COURTS TECHNICAL ASSISTANCE MONOGRAPH NO. TWO

PERSONNEL ADMINISTRATION IN THE COURTS

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THE AMERICAN UNIVERSITY

CRIMINAL COURTS TECHNICAL ASSISTANCE PROJECT
Institute for Advanced Studies in Justice
The American University Law School
Washington, D.C.

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FOREWORD

This monograph is the second in a series of monographs developed for the Adjudication Division of LEAA by the Criminal Courts Technical Assistance Project at The American University. The monograph series was initiated to provide an additional technical assistance resource for court agencies by synthesizing within single documents the range of issues and management responses to them that have been addressed in the course of numerous on-site assignments in various categories of technical assistance over the past six years.

Since the Criminal Courts Technical Assistance Project began in 1972, courts have become increasingly aware of the need to approach personnel matters systematically and develop a management environment which is conducive to both efficiency and good morale. While personnel studies, per se, constituted a relatively small proportion of the project's total assignments, recommendations relating to personnel administration issues figured prominently in assignment reports in almost every category of technical assistance. The fact that the technical assistance recipient had not initially perceived such matters as principal areas of concern highlights the problem posed to court improvement efforts by the lack of knowledge and information in this area.

Personnel Administration in the Courts draws upon approximately sixty technical assistance studies and the various personnel problems and changes with which they dealt. It is not intended to be a "how-to" manual, however, nor is it offered as a definitive treatment of the subject of court personnel administration. What we have aspired to do is provide a framework for analyzing and understanding the overall objectives which a court personnel system should serve, as well as the practical problems and specific issues which court personnel administration entails.

In so doing, we hope to enhance the ability of judicial administrators and planners to undertake court system self-assessment efforts and to begin court improvement programs with a keener appreciation of their needs and alternative courses of action.

Readers are invited to communicate to us any suggestions they may have for improving the content or format of any publication in the Courts Technical Assistance Monograph Series.

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PREFACE

In the past few years, increasing attention has been given to personnel administration in the courts, and significant changes have taken place in a number of jurisdictions in the management of non-judicial personnel. National standards of court organization and administration, adopted in the mid 1970's stress the importance of competent supporting personnel in the courts, appointed, compensated, and retained under a merit system operated independently by the judicial branch.

State funding of the judicial system, a reality in several states, and under consideration in some others, makes it possible to establish a state-wide judicial branch personnel system. A number of locally funded trial courts, especially in the urban areas, have also developed and implemented personnel plans. Public employee collective bargaining has now expanded in some jurisdictions to include court personnel, spurring even greater interest by judges and court administrators in personnel management. In short, personnel management is now accepted as an important part of the court improvement package, when not so long ago it seemed of little concern to proponents of court reform or to students of judicial administration.

Despite the growing interest in court personnel administration, very little has been written about significant developments or to provide guidance to court managers on how to undertake the various tasks of personnel administration within a court setting. This monograph was written to begin to meet these two needs. Personnel administration in the courts today is discussed, as are personnel problems peculiar to the court environment. Classification, recruitment, compensation, and other aspects of personnel administration are covered within the court setting, and information is provided for court administrators on how these tasks may be initiated and carried out.

The authors recognize that much more needs to be done -- the subject is by no means exhausted, nor is this a definitive work. We plan to expand the monograph into a book that will examine and explain personnel administration in the courts more extensively than was possible in this initial effort, as well as address in more depth some of the issues raised.

The authors are indebted to the Criminal Courts Technical Assistance Project, Institute for Advanced Studies in Justice, The American University Law School and the Law Enforcement Assistance Administration for providing funds to cover the field studies, writing, and research involved in this project.

We thank the many state and trial court administrators who filled out and returned our lengthy and complex questionnaires and then, took the time not only to respond to follow-up questions, but to supply us with copies of personnel rules, collective bargaining agreements, and other pertinent material. Without their help, this monograph could never have been completed. The same is true for those court administrators and their staff members who took time from their very busy schedules to provide assistance during field visits.

We express our gratitude to Marion Weaver Lawson, who laboriously read and edited the very-much marked up penultimate draft and made many clarifications in the text. Barbara Allen, University of Denver College of Law library staff, did her best to straighten out three very different and irregular footnote styles, and we thank her for her help. This is probably the place to state than any sins of omission or commission as to substance, style, or grammar are the authors' alone.

Finally, several people were involved in typing the manuscript in its various stages of draft and redraft. We appreciate their help and extend our thanks to: Nelle C. Ackerman, Kimberly E. Beckman, Zona B. Campbell, Margo Guillen, Marilyn Prince, and Barbara L. Spangler.

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THE NEED FOR PERSONNEL MANAGEMENT IN THE COURTS*

Introduction

All fifty states and most large and medium size counties and municipalities, as well as some of the smaller ones, have some sort of civil service or personnel merit system, usually including established classification and compensation plans for executive branch employees. Although state and local courts and related agencies employ at least 130,000 people,[1] they have lagged behind other public entities in personnel administration.

Even though this is so, significant changes have been made in some jurisdictions in the past decade in the management of nonjudicial personnel in the courts. Some of these changes have been statewide; others have been limited to individual trial courts or circuits or to related agencies, such as probation departments. In almost all instances of change, some sort of formal personnel system has been created to replace the haphazard, personalized, and patronage methods and procedures of personnel management. These formal systems are generally similar to those in state and local executive branch agencies. Some of these, including the United States civil service system, had their origin in the nineteenth century.

The relatively recent discovery of personnel administration by courts and judicial systems is related to and part of the major concerns of judicial administration today. As such, it is not a transitory phenomenon. Other judicial systems, courts, and related agencies are moving and will move in the direction of more sophisticated and systematic personnel administration.

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1. The last published total (1974) shows 118,395 FTE's (full-time employee equivalents) employed in state and local judicial activities, Source Book of Criminal Justice Statistics, 1976, (Washington, D.C.: U. S. Department of Justice, Law Enforcement Assistance Administration, National Criminal Justice Information and Statistics Service, 1977), Table 1.51, p. 134. The average annual increase in FTE's between 1971 and 1974 was 6,229, some of which may be attributed to better reporting. Even assuming a lesser growth rate, the total of FTE's at the end of 1977 can be conservatively estimated at 130,000.

* A limited amount of the material in this chapter will appear in different form in a chapter on court personnel and facilities by the same authors in a monograph prepared and edited by Dr. E. Michael Wong and funded by the Law Enforcement Assistance Administration.

Reasons for Growing Court Interest

There are several reasons for this emphasis on personnel administration, not the least of which is that appropriation bodies--whether state or local--are insisting upon greater productivity and efficiency from public employees and the development of new management techniques and technological applications to meet increasing workloads. This is an extremely important consideration, since personnel accounts for 75 to 80 percent of the operating costs of a court or judicial system, including furniture and equipment, but excluding building, maintaining, and remodeling facilities.

The second reason is the trend toward state-funded judicial systems. This has been a relatively recent development. While there were a few judicial systems predominately state funded,[2] analysis of data from FY 1969 to FY 1972 led one author to conclude: "If there is a movement toward state financing of courts, it is moving much more gradually than the press releases and speeches on court reform might convey."[3] Since that time, another five states have assumed state funding of their judicial systems, and a sixth will begin in another year.[4] Two states (Nebraska and Virginia) now fund the court of limited jurisdiction, as has Maryland since 1971. New York is phasing in-state funding, and at least three states (Kansas, North Dakota, and Oregon) have state funding under study. State-wide judicial employee merit systems usually go hand in hand with state funding and administrative integration and unification of the judicial system.

The third reason for the increasing emphasis on personnel administration in courts is the emergence of public employee collective bargaining. Unionization of and collective bargaining by public employees have been on the scene for a number of years, and many states have legislated in this area, although the legislation is by no means uniform from state to state in its application either to state or local employees. Judicial systems and individual trial courts have had limited experience in collective bargaining as compared with other sectors of public employment, but this situation is changing and will change markedly in the next few years. Without a rational personnel system and skilled personnel administrators and negotiators, the courts are at a distant disadvantage in the bargaining arena.

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2. Alaska, Colorado, Connecticut, Delaware, Hawaii, New Mexico, North Carolina, Rhode Island, and Vermont.

3. Carl Baar, Separate but Subservient; Court Budgeting in the American States (Lexington, Mass.: Lexington Books, 1975), p. 121.

4. The five are Alabama, Kentucky, Maine, South Dakota, and West Virginia; the sixth is Nevada.

Fourth, judicial systems and individual courts are not exempt from federal statutory requirements and regulations concerning equal employment opportunity and affirmative action. This is especially true for those courts and related agencies which receive federal funding. It is extremely difficult, if not impossible, for a judicial system or an individual court to comply with these requirements or even to determine whether it is in compliance without some sort of formalized personnel system and some degree of personnel management sophistication.

Last, but certainly not least, is that good management of the public's courts dictates that trained, qualified personnel be recruited to handle the courts' business and that they be retained, promoted, disciplined, or removed according to their abilities and job performance. This is necessary for the effective, efficient, and equitable management of the courts' most important resource--personnel--regardless of the concern of appropriation bodies. A personnel merit system, properly managed and maintained, provides the framework for good personnel administration both on the state and trial court level.

What is Personnel Management?

Scope of Personnel Management

Personnel administration, whether in the public or private sector, probably touches on or is involved in a wider range of activities than any other management function. Personnel management is usually thought to be concerned with recruitment, compensation, retention, promotion, and discipline of employees on an equitable basis related to job content and employee performance. It is much more. It is concerned with employee orientation, morale, and motivation. It is directed toward providing an adequate number of qualified employees to meet the agency needs, allocated and supervised in such a way as to carry out required functions as effectively or efficiently as possible. In the broadest sense, any person who supervises others is involved in and part of personnel management.[5]

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5. There are many personnel text books and handbooks that explain the importance of the various facets of personnel management in great detail and trace the historical development of civil service and personnel merit systems and personnel administration. It is not necessary for the purposes of this monograph to reproduce this material. Rather, the major functions of personnel management, especially as they relate to courts, are stressed and summarized here, with emphasis on the interrelationship of personnel and other management disciplines. A bibliography of some standard works on personnel administration is included as Appendix A for those readers who wish to cover this background material in greater detail. The major functions of personnel management with identification of the issues and a discussion of "how-to-do-it" are set forth in Chapters III through VIII.

Accomplishing Goals and Objectives

The accomplishment of the goals of personnel management requires:

1) understanding and determining employee skills needed;

2) gaining knowledge of the labor market and its various components;

3) developing and implementing an effective recruitment program designed to attract the best-qualified employees available in the labor market and to reach all segments and groups within that market;

4) developing and implementing training programs, both for new employees and those already on the job, including the development of supervisory skills and adaptation of and to technological change;

5) understanding budgetary needs and constraints;

6) forecasting personnel needs;

7) determining and improving adequacy of work space and equipment;

8) developing and implementing sound career ladder and promotional policies and opportunities; and

9) developing and implementing adequate fringe benefit programs to attract, retain, and maintain the morale of qualified and motivated employees.

Interrelationship with Other Management Functions: Some Examples

These are not easy or uncomplicated tasks, and their successful achievement require the integration of personnel management and the other management skills and functions needed for proper administration.

The relationship between personnel management and budget and fiscal administration is illustrated by the personnel functions described above. Personnel need forecasting is an integral part of the budgetary process. It is also an integral part of both short-range and long-range planning, especially where planning is concerned with: 1) technological innovation to augment or supplant personnel; and 2) facility needs, including size, location, new construction, or remodeling.

Good personnel forecasting involves both good estimating techniques for determing future work levels and the development of realistic employee workload measures. It also involves determining the impact on personnel needs from a change in procedures or the introduction of technological change, such as the use of computers.

Budgetary constraints have a direct impact on improvements in fringe benefits or revisions in the compensation plan. These limitations might be offset to some extent by improvement in employee efficiency and better development of personnel. Both of these can be affected by training programs and cost-effective technological change.

Decisions on whether and how soon vacant positions should be filled are affected by expenditure patterns and fiscal controls, as well as by personnel needs. This is yet another reason for good communication among the various management disciplines and for the development of a system of shared management decisions.

To be effective, personnel managers must have knowledge of the agency's major functions, activities, goals, and objectives and should be involved in planning (including determination of facility needs), budgeting, fiscal administration, management studies, and any other major management activity.

Personnel Management in Courts: Whose Responsibility?

The importance of personnel management in the efficient and effective operation of public agencies has long been accepted. As previously discussed, judicial systems, individual courts, and related agencies are recognizing the need for personnel administration in the court environment. With this recognition has come judicial understanding that personnel management is part of the professional training and skills expected of court administrators and their staffs, whether at the state or local level.

Beside determining the kind of personnel system best suited to meet court needs, a major question is who is to be responsible for managing and operating the system. Previous comments imply that personnel administration should be a responsibility of the judicial branch, but this is not a foregone conclusion, especially the definition of what constitutes "responsibility" and how it relates to "authority." This is a matter of such significance that considerable discussion is warranted.

Executive Branch Involvement

The executive branch may consider court employees to be the same as other government workers, failing to differentiate among the three branches of government or, in some cases, to recognize that there is a meaningful distinction. This is especially true at the trial court level for those trial courts supported primarily by local funds. County and municipal governments tend to think of court employees as similar to those in the public works or health department and, that, consequently, their recruitment, conditions of employment, etc., should be governed by the same rules and regulations under the county or municipal governing body. This is the practice in a number of jurisdictions today, as will be discussed in the next chapter.

Very often legislation (both state and local) will authorize the placement of judicial branch employees under the executive branch personnel system, although legislative bodies protect their own independence in the selection and management of their own personnel.

Even if the executive branch recognizes the distinction and implication of separate branches of government, it may still offer--rather insistently in some cases--to provide personnel services for the courts. An example would be Maryland, where the state-funded consolidated court of limited jurisdiction is under the executive branch personnel system.

In at least two states, Alaska and Colorado, there have been law suits to establish the authority and responsibility of the judicial branch over its own personnel. In Alaska, the matter was settled through a memorandum of agreement between the Department of Administration and the State Court Administrator as to the responsibility and authority of each.[6] In Colorado, the Supreme Court ruled that judicial employees were not subject to inclusion in the executive branch personnel system.[7]

It took until July 1, 1977 for the Hawaii judicial system to gain legislative authority to operate its own personnel system.[8] Even though the judicial system has always been state funded, since statehood in 1959, the Department of Personnel Services of the executive branch had been the central personnel recruiting and administering authority for all state employees.

A Separate Judicial Personnel System

At first sight, it may appear that it is a sensible arrangement for the executive branch to provide personnel services for the judiciary, thereby eliminating duplication of administrative staff and services by using an established and experienced agency. Nevertheless, there are several reasons why it is not only desirable, but necessary for the judiciary to have the authority and responsibility for its own personnel system. These were expressed very well in a 1972 study setting forth recommendations for improving the Utah court system:

> The creation of a separate judicial personnel system is basic recognition of the separation of powers concept in our form of government. The judiciary should be treated in the same fashion as the executive and legislative branches in its ability to select and retain qualified personnel. The separation of powers concept in Utah State Government has not always been adhered to. For example, Section 1 of House Bill 22 passed by the 1972 Budget Session (amending Section 67-13-12 of the Utah Code) provides that by July 1, 1973, the State

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6. Memorandum of Agreement, signed by Robert W. Ward, Commission of Administration and John W. McMillan, Administrative Director, Alaska Court System, July 7, 1967.
7. In Re Interogatory of the Governor, Concerning Article XIII, Section 13 of Constitution of Colorado 162 Colo. 158 [425 p2d 31]
8. Act 159, Ninth Legislature, State of Hawaii, 1977.

Director of Personnel, an executive employee, shall prepare and administer a position classification plan for all positions in the executive and judicial branch of state government. Interestingly, employees of the Legislature are exempt from the authority of the Personnel Director to devise and administer such a plan.

The power to control the qualifications and salaries of employees is tantamount to the ability to control an organization. Especially if a personnel office in exercising its statutory prerogatives begins to make what amounts to "line" as opposed to "staff" decisions on who can be hired, when, and at what salary.

There are many positions in the judiciary which are not comparable to those in the executive branch. There is, for example, nothing in the executive branch directly comparable to a court administrator, court clerk or bailiff. Requiring that these judicial positions be comparable, in qualifications and/or pay, to positions in the executive branch complicates the ability of the court to secure the kind of people needed for jobs that are unique to the judiciary.

By merging judicial and executive personnel systems, legislative intent in appropriating funds to the courts may be frustrated. The interposition of executive branch employees with authority to make judgements on court personnel matters can be quite critical when it is realized that over 75 percent of all funds appropriated for courts are for salaries and wages. . . .

Continuing the practice of using the same personnel or "merit system" for judicial personnel as that developed for executive employees is contrary to the concept of the administrative independence of the judiciary. It inevitably results in the courts being treated as departments of the executive branch in administrative affairs. It is important that one branch of government not become excessibly dependent on another for essential administrative support, of which personnel is a large part.

The protections presumably afforded court employees under a state merit system designed for executive employees may be illusory because ultimately the sanctions that can be brought to bear for any violations of merit rules apply only to employers subject to executive powers. Employee rights and protections are important and should be contained in express personnel rules and regulations. But these should be promulgated by the judiciary for its own employees. Reasonableness and general comparability in salaries can be maintained by legislative approval of the judicial compensation plan if this is considered appropriate. This would be similar to the current practice in Colorado and the Federal courts.

> A separate judicial personnel system, if properly created and administered, will not jeopardize reasonably uniform salaries for the same type of work (subject of course to reasonable latitude for employees that have no parallel in the executive branch), adherence to merit principles, and adequate protection for employees of various courts where the employees of some courts are subject to executive control while others are not.[9]

The rationale for placing control in the judiciary over personnel management and other administrative functions in the courts is a constantly recurring theme in the literature of judicial administration. It is perhaps best expressed in the American Bar Association Standards Relating to Court Organization.

Standard 1.00 provides:

> [1.00] Aims of Court Organization. The organization of a court system should serve the courts' basic task of determining cases justly, promptly, and economically. To this end, the organizational structure should facilitate the selection and assignment of competent judicial and auxiliary personnel, sound financial administration, efficient use of manpower, facilities and equipment, and continuous planning for the future.[10]

The commentary on this standard discusses the two basic objectives of a court system. In brief, the primary objective is to determine the matters committed to its jurisdiction fairly, promptly, and economically. The secondary objective is set forth here in detail because of its bearing on the subject under discussion:

> A secondary objective of the court system is to maintain itself as an independent and respected branch of government. This objective is ultimately fulfilled by achievement of the court system's primary goal. The courts must, nevertheless, direct attention and effort to their own maintenance problems. These include administering their affairs effectively, establishing and improving skill and morale of their judicial and auxiliary personnel, developing the popular and legislative support required to secure adequate resources, and planning to meet future demands.[11] (emphasis supplied)

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9. Utah, Legislative Council, Unified Court Advisory Committee, Utah Courts Tomorrow; Report and Recommendations (Salt Lake City: Utah Legislative Council, 1972), pp. 43-44.

10. American Bar Association, Commission on Standards of Judicial Administration, Standards Relating to Court Organization (Chicago: American Bar Association, 1974), p. 1.

11. Ibid.

Examination of court personnel rules and policy statements reflects this concern for independent management within the judiciary. The following taken from the forward of the Hamilton County (Ohio) Court of Common Pleas Personnel Rules is but one example:

> The Hamilton County Court of Common Pleas existing as entity of the judicial structure seeks to maintain its constitutional independence of the executive and legislative branches concerning organization and personnel supervision.[12]

Court Personnel Administration Standards

Both the American Bar Association and the National Advisory Commission on Criminal Justice Standards and Goals have specifically addressed personnel administration in the courts in the promulgation of standards related to judicial administration. Both stress the need for a separate, independent personnel system for the judiciary based on merit.

The American Bar Association Standards Relating to Court Organization deal extensively with this subject in Standard 1.42:

> 1.42 Non-Judicial Personnel of Court System.
>
> (a) Governing regulations. Non-judicial personnel of the court system, including those performing the functions stated in Section 1.41(b)(ii)(2), should be selected, supervised, retained and promoted by the court system, in accordance with regulations adopted pursuant to Section 1.32. [relating to administrative authority] The regulations should provide for:
>
> (i) A uniform system of position classification and levels of compensation.
>
> (ii) A system of open and competitive application, and examination, and appointment of new employees that reflects the special requirements of each type of position in regard to education, professional certification, experience, proficiency, and performance of confidential functions. Employment should be made without discrimination on the basis of race or ethnic identity, age, sex, or religious or political affiliation, and should be administered to encourage members of minority or disadvantaged groups to seek employment in the court system.

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12. Hamilton County, Ohio, Court of Common Pleas, General Division, Personnel Manual for the General Division of the Hamilton Court of Common Pleas (Cincinnati: Hamilton Court of Common Pleas, 1975), p. 1.

(iii) Uniform procedures for making periodic evaluation of employee performance and decisions concerning retention and promotion.

(iv) Requirements that discipline or discharge be based on good cause and be subject to appropriate review.

(v) Compatibility, so far as possible, with the employment system in the executive department. Transfer of individuals from one system to the other, without impairment of compensation, seniority, or fringe benefits should be facilitated.

(b) Auxiliary staff classifications. Regulations governing non-judicial employees of the court system should reflect the differences in duties and responsibilities of various types of non-judicial personnel including the following:

(i) Administrative personnel. Administrative personnel, such as the executive director of the administrative office, court executives of subordinate court units, and their principal deputies, should perform duties requiring managerial skills and discretion. Administrative personnel should have qualifications that include general education, appropriate professional experience, and education and training in court management or public administration. The executive director should be appointed and hold office as provided in Section 1.41(a)(i). The court executive of a subordinate court unit should be appointed and hold office as provided in Section 1.41 (b)(i). The principal deputies of the executive director should be appointed by him and hold office at his pleasure, and a corresponding arrangement should apply to the principal deputies of court executives of subordinate court units.

(ii) Professional personnel. Professional personnel include persons such as examining physicians, psychological and social diagnosticians, appraisers, and accountants, whose duties require advanced education, specialized technical knowledge, and the exercise of critical judgment. They should be selected on the basis of their competence within their own profession and adaptability to the working environment of the court system. The procedure for evaluating potential appointees to professional positions should include participation by persons of recognized standing in the professional discipline involved.

(iii) Confidential employees. Confidential employees include secretaries and law clerks, and other persons whose duties require them to work on a personal and confidential basis with individual judges, judicial officers, administrative officials, and professional personnel. Confidential employees should meet qualifications prescribed in regulations adopted pursuant to Section 1.32, but their appointment and tenure should

be at the pleasure of the person for whom they work.

(iv) Technical and clerical employees. All other employees should be appointed by the chief administrative official of the administrative office in which they are employed.[13]

In its commentary, the American Bar Association Commission on Standards of Judicial Administration, stresses the importance of selecting and retaining non-judicial court personnel on the basis of competence, with a rational and uniform system of job classification. The classification plan should be designed to "assure parity of treatment of employees who do essentially the same work, to assure fair relationships regarding compensation and responsibilities between levels of employee positions and to facilitate promotion and transfer of personnel within the system."[14]

The Commission observes that court employment policies should appear to the public to be even-handed and efficient. The Commission also voices its concerns about the application of the traditional civil service system to judicial system employment:

> The regulations relating to personnel policy may go so far as to amount to a civil service system for the administrative staff of the courts. Subject to the considerations referred to in paragraph (b) of this section [Standard 1.42], particularly those pertaining to administrative and confidential personnel, a civil service system may well be satisfactory in many jurisdictions. Indeed, in some states civil service systems are so fully established that anything different would be incompatible with locally prevailing practice concerning government employment. At the same time, some aspects of civil service systems have proved extremely burdensome and sources of serious inefficiency. This is particularly true of rigid seniority arrangements and requirements that an employee may be discharged only for serious cause. In the absence of strong local traditions that impel adoption of such provisions, these aspects of formalized personnel systems should be avoided.
>
> Whatever the arrangements concerning employment, retention, and advancement of court auxiliary personnel, they should reflect the important differences in the duties and responsibilities of various types of court staff members. Staff officials who serve as the immediate representatives of judges in positions of administrative responsibility require the personal confidence of the judge whom they serve, and should be employed on that basis. Professional personnel, who are retained so that the court system can have the benefit of advice and assistance from a professional expert, should be retained in terms of their professional competence. . . .[15]

13. American Bar Association, Commission on Standards of Judicial Administration, Standards Relating to Court Organization, pp. 91-93.
14. Ibid., p. 94.
15. Ibid., pp. 95-96

It should be noted that Standard 1.42 and the commentary related thereto not only question the application of full civil service protections to certain categories of court employees, but also provide that personal employees of judges, such as secretaries and law clerks, be treated differently from other personnel as to employment and retention. In addition, the election of court clerks and appointment of any court personnel outside of the court system should be abolished. These are three of the major issues confronting court personnel administration and are discussed more extensively in a subsequent section of this chapter and in other chapters of this monograph. Stated specifically, these issues are:

1) the extent of employment safeguards which should be afforded court personnel who serve in high level administrative and professional positions;
2) the extent to which personal employees of justices and judges should be treated differently; and
3) the elimination of elected court clerks and appointment by them of their staffs outside of the court system.

In contrast with the American Bar Association, the National Advisory Commission deals with personnel administration much more generally and summarily.

Standard 9.1 provides in part:

> 2. Personnel Policies. The State court administrator should establish uniform policies and procedures governing recruitment, hiring, removal, compensation, and training of all non-judicial employees of the courts.[16]

A portion of Standards 9.2 and 9.3 also cover personnel administration.

> [9.2]1. Personnel matters. The presiding judge should have control over recruitment, removal, compensation, and training of non-judicial employees of the court. He should prepare and submit to the court for approval rules and regulations governing personnel matters to insure that employees are recruited, selected, promoted, disciplined, removed, and retired appropriately.[17]

> [9.3]4. Recruiting, hiring, training, evaluating, and monitoring personnel of the court or courts with which he [trial court administrator] is concerned;[18]

16. National Advisory Commission on Criminal Justice Standards and Goals, Report on Courts (Washington, D.C.: U. S. Govt. Print. Off., 1973), p. 176.
17. Ibid., p. 180.
18. Ibid., p. 183.

While there appears to be some conflict among the portions of the three standards quoted above, it is clear that the National Advisory Commission's position is that personnel administration belongs within the judicial system.

Summary

Roscoe Pound once wrote, "The judiciary is the only great agency of government which is habitually given no control over the clerical force. Even the pettiest agency has more control than the average state court."[19]

In the past decade this continuing problem has been recognized both by state judicial systems and individual trial courts. In more and more jurisdictions, the judicial branch is exercising the authority and responsibility for personnel management, usually through the adoption of personnel rules and the creation of a system of merit employment for non-judicial personnel. This has and is happening at the state level where state funding of the judicial system has made state-wide administration possible. In other places, individual trial courts have established personnel systems for their employees.

This trend is expected to continue, although there may continue to be executive and legislative branch opposition in some jurisdictions. Two sets of national standards dealing with judicial administration include personnel management among those ingredients necessary to operate a modern court organization effectively. Personnel administration in courts tends to vary from that in executive branch agencies as adaptations are made of personnel management principles to meet the peculiar needs of the court environment.

Legal Requirements and Court Personnel

The legal framework has been touched upon briefly in a previous section in connection with determining who should have the authority and responsibility for personnel management in the courts. An expanded discussion is warranted, because one conclusion to be drawn from those comments is that the way a court personnel system is organized and administered--indeed whether there is any system at all--may be determined by a variety of constitutional provisions, statutory requirements, or court rules; by a combination of the three or any two; or by statute or rule only. The content and mix of these provisions, requirements, and rules differ from jurisdiction to jurisdiction, and, in some states, there are no formal requirements or guidelines at all within the judicial system.

Where there are no judicial system or court formal requirements or guidelines, court personnel are usually administered

19. Roscoe Pound, Organization of Courts (Boston: Little, Brown, 1940), p. 98.

in one of two ways. First, court personnel may be hired, retained, promoted, or terminated under traditional, unwritten practices--usually found in patronage systems. Second, an agency outside the judicial system may step in to fill the vacuum--an executive branch personnel system at the state level or a county or municipal personnel system at the local level, as previously discussed.

Federal Requirements

Court personnel administration is subject to very few federal statutory requirements or rules. A relatively recent U.S. Supreme Court decision determined that state and local employees are not subject to the provisions of the Fair Labor Standards Act.[20]

The Equal Employment Act of 1972 applies to court personnel along with all others. The Act states that state and local governments are subject to the provisions concerning discrimination in the employment process as outlined in the 1964 Civil Rights Act. The courts are ordered to correct discrimination practices, both current and historic, and may order back pay for two years preceding the filing of a charge.

Although judicial systems and individual courts have been sued under the provisions of this Act by persons alleging discrimination in hiring or other personnel practices, the main impact on courts has come through federal grant requirements, especially those made by the Law Enforcement Assistance Administration. LEAA requires an Affirmative Action/Equal Opportunity Employment Program, if there are more than 50 employees, or if the population to be served has more than three percent minority representation, or if the LEAA sub-grants total more than $25,000.

State Constitutions and Statutes

Very few state constitutions make reference to court personnel, as such. One exception is Colorado, which provides: "The supreme court shall appoint an administrator and such other personnel as it deems necessary to administer the system."[21] Several state constitutions provide for the appointment of an administrator, but do not refer to other personnel.[22] Article VI, Section 11 of the South Dakota constitution provides in part:

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20. National League of Cities v. Usery, 96 Sup. Ct. 2465, 49 L. Ed 2nd. 245.
21. Colorado Constitution, Art. 6, Sec. 5(3).
22. For example, Alaska, Arizona, Hawaii, Illinois, Missouri, and New Jersey, among others.

Section 11. ADMINISTRATION

> The chief justice is the administrative head of the unified judicial system. The chief justice shall submit an annual consolidated budget for the entire unified judicial system, and the total cost of the system shall be paid by the state. The Legislature may provide by law for the reimbursement to the state of appropriate portions of such cost by governmental subdivisions. The Supreme Court shall appoint such court personnel as it deems necessary to serve at its pleasure.
>
> The chief justice shall appoint a presiding circuit judge for each judicial circuit to serve at the pleasure of the chief justice. Each presiding circuit judge shall have such administrative power as the Supreme Court designates by rule and may, unless it be otherwise provided by law, appoint judicial personnel to courts of limited jurisdiction to serve at his pleasure. Each presiding circuit judge shall appoint clerks and other court personnel for the counties in his circuit who shall serve at his pleasure at a compensation fixed by law. Duties of clerks shall be defined by Supreme Court rule.[23] (emphasis supplied)

In many states, the only constitutional reference to court personnel usually is to elected court clerks.

An example of specific state legislation is an act adopted by the Kansas legislature in 1977, which provided for the establishment of a judicial personnel system for the non-judicial employees of the supreme court, the court of appeals, and the judicial administrator. This measure provided in part:

> The supreme court shall establish for the non-judicial personnel of the supreme court and the court of appeals a formal pay plan, a personnel plan and an affirmative action plan for the hiring of minority persons. Such pay plan and personnel plan shall include, but not be limited to, job descriptions, qualifications of employees, salary ranges, vacation, sick and other authorized leave policies. A copy of such pay plan, personnel plan and affirmative action plan shall be submitted to the legislature on or before January 15, 1978.[24]

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23. South Dakota Constitution, Art. 6, Sec. 2.
24. S.B. 460, Kansas Legislature, 1977 Session; also see Institute for Advanced Studies in Justice, Criminal Courts Technical Assistance Project, Development of a Comprehensive Personnel Plan for Non-Judicial Employees of the Kansas Appellate Courts (Washington, D.C.: The American University Law School, 1977).

Court personnel systems are usually not covered as extensively by statute in most states as in the examples cited above. Statutes in a number of jurisdictions, however, may specify the employee appointment authority of various courts or judges and may set salaries by statute.

Public Employee Labor Relations. Of considerable importance are laws providing for and regulating public employee labor-management relations. At least 28 states have adopted comprehensive legislation relating to labor relations of state, county, and municipal employees. Usually, judicial branch employees are not directly addressed. Only three of the 28 states which adopted comprehensive legislation specifically exempt or make specific reference to court employees (Connecticut, Iowa, and Vermont).[25]

These statutes--and those which may be adopted--in the other states will be of greater significance to the judiciary as court employees in more jurisdictions organize and enter into collective bargaining agreements. Because of the lack of specific reference to court employees in most of these acts, the amount of litigation and court decisions interpreting applicability to court employees can be expected to increase. (Collective bargaining in the courts is discussed in more detail in Chapter X.)

Court Rules

State-wide personnel rules have been adopted in most jurisdictions where the court system has been state funded, as previously indicated. In Colorado, these rules were adopted by the supreme court pursuant to the court's general rule-making authority and specific statutory provisions. In South Dakota, it was done under the supreme court's general constitutional superintending authority. This pattern has been followed in most of these states.

In those states where local courts have established separate judicial system personnel plans, usually it has been accomplished by local court rules.

Model Judicial Articles and Legislation

Most model judicial articles, such as those of the American Bar Association and the National Municipal League, do not make reference to court personnel. These articles were drafted before state funding and judicial system control of its personnel were part of the court reform package. A draft of a model judicial article, based on the American Bar Association

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25. George G. Cole and John R. Wadsworth, Unionization of Court Employees: A National Survey (Paper presented to the Conference of State Court Administrators, Minneapolis, August 1, 1977), p. 9.

Standards Relating to Court Organization, recently prepared for the American Bar Association Committee on the Implementation of the Standards of Judicial Administration provides that the supreme court or judicial council shall establish a personnel system based on merit for all non-judicial personnel.

The model judicial article proposed by the Advisory Commission on Intergovernmental Relations provides for the appointment by the supreme court of the administrator and his assistants, but goes no further.[26]

The A.C.I.R. court reform package also includes legislation establishing a separate state-wide, state-funded court personnel system. This proposed model legislation is based on a similar Colorado provision and specifies:

TITLE VIII

COURT PERSONNEL AND FINANCES

.... Section 2. Court Personnel and Compensation. (a) After [insert appropriate date] the chief justice shall prescribe by rule a personnel classification plan for all courts in the judicial department. Such a plan shall include; (i) a basic compensation plan of pay ranges to which classes of positions shall be assigned and may be reassigned; (ii) qualifications for all non-judicial positions and classes of positions which shall include education, experience, special skills, and legal knowledge; (iii) an outline of duties to be performed in each position and class of positions; (iv) the number of full-time and part-time positions, by position title and classification, in each court in the state; (v) the procedures for and regulations governing the appointment and removal of nonjudicial personnel; (vi) the procedures for and regulations governing the promotion of non-judicial personnel; and (vii) the amount, terms, and conditions of sick leave and vacation time and fringe benefits for court personnel, including annual allowance and accumulation thereof, and hours of work and other conditions of employment.

(b) The chief justice, in promulgating rules as set forth in this section, shall take into account the compensation and classification plans, vacation and sick leave provisions, and other conditions of employment applicable to the employees of the executive and

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26. Advisory Commission on Intergovernmental Relations, Court Reform (Washington, D.C.: Advisory Commission on Intergovernmental Relations, 1971), p. 5.

> legislative department. The chief justice shall be aided by the administrative office of the courts in the implementation of this section.[27]

The subjects covered on the A.C.I.R. model legislation are essential in any comprehensive set of personnel rules and provide the framework for effective personnel legislation. These subjects are included in most of the state-wide judicial system personnel rules adopted in the past few years and in a number of local jurisdictions as well.[28]

Summary

Only in a very few jurisdictions are there constitutional or statutory provisions that relate to or provide for court personnel, except in the most narrow way, e.g., a constitutional requirement for elected court clerks or a statute setting the salary of court reporters. The judicial branch in a number of state-wide systems has exercised authority for personnel management under general administrative or rule-making power. This has also been true in a number of trial courts which are locally funded.

The most immediate concern is with state laws providing for collective bargaining by public employees. In most of these, specific reference is not made to court employees, either as to inclusion or exclusion. Court decisions and experience in those jurisdictions where court employees collectively bargain will make this cloudy picture clearer.

The Court Environment

There are a number of reasons why the court environment differs from that of most other public agencies. Some of these were cited by Edward B. McConnell in an address at the National Conference of Judiciary in Williamsburg, Virginia, in 1971:

> a. First, the key people in the courts are high level professionals--judges and lawyers--who are accustomed to working as individuals, and do not take kindly to regimentation. The judge in the black robe does not wear under it a gray flannel suit--he is not an organization minded man!
>
> b. Second, in our governmental system we place a very high value on judicial independence, and to insure

27. Ibid., p. 20.

28. Statewide system examples are: Alaska, Colorado, Maine, New Mexico, and South Dakota among others; at the trial court level, the circuit court of Multnomah County (Oregon), the Hamilton County Court of Common Pleas (Ohio), and the Superior Court of Alameda County (California) are just a few of many examples.

it we have surrounded judges with a variety of protections against outside influences, even administrative ones. Thus in our state [New Jersey] for example, while the Chief Justice is constitutionally the administrative head of all the courts, he has no authority to appoint, promote, demote or remove any judge; in fact, the only people in the system he can hire and fire are his stenographer, his law secretary, and me! As an executive in business or government can appreciate, this severely limits the pressures that can be brought to bear to produce administratively desired results.

c. Third, many of the "dramatis personae" required for a successful judicial performance--these include practicing attorneys, jurors, witnesses, and litigants are not even public employees; and others who are so employed are not within the judicial branch of government--this is particularly true on the criminal side.

d. Fourth, the various participants in the litigation process do not all have the same goal in mind, but often are pursuing conflicting objectives.[29]

There are further reasons why administration of a court system (including personnel management) is complex and different from other types of administration.

First, the structure and organization of a court system are established by constitutional and statutory provisions. Reorganization cannot take place by executive fiat (of the judicial branch), even with the concurrence of those responsible for managing the system. Constitutional or statutory change is often a time consuming and difficult process, involving many who are outside the system.

Second, the courts have no control over intake. With limited exceptions, courts have to accept cases filed with them.

Third, there is the matter of tradition. While court administration as a concept is relatively new and personnel management in the courts even newer, the courts and the laws they interpret have their roots in medieval England. Judges and lawyers are traditionalists and are slow to accept change and are usually not innovators. The doctrine of stare decisis is the cornerstone of the American legal process and provides stability in the determination of legal issues, but it is an impediment when applied to administration of the courts' business.

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29. Edward B. McConnell, "The Role of the State Administrator," Justice in the States; Addresses and Papers of the National Conference on the Judiciary, March 11-14, 1971 (Washington, D.C.: U.S. Department of Justice, Law Enforcement Assistance Administration, 1971), pp.89-90.

Fourth, judges are very much involved in all aspects of court administration, and this is as it should be, because the nature of the judicial process is such that administrative policy decisions often affect the image and independence of the judiciary and the ways in which cases proceed through the court (just to cite two interrelationship examples). The court personnel manager, whether or not the court administrator, must recognize these interrelationships and work within this context to be effective. He must also recognize that his authority is not independent and separate, but derives from the authority of the judge or judges to whom he is responsible. This situation requires a clarification of administrative responsibilities between the judges and the administrator and his staff, definition of the scope of the administrative staff functions, and an enumeration thereof--not always easy to accomplish, especially in a court or court system where the approach to administration has been fragmented and relatively unsophisticated.

Specific Areas of Concern for Personnel Management

There are certain aspects of the court environment that may raise problems for personnel management not found in other public agencies.

Method of Judicial Selection. In those states where judges are appointed, especially those with merit systems of selection, the imposition of a court personnel system for non-judicial employees usually does not pose any unusual problems. These judges do not need the campaign support of their employees to gain office in the first instance or to be retained. This is not necessarily the case in those 28 states where all or part of the judiciary is elected either on a partisan or non-partisan adversary ballot.

It is primarily in these states that many court employees are hired and still hold their jobs under some form of patronage. As Chief Justice Edward E. Pringle of Colorado has observed:

> The election of judges may also result in the hiring of patronage employees, again very understandable, but often employee qualifications and competence take a back seat to loyalty and the ability to help the judge get re-elected.[30]

This situation has been overcome in a number of jurisdictions, and personnel systems for employees based on merit have been established. This has happened both at the state and trial

30. Edward E. Pringle, "The Role of the State Chief Justice," Justice in the States; Addresses and Papers of the National Conference on the Judiciary, March 11-14, 1971 (Washington, D.C.: U.S. Department of Justice, Law Enforcement Assistance Administration, 1971), p. 82.

court levels. Usually, it has been accomplished by allowing judges to retain certain employees on a personal or patronage basis, such as the judge's secretary, law clerk, reporter, and bailiff, or some combination thereof. Even so, in some places, it has been possible to include these employees in the personnel plan insofar as salaries, qualifications, and fringe benefits are concerned.

Experience in these jurisdictions has shown that it is possible to establish a system of personnel management where judges are elected, but it may be more difficult to accomplish, and those working in this kind of court environment should recognize potential problems, especially in gaining initial judicial acceptance for establishing a personnel plan.

