

STATE OF SOUTH DAKOTA UNIFIED JUDICIAL SYSTEM

PERSONNEL RULES



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UNIFIED JUDICIAL SYSTEM PERSONNEL RULES

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UNIFIED JUDICIAL SYSTEM PERSONNEL RULES

POLICY STATEMENTS

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RULE 1.1 EQUAL EMPLOYMENT OPPORTUNITY

As an equal opportunity employer, the Unified Judicial System of South Dakota does not discriminate in its employment decisions on the basis of sex, sexual orientation, gender and gender identity, race, color, creed, ancestry, national origin, pregnancy, religion, familial or military status, political affiliation, disability, age (40 years of age or older), genetic information, or any other basis that would be in violation of any applicable federal, state or local law. The goal of the UJS is to recruit, hire and maintain a diverse workforce. Equal employment opportunity applies to all areas of employment, including recruitment, selection, hiring, training, transfer, promotion, termination, compensation, and benefits. Persons believing they have been the subject of unlawful discrimination in violation of this policy may file a complaint with the State Court Administrator's Office, which shall promptly investigate the matter and take action as needed.

RULE 1.2 DISCRIMINATION, SEXUAL AND OTHER UNLAWFUL HARASSMENT

(A) Policy. The Unified Judicial System is committed to providing a work environment that is free from all forms of unlawful discrimination and harassment, including sexual harassment. Actions, words, jokes, or comments based on an individual's sex, sexual orientation, gender and gender identity, race, color, creed, ancestry, national origin, pregnancy, religion, familial or military status, political affiliation, disability, age (40 years of age or older), genetic information, or any other legally protected characteristic will not be tolerated.

(B) Definitions. One specific kind of illegal behavior is sexual harassment. Sexual harassment, which can consist of a wide range of unwanted sexually directed behavior, is defined as:

Unwelcome sexual advances, requests for sexual favors, and other verbal or physical conduct of a sexual nature, when:

- (1) Submission to such conduct is made either explicitly or implicitly a term or condition of employment;
 - (2) Submission or rejection of the conduct is used as a basis for making employment decisions; or,
 - (3) The conduct has the purpose or effect of interfering with work performance or creating an intimidating, hostile, or offensive work environment.
- This definition includes gender-based harassment of a person of the same sex as the harasser.

(C) Notification and Confidentiality. All judicial officers and employees should be encouraged to report any incident of discrimination, sexual or other unlawful harassment in confidence and without fear of retaliation, as provided below. The disclosure of allegations of discrimination, sexual or other unlawful harassment shall be restricted to those individuals who have a need to know. Any complaint brought

against a judicial officer or employee of the Unified Judicial System shall not be discussed by the investigators with anyone other than those directly involved in the investigation of the complaint.

(D) False Reporting. False or frivolous charges of discrimination, sexual or other unlawful harassment can severely damage the otherwise good reputation of an accused person. Given the serious impact such charges may have, any judicial officer or employee who falsely accuses another of discrimination, sexual or other unlawful harassment shall be subject to the full range of disciplinary actions available under the UJS Personnel Rules up to and including termination, depending on the circumstances.

(E) Reporting Procedures. Any supervisor who becomes aware of possible discrimination or sexual or other unlawful harassment must immediately advise the State Court Administrator's Office so the allegation can be investigated. A judicial officer or employee who believes that she or he has been discriminated against or harassed is encouraged to identify the offensive conduct to the offending party and request that it stop immediately. If the judicial officer or employee chooses not to discuss directly with the offending party or after confronting the offending party the conduct does not cease, a judicial officer or employee should report the matter as follows:

(1) A complaint of discrimination, sexual or other unlawful harassment should be brought to the attention of the employee's appointing authority or the Deputy State Court Administrator. The person to whom the complaint is addressed shall initiate an investigation by informing the State Court Administrator's Office immediately.

(2) A formal complaint of discrimination, sexual or other unlawful harassment may be verbal or in writing and should contain the name of the offending party, the recipient of the offensive conduct, the nature of the conduct that is alleged to constitute discrimination or unlawful harassment, the time when the conduct occurred and any witnesses to the incident. The complaint shall be treated by the recipient and/or investigator as confidential and no judicial officer or employee should disclose the existence, or content of the complaint to anyone other than those who need to know.

(F) Investigation. Upon receipt of a complaint and after consulting the appointing authority, if appropriate, the State Court Administrator's Office shall coordinate an investigation. The complainant should be informed that to adequately investigate the allegations, the offending party must be confronted and made aware of the allegations. The procedure to be followed is:

(1) The person investigating the allegation shall conduct an interview with the party registering the complaint. The purpose of the interview is to determine a true and complete account of the incident. The investigating party should determine the severity of the conduct, the frequency of the alleged acts, the relationship of the parties, the response of the complainant at the time of the incident, witnesses, and the employment environment within the office or workplace. Only under such circumstances as where necessary to ensure the

integrity of the investigation or to comply with other employment laws should an employee be encouraged not to discuss the matter with co-workers.

(2) The investigating party shall inform the alleged discriminator or harasser that a complaint has been brought against him or her and interview that person. The individual should be informed that retaliation or intimidation directed toward the complainant or any employees participating in the investigation will not be tolerated. Only under such circumstances as where necessary to ensure the integrity of the investigation or to comply with other employment laws should an employee be encouraged not to discuss the matter with co-workers.

(3) The investigating party shall make a written record of the interviews and any other aspect of the investigation. The investigating party shall also prepare a written report summarizing the findings and, if appropriate, recommending disciplinary action.

(4) Upon completing the investigation, the appointing authority and/or the State Court Administrator shall take appropriate action, as may be warranted.

(G) Appeal of Disciplinary Action. If an employee is disciplined for discrimination, sexual or other unlawful harassment, the employee may appeal the disciplinary action as provided in Rule 8.0.

(H) Retaliation for Filing a Complaint Prohibited. Any intimidation, retaliation or interference for filing a complaint or assisting in an investigation is prohibited and disciplinary action may be taken against any employee of the Unified Judicial System knowingly participating in such conduct.

RULE 1.3 PERSONS WITH DISABILITIES

(A) Purpose. The Unified Judicial System hereby establishes the following policy and procedures regarding the treatment of persons with disabilities by all judicial officers, managers, supervisors, employees and volunteers of the Unified Judicial System, and any other persons who use the state court system's services, including applicants, attorneys, law enforcement officers, contractors, and vendors.

(B) Policy. Discrimination against persons with disabilities violates an individual's civil rights, undermines the integrity of the court system and the workplace, and adversely affects the equal administration of justice. In addition, discrimination against persons with disabilities is prohibited by law.

The Unified Judicial System supports the right of all persons, including those with disabilities, to enjoy access to the facilities and services offered by the Unified Judicial System. The Unified Judicial System also supports the right of all persons, including those with disabilities, to have equal opportunity to employment, if otherwise qualified. It is the policy of the Unified Judicial System to maintain an atmosphere free of discrimination against persons with disabilities, to encourage the construction of facilities that allow for free access to persons with disabilities, to assist in the removal of communication barriers that result in discrimination, and to provide reasonable accommodations to persons with disabilities.

All members of Unified Judicial System are expected to comply with this policy and to take appropriate measures to ensure that discrimination against persons with disabilities does not occur. This includes all judicial officers, temporary, permanent and contractual employees, applicants for employment, volunteers and interns. Each appointing authority, judicial officer, manager, and supervisor is responsible for providing a work place free from discrimination on the basis of a disability. Appropriate disciplinary action may be taken against anyone who intentionally violates this policy.

(C) Definitions

(1) A person with a disability is:

- (a) A person with a physical or mental impairment that substantially interferes with a major life activity;
- (b) A person with a record of such a physical or mental impairment;
- (c) A person who is regarded as having such an impairment.

(2) The Pregnant Workers Fairness Act (PWFA) applies to accommodations for physical or mental health conditions related to, affected by, or arising out of pregnancy, childbirth, or related medical conditions. Qualified employees and applicants under the Pregnant Workers Fairness Act (PWFA) define disability as:

- (a) A person with a physical or mental impairment that substantially interferes with a major life activity;
- (b) A person with a record of such a physical or mental impairment;
- (c) A person who is regarded as having such an impairment;
- (d) A person with an inability to perform an essential function for a temporary period or could be performed in the near future.

(2) Reasonable accommodation is any modification or adjustment to a job, the work environment or the way things are usually done that enables a qualified individual with a disability to have an equal opportunity to participate in and enjoy the benefits of employment with or the services of the Unified Judicial System without imposing upon the Unified Judicial System undue hardship.

(D) Complaint Procedures. The Unified Judicial System encourages all employees and individuals to report any incident of discrimination against persons with disabilities. Complaints will be promptly responded to and every effort will be made to resolve all complaints as quickly as possible. An individual who believes he or she may have been discriminated against because of a disability, and who wishes to discuss the situation prior to making a formal complaint, may contact the supervisor, the appointing authority, or the Deputy State Court Administrator, who shall meet with the individual, if requested, to discuss the situation and attempt to correct the alleged discriminatory conduct.

(1) Complaints Concerning Employment with the Unified Judicial System. Complaints of discrimination against persons with disabilities who are currently employed by or are seeking employment with the Unified Judicial System shall be referred to the appointing authority or the Deputy State Court Administrator.

All complaints shall be promptly reported to the State Court

Administrator. The official handling the complaint shall initiate an investigation within three working days and shall conclude the investigation within ten working days. The investigation shall be handled in a confidential manner. If there are reasonable grounds to believe that discrimination against persons with disabilities has occurred, reasonable remedies shall be undertaken to correct the situation as soon as practicable. The complainant shall be informed in a timely manner of the progress of the complaint, the investigation, and the action taken in response to the complaint.

If the complainant is a current Unified Judicial System employee and is dissatisfied with the outcome and action taken, the complainant may grieve that action by filing a notice with the State Court Administrator's Office. The State Court Administrator shall review the complaint, review the actions taken to address the complaint, and recommend such other action as is necessary to correct substantiated discrimination. The State Court Administrator shall forward the recommendation to the Chief Justice for review and action. If the State Court Administrator finds that the complaint is not substantiated or that the prior action taken to correct the discrimination was reasonable, the State Court Administrator shall report such findings to the Chief Justice and the complainant. The Deputy State Court Administrator shall be responsible for establishing and maintaining files of substantiated complaints of discrimination against persons with disabilities with regards to employment.

(2) Complaints Concerning Access to Services. In those instances where a complaint is made regarding access to court services, the complaint shall be made to any of the following: the Presiding Circuit Judge of the circuit in which the complaint arose, the supervisor of the office, or the Deputy State Court Administrator. All complaints not otherwise filed with the State Court Administrator's Office shall be promptly reported to that office. A confidential investigation shall be initiated within three working days and shall be concluded within ten working days. If there are reasonable grounds to believe that discrimination against persons with disabilities has occurred, remedies shall be undertaken to correct the situation as soon as practicable. The complainant shall be informed in a timely manner of the progress of the complaint, the investigation, and the action taken in response. The Deputy State Court Administrator shall be responsible for establishing and maintaining files of substantiated complaints of discrimination against persons with disabilities in the area of access to services.

If a disciplinary action is initiated against any employee found to be responsible for discrimination against persons with disabilities, the employee may appeal the disciplinary action under Rule 8.0.

(E) Confidentiality. All actions taken to investigate and resolve complaints through this procedure shall be conducted confidentially without compromising the thoroughness of the investigation. This complaint procedure is designed to encourage reporting of all incidents of discrimination against persons with disabilities as well as to

protect the reputation of any employee wrongfully charged with such conduct. Employees shall be informed that if the Unified Judicial System has to defend any action taken because of a complaint, confidentiality cannot be guaranteed.

(F) Retaliation for Filing a Complaint Prohibited. Any intimidation, retaliation or interference for filing a complaint or assisting in an investigation is prohibited and disciplinary action may be taken against any employee of the Unified Judicial System knowingly participating in such conduct.

RULE 1.4 REASONABLE ACCOMMODATION PROCESS

(A) Guidelines. In general, it is the responsibility of the individual with the disability to inform the employer that an accommodation is needed. The Unified Judicial System (UJS) is not expected to accommodate disabilities of which it is not aware. To request an accommodation, an individual may use “plain English” and need not mention the Americans with Disabilities Act (ADA)/Americans with Disabilities Act Amendments Act (ADAAA) or use the phrase “reasonable accommodation.” Employees are responsible for initiating requests for any desired disability related workplace accommodations. Requests should be made to your direct supervisor.

Supervisors are responsible for receiving requests for workplace accommodations and referring requests to the Circuit Administrator or SCAO Division Director. Supervisors/Circuit Administrators/Division Directors are responsible for visiting with the employee about the employee’s needs, the requested accommodation, or other accommodations the employer may suggest. This is the “interactive process” and should be an open and ongoing two-way conversation about employee needs and how the employee’s requirements might affect the way the worker performs the job’s essential functions.

The Deputy State Court Administrator or designee is responsible for providing advice and guidance in considering the needs or requests for workplace accommodations.

A person with a disability must be able to perform the essential functions of the position, with or without reasonable accommodation. It is a violation of the ADA/ADAAA to fail to provide a reasonable accommodation to the **known** physical or mental limitations of a qualified individual with a disability, unless to do so would impose an undue hardship on the operation of the business.

The Pregnant Workers Fairness Act (PWFA) requires covered employers to provide reasonable accommodations to workers and applicant’s known limitations related to, affected by, or arising out of pregnancy, childbirth, or related medical conditions, unless the accommodation will cause the employer an undue hardship.

Reasonable accommodation may include, but is not limited to:

- Making existing facilities used by employees accessible to and usable by persons with disabilities;
- Job restructuring, modifying work schedules, reassignment to a vacant position;

- Acquiring or modifying equipment or devices; adjusting/modifying examinations, training materials, or policies; and providing qualified readers or interpreters.

The UJS will consider reasonable accommodation on an individual basis through the interactive process. The UJS does not require indefinite leave of absence as accommodation of an employee with a prolonged illness.

Among the factors to be considered in determining whether an accommodation is an undue hardship are the cost of the accommodation, the employer's business size, and financial resources and the nature and structure of its operation. No accommodation should be denied due to an undue hardship without consulting with the Deputy State Court Administrator or designee.

