arrested for any reasons or who is charged with any felony, misdemeanor, serious traffic offense, or petty offense involving drugs or alcohol, shall notify their supervisor within three calendar days of being arrested or charge. The supervisor shall then notify in writing the Chief Justice, Presiding Judge, or designee as soon as possible. If the employee has not notified their supervisor, but the supervisor becomes aware of the arrest and/or charge they shall notify the Chief Justice, Presiding Judge, or designee in writing as soon as possible. The employee must notify the Chief Justice, Presiding Judge, or designee upon final resolution of any filed charges. Upon receipt of notification of an employee being arrested or charged with a felony, misdemeanor, serious traffic offense, or petty offense involving drugs or alcohol, the Chief Justice or Presiding Judge will immediately inform the employee in writing whether they are placed on suspension. The Chief Justice or Presiding Judge will also immediately notify an employee if they are placed on suspension pending a disciplinary investigation.

(B) Suspension for Employees Charged with a Crime

(i) An employee charged with a felony shall be suspended and allowed to use accrued paid time off from the date of the charge. No administrative leave shall be granted.

(ii) An employee charged with a misdemeanor, serious traffic offense, or petty offense involving drugs or alcohol, may be suspended at the Chief Justice's or Presiding Judge's discretion, depending upon the type of work the employee performs and the nature of the charged offense, and allowed to use accrued paid time off from the date of the charge. No administrative leave shall be granted.

(iii) If the case has not been resolved by the time the employee has exhausted paid time off, the employee shall be placed on leave without pay pending the outcome of the action, including any appeal. No administrative leave shall be granted.

(iv) If the employee suspended is not convicted or if conviction is reversed on appeal, and if the employee has not otherwise been dismissed pursuant to the



procedures of these rules the employee shall be compensated for the period of suspension and any used paid time off during the suspension shall be restored to the employee's accruals.

(v) If the employee is convicted, and if conviction becomes final upon appeal, if any, the employee shall not be compensated for the period of suspension. Conviction includes any plea or finding of guilt, including a plea of nolo contendere or acceptance of a deferred judgment and sentence.

(vi) If the charges are dismissed, the employee shall be compensated for the period of suspension and any used paid time off during the suspension shall be restored to the employee's accruals.

(C) Suspension for Employees under Disciplinary Investigation

(i) An employee under disciplinary investigation may be suspended during the period of investigation when there is reason to believe that the employee's continued presence may endanger the safety or welfare of the public, the Judiciary's employees, facilities, property, or when there is reason to believe that the employee's presence may impair the investigation.

(ii) The Chief Justice or Presiding Judge shall provide the employee with written notice of an administrative suspension and the reasons therefore by certified mail or by personal delivery to the employee.

(iii) An employee suspended under this subsection shall be placed on administrative leave until otherwise notified by the Chief Justice or Presiding Judge.

(6) Corrective and Disciplinary Action Limitations

(A) An employee may not be corrected or disciplined more than once for a single specific act or violation, but may be corrected or disciplined for each additional act or violation of the same or similar nature.

(B) No more than two corrective actions shall be imposed on an employee in any consecutive twelve month period. Disciplinary action shall be taken for any further violation or offense during the same period.

(C) Suspension of an employee without pay for the purpose of disciplinary action shall be limited to thirty (30) calendar days, except as follows:

(i) In a case of disciplinary suspension pursuant to Rule 11(e)(5), the period of suspension is not limited; and

(ii) An employee who takes unauthorized paid time off without a reason acceptable to the Chief Justice or designee, shall be subject to suspension without pay for a period equal to twice the amount of leave used and will not be paid for such unauthorized leave.

**RULE 12. SEPARATION FROM SERVICE**

*(a) Contract Expiration*

(1) If an employee's contract is not renewed prior to the expiration of the contract term the employee is deemed separated from service effective upon the expiration of the contract term.

*(b) Resignations and Terminations*

(1) Resignation Procedure

(A) In order to resign, an employee shall submit a written resignation to the supervisor and the Chief Justice, Presiding Judge, or designee at least 30 working days prior to the date the resignation is to be effective.

(B) The Chief Justice, Presiding Judge, or designee may, for good cause, accept a lesser period of written notice than required by Rule 12(a)(1)(A).

(C) Failure of an employee without good cause to submit a resignation in accordance with Rule 12(a)(1)(A) may result in the separation being administered as a dismissal.