Personal or Confidential Employees. The question of what to do about personal or confidential employees of a justice or judge is not limited to jurisdictions where judges are elected. In all court environments, there are employees who work on a personal and confidential basis with judges. Each court system or individual court, therefore, has to deal with this aspect of personnel management.

Justices and judges in most jurisdictions feel strongly that they need to command the personal loyalty of secretaries and law clerks (and, in some places, reporters and bailiffs), because of their close and confidential involvement with the judge for whom they work in expediting his or her judicial business. Judges feel that they should select whom they want and that these persons should serve at their pleasure. Some feel strongly that they should be able to set salaries, determine working conditions, and fringe benefits.

Very often, an administrator or consultant making a study preparatory to establishing a personnel system not only has to deal with this situation, but often finds that the salaries and benefits are out-of-line with those of other employees, including personal employees of other judges. These practices are not compatible with the basic tenents of a personal merit system involving equal treatment of employees, comparable pay for comparable duties, standard fringe benefits, and comparable employment standards for similar positions. In fact, employee morale may be affected, because of the feeling on the part of some that there are two classes of employees in the court.

Most court personnel systems handle this situation by effecting a compromise. As previously indicated, justices and judges are given the direct authority to hire and remove confidential or personal employees. These employees, however, must meet employment standards as specified in the job description for the position, and they are subject to the same classification and salary plan and fringe benefits applicable to other employees. They do not have the protection of the grievance procedure or

disciplinary appeal proceedings available to most employees in the classified service, which means they have no tenure protection. South Dakota appears to be the only jurisdiction where all employees, including those usually considered personal or confidential, are included within the classified service.

Reporters are removed from confidential service in jurisdictions, such as California, where they are pooled rather than assigned to a specific judge. This approach is possible only in large multi-judge courts and is not applicable in rural areas where reporters accompany judges on circuit. At least one jurisdiction--Colorado--provides that confidential employees of a judge are subject to reassignment by the chief judge when not needed in their own court.

No matter how this problem is handled, it represents a situation seldom found in other kinds of public employment. Its solution requires a great deal of tact and give-and-take by all involved. It is seldom solved to the complete mutual satisfaction of all concerned; the judges, the employees involved, the personnel managers, and other employees of the court. Short of eliminating this category, it is difficult for the employees involved, regardless of group, to overcome the feeling of separateness, but it can be mitigated. A court personnel system that does not come to grips with this problem and resolve it in some way is not likely to endure.

Elected Court Clerks

In 37 states, at least some of the trial court clerks are elected. In some, the only duties of the position are related to the courts. In others, the position is combined with other functions, such as recording deeds and maintaining the election roles. Elected clerks usually appoint their deputies and may operate independently of the judges as separately elected constitutional officers. The situation is further complicated in some places, because the clerk's office is operated from the fees it collects, and staff size and salaries depend on the revenue received.

A few states, such as Alaska, Colorado, and Hawaii, never had elected court clerks, and a few others, such as Kansas and South Dakota, have been successful in changing from elected to appointed clerks as part of a court reform constitutional package and implementing legislation. In most jurisdictions, the election of court clerks is deeply rooted in tradition, and efforts to change this practice has been successfully resisted, even when included in a court reform proposal.

In large jurisdictions, such as Maricopa County Superior Court (Arizona) and the superior courts of the larger counties in California, employees of the clerk's office may be under the county (executive branch) personnel system, while the other court employees are under a separate system. Employee morale problems

are minimized, if the salary structure and fringe benefits under both plans are similar.

North Carolina's handling of personnel management with respect to elected court clerks may be unique. In that state, the judicial system is state funded. The elected court clerks still select their own court employees, but these employees must meet the qualifications and be selected according to the procedures established in the judicial system personnel rules promulgated by the Administrative Director of the Courts.[31] Salaries and fringe benefits are also specified by rule.

The ways in which the employees of elected court clerks might be incorporated into a state-wide judicial personnel system were among the major considerations of a 1974 state-wide court personnel study conducted by an interim committee of the Florida legislature. A further compounding factor was the disparity of the salary and fringe benefit plans affecting clerk's office personnel in most of the counties.[32] The results of this study were not adopted because the legislative decision was made not to consider state-wide funding, at least at that time.

The same management problems usually exist regardless of the personnel system covering the employees of the clerk's office. These problems are not limited to personnel management, but cover all aspects of court support operations and the relationship and degree of coordination between the judges (and their administrator, if they have one) and the elected clerk and staff. These vary among jurisdictions, and a separate treatise would be necessary to explore this subject in the depth it deserves. It is sufficient for the purposes of this monograph to highlight this situation as another important aspect of the court environment in many jurisdictions which cannot be overlooked in efforts to rationalize personnel management, as well as other aspects of court administration.

Other Examples of Court Personnel System Fragmentation

The discussion thus far in this section shows the difficulties inherent in establishing rational personnel management in the courts, because of fragmentation in administrative responsibility for court personnel, with personal employees of judges and elected court clerks cited as examples. The list is by no means exhausted. In some jurisdictions, bailiffs are

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31. North Carolina, Administrative Office of the Courts, Personnel Manual (Raleigh, N.C.: Administrative Office of the Courts, 1966).

32. Institute for Advanced Studies in Justice, Criminal Courts Technical Assistance Project, Report on Technical Assistance in Planning a State-wide Court Personnel Study for the State of Florida (Washington, D.C.: The American University Law School, 1974).

employees of the sheriff. In others, employees working side-by-side may be funded by different levels of government and subject to different rules and statutory requirements governing their employment.

Perhaps a prime example can be found in the State of Maryland, where the status of court personnel was explained as follows in a 1976 report:

> There are approximately 2,250 employees in Maryland courts or related agencies. Those appellate courts (64), Administrative Office of the Courts (30), and the District Court (826) are state funded. In a sense, the employees in the elected clerks of circuit courts (733) are state funded, in that the state makes up any deficiencies in operating expenses, if fees fail to provide sufficient revenue. Circuit court employees and employees of the Supreme Bench of Baltimore, other than those in the clerks' offices, are funded at the county level, except for employees of the Supreme Bench of Baltimore; they are funded by Baltimore City.
>
> There are a variety of personnel systems in effect, not necessarily related to the source of funding. The district court is under the state executive branch personnel system. The two appellate courts and the Administrative Office of the Courts have an ad hoc system patterned after the state system. With two exceptions, employees of the elected court clerks serve at the pleasure of the clerk. Personnel in the clerk's office in Washington County and in the Criminal Court of Baltimore City (part of the Supreme Bench) are in the state executive branch merit system. The nonclerks' office employees in Baltimore City are under the municipal personnel system. In the circuits, generally, employees serve at the pleasure of the judges, even though the county pay plan may be used.[33]

Summary

The court environment is much more complex than that usually found in state agencies. The nature of the process, the concept of judicial independence, the many and varied actors, tradition, and the necessary involvement of judges in administration all contribute to this complexity. All of these factors must be taken into account, if court administration is to be accepted and effective.

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33. Institute for Advanced Studies in Justice, Criminal Courts Technical Assistance Project, A Request for a Proposal to Design and Develop a Personnel Merit System for Non-Judicial Court Employees in the State of Maryland (Washington, D.C.: The American University Law School, 1976), p. 4.

Personnel management in this setting must be adaptable to still other conditions, such as how judges are selected, differential treatment for personal employees of judges, elected court clerks and staffs (where they exist), and the general fragmentation of court personnel. The task is not insurmountable, as attested by the success achieved in a number of state systems and individual trial courts. This experience shows generally that the traditional civil service system probably will fail if applied without modification in a court setting. Modifications are necessary given the nature of the court environment, but vary from place to place depending on local conditions.

It is little wonder that it has taken longer for professional personnel management to be accepted in a court setting than in other public agencies. The need is just as great and may be even greater, the longer it is postponed.

CHAPTER II

COURT PERSONNEL SYSTEMS

Background

Court personnel systems, as previously indicated, have tended to follow developments in the executive branch personnel systems, though usually some years later. For the most part, court personnel systems may be typified by three general models: patronage, merit, and collective bargaining. There have been mixes, of course, of all three in the same jurisdiction, as well as graduations which hardly fit in one category, let alone three. Though the general movement has been from patronage to merit and then to collective bargaining, there are many exceptions, and many judicial systems or courts remain "stuck" with some form of patronage or merit system. Collective bargaining has probably stimulated greater attention in court personnel in some jurisdictions than either patronage or merit.

Operationally, a distinction exists between a statewide court personnel system and that of a trial court. This is so for a number of reasons, which are addressed in other chapters of this monograph. As background for the discussion of models, it is useful to list the distinguishing factors between these two systems, as shown in Figure 1.

The differences enumerated in Figure 1 make it obvious that nay use of models to describe court personnel systems must recognize the state dimension, if one exists, as well as the local one. It is for that reason that patronage, merit, and collective bargaining may exist, on occasion, in the courts in the same state. It is possible to describe patronage as a system, regardless of the number of employees affected, in the same way that merit and collective bargaining are described as systems. It is important to see how each of these concepts operate as a system and then place the various systems together into a macrosystem which comprises all the judicial entities in a state.

A state then, for modeling purposes, will be made up of various entities which might constitute a state system as delineated earlier in the comparison chart or a series of local system. Of course, even a state system can have local exceptions which lie outside the unified system, such as municipal courts of limited jurisdiction. These courts are not covered in the models unless they are noteworthy, e.g., Denver, Colorado, is both a city and county, and the county court has both state and municipal jurisdiction, has local funding and a local personnel system,

FIGURE 1

Key Distinguishing Factors Between State Personnel System and Local Personnel System (trial court, limited, and special jurisdiction courts)

Factor	State System	Local System
Scope	Typically affects all courts in unified system, usually with unitary budget (state funding), central headquarters staff	Typically affects one court at local level for which funding is provided primarily by a local governmental body
Employer	Typically, Chief Justice or State Court Administrator	Typically, Presiding Judge or Trial Court Administrator, though may include funding body
Funding	State legislature typically funds judges and non-judicial personnel	Local government typically funds non-judicial personnel and may provide salary supplement to judges
Technical Responsibility	State administrator's office typically develops, monitors, and controls classification and pay plan, as well as rules and fringe benefits for all courts in unified system including headquarters, but hiring is a local responsibility	Local court typically develops, monitors, and controls classification and pay plan, as well as rules and fringe benefits system for its court only

and is not part of the unified system (two tier). This court is a noteworthy exception to Colorado's otherwise state system.

Patronage

Patronage in the courts derived its strength from the political process. It survives primarily in states wherein judgeships are contested on a partisan basis. Its decline can be traced in large measure to the introduction of merit selection of judges. Other factors in decline of patronage include the introduction of merit systems in the executive branch, the unification of state courts and unitary budgeting, the complexity of court operations, attention to affirmative action (though some argue that patronage is more likely to be responsive to affirmative action than merit systems), and burgeoning numbers of well qualified court applicants.

For that matter, even political parties have increased their levels of professionalization, making it likely that, where patronage exists, the level of competence of appointees exceeds that of past generations. For the most part, increased levels of professionalization, whether patronage or merit, may be equated to increased education. This development has affected minorities, who traditionally had been excluded because of color and now may be because of education (i.e., lack thereof).

A major difference between patronage and merit lies in the recruitment and selection process. In patronage, the appointment is limited to those persons who have assisted the judge or the political party in the election of a judge or some other official. Announcement of a job opening is typically by word of mouth. The selection interview, typically by the judge, is not recorded, need not conform to standards, and is typically pass/fail. Other major differences involve promotion, tenure, and parity in compensation and working conditions.

Confidential/Exempt Employees

Closely akin to the patronage appointment is the confidential or exempt employee, who serves "at the pleasure of the judge." Perhaps at its worst it constitutes "nepotism," (familial relative) and "cronyism" (a friend). In other respects, the appointment may be the same as patronage with respect to the announcement of a vacancy and the job interview.

A confidential or exempt appointment may occur in a merit system or in a collective bargaining system. It may be unclassified, meaning that the position has no permanent status, no rights of appeal, and terms and conditions of employment are not standardized. A confidential or exempt position may be within the classified system for compensation, hours of work, and fringe benefits, but still be without any right of appeal or permanent status.

Merit Systems

Merit systems, where they exist, are generally similar to those governing court executive branch agencies. They usually provide for open recruitment, appointment, and promotion according to ability; adequate compensation, equal pay for equal work, and protection against arbitrary dismissal. There are technical considerations as well:

A merit system typically consists of classified positions. A classified position is one in which permanent status can be achieved after a suitable probationary period.

A merit system typically employs standardized selection devices whether oral interviews, written tests, performance tests, or combinations thereof.[1] Whether these devices have been fair, predictive, and selective of the best candidates, they have been administered on the premise that each candidate faced the same test. It was assumed that this equal treatment would at least be non-discriminatory and, at best, produce the most highly qualified candidates from which to make the appointments.

A merit system bases its personnel action on formalized rules which guide events, such as status changes (a status change is one which affects pay in some fashion such as promotion, demotion, transfer, discipline, dismissal, or "freezing" a salary step, fringe benefits, grievance procedure, classification, and pay plan, layoffs, etc.). Such rules control personnel actions, forcing individual actions to conform to the structure created. Rules, it is argued, make it more likely that employees will be treated equally in personnel actions.

A merit system provides for an appeal procedure from personnel actions. These procedures, in court personnel systems are focused more on grievances from disciplinary actions than from matters affecting classification and pay. (These matters have not necessarily been excluded, although they have, to some extent, been neglected.) Appeal procedures typically provide for a hearing before a formal appeals board.[2] These boards vary in

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1. That is not to say that such instruments have not been attacked legally as being discriminatory, unrelated, and invalid. Such attacks are discussed elsewhere in this monograph.

2. It is customary that such a hearing is provided after the action, disciplinary or whatever, has been taken. The California Supreme Court recently found fault with this procedure referring substantially to Arnett v. Kennedy (1974) 416 U.S. 134 [40 L.Ed. 2d 15, 19 S.Ct. 1633]. Said California, "...due process does mandate that the employee be accorded certain procedural rights before (emphasis added) the discipline becomes effective. As a minimum, these pre-removal safeguards must include notice of the proposed action, the reasons therefor, a copy of the charges and materials upon which the action is based, and the right to respond, either orally or in writing, to the authority initially imposing discipline." The court held certain provisions of the State Civil Service Act.(Sec. 19574), governing the taking of punitive action against a permanent civil service employee to violate...due process. See Skelly v. State Personnel Board, 15 Cal. 3d 194 [124 Cal. Rptr. 14, P.2d 774].

composition from completely independent bodies to committees appointed from within the agency. The courts typically hear such appeals, when so provided, before a board or panel of judges (sometimes including non-judicial personnel) from within the system. Appeals boards may be assisted in their deliberations by a hearing officer who makes findings of fact with respect to the issues and recommends a disposition of the dispute. Boards usually sustain the findings of hearing officers.

As hearing officers are usually paid by the agency, normally the defendant in such cases, it is not surprising that they are viewed as "pro-agency". After exhausting these remedies, litigants may turn to the trial courts, This poses an interesting dilemma, as the plaintiff, if suing in the state trial court, and if a trial court employee, must once again face a judge of the very court employing the plaintiff, a situation which may prompt filing in the federal court in hope of finding a more sympathetic tribunal. As an alternative, an outside judge may be assigned upon disqualification of the local judges.

Collective Bargaining

Collective bargaining is described in detail elsewhere in this monograph. For purposes of the present discussion, two distinctions should be made with reference to the courts between:

1) collective bargaining which covers a court function, such as probation, which is in the executive branch; and

2) collective bargaining between the court, at least as a co-employer, and at least one court function, such as clerical employees.

Collective Bargaining When the Court Function is in the Executive Branch

The court, in this instance, not only stands outside the funding relationship, but yields the hiring and firing responsibilities to another agency. Accordingly, the court is not considered the employer in collective bargaining terms, nor does it have management rights.[3] For the most part, such employees gained quick collective bargaining rights when a public employees' relations act was adopted. These employees had been typically lodged in the executive branch prior to passage of the act.

In states where court functions, such as probation, remain in the court and where executive branch employees enjoy

3. See discussion of management rights on p. 136, et. seq.

collective bargaining there may be pressure from among these court employees for transfer to the executive branch. This can occur, as well, in court merit systems which lag in comparability with the executive branch system.

Collective Bargaining in the Court

In this instance the court stands as the administrative authority, though typically not the funding agency. There is speculation about who may become the employer in a unified, unitary budget system. Massachusetts has named the state's chief justice as the employer, though he may delegate this authority. Presumably, since local courts stand as "co-employers" with local funding bodies, the state legislature will become involved at such time as state-funded court systems engage in state-wide collective bargaining.

Personnel System Models

Earlier discussion of models considered the state and local systems with respect to scope, employer, funding, and technical responsibility. The type of personnel system: patronage, merit, and collective bargaining should also be added as key distinguishing characteristics and a separate category, mixed systems, to characterize those jurisdictions with a combination or mix of the features of state and local systems. These are shown in Figure 2.

Judicial personnel systems should be classified as to both state and local dimensions. The state dimension in Michigan, for example, would include the Supreme Court, Court Administrator's staff, one juvenile probation officer in each county, and the basic salary of the state trial judges. The local dimension would include the trial judges' salary supplement, all other non-judicial personnel, equipment, and facilities. Michigan and California stand, to some extent, midway between the decentralized, autonomy of Texas and the unified, unitary budget of Colorado and South Dakota.

Three basic personnel models: state, local, and mixed can be identified from those states and local jurisdictions which either responded to personnel questionnaires from the authors or which were visited. Each state for which responses were received has been classified within one of these three models. The distinguishing characteristics of each model are shown below.

State System

This model is characterized generally by substantial state funding, appointed clerks, and technical responsibility attached to the administrative office of the courts (or state court administrator's office); substantial merit features with

Figure 2

Key Distinguishing Factors: State, Local, and Mixed Personnel Systems

Factor	State System	Local System	Mixed System
Scope	Typically affects all courts in unified system, usually with unitary budget (state funding), central headquarters staff	Typically affects one court at local level for which funding is provided primarily by a local governmental body	May affect a whole level of trial courts or certain categories of employees statewide, but otherwise affects individual courts because of local funding
Employer	Typically, Chief Justice or State Court Administrator	Typically, Presiding Judge or Trial Court Administrator, though may include funding body	Diffused, depending on source of funding and type of personnel system
Funding	State legislature typically funds judges and non-judicial personnel	Local government typically develops, monitors, and controls classification and pay plan, as well as rules and fringe benefits system for its court only	A mix of state and local funding, state funding may cover one level of trial court or certain categories of employees, such as court administration, reporters, and judges' secretaries
Technical Responsibility	State administrator's office typically develops, monitors, and controls classification and pay plan, as well as rules and fringe benefits for all courts in unified system including headquarters, but hiring is a local responsibility	Local court typically develops, monitors, and controls classification and pay plan, as well as rules and fringe benefits system for its court only	Typically fragmented between executive and judicial branches and between state and trial court levels
Type of Personnel System	Typically some sort of merit system under the judicial branch, but with some exempt positions -- top professionals and judges' personal employees	A merit system under the court, or a merit system under the executive branch, a patronage system or a combination may exist; if a merit system, there will be some exempt positions; collective bargaining is most often found in local systems	Any or perhaps all of the systems described in this chapter may exist in different combinations; where one level of trial court is state funded, a merit system is likely; collective bargaining is the exception rather than the rule.

exempt positions typically judges' personal employees and top professionals; and a state-wide affirmative action plan. States categorized as state personnel systems include Alamaba, Alaska, Colorado, Connecticut, Delaware, Hawaii, Maine, Kentucky, New Mexico, New York, North Carolina, South Dakota, and West Virginia. In some of these states, some courts may be excluded from the state system, such as municipal courts (e.g. Colorado and New Mexico), or the County Court, (Denver, Colorado) as previously mentioned. Of these states, only Hawaii and New York have collective bargaining involving court employees. In Hawaii, the executive branch handles the negotiations, but the administrative office of the courts performs the function in New York.

Local Systems

This model is characterized by local funding, elected clerks (usually), technical responsibility attached to the local court or local executive branch, substantial use of patronage, exempt employees, and very little use of affirmative action plans. One exception is the Circuit Court of Multnomah County (Portland, Oregon), which has developed and adopted a comprehensive merit plan. Court employees may need to meet executive branch standards, though selection and retention is a court matter, as in the Hamilton County Court of Common Pleas in Cincinnati, Ohio.

States characterized as local systems include Arizona, Arkansas, California, Illinois, Indiana, Iowa, Louisiana, Michigan, Minnesota, Missouri, Mississippi, North Dakota, Ohio, Oregon, Pennsylvania, Texas, Washington, and Wisconsin.

Of these states, the following have some collective bargaining agreements, basically negotiated by the executive branch: California (meet and confer), Iowa (bailiffs only), Michigan, Minnesota, Oregon, Washington, and Wisconsin. Michigan conducts negotiations in various ways with the court as employer, the court and county as co-employees, and the county as sole employer. Pennsylvania has ceased further union activity pending litigation.

Mixed Systems

This model mixes state and local funding in interesting ways. In certain states, the court of limited jurisdiction is state funded, while the court of general jurisdiction is locally funded. This situation is found in three states: Maryland, Nebraska, and Virginia. In Maryland, the court of limited jurisdiction is under the state executive branch personnel system. In Nebraska and Virginia, the court of limited jurisdiction is under a separate state judicial personnel system. In other jurisdictions, the state funds the trial court administrators and judges, but not other non-judicial employees, although court reporters and judges' secretaries may also be state funded in some places. In this model, certain clerks are elected while

reporters and judges' secretaries may also be state funded in some places. In this model, certain clerks are elected while others are not. The technical responsibility for personnel matters is fragmented between the executive and judicial branches and between the central administrative office of the courts and the local trial court. Both merit and patronage systems may exist side by side. Where affirmative action exists it usually applies to state-funded employees. Of the states reporting, only one has collective bargaining, New Jersey, and bargaining is conducted in the same variety of ways as in Michigan. States included in this model are Florida, Georgia, Idaho, Maryland, Nebraska, New Jersey, Utah, and Virginia.[4]

Summary

The development of court personnel systems among the states is marked by diversity. Some states have unified their personnel systems along merit principles, typically using unitary budgeting as a means for state-wide standards. Collective bargaining has been limited in these states. For the most part, these states have been those having lower populations and, if highly urbanized, having small geographical boundaries, such as Delaware, Connecticut, and Hawaii.

A second group of states has clung to local personnel administration which, for the most part, has been characterized by substantial use of patronage and exempt employees. These states typically fund courts at the local level. Collective bargaining is more prevalent in these states. These states do not share any common population or geographical similarities although, for the most part, they are more highly urbanized.

A third group constitutes a mixture of state and local funding, state and local technical personnel control, and merit and patronage features. These states are primarily in the southern and western portions of the United States.

4. Questionnaires were not received from several states. Where sufficient information was available, these states are categorized as shown in the text.

SECTION TWO

Tools and Processes of Personnel Administration in the Courts

CHAPTER III

CLASSIFICATION: THE ESSENTIAL BUILDING BLOCK

Introduction

Classification is, in essential terms, the basis, the building block, the foundation of functional, modern personnel administration, and nowhere is it more important than in the court or judicial environment. Classification turns chaos into order and shapes the senseless into a formed, structural, rational approach to personnel management.

Other than providing the information and system necessary to classify and pay employees in a clear, logical, and even-handed manner, classification and work that goes into it supply the information which is basic to examinations and recruitment, placement, performance evaluation systems, training programs, systems analysis, planning, and just about anything else having to do with people and personnel systems.

Classification and Other Terms Defined

What then is classification? To understand classification, one must first understand what a position is. A position is a group of duties and responsibilities which require the employment of one person (either full or part time). These duties and responsibilities must be assigned by competent authority to the position. The classification of a position becomes, then, the manner or format used to describe the duties and responsibilities of a position. To be redundant, because it is important, a classification is no more and no less than a description of the duties and responsibilities of a position set forth on paper.

With a large number of positions, it is not necessary to have an equally large number of classifications. In a system of any size, there will be groups of positions which are similar in the nature of their duties and responsibilities. These positions will be close enough in their activities to be placed under one description. This group of positions is called a class. Aside from similar duties, a class that has the same grade level (pay level), requires the same education and experience, and uses the same test for all of its member positions.

Class Series. A class series is a group of classes which has the same general area of concern or responsibility. For example, Court Clerks I, II, and III all work in the same general area requiring court clerical skills, but with varying

amounts of responsibility. Court Clerk I may be an entry, or lower level classification, and may be assigned to areas such as filing, entry of various prepared documents into docket books, or to a general apprenticeship throughout a number of divisions within a court. Court Clerk II may be a classification used to connote the journeyman level of expertise in filing cases, issuing various documents, bonding, etc. Court Clerk III can be used for those positions which supervise a unit of other clerical employees within a court clerical setting and which are responsible to an administrative superior.

As can be seen from the above, the higher the classification, the more responsible are the duties which are assigned to the position. An interesting approach to assigning class numbers in a series is to reverse this process. Instead of having the higher numbers denote the greater responsibilities, the lower numbers may carry the greater share of the duties. Court Clerk I then becomes the supervisory class. This approach has the advantage of forestalling the urge to create more and more classifications with higher responsibilities and pay, but it will also make the classification system less flexible and may inhibit the creation of a new class in a series when one is needed.

A class title is the title, or name, given to a classification. This seems readily apparent and taken for granted on first observation, but it should not be confused with a working title. For example, a Court Clerk III (classification title) may have the responsibility for supervising the activities of the criminal division of a court of general jurisdiction. The working title would be something like "Criminal Division Supervisor," but would carry a classification title of Court Clerk III.

Classification Plan. The classification plan is a grouping of all the classes by class series and of all the class series within the organization to form one entire, complete structure. It may include everything from court clerks and court administrators to probation officers and psychologists. (See Figure 3 which indicates a portion of a classification plan.)

Job Descriptions and Class Descriptions. Some mention, for purposes of definition, must be made of two other terms which are similar and, consequently, somewhat confusing. These terms are job description and class description. For the purposes of this work, a job description is the sum and substance of the duties of a position as described and defined by the incumbent of the position and his supervisor. A class description is a written document which sets forth the duties, responsibilities, and the activities of a classification and includes the levels of education and experience necessary for success on the job. In short, the class description is the written description of all similar positions and is prepared by the personnel analyst.

FIGURE 3

OCCUPATIONAL INDEX TO CLASSES
(An Example)

Class Code	Class Title
1XXX	ADMINISTRATIVE
11XX	General Administrative
1101	Planning and Development Director
1111	Administrative Assistant I
1112	Administrative Assistant II
1113	Administrative Assistant III
12XX	Administrative, Court
1201	Assistant Director Juvenile Court Services
1202	Director Juvenile Court Services
1211	Clerk of Supreme Court
1221	Court Administrator I
1222	Court Administrator II
1223	Court Administrator III
1224	Court Administrator IV
1225	Court Administrator V
13XX	Administrative, Jury
1301	Jury Commissioner I
1302	Jury Commissioner II
2XXX	PROFESSIONAL
21XX	Budget and Fiscal
2101	Budget and Fiscal Director

Desk Audit. A desk audit is a tool used by the personnel analyst to gather additional data about a position. These data are in addition to information already received from the job description and are used to supplement that information. The desk audit is an oral interview with the position's incumbent and his supervisor. This tool is rarely used in a hundred percent of the positions in a large organization and, when used, is primarily for clarification purposes only. For example, it makes more sense to make desk audits on a larger percentage of a diverse classification, such as court clerks, than it does to make them on a generally uniform classification, such as court reporter, as all court reporters are required to do much the same thing.

Grade. A grade is a pay or wage term which denotes a level of salary. Classifications or classes are assigned to a pay grade. The Federal Government uses some eighteen different pay grades for all of its classes. Employees of the State of Colorado currently have some eighty-two different grades. The New Mexico judiciary uses thirty-two pay grades, while both Maine and West Virginia have thirty-three. Hamilton County, Ohio (Cincinnatti) has a thirty-grade pay plan. The number of grades is not important. What is important is that, within a system, all incumbents, or member positions of a class are paid at the same grade level. For example, all Court Clerk IIs within a system would be paid at the same grade level. It is important to note that they may not receive the same pay, but that they are at the same grade or pay level. Each pay grade typically has a series of steps from, for example, one to ten, with each step being a certain amount above the one which precedes it. (See example of grade/step chart in Figure 4.)

Job Analysis. Job analysis is a method used by the personnel specialist to determine the range and extent of the duties and responsibilities of a job or position. All facets of a position are weighed and measured until a clear picture of these duties and of the position itself are determined. This is the key tool to be used, not only in constructing the classification plan, but also in developing the remainder of the personnel plan.

Classification Plan Development

Ranking System. There are three prevalent systems used in establishing a classification plan, all of which rely upon job analysis for their validity. The first method is the ranking system. This is an intra-comparative system which compares, after job analysis, the duties and responsibilities of each position within an organization with the other positions in the organization. All of the positions are then ranked in order of their duties and responsibilities from top to bottom. This ranking indicates to the personnel analyst the order of responsibilities, allows him to classify each position, and assign it to a proper grade level.

FIGURE 4

Example of a Compensation Plan, Showing Grades and Step's

GRADE	STEP 1	2	3	4	5	6	7
1	$ 333	$ 350	$ 367	$ 386	$ 405	$ 425	$ 447
2	341	358	376	395	415	436	458
3	350	367	386	405	425	447	469
4	358	376	395	415	436	458	481
5	367	386	405	425	447	469	492
6	376	395	415	436	458	481	505
7	386	405	425	447	469	492	517
8	395	415	436	458	481	505	530
9	405	425	447	469	492	517	543
10	415	436	458	481	505	530	557
11	425	447	469	492	517	543	570
12	436	458	481	505	530	557	585
13	447	469	492	517	543	570	598
14	458	481	505	530	557	585	614
15	469	492	517	543	570	598	628
16	481	505	530	557	585	614	645
17	492	517	543	570	598	628	660
18	505	530	557	585	614	645	677
19	517	543	570	598	628	660	693
20	530	557	585	614	645	677	711
21	543	570	598	628	660	693	727
22	557	585	614	645	677	711	747
23	570	598	628	660	693	727	764
24	585	614	645	677	711	747	784
25	598	628	660	693	727	764	802
26	614	645	677	711	747	784	823
27	628	660	693	727	764	802	842
28	645	677	711	747	784	823	864
29	660	693	727	764	802	842	884
30	677	711	747	784	823	864	907
31	693	727	764	802	842	884	928
32	711	747	784	823	864	907	952
33	727	764	802	842	884	928	975
34	747	784	823	864	907	952	1000
35	764	802	842	884	928	975	1023
36	784	823	864	907	952	1000	1050
37	802	842	884	928	975	1023	1075
38	823	864	907	952	1000	1050	1103
39	842	884	928	975	1023	1075	1128
40	864	907	952	1000	1050	1103	1158
41	884	928	975	1023	1075	1128	1185
42	907	952	1000	1050	1103	1158	1216
43	928	975	1023	1075	1128	1185	1244
44	952	1000	1050	1103	1158	1216	1277
45	975	1023	1075	1128	1185	1244	1306
46	1000	1050	1103	1158	1216	1277	1341
47	1023	1075	1128	1185	1244	1306	1372
48	1050	1103	1158	1216	1277	1341	1408
49	1075	1128	1185	1244	1306	1372	1440
50	1103	1158	1216	1277	1341	1408	1478
51	1128	1185	1244	1306	1372	1440	1512
52	1158	1216	1277	1341	1408	1478	1552
53	1185	1244	1306	1372	1440	1512	1588
54	1216	1277	1341	1408	1478	1552	1630
55	1244	1306	1372	1440	1512	1588	1667
56	1277	1341	1408	1478	1552	1630	1712
57	1306	1372	1440	1512	1588	1667	1750
58	1341	1408	1478	1552	1630	1712	1798
59	1372	1440	1512	1588	1667	1750	1837
60	1408	1478	1552	1630	1712	1798	1888
61	1440	1512	1588	1667	1750	1837	1929
62	1478	1552	1630	1712	1798	1888	1982
63	1512	1588	1667	1750	1837	1929	2025
64	1552	1630	1712	1798	1888	1982	2081
65	1588	1667	1750	1837	1929	2025	2126
66	1630	1712	1798	1888	1982	2081	2185
67	1667	1750	1837	1929	2025	2126	2232
68	1712	1798	1888	1982	2081	2185	2294
69	1750	1837	1929	2025	2126	2232	2344
70	1798	1888	1982	2081	2185	2294	2409
71	1837	1929	2025	2126	2232	2344	2461
72	1888	1982	2081	2185	2294	2409	2529
73	1929	2025	2126	2232	2344	2461	2584
74	1982	2081	2185	2294	2409	2529	2655
75	2025	2126	2232	2344	2461	2584	2713
76	2081	2185	2294	2409	2529	2655	2788
77	2126	2232	2344	2461	2584	2713	2849
78	2185	2294	2409	2529	2655	2788	2927
79	2232	2344	2461	2584	2713	2849	2991
80	2294	2409	2529	2655	2788	2927	3073
81	2344	2461	2584	2713	2849	2991	3141
82	2409	2529	2655	2788	2927	3073	3227

The advantage of this system is that it allows a clear, concise method of comparing one position with another and for weighing the relative merits of each position. It is also relatively simple to use. The disadvantage is that it can be rather unwieldy when applied to a large, geographically far-flung organization, such as a state judicial system. For example, it would be difficult to weigh the merits of a position in a large metropolitan area with a position in a rural judicial district. A Court Clerk III (class title) may be the head of the civil division in the metro court, but the clerk of the entire court in a rural area.

Position Classification. A second method of classification may be called position classification. Under this method, all jobs are analyzed to determine the level of duties and responsibilities. Like or similar positions are then grouped together to form a sort of "loose" class. Class descriptions are then prepared or, if already prepared, are analyzed and modified. The grouping of job descriptions in a loose class are then compared with the various class descriptions until the one most suitable is identified. Then the job descriptions which are borderline are moved into the higher or lower classes in the class series, or into an entirely different class series, if this move is warranted.

The advantage of this system is that all job descriptions are compared to the same standards across an entire system, and this can be done regardless of the size of that system. The big disadvantage is that it may be somewhat subjective, as the individual position tends to lose individual identity with other positions of the same class, and the uniqueness of the position tends to be leveled, with certain salient features being forgotten or ignored.

Point Rating System

The third method is the point rating system. In this system, as in others, a thorough job analysis must be performed prior to any further action taking place. Each duty of the position is given an assigned point value. For example, filing documents may have an assigned value of two points, whereas supervising persons who file documents may have an assigned value of ten points. When all the duties and responsibilities of a position have been identified, weighed, and assigned a point value, the numbers are totaled, and the full value of the position is calculated. The values of all of the positions are then entered on a log in numerical order, so that they may be compared with each other, and so that proper wage and classification levels may be determined. The advantage of this approach is that it is relatively scientific and sophisticated, and much of the work may be done by a computer. The disadvantages are that it takes a person with training and experience in the area to apply it correctly.

The Classification Process

The size of the court personnel system is unimportant for the purpose of classification. Classification is relevant or applicable regardless of the size of the system to which it is applied, except that, as the size of the system grows, the more structured and formalized the classification system becomes, with the result that there is less flexibility than in a smaller system.

In a smaller personnel system (fewer than 500 employees) more flexible, less rigid class descriptions can be used, while still maintaining control over the system. The smaller system can get by with terms such as "desirable" when applied to education or experience, and duties can be described in a more indefinite manner. The main reason for this is that the communications from top to bottom, bottom to top, and laterally in smaller systems are more clear than they are in larger systems. These communications help explain to people what is expected of them and, consequently, make much easier the process of classification control.

Determining Classification Study Need

The use and application of the principles and tenets of classification will make any personnel system function more efficiently and equitably. The first step is a classification study. There are several factors which must be considered prior to undertaking the study. Initially, several questions should be asked: Are there written class descriptions which set forth accurately the duties and responsibilities of the various employees of the court or judicial system? Are there any written formalized class descriptions at all? Do responsibilities appear to be commensurate with salary? Has a classification study been performed within the past five to seven years? If the answer to one or more of these questions is no, a study is probably needed.

Judicial Support Needed

At the outset, it is important to gain the support of the bench. This is necessary, because it is surprising to find the amount of fear and apprehension that the mention of a classification study can generate. If the judges, especially those with administrative authority and responsibilities, support a modern personnel program, including a classification plan, problems are minimized. If the judges are lukewarm or negative, the study must be sold on its merits, with no embellishment or promises which would well prove to be the undoing of the system later on.

Judges who are adamantly opposed to the idea of a study fall into two categories: those who can be convinced of such a system's merits, and those who will never be convinced. It is

presumed that an administrator or other person proposing a classification study as the first step in developing a formal personnel system knows his or her environment. He or she knows or should know what is likely to be acceptable and how to present it so that it is.

Once the need for the study has been determined, and there is adequate support from the bench, the scope of the study should be decided, as well as the method of conducting the study.

In a circuit or district court or a state-funded judicial system where the administration and operation of probation services are also a judicial responsibility, there may be a need only to study court personnel or probation personnel rather than both. There may be some other reason, perhaps financial or political, why the decision may be made to study one and not the other. Such a decision must be carefully made, because either the studied or nonstudied group may feel it is being treated unfairly.

Another closely related problem is the inclusion or exclusion of personal or confidential employees of judges. These employees should be included, because the same classification scheme and salary schedule should apply to all employees, even if some are personally selected by judges as their confidential staff members. Different salary schedules cause morale problems, and, even if the same salary schedule applies, a large number of exemptions from the classification plan disrupts the uniformity, fairness, and effectivenss of the system.

Making the Classification Study

This explanation of the classification process is aimed at the trial court level, assuming trial courts of both general and limited jurisdiction with responsibility for juvenile probation services. The principles are the same regardless of the size of court and auxiliary services included. Indeed, they apply to a state system as well. It is assumed that the study has the support of the bench.

Proper preparation and planning at the start of the study will save much wasted time in the future and will do much to alleviate the fears and concerns of the employees.

In House or Consultants. First, it must be determined who will make the study. Should the study be done in-house, or should a consultant be retained? Each has distinct advantages and disadvantages. An in-house study costs less. The system is also familiar to the persons doing the study or will become so. The main concerns are in-house capability and capacity, because most courts and related agencies lack expertise in the area of personnel. Also, in-house staff may be less objective than someone from outside. In addition, the reaction to the

study findings may result in a climate which may be so "hot" that it is difficult for in-house staff to maintain both its credibility and that of the study. This is especially true in smaller jurisdictions.

The use of an outside consultant is a way to avoid this problem. The consultant brings with him a great deal of expertise and objectivity in the area of personnel classification and can generally be counted on for a good work product, as his reputation and future contracts depend on it.

Another important consideration in determining who is to do the study is whether the decision has already been made to establish a formal personnel system following the classification study or whether the study is being made to determine whether a formal personnel system is needed.

In the former instance, the decision may be made to spend the money on augmenting in-house staff rather than employing a consultant, so that in-house staff will have gained the experience requisite to administering the system after it is established.

In the latter instance, a consultant is preferable, because the court has not made a staff commitment before it decides to establish a system. A consultant may also be seen as more objective in this situation, because he does not have a vested interest in seeing the system established. A consultant may also be preferable in a small court or agency, where the court administrator would be able to maintain the system without additional staff help once it is established.

There are drawbacks to the use of a consultant. The costs are greater, and a consultant frequently has to be led by the hand through the court organization maze. In other words, if he has not had judicial personnel study experience, he has to learn a new and different environment. These negating factors are usually outweighed by the consultant's ability to take the heat for the disappointments inherent in the classification process; he can train existing personnel to maintain the classification plan, and he can give management the option of implementing the plan either wholly or in part.

In selecting a consultant to do a classification study, it is important to know his background, or, at least, the background of the firm he represents. It is also helpful, if the consulting firm has had experience working in the judicial systems.

Requests for proposals (RFP's) which detail the study to be undertaken should be sent to all organizations and individuals deemed eligible after investigation. The RFP must include all information pertinent to the study. This information

must include, but is not limited to, the site of the study; the number of positions to be classified; the number and types of units to be considered; the general scope of the study; the on-site resources available to the consultant; who has the power to approve or reject the classification report; and the deadline for submitting the RFP.[1]

Reviewing Proposals. Cost is an important factor in reviewing RFP's, but it is important to remember that the least expensive proposal is not always the best. For example, one RFP lists the following criteria for awarding a contract for a personnel study:

> a) Technical and Management Approach. Emphasis will be placed on depth of understanding and the soundness of the offeror's study approach and work implementation plan.
>
> A clear statement of the project plan and use of resources should be provided to assure compliance with the requirements within the time limits and budget framework of the project. This statement should include study approach relationships and sequence of the tasks and methods for managing the study.
>
> b) Performance Credibility Based on Experience and Resources. Emphasis will be placed on specific experience in the court personnel field afforded by the offeror's staff to be employed on the study. This experience should be demonstrated by successful completion of projects of comparable work scope. Assigned key personnel must possess demonstrated familiarity with the structure, functional relationships, and operational problems of a court system, with emphasis on personal administration.
>
> c) Price.[2]

Once the consultant is selected and under contract, the contractor should make sure that all lines of communication are open. Failure to do so can undermine the study from the start.