(B) Definitions. Terms used in this rule mean:

- (1) Disability - A person with a disability is:
 - (a) A person with a physical or mental impairment that substantially interferes with a major life activity;
 - (b) A person with a record of such a physical or mental impairment;
 - (c) A person who is regarded as having such an impairment.
- (2) Essential functions are the basic job duties and the primary reason the position exists.
- (3) Reasonable accommodation is any modification or adjustment to a job, the work environment or the way things are usually done that enable a qualified individual with a disability to perform essential functions of their job or to enjoy the equal benefits and privileges of employment without imposing upon the Unified Judicial System undue hardship.
- (4) An undue hardship means that an accommodation would be unduly costly, extensive, substantial, disruptive, or would fundamentally alter the nature or operation of the business.

(C) Interactive Process. The interactive process involves the following:

- (1) Request: The employee is responsible for requesting a workplace accommodation for his/her disability. The request shall be to the employee's supervisor. Requests may be verbal or in writing and should include the following information:
 - (a) Name, telephone number, and address of the employee
 - (b) Circuit
 - (c) Supervisor
 - (d) Medical or psychological condition and its duration
 - (e) Nature of the request
 - (f) Brief explanation of how the requested accommodation will enable the employee to perform the essential functions of his/her job.
- (2) Discussion/Documentation: When received, the supervisor will forward to the Circuit Administrator/Division Director and the Circuit Administrator/Division Director will discuss the request with the employee. When the need for an accommodation is not obvious, an employer may require

that an individual with a disability provide documentation that is job-related and necessary regarding the need for accommodation. It is the responsibility of the employee to provide the requested documentation regarding his or her disability and ensure that the documentation explains the existence of the ADA disability and the need for a reasonable accommodation. If this information is not provided the documentation will be considered insufficient and the UJS may require clarification from the employee. If the employee provides insufficient documentation, the UJS may also require the employee to go to a health care provider of our choice to substantiate the disability and need of a reasonable accommodation. If the UJS requires the employee to visit a health care provider of our choice, the UJS will bear all costs associated with the visit(s). The request for an accommodation will be evaluated once the employee has submitted all documentation.

(3) Evaluation: Appropriate accommodations are determined following an individualized assessment of each request. The Circuit Administrator/Division Director may consult with the Deputy State Court Administrator or designee in considering the needs or requests for reasonable accommodations.

The UJS is not required to provide an accommodation that will have the effect of eliminating an essential function of the job in question or to provide an accommodation or service that is personal in nature, such as a hearing aid or wheelchair. Furthermore, the UJS is not required to lower performance, production or conduct standards, or alter attendance requirements expected of all employees.

The UJS is also not obligated to necessarily provide the specific accommodation requested. It may however provide an equally effective accommodation (e.g., the UJS does not have to purchase the top model if a cheaper model is equally effective).

(4) Notification: The Circuit Administrator/Division Director will provide the employee the determination and implementation date of the accommodation, if approved.

(5) Documentation and Follow Up: All documentation regarding the interactive process will be forwarded to the Human Resources office to be maintained in the employee's medical file. The Circuit Administrator/Division Director should also follow up with the employee regularly to ensure the accommodation is meeting the employee's needs.

(D) **Direct Threat**. The Unified Judicial System will not place qualified individuals with disabilities in positions in which they will pose a direct threat to the health or safety of others or themselves. A direct threat means a significant risk to the health or safety of one's self or others that cannot be eliminated by reasonable accommodation. The determination that an individual with a disability poses a direct threat will be made by the appointing authority in consultation with the State Court Administrator and will be based on factual, objective evidence.

(E) Confidentiality. All information obtained concerning the medical condition or history of an employee will be treated as confidential information, maintained in a separate medical file, and disclosed only as permitted by law.

(F) Right to Review. Any employee who believes that they have not been provided an appropriate accommodation, will have the right to review of the reasonable accommodation process by the State Court Administrator. This right to review shall be requested in writing within 10 calendar days of the date of the notification letter. The review will include a re-evaluation of the process and the State Court Administrator may affirm the decision or request that the Circuit Administrator/Division Director re-evaluate the accommodation decision.

RULE 1.5 MANDATORY REPORTING OF IMPROPER CONDUCT

(A) Policy. The Unified Judicial System is committed to establishing employee reporting requirements concerning improper governmental conduct and crimes, and to provide protections for employees who report such conduct in good faith.

(B) Scope. This policy applies to all employees and supervisors in the Unified Judicial System.

(C) Definitions:

(1) "Adverse employment action" means constructive or actual discharge, suspension from employment, demotion, transfer, decrease in compensation or benefits, imposition of an unfavorable work schedule, or any other similar reprisal or retaliatory action.

(2) "Conflict of interest" means conduct defined or described in SDCL 5-18A-17 or 5-18-A-17.6, inclusive, 42-7A-27, and 42-7A-28.

(3) "Crime" means a criminal act attempted or committed by misusing a state employee's access, duty, position, or responsibility as a state employee, which constitutes a felony under state law.

(4) "Good faith report" is a report made, without malice, by a reporter, which the reporter has reasonable cause to believe is accurate and true.

(5) "Improper governmental conduct" means any conduct or omission that results in a conflict of interest prohibited by state law; fraud; or theft of moneys or property belonging to or derived from federal, state, or local government sources, constituting a felony.

(6) "Reasonable cause" means sufficient reason, based on known facts, to assume something is true.

(7) "Reporter" is a state employee who witnesses or has evidence of improper governmental conduct or a crime, and who makes a good faith report of the improper governmental conduct or crime, to a supervisor or other appropriate authority.

(8) "State employee" is a full-time, part-time, intern, seasonal, or temporary employee of any state agency.

- (D) Reporting Procedures.
- (1) A state employee who, in the regular course of the state employee's duties, has reasonable cause to suspect that another state employee has engaged in improper governmental conduct, or a crime, shall promptly notify a supervisor.
 - (2) Upon receipt of a reporter's good faith report, a supervisor shall submit information provided by the reporter on a form to the attorney general and auditor-general; and notify the appointing authority or State Court Administrator.
 - (3) The supervisor shall promptly submit to the attorney general and auditor-general any record, as allowed by law, in the supervisor's custody or control, evidencing the improper governmental conduct or crime; and cooperate with any investigation or inquiry initiated in response to the report.
 - (4) A supervisor who knowingly fails to make a report and/or knowingly and intentionally fails to submit a record is guilty of a Class 1 misdemeanor.
- (E) Retaliation for Reporting Prohibited. The supervisor or appointing authority may not take any adverse employment action against a reporter based on a good faith report of improper governmental conduct, filing a complaint, a complaint that instituted or caused a proceeding, requesting or participating in an investigation or audit, testifying or being asked to testify in a proceeding, or exercising any other right or obligation imposed by this Rule.

The provisions of this Rule do not apply to a state employee who made a report knowing the report was false or who made a report in a reckless disregard for the truth. A disclosure that is made with a reckless disregard for the truth or that the state employee knows or should know is false or malicious is not a good faith report.

RULE 1.6 REPORTING WRONGDOING PROTECTIONS

- (A) Responsibility to Report. Employees who suspect any violations of state law or rule, abuse of funds, substantial and specific danger to the public health or safety, direct criminal conflict of interest, harassment or discriminatory behavior, or a retaliatory action should report the matter to a supervisor, appointing authority, or State Court Administrator. Reports should be made in good faith, without malice, and the reporter should have the reasonable cause to believe the report is accurate and true.
- (B) Protections. The Unified Judicial System will not tolerate any adverse employment action against a reporter because the reporter:
- (1) Made a good faith report of improper governmental conduct or a crime to an appointing authority;
 - (2) Filed a complaint;
 - (3) Instituted or caused to be instituted a proceeding;
 - (4) Requested or participated in an audit;
 - (5) Testified, or will testify, in a proceeding; or

- (6) Exercised any other right or obligation imposed by statute or any law of South Dakota.

If an employee feels that they have been subjected to retaliation, the employee should immediately report the alleged retaliation to their supervisor, the appointing authority, or State Court Administrator.

These protections do not apply to an employee who made a report knowing the report was false or who made a report in a reckless disregard for the truth.

UNIFIED JUDICIAL SYSTEM PERSONNEL RULES

GENERAL PROVISIONS

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2.0 GENERAL PROVISIONS

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RULE 2.1 CITATION

These rules shall be known and cited as the South Dakota Unified Judicial System Personnel Rules (UJS Personnel Rule __), adopted under the superintending authority of the Supreme Court of the state of South Dakota, under Article V, §§ 11 and 12 of the South Dakota Constitution and SDCL 16-2-21.

RULE 2.2 SCOPE

These personnel rules shall apply to the employees of the South Dakota Unified Judicial System and supersede all previous versions of the UJS Personnel Rules. They are not meant to cover all practices and procedures governing UJS employment, nor do they constitute any kind of contractual relationship between the UJS and its at-will employees. For guidance on issues not covered by these rules, the employee is directed to contact his or her supervisor or the Deputy State Court Administrator.

RULE 2.3 RESPONSIBILITY

- (A) Presiding Circuit Judges and State Court Administrator. Presiding Circuit Judges and the State Court Administrator shall be responsible to the Chief Justice of the Supreme Court for the administration of these rules.
- (B) Appointing Authorities. Appointing authorities shall be responsible for:
- (1) Administration of these rules and compliance with the policies contained therein;
 - (2) Orientation and on-the-job training for employees;
 - (3) Review and evaluation of employee performance;
 - (4) Corrective or disciplinary action when required in accordance with these rules; and
 - (5) Providing a work environment conducive to employee welfare and safety.

RULE 2.4 DEFINITIONS

The terms used in these Rules and UJS practice and policy are:

1. "Americans with Disabilities Act (ADA)" is federal law that protects the rights of people with disabilities, including prohibiting covered employers from discriminating against people with disabilities in the full range of employment-related activities, from recruitment to advancement, to pay and benefits. 42 USC §§12101-12213.
2. "Appointing authority" means the person or group of persons vested by these rules with the authority to appoint employees to positions under the conditions of these rules and who has the primary administrative responsibility for the operation of the courts and judicial services as delegated by the Chief Justice or

as specified in these rules. Appointing authorities include the Supreme Court, Chief Justice, State Court Administrator, Deputy State Court Administrator, Presiding Circuit Judges and circuit administrators.

3. "Break in service" means the period following the termination date of employment with the state of South Dakota exclusive of time on layoff status if less than one year.
4. "Child (son/daughter) – military exigency leave and covered servicemember" means a biological, adopted, or foster child, a stepchild, legal ward, or a child for whom the employee stood in loco parentis, who is on active duty or call to active duty status, and who is of any age. This definition applies to Rule 6.4, FMLA (military exigency leave and covered servicemember).
5. "Child (son/daughter) – serious health condition" means a biological or adopted child, a stepchild or a person who is under eighteen years of age, who resides with the employee and for whom the employee has been appointed guardian pursuant to SDCL 29A-5-201. This definition applies to Rule 6.4, FMLA (family member with a serious health condition) and Rule 6.5, Donating Leave.
6. "Class" means a grouping of positions or jobs sufficiently similar in duties, authority, and responsibilities that:
 - a. The same descriptive title may be used;
 - b. The same qualifications for entrance may be required;
 - c. The same aptitude or proficiency tests may be used; and
 - d. The same pay grade may be applied with equity.
7. "Class series" means a grouping in sequence of classes that are alike in kind but not in level, starting with a trainee or entry level position and advancing upward in duties, complexity, authority, and responsibility.
8. "Class specification" means the official written job description of a class of work which defines the class, lists some of the more typical tasks of the class, and the training, education, and experience standards required for the class.
9. "Class title" is the official title used for all personnel and payroll actions.
10. "Compensation schedule" is the array of pay grades applying to Unified Judicial System employees.
11. "Convicted" means there has been a finding of guilt, including a plea of nolo contendere or imposition of sentence or both, by a judicial body charged with the responsibility to determine violations of federal or state criminal statutes.
12. "Date of employment" is the date on which an employee begins service with the state.
13. "Days" means calendar days unless stated otherwise.
14. "Demotion" is a change in the classification of an employee from one class title to another class title with a lower entry level salary, caused by an action other than reclassification.
15. "Dismissal" is the termination from employment for cause as defined in the Unified Judicial System Personnel Rules.
16. "Employee position types" in the Unified Judicial System are:

- a. "Full-time regular position" means a position scheduled for full-time work, i.e. forty hours per week, and filling a budgeted position of 1.0 FTE or approximately 2080 hours annually. The actual number of hours fluctuates annually depending on the number of working hours in a fiscal year. This position is eligible for all normal employment benefits.
 - b. "Part-time regular position" means a position scheduled for part-time work, i.e. less than forty hours and at least twenty hours per week, and filling a budgeted position of 0.5 FTE or approximately 1040 hours annually, or more. The actual number of hours fluctuates annually depending on the number of working hours in a fiscal year. This position works a regular schedule and is eligible for all normal employment benefits on a pro-rated basis.
 - c. "Part-time hourly position" means a position scheduled for part-time work, i.e. less than twenty hours per week, and filling a budgeted position of less than 0.5 FTE or approximately 1040 hours annually. This position may work a regular or irregular schedule and is not eligible for normal employment benefits.
 - d. "Temporary position" means a position scheduled for either full-time or part-time work for a six-month period or less. Such positions must have budgetary authority and may be extended for a thirty-day period with the approval of the Chief Justice. Temporary positions are not eligible for normal employment benefits or unemployment compensation. Seasonal help and interns shall be considered temporary employees.
17. "Fair Labor Standards Act (FLSA)" is the federal law that requires employers to pay covered non-exempt employees at least the federal minimum wage and overtime pay for all hours worked over 40 in a work week. 29 USC §§201-219.
18. "Family Medical Leave Act (FMLA)" is the federal law that requires employers of 50 or more employees to give up to 12 workweeks of unpaid, job-protected leave to eligible employees for the birth or adoption of a child, placement of a son or daughter with the employee for adoption or foster care, or for the serious illness of the employee or a spouse, child or parent, or a qualifying exigency; or 26 workweeks in a single 12-month period to care for a covered servicemember with a serious injury or illness. 29 USC §§2601 *et seq.* See UJS Personnel Rule 6.4.
19. "Full-time equivalent (FTE)" means a number which designates a staffing level where one full-time equivalent position is equal to approximately 2,080 paid hours in one fiscal year excluding overtime hours.
20. "Immediate family" means the employee's children, spouse, parent, son- or daughter-in-law, mother- or father-in-law, brother/step-brother, sister/step-sister, brother- or sister-in-law, grandparents, grandchildren, stepchildren and stepparents, aunt or uncle, niece or nephew and foster children. This definition

applies to Rule 6.2, Sick Leave, Rule 9.5, Nepotism and Rule 9.10, Employee or Family Member as Party to Pending Case.