(D) The Chief Justice, Presiding Judge or designee, immediate supervisor, or the employee may request an exit interview to determine the nature and reason for resignation.

(E) The effective date of resignation shall be deemed to be the employee's last day at work unless a different date is determined by agreement between the Chief Justice, Presiding Judge, or designee and the employee.

(F) Withdrawal of Resignation – At the discretion of the Chief Justice, Presiding Judge, or designee, the employee may, for good cause, withdraw the resignation at any time prior to its effective date.

(G) Absence Without Approved Leave – An employee who is absent without approved leave for a period of five or more consecutive scheduled working days may, at the discretion of the Chief Justice, Presiding Judge, or designee, be deemed to have resigned at the close of working hours on the fifth day.

(2) Reinstatement

(A) If within 90 days following resignation, an employee who resigned for a non-disciplinary reason is hired back into any Judiciary position, the employee shall have all leave amounts restored.

(3) Termination of Employment – Any employee may be terminated “for cause” with seven (7) days notice. An employee terminated “for cause” shall be placed on paid administrative leave and shall not report to work. Upon notice of “for cause” termination, the employee shall be escorted by a Deputy Marshal to clear out their workspace and exit the building.

An employee may be terminated “without cause” with sixty (60) days notice. An employee terminated “without cause” is expected to report to work until the termination is effective. The Chief Justice may determine in writing, for good cause, that the employee shall not report to work and shall be placed on administrative leave with pay.

A probationary employee shall be terminated after an Unsatisfactory Appraisal with ten (10) days notice. A terminated probationary employee shall be allowed to use all accrued annual leave, and if accrued annual is insufficient to cover the ten-day period, shall be placed on paid administrative leave and shall not report to work. Upon notice of the termination, the employee shall be escorted by a Deputy Marshal to clear out their workspace and exit the building. The employee may not utilize the grievance procedures from these rules to contest their termination.

(4) An employee who dies shall be considered to have resigned effective the day after the date of death as specified in an official death certificate.

### **RULE 13. LAYOFF**

#### *(a) Separation by Layoff*

An employee may be involuntarily separated from employment because of reorganization, including but not limited to the abolishment of a position, lack of funds, or restructuring of the office. The decision to layoff an employee shall be final and shall not be subject to the grievance procedures set forth in these rules.

#### *(b) Administration of Layoff*

The Judicial Council may, at any time, announce a need for layoffs. When the Judicial Council has determined the positions and number of positions to be abolished, reduced, or vacated, the supervisor and a designee of the Chief Justice shall administer any resulting layoff of employees in accordance with the provisions of this rule.

Upon the Judicial Council's announcement for the need for layoffs, the administration of layoffs shall occur in order as below.

(1) Voluntary Layoffs – Voluntary layoffs may be offered prior to the administration of involuntary layoffs. When the need for layoff is announced by the Judicial Council, the option for voluntary layoffs may be provided for employees in good standing.

(A) Eligibility for Voluntary Layoff – An employee in good standing shall be defined as an employee whose two most recent performance appraisal were satisfactory and who has received a combination of two or more corrective or disciplinary actions in the previous 24 months.

(B) Employees may request voluntary layoff for either all or a portion of the position encumbered.

(C) Approval of Voluntary Layoff – Any request to be voluntarily laid off must be approved by the Chief Justice or designee.

(D) Reemployment After Voluntary Layoff – All employees approved for voluntary layoff shall be placed on a reemployment list according to seniority. The reemployment list shall be valid for 24 months from the effective date of voluntary layoff.

(2) Involuntary Layoffs

(A) After completion of voluntary layoffs, if reductions are still needed, the following procedures shall occur in the following order.

(i) Employees on temporary contract in the effected job shall be laid off. A temporary contract is one for a term of less than twelve months.

(ii) Employees on Performance Probation shall be laid off.

(iii) Employees in the affected job position type in reverse order of length of service.

(B) Reemployment After Involuntary Layoff – All employees approved for voluntary layoff shall be placed on a reemployment list according to seniority. The reemployment list shall be valid for 24 months from the effective date of involuntary layoff. If a list of employees for voluntary layoff already exists in the same job type, the two lists will be combined.

#### *(c) Special Qualifications*

An employee filling a position with special qualifications as approved by the Chief Justice or designee shall not be laid off. An exemption based on special qualifications must be preapproved on an individual basis and recorded by the Chief Justice or designee.