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1. The Criminal Court Technical Assistance Project, Institute for Advanced Studies in Justice, American University Law School has prepared RFP's for personnel studies in several jurisdictions through consultants funded by the Law Enforcement Assistance Administration. Copies may be obtained by contacting the Institute at 4900 Massachusetts Avenue, N.W., Washington, D.C. 20016.
2. Institute for Advanced Studies in Justice, Criminal Courts Technical Assistance Project, A Request for a Proposal to Design and Develop a Personnel Merit System for Nonjudicial Court Employees in the State of Maryland (Washington, D.C.: The American University Law School, 1976), p. 20.

The consultant should be furnished with all material that has a direct or indirect bearing on the subject matter at hand, including, but not limited to, all pertinent statutes, rules, organization charts, work-flow charts, any previous studies, and procedural manuals. All of these documents will give the consultant a broader understanding of the system.

In addition, the court administration should offer any assistance to the consultant that he may need. For instance, it will help him a great deal, if the administrator explains the purpose of the study to all the employees, allaying their fears and suspicions, and distributes the classification questionaires. The questionnaires (see example, see Appendix B) should be distributed approximately three to four weeks prior to the arrival of the consultant on site, with a mandatory return date at least one week before the arrival of the consultant.[3]

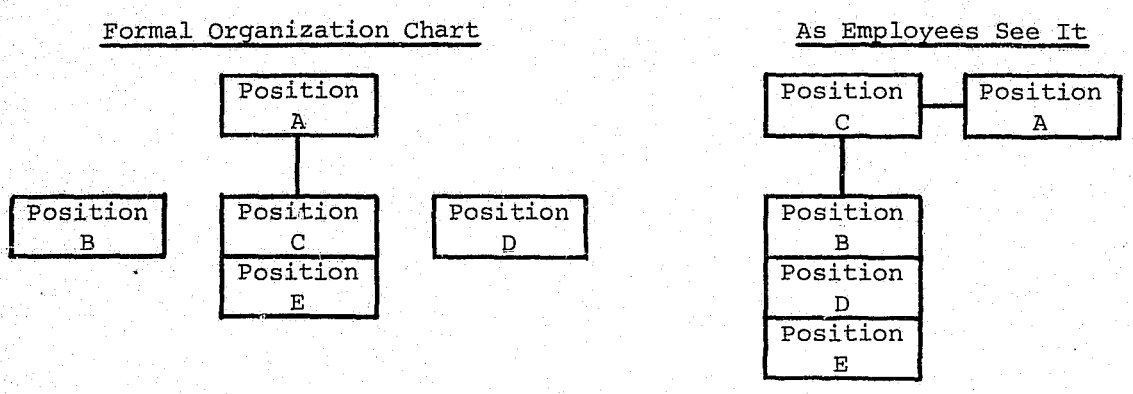
Questionnaire Preparation. Who should prepare the questionnaire? Although some personnel specialists propose that the analyst or the supervisor do the preparation, it is these authors' contention that the person who knows the most about the position (i.e., the incumbent, or if position is vacant, the supervisor) complete it. There should be a review of the statements made by the incumbent by the supervisor. This supervisory review, if done objectively, can cut down on the impact of the incumbent's ego, or lack thereof.

Once all the questionnaires have been filled out and reviewed, the consultant can begin his work in earnest.

Charting the Results. The consultant's first job should be to categorize the questionnaires in the form of a supervisory hierarchy. On the bottom of each questionnaire (see Appendix B), there is a section concerning whom the incumbent supervises, and who, in turn, supervises the incumbent. This charting will indicate to the consultant (and to astute management) how employees perceive the manner in which the organization functions, as well as possible sources of conflict (i.e., Position A indicates that it supervises Positions B, C, D and E, while Positions B, D, and E indicate they are supervised by Position C. (See example in Figure 5.)

3. While this discussion centers on the conduct of the classification study by a consultant, the same procedures and sequence of events would apply if the study were made in house.

FIGURE 5



The chart should also contain the position numbers of the employees, so that they can be cross-referred to the questionnaire.

Pre-Desk Audit Allocations. After the charts have been developed, pre-desk audit allocations may be made. To do this, the questionnaires are divided into groups which have similar responsibilities and duties. These groupings make it possible to identify the employee groups or classes, which will be used in position classification. In other words, all employees who have the responsibility for filing documents in various court records may be titled Court Clerk I; all employees who have the responsibility for supervising juvenile probationers may be titled Juvenile Probation Officer II, etc. This is done until all positions have been tentatively allocated to one group or another. These groupings are reviewed and reviewed again, shifting some up and some down, until the initial allocation process is deemed to be complete by the consultant.

Desk Audit. Desk audits are next performed to determine the validity of the questionnaire responses or job descriptions; to fill in or round out the information supplied in the questionnaires; to answer any questions which may have been raised by the questionnaires; and to convince employees that the person conducting the study is actually a human being, and not an office bound technician who casts their fates to the winds, without even talking to them.

Desk audits, in a medium or small sized court, should be performed on all positions. This is especially true if the court has not had a classification system prior to the study. In larger systems, it may be difficult to do desk audits on all positions, even though it is desirable in a first-time study, but it can be done. It is interesting to note that Colorado performed what amounted to a hundred percent desk audit on 1,206 positions during its initial study in 1968-69, and a forty-six percent desk audit during the follow-up study in 1973.

A larger system which already has a classification plan should require only a thirty-five to forty-five percent desk audit sampling in subsequent studies. The reason is that there are many positions, such as court reporter or bailiff, each of whose job duties are similar enough to alleviate the need for more than a small general sample. Even so, it is important for all types of positions to have at least a small sample of the class audited, including, of course, one and two position classes.

During the course of the desk audit, it is important for the consultant or in-house analyst to put the position incumbent at ease and to allow the incumbent to expand upon his own duties and responsibilities, by asking open-ended questions. The consultant should guide the questions and the course of the conversation as much as possible to keep it centered on the subject at hand. The consultant must also watch out for the inevitable ego problems which crop up during the desk audit and make sure that the responsibilities are not inflated by larger egos, or deflated by smaller ones. All findings must be confirmed or discarded after discussions with the incumbent's supervisor.

Writing the Class Description

After the desk audits are completed, the class descriptions must be written. The information used in these descriptions is taken from the job description prepared by each incumbent and the subsequent desk audits performed on the positions.

The job descriptions are grouped, once again, by class, changing those descriptions about which additional information has been gathered through the desk audit, either up or down, depending on the nature of the duties and responsibilities. Remember--this is an important point--classification or reclassification does not mean that an employee can only be raised. It is a two-edged sword; the employee can be lowered too.

Salient and recurring features of the groups of job descriptions in the system are culled and noted. These recurring features are then set down in draft form and studied. In a group of questionnaires loosely entitled "Court Clerk," certain patterns will begin to emerge (see example in definition of "class series"). The common features in each of the classes in the class series are then used to write the final class description.

Each class description should have:

(1) A Descriptive Title, or a title which states generally, but accurately, what the nature of the classification is;

(2) a "Definition of Work" section which elaborates, in general terms, what the responsibilities of the position are;

(3) an "Examples of Work Performed" section which defines more accurately what the classification is responsible for and what the nature of the work is;

(4) a "Skills, Knowledge, and Abilities" section which sets forth the attributes necessary to perform the job effectively;

(5) an "Education and Experience" section which defines the minimum preparation necessary to perform the job effectively; and

(6) a "Necessary Special Requirements" section (if necessary) which states what, if any, special requirements are needed for a position (law degree, C.P.A. certificate, Court Reporting certificate, etc.). (For example of job description, see Appendix C.)

After the job descriptions are complete, the entire package, including the final allocations, are presented to the chief or presiding judge in conjunction with the court administrator. After, and only after, their review and approval, the allocations are announced to the employees, and a copy of each employee's class description is given to him/her for review.

Employee Review and Appeal

This can be the most tense moment in the study. A wise move is to show the incumbent his or her salary at the same time the class description is reviewed. This will alleviate the suspense in that area. In addition, it would be wise for the consultant or the person making the study to hold an appeals session for those employees who feel they have been wronged by the classification study. This hearing, too, will relieve some of the pressure from a potentially difficult situation. The appeals session should include someone from the court sitting on the appeals board, as well as the consultant or his representative. This process will enable the consultant to receive information which is more in depth than that which was considered initially. Also, it can serve as a training session for the staff member selected to serve on the board.

With the classification study essentially completed, the consultant moves on to a new job, leaving the administrator of the court to implement the plan.

The court is not bound by the decision of the consultant. The court must decide for itself how much of the plan is to be put into effect. If the court feels that certain positions have been rated either too high or too low, it is free to change them. But, by and large, the recommendations of the consultant should be accepted as accurate and should be implemented with little or no modification.

With the plan placed in operation in a smooth, efficient manner, management should make sure that it is maintained and not neglected.

Plan Maintenance

The classification study and the implementation of the plan are only half the battle in the classification process. True, it is a major step forward to have a classification plan in the court, as it leads to more progressive personnel administration, especially where none has existed before, but the proper maintenance of the system and the manner in which maintenance is carried out are the important factors in determining the viability of the classification plan.

To remain effective, the plan and the personnel charged with its administration must have the support of the chief or presiding judge and the entire bench, as well as non-judicial administrative personnel. This support will allow those responsible for the plan's maintenance to monitor it and correct it as time passes, with little or no chance of the plan's being set aside to allow a return to the "old ways" of personnel administration.

To maintain a plan in a trial court setting is somewhat more difficult than in a state-wide or more remote and centralized system. Trial court administration may have its view obfuscated by the various personnel interrelationships which exist within a court and may be incapacitated in rendering an objective decision. Any capable administrator should be able to recognize when this situation exists and should act accordingly by requesting help from the outside, if necessary. This help can come from the personnel analyst from the local city or county merit system, if one exists; from the state court administrator's office, if it has personnel who are capable; from the Intergovernmental Personnel Act staff members in the area, if they have the time and expertise; or from a consultant (as a last resort, as this can be fairly expensive).

Three observations should not be interpreted to mean that the plan's maintenance should be shoved off on a third party. It only means that outside assistance may be needed for those positions where the administrator feels he is unable to render an objective decision. The remaining positions should be handled by in-house staff.

Reclassification

After the plan has been in operation for six months to a year, some dissatisfaction may set in with the incumbents of certain positions. These persons should be allowed to request reclassification of their positions. Reclassification requests stem typically from two areas. One is dissatisfaction with

salary, which is not a concern of the classification process; and the second is a change in the duties assigned to a position, which is a concern of the classification process.

All positions for which classification is requested should have a position classification questionnaire completed and should have a desk audit performed. Care must be taken to determine the impact of decision regarding the reclassification request. Will changing the classification set off a wave of similar requests? Is the change warranted, based on new duties, or did the initial study overlook some of the more responsible features of the position? It should be noted, as in the initial study, personality, volume of work, efficiency of the incumbent, qualifications of the incumbent, diligence, length of service, recruiting problems, and financial need are not classification problems. The nature and difficulty of the work performed, the authority exercised by the position, the supervision exercised and received, and the qualification requirements of the work are classification problems or concerns.

The incumbent should have access to a classification appeals board, if he feels he has been wronged in the reclassification process, in the same manner as when the initial classification was determined. This board should be the "court of last resort," and its decision should be final.

Periodic Class Review

In addition to individual reclassification requests, it is wise to perform periodic checks on all of the class series within the organization. The only thing constant in personnel administration (as in so many other things) is change itself. Periodic class series checks give valuable information on the metamorphosis of a class series and allow the administration to restructure and act accordingly. These checks should be made every two to three years in smaller organizations and every three to four years in larger ones. Regardless of time limits used, a check should be made whenever it is felt that significant change has taken place.

Administration is also wise, if it reviews the nature of the duties of each position as it becomes vacant. Review of vacant positions allows for flexibility in position control both in classification and in meeting organizational needs. A vacant position which is classified properly may be moved to a different unit where the personnel needs are greater, be reclassified, and used more effectively without having an incumbent go through culture shock.

One final word on plan maintenance. In the larger systems, such as a state court system, the question of plan maintenance becomes one of centralization versus decentralization. Both approaches have their benefits, but centrailized

control of the classification process appears to be the better way to handle it. A centralized classification system relieves a lot of the pressure resulting from interpersonal relationships which exist at the local level. It may be better to blame classification problems on a remote state office, than have interoffice hostility aimed at the trial court administrator, which could reduce his effectiveness. In addition, a state office can probably supply more expertise in the area of classification than can be expected to be found at the local level. After all, a trial court administrator has his hands full with dockets, budgeting, accounting, and the public, without having the additional burden of the classification process. The local trial court administrator must be brought into the process by the personnel analyst, and he should be made aware of the potential consequences of the actions contemplated by the personnel analyst.

An example of personnel rules which govern the classification process, including the classification review board, are found in Appendix E.

CHAPTER IV

RECRUITING: A MEANS TO AN END

Matching Needs and Supply

As explained in Chapter III, the information gathered during the classification study is essential in the formulation of other positions of the personnel plan. One of the areas in which this information can be used most effectively is in the recruiting process.

Through the classification study, the minimum qualifications necessary for a person to perform effectively on the job are determined. These qualifications are established to be inclusive rather than exclusive. For example, a clerical position might be filled by a degree-holding individual, but it would not be desirable to make a college degree a minimum requirement for the position. The elimination of artificial barriers of this nature seeks to include people rather than exclude people from the system.

These minimum qualifications and the information concerning the duties and major responsibilities of the position are the items which are used to develop recruiting literature.

Labor Needs

The first step is to determine labor needs (once again the classification plan is extremely helpful) and to compare those needs with the type of labor market from which the court recruits. If the area is primarily blue collar labor, there may be some problems recruiting persons for what are essentially white collar jobs. This example, although extreme, indicates that recruiting may be somewhat more difficult in some localities and for some classes of positions.

Labor Market Survey

Courts usually employ persons in at least some of the following categories: clerical, secretarial, bookkeeping, administrative/supervisory (court administrators), professional (probation officers, psychologists, marriage counselors, etc.) and legal (law clerks, referees). There may be other categories, as well, if the court is responsible for juvenile detention or related services. Knowledge of the labor market will go a long way to insure that the applicants who come to the court not only are qualified, but may be the best available.

A labor market survey can accomplish several things for the administrator. It can provide information concerning the types

of applicants an administrator can expect for open positions; it can indicate the unemployment rate and the types of persons unemployed in the recruiting area; and, based on the information gathered, can indicate what should be the size, type, and scope of the recruiting effort.

The most efficient manner in which a labor market survey can be conducted is to gather information from a variety of sources to give the administrator an over-all employment picture. The area unemployment rate can be found by checking with the state department of labor or the federal government. Types of persons typically employed in the area can be checked with the local chamber of commerce or employers' groups and organizations. Types of persons graduated from local high schools and colleges and their propensity to stay in the local recruiting area can be found by checking with these institutions or the state department of education.

Many other pieces of information can be discovered by consulting these and similar agencies. The information so gathered will give an accurate representation of the area's employment picture.

The Recruitment Process

Extensiveness

How extensive should the recruiting effort be? The local administrator is in a much better position to answer this question than someone from the outside. He or she should know after the completion of a labor market survey how widespread a campaign is required. He or she may find that the types of persons he or she seeks are not in the employing area and, therefore, efforts will have to be made outside the normal recruiting boundaries. He or she may discover that the types of persons sought are plentiful in the standard recruiting area, so that recruiting can be more selective, such as relying on those few agencies or other sources which can be expected to offer the most qualified talent.

What, then, are the appropriate target areas for recruiting efforts? Certainly, a court administrator would not seek qualified clerical workers from a factory assembly line or another traditional blue collar field. He or she must determine where efforts logically should be directed. State and local agencies which deal with labor and employment matters are generally willing to aid almost any employer who requests advice. These agencies can also steer an employer to other agencies that can help in certain individualized areas, such as clerical, bookkeeping, professional, etc. An administrator should develop and keep updated a list of all agencies that perform recruiting and placement services in his or her employment field. This will enlarge and expand greatly the employment market he or she is trying to tap. Actions of this nature will enable the administrator to reach out to the most qualified persons available.

Minority Recruitment

A court administrator must be sure that he or she is reaching all sectors of the community in his or her recruiting efforts, because the courts are a public agency paid for by public funds. To facilitate the efforts, he or she should contact the heads of local, state, and federal civil rights agencies and enlist their aid in developing a list of organizations and groups which specialize in minority recruitment. This list should be incorporated in the full listing of agencies used for recruitment purposes.

The contact with and use of minority recruitment agencies will also help affirmative action efforts immensely. A good working relationship with these groups should furnish a steady stream of qualified minority applicants for available positions and will help in reaching the entire community.

Personal Contact

Personal contact is necessary to insure that the recruiting/placement agencies are doing their best. Personal contact will put a "name to a face" when subsequent telephone or written contacts are made and will tend to personalize the entire procedure. If an agency has not referred applicants for some period of time, the administrator should make personal contact with the agency head to determine if there is a problem, and, if there is, to move immediately to rectify the problem, so that the agency will once again furnish applicants to the organization.

The list of agencies which is developed may be anywhere from a handful to over a hundred and depends on the size and scope of the judicial organization and the area covered. This list will become obsolete and useless unless it is kept up to date. Recruiting agencies come and go and depend largely on their success as a go-between for their applicants and employing agencies. In addition, many of these agencies receive their funding from grant sources. When these dry up, the agency either goes out of existence or receives funding from a different source, changes its name, and continues to give service of the same or similar nature.

Intergovernmental Efforts

One example of a joint government effort in the recruiting area is the Intergovernment Job Placement Center in Denver, Colorado. This agency is supported by funds from the Intergovernmental Personnel Act and was set up to act as a centralized recruiting and information disbursement center for all governmental agencies in the Denver area. The agency exhibits the job announcements of local, state, and federal systems and maintains a supply of each agency's application forms for distribution to interested applicants. If an agency of this type exists in a recruiting area, its use and support are strongly recommended. If one does not exist, intergovernmental cooperation between the courts and other employers is suggested to establish one.

Intergovernmental cooperation, an example of which was discussed above, is important in public personnel administration. The prudent court administrator must realize that his is a small agency when compared with the agencies of the executive branch of government; consequently, it is important to make sure that everything possible is being done to make the available positions attractive to applicants.

The executive branch, with its greater resources and number of available positions, is generally perceived by the public to be "the employer" in the public area. This misconception may hinder recruiting efforts of the court. To combat this competition, it is important to inform the public of the availability of positions in the court area. This can be done through the agency approach, already mentioned, and through media announcements. The more public knows about an employer, the better off the agency is in the recruiting arena.

One big advantage that the smaller judicial or court agency has is the speed with which it can move to fill positions. The executive branch bureaucracy frequently cannot, due to size, provide the fast personnel service that the smaller court agency can. For example, if both the executive branch and the courts are recruiting clerk-typists, and the courts can fill the position in two to three weeks from time of announcement, the recruiting advantage may lie with the courts.

One method of recruitment, that of using the job placement center or agency, has already been explored, but one type of agency has not been mentioned. The college placement agency frequently has a difficult time in placing graduates in governmental positions. The reason is that employers, such as court administrators, do not use these centers in their recruiting activities to the extent that they should. The college placement office is probably the best source of entry-level professional applicants there is. Administrators should use them, if at all possible.

Private Agencies

There are many private employment agencies which make their living by placing employees in jobs for a fee. These fees typically constitute a one-time charge of one month's salary for placing a person in a position. This fee may be paid by either the employing agency or the applicant. These agencies do a good job -- their continued existence depends on it -- but they should be used only if recruitment efforts through public and non-profit sources are not successful. Every citizen has an absolute right to information concerning jobs in the public area, and, consequently, should not have to pay for information which is a public right.

Word-of-Mouth

One of the most frequently used methods of recruiting is aptly called "word-of-mouth." This is a method which has been used

historically by all agencies, both public and private. Its use may be either intentional or accidental. Word-of-mouth recruiting is exactly what its name implies; employees of the agency learn of a vacant position and tell their friends about it. These friends -- at least, some of them -- apply for the position and are accepted or rejected.

The advantage of this approach is that the friend of an employee is typically very much like the employee himself. Therefore, if an administrator has what he or she considers a good group of employees, word-of-mouth recruiting should perpetuate the quality of his or her work force.

There are disadvantages to this method of recruiting. One is that there is no agency acting as a screening agent to refer applicants with the minimum qualifications necessary to perform on the job. The other big disadvantage is that the "birds of a feather" approach alluded to above can have a backlash effect in the area of affirmative action recruiting. If employees are predominantly Anglo, their friends will be, in all probability, predominantly Anglo. Therefore, an administrator will be tapping only one segment of the work force. Also, this type of recruiting has the effect of making employment by the courts appear to the public as a closed shop, depending on whom you know and not on ability. Word-of-mouth recruiting, then, should not be relied upon as the sole recruiting method; rather, it should be used in conjunction with other methods.

Using the Media

Other sources of recruiting employees are the various media outlets available to employers. The big media outlet is, of course, newspaper want ads. Newspapers reach a large portion of the population at very little expense, but they may not reach everyone. Care must be taken here to assure that the newspapers selected to carry recruiting announcements are representative of the community.

The larger newspapers certainly should be chosen to publish job announcements, but consideration should be given to the smaller weekly journals which service minority or ethnic neighborhoods. Support of these smaller journals with the court administrator's recruiting literature provides another way to reach minority communities for applicants. In addition, by advertising in these publications, the court is helping to support a viable community force.

Trade journals or periodicals which may be available should not be overlooked by the court administrator. A local legal secretaries' association may have a regular periodical which can be used to advertise for the always needed secretarial/clerical employees.

Radio and television, while being considerably more expensive, have the capacity of reaching out to a large segment of the population and informing it of the job opportunities available in the courts. The court administrator's budget and needs are the key here. Will the expense incurred be justified by the increased exposure and a more plentiful supply of highly qualified applicants? This question must be answered before jumping into the expensive advertising market.

National Recruiting

At times, the court may be forced into stepping outside the normal recruiting area and procedure in order to fill certain positions. Jobs which are difficult to fill from the normal recruiting area include, but are not limited to, court administrator, probation supervisor or director, budget officer, personnel director, or any of the many other positions which require a specialized background.

A number of very good sources is available to the administrative officers of a court to effect a good nationwide recruitment effort. Among them are: The News and Views, publication of the American Society for Public Administration (moderate cost); the Criminal Justice News Letter (free); the Job Finder from the Western Governmental Research Association at the University of California, Berkeley (free); State Courts Reports from the National Center for State Courts; The Institute for Court Management; the Masters' Degree Programs at the University of Denver College of Law and the University of Southern California; The New York Times (relatively expensive); and The Wall Street Journal (very expensive and very effective). This list is not exhaustive, but gives examples which will give good results in any nationwide recruiting effort.

One thing which must be guarded against in any nationwide recruiting effort is the practice of some agencies that prey on the public employer. An agency reads the announcement in one or more sources and runs the same advertisement in its own publication. The same agency then bills the court accordingly. This is all done without permission, and may cost the court, if its administrator is not careful, several hundred dollars. It is best to report an agency of this type to the local prosecutor, attorney general and the attorney general of the state where the bill originated.

Job Announcements

Regular announcements of vacant positions are a must, if the court expects to be a successful competitor in the recruiting market. These announcements can, of course, be regular only if there are vacancies on a weekly or monthly basis. Regular vacancies are symptomatic of larger agencies where there is more

position turnover. A mechanism for a regular and orderly procedure must be set up for printing and distributing these announcements, if they are to be effective.

Job announcements should be distributed to all of the agencies with which the court has contact and should be posted in all court facilities, as well as such offices as the district attorney's, public defender's, and any other agency which interacts regularly with the court or court-related agency under the administrator's jurisdiction.

The job announcement, regardless of where it is sent, is a most important document, as it represents both the court administrator and the court. To be brief and accurate, the announcement must contain the following information:

1) A descriptive job title: This title may be either the classification title or the working title, or both, and should be generally descriptive of the job to be performed.

2) A brief summary of duties: This may come from the "Definition of Work" section of the class description, or may be written especially to summarize the duties to be performed.

3) Salary: The salary range must be indicated unless the level of the wages is minimal, and may, consequently, repel rather than attract the prospective applicants. If the range is indicated, and there is a specific starting point above which an employee cannot be hired, this should also be indicated.

4) Where application is to be filed: Obviously, an applicant cannot file a resume or application unless the address of the employing agency or personnel office is mentioned in the job announcement.

5) Closing date for application: This is an absolute necessity, as no closing date mentioned serves no purpose other than to frustrate the applicant. If few or no applications are received, it is a simple matter to announce the position again and to intensify recruiting efforts.

6) Type of examinations: The type of examination to be given for the position should also be indicated in the announcement. Also, it is helpful to give the weighting value of each component of the examination. If the examination is to be 50 percent written and 50 percent oral, it should be so stated.

Figure 6 presents an example of a job announcement.

FIGURE 6

Judicial Department

COLORADO STATE JUDICIAL BUILDING
TWO EAST FOURTEENTH AVENUE
DENVER, COLORADO 80203
(303) 831-1111

JAMES D. THOMAS
STATE COURT ADMINISTRATOR

E. KEITH STOTT, JR.
DEPUTY STATE COURT ADMINISTRATOR

February 10, 1978

MEMORANDUM

1) COURT ADMINISTRATOR II	Boulder	Criminal Division
2) DISTRICT ADMINISTRATOR I	Craig	District Court
3) COURT CLERK IV (Promotional Only)	Sterling	District Court
4) DIVISION CLERK II (Extension of application date for 2/3/78 announcement)	Denver	Juvenile Court
5) DIVISION CLERK I	Colorado Spgs.	County Court
6) DIVISION CLERK	Colorado Spgs.	County Court
7) COURT CLERK II	Breckenridge	District Court
8) COURT CLERK I (.5 FTE Position)	Hot Sulphur Spgs.	Combined Court
9) BAILIFF	Colorado Spgs.	County Court
10) CLERK TYPIST I	Littleton	Probation Department
11) PROGRAMMER I	Denver	State Court Administrator's Office

1) COURT ADMINISTRATOR II $1,216-1,630

DUTIES: This is responsible administrative and supervisory work in administering and supervising the work in a court in a judicial district with a large population. Work involves responsibility for organizing, directing, coordinating and directly supervising the activities of subordinates engaged in processing all district, probate, or county court cases in a single court with a high degree of activity. Work is performed under the general supervision of a district court administrator or judicial district administrator.

DESIRABLE EDUCATION AND EXPERIENCE: Graduation from an accredited four-year college or university with major course work in public administration, business administration or a related field; and experience in an administrative or supervisory capacity.

APPLICATIONS TO: Tom Evans, District Administrator, Boulder Justice Center, 6th and Canyon Blvd., Boulder, Colorado 80302, by February 24, 1978.

2) DISTRICT ADMINISTRATOR I $1,277-1,712

DUTIES: This is highly responsible administrative and supervisory work in directing the administrative activities of a small judicial district. Work involves responsibility for organizing, directing, coordinating and supervising directly or through the use of intermediate supervisors the activities of subordinates engaged in processing all district and county court cases in a multi-county judicial district. Work is performed under the general direction of the Chief Judge of the appropriate judicial district and is reviewed through conferences and reports and on the basis of results obtained.

DESIRABLE EDUCATION AND EXPERIENCE: Graduation from an accredited four-year college or university with major course work in public administration, business administration, or a related field; and experience in an administrative capacity, including some experience in court or related administrative or professional work.

APPLICATIONS TO: Hon. Claus Hume, Moffat County Courthouse, 221 West Victory Way, Craig, Colorado 81625, by February 24, 1978.

3) COURT CLERK IV (promotional only) $884-1,185
DUTIES: This is supervisory and technical work in a court of the Colorado state court system. Work involves supervising a group of employees engaged in technical clerical work. Typical assignments include performing as the Clerk of a large District Court, Water Court or Probate section. Work is performed under the general supervision of a court administrator and is reviewed through conferences, reports and on the basis of results obtained.
DESIRABLE EDUCATION AND EXPERIENCE: Graduation from high school, supplemented by completion of courses in business or legal training; and thorough experience in work involving familiarity with the procedures, policies, laws and operations of the court of assignment.
APPLICATIONS TO: Velma Parker, District Administrator, P.O. Box 71, Sterling, Colorado 80751, by February 24, 1978.

4) DIVISION CLERK II (Previously announced 2/3/78) $842-1,148
DUTIES: This is varied secretarial and clerical work in support of a Judge or Referee at the Denver Juvenile Court. Work involves performing secretarial duties and relieving a Judge or Referee of routine administrative duties. Work involves performance of routine courtroom duties. Work is performed within established routine and is reviewed by the Judge or Referee for adherence to established procedures and results obtained.
DESIRABLE EDUCATION AND EXPERIENCE: Graduation from high school, including or supplemented by course work in office procedures and clerical routine, and experience in court clerical work.
NECESSARY SPECIAL REQUIREMENTS: Minimum typing skill of 60 wpm and ability to take shorthand above 80-90 wpm preferred.
APPLICATIONS TO: Marianne Rutherford, Denver Juvenile Court, City and County Bldg., Room 157, Denver, Colorado 80202, by February 24, 1978 (extended from 2/17/78).

5) DIVISION CLERK I $764-1,023
DUTIES: This is varied secretarial and clerical work in support of a judge of a County Court. Work involves performing secretarial duties and relieving a judge of routine administrative duties. Work may also involve the performance of routine courtroom duties. Work is performed within established routine and is reviewed by the judge for adherence to established procedures and results obtained.
DESIRABLE EDUCATION AND EXPERIENCE: Graduation from high school, including or supplemented by course work in office procedures and clerical routine, and experience in court clerical work.
APPLICATIONS TO: Jack McLaughlin, District Administrator, Judicial Building, 20 East Vermijo, Colorado Springs, Colorado 80903, by February 24, 1978.

6) DIVISION CLERK $727-975
DUTIES: This is varied secretarial and clerical work assisting in the support of a judge of a County Court. Work involves assisting in the performance of secretarial duties and relieving a judge of routine administrative duties. Work involves also the performance of routine courtroom duties. Work is performed within established routine and is reviewed by the judge for adherence to established procedures and results obtained.
DESIRABLE EDUCATION AND EXPERIENCE: Graduation from high school, including or supplemented by course work in office procedures and clerical routine; and some experience in court clerical work.
APPLICATIONS TO: Jack McLaughlin, District Administrator, Judicial Building, 20 East Vermijo, Colorado Springs, Colorado 80903, by February 24, 1978.

7) COURT CLERK II $693-928
DUTIES: This is technical clerical work in a court of the Colorado state court system. Work involves performing a variety of technical clerical functions which may require the application of independent judgment and the interpretation of routine policies and regulations on the basis of training and knowledge gained through experience on the job. Work is reviewed by a supervisor through observation of operations, and advice and assistance are available when unusual or difficult matters arise.
DESIRABLE EDUCATION AND EXPERIENCE: Graduation from high school, supplemented by completion of courses in business or legal training; and experience in work, including familiarity with procedures, policies, laws and operations of the court of assignment.
APPLICATIONS TO: David Young, District Administrator, P.O. Box 2117, Breckenridge, Colorado 80424, by February 24, 1978.

8) COURT CLERK I (.5 FTE position) $570-764
DUTIES: This is routine clerical work in a court of the Colorado state court system. Work involves performing routine and standardized duties which follow well-established methods and procedures. Work is performed under the supervision of a higher level court clerk and is reviewed for accuracy.
DESIRABLE EDUCATION AND EXPERIENCE: Graduation from high school, and some general clerical experience.
APPLICATIONS TO: Marguerite Clift, County Courthouse, 308 Byers, Hot Sulphur Springs, Colorado 80451, by February 24, 1978.

9) BAILIFF $570-764
DUTIES: This is responsible work in maintaining order and providing general services in a courtroom. Work involves providing general services in the operation of a court. Work includes maintaining order, calling witnesses, notifying interested parties, transferring prisoners, collecting case files for court cases andperforming various services for a judge. Work is performed in accordance with established practices, procedures and instructions from a judge and is reviewed primarily through observation of performance and conferences.
DESIRABLE EDUCATION AND EXPERIENCE: Graduation from high school and some experience in routine clerical work or other public contact work.
APPLICATIONS TO: Jack McLaughlin, District Administrator, Judicial Building, 20 East Vermijo, Colorado Springs, Colorado 80903, by February 24, 1978.

10) CLERK TYPIST I $570-764
DUTIES: This is moderately difficult clerical work including the skilled operation of a typewriter in a probation department or other administrative unit. Work involves primary responsibility for performing skilled technical typing. This and other important clerical functions may require judgment based on a knowledge of the procedures and policies pertaining to the area of assignment. Work is reviewed by superiors through internal controls, review of completed tasks, records and reports.
DESIRABLE EDUCATION AND EXPERIENCE: Graduation from high school, including or supplemented by courses in typing; and experience in typing and general clerical work.
APPLICATIONS TO: Frank Minkner, Chief Probation Officer, 5657 South Spotswood, Littleton, Colorado 80120, by February 24, 1978.

11) PROGRAMMER I $1,158-1,552
DUTIES: Responsible for analyzing program specifications, writing, testing and debugging batch and on-line computer programs. Eventual user contact and analysis responsibilities. Work is supervised by Systems and Programming Manager.
D.P. ENVIRONMENT: IBM 370-148 DOS-VS VSAM file structure, CICS
DESIRABLE EDUCATION AND EXPERIENCE: Graduation from a four year college of university with major course work in data processing or a minimum of two years working experience in Data Processing with ability to write programs in both COBOL and Assembler languages.
APPLICATIONS TO: Don Madison, Office of the State Court Administrator, Colorado State Judicial Building, 2 East 14th Avenue, Denver, Colorado 80203, by February 24, 1978.

THE COLORADO JUDICIAL SYSTEM
IS AN EQUAL EMPLOYMENT OPPORTUNITY EMPLOYER

CHAPTER V

EXAMINATIONS

Introduction

With a few notable exceptions the courts have avoided formal testing of non-judicial employees.[1] Testing practices which have been used by executive branch personnel agencies have been slow to be adopted by the courts. That is not to say that testing is a panacea. Both private and public agencies have endured litigation attacking examinations. There is no indication that these attacks will cease. Few, however, suggest that tests be eliminated entirely.

It should be remembered that for all their frailties, tests in the civilian public sector came about to counter patronage methods. In the military, evidence somewhat to the contrary, examinations were used to assign GI's to appropriate duties. Though the military's examinations occasionally resulted in gross errors, the methods of testing fitted the need for processing large numbers of personnel. Following World War II, civilian jurisdictions, faced with large numbers of applicants, turned increasingly toward standardized tests. Such approaches were counter to patronage methods and only succeeded in jurisdictions having personnel boards or civil service commissions with some degree of authority.

As government, particularly local government, increased its personnel rolls, standardized tests became useful in screening large numbers of prospective public employees. Returning veterans expected consideration. They typically received special credit (veterans' preference points) after being admitted to civil service examinations. Where merit systems developed, then, standardized examinations found their place.

Testing in the Courts

The courts, except for Los Angeles and a few other large courts, did not for many years employ large numbers of employees. Often, the clerk was elected, as were the judges.

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1. Performance tests for clerical employees are somewhat more prevalent; where testing exists employees are frequently tied to procedures of the county or city executive branch. Testing does exist at the state level though almost always limited to the central administrative office for the courts.

These elected officials administered small, tightly knit staffs, using patronage as the primary selection device. Where probation officers were lodged in the executive branch, there was a higher probability of a testing program. As courts grew in size at the local level or became unified at the state level, and merit selection of judges was introduced, one began to notice some use of testing though primarily in the form of performance tests and unassembled examinations. Where testing is practiced in the courts, the oral interview predominates. Few standardized written tests are employed. Most oral interviews are unstructured. Virtually no examination used for court personnel has been validated in the courts.

Definitions

Examination. An examination embraces any device used in the selection of applicants for a job, or in cadre systems such as the military, law enforcement, and foreign service, for entry into the "corps." Examinations for particular jobs or classes are more narrow than those designed for entry into a corps. The former tend toward examining for substantive knowledge, while the latter favor demonstration of skills and abilities. An examination may consist of various tests: written, oral, achievement, and performance, either administered individually or in combination.

Validity. An examination is said to have validity when it measures what it purports to measure. More simply put, a test is valid when it discriminates between those who can perform a task and those who cannot. If flying an airplane requires manual dexterity, then a valid test will accurately measure that skill without placing each applicant in an airborne aircraft. Validating an examination is merely an extension of the validity concept. The premise in a validated test[2] is that it will correctly screen out those not capable of performing a task and admit those capable of performing well.

The process of validating involves careful selection of existing employees generally rated as highly competent. The test to be validated is then administered to these employees. It is assumed that these employees will score well on the examination particularly when compared with another group of employees generally rated as no higher than satisfactory. If both groups score equally well in the exam, it could not be considered a valid test. An I.Q. test, for example, would hardly predict successful performance as a court bailiff. Validation cannot really be complete, however, until the performance of employees

2. A technical discussion of test validation is beyond the scope of this monograph. C.f. Edwin E. Ghiselli, The Validity of Occupational Aptitude Tests (New York: Wiley, 1966).

admitted through the testing procedure is monitored for some time thereafter. The results of that monitoring will indicate whether or not the examination process predicts successful job performance.

Reliability. An examination is said to have reliability when it consistently produces the same result. A group of persons taking a particular test should achieve essentially the same score if administered at different times. In like fashion, test takers should achieve similar scores if the results are divided in half and a score computed for all even-numbered items and all odd-numbered items.

Critical Issues in Examinations

Use of standardized tests can be costly. Such tests must typically be purchased, or in effect rented, particularly for proper interpretation in scoring. Certain tests may be available through executive branch agencies, thus mitigating cost. Whether such tests are valid for the courts must be carefully determined. Oral examinations, particularly unstructured exams,[3] are of questionable validity, though modest in cost.

In the courts, oral examinations seem most prevalent in selecting professional supervisory personnel. By far, the greatest need among the courts is to st. dardize oral examinations.

In today's labor market, particularly in metropolitan areas, an examination will attract large numbers of applicants. While the actual cost of administering the exam is a factor, the more critical factor is the cost of time in selecting a prospective group of eligible applicants. No administrator, least of all judges, wishes to wait weeks or months before filling a vacant position. A merit system typically attempts to provide equal access to examinations for all persons possessing the minimum requirements. It can then be faced with the need to reduce 400 applicants to a manageable group with which to fill a limited number of positions. The method by which this is done will directly influence which types of candidates will be successful.

Open or Promotional Exam

The decision as to whether an examination will be open, that is, offered to the public or promotional, so it is

3. A structured oral is a test in which the same questions are asked of each applicant. An unstructured oral permits the examiners to differentiate their questioning as the examination proceeds.

limited to employees of the court, turns on more than one factor. For the most part, entry positions such as junior clerk, probation trainee, and junior secretary will be examined for on an open basis. These positions are at the lowest salary levels for their series,[4] thus precluding interest among most existing employees. Secondly, it permits the court to seek new personnel who may be monitored and evaluated for positions of future responsibility. Training is virtually required for persons entering at this level.

The court may seek certain skills which are not prevalent in the organization, such as those required for court administrator, systems analyst, law clerk, court reporter, or budget officer. In these instances, the court may invite applicants from the public, even though these salary levels exceed entry levels. Promotional candidates may, of course, compete on an open basis. For the most part, promotions to higher levels in the series, in particular for supervisory positions, should be reserved for promotional candidates. It is sound personnel practice to promote qualified employees. The basic standard is that an examination should be held on a promotional basis whenever a sufficient number of qualified applicants exist from within the court.

Affirmative Action Implications

Courts will need to pay continuing action to affirmative action implications of the examination process. Bakke[5] notwithstanding, the courts have, over the years, held a number of examinations to be discriminatory. Griggs v. Duke Power,[6] certainly the most quoted case, held that an employment practice, such as a written intelligence test, that operates to exclude minorities and cannot be shown to be related to job performance is prohibited, notwithstanding the employer's lack of discriminatory intent. Put more simply, the Court was saying that tests which are not validated for the job to be performed should not be used.