21. "Last working day" is the last day an employee is actually on the job.
22. "Lateral transfer" means the movement of an employee from a position or class of work to the same or a different position or class of work at the same pay grade.
23. "Leave without pay" means approved absence from duty for which time the employee is not paid.
24. "Life threatening illness or injury" means an acute illness or injury which has been certified by a licensed physician as having a significant likelihood of terminating fatally. This definition applies to Rule 6.5, Donating Leave.
25. "Next of kin" means nearest blood relative in the following order of priority, unless specifically designated in writing by the servicemember: blood relatives who have been granted legal custody of the servicemember by court decree or statutory provisions, brothers and sisters, grandparents, aunts and uncles, and first cousins. This definition applies to Rule 6.4, FMLA.
26. "Non-supervisory employee" means an employee who does not regularly supervise other court employees.
27. "Occasional duties" means those tasks that an individual may infrequently perform in cases of emergency or under conditions as the need arises.
28. "Overtime" means the time worked by hourly, non-exempt (from Fair Labor Standards Act (FLSA) overtime requirements) employees in excess of 40 hours during an established work week. This provision applies to non-exempt positions that are full-time, part-time, temporary or seasonal.
29. "Overtime compensation" means remuneration of hourly, non-exempt employees for overtime given in cash at a rate of one and one-half times the employee's current hourly rate.
30. "Parent" means biological or adoptive parent or stepparent under Rule 6.5, Donating Leave. For FMLA purposes, the definition of "parent" is a biological, adoptive, step- or foster father or mother or anyone else who undertook the parental role. It is the person who actually has the day-to-day responsibility for caring for the child.
31. "Pay grade" is a range of pay at which a class of positions in the Unified Judicial System is paid.
32. "Position" means an individual job or place of employment within the Unified Judicial System.
33. "Primary duties" means those tasks that an individual is expected to perform on a regular recurring basis.
34. "Probation" means the first six months of employment; it is an examination period during which the employee may be removed by the appointing authority according to the Unified Judicial System Personnel Rules. See UJS Personnel Rules 3.5 and 8.1.
35. "Promotion" means the movement of an employee from one position to another position with a higher level salary.

36. "Reclassification" means a change in the class title of a position caused by a permanent substantial change in the duties and responsibilities of a position involving either the addition of new duties and responsibilities or the deletion or modification of existing duties and responsibilities.
37. "Reinstatement" means the privilege of the employer to rehire within one year a former employee of the Unified Judicial System who voluntarily terminated employment in good standing.
38. "Resignation" means the voluntary termination of employment by an employee.
39. "Retirement" means the date an employee leaves the employ of the UJS and is then eligible to receive retirement benefits under the South Dakota Retirement System.
40. "Salaried employee" means an employee who is not eligible for overtime payment because the employee is exempt from FLSA overtime reporting requirements.
41. "Staffing record" means a document showing the number of positions (FTE) authorized for each court, the title and grade of each position, and other related information as prescribed in UJS Personnel Rule 4.10.
42. "Straight time" is earned on a one-hour for one-hour basis at the employee's current hourly rate.
43. "Supervisor" an individual with supervisory authority over one or more state employee. Clerks of court, chief court services officers, and circuit administrators who are solely or primarily responsible for the operation of their offices shall be considered supervisory employees.
44. "Suspension with pay" means a forced leave of absence, with pay, pending investigation of charges made against an employee.
45. "Suspension without pay" means a forced leave of absence, without pay, for disciplinary purposes.
46. "Terminal illness" is an incurable physical condition that is certified by a licensed physician to be nonreversible and likely to result in death. This definition applies to Rule 6.5, Donating Leave.
47. "Terminal leave period" shall be that period of time between the notification of termination and the termination date.
48. "Termination" means ending employment and benefits provided by the Unified Judicial System for any reason including dismissal, resignation, retirement, transfer to other state government employment, death, or inability to perform essential functions of a job.
49. "Termination date" is the employee's last day of work, even though payment for unused leave may be made after that date.
50. "Transfer" means relocating an employee from one position or class of work to a different position or class of work, or moving an employee to the same position or class of work in a different judicial circuit or the State Court Administrator's Office or state agency.
51. "Unclassified position" means a Justice, Judge, contract employee, and any other

position so designated.

52. "Work location" or "duty station" is the location at which an employee performs assigned work with the approval of the appointing authority.

RULE 2.5 ADMINISTRATIVE INTERPRETATION

- (A) Any employee or judge of the Unified Judicial System may submit a request in writing to the State Court Administrator for an interpretation of any rule or part thereof.
- (B) The written request must set forth the specific facts relating to the rule in question and the employee's or judge's interpretation and rationale in applying the facts to the rule.
- (C) The State Court Administrator shall, within ten working days after receipt of the written request, prepare and transmit a written response to the requesting employee or judge and to the employee's or judge's Presiding Circuit Judge or, if not employed in a circuit, the employee's supervisor.
- (D) If upon receipt of the State Court Administrator's interpretation of the rule the employee, judge, Presiding Circuit Judge or appointing authority disagrees with the interpretation, the employee or judge may, within ten working days, submit a request for review of that interpretation to the Chief Justice.

UNIFIED JUDICIAL SYSTEM PERSONNEL RULES

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RULE 3.1 QUALIFICATIONS OF NEW EMPLOYEES

- (A) Effective Date. After the effective date of these rules, no person may be appointed to fill a position in the Unified Judicial System, except as provided in Section (C) of this rule, unless the person meets the minimum qualifications set for the position.
- (B) Determination of Qualifications.
- (1) The determination as to whether a person meets the specified qualifications shall be made by the appointing authority after a review of the person's academic credentials, work experience, criminal background check, examination results if required, and any other pertinent information. For budget purposes the effective date of appointments shall not precede the approval date designated by the State Court Administrator.
 - (2) Written or oral examinations may be required to determine whether the qualifications for a position have been met by an applicant or appointee.
 - (3) Current Unified Judicial System employees may be given preferential consideration when filling vacant positions.
- (C) Exceptions. Lesser or alternative qualifications may be accepted, if the Supreme Court determines that it is not possible to fill the position at the salary authorized in a reasonable length of time.
- (D) Training. If a person is appointed to a position within the Unified Judicial System which requires knowledge and use of the accounting or information systems, such person shall attend a training class on these systems within ninety days of their appointment.
- (E) Confidential Employees. The qualifications specified in the Unified Judicial System Classification Plan shall also apply to the confidential employees of a Justice, but the determination whether a confidential employee has the required qualifications shall be made by the appointing authority.

RULE 3.2 APPOINTING AUTHORITY

- (A) Supreme Court.
- (1) The Court will hire the positions of State Court Administrator; Chief of Legal Research; staff attorneys; Supreme Court Clerk; Supreme Court legal secretaries; and Supreme Court Law Librarian. The Court will approve or confirm the positions of Deputy State Court Administrator; Director of Clerk Support; Director of Court Services; Director of Budget and Finance; Director of Policy & Legal Services; Director of Treatment Courts; Director of IT Operations; Director of Human Resources; and Chief Deputy Supreme Court Clerk. The Court will hire and approve or confirm any new positions created hereafter and so designated. Persons serving in these positions may be removed by a majority of the Justices of the Supreme Court.
 - (2) Law clerks shall be appointed by the individual Justice whom they serve.

Persons serving in these positions may be removed by the appointing Justice in consultation with the Justices of the Supreme Court, or by a majority of the Justices of the Supreme Court.

(3) Employees of the Clerk of the Supreme Court other than the Chief Deputy Clerk shall be appointed by the Clerk, subject to the approval of the Chief Justice. Persons serving in this office may be removed by the Clerk of the Supreme Court subject to applicable provisions of the Unified Judicial System Personnel Rules.

(4) Employees of the Chief of Legal Research/Law Librarian other than staff attorneys shall be appointed by the Chief of Legal Research/Law Librarian, subject to approval by the Chief Justice. Person serving in this office may be removed by the Chief of Legal Research, subject to applicable provisions of the Unified Judicial System Personnel Rules.

(B) State Court Administrator's Office. The employees of the State Court Administrator's Office shall be appointed by the State Court Administrator, subject to the approval of the Supreme Court. Persons serving in this office may be removed by the State Court Administrator or Deputy State Court Administrator subject to applicable provisions of the Unified Judicial System Personnel Rules.

(C) Circuit Court.

(1) The Presiding Circuit Judge shall appoint clerks and other court personnel for their circuits, except that circuit administrators shall be appointed as follows:

(a) All applications for the position of circuit administrator shall be received by the State Court Administrator's Office.

(b) After the closing date for the position, the State Court Administrator shall review all applications submitted and determine the qualified candidates, considering each candidate's education, prior work experience, and other legally appropriate criteria. In determining the qualified candidates, the State Court Administrator may work in cooperation with other personnel, conduct interviews, and initiate investigations into a candidate's background. The names of the qualified candidates shall be forwarded to the Presiding Circuit Judge who shall interview from the list submitted by the State Court Administrator. The Presiding Circuit Judge and the State Court Administrator shall conduct these interviews.

(c) The Presiding Circuit Judge shall select a candidate to fill the vacant position from the list submitted by the State Court Administrator. Upon selecting a person to fill a vacant circuit administrative position, the Presiding Circuit Judge shall consult with the State Court Administrator prior to offering the position to the candidate. The final decision to offer a position to a candidate shall rest with the Presiding Circuit Judge in consultation with the State Court Administrator.

(d) The Presiding Circuit Judge may reject the names submitted for consideration by the State Court Administrator and request that a new list be provided. In that event, the Presiding Circuit Judge shall state in

writing the reasons for rejecting all candidates. The State Court Administrator shall then re-advertise the position and conduct another search for qualified candidates as provided in this rule. To every extent possible, the State Court Administrator and Presiding Circuit Judge shall work in cooperation with each other to ensure that the most highly qualified candidate is chosen for the position. Persons serving in these positions may be removed by the Presiding Circuit Judge or by a majority of the members of the Supreme Court, in consultation with the State Court Administrator.

- (2) Persons appointed by the Presiding Circuit Judge under this rule may be removed by the Presiding Circuit Judge subject to applicable provisions of the Unified Judicial System Personnel Rules.
- (3) Employees of the circuit court may be selected by the circuit administrator subject to appointment by the Presiding Circuit Judge of that circuit.
- (D) Magistrate Court. Magistrate judges and clerk magistrates shall be appointed in accordance with SDCL 16-12B and -12C.

RULE 3.3 RECRUITMENT AND FILLING POSITIONS

- (A) Recruitment.
 - (1) When a vacancy exists or is created or anticipated, the appointing authority shall notify the Deputy State Court Administrator and request assistance in recruiting applicants.
 - (2) The Deputy State Court Administrator may recruit for a position as extensively as it deems advisable.
- (B) Filling Positions. The appointing authority may appoint any qualified person pursuant to Rule 3.1.
- (C) Announcing Vacancies.
 - (1) Announcements for permanent positions shall be distributed to inform interested persons of the opportunity to apply. Announcements shall include such information as the title of the class, grade, work location, qualifications and standards applicants must meet, primary duties, time limits, and other pertinent information.
 - (2) Position announcements shall be advertised throughout the Unified Judicial System.
 - (3) Positive efforts shall be made by the appointing authority and the State Court Administrator's Office in all recruitment efforts to advertise employment opportunities in the Unified Judicial System to minority groups and to seek out and employ qualified minority candidates.
 - (4) When any substantial change is made in an announcement, such changes shall be distributed and posted, and a new time limit shall be set for filing applications.

(D) Extending Filing Date. Whenever it is found that an insufficient number of applications has been received from qualified persons for any announcement, the filing date may be extended by the State Court Administrator's Office.

(E) Filing Applications.

(1) All applications for vacant positions shall be made by filing a form approved by the State Court Administrator.

(2) The applicant's submission of the application shall constitute certification that, to the best of the applicant's knowledge, all information entered on the application is true.

(3) Applications must be submitted within the time period specified in the announcement to be considered.

(F) Removal from Selection Process. At any point in the selection process the appointing authority may remove the name of a person from consideration for a position or from one or more classifications for up to four years for just cause as reported to the State Court Administrator, including the following just causes listed in the section:

(1) The person has made false or misleading statements or intentionally omitted relevant information during the selection process;

(2) The person has directly or indirectly gained or attempted to gain an unfair advantage in the selection process;

(3) The person was dismissed from previous employment with the UJS for just cause listed in UJS Personnel Rule 7.2;

(4) The person has been found unacceptable as a result of a prior or current preemployment screening conducted by the appointing authority;

(5) The person has failed to appear or arrange for an interview, has not responded to correspondence or telephone inquiries, cannot be located, or has requested to be removed from consideration for the position;

(6) The person has been passed over or has declined an offer of employment for the same or similar class with the same appointing authority within the past two years; or

(7) The person is unable to perform the essential functions of the position.

The appointing authority must notify an applicant in writing that they have been removed from the position or classification for any of the above reasons.

RULE 3.4 APPOINTMENT RATE

(A) Original Appointment. The original appointment to any position may be made between the minimum level and 5 percent of minimum of the assigned salary range at the discretion of the appointing authority, if funds are available, taking into consideration the internal comparison of salaries and availability and qualifications of applicants. With the approval of the Chief Justice, or State Court Administrator after consulting with the Chief Justice, an appointing authority may exceed 5 percent of the assigned salary range where employment conditions so require. Any requests to exceed

the 5 percent of the minimum shall be in writing and shall set forth the basis of the request.