*(d) Notification of Layoff to Employee*

The designee of the Chief Justice shall notify any employee scheduled for layoff at least 30 calendar days in advance of the effective date of the layoffs. All employees affected by layoff shall be notified by hand delivery or may be sent notification via certified mail where it is infeasible to meet with the affected employee in person.

*(e) Transfers and Demotions*

During a time of an announced layoff, job postings will not be required to fill a vacant position if the position is filled by the transfer or demotion of an employee approved by the Chief Justice or designee. The Chief Justice or designee may allow an employee to demote in lieu of layoff prior to conducting layoffs in the affected job to which the employee demotes. An employee transferred or demoted to another position during a layoff shall receive written notice of the decision which shall not be subject to the grievance procedures set forth in these rules.

**RULE 14. ACCOMMODATION FOR MENTAL OR PHYSICAL DISABILITIES**

*(a) Request Process*

Any employee requesting an accommodation for a disability shall provide the Chief Justice or designee with medical certification of any physical or mental impairment and the nature of any limitations the employee may have in performing his or her job duties and responsibilities, unless the disability or the need for accommodation is obvious.

If an employee requests an accommodation on the basis of a disability, the Chief Justice or designee shall engage in an interactive process with the employee to:

- (1) Analyze and define the essential duties and responsibilities of the position.
- (2) Obtain information from the employee's medical treatment provider or from an independent medical examiner in order to determine the extent of the disability and how the disability limits the employee's ability to perform the essential function(s) of the position.
- (3) Consider any reasonable accommodation(s) that would enable the employee to continue to perform the essential functions of the job without presenting any undue hardship to the Judiciary.
- (4) Determine which accommodation(s) can and will be used, if any. If no reasonable accommodation can be made in the employee's current position, the Chief Justice or designee shall consider reassignment to a vacant position for which the employee is qualified, with or without reasonable accommodation.
- (5) Within 30 days after meeting with the employee, or at a later date with the agreement of the employee, the Chief Justice or designee shall notify the employee whether an approved reasonable accommodation can be made that will allow the employee to continue to work for the Judiciary. If no reasonable accommodation is available or if an accommodation cannot be made without imposing undue hardship to the Judiciary, the Chief Justice or designee may consider termination of the employee's employment in accordance with the procedures of this rule.

*(b) Interaction with Other Laws*

Prior to rendering a decision regarding the employee's status, the Chief Justice or designee shall consult with legal counsel and review all medical considerations and any federal laws and employer benefits

that may affect the employee, including but not limited to worker's compensation, family or medical leave, and whether the disability is short or long term. The Chief Justice or designee shall determine whether the employee is affected by any of these factors.

*(c) Inability to Return to Work*

If the employee cannot return to work with or without reasonable accommodation and all protected leave has been exhausted, the Chief Justice may terminate the employment after consultation with the General Counsel.

**RULE 15. DISPUTE RESOLUTION AND GRIEVANCE**

*(a) General Provisions*

Disputes should be resolved at the lowest level and as informally as possible. Parties are encouraged to use alternative dispute resolution methods described in this rule in an attempt to reach early resolution.

*(b) Alternative Dispute Resolution*

(1) All employees are encouraged to address conflicts directly and as informally as possible. This can include the following:

- (A) Meet one-on-one to discuss the conflict;
- (B) Meet with the other party and supervisor(s)/manager(s) to discuss the conflict; or
- (C) Meet with the other party and a third neutral party to discuss the conflict.

(2) If attempts to resolve the conflict pursuant to Rule 15(b)(1) are unsuccessful, either party may request mediation through their supervisor. If the parties have different supervisors, the supervisors will notify the Chief Justice or designee who will determine who will be assigned to mediate. The parties may choose not to participate in the mediation if the dispute involves allegations of a violation of the Judiciary's Anti-Discrimination Policy or Code of Ethics.

*(c) Grievance*

(1) Employees may file a grievance in order to resolve complaints and concerns related to the work environment, except as identified below. Grievances must be to with the Chief Justice or designee, or if the Chief Justice's designee is the subject of the grievance to the Chief Justice, or if the Chief Justice is the subject of the grievance, to the most senior associate justice. Grievances must include:

- (A) Details outlining the reason for the grievance.
- (B) Desired outcome.