In 1965, the Equal Employment Opportunity Commission (EEOC) was created to enforce Title VII of the Civil Rights Act of 1964. EEOC is concerned with any employment and selection practices that may discriminate against minority groups and women. EEOC guidelines define test or selection standards in a

4. A series is simply a group of classes related vertically into which employees typically are promoted, such as Clerk I, Clerk II and Clerk III.
5. Bakke is the primary "reverse discrimination" case now before the U.S. Supreme Court and not decided at the time of this monograph.
6. 401 U.S. 424 (1971).

broad sense and include any formal standardized measure or technique of appraising people that is used in employment decisions and cover decisions on eligibility for hire, transfer, promotion, and retention. The EEOC definition includes interview data, scored application forms, physical standards, and qualifying or disqualifying personal data.

The Examination Process

The Application

Following recruitment, described earlier, applicants must submit the job application. This, the first formal step taken by an applicant, sets the tone for the examination process. The court and the applicant begin to interact. This stage can run smoothly or seem not to run at all. An antiquated application form coupled with interminable delay may drive away desirable applicants. Filing deadlines not adhered to, confusion regarding out-of-state applicants, ambiguity concerning required documents to be included (e.g., transcript of grades), and uncertainty about the purpose of the application may jeopardize a successful examination. If, for example, the volume of applications is high, and the court decides to screen out applications without having communicated this intent in the examination announcement, the results will be uncertain. Applicants need to know whether they will have an opportunity to explain their applications at an oral interview or whether they will be judged solely on what is written.

Discriminatory questions continue to appear on job applications. Courts must recognize that certain information is not a valid determinant for job success. For the most part, questions relating to sex, marital status, ethnic background (e.g., requirement of a photograph), age, arrest records, and physical handicaps are discriminatory in nature. If these questions have any relevance, they should be so stated on the examination announcement: "Applicants for police officer must not have attained their 30th birthday." Inquiry into questionable items may be made after the candidate has been rated competitively with the other candidates. An arrest record, for example, should only be used to exclude a candidate entirely (because of the nature of the crime) rather than to reduce the candidate's score.

If applications are to be used for screening out candidates, a practice which should seldom be attempted,[7] it is essential that prior to submission, criteria for screening have

7. Despite the continuing practice of this method, there is a serious question whether quality of information provided by the applicant is comparable for purposes of selection.

been established. One cannot "take a look at what we get," and then screen. Such a procedure is inviting litigation. Each stage of the examination process requires specific criteria upon which decisions will be made.

The primary purpose of the application is to establish whether the applicant meets the minimum requirements. The examination announcement should state those requirements explicitly. If a bachelor's degree is not required, yet is desired, then the wording should state that a B.A. is "desired." Similarly, the wording, "bachelor's degree in economics, business, psychology, or a related field" may be unworkable unless a list of other acceptable degrees exists for inspection. For most jobs in the administrative and social science fields, a bachelor's degree, regardless of major, will be acceptable. If a high volume of application is expected, the applicants should be restricted to local residency.

The practice of raising the minimum requirements in an "employer's market" is counterproductive. Job analysis is a sound method for determining the requisite skills, knowledge, and abilities for a class. Requiring a master's degree when a bachelor's degree suffices will not produce the desired result. The employee will usually seek another position when such becomes available commensurate with his/her qualifications. The agency will experience turnover. Some courts will refuse to admit over-qualified applicants, particularly when more appropriate classes are available for application. This problem is known as "credentialism."

Some practitioners prefer to narrow the larger group of applicants by conducting a qualifying exam, most usually in written form. Candidates must achieve a "passing score" or be excluded from progressing to the next portion of the process, usually an oral exam. Though some written tests perform more admirably in this respect, they require high validity, if their primary goal is to screen out unacceptable candidates. Since written tests perform better in testing for intelligence or specific knowledge, they may not possess sufficient validity to screen for court jobs involving substantial public contact, such as probation officer.

Types of Tests

Written tests are primarily one of two types: short essay type and short answer. For all of the reasons stated previously, the essay exam, even short essay, presents major difficulties. Since answers are open-ended, scoring will tend to be subjective. Most typically, examiners are looking for a particular response. Their rating of unexpected answers will obviously influence the type of successful applicant. Secondly, writing ability is critical. If this skill is not highly important, the result may be disappointing. The essay test benefits from lower cost and ease of administering (careful validity and reliability checks are seldom made).

The short answer test permits standardized answers. Applicants must choose from a fixed number of responses. While more costly to administer, scoring is simplified. As mentioned earlier, the short answer test lends itself well to testing of intelligence or specific knowledge. Where validity of these tests can be established, they offer a benefit to the court. As has been mentioned, courts have seldom performed such validity analysis.

Achievement tests are specifically designed to measure a particular knowledge or skill that may be learned. Spelling for typists, bar examinations for lawyers, and CPA exams for accountants are examples.

A performance test is one which attempts to measure actual performance in an exam which simulates on-the-job situations. A court reporting test using actual equipment, a typing test with typewriter, and a driver's road test are examples. Courts are most familiar with the typing test for clerical positions and, to some extent, a stenographic test for secretaries. Court reporters are often required to be certified before gaining a position with the court.

The oral test, as previously indicated, is probably the most prevalent among courts. It suffers from all of the disadvantages of written tests plus more. It not only is seldom conducted as a structured oral,[8] it is seldom validated, nor tested for reliability. In addition, the opportunities for discriminatory evaluation abound. The unattractive, the handicapped, the female, the minority group member, and the uncommunicative applicant may all be at a disadvantage before an oral interview panel.

Selection of the panel will largely determine the outcome. Their biases are only balanced not necessarily eliminated by selecting three representative panel members. Courts frequently mix the membership of the panel to include both sexes, varying ethnic backgrounds, in-house membership, and public representatives.

An additional strain for the candidate is the tension of the actual interview situation. There is no excuse for a panel to cause tension in most court exams. It already exists. The results will be detrimental should panel members attempt to reproduce the "actual" job situation by "simulating" a hostile environment. Panel members are not professionally trained in such techniques. The reaction of the candidate may be neither valid nor reliable.

Despite the extraordinary difficulties in administering an oral exam, it has been used frequently in the courts. Many courts carefully select their panel members. It is substantially

8. See note p. 4.

to their credit that oral exams have evolved without major litigation. To some extent, minorities have fared better in oral exams than in written tests. To the extent that panels appear to be asking valid questions, the candidates may assume that the test is at least fair. The appearance of validity is known as "face validity."

Eligibility Lists[9]

Whatever method is used for ranking candidates, the court will need to produce a final list of those who are to be considered. The eligibility list will include those who have passed the examination and who might reasonably be considered for hiring over the life of the list. (Six months is usually the most viable time period.) If the court expects only one vacancy during the six months' period, there is little wisdom in placing 100 people on the list. Accordingly, the list should effect a balance between those who are acceptable to the court (i.e., would be hired if a vacancy exists) and those who might reasonably be "reached" on the list over a six months' period. The point at which all above "pass" and all below are eliminated is called the "cut point" or "pass point."

The pass point is illustrated below:

CANDIDATES	RAW SCORE
A	99
B	97
C	96
D	93
E	89
F	88
G	88
H	86
I	83
J	79
K	77
L	73
M	68
N	67
O	66
P	65

The pass point occurs above 68 and below 73. These raw scores happen to coincide with percentages, thereby, in this case assuring that those who attained 70 percent were placed on the eligible list. The pass point may be moved upward or downward depending upon the desired size of the list. Care should be taken to find a "natural" break in the scores. In this case,

9. This section and the next are excerpted with permission from Courts and Personnel Systems, Institute for Court Management (Denver: Institute for Court Management, 1973).

there is a five point spread between 68 and 73, a good break in the scores. When possible, the pass point should not be placed at a point separated by only one point (e.g., between 69 and 70). It is better to move up or down until a larger interval exists.

Rule of Three

Having now established an eligibility list the names may be "certified" (officially released) to the hiring authority. Many jurisdictions use what is called the rule of three. The top three names are given to the hiring authority from which the appointment must be made. The hiring authority interviews each of the three, makes the selection, and offers the job. If the candidate, for some reason, refuses the job, the hiring authority receives the fourth name for consideration (and interview). Similarly, when an appointment is made all names move up one position on the list, so that the hiring authority may always consider three names. Other jurisdictions may wish to consider more than three or less than three names, though this number probably remains the most viable: large enough to permit hiring discretion and small enough to make the hiring interviews manageable.

Methods Other Than Rule of Three

Several other methods exist for certifying eligibles. Naturally, the rule of three may be extended to five or even to 10. In contrast, it may be reduced to the rule of one. Rule of one is not only extremely restrictive, but places more confidence in the examining process than may normally be justified.

Category certification is that which certifies all candidates within a certain range of scores. If, for example, scores are arrayed as on 69, it may be desirable to certify all names achieving a rating of 93 and above. Such a method acknowledges that candidates receiving scores within a relatively narrow range (in this case, 93-99), may be reasonably certified.

Selective certification is a method for certifying individuals who possess specialized skills for certain jobs within a class. The probation officer class might, for example, have certain positions for which Spanish speaking ability is essential. Accordingly, Spanish-speaking candidates may be certified from a general list according to scores achieved by all such specialized candidates.

Summary

The examining process is complicated. Courts should seldom, if ever, devise their own written tests. Standardized tests exist which may be administered by personnel specialists. Such tests provide the benefit of validity and reliability analysis.

Performance tests may be similarly purchased or otherwise used. Executive branch agencies should be able to provide assistance to courts in test usage.

Courts will continue to administer the oral interview. Though it is inherently open to misuse, steps can be taken to improve validity and reliability. The structured oral offers some advantages. Though time consuming, the oral exam provides the potential for equal access to the court's examining process. In avoiding the rather impersonal nature of a written exam, the oral brings the court in direct contact with the public. An opportunity is thus provided for the court to communicate the nature of its examining program on a personal basis.

CHAPTER VI

COMPENSATION AND BENEFITS

Developing the Compensation Plan

The information concerning duties and responsibilities of a position classification is extremely important in salary setting, especially that information which differentiates one classification from another, based on duties, responsibilities, and level of experience and education required.

These two integral factors--education and experience, duties and responsibilities--play a large part in determining which classification receives more compensation than another and how much more it receives, expressed in an added percentage or grade differential. The eighty-two grade salary chart shown in Figure 4 on Page 39 shows these grade differentials. In that chart, each grade is approximately 2-1/2 percent greater than the one which precedes it. Grade 46, Step 1 is $1,000, and $25 or 2-1/2 percent greater than the $975 which is indicated for Grade 45, Step 1. On the other hand, the horizontal axis of the chart has seven steps in each grade, with each step being five percent greater than the one which precedes it. Grade 46, Step 2 is $1,050 as opposed to Grade 46, Step 1 at $1,000, which is a $50 or five percent differential. This is shown in the following excerpt from Figure 4.

	Step 1	2	3	4	5	6	7
Grade 45 -	975	1023	1075	1128	1185	1244	1306
Grade 46 -	1000	1050	1103	1158	1216	1277	1341

Entry Level Classes

An entry level class may have a larger differential between it and the next higher class than the differentials used between the other classes in a class series. This is for two sound reasons: one, the entry level, or training level, is of less use to the organization than the full-functioning higher level positions. Consequently, if it is of less use, then the pay grade assigned is lower; and, two, a larger differential will be an incentive to the incumbents of the lower classifications to move from the entry level to a higher level.

Other factors in setting the class differentials may

include premiums for supervisory or lead work, exceptionally difficult or technical work assignments, or the possession of a necessary special license or certificate (i.e., more than the standard class differential within a class series could be applied to a classification requiring a court reporter's certification, or admission to practice as an attorney).

Pay Differential Among Classification Groups

The court should recognize that differing groups of classifications require differing amounts of pay and that each separate group requires a different pay structure. Clerical workers, for instance, are paid less than those workers carrying a professional level job classification, but how great should the difference be? Certainly there should be a large difference between the entry level clerical position and the entry level professional position, as there should also be a great variation between the high levels of clerical and professional classifications. In most state systems, the difference between entry level clerical and professional positions is sixty to seventy-five percent.

What differential should be applied between the top clerical classification and the entry level professional classification. As stated earlier, the entry level position does not require the skill, expertise, or training necessary to be of great worth to the court. On the other hand, the incumbent of the top level clerical position may have ten or more years in the court and frequently may know more about the day-to-day realities of working in a court environment than anyone else including the judges.

The setting of salaries or grade levels for these classifications may be difficult at best. Parity can be achieved in this area by setting the grades of the top level clerical position and the entry level professional position at approximately the same level. This will allow the top level clerical employees an opportunity to switch from the clerical ranks to the professional ranks without having to overcome the hurdle of an artificial salary barrier and will allow for a more nominal increase, which may be ten or fifteen percent.

Other Important Considerations

Other internal considerations in setting salaries, beside classification, are: 1) employer's attitude and expectations, which may be raised by employee groups to which they belong; and 2) court or judicial system wage philosophy, such as setting artificially low wages on certain classifications to encourage turnover of incumbents.

There are also external forces which have an impact

upon the pay level attached to a classification. One is collective bargaining agreements (discussed in Chapter X). Another is legislation passed by federal, state, or local governments pertaining to or affecting salaries. An example is the Federal Fair Labor Standards Act, which was applied by the Congress to all levels of government in 1974. This act set the minimum wages to be paid to employees and, perhaps more important, set certain standards (time and a half) for work in excess of forty hours in any work week. The Supreme Court ruled in National League of Cities vs. Usery that the federal government has no power to regulate the wages and hours of state and local government employees.[1] Even though the law was reversed, state and local governments, including the judiciary, were forced to comply with the law and set their salaries accordingly for a period of approximately two years.

Another external force is compensation being paid by other employers who are competing for applicants in the marketplace. If the court's wages are too low, the court system will have a difficult time recruiting and retaining the best qualified applicants. If the salaries are too high, and taxpayers become upset, public pressure may well force salaries down to a more realistic level. This final consideration, that of other salaries paid in the court's recruiting area, is very important in establishing and maintaining a salary schedule.

Compensation Plan Maintenance

Developing and adopting a Compensation Plan are only the first steps. The plan must be maintained; without updating, the plan will become useless in a short period of time. How would an administrator or personnel manager approach salary schedule maintenance? The most simple, most effective, and cheapest means available is to use a salary survey from another source and apply it directly to the compensation schedule used by the court.

Comparability with Executive Branch

When the classification study is made, the classes in the judicial system or court should be compared with the classes used by the executive branch for salary-setting purposes. Whoever does the study should weigh and compare the strength of each judicial class with the classes used in the executive personnel system. Obviously, not all classes can be related to those used in another system, as there are certain classes, such as bailiff, for which there is no comparison. These unique classes should be related internally to those judicial classes which are related to those in the executive branch.

1. National League of Cities v. Usery, 96 Sup. Ct. 2465, 49 L. Ed. 2nd 245.

CONTINUED

1 OF 4

Not every class within the judicial classification structure should be related to a class in the executive branch. Only the key classes of a class series need be related.[2] These key classes should be drawn from the entire spectrum of employment within a court. For instance, different classes (clerical, administrative, data processing) should be compared with their counterparts in the general labor force. In this manner, the administrator can determine that clerks are receiving comparable wages to other clerks, administrators are receiving approximately the same wages as other administrators, and so on through all of the various classes of employment.

Salary Surveys

If the judicial system or court has related its key classes to those in the executive branch, so that there are proper alignments, it becomes possible to apply the results of executive branch salary surveys to judicial branch classifications. It takes approximately one year to make and implement a thorough salary study for the average public personnel system, especially if certain senior level positions are surveyed regionally or nationally. The results of the study can be applied to any related system in a very short time, once the proper class alignments have been made. If in-house staff is not qualified to apply the survey results, a consultant can be retained at a nominal cost to analyze the salary data and to train staff in their application to court positions.

Most judicial systems and trial courts usually do not have the resources to conduct a separate salary survey, either by in-house staff or by hiring consultants. Funding bodies are likely to accept the application of executive branch salary surveys to court positions, especially if parity among the employees of the three branches is an established principle, and the alignment of key classes is supported by adequate documentation.

It might become necessary, under certain circumstances, for a judicial system or a trial court to conduct a separate salary survey, or at least a partial survey, even if the executive branch makes an annual study. The executive branch may have over-

2. Key classes are those classes which have universally understood titles and which can be readily surveyed in most organizations. They can be defined easily from the type of work performed and the level of skill required to perform such work. Key classes are usually at the entry level of a class series whether the series is at the worker or supervisory level (Court Clerk I or Clerical Supervisor I) and have a fairly large numerical representation in the work force.

looked some key classes in the court or may not have made as comprehensive a survey as the judicial or court considers necessary, e.g., court reporters may have been surveyed locally rather than nationally, when there is competition among states for qualified reporters. The judicial system or trial court may be concerned over the internal relationship of some classes in light of labor market developments. To assure valid results and their acceptance by the funding body, the person or persons conducting the survey should have personnel administration training and experience, with emphasis on wage and salary administration. Again it may be necessary to contract out to assure an adequate study is made.

General Increase

Another approach, used frequently by the United States Civil Service Commission, applies the same general increase to all classes of employment and, consequently, may shortchange some employees, while overpaying others in comparison with the general labor market.

Cost of Living

Another method of maintaining the salary schedule is by using cost-of-living (COL) increases. This method of salary setting is not prevalent in public agencies, but is used in the private sector. The COL method escalates salaries at the same rate as the cost of living index increases. This is done regardless of the type of work performed by an employee. Increments are applied to a certain base salary rather than to the total salary. For example, if an employee's base salary is $500 per month, and an increase of one percent is awarded, the employee receives $5. Succeeding one percent increases will be awarded to the employee at the rate of one percent on the base, or $5, not one percent of the total monthly salary. In other words, the increments are not compounded.

Another factor in the COL method of maintenance is that when the cost of living index drops, the employee's salary drops also. This can have a negative effect on morale. The biggest drawback to using COL to determine wages is that it is almost impossible to budget for unexpected increases. This may lead to a loss of credibility with the funding body when the use of COL places the court's budget in the red.

In-Grade Hiring

The salary schedule also has some built-in flexibility. If, during the middle of a fiscal year, or half-way through the wage survey cycle, it becomes apparent that certain court classifications have had dramatic wage increases, the entry level of the corresponding judicial classifications may be raised. This

is done by setting an in-grade hiring rate for the class. That is, an employee, instead of being hired at Step 1, would be hired at Step 2 or 3 in the grade to compensate for the inequity between the judicial class and similar classes in other agencies. If an employee is brought in at a higher step in grade, the administrator should raise all persons in the class hired at a lower step to the in-grade step. This alleviates intra-system inequities, but may also lead to a serious budget problem, if the number of employees affected is large.

Fringe Benefits

While wages are the most obvious benefit from working for any agency, whether public or private, the fringe benefits associated with an agency's positions must also be competitive with those offered by other employers. Fringe benefits differ from wages in that all permanent employees[3] receive the same amount, regardless of classification. This is true whether the employee is the highest administrative official or a clerk-typist.

Fringe benefits can be categorized in the following areas: annual, sick, and other types of leave; health and life insurance; holidays; retirement; and overtime and compensatory time.

Annual Leave

Annual leave is the leave which is accrued by an employee to be used for vacation purposes. An employee accrues annual leave at a set rate per month, year, or other designated time period. The employee uses this leave at times which are mututally convenient for the employee and his supervisor.

Annual Leave Accrual. Employees should be allowed to accrue and use leave at a rate which is competitive with other employers in the area. A suggested, but not mandatory, policy for leave accrual is to increase the rate of accrual for employees according to length of service. Following is an example of this type of system:

Years of Service	Accrual Rate
1 - 5	1 day/month
6 - 10	1 1/4 days/month
11 - 15	1 1/2 days/month
16 and up	1 3/4 days/month

3. The discussion of fringe benefits applies primarily to permanent workers. Temporary or contract workers may or may not receive them, as this depends on the management philosophy of the employing agency.

An employee under this system can accrue from twelve to twenty-one days of leave per year.

An employee should also be allowed to carry over a certain amount of unused annual leave from one year to another, with a maximum amount of leave which he may accrue. This amount can vary according to the amount of time in service or the accrual rate of the employee. This is for two purposes: It forces the employee to use leave, as it is there for his use to keep him from getting too tired. It keeps the debit account of unused employee leave at a lower level, so that the organization will not be leave poor, because of excessive payoffs for unused leave.

Payment for Unused Leave. This latter reason is especially important, if the organization pays off unused annual leave when an employee terminates from the system. All annual leave accrued up to the limit allowed should be paid off in full when an employee terminates. The employee has earned the leave, and he should be compensated for the unused portion. The problem with annual leave payoff is that it is difficult to budget for (except for a rough estimate based on experience) and can, consequently, exceed budgetary estimates for personnel services. To help alleviate this problem, all but the most vital positions should be left open until the former employee's leave is paid off.

Sick Leave

Sick leave is leave which is accrued by an employee for use when he is ill or otherwise unable to perform his job. Sick leave may be accrued on an annual or monthly basis. Most public agencies allow accrual on a monthly basis at a rate of one to one and a quarter days per month.

Sick leave may be accrued at increasingly greater rates for length of time in service, or may be accrued at a standard rate for everyone. It is, however, a good idea to set a maximum for the number of sick leave days which can be accrued. The maximum allowed should be higher than the level set for annual leave days to allow an employee the time necessary to recover from a severe illness, such as a heart attack.

Payment for Unused Leave. Some jurisdictions pay off sick leave at retirement, some pay off upon any termination, and some do not pay off at all. Jurisdictions which do pay off sick leave sometimes pay off at a percentage of the total accrual.

The Colorado Judicial System has found that by paying off 25 percent of total accrual at the time of termination (for any reason) the number of sick days used drops appreciably when compared with other public agencies' sick day absences. Employees of the Colorado Judicial System use a yearly average of

five days sick leave per person, whereas employees of other agencies in that state use approximately seven days yearly per person. The interesting fact is that the five days per year rate includes the number of sick leave days paid off to terminating employees. To keep the final payoff within reason, the Colorado Judicial System has set a maximum accrual of one hundred eighty days with a maximum payoff of 45 days.

Some public systems allow employees to convert a certain amount of unused sick leave to annual leave. This is done when an employee reaches the maximum amount of sick leave he can accrue. Time accrued over this amount can be converted on a one for one, two for one, or some other predetermined ratio. This is done to allow an employee to accrue extra annual leave to take a day or two at a time, e.g., to avoid having to cut short a two or three week vacation due to lack of leave.

Maternity Leave

Maternity leave is leave which is granted to a pregnant employee whose continued employment constitutes a danger to the employee or to the unborn child. Maternity leave usually has a set period (from three to six months) and is made up of a combination of sick and annual leave and leave without pay.

Maternity leave allows a pregnant employee to leave the job, have the baby, and return to work without prejudicing the employee's position or salary. This is a benefit which most public agencies give to their employees. Typically, before taking maternity leave, the employee is requested to furnish a doctor's statement indicating the inadvisability of continued employment.

Injury Leave

Injury leave is leave which is given to an employee who is injured on the job or in the line of duty. This leave is used by an employee without prejudicing his sick leave account. Injury leave is usually a set amount of time, such as three or four months. When injury leave is exhausted, and the employee is still unable to return to his job, he can draw on his accrued sick and annual leaves.

Injury leave is usually granted by an employer only when the injury is determined compensable under the state's workmen's compensation laws. Because injury leave is given by an employer, he may require the employee to forfeit any workmen's compensation award received to the employing agency. As the courts are a low risk employer, this leave is not used too frequently.

Military Leave

Military leave is leave which is granted to employees who are members of the National Guard or the active military reserve.

Leave is generally for a two-week or fifteen-day period with pay and is granted annually to allow the employee to complete his military obligation. This leave is given without forcing the employee to use his annual leave.

Military leave without pay may be granted an employee who enlists in military service during a time of war or national emergency, allowing the employee the right to return to his position without prejudice after serving during that time.

Educational Leave

Educational leave is leave which may be granted to an employee who wishes to pursue his education in the specialty in which he is employed. This is a benefit to both the employee and the employing agency. The agency benefits from the employee's additional education, and the employee benefits both from the education and the chance to attain it in a short time.

Educational leave can be granted with or without pay. If the court can afford to give one employee educational leave with pay, it must afford the same opportunity to other employees similarly situated, or morale problems may result. The same is true for educational leave without pay. The administrator must be sure at all times that he is not granting so much educational leave that his court will be forced to operate with a short staff.

Administrative Leave

Administrative leave is leave with pay which may be granted to an employee at the discretion of the administrator or supervisor. This type of leave is granted to allow an employee to attend job-related clinics or seminars, although it may also be granted to an employee to attend to personal business (closing on a home, moving, etc.).

Jury leave or leave to be a witness in court generally falls under this category. Granting leave for these purposes is usually outside the discretion of the administrator. Any fees or payment to the employee for jury or witness service may be forfeited to the employer. Hawaii's collective bargaining agreement, on the other hand, allows employees to retain payments for juror service.

Leave Without Pay

Leave without pay may be granted to an employee for justifiable personal reasons in addition to those times where leave without pay is allowed in the foregoing sections on other types of leave. As a rule of thumb, leave without pay is given when other types of leave are exhausted or will be exhausted during the employee's absence. For example, if an employee has two weeks of annual leave accrued and desires to go on a package

tour through Europe which lasts three weeks, then one week of leave without pay could be granted.

Health Insurance

It has become a practice for almost all employers to provide a health insurance package for their employees. This has been done to help curb the impact of rapidly rising medical costs. Health insurance is paid for in various ways. In some jurisdictions the employer pays the entire cost of the employees' health insurance; in others, the employer and employees split the cost of the insurance package at predetermined percentages or amounts. Some larger jurisdictions are using, or are exploring the use of, self-insurance for health purposes. As the amount contributed by the employer is non-taxable, this is a good benefit.

There are two types of insurance in frequent use today. One is the standard health insurance package offered by companies such as Blue Cross, Blue Shield, and commercial insurance companies, and the other is a relatively new concept known as health maintenance organizations (HMO's). Kaiser is an example of these.

Standard Coverage. Standard insurance works in much the same way as other insurances. Once the insured has incurred a loss, the bills are submitted to the insurance company which pays the portion(s) of the bill covered by the policy up to the extent covered by the policy. The remainder is paid by the insured. The costs of a group policy such as this depend on the extent of the coverage provided. "First dollar coverage," the insurance that pays almost everything, can be a very expensive package running well in excess of $100 a month. Insurance policies of this nature have a set amount that may be paid in each area of the medical bill. For example, the policy may cover the cost of a semi-private room up to $100 a day for 180 days in any policy year. Any costs above the maximum limit would be covered by the insured or the "major medical" provision (if there is such provision) of the policy.

Major Medical. Major medical covers otherwise uncovered costs after a certain deductible is reached. The costs in excess of the deductible are then paid on a percentage basis (typically 80 percent) by the insurance carrier. Major medical covers the insured for catastrophic loss.

Major medical, or percentage over deductible type of insurance, may also be used as primary insurance. This has the advantage of relatively low insurance premiums, while still providing coverage for the larger medical bills. For example, if the insured or a member of his family has a short stay in a hospital and the bill is $1,000, the insured would pay a $100 deductible plus 20 percent of the remainder, or $180, or a total of $280. The insurance company would pay $720. Under this type of policy, the insured generally pays only one deductible during

the policy year. Consequently, any other costs during the policy year would be covered on an 80-20 percent basis, with no additional deductible. Furthermore, the major medical policies usually have a maximum limit for which the insured is liable at the 20 percent rate. Anything over this amount would be paid for entirely by the insurance company.

There are almost as many variations on this type of group policy as there are group policies. The administrator who has the responsibility of contracting for insurance coverage should be very careful to determine what is the best plan for the employees.

Health Maintenance Organization. A type of health insurance plan that is becoming more and more popular is the HMO. HMO's provide medical services to the insured person at a low cost. The philosophy underlying the HMO concept is to keep the insured healthy to prevent major illness that may be very costly. This plan provides a clinic which is available to the insured for his medical needs. The per visit costs for use of the clinic are very small when compared with the charge for a visit to a doctor's office.

The disadvantages of the HMO concept are that the insured usually has a choice of only those doctors associated with the plan and has the use of only one or two hospitals in the immediate area. In addition, only minimal coverage may be available for insured persons who are hospitalized or who need medical attention outside of the immediate geographical area in which the plan functions.

Retirement

One of the most attractive features of working for a public agency has been the availability of good retirement plans. Most public employers provide retirement options for career service employees. These plans are funded by a combination of contributions from both the employer and employees and allow each employee to retire with a reasonable amount of income security.

Some public agencies establish a retirement plan through a combination of contributions to both social security and a local retirement fund, while others disregard social security entirely and place all funds in one retirement fund.

Vested Rights. Most plans provide features that are similar to the following. An employee, after contributing to the fund for five years has a vested interest in the retirement plan, which means that, with five years' service, the employee is guaranteed the right to a pension at the age of retirement. Usually when an employee has twenty years of service and has reached retirement age (between 55 and 65 years of age), he is eligible for approximately 50 percent of the average of his five

years of highest salary earnings. For each year of service over twenty, the employee may be allowed to receive an additional percentage of his highest five year average salary up to a specified maximum. If an employee leaves the system at any time before five years, he may have his portion of contributions refunded, with or without interest. If an employee leaves the system after he has a vested interest, he may withdraw the amount he has contributed as mentioned above, or he may leave his share of the money in the fund and receive a pension when reaching retirement age.

Rule of Eighty. One new concept on retirement which is emerging is the "rule of eighty" (or seventy, seventy-five, etc.). This states that when an employee's age plus his years of service equals eighty (age 55 with 25 years of service, for example), he is eligible for retirement with 50 percent of his highest five year average salary. Additional years of service may be worth two percent per year up to a predetermined maximum.

The purpose of plans like the rule of eighty is to move employees out of the system, so that positions will be made available for the steadily increasing number of workers entering the employment market.

Overtime and Compensatory Time

Overtime is paid to an employee for work in excess of the standard number of work hours in a given time period. Overtime is generally awarded to an employee after he has worked more than 40 hours in a work week. This is due to the impact of the Federal Fair Labor Standards Act, which was overturned in National League of Cities v. Usery. Overtime is generally paid at the rate of time and a half for each hour worked, although a union contract may modify the rate of overtime compensation.

Compensatory time, or "comp" time as it is frequently called, is also an award for time spent in work over the usual number of work hours. Instead of a monetary payment, the employee is granted time off for his extra hours of duty. Comp time may be granted at the straight time rate (one hour for each additional hour worked) or a time and a half rate (one and a half hours off for each additional hour worked). The danger inherent with comp time is that when employees must work extra hours to keep up with the work load in a court there is little opportunity for them to use that accrued time. As a result, employees frequently use the accrued comp time in lieu of annual leave allowance. This situation may lead to excessive annual leave accrual and the accompanying large payoff at termination.

Overtime should be granted only when prior approval of the court's administrative authority has been given.

Holidays

Public employment usually has more paid holidays than those found in the private sector, and this practice applies to courts as well. The most common holidays are New Year's Day, Lincoln's Birthday (some states), Washington's Birthday, Memorial Day, Independence Day, Labor Day, Columbus Day, Election Day, Armistice or Veteran's Day, Thanksgiving, and Christmas.

In addition, some jurisdictions celebrate the anniversary of statehood as a holiday, and religious holidays of various denominations are sometimes observed. There are also a few other holidays peculiar to one or two jurisdictions. Some examples are: Arbor Day (Nebraska and Utah); Jefferson Davis Day, Patriot's Day (Maine and Massachusetts); Confederate Memorial Day (Alabama and Mississippi).

As the courts are closed on official holidays, employees seldom work. If they do, for any reason, they may receive compensatory time or overtime pay.

CHAPTER VII

RETENTION AND PROMOTION

The New Employee

It is unlikely that the new employees have had any court experience, especially those in lower level positions. Not all court positions differ substantially from those in other public agencies; some have essentially the same duties and levels of responsibility. Nevertheless, it is still necessary to provide training so the new employee can become as effective as possible in as short a time as possible.

Once the new employee has entered a training program and has proved his effectiveness on the job, efforts must be made to ensure that he stays within the system. Otherwise, many hours and dollars will have been wasted in the training effort.

One way an administrator can keep turnover at a low level is to show each new employee a route which he may follow to advance his career on the promotional ladder. This, then, is the thrust of this chapter: orienting and training new employees to retain and promote them within the system.

If a new employee is placed in his new role with no preparation and has no hope that he can pick up enough information to be successful on the job, the turnover rate will be abnormally high, and the administrator will spend most of his too-few hours in recruiting and examining prospective employees. A new employee should not be expected to take on a new work experience with little or no preparation. To do so will lead to a high frustration level for everyone concerned, especially the new employee.

Regardless of the size of the organization, it is very helpful to have an employee's handbook available for each employee to refer to when a question is raised. The cost of such a publication is minimal when compared with the benefits.

Initial Orientation

The first step for the administrator is to orient the new employee to his surroundings. This may be done either at formalized training sessions (in larger courts and jurisdictions) or at informal training sessions (in the smaller courts and jurisdictions where formal sessions are less cost efficient). At these training sessions, the administrator, or his designee, will explain the work environment and what is expected of that

employee. A most rudimentary orientation system suggests that the employee be made aware of what his duties and responsibilities are and, in turn, what his rights and privileges are.

On-the-Job-Training

The simplest way for the new employee to learn is by doing the job under the guidance of a person who has considerable expertise about the job. This person may be the direct supervisor of the position, an employee who has just been promoted from the position, or possibly the court administrator.

Whoever is selected to perform the task of guiding the employee through the on-the-job training program should be aware that the new employee probably has no experience with the language and "buzz words" of the courts. The trainer needs to have the patience to answer all of the questions which will be asked and re-asked and should be selected with this attribute in mind. The care and patience with which the questions are answered will show in work performance and in the way in which the employee responds to the job.

Probationary Period

The employee should be told the length of the probationary period when he first begins work. A probationary period is that time during which the employee is expected to gain the ability to perform successfully on the job. It is also the period during which the supervisor and administrator evaluate the employee's performance and progress. The duration of the probationary period may be explicit (six months to a year) or may be general (the length of time required to complete a training program for the position). It is helpful if the training program coincides with the length of the probationary period.

During the probationary period, a constant check should be made on the employee by his supervisor or trainer. All too often an employee is not made aware of his weaknesses in the work environment and ends up being dismissed, when a few well-timed words would have corrected his deficiencies. Lack of communication between supervisor and employee is one of the most common causes for employee failure during the probationary period.

The orientation program should be carefully established to allow the employee to see what is expected of him and to allow the supervisor to chart the employee's progress. This does not mean that the program established for the new employee should be so rigid as to deny him access to other areas outside his principal purpose. To the contrary, the program should be set up in a way to allow all concerned the flexibility necessary to meet the changing environment of the job.

In addition to learning the job assigned, the new employee must be given the opportunity to learn about the rights, privileges, and benefits to which he is entitled. In larger organizations where there is a considerable amount of hiring, it is beneficial to have an orientation session for all new employees to explain the rights, privileges, etc., which go with each job. In smaller organizations, this may not be possible, as new employees may be hired at the rate of one per month, or even less frequently. In the smaller court organization, it is more feasible to have the supervisor sit down with the new employee and explain to him exactly what are the rights and benefits of the position.

When the employee has successfully completed his probationary/training period, it is necessary to continue to monitor his progress as he continues to learn his job. This may be very important in the employee's career, as well as in the over-all efficiency of the court's operation. The fact that the probationary period has been completed successfully does not mean that the employee has complete mastery of the position which he holds, nor that he has a complete understanding of the court environment. The supervisor should continue to review his progress with the understanding that rapid strides toward mastering the job are made during the early stages of employment and that expertise in completing assigned tasks is gained after the employee has been on the job for a longer period of time.

In-Service Training

To that end, it is important that some sort of in-service training program be developed for those who have been employed for some time. The objective of in-service training is to enhance the employee's job skills and to improve his efficiency and competency.

It is more difficult to develop this type of training for lower level clerical positions (file clerks, etc.) than it is to develop a program for higher level clerical employees, clerical supervisors, and professional personnel involved in court operations. Because it is more difficult does not mean that some sort of job enrichment should not be attempted. Cross-training with employees at higher levels should allow the incumbents of lower level positions to gain the skills necessary to advance to better paying, more meaningful jobs.

Training programs for higher level clerks should concentrate on new techniques and systems for processing the work to be done and to prepare them for professional vacancies. A variety of programs may be designed and administered in-house to meet the needs of all these employees, and they may be used with outside training programs to achieve the desired results.

Training at all levels is essential to the goal of staff development. All too often training is viewed as an excessive luxury or governmental "boondoggle" by those who hold the purse strings. Excessive abuses of training may have led to these feelings. Every effort should be made to demonstrate to policy makers and appropriator bodies that proper training is imperative, if the court is to become efficient in its procedures and effective in its delivery of services to the public.

In addition to training employees, it is necessary for management to determine the relative value or merit of the abilities of the court employees. In other words, a performance evaluation system should be established and maintained for the benefit of both management and employees.

Performance Evaluation[1]

The American Bar Association's Commission on Standards of Judicial Administration recommends:

> Uniform procedures for making periodic evaluation of employee performance and decisions concerning retention and promotion.[2]

Performance criteria are the solid core upon which an effective performance evaluation program depends. In courts there are many jobs which cannot be easily measured, and there are many jobs in which the quality of performance is of greater importance than quantity. Accordingly, both quantity and quality of performance should compose the key elements in performance evaluation (also referred to as performance appraisal).

Performance appraisal theory assumes that there are traits and characteristics which, when present in and applied by employees, result in productivity; these traits and characteristics can be perceived and isolated; they can be measured; and they should be rewarded.

Who Should Do the Rating?

One management concept that has withstood the test of time is that evaluations should be made at the lowest organizational level where there are sufficient facts to make a valid

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1. Much of the material on performance evaluation is taken with permission from Courts and Personnel Systems, Institute for Court Management, (Denver: Institute for Court Management, 1975), pp. 81-92.
2. American Bar Association, Commission on Standards of Judicial Administration, Standards Relating to Court Organization (Chicago: American Bar Association, 1974) p. 92.

determination. Thus, it follows that the evaluation of employee performance should be made by the employee's immediate supervisor, and the rating should be related to the characteristics, qualifications, traits, capacities, proficiencies, and abilities of the individual as demonstrated by him in relation to the job.

Uses of Performance Evaluation

In December, 1968, Fred E. Schuster, Associate Professor of Management, and Assistant Dean, College of Business and Public Administration, Florida Atlantic University, conducted a study of performance appraisal practices of 500 large corporations.[3] Out of 403 respondents to the survey, 316 used some type of performance evaluation plan. The uses made of employee appraisals by these 316 corporations are shown in the following table:

Uses of Appraisals or Ratings in 316 Leading Industrial Corporations

Uses of Appraisals	Responses No.	Percent
1. Merit increases or bonuses	238	75.3%
2. Counseling the ratee	278	88.0
3. Planning training or development for ratee	270	85.4
4. Considering the ratee for promotion	266	84.2
5. Considering retention or discharge	185	58.2
6. Motivating the ratee to achieve higher levels of performance	269	85.1
7. Improve company planning	178	56.3
8. Other	28	8.9

The preceding data indicate that a substantial majority of organizations use performance evaluations for multiple purposes, and it is recommended that courts do likewise.

Types of Performance Evaluation

The most widely used types of performance evaluations are:

performance checklists;
graphic rating scales;
narrative rating;
forced distribution;
forced choice;
critical incident; and
management-by-objectives

3. See Fred E. Schuster, "History and Theory of Performance Appraisal," in Handbook of Wage and Salary Administration, ed. by Milton L. Rock (N.Y.: McGraw-Hill, 1972), p. 5:4.

4. See, in this connection, Rock, Ibid., chapters 22-27; and Joseph J. Famularo, ed., Handbook of Modern Personnel Administration (N.Y.: McGraw-Hill, 1972), chapters 40-45.

Performance Checklist. The checklist consists of a series of scaled statements, phrases, or objectives characteristic of job performance to be checked by the supervisor. The rater checks items describing or which apply to a subordinate's performance. A performance rating is found by assigning a value, based on the job, to each item and averaging the scale values of all items.

The checklist is a person-oriented evaluation procedure and should contain factors that are objectively observable. Results from various tests indicate that the checklist reduces the errors of personal bias. Items to be checked can be closely related to or descriptive of actual job elements. The form also can aid in counseling and motivating an employee. Statements, phrases, and objectives to be checked should indicate typical performance or behavior observed of the employee. Descriptive statements are usually brief and may invite ambiguity, as the rater provides his own interpretation of the items checked. The form is relatively short and requires little time to complete. Best results are achieved when supervisors fully understand the system.

Graphic Rating Scale. The graphic rating scale contains a list of traits followed by a series of numerical or descriptive values to be used to designate the degree to which an employee possesses and displays a trait. The traits listed are explained by brief descriptions under each category. The rater is given a fairly broad score range within which to determine the performance of the employee. An over-all score is determined by adding up the scores given to specific factors. Often space is allotted for brief, written appraisals of a subordinate's work performance.