(B) Reinstatement Appointment. If a former employee returns to duty in the class of position after a separation from service of not more than one year, the employee may receive a rate in the salary range not to exceed the rate at the time of separation.

RULE 3.5 PROBATIONARY EMPLOYEES

(A) Probationary Period. A newly appointed full- or part-time employee shall serve a six-month probationary period in the position to which the employee is appointed. Any new employee, appointed at the minimum, may be authorized to receive a raise to 5% of the minimum at the end of the probationary period. Any lateral transfers between circuits pursuant to Rule 4.7(B) may be authorized to receive up to a maximum 5 percent increase in salary at the end of the probationary period, as authorized by the State Court Administrator.

(B) Termination.

(1) Any employee, except those who qualify for veteran preference, on probationary status may be terminated without cause at any time. The appointing authority shall notify the employee of this action in writing.

(2) Termination of a probationary employee shall be final and not subject to review.

(3) Employees on probation that qualify for veteran preference, may be removed for incompetency or misconduct shown after a hearing, upon due notice, upon stated charges, and with the right of the employee or appointee to review, unless replaced by another person with veteran preference.

(C) Attaining Certified Status.

(1) At the conclusion of the six-month probationary period, if the employee's performance meets expectations, the employee shall be certified in the position, and the appointing authority shall notify the State Court Administrator's Office in writing of the certification and any salary increase awarded under Section (A) of this rule.

(2) In exceptional cases, upon written request and justification from the appointing authority and after consulting with the Chief Justice, the State Court Administrator or Deputy State Court Administrator may extend probationary status for an additional period of time not to exceed three months.

(3) Probationary employees shall accrue and use leave in accordance with Rules 6.1 and 6.2.

UNIFIED JUDICIAL SYSTEM PERSONNEL RULES

CLASSIFICATION

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RULE 4.1 CLASSIFICATION PLAN

(A) Specifications.

(1) The State Court Administrator shall recommend and maintain written specifications for each class in the classification plan, subject to approval by the Supreme Court.

(2) The specifications shall briefly define each class, describe the most typical duties of each class, and summarize standards required for appointment. The duties described in the specifications shall not be construed to restrict the assignment of other occasional duties.

(B) Periodic Review.

(1) The State Court Administrator shall make periodic reviews of the classification plan and shall prepare for consideration by the Supreme Court specifications for new classes of positions, revised specifications for existing classes, changes in class title, changes in pay grades of classes, and recommendations for abolishing classes.

(2) The State Court Administrator may also recommend to the Supreme Court other changes in and revisions of the classification plan as changing conditions require.

(3) The State Court Administrator shall submit a report of the changes to the appointing authorities who are affected and to the Supreme Court.

(4) Any changes in the classification plan shall be effective on the date of approval by the Supreme Court.

RULE 4.2 REQUEST FOR CLASSIFICATION REVIEW

(A) Request by Appointing Authority.

(1) Any appointing authority may request a classification review of any position at any time, if the position has not been reviewed within the previous twelve months. The appointing authority shall submit the request to the State Court Administrator for review and approval by the Supreme Court.

(2) Any such request shall be submitted in writing by the appointing authority to the State Court Administrator, together with any comments thereon, and a written position or job description setting forth the actual primary duties and other essential duties assigned to the position.

(B) Request by Employee.

(1) Any employee may request a classification review of the employee's position at any time, if the position has not been reviewed within the previous twelve months. The request shall be submitted initially to the appointing authority. Such request shall include a written position or job description setting forth the actual primary duties and other essential duties now assigned to the position.

(2) Any such request, if approved by the appointing authority, shall be submitted to the State Court Administrator for review and approval by the Supreme Court.

RULE 4.3 RECLASSIFYING AN EXISTING FILLED POSITION

(A) Basis for Reclassification. A filled position may be reclassified when warranted by a permanent, substantial change in the duties and responsibilities of a position.

(B) Procedure for Reclassification.

(1) If the appointing authority requests a reclassification of a filled position, such request shall be accompanied by a statement of the changes in duties.

(2) (a) Upon receipt of the request, the Deputy State Court Administrator shall review the position and determine the class and grade to which the position should be assigned.

(b) The Deputy State Court Administrator shall submit a recommendation to the State Court Administrator for his or her review and for approval by the Supreme Court.

(3) No filled position may be reclassified to a class where the resulting grade is higher than the one already assigned to the position unless there are sufficient funds in the UJS budget.

(C) Administration.

(1) When a filled position is reclassified, the action shall be administered as though the position was abolished and a new position with a different classification established.

(2) When a filled position is reclassified to a different class at the same grade level and the incumbent remains in the position, the action shall be administered as though the employee were transferred to a different position, and the employee's pay and status is unchanged. The effective date shall be the beginning of the next pay period after the reclassification was approved by the Supreme Court.

(3) In the event of reclassification of a position to a classification with a higher minimum rate, the incumbent may receive an increase to the minimum of the new salary range or 5 percent in base pay, whichever is greater. In no event can the incumbent receive less than the minimum or more than the maximum of the salary range of the new classification. Employees brought to the minimum of the salary range may be raised to 5% of minimum after serving six-months in the new classification or pay grade.

(4) An employee reclassified to a position with a lower pay grade shall retain his/her current salary.

RULE 4.4 RECLASSIFYING AN EXISTING VACANT POSITION

- (A) Review by State Court Administrator. If an authorized position is vacant more than 90 days, the State Court Administrator may review the duties assigned to the position to determine its proper classification and whether elimination or transfer of the position should be recommended subject to review and approval by the Supreme Court.
- (B) Reassigning Duties
- (1) The appointing authority may reassign duties assigned to a vacant position, within program categories, and may request a classification review by the State Court Administrator.
 - (2) If the State Court Administrator determines after a classification review that the classification of the vacant position should be changed, the State Court Administrator shall make such change or reclassification, subject to review by the Chief Justice.
 - (3) The effective date of reclassification of a vacant position shall be the beginning of the next pay period after the reclassification is approved by the Supreme Court.
 - (4) No position reclassification shall be approved unless sufficient funds are available in the program budget.

RULE 4.5 DEMOTING

If an employee voluntarily accepts a demotion or is demoted for cause, the employee shall receive a rate of pay in the lower pay grade that the appointing authority in consultation with the State Court Administrator considers appropriate, taking into consideration salaries paid to employees in like classes and budget restrictions. In no case may the employee receive an increase in pay.

RULE 4.6 LAYOFF PROCEDURES

- (A) Purpose. The purpose of this rule is to establish a uniform process for reducing the Unified Judicial System's workforce due to lack of funds, workload changes, organizational changes, or other conditions.
- (B) Reasons. The Supreme Court may require the layoff or reduction of employees or their regular working hours whenever necessary for the following reasons:
- (1) A shortage of funds or work;
 - (2) Abolishment of a position;
 - (3) Internal reorganization;
 - (4) Material change in the duties or the organization; or
 - (5) A revision of staffing patterns.
- (C) Administration. When the State Court Administrator has determined the number and classes of positions to be abolished or vacated, the appointing authority for each

affected position shall administer the layoff of employees in accordance with the provisions of this rule. The State Court Administrator may, with the approval of the Supreme Court, designate specific positions as exempt from the layoff procedures contained in this rule.

(D) Order. If more than one incumbent exists in any classification, work unit, or geographical location designated for layoff or reduction in hours, any combination of the following criteria will be used to identify those employees whose hours will be reduced or who will be laid off:

- (1) Type and mixture of funding and fund status;
- (2) Past and present work performance;
- (3) Longevity with the state;
- (4) Employment status;
- (5) Special knowledge, skills, abilities, and potential of employees including, but not limited to skills, education, and experience;
- (6) Future estimated needs of the offices; and
- (7) Geographical location.

(E) Notification to Employees. Employees must be notified at least fourteen working days before the effective date of the layoff or reduction in hours and will be given written notice of the reasons for the layoff or reduction.

RULE 4.7 LATERAL TRANSFERS

(A) Procedure.

(1) When a vacancy occurs in the Unified Judicial System, any Unified Judicial System employee meeting the minimum qualifications of the vacant position should apply for the vacancy and notify the appointing authority they have submitted their application for consideration. Once the current Unified Judicial System employee applies, the appointing authority may close the announcement and consider only the current Unified Judicial System employee or continue the opening and consider all qualified applicants including the qualified current Unified Judicial System employee.

(2) Prior to the effective date of any lateral transfer the appointing authority involved shall report to the personnel office the name of the employee being transferred, the employee's salary grade, current class title, and class title of the position the employee is transferring to.

(3) An appointing authority may transfer an employee between programs within a location from one position in a class title to the same or different class title of the same pay grade in another program.

(4) Two appointing authorities may transfer an employee from a position in a class title in one location to a position of the same or different class title of the same pay grade in another location. The transfer must be mutually agreeable to the two appointing authorities.

(5) An appointing authority may transfer an employee from one position in a class title to another position in the same or a related class title in the same salary range within one or between two programs within a circuit if the employee meets the entrance qualifications of the related class title.

(B) Probationary Period. Persons transferred by an appointing authority to the same or a related class title may be required to serve a six-month probationary period, at the discretion of that same appointing authority. Employees laterally transferred between two appointing authorities shall serve a six-month probationary period in the position to which the employee is being transferred. Laterally transferred employees under probation shall be subject to the provisions of Rule 3.5(B) and (C).

RULE 4.8 PROMOTIONS

In the event of a promotion of an employee to a classification with a higher minimum rate, the employee may receive up to 5 percent of the minimum hiring range of the new classification, or an increase of 5 percent in his or her current base pay, whichever is greater. Requests to exceed this must be approved by the State Court Administrator, who shall consult with the Chief Justice. In no event can the employee receive less than the minimum or more than the maximum of the salary range of the new classification.

If the promotion is from one appointing authority to another, the employee shall serve a six-month probationary period in the position to which the employee has been promoted and shall be subject to the provisions of Rule 3.5(B) and (C). Employees promoted within a circuit, the State Court Administrator's Office, or Supreme Court may be required to serve a probationary period, at the discretion of their appointing authority.

RULE 4.9 TEMPORARY ASSIGNMENT

(A) Qualifications and Compensation. When an employee is temporarily required to serve in and accept at least 50 percent of the responsibilities for another position for more than 15 working days, the employee may receive an increase for the term of the temporary assignment of 5 percent above the employee's present rate.

(B) Authorization. A request for temporary assignment and temporary pay increase must be made in writing, and approved by the State Court Administrator, before compensation will be paid.

(C) Approval and Length of Assignment. The higher rate shall start on the first day of assignment, subject to the approval of the appointing authority and the State Court Administrator. The compensation period for a temporary assignment shall not exceed ninety working days. This period may be extended upon request of the appointing authority and approval of the State Court Administrator for extraordinary circumstances. The reason and length of such extension shall be submitted in writing

to the State Court Administrator. Any such compensation shall terminate upon the appointment of a replacement to the vacant position.

RULE 4.10 STAFFING RECORDS AND REQUESTS

(A) Content.

(1) The staffing records for each location shall contain the number of authorized positions, classification grade of each position, position number, official title, pay range, and such other information as the State Court Administrator may determine. They shall also show the name of the incumbent, unless the position is vacant, in which case the vacancy shall be indicated.

(2) (a) The current fiscal year salary of each incumbent shall be listed on the staffing records.

(b) If the position is vacant, the salary will be calculated as provided in Rule 3.4.

(c) Any anticipated change in classification grade or salary resulting from application of the annual salary policy shall not be included in the staffing records.

(B) Request for New Position.

(1) Any request for a new position shall be submitted initially by the appointing authority to the State Court Administrator's Office as part of the annual budget process.

(2) The appointing authority shall submit such request to the State Court Administrator's Office together with a description of the duties to be assigned, an explanation of why the position is needed, and any other pertinent information or comments.

(3) Upon receipt of a request for a new position, the State Court Administrator's Office shall examine the need for the position, such examination to include any on-the-scene study of the requesting court or agency as is deemed appropriate.

(4) (a) Upon completion of this examination, the State Court Administrator shall recommend to the Supreme Court whether the request for the new position should be approved or denied.

(b) The State Court Administrator's recommendation to the Supreme Court shall set forth the proposed salary classification, official title, availability of funds, and reasons for the recommendation.

(c) The State Court Administrator shall forward notice of the Supreme Court's approval or denial of the request to the appointing authority.

(C) Limitations. No personnel may be hired in excess of the number authorized, in job classes other than authorized, nor in grades other than authorized on the staffing records, except as provided in this rule or pursuant to Rules 4.1, 4.3 and 4.4.

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RULE 5.1 SALARY COMPUTATION

- (A) Compensation Schedule. All employees in the Unified Judicial System shall be compensated according to the compensation schedule established by the Supreme Court.
- (B) Holidays. In computing the number of work days in a pay period, paid holidays which occur on work days during the pay period shall be counted as work days.
- (C) Full-Time Regular Employees.
- (1) Full-time regular employees who work or are on paid leave on all scheduled work days of a pay period shall be compensated at the appropriate hourly rate.
 - (2) Full-time regular employees who work or are on paid leave less than a full pay period shall be compensated at a computed hourly rate for each hour worked. Payment for holidays shall be determined as prescribed in Rule 5.4. The applicable hourly rate shall be taken from the compensation schedule.
- (D) Part-Time Regular Employees. Part-time regular employees who work a regular part-time pay period schedule shall be compensated at an appropriate hourly rate. Those employees whose work schedule is less than a full pay period shall be compensated in the same manner as full-time regular employees who work less than a full pay period, as prescribed in this rule. Payment for holidays shall be determined as prescribed in these rules.
- (E) Part-Time Hourly Employees. Part-time hourly employees who work on irregular or intermittent schedules shall be compensated at the appropriate hourly rate for time actually worked. Such employees shall not be compensated for holidays, unless they actually work on the holiday.
- (F) Temporary Employees. Temporary employees will be compensated at the appropriate hourly rate for time actually worked. Such employees shall not be compensated for holidays, unless they actually work on the holiday.