(2) The following matters are not subject to the grievance procedure:

- (A) Issues relating to transfers as defined in these rules and the promotional process and qualifications including, but not limited to, the existence, content, administration, and method of scoring of interviews;
- (B) Matters relating to the designation of positions as excluded, exempt, and nonexempt from the provisions of the Fair Labor Standards Act;
- (C) Wage survey results;
- (D) Corrective actions;
- (E) Disciplinary actions;

- (F) Performance appraisals;
- (G) Layoffs;
- (H) Shift and job location assignments;
- (I) Matters investigated by the Chief Justice, Presiding Judge, or their designee;
- (J) Payment of cash bonuses of bonus annual leave; and
- (K) Any other matter specified in these rules as not subject to the grievance procedure.

#### **RULE 16. ANTI-DISCRIMINATION POLICY**

The CNMI Judiciary is an equal opportunity employer. Discrimination against any personnel or potential personnel of the Judiciary on the basis of race, color, religion, national origin, ancestry, sex, age, or disability undermines the Judiciary's purpose for existence—the provision of equal justice under law—and is strictly prohibited.

The Judicial Council shall adopt a comprehensive Anti-Discrimination Policy applicable to the Judiciary's Justices, Judges, and employees. Such policy shall constitute an appendix to these rules.

#### **RULE 17. ALCOHOL AND DRUG FREE WORKPLACE POLICY**

The Commonwealth of the Northern Mariana Islands Judiciary ("Judiciary"), as an employer, recognizes it has a responsibility to its employees and the public it serves to take reasonable steps to assure safety in the workplace and in the community. Furthermore, the Judiciary is concerned about the adverse effect alcohol and drug abuse have on safe and productive job performance. It also recognizes that any employee whose ability to perform safely and productively is affected by the use of alcohol and other drugs, jeopardizes the integrity of the workplace and the achievement of the Judiciary's mission. The Judiciary realizes that alcoholism, problem drinking and drug addiction are treatable illnesses. The Judiciary, therefore, encourages employees who have problems with drugs or alcohol to utilize all available resources to resolve their problems before those problems affect their job performance. This policy is enacted to ensure the Judiciary's compliance with the provisions of the federal Drug-Free Workplace Act of 1988.

The Judicial Council shall adopt a comprehensive Alcohol and Drug Free Workplace Policy applicable to the Judiciary's employees. Such policy shall constitute an appendix to these rules.

#### **RULE 18. ETHICS CODE**

A court employee, faithful to the trust instilled in the Judiciary by the public, shall observe high standards of conduct so that the integrity and independence of the courts may be preserved. Court employees shall carry out all duties assigned by law and shall put loyalty to the principles embodied in this Code above loyalty to persons or parties. A court employee shall uphold the Constitution, laws and legal regulations of the United States, and the Commonwealth of the Northern Mariana Islands. Court employees shall abide by the standards set out in this Code and shall endeavor to expose violations of this Code whenever they may appear to exist.

The Judicial Council shall adopt a comprehensive Ethics Code applicable to the Judiciary's employees. Such policy shall constitute an appendix to these rules.

#### **RULE 19. COMPUTER USE POLICY**

Proper use of Judiciary computers is essential to insure optimal productivity and guard against abuse of Judiciary resources.

The Judicial Council shall adopt a comprehensive Computer Use Policy applicable to the Judiciary's employees. Such policy shall constitute an appendix to these rules.

**RULE 20. TIME AND ATTENDANCE POLICY**

Punctuality and regular attendance are essential to insure optimal productivity. In order for the Commonwealth Judiciary to achieve these goals, employees are required to maintain a satisfactory record of time and attendance.

The Judicial Council shall adopt a comprehensive Time and Attendance Policy applicable to the Judiciary's employees. Such policy shall constitute an appendix to these rules.

**RULE 21. DRESS CODE**

As representatives of the Judiciary of the Commonwealth of the Northern Mariana Islands, employees should dress appropriately and professionally while at work.

The Judicial Council shall adopt a comprehensive Dress Code applicable to the Judiciary's employees. Such policy shall constitute an appendix to these rules.

**RULE 22. OTHER POLICIES AND OBLIGATIONS**

The Judicial Council may, from time-to-time, create policies, codes, regulations, and obligations applicable to the justices, judges, and employees. In the event of a conflict between these rules and a Judicial Council policy, code, regulation, or obligation mentioned in these rules or created in the future, these rules shall control.

# Diagram 1

## Table of Kinship

Showing degrees of relationship