The graphic rating scale is the most widely used rating method due to its simplicity in design and facility of administration. The rating scale serves to differentiate employees on a series of given traits. It can be used in a small or large organization to rank or compare individuals in order of merit by giving an over-all summary rating or score. The specific rating of a particular trait assists a supervisor in counseling an employee who needs development in certain areas of performance. The form may be used as an aid in designating employees who deserve pay increases, promotions, or employees who are in need of counseling or training.

The dysfunctional aspects of this type rating concern:

1) Using terms that are sufficiently vague and ambiguous as to make it difficult to distinguish between satisfactory and unsatisfactory performance; and

2) limiting the supervisor's rating to those traits and characteristics on the scale which may or may not be significant to the jobs being rated.

Narrative Form Rating. The narrative form of appraisal involves a written, subjective measure of job performance. The supervisor gears the rating to the particular job of the person being rated. Thus, the use of the same criteria by all supervisors is not required, and appraisal methods and factors are widely varied. But the narrative appraisal, due to its unstructured form, has an additional use in that it reveals a great deal about the values of the rater and his perception of what is and is not important to the jobs under his supervision.

The questionnaire type of narrative rating permits the rater to appraise the over-all performance of the subordinate being evaluated. The form requires a subjective measure of evaluation and provides for an individual assessment. The rater is usually able to participate in the definition of the factors used in the evaluation. The form is most useful in small offices where the number of employees allows sufficient time to complete individual subjective appraisals. The completed form can serve as a counseling tool to motivate the employee for improved performance toward organizational goals. The questionnaire type of narrative rating does not require position description.

Forced Distribution. This system uses a ranking technique by which job performances are rated according to a "grading on the curve" to secure a technical, normal frequency distribution of individual performances. The rating results in ranking employees by class rather than assigning a set of values to an individual's performance. A five-point job performance scale is established ranking from top 10 (outstanding) to low 10(unsatisfactory) thus creating a bell-shaped frequency distribution. Five areas of specific work habits are usually rated. There can be space given for a short narrative answer as to significantly good or bad performance at the end of the form.

This method eliminates the errors of leniency and central tendency and facilitates inter-group comparisons. To secure normal distribution of scores, it must be explained to supervisors that a low score area does not necessarily indicate an ineffective employee. It should be used with caution in particular groups. Not all work groups reflect a normal distribution of individual performance. It cannot describe the absolute level of an employee's performance. This method has been most effective in small groups of under fifteen employees in a job class. It ranks order of merit, but not the area of difference in ability between ranks; it gives a graphic picture of a particular employee's performance in relation to fellow workers. An over-all rating of ability is made instead of a rating on a series of separate factors. This method of evaluation is relatively easy to administer.

Forced Choice. The forced choice system of rating uses a series of statements relevant to job proficiency or personal qualifications. The statements used fall into two categories:

the most characteristic and the least characteristic of the person.

This system is thought by some to be the most advanced method to evaluate the job performance of individual workers. The method "forces" the rater to discriminate on the basis of concrete aspects of job behavior. The technique yields a numerical index by which persons in different occupations can be compared on factors found to be a significant part of job performance. The rater is unaware of the relative worth or value of the alternative statements, thus the subjective elements are minimized. The method is designed to produce a standardized, objective index of job performance. The underlying principle of this method holds that people are more apt to agree on description than evaluation, and the fact that the employee evaluated often agrees with the selected statements points out its usefulness for self-evaluation, counseling, and motivation. The job performance measured can be positively correlated with the review of other variables such as job satisfaction. The technique requires considerable time and expense to construct. The system is most useful in a large organization.

Critical-Incident. The critical-incident technique of rating is a systematic and immediate recording of actual instances of significantly good or significantly poor performance. A list of "credits" and "debits" is maintained for each employee by the proper supervisor. A job description is used for each position rated as a tool for training supervisors to know what performance is expected of an employee. The emphasis should be on what is accomplished instead of how it is accomplished.

It has been found that the recorded incidents can be useful in predicting successful job performance. Using this technique, supervisors can anticipate job needs, improve job performance, improve results of work, increase the motivation of an employee, and establish a means of counseling. The facts gathered will provide the employee with an understanding of the requirements of the job at hand and help in developing potential for more responsible levels. It is a thorough procedure to insure that concrete events relevant to job performance are the basis of an evaluation.

This method requires supervisors actually to observe the work of employees and to select important performance events for evaluation. The system gives added meaning to evaluation content, in that actual circumstances are recorded in specific terms; it evaluates results, not persons. It requires a great deal of the supervisor's time and effort to maintain a continuing performance record.

Management-by-Objectives. This newer method of performance evaluation focuses on specific goals and results of performance rather than personal qualities and traits. It is an alternative to traditional forms of performance evaluation. This system is designed to evaluate results of job performance by four steps: 1) establishing organizational goals; 2) establishing unit objectives; 3) securing individual commitment; and 4) reviewing actual job performance.

The system requires that each job be directed towards the objectives of the total organization. Evaluation of performance is measured by the contribution of each individual to the success of the whole.

The design of the system and the philosophy of management-by-objectives involves the total organization and all its members in a common purpose. This method of evaluation holds an individual accountable for certain actions and their completion, thus setting a task guide to demonstrate how an individual's contribution fits into the over-all effort.

The system offers an opportunity for the supervisor and subordinate to work together towards achievement of objectives. The evaluation form is designed to insure a means of accomplishing the individual work tasks necessary to goal fulfullment. It instills in the employee the idea that his abilities, skills, and knowledge will be as much a part of his or her work as the way it is done.

The implementation of this method has positive effects in that employees are apt to grow as members of the organization, thus affecting their attitude and morale. The method is best facilitated when a clear explanation of the system is made. The initial effort of filling out the form must be sustained to insure positive participation and growth. This system does not have accompanying semantic problems. It is useful, as it does not require the supervisor to make ratings that he or she does not have the ability to make. Organizations can easily custom fit the form needed.

What Plan Should Courts Use?

Until recently, most performance evaluation plans were based on the belief that the supervisor is in the best position to evaluate the behavior of subordinates. Thus, employee appraisals were primarily a trait rating by the supervisor, and, even though most plans required the supervisor to discuss the rating with the employee, the system was hierarchical, with little or no chance for input from the employee being rated. In the last twenty years, research, for example, by Rensis Likert, Peter Drucker, and Douglas McGregor indicates that the hierarchical trait rating approach tends to decrease motivation and inhibit individual development, while participatory and

supportive management tends to increase motivation and foster personal growth and development.

It is understandable that courts, until recently, have not had professional administrators to devote the necessary time and attention toward developing employee appraisal plans. With the pressure of other administrative matters, the tendency is to copy those appraisal plans used by the executive branch of government. The danger in copying is that, in many instances, the problems associated with these plans have not been resolved. By blindly adopting these plans, the courts will inherit the unresolved problems.

There is no simple across-the-board answer as to which performance plan should be used by courts. There are some factors which should be considered by court administrators in deciding on a performance evaluation plan. These factors are:

Nature of the Occupation. Job content, skills, attitudes, and expectancies of individuals in various occupations; the organizational level of positions; and whether the occupation is professional, technical, or clerical should all be taken into consideration. Different position classes may require different employee evaluation methods, so as to account properly for the factors just enumerated.

The Court's Management Climate. The evaluation plan or plans should be viewed by all concerned as being in accord with the basic style of management prevalent in the court, e.g., management-by-objectives should not be used for employee evaluation unless it is a logical extension of other objectives of management philosophy.

Difference Between Entry and Experieced Personnel. If the person being evaluated is a beginning level employee, the appraisal might be limited to his grasp of the basic job requirements. If the person being evaluated is an experienced employee on that job, the appraisal might be more effective if it focuses on the extent to which his performance exceeds basic job requirements and expansion of the job to fit his own potential. Trainee or entry level evaluations should be concerned with whether the employee has learned what he needs to know. The evaluation of jobs above the entry or trainee level should be concerned with how well does the employee apply what he should apply to the work situation.

Employee Evaluation and Compensation

The steps involved in performance evaluation allow the incumbent employee to advance through the salary range at whatever rate is dictated by the salary grid in conjunction with the personnel rules.

Currently, there is a debate as to whether an employee's salary advancement (annual step increase) should be tied to his performance. The affirmative argument is that a salary increase at regularly recurring intervals over the first few years of employment is one of the better incentives for an employee to work at a greater capacity. The negative argument is that very few employees, regardless of their level of efficiency or inefficiency, are ever turned down for an annual salary step increase, so that it is better to give the increase automatically at designated intervals without regard to performance and to make an objective performance evaluation at other intervals. The theory behind this argument is that supervisors are reluctant to rate an individual as unsatisfactory when a salary increase is at stake.

No further argument is offered here to support either position, except to note that other factors, such as a reluctance by supervisors to confront an individual with any derogatory comments may well be the overriding concern.

Varying Merit Increases. Another concept of performance evaluation the administrator may want to consider is the possibility of granting differing amounts of money for differing degrees of performance. In other words, a low level performer would receive little or nothing in the way of a merit increase, while a superior performer would receive more than the average amount. This system of wage increase distribution could be used compatibly with the "forced distribution" method of performance evaluation discussed in the preceding section. Before this is attempted, it is imperative that an evaluation system be devised which explores performance criteria objectively.

Even in the absence of such a system, some method should be developed to reward the consistently superior performer. One means is through promotion, which will be discussed later in the chapter; the other is through a mechanism known as "a superior performance" bonus or increase.

All too frequently employees who do average work and employees who do superior work receive the same compensation after one year's service. To eliminate this disparity, it should be possible for the administrator to compensate his superior performer at a rate which is greater than usual. This amount may be given in one of two ways. The first is an increase of two steps rather than one on the salary scale; the other is to give the employee the equivalent of the second step in a lump sum. The former has its drawbacks, as the employee soon runs out of steps and becomes dissatisfied. The latter has much to recommend it in the employee receives only one step increase and consequently does not reach the top of the range as quickly as he would with the other method.

With performance measures and performance evaluation related to salary increases, the incumbent should be fairly secure in knowing approximately what his salary opportunities will be later in his career, even it he does not change classification or grade levels.

Promotion and Career Ladders

A career ladder expands the opportunities for advancement by an employee who comes into the system in an entry level classification (a classification which is designated to recruit applicants who have had no previous job experience in the field). The manner in which it works is that after sufficient time on the job to gain experience, after sufficient in-service training to polish skills, and with the approval and recommendation of the supervisor, if the budget permits, the employee is advanced from the first to the second level of his classification. This advancement continues until the employee reaches a certain predetermined point in the classification hierarchy, short of the supervisory levels, which may take as long as ten or twelve years to complete.

On the plus side of this system is improved employee morale, because the employee knows exactly what his opportunities for advancement are. The system also assures that only the most fit employees reach the top level and that those who reach it are highly trained and well thought of for their abilities.

There is a negative budget impact with a system of this nature. This can be compensated for by returning all positions which become vacant to the entry level classification. This will create a "vacancy saving" from the declassification of the position and will create extra funds to finance those persons who are on their way up the career ladder.

Promotional Opportunities

In the absence of a career ladder concept in the classification plan, an administrator can turn to a more traditional means of promoting the employees of his court. With normal turnover, employees leave upper level as well as lower level positions. These positions then become available to employees in the lower level classifications. This method of promoting employees through the system may take longer or shorter than the career ladder concept, as it depends entirely on the rate of turnover in the upper level classifications.

When a high level position becomes vacant, employees who are in the lower levels should have the opportunity to compete for the position through a promotional examination. To aid in the promotional examination process, it is helpful for the administrator or appointing authority to have at his disposal

information from performance evaluations, a summary of the applicant's work skills, and any other information which may be pertinent to his ability to perform the job.

This system is self-regulating in that the higher the positions, the fewer there are. For example, a unit of employees may have four Court Clerks I, ten Court Clerks II, six Court Clerks III, two Clerical Supervisors I, and one Clerical Supervisor II, who has the responsibility for administering the work activities of all others below him. As may be seen from this pattern, a person can enter at the Court Clerk I level, progress rather easily to the Court Clerk II level, and, with a little more difficulty, to the Court Clerk III level. After that, promotion into the Clerical Supervisor levels would be highly selective and would depend upon turnover in those levels and the skill and expertise of the employee.

A similar system of promotion is used in New York City, where a person enters the system as a "Uniformed Court Officer," in the limited jurisdiction courts of that city. After some years of service at that level, the Uniformed Court Officer is eligible for promotion to a similar position with the Supreme Court of New York (general jurisdiction court). It is from the ranks of the Uniformed Court Officers of the Supreme Court of New York that persons are frequently selected to fill vacancies in the ranks of Court Clerks (these are administrative positions and should not be confused with the court clerks who have been discussed in this and other chapters). The system works quite well and has much to recommend it in that it is clear to each employee from the start what his promotional opportunities are and what he must do to rise within the system.

The problem with promotional systems, regardless of which kind is in use, is that they are internal systems as opposed to external systems and may lead to system stagnation or entropy. This problem may be dealt with by drawing persons from outside the system into some, but not all, of the higher level positions. This tends to inject new blood and fresh ideas into the system, and helps combat the traditional "We've always done it that way" aspect of court administration. The selection of persons from outside the system must be made with caution, as too much use of outside personnel will create a morale problem with the existing employees. They will perceive outside recruitment as the denial of a promotional opportunity.

CHAPTER VIII

DISCIPLINE AND EMPLOYEES' RIGHTS

Employee Discipline

No matter how carefully the personnel selection system has been established to handle the placement of new personnel, it will not be infallible. There will always be employees who pass through the most carefully designed screening system with personal traits or work patterns which are not fully acceptable to the organization. A well thought-out design in the recruiting and examination process will help to eliminate the chances of inadequate personnel being selected, but cannot be expected to be always successful.

A court administrator must expect and be prepared for the problem of an employee unable to do the job for which he or she was selected, or who, after being selected, acts as a disrupting influence on other employees.

A formalized system for handling problem employees should be established, so that contradictory and disparate penalties for infractions of work rules will be avoided. Depending on the nature of the offense committed by an employee, the action taken by the administrator may range from a simple oral or written reprimand to termination. A short review follows of the types of action which may be taken.

Corrective Actions

Corrective actions are those which are taken by the administrator or supervisor to correct an employee's work habits which are erratic or which deviate from the accepted norm. These actions are not intended to be disciplinary in nature, but are designed to improve the employee's job performance. Typically, they are taken to correct minor incongruities which, if left unattended, can grow and become serious problems.

An oral action of this nature should be administered in private and should include discussion with the employee as to what action or plan of action the employee should take to correct the problem. Also, the employee should be allowed to explain why he or she has been acting in an unsatisfactory manner. It may be that the unsatisfactory performance is in response to an unusual stimulus and is normal considering the circumstances.

A more formal means of administering a corrective action is through a written complaint to the employee. This should be done after a conference with the employee, and a copy of the complaint should be placed in his or her personnel file.

An oral or written corrective action should state the problem, what the employee must do to correct the problem, and the consequences he or she faces if the problem is not corrected. If, after the written corrective action is administered, the employee's performance improves over a specific period of time, then he or she should be allowed to have it removed from his or her personnel file.

Another form of discipline resulting from a corrective action, and one which is a little more severe, is the reassignment of an employee to other job duties. This is not recommended as it is relatively ineffective in altering an employee's work patterns and habits. It may also serve to move the problem from one area of work to another and, therefore, solve nothing.

Disciplinary Actions

Suspension. The form of disciplinary action (as opposed to corrective action) most often used by governmental agencies is suspension without pay. Employees may be suspended for a limited period for actions which deviate from the accepted norm. This may be administered for a single severe incident or for an accumulation of lesser incidents that may have been dealt with ineffectively through corrective actions. Suspension of an employee without pay must be in writing, should state why the employee is being suspended, and the length of time of the suspension. A suspension should not be for more than thirty days and most frequently is for a shorter period. Suspensions for periods longer than thirty days are essentially the same as termination, i.e., if the employee is suspended for six months, he or she has little recourse other than to search for a new job.

If the suspension and discussion of the reasons for it are handled carefully, the employee may return to work with a better attitude and improved work habits.

Demotion. A more severe form of disciplinary action is a reduction in pay or classification. This more or less permanently limits the wage or salary potential of an individual and does little to solve the problem of an employee's performance or attitude. In addition, it has some of the same problems inherent in it as the reassignment of an employee.

Termination. Termination of an employee is the most severe penalty which can be administered. Termination can, contrary to popular belief, be invoked for a single severe instance

of unacceptable behavior. It may also be used after a series of corrective or disciplinary actions have been tried. The termination of an employee should be considered seriously before any action is taken. The employer's case for termination must be solid, especially today when a disgruntled terminated employee can and will take an employer to court or before an administrative tribunal for actions which may have been too hasty.

Not only is the immediate penalty of termination felt by an employee, but termination carries with it the stigma of the action on the employee's record for the rest of his work career.

Causes for Corrective or Disciplinary Actions

Causes or reasons for administering a corrective or disciplinary action are not necessarily limited to the following, but these present a guideline which may be used.

(d) Causes for Corrective or Disciplinary Actions

(1) Causes for initiating corrective or disciplinary action shall include, but are not limited to;

(2) Violation of, or failure to comply with, the state constitution or statutes, supreme court rules and regulations, or local court rules and regulations;

(3) Failure or refusal to comply with a lawful order or to accept a reasonable and proper assignment from an authorized supervisor;

(4) Documented inefficiency, incompetency, negligence, or brutality in the performance of duties;

(5) Under the influence of or unauthorized possession of alcohol, narcotics, or other drugs while on duty;

(6) Medical evidence of physical or mental incapacity to perform duties;

(7) Careless, negligent, or improper use of state property, equipment, or funds;

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

(9) Failure to obtain and maintain a current license or certificate as a condition of employment, if required by law, supreme court standards, or these rules;

(10) Conduct unbecoming to a state officer or employee;

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

(12) Taking unauthorized leave.[1]

Other reasons may be used at the discretion of the court administrator. Admittedly some of the above causes are rather vague, e.g., (d)(10), but they are sufficient to handle most problems which arise.

The important thing to remember at this juncture is that the personnel system under consideration is a merit system incorporating disciplinary rules applied to non-judicial employees of a court or court system. Many courts and court systems still have no formalized system of discipline. Consequently, many employees have lost their jobs simply because the judge who appointed them has been voted out of office during a political election. In addition, it is likely that discipline for the same or similar infractions of work rules has been treated in a widely disparate manner in many courts.

Grievances and Appeals

As in the private sector, as well as other public agencies, court personnel systems should make it possible for employees to air their grievances and complaints and also to appeal a disciplinary action taken against them by supervisors or judges.

Grievances

For purpose of definition, a grievance is an action filed by an employee who feels that his supervisor is treating him or her unfairly or who feels that the administration is not following the rules governing personnel policies. Grievances may also be filed over duty assignments, shift assignments, hours worked, working conditions, leave policies, and other similar matters.

Persons who have a right to the grievance procedure vary from system to system. Many executive branch agencies give

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1. Colorado, Supreme Court. Colorado Judicial System Personnel Rules (Denver: Colorado Supreme Court), rule 25(d)(1-12).

full rights of the grievance procedure to all employees, except those who are appointed to positions outside the merit system. Grievance procedures are now found in a few judicial systems and individual trial courts, either provided by rule or under a collective bargaining contract.[2]

In a judicial merit system, it is important that employees be allowed access to the grievance procedure. The availability of the system will allow an employee to ventilate the problems which he feels are affecting his performance on the job. In some state-wide judicial and trial court personnel systems, some employees are exempted from the grievance procedure. These are usually employees who are directly responsible to a judge or those who are in top professional and administrative positions. This practice protects a judge from being overruled by an administrative tribunal with respect to his confidential employees. In a few systems and courts, the judges have recognized the benefits of a grievance procedure, and it has been expanded to include all employees.

Grievance Procedure Steps. Typical steps for a grievance procedure in a non-union merit system are as follows:

Step 1: An employee who feels he or she has a grievance should discuss the matter first with his or her immediate supervisor. If the immediate supervisor cannot or will not attempt to solve the problem, the employee should be allowed to proceed to Step 2 of the procedure. If the employee's grievance is against his immediate supervisor, then the employee should be allowed to start the grievance procedure at Step 2.

Step 2: An unresolved employee grievance at this level should be handled by a person who is in the middle of the organization structure. In a locally funded court system, this could be a mid-level administrator or supervisor. In a state funded system, this function could be performed by the administrator of the court or judicial district, or by the chief or presiding judge of the court or district. Whoever handles the grievance at the second step should have the option of appointing an impartial review panel or of retaining the services of a hearings officer to make an investigation of the grievance. These options are very important, if there is a possibility of a conflict of interest for the person charged with the grievance responsibility. Decisions reached at the second step level should be in writing. An aggrieved employee who does not receive satisfaction should be allowed to continue to a third and final step in the procedure.

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2. Grievance procedure rules are discussed in Chapter IX, including the variations among different judicial systems and courts.

Step 3: As Step 3 is the final step for an unresolved grievance, it should be handled under the auspices of the highest authority available to the system. This could be the chief or presiding judge in a locally funded court or judicial district, or the administrator of the court or district acting for the chief or presiding judge. In a state system, the grievance should go to the chief justice, or to the state court administrator acting for the chief justice. At the third step, it is imperative that an impartial grievance review panel be established and maintained to hear last resort grievances. As Step 3 is the third and final step, great care should be taken to assure that correct procedure is followed and that the decision handed down, in writing, is fair and equitable.

Additional steps may be taken between the first and final steps of the procedure, but they do little other than dilute the process and drag out the time involved in reaching ultimate resolution. On the other hand, the elimination of one or two steps in the three-step procedure places a greater burden on higher level administration personnel, as they will be feeling the weight of a larger number of grievances without the aid of a filtering process at the lower end of the system.

An analogy can be drawn between the grievance procedure and the usual procedure in court systems where a case enters the system in a limited jurisdiction court, is appealed to a general jurisdiction court and, if a litigant or defendant is still not satisfied, may be appealed to an intermediate appellate court or the supreme court. There is one major difference, however. Under the usual grievance procedure, the process from Step 2 to Step 3 is automatic, while in court cases, the ultimate appellate tribunal may have the discretion to decide whether it will hear the matter.

Ideally, most grievances should be filtered out at the first step of the system in a formal or informal manner. Access to a grievance procedure which is formalized and legitimized by rule can straighten out unpleasant working situations that can be detrimental to the over-all working environment.

Appeal Procedure

An appeals, or review, procedure differs from the grievance procedure in that it occurs on motion by an employee who has been reduced in rank or classification, has been suspended from work, or has been terminated from his position in the court. A request for review or appeal is lodged by an employee who has been subject to one of these disciplinary actions when he or she feels wronged by the action or feels that the action was inappropriate or unfair in light of the nature of the alleged wrongdoing.

The appeals/review procedure is a formalized procedure for handling employee appeals. It is formalized to the extent that hearings officers may be retained (either on the payroll or by contract) to hear and present findings of law in the cases at hand. In short, it is an administrative procedure which is one step removed from the courtroom. Its purpose is to operate as a check on or safeguard against arbitrary or unfair personnel or administrative practices which place an employee in jeopardy.

The appeals/review procedure may be a one-step affair, with no preliminary procedures. A review board may hear the case after all the documents have been submitted and may make a ruling based on fact. The action by the employee may be denied by the board or the board may find in favor of the employee and order that remedial action be taken.

The process may also have two steps, the first step being a hearing of a concerned employee before a hearing officer, with full or partial evidentiary proceedings. After a determination by the hearing officer is handed down in writing, either party may appeal the decision to the board as a whole. The board must then either affirm the decision of the hearing officer, or overturn his decision and state why it is doing so.[3]

An appeals procedure is vital for any personnel system which desires to assure that the employees of the system are being treated fairly.

Limitations on the Right of Appeal

Should all employees have a right to the appeals/review procedure as was suggested earlier in this chapter for grievances? While it can be stated idealistically that this is highly desirable, practicality indicates that it is not. There are positions in all personnel systems which should be excluded from the appeals process. These are positions which involve a confidential or close working relationship with the top administrative officials of the organization and usually include senior level professional and administrative staff. It can be argued that employees in these positions should be allowed to appeal a disciplinary action to an administrative tribunal having the power to reinstate an employee over the wishes of the top administrative authority. To do so would serve only to undermine severely the authority of the administrator and to erode further the working relationship between

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3. Appeal procedure rules and the difference among judicial systems and trial courts, both as to procedures and appeal board composition, are discussed in Chapter IX.

the parties. This is especially true with courts and court administration. The reinstatement of an employee who is directly responsible to a justice or judge, or of a senior level administrative or professional staff member who is responsible to a supreme court, trial judges en banc, or a court administrator would make for difficult or impossible working conditions.

The stated purpose for appeals from disciplinary actions is to protect an employee from irresponsible or irrational actions on the part of a supervisor. In a court setting, judges must interact with those responsible directly to them and must feel comfortable with this interaction. Consequently, those employees (court administrators, chief probation officers, parajudicial personnel, and clerks of court) who work closely with the judges should be denied access to an appeal which is administrative in nature. If this seems harsh, it must be remembered that the disgruntled employee still may have legal avenues to pursue.[4]

In establishing an appeals process, the board composition and the procedures themselves should foster even-handedness. This is necessary to maintain public confidence, as well as employee morale, while at the same time not being too lenient or employee-oriented. If employees who should be terminated are retained, there will be a definite decrease in desired administrative efficiency.

Making the Process Work

The relatively slow pace of some court procedures should be avoided in designing the appeals/review process. Fundamental fairness should be accorded the employee and his rights protected, but the process should be designed to bring the matter to a conclusion as soon as possible. Even if the process is so designed, a disciplinary matter may drag on for an unnecessary period, simply because an administrator or judge(s) may be reluctant to take disciplinary action against an employee who is performing inadequately or is a disruptive influence on other court personnel.

Good personnel management requires that those in authority take action quickly, once justified by the facts, no matter how disagreeable the task may seem. Once that action is taken, the employee may avail himself of the appeals/review procedure or any other action open to him. Some judges and other court personnel may be reluctant to act because they may not enjoy the prospect of being reversed or even having an appeal brought. On

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4. See Appendix D for decision concerning Hamm v. Scott.

the other hand, the employee may feel he faces a difficult situation in having to bring his appeal before a forum composed, at least in part, of peers of the administrator or judge(s) who took the action.

Very seldom is an employee dismissed because of a criminal act or gross negligence. Usually, an employee is terminated because he cannot or will not perform at the level expected of him. To be too lenient with an employee who is not doing his job does him a disservice, as well as the court or judicial system which employs him and the public who pays the bills.

The danger is not that employees will be disciplined or terminated without sufficient cause. The appeals/review process, as previously indicated, should safeguard against this happening. Experience in some public personnel systems has shown just the opposite. Undesirable or incompetent employees may remain on the job, because of a combination of administrative inertia and cumbersome appeal procedures.

SECTION THREE

Setting the Framework

Chapter IX Personnel Rules

CHAPTER IX

PERSONNEL RULES

Introduction

The judicial system, probably more than any other public institution, operates according to very specific and detailed rules. They govern all facets of practice and procedure in the courts from the filing of a case through the ultimate disposition and even post-judgment actions. Not only are judges and the lawyers who practice before them required to become familiar with the rules, but so are employees of the court who are responsible for case processing, assistance in the courtroom, and related tasks. It is surprising that such a rule-oriented and formalistic institution has been so slow to adopt rules covering all aspects of the employment of court personnel, especially when similar rules have governed employment in the executive branch at national, state, and local levels for better than half a century (and much longer in some instances).

The reasons it has taken professional personnel management so long to become accepted in a court setting were discussed in Chapter I. Obviously, professional personnel management and rules of personnel governance go hand in hand. The former requires the latter to assure even-handed treatment for all employees. The latter would not be effective without professional administration. All of which may help explain the delay in adding court personnel to the list of subjects and activities covered by court rules.

During the past decade, a number of state court systems have adopted personnel rules. Some locally-funded trial courts, primarily in urban areas, have also adopted personnel rules. In a number of locations, trial court employees are covered by executive branch personnel rules, although some are expressly exempt from all or specified provisions, and the judges may have the ultimate authority for hiring and removal.

State Systems

Jurisdictions that have adopted personnel rules which cover employees of all state-funded courts include: Alaska, Alabama, Colorado, Connecticut, Hawaii, Kentucky, Maine, New Mexico, North Carolina, South Dakota, and West Virginia.

Nebraska has promulgated personnel rules covering county court personnel, as the county court is the only trial court that is state funded. Virginia has done the same for personnel of the

district court (court of limited jurisdiction), which in that state is the only state-funded trial court. Delaware is in the process of making its personnel system and the application of its rules state-wide.[1]

Nevada[2] is considering proposed personnel rules which would cover all employees in the state judicial system. Kansas is in the process of adopting personnel rules applicable to employees of the Supreme Court, Court of Appeals, and the Judicial Administrator's office.[3] A study of trial court personnel, which included proposed personnel rules, was commissioned by the Kansas Legislative Council. Maryland is also having a personnel study made, which will have proposed rules as one of the by-products.

Trial Courts

The number of trial courts in non-state-funded jurisdictions with their own personnel systems and rules is not known. Some representative courts are the Superior Court of Los Angeles County (California); Circuit Court of Jackson County (Missouri); Courts of Common Pleas of Cuyahoga and Hamilton counties (Ohio); and the Circuit Court of Multnomah County (Oregon).

Personnel Rules Content

Court personnel systems, whether they have state-wide application, or apply only to an individual trial court, differ in several respects from traditional civil service or merit systems found in the executive branch.[4] These differences usually relate to these matters: 1) exempt or partially exempt employees; 2) testing procedures and employee appointment requirements; 3) grievance and appeal procedures or the lack of same; 4) administrative decentralization; and 5) proscribed or limited employee activities. Each of these will be discussed in the appropriate sections to follow.

Generally, court system personnel rules cover the following subjects:

1) Scope
2) Administrative Authority and Responsibilities

1. The Delaware Judiciary: Position Classification, Pay, and Equal Employment Opportunity (Chicago: Public Information Service, 1976).
2. Nevada, State Court Administrator's Office, Draft Prepared by the State Court Administrator's Office (Carson City, Nevada: State Court Administrator's Office, 1977).
3. Institute for Advanced Studies in Justice, Criminal Courts Technical Assistance Project, Development of a Comprehensive Personnel Plan for Non-Judicial Employees of the Kansas Appellate Courts (Washington, D.C.: The American University Law School, 1977).
4. These differences and the reasons therefor were discussed in Chapter I.

3) Definitions
4) Classification Plan
5) Compensation
6) Recruitment, Testing, and Appointment
7) Employee Evaluation and Discipline
8) Termination of Employment
9) Grievances and Appeals
10) Fringe Benefits and Working Conditions
11) Special Provisions (i.e., proscribed or limited activities, such as partisan political participation and outside employment)

Rule Format and Organization

The personnel rule format varies from jurisdiction to jurisdiction, with subject matter organized in different ways. Colorado was the first state to adopt extensive system-wide personnel rules, and the Colorado format has been followed generally by several other jurisdictions, including Delaware, New Mexico, South Dakota, and the proposed Kansas rules. The Colorado Rules are organized as follows:

COLORADO JUDICIAL SYSTEM PERSONNEL RULES

5. Colorado Supreme Court, Colorado Judicial System Personnel Rules (Denver: Colorado Supreme Court, 1975).

The personnel rules in Maine and West Virginia are organized in a similar fashion. The Maine rules cover more subjects and, for that reason, are used here as an example.

MAINE COURT SYSTEM PERSONNEL POLICIES

6. Maine Supreme Judicial Court, Maine Court System Personnel Policy and Procedures Manual (Portland, Maine: Supreme Judicial Court, 1977).

The format of the Multnomah County Circuit Court (Oregon) personnel rules is one of the best examples of personnel rule organization applicable to an individual trial court.

PERSONNEL POLICIES FOR MULTNOMAH COUNTY CIRCUIT COURT

Section V -- Selection of Personnel and Conditions of Service (continued)

Section VI -- Hours of Work and Leaves of Absence

Section VII -- Separation, Suspension, Demotion and Retirement

Section VIII -- Rules of Conduct

Compliance with Personnel Plan.....	8.00
General Rules of Conduct.....	8.10
Release of News Information.....	8.20
Compliance With Rules of Conduct....	8.30

Section IX -- Grievance Procedure

Grievance Procedure.....	9.00
Presentation of Grievance.....	9.10
Appeal from Reallocation of Position	9.20
Appeal from Dismissal, Demotion or Suspension.....	9.30
Other Appeals and Investigations....	9.40
Reviews.....	9.50

Section X -- Miscellaneous

Private Solicitations.....	10.00
Violation of Personnel Policies.....	10.10
Amendments to Policies.....	10.20

Section XI -- Definitions

Section XII -- Index [7]

There are other examples that might be used, but these three are sufficient to illustrate different ways in which personnel rules might be organized according to subject matter.

Content

Specific rule provisions differ as personnel systems differ, even among jurisdictions using similar format in personnel rule organization. Even though provisions differ, the subject matter covered is much the same.

Scope. The employees covered by the rules may be specified. Conversely, only those employees who are exempt may be specified, such as the court administrator's office or elected court clerks. Under most court personnel systems, some categories of employees may be partially exempt, e.g., covered by some rules, such as those relating to classification, compensation, fringe benefits, and working conditions, but exempt from grievance and appeal procedures. In this category are usually found top administrative and professional staff and personal or confidential employees of judges, including any or all of the following: secretary, division or courtroom clerk, reporter, law clerk, and bailiff.

It is usually in this portion of the rules that the relationship between the personnel rules, other court rules, and statutory provisions is clarified.

7. Multnomah County, Oregon, Office of the Circuit Court Administrator, Personnel Policies for Employees of the Circuit Court of Multnomah County (Portland, Oregon: Office of the Circuit Court Administrator, 1973).

Administrative Authority and Responsibilities. Rules in this category usually set forth the authority and responsibility of judges, administrators, and others in the court or judicial system for administering all or a portion of the personnel rules. For example, West Virginia has six rules dealing with the responsibility of the Supreme Court of Appeals, Administrative Director, Circuit Judges, Chief Circuit Judge, Magistrates, and judicial employees, respectively.[8]

The Colorado Judicial System Personnel Rules state concisely what some of these responsibilities entail. Rule 3(2)(b) states:

> (b) Scope of Responsibility. (1) appointing authorities, district administrators, and supervisors are responsible in their respective jurisdictions for:
> (2) administration of these rules and compliance with the policies contained herein;
> (3) orientation and on-the-job training of employees;
> (4) review and evaluation of employees' performance in accordance with these rules;
> (5) corrective or disciplinary action when required in accordance with these rules; and
> (6) providing a work environment conducive to employee welfare and safety.[9]

In addition to specific rule or a series of rules on this subject, references to administrative authority and responsibility are usually found throughout the rules in connection with recruitment, hiring, classification, employee discipline, and related matters.

Definitions. As is true with almost every professional specialty, personnel administration has an argot all its own. To make this argot comprehensible, the personnel rules should contain a complete set of definitions with clear explanations. The following composite list of defined words and terms was taken from several sets of court system personnel rules.

Administrative Director
Administrative Authority
Allocation of Positions
Appointing Authority
Appointments
Anniversary Dates

Bumping Rights

Certification
Certified Employee
Class
Class Series
Class Specification
Classified Service
Classification Plan
Compensation Schedule
Conditional Promotion

8. West Virginia, Supreme Court of Appeals, West Virginia Judicial Personnel System Policy and Procedures Manual (Charleston: West Virginia Supreme Court of Appeals, 1976), rules 2.1-2.6.
9. Colorado Judicial System Personnel Rules, rule 3(2)(b).

Confidential Employees
Continuous Service
Current Rate of Pay

Demotion
Director
Dismissal

Eligible
Eligibility List
Exempt Position

Grade
Grievance

Increment
Immediate Family
In-Grade Hiring

Job Description
Judicial Officer

Lay Off
Lead Worker

Non-Exempt Position

Pay Range
Performance Evaluation Report

Permanent Employee
Permanent Full-time Position
Permanent Part-time Position
Position
Position Control Number
Primary Duties
Probationary Period
Promotion
Promotional Transfer

Reallocation
Reclassification
Re-employment
Reinstatement

Selection Process
Staffing Pattern
Step
Step-for-Step
Supervisor

Termination
Temporary Appointment
Temporary Full-time Position
Temporary Part-time Position
Transfer
Trial Service Period

Unclassified Positions

Classification Plan. The rules relating to the classification plan vary among jurisdictions as to content, but generally include the same subjects. First, the rules usually cover the purposes and content of the classification plan, how it is to be developed initially, and how it is to be applied and administered. Maintenance of the classification plan requires periodic review by those who are responsible for personnel administration, and the rules may specify how often certain classes or all classes of positions are to be reexamined. This is necessary because duties may change.

The rules should also provide a procedure for employees to request reclassification and state the basis for position reclassification. In at least two jurisdictions, there is a special process by which an employee can appeal his denial of reclassification or a new classification given to his position. In Colorado, there is a special classification review board consisting of a judge, a staff member from the state court administrator's office, and a trial court administrator.[10] In Maine, the appeal is heard by the same board that hears grievances. The general practice is for an appeal to be taken to the office or staff members who made the decision being appealed.

10. Ibid., rule 15(d).

Both Colorado and Maine apparently feel that a separate body would give the matter more impartial consideration. Some court personnel rules do not provide for any appeal of a classification determination.

Administrative authorities, such as presiding judges or trial court administrators in a state system or a department or section head under a trial court personnel system should also have the opportunity to reclassify or reallocate an existing position, whether vacant or filled, and the rules usually provide the procedure and basis for such requests.

Compensation. The compensation plan and its applications receive considerable attention in court system personnel rules. The rules provide for the type of compensation plan to be used, which usually consists of a number of grades and steps within each grade.[11] The rules also provide for the assignment of each position class to a grade.

Another important subject usually covered is initial hiring rates, whether an employee can be hired above the initial step, under what circumstances, and with whose approval.

Provision is made for merit and longevity increases (sometimes called anniversary salary increases) and the relationship of various compensation increases to the employee's hiring or anniversary date. Equally important is a rule explaining the basis for salary computations, monthly, daily, or hourly. Special computation problems are usually dealt with, such as payment to terminating and deceased employees, effect of position changes on compensation, and how to handle two simultaneous personnel actions that relate to compensation.

It is now common for the rules on compensation to provide for an annual review and update of the compensation plan, either based on cost-of-living increases or a change in prevailing wages for comparable positions. The court or judicial system may make its own survey, or it may use one made by the executive branch.

Recruitment, Testing, and Appointment. Several rules are usually required to cover all facets of employee recruitment, testing, and appointment. The rules usually provide that there will be no discrimination because of race, creed, color, sex, or age (within whatever limits are set -- usually legal voting age to mandatory retirement). This has been a standard provision of all public personnel system rules for many years. New provisions in the same vein are designed to foster active recruitment and employment of minorities. They generally involve widespread and out-reach notification of job openings and the use of examinations which are job related but not cultural value oriented.

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11. See Chapter VI, Compensation and Benefits.

Personnel administration in state court systems, even with a state-wide personnel program, tends to be decentralized. This means that hiring is done locally, and the central administrative office performs post audits to determine if the chosen applicant meets the requisite qualifications and that the testing or application review process was properly conducted. Because of the number of courts and adjunct judicial agencies involved, the rules are usually quite extensive in detailing who has hiring authority and of what employees. The post audit function is spelled out by rule, with the added provision in some jurisdictions that the position cannot be filled without the prior approval of the central office.

The state court administrator's office also is usually involved in recruitment, including the wide circulation of job announcements and out-of-state recruitment for high level positions.

Testing is not used as extensively in court personnel systems (whether state-wide or local) as is the general practice in executive civil service. Written tests are used only for entry level clerical positions to determine typing, clerical, and stenographic skills. Oral boards are used for professional and administrative positions, but not extensively as yet. Interviews and review of applicants' resumes and applications still constitute the major testing device. Testing in whatever form is covered by rule, as are the establishment of eligibility lists, their application and duration.

In most jurisdictions, the appointing authority may select any qualified applicant. Colorado is one exception; in that state, the appointing authority must select one of the top three candidates, and the rules so provide. Most court personnel rules are silent on this point.

Employee Evaluation and Discipline. All new employees serve a probationary period, usually six months, and, during that time, the protections afforded classified employees under the personnel rules usually do not apply. This means a probationary employee can be dismissed without recourse. Once an employee is certified, the rules specify the acts of commission and omission for which an employee may be disciplined. The possible penalties, such as reprimand, demotion, suspension, or dismissal, and the procedures to be followed are set forth by rule, as well as any appeals that might be exercised by a certified employee.

Employee evaluation involves rules covering performance evaluation procedures, when evaluation is to take place, and the possible alternatives, if an employee receives an unsatisfactory evaluation.