RULE 5.2 TERMINATED OR DECEASED EMPLOYEES

- (A) Unused Sick and Annual Leave. An employee who terminates employment, or survivors of a deceased employee, shall be compensated for unused sick leave and annual leave as prescribed in Rules 6.1 and 6.2.
- (B) Dismissed Employees. A dismissed employee shall be compensated for unused annual leave and shall not be compensated for or credited with leave for holidays occurring on a work day during the terminal leave period.
- (C) Holidays During Terminal Period. Employees who resign or retire in good standing, or survivors of deceased employees, shall be credited for a day of work for each legal holiday that occurs on a work day during the paid terminal leave period.
- (D) Part-Time Hourly Employees. Part-time hourly employees accrue no sick or annual leave and shall not be paid for any time after their last day of work.

RULE 5.3 OVERTIME

(A) Computing, Recording and Approving Overtime Hours.

(1) Overtime will be computed as actual hours worked in excess of forty hours per week and will be paid at the rate of one and one-half the regular hourly rate.

(2) In computing the number of overtime hours, only hours actually worked may be counted. Any leave or holidays will not be counted as hours worked when computing overtime, and leave will not be accrued on overtime hours worked.

(3) Overtime shall be recorded on the time keeping system (TKS) to the nearest tenth of an hour and reported to the appointing authority.

(4) The appointing authority must approve of overtime hours before they are worked. This section may be waived upon a showing to the appointing authority of an emergency situation or unusual circumstances.

(B) Hourly Employees/Salaried Employees.

(1) A position classification as either hourly (non-exempt from FLSA overtime requirements) or salaried (exempt from FLSA overtime requirements) shall be determined by the State Court Administrator's Office pursuant to the provisions of the Fair Labor Standards Act.

(2) Hours spent by employees eligible for overtime under this rule, in travel away from the home community outside of the normal work period, either as a passenger in or a driver of the vehicle, may be included as hours worked for overtime purposes.

(3) Employees who are exempt from the Fair Labor Standards Act are salaried employees and are not eligible for additional compensation or time off based on the number of hours worked over forty hours per week.

(4) The normal work week for all full-time employees shall consist of 168 hours during seven consecutive 24-hour periods. The work week shall begin at 12:00 a.m. on Saturday and end at 11:59 p.m. the following Friday.

(5) Salaried employees will not be permitted to take annual, sick, personal, military or court, or jury leave in less than one day, eight hour increments, with the exception of FMLA leave.

(6) Compensation or leave time will be deducted from hourly employees' paychecks for any absences, including those less than eight consecutive hours.

(7) Salaried employees may leave the work site for less than eight consecutive hours and not account for the time by taking leave.

(8) If the salaried employee is absent from the job for more than eight consecutive hours during the pay period, some type of appropriate leave must be taken.

(9) Salaried and hourly employees must obtain the prior approval of their supervisor before being absent from work.

(10) Before time away from the job is approved, appointing authorities and salaried employees are expected to ensure that the needs of the public and state employees who rely on the salaried employee can be reliably met.

(11) All salaried and hourly employees will keep and submit complete records of hours worked and leave time including absences in TKS. The records will reflect the date, number of hours worked and leave time taken for each pay period.

RULE 5.4 HOLIDAYS

(A) Designation.

(1) Holidays shall be in accordance with SDCL 1-5-1.

(2) Additional legal holidays designated by the President of the United States or the Governor shall also be recognized for Unified Judicial System employees.

(B) Other Conditions and Limitations. Holidays are a benefit to full-time and part-time regular employees and will be paid even if the employee is not scheduled to work the day on which the holiday falls, provided the employee works at least one shift or is on approved paid leave during that calendar week. For payroll and leave purposes, a holiday is no more than eight hours long. If an employee was scheduled to work on the holiday and refused to do so, no payment may be made for the holiday. Employees who work less than full-time shall be given prorated pay, determined by calculating an average for the past five pay periods. When an hourly employee must work on the date a holiday is observed, the employee receives the holiday hours plus any hours worked (only hours worked over 40 in the work week will be paid at overtime). If an employee begins work after a holiday, no payment may be made for the holiday.

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RULE 6.1. ANNUAL LEAVE

(A) Accruing Annual Leave.

(1) Every full-time employee shall be allowed annual leave with pay according to the following schedule:

<u>Years of Service</u>	<u>Hours Earned Per Pay Period</u>	<u>Maximum Accrued Hours</u>
First fifteen years	5	240
Fifteenth year and over	6.6667	320

(2) The fifteen years of service do not have to be consecutive.

(3) Accrued hours for annual leave commence with the date of employment and are accrued on a pay period basis.

(4) Part-time regular employees will earn and accrue annual leave on a pro-rated basis.

(5) Part-time hourly or temporary employees shall not earn or accrue annual leave.

(B) Granting Annual Leave. A request for annual leave must be approved by the supervisor and the appointing authority or the appointing authority's designee prior to leave being used. Employee leave requests shall not exceed the amount accrued. No employee, including magistrate judge, is permitted to use annual leave that has not accrued.

(C) Other Limitations and Conditions.

(1) Employees will continue to earn annual leave while on paid annual or sick leave.

(2) When an employee is on annual leave and terminates employment, no other type of leave may be used.

(3) Employees shall not earn annual leave during a period of leave without pay.

(D) Transferring Annual Leave.

(1) Service time spent within another South Dakota state personnel system shall be transferable for the purposes of annual leave accrued.

(2) Employees transferring from a South Dakota state personnel system shall be credited with previously accumulated annual leave not to exceed the limits specified in Rule 6.1(A)(1). The amount of accumulated annual leave due an employee shall be substantiated by the former employer.

(E) Compensation for Accrued Annual Leave.

(1) Upon voluntary termination including retirement, an employee shall be compensated for unused accrued annual leave, but may not receive payment for leave unless six months of continuous service have been completed.

(2) An employee who voluntarily resigns or retires may notify the human

resources office that they wish to use remaining annual leave until the leave balance is no longer enough to cover a full pay period. Any remaining annual leave will then be issued as a one-time lump sum payment.

(3) Annual leave may be earned during the period an employee is on annual leave or terminating employment on a voluntary basis, including retirement. However, an employee who has been relieved from employment for disciplinary reasons must take any earned annual leave in lump sum payment.

(4) Upon death of an employee, compensation for unused accrued annual leave shall be paid to the surviving spouse. If there is no surviving spouse, payment shall be made according to the provisions of SDCL 3-8-8 to 3-8-11, inclusive.

RULE 6.2 SICK LEAVE

(A) Accruing Sick Leave. Employees shall earn and accrue sick leave with pay at the rate of 4.6667 per pay period for full-time employees. The amount of earned and accrued sick leave is pro-rated for part-time regular employees based on the number of hours worked in the pay period.

(B) Sick Leave Usage. Sick leave may be used for the illness, health care needs, or temporary care of the employee, the employee's immediate family, or a person for whom the employee is the legal guardian. An employee may use up to five days of sick leave, as bereavement leave, for the loss of an immediate family member. The five days must be consecutive working days. An employee may use up to 40 hours of accumulated sick leave annually (or leave without pay) for a call to state active duty of military reserve or national guard members.

(C) Transferring Sick Leave. New judicial employees transferring from a South Dakota state personnel system shall be credited with previously accumulated sick leave. The amount of accumulated sick leave due an employee shall be substantiated by the former employer.

(D) Other Limitations and Conditions.

(1) An employee shall not earn sick leave during periods of leave without pay.

(2) Notification of absence for illness shall be given to the employee's supervisor prior to that employee's starting time for the day involved unless, in the judgment of the appointing authority, the circumstances of such absence made reporting before normal starting time impossible, in which event such report must be made as soon thereafter as possible.

(3) An employee who is on approved leave, except if you have completed your last working day and are stringing out your vacation leave, and becomes injured or ill may use sick leave.

(4) A medical certificate of illness may be required by the appointing authority. If the required certificate is not provided, sick leave shall be terminated and the employee ordered to return to work by a specific date or be

subject to dismissal.

(5) Part-time hourly and temporary positions shall not earn or accrue sick leave.

(E) Payment for Unused Sick Leave. Upon termination an employee shall be paid one-fourth of their unused sick leave, not to exceed 480 hours, at their current base rate, provided:

(1) The employee has not had a break in service with the state in the past seven years;

(2) The employee has not been rehired prior to payment of sick leave, in which case one-fourth of their sick leave will be reinstated; and

(3) The termination was for other than cause.

(F) Payment Upon Resignation, Retirement, or Death. Pursuant to section (E) above payment will be made:

(1) On the employee's normal payday, if the employee retired, the employee will be receiving benefits as provided in SDCL ch. 3-12, South Dakota Retirement System, within ninety days; and

(2) On the employee's normal payday for resignation or death.

RULE 6.3 PAID FAMILY & PAID FAMILY MEDICAL LEAVE

(A) Paid Family Leave Usage. Each full-time regular and part-time regular employee who has been employed for a continuous period of six months with the Unified Judicial System is entitled to 40-hours of paid family leave per week for up to twelve weeks for bonding following the birth of a child of the employee or placement of a child for adoption.

(B) Paid Family Medical Leave Usage. An eligible FMLA employee who has been out of the office at least three full consecutive workdays and whose sick leave balance is below 80-hours may receive paid family medical leave for their eligible FMLA time off, not to exceed the 12-workweeks of FMLA.

(C) Limitations and Conditions.

(1) A part-time regular employee will receive prorated hours per their FTE for both paid family and paid family medical leave.

(2) Sick and vacation leave are accrued while on paid family and paid family medical leave.

(3) Paid family leave must be taken within one year following the birth of a child or the placement of a child for adoption.

(4) Paid family leave must be taken in weeks; partial weeks usage counts as one week.

(5) Foster care is not eligible for paid family leave or paid family medical leave.

(6) Paid family medical leave may not exceed the FMLA allotted 12-workweeks (pro-rated for part-time eligible employees).

(7) Intermittent FMLA does not qualify for paid family medical leave.

- (8) Short-term disability (STD) must be taken at the same time as PFL and PFML and STD payments are offset per PFL and PFML during that time.

RULE 6.4 FAMILY AND MEDICAL LEAVE ACT

(A) Purpose. It is the policy of the Unified Judicial System to provide sick leave, paid family leave, vacation leave, leave without pay, or a combination of these eligible leaves to eligible employees for certain specified reasons as required by the Family and Medical Leave Act (FMLA).

(B) Definitions. The following terms used in this policy shall have the following meaning:

(1) "Health care provider" is a medical doctor, a doctor of osteopathy, a podiatrist, a dentist, a clinical psychologist, an optometrist, a chiropractor, a nurse practitioner, a nurse-midwife, a Physician Assistant, or a Christian Science Practitioner listed with the First Church of Christ, Scientist in Boston, Massachusetts.

(2) "Intermittent leave" is leave taken in separate blocks of time ranging in time from one hour or more to several weeks rather than for one continuous period of time. Intermittent leave is not eligible for paid family leave.

(3) "Reduced leave" is a leave schedule that reduces an employee's usual number of working hours per work week, or hours per work day, but which may not be used in less than one hour increments.

(4) "Serious health condition" is any illness, injury, impairment, or physical or mental condition that involves (a) care in a hospital, hospice, or residential medical care facility, or (b) continuing treatment by a health care provider for a chronic or long-term health condition, or (c) continuing treatment by a health care provider for prenatal care. In the case of a serious health condition affecting an employee, the condition must be such that it renders the employee unable to perform the essential functions of their assigned position. For purposes of military caregiver leave, "serious injury or illness" includes an injury or illness that existed before the beginning of the servicemember's active duty and was aggravated by service in the line of duty. For veterans, the injury or illness may manifest itself before or after the servicemember became a veteran.

(C) Entitlement.

(1) An eligible employee is entitled to a maximum of twelve workweeks of continuous, intermittent or reduced paid leave in a twelve-month period (measured forward from the first date an eligible employee's FMLA leave begins) for the following reasons:

- (a) The birth of a son or daughter in order to care for the child;
- (b) The placement of a son or daughter with the employee for adoption or foster care;
- (c) To care for a spouse, child, or parent suffering from a serious health condition;

- (d) To undergo treatment for a serious health condition that makes the employee unable to perform the essential functions of their assigned position;
 - (e) Qualifying exigency arising out of the fact that the employee's spouse, son, daughter, or parent is on active duty or called to active duty (or has been notified of an impending call or order to active duty) to a foreign country.
- (2) An eligible employee is entitled to a maximum of twenty-six workweeks of continuous, intermittent or reduced paid or unpaid leave in a single twelve-month period to care for a covered servicemember with a serious injury or illness if the employee is the spouse, son, daughter, parent, or next of kin of the servicemember. Only the twelve workweeks (pro-rated for part-time) of FMLA is eligible for paid family medical leave when sick leave balances are below 80 hours.
- (D) Eligible Employees. Any employee who has worked for at least twelve months for the State of South Dakota and for at least 1,250 hours during the past twelve months, calculated from the date that such leave will commence, is entitled to leave under the FMLA.
- (E) Extended Leave for Child Care. FMLA leave taken to care for a newborn child or a child recently placed in the home as a result of foster care placement or as a result of adoption must be taken within one year of the birth or placement of the child.
- (F) Notification Requirements. Whenever an employee's need for leave under the FMLA is foreseeable, the employee shall provide 30 days prior notice to his/her appointing authority of the employee's intention to take such leave. A copy of the notice shall also be sent to the Deputy State Court Administrator or their designee. If leave is requested as the result of an emergency, the employee shall give notice to their appointing authority as soon as is practicable after the occurrence of the emergency and provide a copy of that written notice to the Deputy State Court Administrator or their designee. In all cases, the notice shall contain sufficient information so the Deputy State Court Administrator or their designee can determine whether the leave qualifies under FMLA and that the employee needs FMLA-qualifying leave; and the anticipated timing and duration of the leave.
- (G) Certification of Need. An employee who requests leave for their own serious health condition, to care for a family member with a serious health condition, or for a qualifying exigency, or to care for a covered servicemember may be required to provide, upon request by the appointing authority or the State Court Administrator's Office, a written certification form. The written certification form, available from the State Court Administrator's Office, must be complete and sufficient. If an employee fails to obtain such certification upon request, or the health care provider refuses to provide certification, the employee shall not be entitled to leave and shall return to work immediately or face dismissal from employment. The Unified Judicial System reserves the right to request that the employee, at the expense of the Unified Judicial System, seek a second and third medical opinion, if necessary.

(H) Limitations and Relationship to Paid Leave. An employee's use of leave under the FMLA is subject to the following limitations:

(1) When an employee requests leave for his or her own serious health condition, the employee will be required to use sick leave, vacation leave, or leave without pay for three full consecutive days and until their sick leave balance is below 80 hours, then the employee will be allowed paid family leave not to exceed their 12-workweeks of FMLA eligibility. In situations where employees apply and receive short-term disability through the state health plan, employees on FMLA may choose to use unpaid leave instead of paid leave while receiving short-term disability.

(2) When an employee requests leave to assist in the care of the employee's spouse, child, or parent with a serious health condition, the employee will be required to use sick leave, vacation leave, or leave without pay for at least three full consecutive days and until their sick leave balance is below 80 hours, then the employee will be allowed paid family leave not to exceed their 12-workweeks of FMLA eligibility.

(3) When an employee requests leave for the birth of a son or daughter and to assist in the care of the newborn child, or for the placement of a son or daughter with the employee for adoption or foster care, the employee may be placed on paid family leave (as applicable). Foster care is not eligible for PFL or PFML. Pursuant to SDCL 3-6-7, adoption of a child by any state employee is treated as natural childbirth for leave purposes.

(4) In situations where employees apply and receive short-term disability through the state health plan, employees on FMLA may choose to use unpaid leave instead of paid leave while receiving short-term disability.

(5) When out on paid family medical leave, if sick leave rises above 80-hours the employee will remain on paid family medical leave until they return to work.

(I) Effect on Existing Benefits. Employees on leave under the FMLA shall be entitled to continuation of their health care benefits during the period of leave, the same as if the employee continued working. If an employee fails to return to work from leave, the employee may be required to reimburse the Unified Judicial System for the amount of health insurance premiums paid on behalf of the employee who would otherwise not be eligible for coverage unless the reason for the employee not returning to work is the result of a continuation, recurrence or onset of a serious health condition or because of circumstances beyond the employee's control. Employees on unpaid leave shall not be entitled to accrue sick leave or annual leave during the period. Accrual of leave benefits shall commence immediately upon the employee returning to active pay status.

(J) Restoration to Job. Any eligible employee who takes authorized leave under the FMLA shall, upon return from such leave, be restored to his or her previous position or to an equivalent position with equivalent benefits, pay and other terms and conditions of employment. An employee who has taken authorized FMLA leave is not entitled to be restored to the same or equivalent position if:

- (1) The employee fails to provide a fitness for duty certification when such is required; or
 - (2) The employee's position is eliminated and would have been eliminated even if the employee was not on FMLA leave.
- (K) Reporting Requirements. Prior to returning to work, an employee who took extended leave for treatment of a serious health condition may be required to obtain from the appropriate health care provider a fitness for duty certification attesting that the employee is able to fulfill the essential functions of the assigned position. A copy of the certification shall be sent to the Deputy State Court Administrator or their designee.
- (L) Complaint Procedures. The Unified Judicial System encourages all employees to report any incident of misapplication, discrimination, or retaliation of Family Medical Leave. Complaints will be promptly responded to and every effort will be made to resolve all complaints as quickly as possible. An employee who believes he or she may have a complaint with regard to FMLA and wishes to discuss the situation prior to making a formal complaint, may contact his or her supervisor, appointing authority, or the Deputy State Court Administrator, who shall meet with the individual to discuss the situation and attempt to correct the alleged issue.

RULE 6.5 DONATING LEAVE

(A) Recipient Requirements. An employee may receive donated vested leave if the following requirements are met:

- (1) The employee is employed in a permanent position for at least one year and is eligible for the accumulation of leave under UJS Personnel Rules 6.1 and 6.2
- (2) The employee has been certified by a licensed physician as:
 - (a) Terminally ill and unable to return to work; or
 - (b) Suffering from a life-threatening illness or injury which prevents the employee from working for at least 90 consecutive days.
- (3) The employee has made a written request for and obtained the approval of the Chief Justice to receive donated vested leave;
- (4) The employee has applied for any other public disability programs for which the employee may be eligible; and
- (5) The employee has exhausted all of the employee's leave benefits.

Donated leave benefits may not exceed 2,080 hours of donated leave per recipient employee who is terminally ill or 1,040 hours of donated leave by recipient employee who is suffering from a life-threatening illness or injury. Donated benefits cease when other public disability benefits have been approved, when the employee recovers from the terminal illness or life-threatening illness or injury, when the employee returns to work, or upon the death of the recipient employee. The rate of payment of donated leave is the recipient's current base pay. Sick and annual leave may not be accrued by a recipient employee on donated leave. For every four hours of sick leave donated by an employee, the recipient employee receives one hour of sick

leave. For every one hour of annual leave donated by an employee, the recipient employee receives one hour of annual leave.

(B) Donor Requirements. An employee is eligible to donate vested leave if the employee is employed in a position eligible for the accumulation of leave under Rules 6.1 and 6.2. and has accumulated more than 80 hours of annual leave or 120 hours of sick leave.

The donating employee may donate annual leave in excess of 80 hours or sick leave in excess of 120 hours. The minimum donation of vested annual leave is one hour. The minimum donation of vested sick leave is four hours and can only be donated in increments of four hours. The donating employee may only donate leave to an employee who is at the same or lower pay grade or rate of pay as the donating employee.

(C) Procedure. Though the timekeeping system (TKS), an employee donating vested leave shall give notice to the employee's appointing authority of the amount and type of leave being donated, the name of the recipient of the leave, and the recipient's place of employment, if known. If a recipient receives a donation of leave from more than one donor, the leave shall be distributed in the order received.

(D) Donation of Leave for the Care of Spouse, Child or Parent. An employee may receive donated vested annual leave if the following requirements are met:

(1) The employee has been in a permanent position for at least one year and is eligible for the accumulation of leave under Rules 6.1 and 6.2;

(2) The employee's spouse, child or parent has been certified by a licensed physician as:

(a) Terminally ill or

(b) Suffering from a life-threatening illness or injury.

(3) The employee has made a written request for and obtained the approval of the Chief Justice to receive donated vested annual leave; and

(4) The employee has exhausted all the leave benefits that he or she is entitled to use.

Donated leave for the care of spouse, child or parent ceases when the donated vested annual leave received plus any other leave taken by the employee pursuant to the Family and Medical Leave Act exceeds twelve weeks; when the spouse, child or parent recovers from the terminal illness or life-threatening illness or injury; or five days after the death of the spouse, child or parent. The rate of payment of donated annual leave is the recipient's current base pay. Sick and annual leave may not be accrued by a recipient employee while on donated leave. Donations shall be processed as in (C) above.

RULE 6.6 ADVANCED SICK LEAVE

(A) Granting Advanced Sick Leave.

(1) An employee may request advanced sick leave not to exceed 224 hours upon submission of a request with good and sufficient reasons supported by a

medical certificate from the employee's physician.

(2) The request must be approved by the appointing authority and the State Court Administrator before advanced sick leave will be granted.

(B) Other Limitations and Conditions

(1) To be eligible for advanced sick leave an employee must have been in the regular and continuous employment of the Unified Judicial System for at least one full year.

(2) Any and all accumulated and earned annual leave and sick leave must first be used before advanced sick leave is used.

(3) An employee who terminates employment before advanced sick leave has been repaid must reimburse the state for the remaining advanced hours within thirty days of termination at the employee's current rate of pay.

RULE 6.7 LEAVE WITHOUT PAY

(A) Granting Leave Without Pay.

(1) "Leave without pay" means approved absence from duty for which time the employee is not paid.

(2) An employee requesting leave without pay must get approval from the appointing authority prior to taking such leave.

(3) If the employee is sick, leave without pay may not be granted until all of the employee's accrued sick leave and annual leave has been used. In situations where employees apply and receive short-term disability through the state health plan, employees may be approved unpaid leave instead of paid leave while receiving short-term disability.

(4) No leave will be earned or accrued during the authorized period of leave without pay.

(5) The employee's position shall be left vacant during the period of leave without pay.

(6) At the employee's request, an employee may use accrued leave or leave without pay due to active military service.

RULE 6.8 MILITARY TRAINING LEAVE

(A) Granting Military Training Leave. Full-time and part-time regular employees of the UJS are entitled to military training leave of up to 15 days per calendar year. Employees requesting military training leave will obtain a written order or letter from the commander of their reserve or National Guard unit showing the dates of the training. A copy of the written order or letter shall be submitted to the appointing authority for his or her approval fifteen calendar days prior to the date of the employee's departure for training.

(B) Other Conditions and Limitations.

(1) Part-time hourly and temporary employees are not entitled to military

training leave.

(2) Military training leave shall not be granted to an employee who is on annual leave and terminating employment.

(3) A record of military training leave will be maintained with the regular annual leave and sick leave balances of each employee by the Human Resources office.

RULE 6.9 COURT OR JURY LEAVE

Granting Court or Jury Leave.

(1) An employee subpoenaed to testify in either federal or state court may receive both salary and witness fees without loss of leave credits. If the employee is required to testify in an official capacity on behalf of the state, the employee shall not receive witness fees.

(2) When an employee is a party to private litigation, the employee must use annual leave or leave without pay.

(3) An employee summoned to serve on a federal or state court jury shall receive their regular salary from the state while absent, without losing any leave credits. The employee is also entitled to per diem and mileage (including appearance and witness fees) as provided in SDCL 16-13-46, or similar reimbursement from federal court. The employee summoned to serve on a jury shall record his or her jury leave on TKS.

(4) An employee summoned either as a witness or a juror shall notify his or her supervisor at once so that all necessary work arrangements can be made.

RULE 6.10 ADMINISTRATIVE LEAVE

Granting Administrative Leave.

(1) When an office is closed by the Chief Justice, Presiding Circuit Judge, or county commission due to inclement weather, power outage, civil disturbance or other unavoidable circumstances, employees of that office shall receive compensation for the hours they would normally have worked with no loss of leave.

(2) If an office remains open and an employee is not able to reach the work site, the Presiding Judge or Chief Justice will determine, in his/her discretion, whether the employee must use annual leave or leave without pay.

(3) Appointing authorities shall notify the State Court Administrator's Office of all office closings.

(4) Non-state holidays declared by county commissioners involving the closing of a courthouse are not eligible for administrative leave.

(5) Appointing authorities may grant administrative leave with pay pending an investigation of charges made against an employee upon which disciplinary action could be taken. This leave period may not exceed twenty-one days

without approval of the State Court Administrator. The appointing authority shall notify the State Court Administrator before granting administrative leave.

(6) An employee who is a member of a volunteer fire department, reserve law enforcement unit, emergency search and rescue squad, or ambulance service and is called to emergency duty during working hours may be granted administrative leave.

(7) An employee who is a veteran (active or discharged) and actively serving as a member of their local VFW, Legion Post, or other veteran service organization's honor guard may receive administrative leave for serving in the honor guard at a fellow veterans' funeral. Administrative leave will only be allowed for hours an employee would have normally worked and will not be available for funerals over 60 miles (one-way) away.

(8) Appointing authorities may grant administrative leave with pay as a recognition or reward for going above and beyond normal duties such as providing training to new/existing employees when not a part of their regular duties, participating on a committee or workgroup, performing outside normal duties, etc. to benefited hourly full-time and part-time employees. Appointing authorities may not grant over 4 hours of administrative leave per employee per pay period to be used in the work week when agreed upon by employee and supervisor as an award. An employee may not receive over 8 hours of this type of administrative leave in a calendar year. Part-time employees will be pro-rated based on FTE. Salaried employees are not eligible for this administrative leave. Employees may not be on a current work improvement plan to be eligible. Hours will be entered in TKS as administrative leave. If an employee does not receive administrative leave hours or is approved to receive and does not use prior to submitting their resignation or retirement, they forfeit use and/or payment for this administrative leave. These hours do not roll over into another calendar year.

(9) Appointing authorities will grant up to 8 hours of administrative leave with pay to a full-time or part-time regular benefited employee who is employed on the first day of their birth month to be used on their birth day or another day within their birth month as determined with the employee's supervisor without the loss of leave credits. Part-time employees will be pro-rated based on FTE. Employees who resign in their birth month and have not used these administrative leave hours are not eligible to use or for payment of these administrative leave hours. Hours will be entered in TKS as administrative leave. These hours do not roll over into another calendar year.

(10) If an office is closed pursuant to Rule 6.10(A)(1) while an employee is on any other paid or unpaid leave, the employee is not entitled to adjust that leave by the number of hours the office was closed.

RULE 6.11 EMERGENCY FURLOUGH

An appointing authority may place any employee on furlough because of a shortage of funds or work due to an emergency. The appointing authority with approval of the State Court Administrator may allow an employee to use accrued annual leave; otherwise, the furlough shall be leave without pay. The furloughed employee shall remain eligible for state health insurance plan benefits during the furlough.

At the conclusion of the emergency, the furloughed employee shall be returned to his or her job without reduction in classification, pay, or benefits.

A furloughed employee may be laid off pursuant to Rule 4.6.

RULE 6.12 CONTAGIOUS DISEASE PROCEDURE

If the appointing authority has a reasonable belief that an employee has been exposed to a contagious disease that would endanger the health of fellow employees or the public, the appointing authority may require that the employee leave the workplace. If the employee refuses to leave, the appointing authority may require the employee to provide medical certification that the illness is not a threat to the employee or others. The UJS shall be responsible for the cost of the examination. If the employee refuses to submit to the examination or if the examination indicates that the employee has a contagious disease, the employee may be required to take leave. In the event the employee leaves work pursuant to this rule, the employee may use accrued sick or annual leave for the purpose; otherwise, the leave shall be without pay. Before returning to work the employee may be required to provide medical certification that the illness is not a threat to the employee or others.

An employee who is required to take leave under this section may appeal the decision to the State Court Administrator if the appeal is made in writing within 14 days of the appointing authority's decision to require leave.