Termination of Employment. This category overlaps to a certain extent with the preceding one, because of the penalty of dismissal. Employment termination rules cover much more than dismissal or involuntary termination. They cover voluntary terminations (resignations) and related notice requirements, and also lay-

off procedures and employee "bumping", and reinstatement rights and procedures. Lay-off provisions can become quite complicated, involving seniority, employee status, and possible transfer procedures.

Grievances and Appeals. Grievances generally fall in two major categories, although both may be handled in the same way under court personnel rules. The first category relates primarily to working conditions and on-the-job relationships and practices, as discussed in Chapter VII. The second category pertains to employee disciplinary actions, such as demotion, suspension, and dismissal. (As already mentioned, some jurisdictions also treat reclassification or reallocation appeals as grievances.)

As indicated previously, in some jurisdictions there are employees who are excluded from the grievance procedure, whether in the first or second category. These are usually high level professional and administrative employees and the confidential or personal employees of judges. One exception is Maine, where all employees may avail themselves of the grievance procedure.[12]

Grievances in the first category are handled generally in the same way in those jurisdictions whose rules provide for some sort of grievance procedure. The first step is for the employee to discuss the matter informally with his or her supervisor. If the grievance is not resolved to the employee's satisfaction, the second step is either for the employee to appeal to the chief judge or his designated representative, as in Colorado, or to appeal to the state court administrator or someone in his office as designated by the personnel rules, usually the personnel officer. In Colorado, appeal to the state court administrator constitutes the third step and may be made by the employee if dissatisfied with the decision of the chief judge or that panel established by him to review the grievance.[13]

The second step in the Multnomah County Circuit Court is an appeal to the presiding judge, although the court administrator is authorized to investigate any grievance related to administration of the personnel plan or rules and to take such action as deemed necessary. Dissatisfaction with his actions may then be appealed to the presiding judge by the aggrieved employee.[14]

There is some variation on how a grievance is handled upon appeal to the state level in a state-wide judicial personnel system. In Colorado, the state court administrator appoints a three-member appeals board, whose decision is final. The board consists of a trial judge, a district administrator, and the state court administrator or his designee. A separate board is constituted for each grievance, and these boards are different from the body that reviews appeals of demotion, suspension, or dismissal.[15]

12. Maine Court System Personnel Policy and Procedures Manual, rule 10.1.
13. Colorado Judicial System Personnel Rules, rule 44.
14. Multnomah County (Oregon) Personnel Policies, rule 9.40.
15. Colorado Judicial System Personnel Rules, rule 44(d)(6).

The following examples illustrate other variations. In Maine, the appeal is heard by the board that hears all grievances.[16] This is also the situation in Kentucky.[17] In Alaska, the hearing is held informally by the personnel officer, with a formal hearing the ultimate step. The formal hearing is conducted by a board comprising three members of the bar, one chosen by the employee, one by the personnel officer, and the third by the other two.[18] In Multnomah County, the presiding judge decides whether or not to hold a formal hearing.[19]

In most jurisdictions, the decision made as a result of the ultimate appellate process is final. The one exception found in the personnel rules examined is in Kentucky, where the employee has the express right to appeal to the court of proper jurisdiction, if he is dissatisfied with the appeal board decision.[20] In all jurisdictions examined, the employee has the right to appear and to be represented by counsel or some other person of his own choosing.

While grievances in the second category are generally heard by the same body that reviews other grievances, the process is usually different in that the appeal is taken to the review board in the first instance, bypassing the intermediate steps. The elimination of the intermediary steps is a recognition that grievances in this category are much more serious, since they involve suspension, demotion, or dismissal. In some jurisdictions a hearing by the review board is automatic; in others, the board determines whether a hearing is warranted.

Colorado was the only jurisdiction examined where a different board hears grievances concerning suspension, demotion, or dismissal. This board is appointed by the chief justice and consists of a supreme court justice, who serves as chairman; a district judge other than a chief judge; a county judge other than a presiding judge; a district administrator; and a trial court employee. The staff counsel of the state court administrator's office serves as the legal counsel to the administrative authority who instigated the disciplinary action complained of, and the board may appoint a hearing officer, if it determines that a hearing is required.[21]

There is considerable variation in the composition of the ultimate grievance review bodies. Colorado and Alaska have already been covered. In Multnomah County, the presiding judge is the sole appellate review authority, but presumably he could appoint a review board, if he deems it desirable. The rules do not so provide, but he probably could do so under his general authority as presiding judge.

16. Maine Court System Personnel Policy and Procedures Manual, rules 10.2 & 10.3.
17. Kentucky, Court of Justice, Administrative Procedures of the Court of Justice (Frankfort, KY: Court of Justice, 1977), rule 5.06(2).
18. Alaska, Supreme Court, Alaska Court System Personnel Rules (Anchorage: Alaska Supreme Court, 1977), rules 9.04 and 9.05.
19. Multnomah County (Oregon) Personnel Policies, rule 9.40(c).
20. Kentucky Administrative Procedures of the Court of Justice, rule 5.06(2).
21. Colorado Judicial System Personnel Rules, rules 41 and 46.

Two other examples illustrate the variations in review board composition. In Maine, the board has seven members appointed by the chief justice of the supreme judicial court. The board has a member of the supreme court, a superior court justice, a district court judge, a regional court administrator, and three judicial system employees.[22] The Kentucky board is also appointed by the chief justice and has five members: A female, a minority race member, an attorney not employed by the judicial system, a non-supervisory employee of the judicial system, and a personnel specialist not employed by the judicial system.[23]

Fringe Benefits and Working Conditions. These rules cover a multitude of related subjects, such as hours of work; overtime provisions, including compensatory time; official holidays; mandatory retirement; shift differentials, if any; and various kinds of leave. The rules in some jurisdictions also cover insurance benefits (health and group life) and retirement benefits. The rules on insurance and retirement benefits are necessary, if judicial branch employees are not covered by the same plans applicable to employees of the executive branch.

Rules providing for employee leave usually cover annual leave, sick leave, maternity leave, injury leave, funeral leave, educational leave, administrative leave, and leave without pay. Those relating to annual leave specify maximum accrual, the maximum amount of unused leave for which an employee may be paid upon termination, and the amount of leave that may be transferred from an executive or legislative branch agency upon employment in the judicial branch. In some jurisdictions, the amount of leave which may be accumulated annually, as well as maximum accrual, increases according to length of service.

Rules providing for sick leave also cover annual and maximum accrual limits and the amount of leave that may be transferred in upon employment. In most jurisdictions, terminated employees are not compensated for unused sick leave; Colorado is one exception: one-fourth of unused sick leave, up to a maximum of 45 days, is paid upon termination.[24]

Generally, judicial branch fringe benefits, whether system-wide or applicable to an individual trial court, parallel those of the executive branch, so that all employees are treated in a similar manner.

Special Provisions. This category covers a variety of provisions found throughout the personnel rules examined relating to employee conduct both on and off the job, nepotism, and other restrictions and limitations. Of the most significance are those rules limiting or proscribing political activity by court employees and those relating to outside employment.

22. Maine Court System Personnel Policy and Procedures Manual, rule 10.2.
23. Kentucky Administrative Procedures of the Court of Justice, rule 5.07.
24. Colorado Judicial System Personnel Rules, rule 33(e).

Not all court or judicial system personnel rules deal with both of these subjects. Some jurisdictions cover one and not the other in their rules. Examples of rules limiting employee political activity are found in Alaska, Colorado, Kentucky, and Maine.

Alaska bars employees from being members of any national, state, or local committee of a political party; nor may any employee take part in the management of a political camapign.[25] No employee or representative of the Alaska court system may require any assessment, subscription, contribution, or service from any other employee for any political candidate, party, or activity, or for any nonpartisan or charitable fund-raising activity.[26]

Colorado judicial system employees are barred from holding any political party office or taking an active part in any political campaign; nor can any employee be granted leave without pay to engage in partisan political activity or serve in an elected office.[28] The prohibition against holding a nonpartisan local government office is designed to avoid a seeming conflict of interest should the local government unit be involved in litigation in the court where the employee is employed. The rule is silent on attendance at political meetings, such as party caucuses or making voluntary contributions, so presumably these are not prohibited.

Employees of the Maine judicial system are barred both from holding public office or an office in a political party; nor can they take an active part in any political campaign or management of a political party.[29] The Maine rules also specifically bar employees from wearing campaign buttons or distributing campaign literature in the courthouse. Unlike Alaska and Colorado, some employees in the Maine judicial system (above a certain grade) are also barred from participation in public political functions or making contributions.[30]

Kentucky's rule is generally similar to those in Alaska, Colorado, and Maine. Employees, however, are expressly permitted to hold office in a town or school district, if the election or selection is nonpartisan and compensation is limited to per diem payments.[31] Employees are also expressly permitted to make voluntary contributions, be members of a political party or club, and attend political rallies, receptions, and parties.[32]

Unlike Maine, employees may display political stickers on their cars and wear political buttons. They may also work at the

25. Alaska, Supreme Court, Alaska Court System Personnel Rules, rule 10.00.
26. Ibid., rule 10.03
27. Ibid., rule 10.00.
28. Colorado Judicial System Personnel Rules, rule 30.
29. Maine Court System Personnel Policy and Procedures Manual, rule 5.10.
30. Ibid.
31. Kentucky Administrative Procedures of the Court of Justice, rule 6.23.
32. Ibid.

polls in nonpartisan statutory positions paid from public funds, such as precinct judge or clerk. In addition, they may work actively in political campaigns not identified with a political party or the courts, such as for or against constitutional amendments, referendums, or municipal ordinances.[33]

The extent to which judicial branch employees should be permitted to engage in political activity has been subject to considerable debate, especially if the provisions in the judicial system or court personnel rules are more restrictive than those applying to executive branch employees.

On the one hand is the argument that judicial branch employees should not be required to be second class citizens, because of their employment. The opposing argument is that judicial branch employees are in very sensitive positions and, for that reason, possible conflicts of interest should be avoided; in fact, there should not be even the appearance of a possible conflict of interest. This point of view has especially prevailed in those jurisdictions where judges are selected under what is known as the Missouri plan or some variation thereof. The reasoning here is that, since judges are barred from political activity or from making contributions, employees should be similarly restricted.

As can be seen from the examples cited above, different jurisdictions have dealt with this problem in somewhat different ways. Others have not dealt with it at all. It is obvious that there is no satisfactory universal solution, and each jurisdiction will either continue to struggle with this problem or resolve it according to the local political environment, tradition, and the degree to which judges, themselves, are removed from the political arena.

The question of conflict of interest arises again in connection with outside employment. The personnel rules in some of the jurisdictions examined deal with this question. Others ignore it completely. Rules were found on this matter in Colorado, Maine, New Mexico, and Multnomah County (Oregon).

Colorado judicial system personnel rules provide that an employee may engage in outside employment if: 1) it does not interfere with job performance; 2) it does not interfere with the interests of the judicial system of the state of Colorado; and 3) it is not the type of employment which could reasonably give rise to criticism or suspicion of conflicting interests or duties. Further, no employee may engage in outside employment without the approval of the administrative authority.[34]

The Maine rules have a similar provision, but also expressly prohibit any employee from engaging in the practice of

33. Ibid.
34. Colorado Judicial System Personnel Rules, rule 30

law.[35] The New Mexico personnel rules are similar, but prohibit full-time law clerks only from engaging in the practice of law, rather than extending this provision to all employees in the system.[36]

The Multnomah County (Oregon) personnel rules contain a requirement that an employee's outside activities shall not conflict with the court employment nor reflect negatively on the court.[37] This statement is amplified in other sections of the rules which prohibit employees from: 1) having an interest or engaging in any activity, business, or transaction which is in conflict with the proper discharge of duties; 2) accepting outside employment which may reasonably be expected to impair independence of judgment in the exercise of official duties; and 3) engaging in employment, business or activity which might require or induce disclosure of confidential information.[38]

While no jurisdiction attempts to prescribe a dress code by rule, a few specify that employees be neat, clean, and attractive in appearance, and dress appropriately. This requirement is in addition to those found in all of the court and judicial system personnel rules examined, which describe conduct which could subject employees to disciplinary action.

Several of the jurisdictions examined have rules prohibiting or limiting nepotism. Maine perhaps has the simplest rule on this subject:

> 5.8 Employment of Relatives
> No person will be hired, promoted or transferred to a position where the selecting authority will be a relative of the employee.[39]

Drafting Personnel Rules

Drafting a set of personnel rules for a trial court or a judicial system is no longer the difficult task it once seemed a relatively few years ago. Then there were many executive branch personnel systems to use as models, and there was no dearth of public personnel specialists and text book and reference material. The problem was that personnel specialists were not familiar with the court environment and its special problems, nor were there any text books, reference material, or models directly applying to the courts. Conversely, judges, administrators, and other court

35. Maine Court System Personnel Policy and Procedures Manual, rules 5.9 & 5.11.
36. New Mexico, Supreme Court, New Mexico Judicial System Personnel Plan, (Santa Fe: New Mexico Supreme Court, 1976).
37. Multnomah County (Oregon) Personnel Policies, rule 5.180.
38. Ibid., rule 8.10.
39. Maine Court System Personnel Policy and Procedures Manual, rule 5.8

personnel were relatively unfamiliar with professional personnel management practices. Not only were they not sure of the need for a formal personnel system and rules, but, generally, they were also suspicious of outside experts.

The scene has changed, becuase there are now judicial systems and individual trial courts which have developed their own expertise in personnel management. Outside consultants and specialists have gained sufficient knowledge about the court environment to be helpful in developing court personnel systems, making classification studies, and drafting rules. Standards on court organization and judicial administration, as well as many conferences and workshops, have emphasized the importance of professional personnel management in court administration. Consequently, judges and court personnel are now much more willing to establish and maintain a formal personnel system and to adopt the personnel rules necessary to make the system function. There are now models available,[40] and reference material is being developed which will be helpful both to individual courts and judicial systems.

Preparing the First Set of Rules

Even with the present more favorable climate and the availability of acceptable specialists (both within and outside the court environment), promulgation of the first set of personnel rules for a judicial system or a court is not without some difficulty. There are still a number of problems which must be resolved, not the least of which is general acceptance of the rules by the judges and court personnel who must operate under them and be governed by them.

In meeting this particular problem, the process used in drafting the rules may be as important as the product itself. In other words, high degree of participation by those whom the rules affect may not always be possible, because drafting and promulgation of personnel rules may be subject to rather severe time limits imposed by constitutional or legislative mandate, such as the initial date of state funding of the judicial system. If the degree of participation is, of necessity, curtailed for this reason, every effort should be made to explain the rules and the reasons for them to judges and employees in the system or court as soon as possible after their adoption.

Adoption of system-wide rules is usually the responsibility of the state supreme court. Personnel rules applying only to a particular trial court are usually promulgated by all of the trial judges en banc. Justices or judges usually do not have the time or the expertise to prepare the initial draft, which means that this task will be performed by staff, outside consultants or specialists, or by a combination of the two. The best situation would be for the staff or outside specialists to have the assistance of a representative committee of judges and court personnel. At the very least, the draft might be reviewed by such a committee for comments and suggestions before submission to the adopting body.

40. See Appendix E for examples of complete sets of court personnel rules.

Any tendency to adopt wholesale the personnel rules of another jurisdiction should be strongly guarded against. They can serve as models for format, content, and language, but each judicial system or court has slightly different problems and needs, and should resolve the related policy questions for itself. These policy questions involve, but are certainly not limited to, the following:

1) exempt or partially exempt positions, including provision, if any, for personal or confidential employees of judges;
2) extent to which grievance and appeal procedures apply;
3) content of fringe benefits;
4) recruitment and hiring procedures;
5) limitation or proscription of employee political activity and extracurricular employment;
6) nepotism; and
7) mandatory retirement age for employees.

In considering these and other policy questions, parallel provisions in the executive branch personnel system should be considered, so that necessary departures from them are well thought out and explained, should any questions be raised.

In-House Staff or Consultants. One of the major considerations in determining whether to use in-house staff in preparing the initial personnel rule draft is in-house capability. Another closely related consideration is who is making the classification study, because the two should go hand-in-hand. A third major consideration is the time available to draft the rules and have them adopted.

If the judicial system or trial court has in-house staff with personnel management knowledge and rule drafting capability, the use of in-house staff has certain advantages, such as familiarity with the court or judicial system environment, the key actors, and what are likely to be major policy considerations, as these vary from jurisdiction to jurisdiction. This assumes that the in-house staff assigned to the project has sufficient time and resources available to complete the task within the prescribed limits.

A qualified outside consultant or specialist usually has sufficient expertise to reduce the time required to prepare an initial draft. It should be recognized that he or she may not become completely knowledgeable about the environment or sensitive to the major policy issues, especially if the time to prepare the draft is limited. This problem can be overcome, or at least substantially minimized, with a representative policy or advisory committee, as described above. If an outside consultant is making the classification study, the addition of the rule drafting task should be strongly considered.

When using an outside consultant, care should be exercised that the rule drafting product is not "boiler plate," so that many provisions are not applicable. On the other hand, even a "boiler plate" product can provide a solid base for pointing up the policy decisions and the changes that need to be made to make the rules fit the requirements of a particular jurisdiction.

Perhaps the best solution would be a combination of in-house staff and an outside consultant or specialist. The former can provide background information on the judicial system or court environment and will have the understanding of the proposed rules requisite to following through after the consultant leaves. The consultant, on the other hand, can provide the expertise to identify issues quickly and to provide technical assistance, especially in areas which may be less familiar to more generalist in-house staff.

Rule Submission. The draft of the proposed rules finally submitted to the judicial body which has the responsibility for their adoption should be accompanied by sufficient commentary to explain each of the rules, why it is needed, and how it relates to the other rules, as well as how the rules in toto relate to personnel management of the system or court. This is required, because of the time demands on, and probable lack of personnel management expertise and experience, of the justices or judges charged with the responsibility of adopting the rules. If an advisory committee is used, any of its recommendations or suggestions not included in the final draft should also be submitted to the adopting body with commentary as to the reasons both as to why they were suggested and why they were not adopted.

Continued Rule Revision

Once personnel rules are adopted, it should not be assumed that they are cast in concrete. No matter how carefully the draft has been prepared and reviewed, it is more than likely that something has been overlooked or that conflicting provisions have been adopted. It is often hard to determine how well rules that seem satisfactory on paper will fare in day-to-day application. It may also be necessary to amend, delete, or add rules to meet changing conditions, to correspond to legislative changes, or to take into account personnel rule revisions in the executive branch.

Consideration of rule revisions should have the same kind of representative participation suggested for original preparation and should be submitted to the adopting body with commentary showing the old rule, the change, and the reason it is needed. This should be a continuing piecemeal process.

Every three to five years, it is desirable to examine the entire set of personnel rules in light of experience and the changing state of the art of personnel management. Since more time should be available than when the rules were first adopted, there should be ample opportunity for input from and review by judges and other court personnel.[41]

SECTION FOUR

A Relatively New Development

Chapter X Collective Bargaining

CHAPTER X

COLLECTIVE BARGAINING

Introduction

Taft-Hartley Act

Collective bargaining in the United States derives its definition from the Taft-Hartley Act, Section 8(d):[1]

> For the purpose of this section, to bargain collectively is the performance of the mutual obligation of the employer and the representative of the employees to meet at reasonable times and confer in good faith with respect to wages, hours, and other terms and conditions of employment, or the negotiation of an agreement, or any question arising thereunder, and the execution of a written contract incorporating any agreement reached if requested by either party, but such obligation does not compel either party to agree to a proposal or require the making of a concession.[2]

Taft-Hartley established five requirements:

1) designation of management and the exclusive representatives of the employees, with mutual legal obligations;

2) meeting and conferring in good faith;

3) bargaining on wages, hours, terms, and conditions of employment;

4) agreement to be embodied in a written contract; and

5) bilateral administration, interpretation, and enforcement of the agreement.[3]

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1. This section is paraphrased from Chet Newland's, "Collective Bargaining Concepts: Applications in Governments," which appeared in a special issue on collective bargaining, "A Symposium: Collective Negotiations in the Public Services," Public Administration Review 28 (March/April, 1968), hereafter referred to as Symposium. A full discussion of the American labor movement is beyond the scope of this Monograph. A quick listing of historical labor events may be found in Wendell French, The Personnel Management Process: Human Resources Administration, 2nd ed. (Boston: Houghton Mifflin, 1970), pp. 609-23.
2. Labor Management Relations (Taft-Hartley) Act, §141 et seq., 29 U.S.C. (1970).
3. Ibid.

Up until the Taft-Hartley Act (1947), collective bargaining occurred largely in the private sector. In an estimated 100 or more cities in the United States, municipal officials conducted negotiations with unions and their employees.[4] By 1965, 44.6 percent of municipalities with populations of more than 10,000 reported some employees belonging to national unions or associations.[5]

Public Employee Collective Bargaining

Collective bargaining experience in the executive branch has been varied. Six states have the limited right to strike: Alaska, Hawaii, Montana, Oregon, Pennsylvania, and Vermont (local employees only); 15 states have authorized a union shop or agency shop, by law in Hawaii, Minnesota, Rhode Island (state employees), while 11 states make this negotiable: Alaska, California (teachers only), Kentucky (firefighters only), Maine (university employees only), Massachusetts, Michigan, Montana, Oregon, Vermont (local employees only), Washington, and Wisconsin. Pennsylvania provides for maintenance of membership.[6]

Twenty-four states have comprehensive bargaining laws for public employees, both state and local: Alaska, California, Connecticut, Delaware, Florida, Hawaii, Iowa, Kansas, Maine, Massachusetts, Minnesota, Montana, Nebraska, New Hampshire, New Jersey, New York, North Dakota, Oregon, Pennsylvania, Rhode Island, South Dakota, Vermont, Washington, and Wisconsin.[7]

Federal Employees. Although unionization of federal employees had been permitted for many years, the federal government had no stated policy respecting dealings with unions until Executive Order No. 10988, January 17, 1962, which directed federal agencies (except the FBI and CIA) to recognize and enter into agreements with employee organizations, under specified conditions. The pace of unionization has slowed down in private employment, whereas it has picked up greatly in governmental service. It is estimated that during the period 1947-1967, the number of unionized government employees has doubled, while private section unionization remained stable or declined.[8]

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4. Symposium, p. 111.
5. Ibid.
6. A. Lawrence Chickering, ed. Public Employee Unions: A Study of the Crisis in Public Sector Labor Relations (San Francisco: Institute for Contemporary Studies, 1976), p. 167.
7. Ibid.
8. Symposium, p. 112.

For some time it was believed that were the government to enter into a collective bargaining agreement with an employee organization, it would yield its sovereignty.[9] Since legislative bodies determined terms of employment, it was argued to be illegal if such authority was delegated to an executive agency which in turn signed labor contracts. This line of reasoning appears later in the Michigan court decisions affecting collective bargaining between employees and the courts. Certain judges, for example, believed that binding arbitration, were it to come about, would result in the government binding itself to decisions of private parties (the arbitrators).[10] A New York court said in 1943:

> To tolerate or recognize any combination of Civil Service employees of the government as a labor organization or union is not only incompatible with the spirit of democracy, but inconsistent with every principle upon which our Government is founded. Nothing is more dangerous to public welfare than to admit that hired servants of the state can dictate to the Government the hours, the wages, and conditions under which they will carry on essential services vital for the welfare, safety, and security of the citizen. To admit as true that Government employees have power to halt or check the functions of Government, unless their demands are satisfied, is to transfer to them all legislative, executive, and judicial power. Nothing would be more ridiculous.[11]

Collective Bargaining in the Judicial Branch. Ridiculous or not, the courts found themselves entering into labor contracts, for example, in Michigan in 1971.[12] It has generally been agreed in Michigan that courts are employers and must be represented separately at the bargaining table, but, in addition, that the funding body, normally the county commissioners, must also be represented. The Michigan Public Employees Relation Act (PERA)[13] requires a public employer, now including the courts, to bargain with the representatives of its employees with respect to wages, hours, and other terms and conditions of employment.

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9. Ibid., p. 138.
10. Ibid.
11. Railway Mail Association v. Murphy, 44 N.Y. Supp. (2) 601.
12. See Wayne Circuit Judges v. Wayne County, 386 Mich. 1 (1971); Judges v. Bay County, 385 Mich. 710 (1971); Livingston County v. Livingston Circuit Judges, 393 Mich. 265 (1975); and Michigan Supreme Court Administrative Order, 1971-6.
13. 1965 Mich. Pub. Acts 379; Mich. Comp. Laws Ann. §423.201, et seq.

Not every state has accepted collective bargaining "in good faith" for the courts. On behalf of the judiciary, the Administrative Office of the Pennsylvania Courts has attacked the constitutionality of the Pennsylvania collective bargaining statute. The Pennsylvania Supreme Court has enjoined the state labor board from further processing claims against the judiciary, and is in litigation in nine causes of action not resolved by Sweet v. Pennsylvania Labor Relations Board, 457 Pa. 456, 322 A.2d 362 (1974) nor in Costigan v. Local 696, AFSCME, 462 Pa. 425, 341 A.2d 456 (1975).

An amicus curiae brief in these Pennsylvania cases, submitted by the Administrative Office of the Pennsylvania Courts, argues against the further application of "Act 195," the Pennsylvania Public Employees Relations Act,[14] to employees of the judicial branch. The argument is based on separation of powers and "damage to the principle of a unified Judicial System under the Supreme Court."

Issues

The Pennsylvania amicus curiae brief[15] raises several issues argued in one form or another in many of the states. An examination of this brief reveals the tone for judicial arguments seeking to quash further development of collective bargaining. Though states such as Hawaii, Michigan, New Jersey, and New York have, for the most part, resolved these issues, the Pennsylvania brief probably synthesizes many of the judicial concerns existing elsewhere.

Who is the Employer?

The initial issue raised in Pennsylvania is whether the court is the sole employer of judicial employees (in this case, a locally funded court), whether the local government body is the sole employer, or whether each is a co-employer. The judges argue that if they are not the sole employer, the Pennsylvania Public Employees Act ("Act 195") is unconstitutional.[16]

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14. Pa. Stat. Ann. tit. 43 § 1101.101, et. seq. (Purdon)
15. Amicus curiae brief submitted by the Administrative Office of the Pennsylvania Courts, Sweet v. Pennsylvania Labor Relations Board, 457 Pa. 456, 322 A.2d 362 (1974); Costigan v. Local 696, AFSCME, 462 Pa. 425, 341 A.2d 456 (1975), and hereafter cited as Pa. Amicus.
16. The judges refer to County of Washington v. P.L.R.B., 26 Commonwealth Ct. 135, 365 A.2d 519 (1976); Sweet v. P.L.R.B., No. 76, March Term, 1977; Ellenbogen v. County of Allegheny, No. 117, March Term; Board of Judges of Bucks County v. Bucks County Commissioners, No. 367 and 368, January Term, 1977; Commonwealth ex. rel. Edward J. Bradley v. P.L.R.B., No. 366, January Term, 1977.

The amicus curiae brief contends that the Pennsylvania Labor Relations Board (PLRB) is "given great authority over the administration of the public 'employer's' operations... in this case, the Administration of Justice."[17] The PLRB determines the appropriate bargaining unit (original emphasis) which becomes the "exclusive representative of all the employees in such unit to bargain on wages, hours, terms, and conditions of employment. (Original emphasis). The PLRB can decide an unfair labor practice and can order (original emphasis) the employer to take affirmative action (original emphasis)... including reinstatement of employees .... as it finds necessary.[18] In the judges' view, "No agency of the Executive can constitutionally be given such power and authority over the Judiciary with respect to matters clearly within the province of the administration of justice."[19]

The brief argues further that appeals from the PLRB must be to final (emphasis added) orders of the Board.[20] The Board can find a bargaining unit, direct an election, and hold hearings on any election without objection and without court review. They find this "catastrophic."[21] They warn that should an "impasse" occur "the impasse shall be submitted to a panel of arbitrators whose decisions shall be final and binding upon both parties." (Original emphasis).

The brief also states that employees could affect policy matters (original emphasis) involving the administration of justice, since in Pa. Labor Relations Bd. v. State College Area School District,[22] the Pennsylvania Supreme Court held that "a matter of fundamental concern to the employees' interest in wages, hours, and other terms and conditions of employment is not removed as a matter subject to collective bargaining simply because it may touch upon 'managerial policy'." The judges imagined, therefore, that employees could refuse to perform certain secretarial functions, even in emergency situations, on the grounds that it is not within their job definition. Further, they refer to a supporting case in New Jersey which held:

> The conclusion is quite inescapable that the constitutional mandate given this court to 'make rules governing the administration of all courts in the State' transcends the power of the legislature to enact statutes governing those public employees properly considered an integral part of the court system.[23]

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17. Pa. Amicus.
18. Ibid.
19. Ibid.
20. Ibid.
21. Ibid.
22. 461 Pa. 494, 337 A.2d 262 (1975).
23. Passaic County Probation Officers' Association v. County of Passaic, 73 N.J. 247, 374 A.2d 449 (1977).

Under "Act 195," according to the amicus curiae brief, numerous bargaining units may and do exist within one judicial district and each judicial district represents a separate "employer." It is argued that "the result will eventually be perhaps over 100 separate collective bargaining agreements, with a nearly infinite variety of terms and conditions."[24] This, and the holding that "the public co-employers of directly related court employees under Act 195 of each judicial district and the county in which it sits, violates... the principle of a unified judiciary (emphasis added)."[25] Others "may represent the Supreme Court in the collective bargaining process only if that authority is properly delegated."[26]

Certain issues raised in Pennsylvania have been raised before. Certain cases have established the legitimacy of the courts to act as an employer, particularly with respect to a local government which funds court services.[27] The state of Michigan has concluded that the court is an employer even when funds are provided by the county.[28] While courts do negotiate with exclusive bargaining agents, a coalition of employers may exist, as in Wayne County Michigan: The Board of Commissioners, Circuit Court, Probate Court, Common Pleas Court, and Recorder's Court (Detroit), as well as a labor coalition, such as various locals, and Council 23 of the American Federation of State, County and Municipal Employees, AFL-CIO. Other unions, though signing separate agreements, may follow the general guidelines of companion contracts. Further developments exist in other states.

It is instructive, however, for judicial systems and trial courts in states contemplating the possibility of collective bargaining to evaluate the experience of those states having already expressed themselves with regard to critical issues most likely to reappear elsewhere.

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24. Pa. Amicus.
25. Ibid.
26. Ibid.
27. Cf. Smith v. Miller, 153 Colo. 35, 40-41, 384 P.2d 738, 741 (1963); Carroll v. Tate, 442 Pa. 45, 52, 274 A.2d 193, 197 (1971); Judges for the Third Judicial Circuit v. County of Wayne, 172 N.W. 2d 436, 440 (Mich. 1969); modified and opinion substituted, 386 Mich. 1, 190 N.W. 2d 228 (1971); O'Coins, Inc., v. Treasurer of the County of Worchester, 362 Mass. 507, 287 N.E. 2d 608 (1972); State ex rel. Weinstein v. St. Louis County, 451 S.W. 2d 99 (Mo. 1970).
28. See Wayne Circuit Judges v. Wayne County, 386 Mich. 1 (1971); Judges v. Bay County, 385 Mich. 710 (1971); Livingston County v. Livingston Circuit Judges, 393 Mich. 265 (1975); Michigan Supreme Court Administrative Order, 1971-6.

Collective Bargaining Experience and Developments

Overview

In some 14 states, court employees have entered into collective bargaining agreements.[29] In certain states, agreements are negotiated under the authority of a Public Employment Relations Act (PERA): Hawaii, Michigan, Minnesota, Missouri, New York, Oregon, Rhode Island, and Wisconsin. New Jersey and Washington negotiate under authority of the court and PERA.[30]

Washington noted a dichotomy between administrative authority, i.e., hiring, firing, and working conditions, a proper responsibility for the court; and wages and benefits, a proper responsibility of the funding body, the county commissioners.[31] The court concluded that in applying PERA to court employees, the latter had the dual status of being employees of both the court and the county.[32]

Massachusetts is unique. Having decided in 1976 (July 12) in Massachusetts Probation Association v. Commissioner of Administration and Others[33] that employees of the judiciary, in this case, probation officers, were not public employees. The legislature, at its 1977 Regular Session, promptly amended its PERA to include "any person in the judicial branch excluding administrative heads and confidential employees."[34] Further, public employer was clarified: "In the case of judicial employees, the employer shall be the Chief Justice of the supreme judicial court or any individual who is designated..."[35] The act designated "appropriate bargaining units" and included the judiciary in Sec. 4, which requires

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29. The Futures Group, Glastonbury, Connecticut, has been collecting unionization data coincidentally with research for this monograph. Their preliminary observations are found in George F. Cole and John R. Wadsworth, Unionization of Court Employees: A National Survey (Glastonbury, Conn.: The Futures Group, 1977). Where appropriate, our findings have been compared with theirs. We found no disagreement.

30. In Passaic County Probation Officers' Association v. County of Passaic, 73 N.J. 245, 374 A.2d 449 (1977), the Court basically concluded the PERA, a legislative act, could not "dilute" the control of the court system over its employees (in N.J., probation officers only). The dissent, however, found application of PERA to judicial employees would not "pose any substantial threat to the proper and efficient administration of judicial organization by this court and the Chief Justice."

31. Zylstra v. Pina, 85 Wash. 2d 742 (1975), 539 P.2d 823.

32. Ibid.

33. 352 N.E. 2d 684

34. Judicial Employees Collective Bargaining Act (Chap. 378), 1977 Mass. Acts.

35. Ibid.

a request to the governor for a supplemental appropriation within 30 days of execution of a collective bargaining agreement.[36]

Pennsylvania, as noted earlier, has stayed further certification of bargaining units pending litigation.[37] New Mexico has collective bargaining only with court reporters under administrative authority of the court. California, a "meet and confer" state is unionized only in the executive branch, for example, among clerks and probation officers.[38]

Individual States

The heaviest court involvement in collective bargaining occurs in Hawaii, Michigan, New Jersey, and New York.

Hawaii. Hawaii has a unified court system with a unitary budget. Though the court is the employer, the negotiator for collective bargaining purposes is the executive branch. The courts formerly were part of the executive branch merit system, but a separate judicial branch personnel system went into effect on July 1, 1977.

The Hawaii PERA grants state employees the right to form and join employee organizations, to bargain collectively on wages, hours, and other terms and conditions of employment. Management rights are established to insure that the employer may direct, hire, assign, discipline, transfer, and lay off employees; to determine employee qualifications; and the methods to conduct agency operations.

Court employees are represented by five different collective bargaining units as follows: Unit 1: non-supervisory blue collar workers; Unit 3: non-supervisory white collar workers; Unit 4: supervisory white collar workers; Unit 10: non-professional hospital and institutional workers; and Unit 13: professional and scientific workers.[39]

Collective bargaining agreements are quite comprehensive. The agreement between the state of Hawaii[40] and United Public Workers, Local 646, American Federal of State, County, and Municipal

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36. Ibid.
37. See discussion above, Pa. Amicus.
38. "Meet and confer" means to confer in good faith regarding wages, hours, and other terms and conditions of employment rather than to bargain.
39. Hawaii, Judiciary, Employee Handbook (Honolulu: Hawaii Judiciary, 1977).
40. Included, as well, are the City and County of Honolulu, County of Hawaii, County of Maui, and County Kauai.

Employees, AFL-CIO,[41] includes all matters relating to wages, hours, and terms and conditions of employment. A no-strike or lockout provision is included.[42] In addition, disciplinary actions require notice to the union,[43] which must follow a specific step-by-step grievance procedure.[44] Fringe benefits are included.[45]

Michigan. In 1977, the Michigan Court Administrator's Office reported that, in the following courts at least, some of the employees were represented by a collective bargaining agent:[46]

Circuit Court (Court of General Jurisdiction)	22 of 48 = 45 percent
Probate Court	31 of 79 = 39 percent
District Court (Court of Limited Jurisdiction)	34 of 85 = 40 percent

Provisions of Michigan contracts include cost of living plans, vacation policies, holiday policies, sick leave policies, health insurance, life insurance, retirement, longevity, and, of course, classification, wages, and hours. A provision is made for grievance arbitration, mediation, and fact-finding by the Governor.

The Wayne County Circuit Court (Detroit) is perhaps the prime example of Michigan developments in judicial employee collective bargaining. The Court has contracts with two locals of AFSCME (300 clerical and 50 probation officers); the Wayne County Bar Association (35 attorneys, referees, and friends of court); a local Supervisors' Association (25 first-line supervisors and marriage counselors); and, a special section of the clerical local of AFSCME for 36 court reporters. Contract periods vary from one to three years.

Bargaining in Michigan is established on the principle of "good faith bargaining" rather than "meet and confer." This principle makes the employer liable for unfair labor practices. The primary negotiator for the courts is the county labor relations

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41. Agreement of State of Hawaii and the United Public Workers, Local 646, AFSCME, July 1, 1977 - June 30, 1979.
42. Ibid., Sec. 10.
43. Ibid., Sec. 11.
44. Ibid., Sec. 15.
45. Ibid., Secs. 36-42, 47.
46. Michigan, State Court Administrative Office, Personnel Dept., 1977 Court Employee Compensation Survey (Lansing: Michigan State Court Administrative Office, 1977).

negotiator. The courts have a representative present at these negotiations. Contracts affecting the courts are ratified by the court administrative committee.

Wayne County Circuit Court has an agency shop agreement with its primary bargaining units.[47] A bargaining agent is exclusive for that unit and is, after proper election, certified by the Michigan Employment Relations Commission (MERC). A bargaining unit consists of employees located in similar job classifications, e.g., clerical employees, court reporters, probation officers, etc. A supervisor of any of these groups would belong to a separate bargaining unit.

Wayne County has agreed to voluntary arbitration on grievances and contract violations. Contract negotiations, were they to break down, would be subject to fact-finding and mediation. The board of arbitration consists of one member representing the court, one member representing the union, and a third member, mutually selected by the two, acts as chairperson. Should the two fail to agree on a third member, the grieving party requests the American Arbitration Association to appoint a third member.

New Jersey. The New Jersey courts have collective bargaining only in probation. Of the 21 counties, 20 have agreements with one of the following bargaining agents: Probation Officers' Association, AFSCME, Teamsters, PPO Association and the Supervisors' Union.

Probation officer agreements include such items as: supper allowance, mileage rate, insurance reimbursement, cash educational award (for M.A. and Ph.D.), promotional increase, tuition reimbursement, longevity, grievance procedures, holidays, vacation, health and welfare benefits, management rights statement, residency provisions, seniority provisions, compensatory time, sick leave, and leaves of absence.

New Jersey probation officers, unlike those in New York, serve in the judicial branch. Consequently, union agreements are with the judges. Article 1, Sec. A, of the Morris County Probation Officers' Agreement (1976) is instructive:

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47. Under an agency shop agreement, employees must pay union dues and join the union or pay a service fee and be represented by the union whether or not they join.

> The judges recognize the Union (New Jersey Council 52 and its affiliated Local 2654, Morris County Probation Officers, American Federal of State, County, and Municipal Employees, AFL-CIO) as the sole and exclusive bargaining agent for the purpose of establishing salaries, wages, and other conditions of employment as falls within their purview and the administration of grievances arising therewith...

The agreement excluded probation officers acting as supervisors, the definition for which is included in the Public Employment Relations Act. The Management Rights section is defined in Art. 2, Sec. A. It primarily asserts that "The Court hereby reserves and retains unto itself, as employer, all the powers, rights, authority, duties and responsibilities conferred upon or vested in it by law prior to the signing of this agreement..." In New Jersey most non-judicial court employees are funded by the county.

Despite collective bargaining for probation officers in the trial courts, the New Jersey Supreme Court does not favor the practice:

> Can the control of probation officers and of the whole statewide system of probation, seemingly entrusted to the Judiciary by the terms of the Constitution be in any way diluted or modified by legislation [The Employer-Employee Relations Act]... We think it clear that it cannot.[48]

As noted earlier,[49] the Passaic dissent acknowledges collective bargaining. The dissent states further:

> I am convinced... that the Judiciary as a state employer must tolerate such incidental inconvenience in administration as attends affording Judiciary employees their rights under the labor relations act...

New York. New York State has 10,000 non-judicial court employees under collective bargaining agreements, 5,000 of whom are in New York City. In New York City alone, eleven unions

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48. Passaic County Probation Officers' Association v. County of Passaic, 73 N.J. 247, 374 A.2d 449 (1977).
49. See note 28.

represent court reporters, law assistants, librarians, administrators, identification officers, court assistants, court clerks, and others, amounting to a total of fifty-one job classifications.

Negotiations in New York City affect employees of the following agencies: Mayor's Office, Health and Hospital Corporation (with exceptions), Administration Board of the Judicial Conference, Off-Track Betting Corporation, New York City Housing Authority (with limitations), and several others, including the District Attorneys. Each classification covered has one union as the sole bargaining representative. A typical contract includes provisions for working hours, shift differential and holiday premium, overtime, annual leave, sick leave, leave of absence, holidays, compensatory time, terminal leave pay, meal allowances, health insurance, car allowances, personnel and pay practices, personal security, employee evaluation, cancer development, training trust fund, union rights, dues check-off, welfare funds (health and security), adjustment of disputes, and no-strike clause.