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EVALUATION AND DISCIPLINE

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RULE 7.1 PERFORMANCE EVALUATION

- (A) Annual and Probationary Evaluation. Each employee may annually receive a written evaluation as to his or her performance on the job. An initial evaluation prior to completion of the probationary period shall be performed. An evaluation may be performed annually thereafter. Performance evaluations shall be on a form supplied by the State Court Administrator's Office.
- (B) Interim Evaluation. In addition to annual and probationary evaluations, an employee may also receive a performance evaluation as part of a work improvement plan, corrective action, disciplinary action, or as the appointing authority deems necessary.
- (C) Evaluation Content.
The evaluation shall include, but not be limited to, an evaluation of job performance strengths and weaknesses, and recommendations concerning ways in which the employee might improve performance and develop growth potential.
- (D) Evaluation Responsibility.
(1) The evaluation of each employee shall be made by the employee's supervisor.
(2) The supervisor shall review the evaluation with the employee who shall sign the evaluation denoting their review of the evaluation. The evaluation shall be forwarded to the appointing authority, if other than the supervisor. The employee shall be given a copy.
(3) The appointing authority shall review the evaluation. No changes shall be made to the evaluation unless initiated by the employee.
(4) The appointing authority shall forward the evaluation to the Human Resources office for placement in the employee's file.
- (E) Exemption. Full-time and part-time magistrate judges and term law clerks shall be exempt from this rule.

RULE 7.2 EMPLOYEE DISCIPLINE

- (A) Purpose. The purpose of this rule is to establish an exclusive procedure for the administration of employee discipline. There are three types of formal employee discipline: work improvement actions, corrective actions and disciplinary actions.
- (B) Work Improvement Actions. A work improvement action is taken to aid an employee who is not meeting job expectations in the performance of the duties assigned to their position. Work improvement actions shall be in writing, contain a description of the job performance problem, and describe the action the employee and appointing authority will take to improve performance. Work improvement actions do not affect the employee's current pay, status, or tenure, but may be considered in the administration of further discipline.

(C) Corrective Actions. Corrective actions are taken to correct an employee for conduct or behavior that is in violation of these personnel rules, or Unified Judicial System policies or practices and shall be in writing. Corrective actions do not affect the employee's current pay, status, or tenure, but may be considered in the administration of further discipline.

(D) Disciplinary Actions.

(1) Disciplinary actions are taken to penalize an employee for an offensive act or for not meeting expectations in their job performance, and will affect the employee's pay, status or tenure. Disciplinary actions shall be in writing. A work improvement action or corrective action need not have been taken by an appointing authority prior to initiating a disciplinary action.

(2) Disciplinary actions may include suspension without pay; demotion; dismissal; or any other appropriate sanction.

(E) Responsibility. The responsibility for initiating and administering employee discipline is vested in the appointing authority after considering any recommendations from the supervisor of the employee.

(F) Just Causes for Disciplinary Action. Just causes for disciplinary action include, but are not limited to, the following:

(1) Violations, charges, or failures to comply with or align with the State Constitution, statutes, Supreme Court rules or policies, or local court rules or policies;

(2) Failure or refusal to comply with a lawful directive, or to accept a reasonable and proper assignment from a supervisor, regardless of whether such directive or assignment was written or oral;

(3) Inefficiency, insubordination, incompetence, negligence, or brutality in the performance of assigned duties;

(4) Being under the influence of or unauthorized possession of alcohol, narcotics or other drugs, or marijuana while on duty;

(5) Having a condition which poses a significant risk to the health or safety of one's self, other employees, or the general public that cannot be eliminated by reasonable accommodation;

(6) Careless, negligent, misappropriation, or misuse of state property, supplies, equipment, or funds;

(7) Use of undue influence to gain, or attempt to gain, promotion, leave, favorable assignment, or other individual benefit, or advantage;

(8) Failure to obtain and maintain a current license or certificate as a condition of employment, if required by law, Supreme Court rules, these rules, or Unified Judicial System policy;

(9) Conduct unbecoming a judicial employee;

(10) Chronic absences or tardiness in reporting to work;

(11) Unauthorized leave taking;

(12) Employees who have not contacted their supervisor or appointing authority and do not return to work upon the expiration of an approved leave

will be considered to have voluntarily resigned.

(13) Employees who do not report to work for five or more consecutive workdays and fail to provide notice of the same will be deemed to have abandoned their position(s) and voluntarily resigned.

(14) Conduct or repeated behavior (typically not a single act unless severe and/or egregious) that may reasonably be construed to be intimidating, humiliating, demeaning, disruptive, or which creates an atmosphere that is detrimental to the efficiency or morale of an office;

(15) Receiving from any person not employed by the UJS for personal use a fee, gift, or other valuable consideration whether or not its purpose is to obtain better treatment, the granting of favors or benefits, or the providing of services not regularly accorded other persons;

(16) Conduct that unlawfully discriminates against another person in the exercise of duties related to employment, or conduct that constitutes sexual harassment;

(17) Failure to meet expectations in job performance;

(18) Violation of standard work rules established for the safe, efficient or effective operation of the office; or

(19) Misrepresentation, including intentional omission, of relevant information during the application and selection process.

(G) Procedure.

(1) Prior to initiating a work improvement action, corrective action, or disciplinary action, the employee's supervisor or designee of the appointing authority shall meet with the employee to discuss the matter and to give the employee the opportunity to respond or present mitigating evidence.

(2) If a work improvement action is taken, the employee's supervisor or designee of the appointing authority shall advise the employee at a conference and in writing of the circumstances leading to the action. The work improvement action shall set forth the steps the employee must take to improve performance and the actions the supervisor will take to assist. An employee who fails to show demonstrable improvement in performance may be subject to further action. A copy of the work improvement action shall be forwarded to the State Court Administrator's Office and placed in the employee's personnel file.

(3) If a corrective action is imposed, the employee's supervisor or designee of the appointing authority shall advise the employee at a conference and in writing of the employee's errors or failures, the corrective actions the employee must take, and the consequences the employee will face if the employee fails to follow the corrective actions. A copy of the corrective action shall be forwarded to the State Court Administrator's Office and placed in the employee's personnel file.

(4) If and before a disciplinary action is imposed, the appointing authority shall advise the employee verbally and in writing of the specific disciplinary action being imposed; the reasons why it is being imposed, including specific details of the offense; and the consequences the employee will face for future

violations. Because a disciplinary action affects an employee's pay, the appointing authority must hold a due process hearing prior to implementing the discipline to allow the employee to be heard regarding the intended discipline. This is an informal hearing, after which the appointing authority decides whether or not to impose the intended discipline or whether to impose a lesser discipline. A copy of the disciplinary action shall be forwarded to the State Court Administrator's Office and placed in the employee's personnel file.

(5) An appointing authority may suspend an employee with pay pending investigation of alleged violation of the personnel rules or other wrongdoing for a period not to exceed twenty-one calendar days. This time may be extended with the approval of the State Court Administrator.

(H) Limitations.

(1) An employee may not be subjected to employee discipline more than once for a single act or omission, but may be subjected to employee discipline for each additional act or omission of the same or similar nature.

(2) No more than two corrective actions (i.e., behavior- or conduct-based) may be imposed on an employee in any twelve-month period. For any further act or omission during the same period, a disciplinary action shall be taken.

(3) Suspension of an employee without pay shall be limited to ten working days but the suspension may be extended with the State Court Administrator's approval.

(I) Dismissal.

(1) An employee may be dismissed for any of the causes enumerated in Section F of this rule, whether or not employee discipline was implemented prior to the dismissal. An employee may also be dismissed if convicted of any Class 1 misdemeanor.

(2) Any employee shall be dismissed:

(a) If convicted of any felony; or

(b) If two disciplinary actions were received within any 18-month period.

(3) Because dismissal affects the employee's pay, a due process hearing as described in Section G(4) of this rule must be held prior to dismissal.

(4) Any employee who is dismissed may request a review of the action taken as provided in Rule 8.1.

(J) Nondisciplinary Termination.

Nondisciplinary terminations may or may not be voluntary and occur when the employee cannot perform essential functions of the position. If involuntary, the termination is subject to due process as outlined in (G) Procedure; however, the final decision of the appointing authority is not appealable as provided in Rule 8.1. Nondisciplinary terminations shall receive payment for one-fourth of any unused sick leave at the time of termination as well as payment for all unused annual leave.

(K) Right of Review.

(1) Any employee who has received a work improvement action or corrective action may request in writing to the appointing authority that the appointing authority reconsider the action taken. An employee may also request in writing to the appointing authority that the action be expunged from the employee's personnel file after two consecutive satisfactory employee evaluations made pursuant to Rule 7.1. The appointing authority may then expunge the work improvement action or corrective action.

(2) Any employee who is subject to a disciplinary action pursuant to this rule may request a review of the action taken as provided in Rule 8.1.

UNIFIED JUDICIAL SYSTEM PERSONNEL RULES

GRIEVANCES

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8.0 GRIEVANCES

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RULE 8.1 GRIEVANCE PROCEDURE

(A) Informal Procedures Encouraged. It is the policy of the Unified Judicial System to encourage informal resolution of difficulties between employees, their supervisors, and appointing authorities. No employee shall be penalized for voicing a complaint in a reasonable, business-like manner, or for seeking an informal resolution to a problem. Retaliation against employees expressing complaints in a reasonable manner is strictly prohibited. Supervisors and appointing authorities should encourage an open, courteous, and frank employment atmosphere in which problems, complaints, suggestions, or questions can be offered by employees and can receive a timely and thoughtful response. If an employee and supervisor are unable to resolve a problem, either the employee or the supervisor may bring the matter to the attention of the next higher authority who shall take appropriate steps to resolve the problem in a constructive manner. If the matter remains unresolved, either the employee or supervisor may bring the matter to the attention of the circuit administrator, or the appointing authority, who shall take appropriate action to resolve the problem as constructively and informally as possible. If a grievable matter remains unresolved, the employee or supervisor may bring the matter to the attention of the State Court Administrator who shall work with the appointing authority to resolve the matter in an informal and effective manner, if at all possible.

(B) Nongrievable Issues. The following issues are not matters subject to the formal grievance procedure set forth below. These examples are not to be construed as all inclusive:

- (1) Performance evaluations;
- (2) Appointments, including promotions to positions;
- (3) Transfers requiring an employee to relocate;
- (4) Denial of a leave of absence;
- (5) Position classifications or reclassification;
- (6) Salary allocations;
- (7) Denial of payment of moving expenses;
- (8) Work improvement actions or corrective actions;
- (9) Suspension with pay during a period of investigation for alleged wrongdoing;
- (10) Denial of use of annual leave;
- (11) Nondisciplinary terminations; and
- (12) Probationary period terminations.

(C) Grievable Issues. The procedures provided by this rule shall apply only to the following circumstances:

- (1) Demotion;
- (2) Suspension without pay;
- (3) Dismissal;
- (4) A decision that places an employee at substantial risk of physical harm.

This rule provides employees of the Unified Judicial System with a means for expressing grievances whenever an employee believes there has been a violation of the personnel rules or other rules or policies of the Unified Judicial System that results in one of the four circumstances named above. This rule is the exclusive remedy available to employees of the Unified Judicial System.

(D) Covered Employees. Unless otherwise specified, all employees of the Unified Judicial System, except applicants, temporary employees, employees serving in on-call positions, magistrate judges, and employees serving a probationary period, who occupy permanent positions of employment have grievance rights. Persons hired after March 1, 1996 (the effective date of this rule) to fill vacancies in the following positions shall be exempt from this rule and shall serve at the pleasure of the appointing authority: the State Court Administrator, Deputy State Court Administrator, the Clerk of the Supreme Court, the Chief of Legal Research, law clerks (permanent and term), legal secretaries to Justices of the Supreme Court, the Director of Human Resources, the Director of Budget and Finance, the Director of Clerk Support, the Director of Court Services, the Director of Information and Technology, Director of Policy & Legal Services, Director of Treatment Courts, chief court services officers, circuit administrators, and court reporters. All covered employees who qualify for veteran preference pursuant to SDCL ch. 3-3 have grievance rights unless they are replaced by a person that qualifies for a similar preference.

(E) Discipline Review Board. A discipline review board for the Unified Judicial System shall be formed whose membership shall be comprised of a Presiding Circuit Judge, a circuit administrator or chief court services officer, and a non-supervisory employee of the Unified Judicial System. The board will be chaired by the Presiding Circuit Judge who shall preside over all proceedings. The State Court Administrator's Office shall act as secretary to the board and shall provide such staff support as is needed.

No two members of the board shall be from the same circuit. The board shall be appointed by the Chief Justice and each member shall serve a term of four years, which may be renewed. The Supreme Court shall also appoint one alternate person for each member of the board, with no two alternates being from the same circuit. A member of the board shall recuse himself or herself in any proceeding in which his or her impartiality might reasonably be questioned, including, but not limited to, instances where that member participated directly or indirectly in the grieved action. In such an event, an alternate board member shall be appointed by the chairperson of the board to sit as a member of the board to hear the grievance, which alternate shall not be from the same circuit as any other member of the board.

Upon proper notice from a grieved employee, the board shall be empowered to review disciplinary actions taken by an appointing authority, except actions taken by the Supreme Court of South Dakota or a Justice of the Court, which are covered by this rule. The board shall issue a written decision that includes findings and conclusions to the appointing authority, the grieved employee, and the State Court Administrator as to the propriety of the disciplinary action. The board shall review the action taken by the

appointing authority to determine whether the action was clearly erroneous. A majority of the members of the board may affirm the disciplinary action, reverse the action, or modify the action.

(F) Appeal.

(1) A covered employee of the Unified Judicial System who has been demoted, suspended, terminated, or placed in risk of grave physical harm by a decision of a supervisor may appeal the decision of the appointing authority to the board by filing a written statement of such intention with the appointing authority and the State Court Administrator within ten working days of the final action by the appointing authority. The employee's written statement shall contain a summary of:

(a) the action taken by the appointing authority; and

(b) why that action was clearly erroneous under the circumstances.

(2) Upon receipt of the written notice, the State Court Administrator shall in writing immediately advise the Chief Justice and the chairperson of the board. The chairperson shall convene the board as soon as reasonably possible and promptly schedule further proceedings to ensure a timely resolution to the grievance. In the absence of a standing member of the board, the chairperson shall select an alternate member to serve.