New York's PERA, the so-called Taylor Law, was submitted to that state's high court to determine whether "provisions of the Act prohibiting strikes by public employees is applicable to non-judicial employees of the unified system."[50] The court held that the Taylor Act apparently applied, issuing a mild warning that inherent powers might become more than an academic issue. The court said:

> The subjection of the Board (Administrative Board of the Judicial Conference which administers the state court system) to certain legislative action, such as the Taylor Law, does not derogate its basic administrative control over the court system, but rather, only requires the Board to be subject to certain reasonable limitations in the exercise of this power. It may be that some future legislative action would so deeply cut at the basic fibre of administrative power as to be violative of Article VI, Sec. 28, of the Constitution. The application of the Taylor Law, however, is not such a case.[51]

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50. McCoy v. Selby, 28 N.Y. 2d 790 (Ct. of Appeals, 1971), 321 N.Y.S. 2d 902.
51. Ibid.

Summary

Collective bargaining agreements covering court employees are found in several states where private and public sector bargaining has been well established. Hawaii, Massachusetts, Michigan, Minnesota, New Jersey, New York, Oregon, Rhode Island, Washington, and Wisconsin are examples. For the most part, these states have a PERA, and court employees are included either explicitly or by approbation of the state's high court. New Jersey and Washington used administrative authority to extend the reasoning of their high courts.

New Mexico extends bargaining only to court reporters by administrative authority, while California limits coverage to executive branch employees as provided by municipal and county ordinances.

Courts may bargain exclusively with one bargaining agent, may be involved in any agency shop, and may or may not have a formal role at the bargaining table with the funding unit. For the moment, both the unions and the courts seem willing to recognize a sphere of influence for each. Unions bargain for strength on wages, hours, and terms and conditions of employment. The courts retain management's right to hire, administer, discipline, and remove their employees. The funding bodies remain somewhere in the middle.

APPENDICES

A. Bibliography of Selected Texts Relating to Public Personnel Administration

B. Position Classification Questionnaire and Instructions

C. Job Description Examples

D. Robert D. Hamm v. Rex H. Scott, etal, United States District Court, Civil Action No. 76M910

E. 1. Colorado Judicial System Personnel Rules

2. Maine Court System Personnel Policy and Procedures Manual

3. Personnel Policies for Employees of the Circuit Court, Multnomah County, Oregon

APPENDIX A

BIBLIOGRAPHY OF SELECTED TEXTS
RELATING TO PUBLIC PERSONNEL ADMINISTRATION

Kenneth T. Byers, ed., Employee Training and Development in the Public Service Chicago: Public Personnel Association, 1970.

James C. Charlesworthy, Government Administration New York: Harper, 1951.

A. Lawrence Chickering, ed., Public Employee Unions, A Study of the Crises in Public Sector Labor Relations San Francisco: Institute for Contemporary Studies, 1976.

Robert T. Golembiewski and Michael Cohen, eds., People in Public Service: A Reader in Public Personnel Administration Itasca, Ill.: F. E. Feacock Publishers, 1970.

Joseph J. Fomularo, ed., Handbook of Modern Personnel Administration New York: McGraw-Hill Book Company, 1972.

Institute for Court Management, Courts and Personnel Systems Denver: 1975.

Albert Lewpawsky, ed., Administration, The Art and Science of Organization and Management New York: Knopf, 1952.

Felix A. Nigro and Lloyd G. Nigro, The New Public Personnel Administration Itasca, Ill.: F. E. Peacock Publishers, Inc., 1976.

Norman Powell, Personnel Administration in Government Englewood, Cliffs, N.J.: Prentice Hall, 1956.

O. Glenn Stahl, The Personnel Job of Government Managers Chicago: Public Personnel Association, 1971.

O. Glenn Stahl, Public Personnel Administration, 5th, 6th, and 7th eds., New York: Harper & Rowe Publishers, 1961, 1971, and 1976.

Kenenth O. Warner and J. J. Donovan, eds., Practical Guidelines to Public Pay Administration, Vol. 1, 1963; Vol. 2, 1965 Chicago, Public Personnel Association.

INSTRUCTIONS AND SUGGESTIONS FOR FILLING OUT POSITION CLASSIFICATION QUESTIONNAIRE

Do Not Attempt To Fill Out Questionnaire Until You Have Read These Instructions

WHAT THE CLASSIFICATION SURVEY IS

This is a job inventory. It is not concerned with your ability on the job or with your qualifications. The kind of work you do and the responsibilities of your position are the things to be shown on the classification questionnaire.

This survey is simply an analysis of the duties and responsibilities of positions in order to develop a classification plan. This plan will consist of a grouping together of all positions having substantially similar duties and responsibilities and requiring like abilities and skills for successful performance.

The classification plan is used as the basis for sound practices in selection, promotion, and transfer, and for uniform and equitable compensation standards. It is essential that the plan be accurate and fair. Therefore, detailed and exact information about the duties and responsibilities of each position is necessary.

You are the best person to provide complete information about your job. You know the exact duties you perform and your responsibilities. Consequently, you are asked to fill in the classification questionnaire. Use great care in doing this, so that a clear and complete understanding of your job can be obtained from your answers. The information provided through questionnaires will be supplemented by information obtained by discussions of the work of individual positions with supervisors and the employees themselves in a number of cases. However, the information provided by you on your classification questionnaire will be very important in determining in what class your position belongs. Your statements will not be changed by your supervisor.

Do not copy other people's answers even though their work is the same as your own. We want your own statement of your work—not the ideas of others about your work. Ask your supervisor to explain questions you do not understand, but use your own words in answering all questions. If you are new on your job, ask your supervisor what duties you will have in addition to those with which you have already become familiar.

PART I — TO THE EMPLOYEE

Read these instructions carefully. Write your answers on one copy of the questionnaire. See that they are correct and complete. Then type your answers on the other two sheets. Sign and return the two typewritten forms to your supervisor within five days. Keep your work copy of the questionnaire.

If you cannot type yourself, write your answers on one sheet and return the forms to your supervisor for copying within five days. He will return the forms to you for review, dating, and signature. Then return the typewritten copies to him and keep the sheet which you filled out originally.

The following explanation will help you to understand just what information is wanted. Read the explanation for each item just before answering each question.

ITEM 1 — Give your last name first, then your first name, then your middle initial. Indicate whether Mr., Mrs., or Miss by crossing out the two designations which do *not* apply.

ITEM 2 — Give your present official title as carried on the payroll. If you do not know, ask your supervisor. Under "Usual Working Title of Position," write the title you and your fellow workers customarily use for your job.

ITEM 3 — Indicate your regularly established work schedule, showing your regular starting and stopping times for each day, the length of your regularly established lunch period, and the total number of hours in your regularly established work week. If your official work schedule varies from week to week, show the average number of hours you work in the space for "Total Hrs. per Wk." If you are subject to rotating shifts, explain the system of rotation as it affects you, indicating whether you change shifts at weekly or monthly intervals and what shifts you rotate through. If your job requires that you be available at a specified location a fixed period each week for emergency service as required, in addition to your regular work time, indicate the average number of hours per week involved in this "on-call" or "stand-by" time.

ITEM 4 — Enter the name of the major branch of the jurisdiction in which you are employed, giving the name of the department, board, or commission in which you work.

ITEM 5 — Enter the name of that division or other principal subdivision of the department in which you work.

ITEM 6 — Enter the name of that section or other unit of the division or institution in which you are employed.

ITEM 7 — Enter the room number, building name or street location of building, and name of the city in which you work, as Room 182, Memorial Hospital, Capital City. If you work out of doors or on projects at different locations, as in a highway district or on institutional premises, give the room number, building name, or street location of building, and city in which your headquarters are located—that is, the place where you report for instructions, etc.

ITEM 8—Indicate by checking the appropriate box whether your job is full-time or part-time, and whether it is of a year-round character or whether you are employed only, for example, for the summer months or for some other limited period. If you work part-time, indicate whether you work half-time, three-quarters time, five hours a week, or otherwise show what proportion of full-time employment is involved in your job. If you work seasonally or on a temporary basis, indicate for how long a period your employment is expected to continue during the year.

ITEM 9 — If you receive maintenance in the form of meals, lodging, laundry, or the like, either for yourself or for both yourself and your family, *in addition to your cash salary,* check the "Yes" box. Maintenance, as used here, does *not* refer to reimbursement for travel and transportation expenses incurred in the course of official travel.

ITEM 10 — This, the most important question on the form, is where you tell in detail what you do. Each kind of work that you do should be carefully explained. The task which you consider most important should be given first, followed by the less important work, until the least important is described. If your work varies from season to season or at specific times, duties should be grouped together according to such periods. Give your complete work assignments over a long enough period of time to picture your job as a whole. If one kind of work takes one-half your time, say so. If another kind takes one day a month, say that. You may prefer to show the time spent on different duties as percentages or fractions, as 75% of your time, or one-third of the year. Use whatever method you think will give a clear understanding of how you spend your working time, but be sure to show how much time is used for each type of work. Do not state it is impossible to estimate the time spent on various tasks; it may be difficult, but you are in a better position to do this than anyone else.

If you are performing duties other than those of your usual position, describe both. In describing the temporary position, you should give the name of the person you are replacing, how long you have been filling in for him, how long you expect to continue doing so, and the reason, such as vacation, sick leave, etc.

If necessary for a full explanation of your job, attach copies of forms used, being careful to explain how each is used and what entries you make, but do not attach copies unless you feel they are needed to describe your work.

Make your description so clear that anyone who reads your answer, even if he knows nothing about your job, will understand what you do. Be specific; do not use general phrases.

Examples of work in different fields are given below as a guide to the kind of statements wanted. Do not copy *these* examples—use your own words. Ordinarily it will take all the space provided on the questionnaire to tell what you do. *If you do not have enough space, attach additional sheets.*

EXAMPLES IN THE LABOR FIELD (Skilled and Unskilled)

2 months:	I dig trenches with pick and shovel. Mr. Brown, my boss, tells me where to dig and when to stop.
1 month:	I fill wheel barrows with sand or gravel and take it to the concrete mixer. I tamp concrete after it is poured into forms.
1 month: Etc.	I ride a ten-ton flat-bed truck and help load and unload bags of cement, heavy rock, reinforcing steel.....etc. We generally haul from the warehouse yards to maintenance or construction jobs. I wash the truck . . . etc.

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3 months:	I operate a tractor on construction work as follows:.....
1 month:	Hoisting work with a two- or three-drum hoist. (Vacation relief.)
2 months:	Pile driving for retaining walls, excavations, and foundations. Sometimes I . . . etc.

EXAMPLES IN THE CLERICAL AND RELATED FIELDS

Average 4 hrs. per day:	I type vouchers in duplicate to accompany invoices, after they have been approved by Mr. Jones and extensions checked by Miss Smith.
2 hrs.:	I type reports from rough pencil copy.
1 hr.: Etc.	I also . . . etc.

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2 days:	I file purchase orders chronologically and by department and vendor.
1 day: Etc.	I sort and distribute letters.

10%:	I take dictation from Mr. Brown, including letters, memoranda, and drafts of speeches, but Miss White takes all his engineering dictation.
5%: Etc.	I file . . . etc.

EXAMPLES IN THE ENGINEERING FIELD

6 months:	I lay out and trace plan-profile sheets for street improvements. I reduce survey notes, balance traverses, and plot maps from the field books brought in by the field survey parties, also plot cross-sections and planimeter for cut and fill areas.
2 months: Etc.	I draft . . . etc.

EXAMPLES IN THE ACCOUNTING FIELD

10%:	I supervise three clerks assigned to the cost accounting system for road construction and maintenance.
10%:	I assemble job record reports, post to summary sheets, and do other routine work.
5%:	I tabulate and prove material for weekly, monthly, and annual reports.
2%: Etc.	I compile . . . etc.

EXAMPLES IN THE CUSTODIAL FIELD

1/2 day:	Washing floors, walls, windows, and woodwork by hand.
1/3 day:	Polishing metal; waxing and polishing floors with a polishing machine.

ITEM 11 — Give the name and title of your actual immediate supervisor—the crew chief, section leader or similar person to whom you look for orders, advice or decisions and who probably works very closely and directly with you.

ITEM 12 — If you have five or fewer persons under your supervision, give their names and payroll titles. If more than five, give their payroll titles and give the number of employees under each title. If you supervise no employees, write "none."

ITEM 13 — List here any major items of equipment, machines, or office appliances which you use in your work and the approximate percentage of your working time which you spend in the operation of each.

ITEM 14 — What instructions or directions do your superiors give you in relation to the work you do? How detailed are instructions about what you are to do and how you are to do it? You may have had instructions only when you were new on the job. You may get special instructions with each new task. Describe the nature and extent of the instructions you receive.

ITEM 15 — Describe the check or review that is made of your work. Are there any automatic checks by other offices, or are there procedures which would catch any errors you might make? How final are the decisions you make about your work? Describe such features as these.

ITEM 16 — Explain the nature and purpose of important contacts you have with people other than your fellow workers. Is the purpose to obtain or give information, to persuade others, or to obtain cooperation? What problems and difficulties are involved?

PART II — INSTRUCTIONS TO GENERAL SUPERVISORS AND DEPARTMENTAL OFFICIALS

Method of Distributing and Reviewing the Classification Questionnaires

You will be supplied with a complete set of three Classification Questionnaires and a copy of these Instructions for each employee under your supervision.

Give each employee a set of Classification Questionnaires and Instructions. Ask employees who have access to typewriters to work out their answers on one copy, and then type them on the other two copies, and return the two signed typewritten copies to you within five days.

Ask those employees who cannot type their own questionnaires to write their answers on one sheet and return the complete set to you within five days, for typing. When typed, return all three copies to the employees. Have the two typewritten copies reviewed, dated, signed, and returned to you.

Go over each employee's questionnaire carefully to see that it is accurate and complete. Then fill out Items 17 to 22, inclusive. The general supervisor should fill out Items 17 to 20 on the questionnaire forms of only those employees whom he supervises. A department head should not fill in these items for employees whom he directs through a sub-executive but only for those to whom he assigns work directly. In all instances, the director or other administrative officer, or a representative designated by him, should look over both the employees' and their supervisors' statements and indicate under Item 22 any inaccuracies found. Neither the general supervisor nor the administrative officer, however, should make any alteration or change in the statements made by a subordinate.

If there is a regular position under you which is temporarily vacant, or if an employee is not available to fill out the questionnaire, please supply a form for that position, made out as accurately as is possible. The fact that an employee did not fill out the form and the reason should be clearly indicated. If the employee returns, he should fill out and submit his own questionnaire.

Suggestions for Filling Out Items 17 through 22

ITEM 17 — Do not change the employee's statements. Read them through and then give your opinion of their accuracy and completeness. Is it a good description of the position? Has he neglected to give a full picture of his duties and responsibilities? Has he overstated them? Has he put emphasis on the wrong points? Either comment generally on his statements or refer to specific items.

If you have a number of positions under you which are practically identical, it will be sufficient to answer Items 18 to 21 fully for one such position only, and then refer to such answers on the other questionnaires. You can merely state, "Same as John Doe."

ITEM 18 — Sum up what you consider to be the distinguishing aspects of the employee's job. What are the most important functions carried on in this position? What operations in the job contribute most to your organization? Is the position a beginning or an advanced one?

ITEMS 19 and 20 — If the job involves any typing or shorthand, even if merely incidental, answer these items completely. If not, check "No."

ITEM 21 — With full consideration of the duties and responsibilites of this position, tell what are the basic qualifications of a person you would choose for the position if it were to become vacant. What must he know? Of what basic subjects, procedures, principles, laws, or regulations must he have a knowledge? Must the knowledge be thorough or is a general knowledge or familiarity sufficient?

What abilities or skills must a successful employee possess? How much formal education is necessary? What course or subjects are required? Which are desirable but not essential? Is previous experience necessary? If so, how much experience, and in what type of work? What degree of physical strength, agility, or endurance is necessary? For what purpose is it used, e.g., for walking, lifting, etc.? Please be as specific and complete as you can in answering these questions.

Indicate, wherever possible, both the basic qualifications required to fill the position and the desirable qualifications which you would like to have in a new employee.

ITEM 22 — The comments made here by the department head or other administrative officer should follow the procedure suggested for the general supervisor in Items 17 and 18 to the extent that additional comment is needed.

Return of Completed Questionnaires

One copy of the questionnaire signed by employee, general supervisor, and administrative officer—the original of the typewritten copies—should be submitted for each employee in the department within no more than two weeks of the date of distribution of the questionnaires to employees. The carbon copy of the completed typewritten form is for departmental files.

POSITION CLASSIFICATION QUESTIONNAIRE

Soc. Sec. Number ☐☐☐-☐☐-☐☐☐☐

1. Mr. / Mrs. / Miss — Last Name — First — Middle Initial

2. Official Title of Position

Usual Working Title of Position

3. Regular Schedule of Hours of Work

	From	To
Mon.		
Tues.		
Wed.		
Thur.		
Fri.		
Sat.		
Sun.		

Length of Lunch Period

Total Hrs. per Wk.

Explain rotation of shifts, if any:

Hrs. of "On-Call" Time per Wk.

4. Commission, Board, or Department

5. Division or Institution

6. Section or Other Unit of Division or Institution

7. Place of Work or Headquarters

8. Is your work ☐ Full-Time? ☐ Part-Time? ☐ Year-round? ☐ Seasonal? ☐ Temporary?

If work is *seasonal, temporary,* or *part-time,* indicate part of year or proportion of full-time:

9. Do you receive any maintenance (room, meals, laundry, etc.) in addition to your cash salary? ☐ Yes ☐ No

10. Describe below in detail the work you do. Use your own words, and make your description so clear that persons unfamiliar with your work can understand what you do. Attach additional sheets if necessary.

TIME	WORK PERFORMED	LEAVE BLANK

11. Name and Title of Your Immediate Supervisor:

12. Give the names and payroll titles of employees you supervise, if five or fewer. If you supervise more than five employees, give the number under each title. If you supervise no employees, write "*none.*"

13. Machines or equipment used regularly in your work. Give per cent of time spent in operation of each:

	%		%
	%		%
	%		%

14. What are the nature and extent of instructions you receive regarding your work?

15. What are nature and extent of the check or review of your work?

16. Describe your contacts with departments other than your own, with outside organizations, and with the general public.

CERTIFICATION: I certify that the above answers are my own and are accurate and complete.

Date_____ Employee's Signature_____

STATEMENT OF GENERAL SUPERVISOR

17. Comment on statements of employee. Indicate any exceptions or additions.

18. What do you consider the most important duties of this position?

19. Does this position involve typing?

☐ No

☐ Yes — Give % of time spent in typing %

20. Does this position involve shorthand?

☐ No

☐ Yes — Give % of time spent in taking shorthand. %

Date_____ General Supervisor's Signature_____

STATEMENT OF DEPARTMENT HEAD OR OTHER ADMINISTRATIVE OFFICER

21. Indicate the qualifications which you think should be required in filling a future vacancy in this position. Keep the position itself in mind rather than the qualifications of the individual who now occupies it.

	Basic Qualifications	Additional Desirable Qualifications
Education, general:		
Education, special or professional:		
Experience, length in years and kind:		
Licenses, certificates, or registration:		
Special knowledges, abilities, and skills:		

22. Comment on the above statements of the employee and the supervisor. Indicate any inaccuracies or statement with which you disagree.

Date_____ Department Head's Signature_____

APPENDIX C

4102

COURT CLERK II

DEFINITION OF WORK

This is technical clerical work in a court of the Colorado state court system.

Work involves performing a variety of technical clerical functions which may require the application of independent judgment and the interpretation of routine policies and regulations on the basis of training and knowledge gained through experience on the job. Work is reviewed by a supervisor through observation of operations, and advice and assistance are available when unusual or difficult matters arise.

EXAMPLES OF WORK PERFORMED (Any one position may not include all of the duties listed, nor do the examples cover all the duties which may be performed.)

Reviews stipulations, writs of restitution, bindovers, dismissal under rule, and similar documents for completeness, adequacy, and accuracy; determines processing required and takes necessary action in accordance with court rules or refers difficult matters to superiors.

Issues summons, notices, subpoenas duces tecum, and similar processes; computes applicable dates for service and return of service, affixes court seal, and authenticates documents as an officer of the court.

Assures completeness and accuracy of records leaving the court's jurisdiction pursuant to change of venue, outgoing reciprocals, and similar matters.

Makes certain bondsman's license is in order as a means of evaluating the acceptability of surety bonds; enters required information on permanent various records by hand, typewriter, or photocopy process; and prepares appropriate indices for ready reference.

Answers inquiries and furnishes information by reviewing court records.

Performs related work as required.

DESIRABLE KNOWLEDGES, ABILITIES AND SKILLS

Knowledge of court procedures and policies, legal documents, laws and legal factors pertaining to the court.

Knowledge of the organization operations, functions and scope of authority of the court or activity to which assigned.

Knowledge of modern office practices and procedures.

Ability to understand and follow oral and written instructions.

Ability to make work decisions in accordance with laws, regulations and departmental policies and procedures.

Ability to maintain a variety of complex records and prepare reports from such records.

DESIRABLE EDUCATION AND EXPERIENCE

Graduation from high school, supplemented by completion of courses in business or legal training; and experience in work, including familiarity with procedures, policies, laws and operations of the court of assignment.

4/73

DEFINITION OF WORK

This is highly responsible administrative and supervisory work in directing the administrative activities of a small judicial district.

Work involves responsibility for organizing, directing, coordinating and supervising directly or through the use of intermediate supervisors the activities of subordinates engaged in processing all district and county court cases in a multi-county judicial district. Work is performed under the general direction of the Chief Judge of the appropriate judicial district and is reviewed through conferences and reports and on the basis of results obtained.

EXAMPLES OF WORK PERFORMED (Any one position may not include all of the duties listed, nor do the examples cover all the duties which may be performed.)

Plans and organizes administrative services; determines organizational requirements and plans office layout, space utilization and work flow of court administrative activities.

Assigns personnel to administrative and clerical functions; develops and establishes procedures for operating and maintaining required administrative systems; procures equipment and supplies to perform administrative services of the court; disseminates information to court personnel.

Directs administrative services; directs budgeting, accounting, personnel, statistics, purchasing, financial reporting, jury management, property management and other major staff services; directs personnel in the preparation, reproduction, and distribution of court orders, directives, administrative publications, communications and reports; directs personnel in the identification and evaluation of court record material and in the application of proper filing and disposition procedures; directs the record management activities of the judicial district.

Directs and evaluates the effectiveness of personnel and administrative programs to determine requirements for program modification and personnel training, promotion, or re-assignment; establishes training program for court clerical personnel.

Monitors budget and controls expenditures for the judicial district probation department.

Maintains contact with various court locations within the district by means of periodic visits and other communications.

Confers with judges, attorneys, public and private agencies and criminal justice system participants to insure adequate

communication, administrative services and provide for changing or unusual demands.

Performs related work as required.

DESIRABLE KNOWLEDGES, ABILITIES AND SKILLS

Thorough knowledge of modern principles and practices of public administration.

Thorough knowledge of court procedures, legal documents, laws and legal factors pertaining to the court.

Thorough knowledge of the organization, functions, responsibilities and procedures of the courts.

Ability to organize, direct and coordinate the administrative activities of a small judicial district in a manner conducive to full performance and high morale.

Ability to express ideas on technical subjects clearly and concisely, orally and in writing.

DESIRABLE EDUCATION AND EXPERIENCE

Graduation from an accredited four-year college or university with major course work in public administration, business administration, or a related field; and experience in an administrative capacity, including some experience in court or related administrative or professional work.

APPENDIX D

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF COLORADO

Civil Action No. 76 M 910

ROBERT D. HAMM,

Plaintiff,

v.

REX H. SCOTT, individually and as Chief Judge of the 20th Judicial District of the State of Colorado; and Hon. Paul V. Hodges, Hon. Marcus O. Shivers, Jr., Hon. John R. Tracey, Mary M. Connell and Beverly J. Estrada, as members of the Judicial System Personnel Board of Review of the Judicial Department of the State of Colorado,

Defendants.

Mr. James R. Gilsdorf, 1390 Logan Street, Suite 200, Denver, Colorado 80203 and Mr. Robert F. Moreland, 75 Manhattan Drive, Suite 203, P. O. Box 3185, Boulder, Colorado 80303, attorneys for the plaintiff. Ms. Janice L. Burnett, First Assistant Attorney General, Litigation Section, 1525 Sherman Street, 3rd Floor, Denver, Colorado 80203 and Mr. David R. Brougham, Yegge, Hall & Evans, 1340 Denver Club Building, Denver, Colorado 80202, attorneys for the defendants.

FINDINGS, CONCLUSIONS AND ORDER

MATSCH, Judge

Robert D. Hamm seeks relief under the limited jurisdiction granted by 28 U.S.C. § 1343(3) and (4) and 42 U.S.C. § 1983 upon the claim that the termination of his employment as chief juvenile probation officer for the 20th Judicial District of the State of Colorado was a deprivation of his property without due process

of law, in violation of the protection given by the Fourteenth Amendment to the Constitution of the United States. The evidence taken at a hearing on the plaintiff's motion for preliminary injunction established the facts upon which the claim is based.

After service as a student volunteer, Robert D. Hamm was appointed as a probation officer for the 20th Judicial District in October, 1967, and four years later he was named the chief juvenile probation officer for that court. During the time of his employment, Mr. Hamm was working under the direction and supervision of Judge Horace Holmes, the district judge assigned to juvenile matters. The official duties of a chief probation officer as set out in the applicable job description include the following:

> Maintains cooperative relationship with state and local welfare and social service agencies, institutions, and law enforcement agencies, and relates the activities of the department to their services; participates in coordinating of the department to their services; participates in coordinating councils, committees, and other groups interested in probation or crime prevention.

The Honorable Rex H. Scott became a judge of the 20th Judicial District on July 1, 1970, and he was named chief judge of that district in January, 1975. On May 4, 1976, Judge Scott was in possession of copies of correspondence and memoranda concerning the conduct of Mr. Hamm in his official capacity and his relationship with several social service agencies. This correspondence included an exchange of letters with a high school principal in March, 1976. Judge Scott took copies of these documents to Judge Holmes on the morning of May 4, 1976 with a

request that Judge Holmes obtain Mr. Hamm's resignation or terminate his employment. Judge Holmes declined to take that action, and Judge Scott then asked Judge Holmes to give the copies to the plaintiff.

When he was informed that Judge Scott wanted a resignation or termination of employment, Mr. Hamm asked to see Judge Scott and, at about 11:30 A.M., they met in Judge Scott's chambers. At that meeting, Mr. Hamm denied the accusations in the letters. Judge Scott told the plaintiff that he should submit his resignation or be discharged by 4 P.M. that day. Mr. Hamm asked for more time, and he asked for an opportunity to bring in agency directors and other persons to make statements on his behalf. Judge Scott adhered to the 4 P.M. deadline. Mr. Hamm did return to Judge Scott's chambers at 4 P.M. on that same day and submitted a handwritten statement which generally denied all accusations and in which Mr. Hamm refused resignation. After reading that document, Judge Scott told Mr. Hamm that he was dismissed, and a letter of termination, signed by Judge Scott, was given to the plaintiff. In that letter, Judge Scott set forth the following reasons for termination.

> 1. Failure to comply with a reasonable and proper assignment from an authorized supervisor.
>
> 2. Documented inefficiency, incompetency, in the performance of duties, i.e. that you have been a negative and alienating force with the youth serving agencies.
>
> 3. Conduct unbecoming a state judicial department employee.

Article VI, Section 5(2) of the Colorado Constitution provides that the chief justice is the "executive head" of the judicial system of that state. Section 5(4) of the same article provides that the chief judge of each district shall be appointed

by and serve at the pleasure of the chief justice and that each chief judge shall have such administrative powers as shall be delegated to him by the chief justice. On August 27, 1971, Chief Justice Edward E. Pringle executed a written delegation of authority to all chief judges. That delegation was a very broad grant of administrative power, including the authority to appoint and remove personnel, excepting confidential employees of a judge.

The terms and conditions of employment of the employees of the executive branch of Colorado's government are established by a merit personnel system under Article XII, Section 13 of the state's constitution. Those provisions do not apply to those who work in the judicial department. Subparagraph (3) of Section 13 provides:

> (3) Officers and employees within the judicial department, other than judges and justices, may be included within the personnel system of the state upon determination by the supreme court, sitting en banc, that such would be in the best interests of the state.

The Colorado General Assembly has, by statute, provided for the establishment of a personnel classification and compensation plan for all courts pursuant to rules adopted by the Supreme Court of Colorado. 1973 C.R.S. § 13-3-105. Subsection (4) of that section reads as follows:

> (4) To the end that all state employees are treated generally in a similar manner, the supreme court, in promulgating rules as set forth in this section, shall take into consideration the compensation and classification plans, vacation and sick leave provisions, and other conditions of employment applicable to employees of the executive and legislative departments.

The Colorado Supreme Court did adopt personnel rules in 1970. Under those rules, there was no right of review of any personnel decision affecting supervisory positions. The plaintiff here was placed in a supervisory position in 1971.

The rules were rewritten and readopted by the Supreme Court with an effective date of January 1, 1975, and designated Colorado Judicial System Personnel Rules (CJSPR). The plaintiff here was a "certified employee" under those rules, and under Rule 26(a) such an employee may be dismissed for any of the reasons enumerated in Rule 25(d). That rule enumerates grounds which include those set forth in the termination letter issued by Chief Judge Scott.

Rule 45 establishes a Board of Review having jurisdiction over requests for review of discharges and other personnel actions. Rule 46 describes the right of review given to certified employees, and subsection (b)(2) expressly excludes a number of positions from that right of review. Chief probation officers are among those excluded positions.

Mr. Hamm sought to obtain a hearing before the Board of Review. A review board hearing was denied with the approval of Chief Justice Pringle upon the basis of the exclusion in Rule 46.

Mr. Hamm had no written contract of employment and there is nothing in evidence to support a finding of any express oral agreement or promise of any term or tenure.

I.

The plaintiff's principal contention here is that the personnel rules created an objective expectation of tenure which should be characterized as a property interest subject to due process protection on the authority of Board of Regents v. Roth,

408 U.S. 564 (1972); Perry v. Sindermann, 408 U.S. 593 (1972); and Arnett v. Kennedy, 416 U.S. 134 (1974).

In Roth, an assistant professor of political science at a public university had been hired for a one-year fixed term of employment pursuant to a written contract. He had no tenure and there were no statutory or administrative standards of eligibility for reemployment. After he had been openly critical of the school administration, the teacher was notified that he would not be employed for the following academic year. He sued, alleging that he had been punished for his criticism in denial of his First Amendment freedom, and he asserted a right to procedural due process. The district court ordered a partial summary judgment for the plaintiff on the claim of entitlement to procedural due process, which, the court held, required a statement of reasons for non-hiring and an opportunity for a hearing on those reasons. Roth v. Board of Regents, 310 F. Supp. 972 (W.D. Wis. 1970). That result was affirmed in Roth v. Board of Regents, 446 F.2d 806 (7th Cir. 1971).

A majority of the Supreme Court reversed the order on summary judgment, observing that the only question presented was whether the teacher had a constitutional right to a statement of reasons and a hearing on the decision not to rehire him for another year. In holding that he did not, Justice Stewart concluded that a determination of the nature or character of the teacher's interest was controlling of whether it came within the Fourteenth Amendment's protection of liberty and property. Because the district court had stayed any development of the issues on the claim of retaliation for the exercise of freedom of speech, that allegation was not before the Supreme Court.

The Supreme Court's holding in Roth was that a teacher who had not been rehired for one year at one public university had no protectable interest in reemployment without proof of something more.

The Sindermann case came to the Supreme Court differently. There, the district court granted a summary judgment for the defendants, regents of a public junior college, who had failed to renew the plaintiff's one-year employment contract, and who had issued a press release containing allegations of insubordination on which there had been no hearing or factual determination.

The teacher had been employed with the same institution for four successive years under a series of one-year contracts, and he had taught an additional six years at other schools within the state college system. He had been involved in public disagreements with the defendant regents. Without taking evidence, the trial judge dismissed the plaintiff's claim that the failure to renew his contract was a retaliation for his public criticism and the claim that the failure to provide him with a statement of reasons and an opportunity to challenge those reasons resulted in a denial of procedural due process.

The Fifth Circuit had reversed this ruling, Sindermann v. Perry, 430 F.2d 939 (5th Cir. 1970), for the obvious reason that the plaintiff had not been given an opportunity to develop evidence of his contentions that the defendants withheld renewal of his contract on the impermissible basis of reprisal for the exercise of rights protected by the First Amendment. Having decided to remand, the Fifth Circuit apparently felt obliged to offer direction to the district court with regard to plaintiff's claim of entitlement to a hearing. In considering what academic

CONTINUED

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procedures should be made available, the court said that a determination had to be made as to whether the teacher had "an expectancy of reemployment under the policies and practices of the institution." 430 F.2d at 943.

Whether such an expectancy existed would determine whether a pretermination hearing was necessary (with the regents having the burden of establishing cause) because the requirement of cause as a condition to a failure to renew was a part of the contractual expectancy of reemployment. However, if no such expectancy were established by the evidence, the teacher would have the burden of showing that the decision was wrongful and the administrative hearing should be so conducted by the academic authorities. In making that distinction, the court said at page 944:

> On the other hand, if the court resolves that Sindermann did not have an expectancy of reemployment which would require the college to show cause for the decision not to renew his contract, a different procedure would be indicated. In such a situation, upon receipt of notice that a new contract will not be offered, the teacher must bear the burden both of initiating the proceedings and of proving that a wrong has been done by the collegiate action in not rehiring him. It is incumbent upon such a teacher, not the college, to shoulder these responsibilities because the college may base its decision not to reemploy a teacher without tenure or a contractual expectancy of reemployment upon any reason or upon no reason at all.

A majority of the Supreme Court affirmed the circuit. The first question considered was whether the

> . . . lack of a contractual or tenure right to re-employment, taken alone, defeats his claim that the nonrenewal of his contract violated the First and Fourteenth Amendments. (408 U.S. 593, 596)

In holding that the claim was not so disqualified, the Supreme Court applied the well-developed principle that government may not act on any basis which infringes a constitutionally protected individual interest, particularly freedom of speech and association. Accordingly, any claim of contract right was considered to be irrelevant to the freedom of speech claim, and the teacher should have been given the right to develop the factual basis for his claim of infringement.

The Court then considered the separate claim of entitlement to some kind of hearing as a part of the non-renewal decision. It was noted that the teacher had not been given an opportunity to introduce evidence to establish the existence of an interest which would warrant due process protection. The holding was that the allegations of the complaint were sufficient to state a claim of a protectable interest. The majority said at page 600-601:

> In particular, the respondent alleged that the college had a de facto tenure program, and that he had tenure under that program. He claimed that he and others legitimately relied upon an unusual provision that had been in the college's official Faculty Guide for many years:
>
> > "Teacher Tenure: Odessa College has no tenure system. The Administration of the College wishes the faculty member to feel that he has permanent tenure as long as his teaching services are satisfactory and as long as he displays a cooperative attitude toward his co-workers and his superiors, and as long as he is happy in his work."
>
> Moreover, the respondent claimed legitimate reliance upon guidelines promulgated by the Coordinating Board of the Texas College and University System that provided that a person, like himself, who had been employed as a teacher in the state college and university system for seven years or more has some form of job tenure. [footnote omitted] Thus, the respondent offered to prove that a teacher with his long period of service at this particular

> State College had no less a "property" interest in continued employment than a formally tenured teacher at other colleges, and had no less a procedural due process right to a statement of reasons and a hearing before college officials upon their decision not to retain him.

The Court then referred to the concept of implied contract, citing 3 A. Corbin on Contracts §§ 561-572A (1960), and paraphrased the doctrine of promissory estoppel. Finally, Mr. Justice Stewart wrote:

> We disagree with the Court of Appeals insofar as it held that a mere subjective "expectancy" is protected by procedural due process, but we agree that the respondent must be given an opportunity to prove the legitimacy of his claim of such entitlement in light of "the policies and practices of the institution." 430 F.2d at 943. Proof of such a property interest would not, of course, entitle him to reinstatement. But such proof would obligate college officials to grant a hearing at his request, where he could be informed of the grounds for his nonretention and challenge their sufficiency. (408 U.S. 593, 603)

I most respectfully suggest that much of the apparent confusion and difficulty experienced in the trial and appellate courts since Roth and Sindermann result from a failure to stay within traditional definitions of property interests. Contrary to Mr. Justice Stewart's suggestion, the Fifth Circuit did not indicate any view that a mere subjective expectancy of reemployment entitles one to procedural due process protection. The "contractual expectancy" language in the Fifth Circuit opinion is nothing more than an abbreviated statement of the well-recognized law of implied contract and promissory estoppel. The pretermination hearing with the burden on the college to establish cause was not considered to be a requirement of procedural due process; it was simply one of the terms and conditions of the implied employment contract. As the circuit court noted, if no

such contract existed, then the protection of academic freedom required some other form of procedural due process hearing before termination became final.

In Bishop v. Wood, 44 U.S.L.W. 4820 (U.S. June 10, 1976), a majority of the Supreme Court affirmed a summary judgment dismissing the due process claims of a police officer who had been a permanent employee of Marion, North Carolina. The city manager terminated the plaintiff's employment without a hearing to determine any cause for discharge, despite a city ordinance which appeared to require cause. Writing for the majority, Mr. Justice Stevens observed that property interests are created and defined by state law and that the trial court's decision that the ordinance did not create a property interest such as to require constitutional protection was not subject to independent examination by the Supreme Court.[1]

Three Justices agreed with the dissent by Mr. Justice White, who viewed the denial of the existence of a property interest as inconsistent with the views of a majority of the Court in Arnett v. Kennedy, 416 U.S. 134 (1974). In that case, a federal civil service employee was removed from his job as a field representative in a regional office of the Office of Economic Opportunity, pursuant to the procedures established by federal statute and regulations. Written administrative charges were made and upheld

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[1] The only indication of any infringement of a liberty interest was the possible stigmatic effect of the firing. Because the reasons for the discharge had not been communicated to the public, there could be no impact on the plaintiff's reputation and, accordingly, no deprivation of any recognizable liberty interest.

by the OEO regional director. The employee failed to avail himself of the right to reply to these charges, and he failed to appeal to the Civil Service Commission. He then sued, contending that the statutory standards and procedures were not sufficient protection of his interest to be considered due process of law and that there was an unwarranted interference with freedom of expression..

Mr. Justice Rehnquist, writing for three Justices, found that the statutory procedures for termination and post-termination review were limitations on any property right conferred by the civil service statutes. He stated succinctly at page 155:

> Here the property interest which appellee had in his employment was itself conditioned by the procedural limitations which had accompanied the grant of that interest.

The administrative appeal and review procedures were held to be a sufficient protection of the First Amendment right.

Mr. Justice Powell, joined by Mr. Justice Blackmun, concurred in the result but used different reasoning. The disagreement derived from Mr. Justice Powell's perception of the earlier opinions in Roth and Sindermann as holding that whenever a property interest is found to exist, it is constitutionally protected by the due process clause. He then proceeded to determine what procedure would be adequate for due process by balancing the government's interest in expeditious removal of an unsatisfactory employee against the interests of the employee in continued employment. The conclusion reached by these two Justices was that the procedure established by the federal act and regulations was sufficient to meet the constitutional

requirements. Mr. Justice White's concurring and dissenting opinion used the same balancing process with different weights, concluding that due process required a pretermination hearing by an impartial decision-maker, but that the trial type of hearing could be reserved for review.

Read together, these cases offer only the broadest and most generalized guidance for the trial courts in resolving the kind of dispute presented here. The difficulty is compounded because prior to Roth and Sindermann we could presume that employment would not differ from any other form of contract-created property interest; consequently, it could be adequately protected, upon breach or repudiation, by a common law action in damages or by appropriate equitable relief. Does the fact that one of the contracting parties is a governmental entity alter the property characteristics of the agreement? It does so only in the sense that it involves state action, to which the prohibitions of the Fourteenth Amendment apply. Yet, there is nothing to suggest that all state contracts come within the protection of the due process clause. We have not yet seen any case holding that a road builder or supplier of materials must receive notice, a statement of reasons and an opportunity to be heard before the state refuses payment. Absent a statute or specific contractual provision, those parties are, presumably, still required to pursue their remedy in court after a breach has occurred.