(3) Notice of the time and date of a hearing before the board shall be served on the employee and the appointing authority by certified mail no later than ten working days prior to the date scheduled for the hearing. Upon proper application and for good cause shown, the chairperson of the board may continue the date of the hearing but in no event shall the hearing be continued for more than twenty working days from the date originally scheduled. At a board hearing, an employee is entitled to be represented by counsel, may compel the attendance of Unified Judicial System witnesses, and may present evidence. The proceedings before the board shall be recorded. Upon request by any participant to the review, a transcript shall be prepared at the cost of the requesting party. The Unified Judicial System will not be liable for payment of an employee's attorney's fees.

(4) The board shall within forty calendar days of the conclusion of a hearing determine whether there are grounds to believe the charges against the employee are true, whether the action taken by the appointing authority was reasonable given the evidence, and whether the appointing authority acted in a clearly erroneous manner under the Unified Judicial System Personnel Rules in taking the action. The board's decision, including findings and conclusions, shall be in writing and signed by a majority of its members. The board shall provide a copy of its written determination to the employee, the appointing authority, and the State Court Administrator. If a majority of the board concludes that the disciplinary action was not warranted or the sanction imposed by the appointing authority improper, it may reverse or modify the decision of the appointing authority.

(5) If the employee fails to appear for the hearing on the date and at the time scheduled, the board may treat the grievance as withdrawn by the employee. If an employee voluntarily separates from employment with the Unified Judicial System during the pendency of any matter before the board, the board may likewise treat the grievance as withdrawn by the employee. The board shall have full authority to compel the cooperation of the appointing authority in all matters pending before it. Should the appointing authority fail to cooperate with the board, the board may, in its discretion, reverse the decision of the appointing authority and order the employee reinstated to his or her prior position. Any failure of the appointing authority to cooperate with the board shall be reported to the State Court Administrator who shall immediately bring the matter to the attention of the Chief Justice.

(6) If the employee or appointing authority is dissatisfied with the decision of the board, the employee or appointing authority may request that the Chief Justice of the Supreme Court of South Dakota review the decision of the board. The following procedures shall control any request for such review:

(a) The employee or appointing authority shall file with the State Court Administrator within ten working days of the final decision of the board a written statement detailing alleged errors in the board's proceedings and decision. Failure of the grieved employee or appointing authority to file the written statement within the time provided may bar further consideration of the matter.

(b) Within fourteen working days of receipt of the employee's or appointing authority's request for review, the State Court Administrator shall assemble and consecutively number the pages of all pleadings, documents, papers, and exhibits filed in the action, including the board's decision and the employee or appointing authority's statement of alleged errors. The State Court Administrator shall then prepare and attach an alphabetical index to the record and serve a copy on the employee and appointing authority. This record, together with the transcript, shall be forwarded to the Chief Justice for review.

(c) Upon receipt of the record and transcript, the Chief Justice shall review the board's decision to determine whether the board followed proper procedures and policies, whether the employee was afforded due process and whether the board's decision was clearly erroneous. If the Chief Justice concludes that the board complied with applicable procedures and policies, that the employee was afforded due process, and that the decision of the board was not clearly erroneous, the decision of the board will become final. Should the Chief Justice determine that the board did not follow applicable procedures and policies, that the employee was not afforded due process and/or that its decision is clearly erroneous, the matter may be remanded to the board with appropriate directions or the Chief Justice may modify or reverse the board's decision.

and issue a final decision in the matter.

(G) Actions Taken by the State Court Administrator. Should a disciplinary action covered by this rule involve a decision by the State Court Administrator, the Chief Justice shall appoint a person, other than an employee of the Office of the State Court Administrator, to perform all duties under this rule.

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RULE 9.1 REPORTING PERSONNEL DATA CHANGES

It is the responsibility of each employee to promptly notify their appointing authority or circuit administrative personnel and the Human Resource's office of any changes in personal data. Personal data shall include personal addresses, telephone numbers, number and names of dependents, individuals to be contacted in case of emergencies, change in marital status and dependent's ages. For benefit coverage this information should be accurate and current at all times.

RULE 9.2 RESIGNATION

(A) Resignation.

(1) When an employee resigns, that person shall notify their supervisor or appointing authority in writing ten working days (two weeks) prior to the effective date. The appointing authority may accept the effective date as indicated or waive the notice and make effective sooner, if approved by the State Court Administrator.

(2) Failure of an employee, without good cause, to submit a written resignation may result in the termination being administered as a dismissal.

(3) An employee who resigns, and is not being considered for or undergoing disciplinary action, may be reinstated within a period of one year after termination if a vacancy exists.

(4) The State Court Administrator may request an exit interview with an employee who resigns.

(B) Resignation While Under Disciplinary Suspension. An employee who resigns while under disciplinary suspension or dismissal shall forfeit all rights to any grievance, appeal or review, and shall not be eligible for reinstatement.

RULE 9.3 EXTRA-JUDICIAL EMPLOYMENT

Authorization Required. Full-time and part-time regular employees of the Unified Judicial System may receive authorization from the Chief Justice, if approved by the appointing authority, to take extra-judicial employment, provided that:

(1) In the written opinion of the appointing authority there is no conflict with the interests of the judiciary, working hours, or the employee's efficiency in conducting official duties.

(2) Employees requesting authority to take extra-judicial employment use the forms provided by the State Court Administrator.

(3) Employees receiving authorization not engage in activities related to the extra-judicial employment while on duty nor use judicial property for anything but judicial functions.

(4) Such authorization may be terminated by the appointing authority if it appears that the extra-judicial employment conflicts with the interests of the

judiciary, the employee's working hours, or the employee's efficiency in conducting official duties.

RULE 9.4 POLITICAL ACTIVITY

(A) Limitations. Employees of the Unified Judicial System, not including magistrate judges, may not participate in partisan political or judicial campaign activities, including but not limited to the following:

- (1) Being a candidate for public or political office;
- (2) Holding a position in any local, state, or national political party or campaign organization, including judicial campaign organizations;
- (3) Taking part in any campaign involving any political party or candidate for judicial office;
- (4) Circulating or soliciting signatures for any nominating petition, including signing a petition for judicial office;
- (5) Making speeches or distributing or displaying any campaign literature or materials for any person or party;
- (6) Soliciting money for any candidate for partisan political office or judicial office; contributing money to any candidate for judicial office; or
- (7) Holding any public office that has policy making authority whose decisions are appealable to any court under jurisdiction of the Unified Judicial System, except ex officio positions when approved by the Chief Justice.

(B) Voting Franchise. No provisions of this rule should be construed to restrict a judicial employee's voting franchise or the employee's right to sign a nominating petition for other than a judicial office.

RULE 9.5 NEPOTISM

No person shall be employed, promoted, transferred or retained in a position in the Unified Judicial System when, as a result, the employee would be supervising or receiving supervision from a member of their immediate family.

RULE 9.6 USE AND RETURN OF UNIFIED JUDICIAL SYSTEM PROPERTY

Employees are responsible for all property, materials or written information issued to them or in their possession or control. Employees must return all Unified Judicial System property immediately upon request or termination of employment. The Unified Judicial System may withhold from an employee's paycheck the replacement cost of any items that are not returned when requested. The Unified Judicial System may also take action deemed appropriate to recover or protect its property.

RULE 9.7 ATTENDANCE RECORDS

Requirements.

All employees of the Unified Judicial System shall complete daily attendance records for each pay period.

- (a) Attendance records utilizing the state's electronic time keeping system (TKS) will contain the employee's electronic signature and will indicate the hours worked, any leave used during the pay period reported, and any other information required.
- (b) Attendance records shall be signed and verified or approved by the employee's supervisor and/or the appointing authority or designee of the appointing authority.

RULE 9.8 REPORTING ABSENCES

An employee who is absent from duty shall report the reason for the absence to their supervisor as soon as possible. Unauthorized or unreported absences are considered absence without leave; and a deduction of pay shall be made for the period of absence. An unauthorized or unreported absence may be cause for disciplinary action.

RULE 9.9 PARTICIPATION ON BOARDS, CORPORATIONS OR ORGANIZATIONS

No employee of the UJS shall, without first obtaining written consent from the appointing authority and the Chief Justice, sit as a member of a board of directors or officer of a corporation or an organization where membership is directly related to their status as an employee of the UJS or where participation creates a conflict of interest. Any employee or appointing authority who is unsure of whether an employee's participation on a corporation or organization would violate this policy may seek an opinion from the State Court Administrator's Office.

RULE 9.10 EMPLOYEE OR FAMILY MEMBER AS PARTY TO PENDING CASE

Court employees who are personally or have immediate family members or a significant other involved in pending court cases should advise their presiding judge, who may direct subsequent administrative action as the presiding judge deems appropriate, if any. Employees who do not work in a circuit shall provide the same notice to the State Court Administrator or the Chief Justice.

RULE 9.11 TECHNOLOGY AND SOCIAL MEDIA

UJS employees are responsible for the appropriate use of technology and are expected to adhere to the highest ethical standards when conducting state business and/or using state equipment. Technology use must be able to withstand public scrutiny without embarrassment to the UJS, its customers or its employees. Do not engage in the personal or unauthorized use of social media during work hours or with UJS equipment. Social media usage during work hours or with UJS equipment must be approved by your supervisor and should be used for business-related reasons only. All employees must adhere and comply to the Technology Use and Social Media I.P. Rule 2019-03.

UNIFIED JUDICIAL SYSTEM PERSONNEL RULES

COURT REPORTERS

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RULE 10.1 GENERAL PROVISION

All UJS personnel rules apply to official court reporters with the addition of the rules set forth in this chapter.

RULE 10.2 COURT REPORTER WORK

(A) Official Work. Official work is the recording and/or transcribing of those court proceedings authorized by the presiding circuit judge. Court reporters at the authorization of the presiding judge may use normal office hours to prepare transcripts of official UJS court proceedings, not to exceed eight hours in one workday.

(B) Grand Jury Proceedings. Court reporters may record and transcribe grand jury proceedings at the discretion of the presiding circuit judge. If the presiding circuit judge approves such work, the recording and/or transcribing of grand jury proceedings is official work.

(C) Freelance Work. "Freelance," "outside," "nonofficial" or "depositional" work is work that does not involve the recording and/or transcribing of official UJS court proceedings. Freelance work does include recording and/or transcribing other UJS proceedings such as Board of Bar Examiners' hearings and examinations, grievance hearings under the UJS Personnel Rules, and proceedings of other state entities, such as the South Dakota Retirement Board. Court reporters may not perform freelance work during normal office hours without taking annual leave. Additionally, the preparation of transcripts from such work may not be performed during normal office hours. All freelance work must comply with Rule 10.3 governing court reporters' extra-judicial employment.

(1) Court reporters who are performing freelance work for the UJS must report this work in advance to the Deputy State Court Administrator and the Director of Budget and Finance so their work is properly paid according to Internal Revenue Service requirements. Court reporters who are performing work for other state entities will have their work recorded on TKS by the hiring entity. As with other freelance work, the court reporter is responsible for negotiating his or her own rate of compensation for this work with the hiring entity.

RULE 10.3 COURT REPORTER EXTRA-JUDICIAL EMPLOYMENT

(A) A court reporter requesting authorization to accept extra-judicial employment shall be treated as any other judicial employee.

(B) In addition, a court reporter may request and receive authorization from the Presiding Judge to utilize court reporting skills for nonofficial or freelance work during the normal work week, provided:

(1) The court reporter certifies in writing that his or her work is current as defined herein; and

- (2) The court reporter obtains advance approval from the assigned judge before accepting such work; and
- (3) A court reporter's work shall be considered current if the court reporter has:
 - (a) No appeal transcript unprepared within the initial time fixed for preparation by rule of the Supreme Court.
 - (b) No deposition, judicial or extra-judicial proceeding transcript unprepared thirty days after it was requested or ordered; and
 - (c) Fewer than 750 unprepared transcript pages for all appeals, depositions, judicial and extra-judicial proceedings.
- (4) The court reporter's authorization to accept nonofficial work will be suspended when:
 - (a) The court reporter requests an extension of time to prepare an appeal transcript; or
 - (b) The court reporter's work is not current.

Such suspension shall continue until the cause thereof is corrected and the court reporter files a certification as required in Rule 10.3(B)(1) above.

UNIFIED JUDICIAL SYSTEM PERSONNEL RULES

MISCELLANEOUS

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RULE 11.1 RETIRE/REHIRE

Unified Judicial System employees who retire and receive a full pension from the South Dakota Retirement System are not eligible to be rehired in their former position, or a comparable position, within the UJS. This rule does not restrict the hiring of a retired UJS employee for temporary, on-call work, or in circumstances where the appointing authority has determined it is necessary to hire, and the Supreme Court has approved the hiring, because workforce conditions prevent finding suitable candidates for the position.

RULE 11.2 PERSONNEL RECORDS

- (A) Maintaining Records. It is the responsibility of the State Court Administrator's Office to maintain all personnel records on all employees of the Unified Judicial System.
- (B) Releasing Information. An employee's name, classification, and salary may be released to any individual upon written request. Additional information may be released if the request is accompanied by an authorization signed by the employee.
- (C) Reviewing Files. Employees may review their own files by giving reasonable advance notice to the Deputy State Court Administrator.

RULE 11.3 SURVEYS AND INFORMATION REQUESTS

In the course of their employment UJS employees are not to respond to surveys without permission from their presiding circuit judge or appointing authority. Requests for names and addresses of UJS employees should be directed to the State Court Administrator's Office.

RULE 11.4 STUDENT WORKERS

Although they do not have employee status, post-secondary work-study students may work in a clerk's office after the clerk has screened them and the presiding judge has approved. High school students should not be hired to work in a clerk's office. Post-secondary interns/volunteers may work in the court services office with presiding judge approval.

RULE 11.5 LONGEVITY CHECKS AND PINS

The State Court Administrator's Office will present pins, accompanied by a letter of appreciation signed by the Chief Justice, to UJS employees in recognition of their years of service with the court system, including years of service with the state court system prior to unification in 1975. Longevity checks, if approved by the legislature, are presented to employees, accompanied by a letter of appreciation signed by the Chief Justice.

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