Additional confusion results from a recognition of the mutability of the due process doctrine. The Supreme Court has found adequate protection in a great range of procedures, varying them according to the vitality and perceived importance of the interest being protected. For example, where a loss of welfare benefits is threatened, minimal due process has been held to

require a pretermination hearing, replete with notice and an opportunity to present oral argument, to obtain counsel, and to confront and cross-examine adverse witnesses. Goldberg v. Kelly, 397 U.S. 254 (1970). The profound deprivation of liberty occasioned by parole revocation is similarly viewed as requiring relatively stringent procedures for due process to be satisfied. The parolee must be afforded the opportunity to present witnesses and documentary evidence before a 'neutral and detached' hearing body, and is entitled to a written statement of facts relied upon in the event parole is revoked. Morrissey v. Brewer, 408 U.S. 471 (1972). Most recently, the Court has determined that public school students may not suffer temporary, short-term suspensions absent procedural due process. Goss v. Lopez, 419 U.S. 565 (1975). In this context, however, the due process clause is satisfied if the student is given "an opportunity to explain his version of the facts" at an informal meeting with the disciplinarian, after having been told of the basis for the accusation. 419 U.S. at 582.[2]

Are all public employment contracts to be given some form of pretermination protection by the due process clause? The Supreme Court has not answered that question. It seems significant that Roth and Sindermann involved the employment of teachers. The courts have long been concerned with attempts to articulate academic freedom. The many cases which have arisen on the subject of teacher conduct, curriculum control, retaliation for

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[2] For a comprehensive discussion of this variable nature of due process protection, see Friendly, "Some Kind of Hearing", 123 U.Pa.L.Rev. 1267 (1975).

speech or conduct, and parental objections to assignments all reveal the enormous difficulty in the balancing of interests involved in public education. I suggest that this same difficulty has been present in the teacher employment cases and that the concern for procedural protections for such employment is more a reflection of the vital interests in affording fairness and freedom in the public classroom than an elevation of claims of injury to contract and property interests to matters of constitutional moment. As Mr. Justice Douglas fully recognized in Roth, "In the case of teachers whose contracts are not renewed, tenure is not the critical issue." 408 U.S. at 582 (dissenting opinion). Rather, as one might expect, the vast number of teacher employment cases prior to Roth and Sindermann presented the critical issue as one of academic freedom or First Amendment rights, not one of Fourteenth Amendment protection afforded a property interest in continued employment. See, for example, Keyishian v. Board of Regents, 385 U.S. 589 (1967); Shelton v. Tucker, 364 U.S. 479 (1960); and Wieman v. Updegraff, 344 U.S. 183 (1952). While the claims of academic freedom or infringement of First Amendment rights were not directly before the Supreme Court in Roth or Sindermann, such claims were within the pleadings.

In the many opinions coming from the federal courts citing Roth and Sindermann, there are frequent discussions of the expanding notion of property interests, and it has become commonplace to refer to Goldberg v. Kelly, for example, as evidencing such expansion. The failure to distinguish among interests with differing values causes a failure to bring the issues into an appropriate focus. Goldberg v. Kelly was based on the perception

that an unfair termination of welfare benefits would create a condition of brutal need. While a casual reference to the possibility of regarding such entitlement as property was mentioned in a footnote, the distinguishing characteristics and the recognition of the importance of pretermination protection were clearly stated in the following language:

> Thus the crucial factor in this context—a factor not present in the case of the blacklisted government contractor, the discharged government employee, the taxpayer denied a tax exemption, or virtually anyone else whose governmental entitlements are ended—is that termination of aid pending resolution of a controversy over eligibility may deprive an eligible recipient of the very means by which to live while he waits. Since he lacks independent resources, his situation becomes immediately desperate. His need to concentrate upon finding the means for daily subsistence, in turn, adversely affects his ability to seek redress from the welfare bureaucracy. [footnote omitted]
> (397 U.S. 254, 264) [first emphasis added]

I have no quarrel with the holding and reasoning in Goldberg v. Kelly. It reflects a profound concern for protecting the interests of the individual against wrongful or arbitrary action in the ever-increasing areas of impact by governmental authority. That concern is the root philosophy of the constitution. Repudiation of the right-privilege dichotomy is but a recognition that there is a growing dependency upon governmental programs to provide an ability to cope with the conditions of modern living, and a corresponding increase in the danger of destruction of vital individual interests by those in authority acting without fundamental fairness. I had no difficulty in following Goldberg v. Kelly in reaching my decision in Ryan v. Shea, 394 F. Supp. 894 (1974), aff'd. 525 F.2d 268 (1975).

But to reach these results it is not necessary to distort the principles of property law. It is not necessary to clothe teachers with court-created concepts of property to protect them from governmental actions which interfere with the freedom to practice the teaching profession in a manner which affects the public interest. It would be enough simply to recognize that issues involved in the employment of public school teachers are but a part of the larger area of special concern for public education and its particularized problems of balancing state, public and private interests. That area has long involved the courts and the constitution.[3]

The Tenth Circuit Court of Appeals has recognized that the Supreme Court has differentiated among types of property interests in its concern for constitutional protection. In Abeyta v. Town of Taos, 499 F.2d 323 (10th Cir. 1974), the circuit court, speaking through Judge Hill, said at page 327:

> The types of property protected by the due process clause vary widely and what may be required by that clause in dealing with one set of interests may not be required in dealing with another set of interests.

In that case, the appellate court affirmed the trial judge's findings and conclusions that police officers in Taos, New Mexico had no contract and that their employment was terminable at will. Accordingly, there was no property interest subject to protection.

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[3] For a broad overview of education law, see Education and the Law: State Interests and Individual Rights, 74 Mich.L.Rev. 1373 (1976).

Bertot v. School District No. 1, Albany County, Wyo., 522 F.2d 1171 (10th Cir. 1975) involved the failure to renew the annual contracts of teachers without tenure. The plaintiffs sought relief under Sindermann by claiming an objective expectancy of continued employment because, in the hiring interviews, the school principal was interested in the plaintiffs' intention to become permanent residents of the area; the school board had never failed to reemploy a teacher since 1966; and the expressed hiring philosophy of the school district was the renewal of probationary teachers whose performance was satisfactory. Again, the circuit court affirmed the trial judge's finding and conclusion that these facts did not establish a property interest subject to protection by the Fourteenth Amendment. Judge Holloway analyzed the case in traditional contract terms. He said at page 1176 of the opinion:

> Agreements may be implied though not formalized, and explicit contractual provisions may be supplemented by other agreements implied from a promisor's words and conduct in the light of the surrounding circumstances.

Again at page 1177 of the opinion:

> Moreover the defendants' conduct and the statements made to the plaintiffs cannot be equated to promissory representations or to words, conduct and usage importing an agreement.

A similar analysis was made in another teacher case, Weathers v. West Yuma County School District, 530 F.2d 1335 (10th Cir. 1976).

In Mitchell v. King, 537 F.2d 385 (10th Cir. 1976), the Governor of New Mexico removed the plaintiff as Regent of the Museum of New Mexico without notice or hearing. The New Mexico Constitution gave the governor appointing authority over that position. The court of appeals affirmed the district court's dismissal for failure to state a claim for relief upon the

conclusion that there was no protectable property interest. In arriving at that result, Judge Barrett emphasized the state constitutional power given to the governor and the importance of absolute authority to remove policy-making officials when their conduct and acts in office are not in harmony with the views and wishes of an official who is accountable to the people.

These Tenth Circuit cases are a helpful clarification of the language used by the various Supreme Court Justices who have written opinions on the subject of public employment. Thus, it seems now to be clear that the notion of "expectancy" or "objective expectancy" is not a new doctrine in the law of property. It is nothing more than a paraphrase of the traditional principles of implied contract and promissory estoppel. Consequently, if, under the law of a particular state, implied contracts are not enforceable or promissory estoppel is not recognized or state law holds that such a doctrine as applied to particular types of public employment would be against public policy, then it would follow that no property right can be given constitutional protection for such public employees of that state.

Under the learning of the cases which I have discussed herein, a proper analysis of the facts involved in the Fourteenth Amendment property claims of state employees requires that four questions be answered:

1. Is there a recognizable contractual or other property interest under state law? Recognizing that new concepts of property interests have and will continue to emerge through legislation and common law development, it is important to be able to identify the existence of such an interest by a

definition available from some source other than a broad claim of a need for protection. Thus, the property interest must be subject to recognition in the law of the state. Such property interests include express contracts, contracts implied in fact, contracts implied in law (promissory estoppel), statutory grants and licenses.

2. Is the enforcement of the claimed contractual or other property interest contrary to the expressed public policy of that state? It is familiar learning that courts will not enforce contracts which are illegal because they are in violation of criminal or regulatory laws or because they contravene established public policy. 6 A. Corbin on Contracts, Part VIII (1962). Likewise, the ownership or possession of narcotics, illegal weapons and many kinds of contraband are recognized limitations on property rights.

3. Is the recognized enforceable property interest worthy of the protection of procedural due process under the Fourteenth Amendment? Stated differently, does the affected property interest contain some extra dimension which would warrant the additional protection of procedural due process? If not, the status of the employment property interest would be comparable to that of a commercial contract with the state, and the aggrieved party must resort to a common law remedy for its preservation. The perhaps singular nature of teacher employment - - imbued with the precious and precarious notion of academic freedom - - provides such an extra dimension deserving of procedural due process safeguards. It would be inappropriate at this time to speculate on what other positions of employment might qualify under this standard.

4. How much protection is required?. Due process is an elastic concept; the amount of process due in any given situation varies according to the perceived weight of the interest involved and the context in which it arises. Determination of procedural requirements for the protection of a property interest in public employment calls for a balancing of the individual's interest with the public interest.

II.

In determining the subject case, each of these four questions will be considered, even though the answer to any one of them may make further inquiry superfluous.

1. Is there a recognizable contractual or other property interest under state law?

Robert Hamm has presented no evidence which would suggest, let alone support, a finding of an express or implied contract. There is nothing to indicate any agreement or meeting of the minds on any term of employment as chief probation officer. There is nothing to show that in accepting appointment as chief probation officer he was relying upon any promise of any term or condition. Rather, the facts compel a finding that Mr. Hamm was aware that he was serving at the pleasure of the chief judge of the district court.

The plaintiff's primary contention is that he has a protectable property interest because Rules 25 and 26 of CJSPR prescribe reasons for which permanent employees of the judicial department may be discharged, and that is said to be analogous to the position of the federal civil service employee plaintiff in Arnett v. Kennedy, supra. The cases are not comparable. 5 U.S.C. § 7501(a) clearly provides that "[a]n individual in the competitive service may be removed or suspended without pay only for such cause as will promote the efficiency of the service."

Congress then provided the procedures for discharge determinations. In four of the five opinions expressing the varying views of the Justices, it was assumed that the requirement of cause conferred a substantive property right. The differences expressed were disagreements about the amount of protection required by the Fifth Amendment. Viewing Arnett from the perspective of my suggested four-step analysis, the property interest arose because the federal statute was the functional equivalent of an express contract of employment which was clear and unequivocal in its terms.

CJSPR cannot be so considered by Mr. Hamm. Rules 25 and 26 must be read in the context of all of the other rules, including Rule 46 prohibiting any review of a discharge. Read in a light most favorable to the plaintiff, there are so many ambiguities and inconsistencies contained in these rules that it is impossible to characterize them as an expression of a mutual agreement. Upon the record before me, I find that the plaintiff had no recognizable interest in his employment.

2. Is the enforcement of the claimed contractual or other property interest contrary to the expressed public policy of that state?

Even if the language of personnel Rules 25 and 26 could be read to create a contractual right to continued employment, the plaintiff here still could not prevail because the recognition of such a contract would violate the expressed public policy of the State of Colorado.

Application of the proposed analysis to Bishop v. Wood, supra, provides a good illustration of this point. There, the fact that

the Marion ordinance conditioned petitioner's dismissal on cause could be regarded as having created for him a recognizable property interest based on implied contract. [Step 1]. But by the district court's reading of Still v. Lance, 275 N.C. 254, 182 S.E.2d 403 (1971), the Supreme Court of North Carolina had expressly negated the existence of such an interest in public employment absent explicit statutory or contractual guarantees. Thus, the expressed public policy of the state had extinguished, as unenforceable, that which otherwise might have constituted a validly claimed protectable property interest. [Step 2].[4]

As previously noted, the Colorado Constitution gives absolute authority over the judicial department to the Supreme Court of Colorado, with administrative control vested in the chief justice. Rule 46 of CJSPR, adopted by the Supreme Court, is unequivocal in excluding chief probation officers from any right of review of the termination of their employment. While the Colorado General Assembly has suggested that the court adopt personnel rules which compare to those applicable to the employees covered by the merit system in the Constitution, the Colorado Supreme Court has quite clearly excluded specific types of judicial employees from any protection against arbitrary action by the appointing authority.

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[4] Utilization of this two-step approach has the advantage of overcoming the seeming inconsistency between Bishop and its immediate predecessor, Arnett v. Kennedy, supra. In Arnett, six Justices were of the view that an employee necessarily had a property interest if his discharge was conditioned on cause. [See, footnote 8, Bishop v. Wood, supra.] By breaking down the analysis into two discrete steps, Arnett and Bishop can be reconciled to mean that a cause requirement may be sufficient to create a protectable property interest, if, and only if, such a grant is not contrary to the expressed public policy of the state.

It must be recognized that, in Colorado, all of the justices and judges of the judicial department are accountable to the people. They can be removed from office by the Colorado Supreme Court after investigation by a commission on judicial qualifications, pursuant to Article VI, Section 23 of the Colorado Constitution, and they are dependent upon an affirmative vote of the electorate for serving succeeding terms of office under Section 25 of Article VI.

Those who serve the judges and justices in the exercise of their sensitive duties, which certainly include chief probation officers, are made wholly accountable to those who are, in turn, responsible to the public for the performance of their courts. Thus, there is a direct comparability between this position of chief probation officer and that of the regent in Mitchell v. King, supra.

3. Is the recognized enforceable property interest worthy of the protection of procedural due process under the Fourteenth Amendment?

Following the suggested four-step analysis, if it were to be assumed that the plaintiff did have a recognizable property interest which would not be contrary to express public policy, would that interest require the protection of procedural due process under the Fourteenth Amendment? In my view it would not. Again, the nature of the position does not present a need for protecting freedom of action by the employee. Indeed, assistance to the judges in the exercise of their sentencing power is a function which requires subordination of the individual's views and efforts to the authority of the decision-maker. Under any balancing of interests approach, the weight of the public

interest in performance is much heavier than the individual's claim to the benefits of employment. Accordingly, the Fourteenth Amendment affords no protection to this plaintiff in this case, other than the ordinary protections that would be afforded in a court of law on a breach of contract suit.

4. How much protection is required?

Finally, assuming that some process were due to him, how much protection must be given? The Plaintiff here asks that this court order a review board hearing for him in the same manner as that which is provided for permanent employees of the judicial department who are not excluded from review by Rule 46. That would be more than the United States Constitution would require. Again, the amount of protection to be given must be determined by a balancing of the public and private interests and, again, the public interest predominates. In my view, the minimum opportunity to learn of the reasons for the action and a chance to address the decision-maker, as was held to constitute adequate protection in Goss v. Lopez, supra, is all that would be required here. That was done by Chief Judge Scott. While it could be contended that his approach to the plaintiff was authoritarian, his action did meet the kind of minimal standards which the Supreme Court has, at times, recognized as due process. I reach that conclusion with considerable personal regret, because I am reluctant to follow the view that the sturdy shield protecting the individual against government action, which was formerly recognized to require an opportunity for the clash of adversary interests at trial, has been so abraded as to permit the courts to characterize this type of hearing as due process of law.

The plaintiff here also claimed an infringement of a liberty interest. That claim was essentially withdrawn at the preliminary injunction hearing. It is also clear that the plaintiff has no evidence that there was any stigmatic effect upon him or his reputation resulting from the discharge. Accordingly, there is no support for a claim of infringement of a protected liberty interest.

Upon the foregoing findings of fact and conclusions of law, it is

ORDERED that the plaintiff's complaint and this civil action are dismissed.

Dated: January 25th, 1977

BY THE COURT:

/s/ Richard P. Matsch

Richard P. Matsch, Judge
United States District Court

APPENDIX E 1

C O L O R A D O J U D I C I A L S Y S T E M

P E R S O N N E L R U L E S

Effective January 1, 1975

PROMULGATED BY THE COLORADO SUPREME COURT

Effective July 31, 1975

PERSONNEL RULES
COLORADO JUDICIAL SYSTEM

PART I. CITATION, SCOPE, RESPONSIBILITY AND DEFINITIONS

Rule 1. Citation

These rules shall be known and may be cited as the Colorado Judicial System Personnel Rules or C.J.S.P.R.

Rule 2. Scope

These rules shall apply to the supreme court, court of appeals, office of the state court administrator, all trial courts, and court services covered by C.R.S. 37-11-6, as amended, and all employees thereof, including the confidential employees of a justice or judge.

Rule 3. Responsibility

(a) Responsibility of Administrative Authorities. (1) Administrative authorities shall be responsible to the chief justice and the supreme court for the supervision and administration of all personnel within their respective jurisdictions.

(2) This authority may be delegated in writing by the administrative authority, if not otherwise prohibited by these rules.

(b) Scope of Responsibility. (1) Appointing authorities, district administrators, and supervisors in their respective jurisdiction for:

(2) Administration of these rules and compliance with the policies contained herein;

(3) Orientation and on-the-job training of employees;

(4) Review and evaluation of employees' performance; in accordance with these rules;

(5) Corrective or disciplinary action when required in accordance with these rules; and

(6) Providing a work environment conducive to employee welfare and safety.

Rule 4. Definitions

(a) Definitions. (1) Administrative Authority. The official or officials with the primary administrative responsibility for a judicial agency, location, or judicial service, as delegated by the chief justice or specified in these rules.

(2) Anniversary Date. The date on which an employee is eligible for advancement to the next salary step in his pay grade.
(3) Anniversary Increase. The increment to which an employee is entitled on his anniversary date for satisfactory performance.
(4) Appointing Authority. The person or persons vested by these rules with the authority to appoint employees to positions, subject to approval of the appropriate administrative authority, as specified in rule 18.
(5) (i) Appointment - The act of an appointing authority by which a position is filled. Type of appointments include:

(ii) Certified Appointment - The permanent appointment of an employee to a position following successful completion of a probationary period;

(iii) Probationary Appointment - The initial appointment of an individual from outside the judicial system to a permanent position for a probationary period not to exceed six months or for a training period, whichever is longer.

(iv) Reinstatement - The right of rehire within one year vested in certified employees who were involuntarily terminated because of lack of work, lack of funds, reorganization, or exhaustion of paid leave;

(v) Re-employment - The privilege of rehire within one year with retention of certification, which may be granted to a former certified employee of the judicial system who terminated his employment in good standing; and

(vi) Temporary Appointment - An appointment for twelve months or less to a nonpermanent position or to one in which the incumbent is on leave without pay. Temporary appointments convey none of the rights or benefits accrued by permanent employees, except coverage under workmen's compensation.

(vii) TEMPORARY EMERGENCY APPOINTMENT - A LIMITED TERM APPOINTMENT WITHOUT EXAMINATION FOR A PERIOD NOT TO EXCEED FOUR MONTHS IN A TWELVE MONTH PERIOD. APPOINTMENTS OF THIS NATURE ARE SUBJECT TO THE APPROVAL OF THE STATE COURT ADMINISTRATOR.

(6) Bumping Rights. The rights of an employee to another position in the Colorado judicial system as provided in rule 27.
(7) Certified Employee. An employee who has successfully completed his probationary period.
(8) (i) Class - A group of positions sufficiently similar in duties, authority, and responsibilities that:

(ii) The same descriptive title may be used;

(iii) The same qualifications for entrance may be required;

(iv) The same aptitude or proficiency tests may be used; and

(v) The same pay grade may be applied with equity.

(9) Class Series. A sequence of classes that are alike in kind but not in level, starting with an entry level position and advancing upward in duties, complexity, authority, and responsibility.

(10) Class Specification. 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.

(11) Classified Service. The aggregate of all non-judicial positions under the judicial system.

(12) Compensation Schedule. The array of pay grades applying to the judicial system classified service.

(13) Conditional Promotion. The promotion of a certified employee to a position for a period not to exceed twelve months.

(14) Confidential Employee. An employee appointed by and directly responsible to a justice or a judge, as provided in rule 18.

(15) Continuous Service. Service in the judicial system which is unbroken by leave or leave without pay as authorized by these rules.

(16) Demotion. Moving an employee from one class to another at a lower pay grade.

(17) Dismissal. The discharge of an employee.

(18) Eligibility List. A roster of persons who have been found qualified for appointment or promotion to positions in the judicial system.

(19) Exempt Position. A professional, administrative or executive position in the Colorado judicial system which is exempt from the provisions of the Federal Fair Labor Standards Act.

(20) Grade. One of the official ranges of pay at which positions in the judicial system classified service are paid.

(21) Grievance. Any complaint filed by an employee in accordance with rule 44 pertaining to employment conditions or personnel practices in the judicial system.

(22) Job Description. The written summary of the duties and responsibilities assigned to a position.

(23) Layoff. The involuntary separation of an employee due to abolition of a position because of lack of work, lack of funds, or reorganization.

(24) Non-exempt Position. A position in the Colorado judicial system which falls within the provisions of the Federal Fair Labor Standards Act.

(25) Permanent Full-time Position. A position scheduled for full-time work, i.e., thirty-seven and one-half hours per week, and carried on the staffing pattern. A federally funded position shall be considered permanent only for the duration of the grant or grants unless subsequently state funded.

(26) Permanent Part-time Positions. A position scheduled for less than full-time work, i.e., less than thirty-seven and one-half hours per week and carried in the staffing pattern. A federally funded position shall be

considered permanent only during the duration of the grant or grants unless subsequently state funded.

(27) Position. An individual job within the classified service.

(28) Primary Duties. The principle tasks which are assigned to a position.

(29) Probationary Period. The designated period following probationary appointment or the trial period following an unstatisfactory performance evaluation.

(30) Promotion. Moving an employee from one class to another class at a higher pay grade within the same district.

(31) Promotional Transfer. Moving an employee from one class and district to a different class in another district at a higher pay grade.

(32) Reclassification. The assignment of a position from one class of work to another.

(33) Staffing Pattern. A document showing the number of positions authorized for each location, the grade and title of each position, and other related information, as prescribed in rule 16.

(34) Step. Incremental pay increases within a grade.

(35) Step-for-Step. A salary adjustment, either up or down, which results in the employee being moved to the same step within his new grade as he was in his former grade.

(36) Supervisor. An individual who directs and coordinates the activities of other employees.

(37) Temporary Full-time Position. A position scheduled for full-time work which is established for one year or less.

(38) Temporary Part-time Position. A position scheduled for less than full-time work which is established for one year or less.

(39) Terminal Leave. Accrued leave which an employee is entitled to take or be compensated for at the time of his departure from the judicial system.

(40) Trainee Position. An entry level job established to provide on-the-job training.

(41) Transfer. Changing an employee from one position to another at the same pay grade, or changing an employee to a different jurisdiction at the same pay grade.

(42) Trial Service Period. The four month period following the promotion of a certified employee to a permanent position to evaluate his performance prior to certification to the position.

(43) Unclassified Position. A contract employee, on-call employee, or any position so designated by the supreme court.

(b) Use of specific pay grade. Whenever a specific pay grade is cited in these rules, it means the pay grade in effect on July 1, 1973. Even if the pay grade changes, these rules shall be interpreted as though the pay grade, and the positions to which it applies, as of July 1, 1973, is still in effect.

PART II. COMPENSATION

Rule 5. Compensation Plan

(a) Authority. The supreme court hereby establishes a compensation plan in which each class shall be assigned to a salary range based upon relative responsibilities of work, comparability to prevailing rates, and other pertinent salary and economic data.

(b) Adjustments. (1) (i) Effective July 1 of each year, adjustments in the compensation plan shall be made as a result of salary surveys and relationship studies by the Colorado state department of personnel, except that the chief justice or the state court administrator, if so delegated, may authorize pay grade adjustments prior to any July 1, if:

(ii) Such adjustments are necessitated by the creation of new positions or classes, authorized reorganization, or change in work; and

(iii) The proposed changes do not require expenditures greater than those for which appropriation or approved transfer of funds has been made.

(2) Any employee may request review of the salary range or relationship assigned to his class. Such request shall be submitted to the administrative authority.

(3) An administrative authority may request review of the pay grades or relationships assigned to positions within his jurisdiction.

(4) All request for review shall be submitted in writing by the administrative authority to the state court administrator.

Rule 6. Hiring Rates

(a) New Employees. Beginning employees shall be compensated at the first step of the pay grade assigned to the class to which they are appointed, except as provided in sections (b) through (e) of this rule.

(b) In-grade Hiring. When recommended and justified by the appointing authority and the administrative authority and approved by the state court administrator, and if funds are available, new employees at grade 43 and below may be hired at the second or third step in the range because of unusual personal qualifications or other unusual conditions. For the same reasons, but with the approval of the chief justice, new employees at grade 44 and above may be appointed at any step in the grade, up to and including step six.

(c) Re-employed Personnel. Re-employed personnel shall be appointed at the initial hiring step of the class, unless otherwise recommended and justified by the

appointing authority and administrative authority and approved by the state court administrator as delegated by the chief justice.

(d) Unclassified Position Brought Under Classified Service. When an occupied unclassified position is brought under the classified service, the salary of the incumbent shall be established at the closest step at or above his present salary, except that if his salary exceeds the maximum rate for the class, the maximum rate shall be assigned.

(e) Change in Position. (1) When an employee is moved to a class other than that to which he is currently appointed, his salary shall be established:

(2) As though he were transferred, if the class is at the same level;

(3) As though he were promoted, if the class is at a higher level; or

(4) As though he were demoted, if the class is at a lower level.

Rule 7. Salary Computation

(a) Application of Compensation Schedule. All employees in the classified service shall be compensated at one of the rates, or at a proportion of one of the monthly rates, established in the salary schedule set forth in appendix A to these rules.

(b) Monthly Work Days - Compensation. (1) In computing the number of work days in a month, holidays which occur on work days during the month shall be counted as work days.

(2) Permanent full-time employees who work or are on paid leave on all scheduled work days of a month shall be compensated at the appropriate monthly rate.

(3) Permanent full-time employees who work less than a full month, including paid leave, shall be compensated at a computed daily rate for each day worked. Payment for holidays shall be determined as prescribed by rule 41. The applicable daily or hourly rate shall be taken from appendix A to these rules.

(4) Permanent part-time employees who work an irregular or intermittent schedule shall be compensated for time actually worked at the appropriate rate established in the salary as prescribed in subsection (b)(3) for time actually worked. Such employees shall not be compensated for holidays, except for holidays actually worked.

(5) Permanent part-time employees who work a regular part-time monthly schedule shall be compensated on a prorated monthly rate. Those employees whose work schedule is less than a full month shall be compensated in the same manner as regular full-time employees who work less than a full month, as prescribed in subsection (b)(3) of this rule.

(6) Temporary employees hired to work a full

month or more shall be compensated in the same manner as regular employees, except that the administrative authority may compensate such employees at the hourly or daily rate as prescribed in appendix A to these rules, rather than the monthly rate.

(7) Temporary employees hired to work less than a full month shall be compensated at either the hourly or daily rate established in appendix A to these rules.

(c) Monthly Work Days - Number. The standard number of work days in a month for judicial system employees shall be twenty-two.

Rule 8. Anniversary Increase

(a) Determination of Anniversary Date. (1) For employees in grade 16, step 2 and above, the anniversary date shall be the first of the month following the date he was appointed, unless the appointment date is the first working day of the month, in which case the first of that month shall be the anniversary date.

(2) For employees appointed to step 1 in grade 16 or below, the anniversary date shall be the first of the month following certification.

(3) When an unclassified employee is brought under the classified service, the date of appointment and the anniversary date shall be established as prescribed in subsection (a)(1).

(b) Pay Step Advancement. (1) (i) Any employee whose job performance is rated satisfactory or superior shall be advanced within the steps in his assigned grade, as follows:

(ii) From step 1 to step 2. Employees in grade 16 and below, after six months of satisfactory service at step 1; employees in all grades above grade 16, after one year of satisfactory service at step 1.

(iii) From step 2 through step 6. Employees in all grades shall be advanced to the next higher step after one year of satisfactory service.

(iv) For advancement from step 6 to step 7. Employees in all grades shall be advanced to step 7 only after five years of satisfactory service at step 6.

(2) Permanent part-time employees shall be granted anniversary increases in the same way as regular full-time employees.

(3) Anniversary increases shall not be granted to terminating employees whose anniversary date occurs during the leave period after their last working day on the job.

(c) (1) Withholding Anniversary Increase for Unsatisfactory Service. Any employee whose job performance is unsatisfactory shall not be advanced to the next step in grade.

(2) The administrative authority shall determine whether the employee's performance has been unsatisfactory and whether, on the basis of his performance, the employee should not be advanced.

(3) A performance determination shall be made and the employee notified at least 30 days prior to the employee's anniversary date on the basis of the performance evaluation.

(4) After consultation with one or more persons who supervise the work of the employee and after giving the employee an opportunity to respond to any reported deficiencies made with respect to his performance, the performance determination shall become final on the anniversary date.

(5) At the end of the ninety day probationary period prescribed in rule (24)(e), the administrative authority may advance the employee to the next higher step if the employee has corrected the deficiencies in his performance. The anniversary date shall be adjusted to the first of the month following the end of the probationary period.

(d) (1) When the pay of an employee is adjusted to a different step in his ~~assigned~~ pay grade, he shall be assigned a new anniversary date, which shall be the first of the month following the date of adjustment, unless that date is the first working day of the month, in which case the first of that month shall be the anniversary date.

(2) When an employee is reinstated or reemployed, his date of appointment and the anniversary date shall be determined as prescribed in subsection (a)~~(1)~~ of this rule.

(3) When an employee returns from educational leave or leave without pay, his anniversary date shall be advanced one month for each month of such leave.

Rule 9. Effect of Position Change on Compensation

(a) Transfer at Same Pay Grade. When an employee is transferred to a class at the same pay grade, his grade, step, salary, and anniversary date shall not change.

(b) Promotion or Reclassification to a Higher Class. (1) When an employee is promoted to or reclassified to a class which is not more than six pay grades higher, his salary may be adjusted step-for-step upon recommendation of the administrative authority and approval of the state court administrator. The anniversary date shall not change.

(2) When an employee is promoted to or reclassified to a class which is more than six pay grades higher, he shall be limited to a salary increase of fifteen percent. The anniversary date shall not change. IN NO EVENT SHALL HE BE PAID LESS THAN THE RATE ASSIGNED TO STEP 1 OF THE CLASS TO WHICH HE HAS BEEN PROMOTED TO OR RECLASSIFIED TO.

(3) When an employee is given a promotional transfer, his compensation shall be governed by this rule.

(c) Demotion. (1) When an employee is demoted, his pay shall be adjusted downward step-for-step, except as follows;

(2) Voluntary Demotion. If an employee is demoted voluntarily for non-disciplinary reasons, his salary in the new grade shall be the salary closest to his salary prior to demotion, but shall not exceed step 7 of his new grade.

(3) Classification Actions. (i) If an employee is downgraded as a result of a position classification study, his salary in the new grade shall be the salary closest to his salary prior to downgrading or shall be frozen at his current salary, if it exceeds step 7 of his new grade.

(ii) If his salary prior to downgrading is within the lower grade, an employee is entitled to regular anniversary increases.

(iii) When an employee's salary has been frozen, he shall become eligible for anniversary increases on his regular anniversary date when the annual wage survey results in his frozen rate of pay falling within the new pay scale for his grade.

(4) Disciplinary Demotion. When an employee is demoted for disciplinary reasons, his pay may be adjusted to any step in the new grade at the discretion of the administrative authority, but he shall not be demoted to a step higher than his step before the demotion.

(d) Probationary Employees. When a probationary employee is demoted or accepts appointment in a lower class, his pay shall be determined as though he were originally appointed in the lower class.

Rule 10. Salary Adjustments from Salary Surveys

(a) Effect of Pay Grade Change. (1) When the pay grade assigned a class is changed because of salary studies or wage surveys, the pay of all employees in the class shall be changed step-for-step to the new grade, and anniversary dates shall not be changed.

(2) When an employee's salary has been frozen, he shall become eligible for anniversary increases on his regular anniversary date when the annual wage survey results in his salary falling with the new pay scale for his grade.

Rule 11. Salary Computation for Simultaneous Personnel Actions

(a) Effect of Two or more Actions. (1) When two or more actions affecting pay occur on the same effective date, the new grade, step, and rate shall be computed in the following sequence, as applicable:

(2) If the action occurs on the employee's anniversary date, the anniversary increase for the class from which the employee is being promoted, demoted, or transferred shall also apply.

(3) If the employee is promoted or demoted, the step-for-step promotional or demotional increase or decrease shall apply along with any pay grade adjustments effective the same date, but the anniversary date remains unchanged.

Rule 12. Pay Computation for Terminating and Deceased Employees

(a) Unused Annual and Holiday Leave. Employees who are terminated, retire, or resign and survivors of deceased employees shall be compensated for unused annual, sick, and holiday leave as prescribed in rules 32, 33, and 40, but not for compensatory time.

(b) Holidays during Terminal Leave. (1) Employees who retire or resign in good standing and 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.

(2) Dismissed employees shall not be compensated or credited with holiday leave for holidays occurring on a work day during the terminal leave.

(c) Temporary Employees. Temporary employees accrue no leave and shall not be paid for any time after their last day of work.

(d) Termination Date. The termination date shall be an employee's last day on the job, even though payment is made for unused leave.

PART III. CLASSIFICATION PLAN AND STAFFING PATTERNS

Rule 13. Classification Plan

(a) General. The state court administrator shall maintain a classification plan based on investigation and analysis of the duties of each position. The plan shall group all positions having comparable duties and responsibilities, and common requirements for filling positions assigned to the class. The plan shall be subject to approval of the supreme court.

(b) Class Specifications. The state court administrator shall prepare written specifications for every class of work in the personnel system. The specifications shall be based on a sound, systematic occupational analysis and position evaluation. They shall contain elements sufficient to distinguish the various classes. Duties as may be described in the specification shall not be construed to limit the assignment of other related duties by proper authority, subject to the notification provisions of rule 14(b).

(c) Class Title. The assigned class title shall be the official title for every position in the judicial system for personnel transactions and budget administration. Working or statutory titles may be used in the day-to-day business of the court.

(d) Changes to Class Specifications. When proposing, amending, or abolishing a class specification, the state court administrator shall provide administrative authorities and other interested parties with a notice of proposed changes and a copy of the changes or proposed specifications. The administrative authority shall make the content of the changes known to employees. The notice shall contain a specified time from the date of notice in which to file written objections with the state court administrator. The state court administrator shall consider the objections and may approve, modify, or disapprove the new or amended specifications or the abolishment of classifications.

(e) Assignment of Duties. The assignment of duties to a position, whether duties are primary or occasional, temporary or permanent, incidental or essential, shall be the responsibility of the administrative authority and the classification plan shall in no way limit or interfere with the administrative authority's responsibility for the assignment of duties.

(f) Creation, Abolition and Reclassification of Positions. (1) To create a new position, the administrative authority shall submit a request and a written job description to the state court administrator.

(2) The state court administrator shall investigate and analyze the duties proposed for any new position, allocate the position to its appropriate classification, and establish the effective date.

(3) The same procedure shall be followed whenever substantial changes in the duties and responsibilities assigned to a position are proposed.

(4) Any administrative authority may request a classification review of any position, if the position has not been reviewed within the previous twelve months. Such request shall be submitted to the state court administrator with a written job description setting forth the actual and essential duties of the position.

(5) Any employee may request, in writing, a classification review of his own position, if the position has not been reviewed within the previous twelve months. The administrative authority shall forward the request to the state court administrator within ten days.

(f) (6) The state court administrator shall act on any request involving an individual position within sixty days after receipt and on any request involving several positions within one hundred and twenty days after receipt. If the reclassification review does not proceed in a timely manner, the employee may petition the reclassification review board for appropriate action.

(7) If a position is vacant, the state court administrator may review the classification of the position prior to appointment to determine the appropriateness of the classification.

(8) The administrative authority may reassign duties assigned to a vacant position and request a classification review, or reclassify the vacant position within limitations established by any prior written delegation of authority to reclassify vacant positions by the state court administrator.

(9) The effective date for reclassification actions shall be the first working day of the pay period following approval by the state court administrator or a ruling by the reclassification review board.

(g) Periodic Review. (1) Subject to the conditions of section (d) of this rule the state court administrator shall make periodic reviews of the classification plan and shall prepare new classes of positions, revise specifications of existing classes, changes in class titles, changes in grades of classes, and recommendations for abolishing classes for consideration by the supreme court.

(2) The state court administrator may also recommend to the supreme court other changes and revisions in the classification plan as changing conditions require.

(3) The state court administrator, with the approval of the chief justice, may contract to have such periodic reviews performed by persons outside the Colorado judicial system who are knowledgeable and experienced in public personnel policies and studies.

Rule 14. Reclassification of a Filled Position

(a) Basis for Reclassification. (1) A filled position may be reclassified when warranted by permanent substantial changes in the duties and responsibilites of a position subject to the provisions of Rule 13(f).

(2) Whenever permanent substantial changes are made in the duties and responsibilities of a position, the administrative authority shall notify the state court administrator in writing within thirty days. Such notification shall include a new written position or job description setting forth the actual primary duties and other essential duties recommended for assignment to the position.

(b) Procedure for Reclassification. (1) If the administrative authority requests reclassification of a filled position, such request shall be accompanied by the notification of changes in duties.

(2) Upon receipt of the request, the state court administrator shall review the position and determine the class and grade to which the position should be assigned.

(3) The state court administrator shall submit his decisions to the requesting administrative authority.

Rule 15. Classification Appeals

(a) Right of Appeal - Time Limits. (1) When a certified employee objects to a reclassification action, he shall have the right of appeal.

(2) (i) When the classification results from a request for reclassification from either the employee or the administrative authority, an employee shall have thirty days to appeal to the reclassification review board from the time he is notified of such classification by the state court administrator.

(ii) When the classification results from a periodic review performed by the state court administrator, or by persons outside the judicial system, as provided in rule(13)(g)(3), an employee shall have ninety days to appeal to the reclassification review board from the time he is notified of such classification.

(b) Content of Appeal. (1) Appeals shall be made in writing setting forth:

(2) The reasons why the employee believes his classification to be in error;

(3) The classification which he feels is appropriate to his position and the reasons therefore; and

(4) Any further documentation in support of his case.

(c) Appeal Procedure. (1) The appeal should be transmitted by the employee to the administrative authority, who shall prepare and attach an evaluation of the appeal and his recommended action thereon.

(2) Within thirty days, the administrative authority shall transmit the appeal and accompanying documents to the state court administrator, who shall have any evaluation and recommendations prepared for the board. The evaluation shall be prepared on the basis of the application of classification standards and budgetary impact of the action.

(3) The reclassification review board may limit its consideration to the material presented by the employee making the appeal and recommendations and supporting documents used as the basis for establishing the classification being appealed. It may request a desk audit or additional information from the employee, the administrative authority, or the state court administrator. The board may ask the employee to appear at a hearing.

(4) (i) The reclassification review board shall make its decision within thirty days after receipt of an appeal in writing, unless the employee making the appeal is requested to appear before the board.

(ii) If the employee is asked to appear, the board shall make its decision within thirty days after hearing.

(5) The decision of the reclassification review board shall be final.

(d) Reclassification Review Board. (1)(i) The reclassification review board shall be appointed by the chief justice and shall be constituted as follows:

(ii) For consideration of appeals from employees of trial courts, the board shall have three members - one shall be a trial court judge or an appellate court judge with trial court experience, one shall be a district administrator, and one shall be the state court administrator or his designee.

(iii) For consideration of appeals from employees of probation departments, the board shall have three members - one shall be an appellate or trial court judge with knowledge of probation department practices and operations, one shall be a chief probation officer, and one shall be the state court administrator or his designee.

(iv) For consideration of appeals from employees of appellate courts, the board shall have three members - one shall be a justice or appellate judge, one shall be the clerk of an appellate court other than the one from which the employee is making his appeal, and one shall be the state court administrator or his designee.

(v) For consideration of appeals from employees of the state court administrator's office, the board shall have three members - one shall be the chief justice or his designee, one shall be a chief judge serving on the advisory judicial council, and one shall be a district administrator with a demonstrated knowledge and understanding of the function of the state court administrator's office.

(2) When an appeal comes before the board involving an employee from the court or agency of one of the board members, the member shall disqualify himself, and the chief justice or the state court administrator, if so delegated, shall appoint a replacement temporarily to hear the appeal.

Rule 16. Staffing Patterns and Position Allocations

(a) Content. (1) The staffing pattern for each location shall contain the number of authorized positions, the classification grade of each position, the position number, the official title, the pay range, and such other information as the state court administrator may determine. It shall also show the name of the incumbent, unless the position is vacant.

(2) The current salary of each incumbent shall be listed on the staffing pattern, as well as the salary he is to receive in the next fiscal year.

(b) Request for new Positions in the Current Fiscal Year. (1) Any request for a new position to be established before the succeeding fiscal year shall be submitted initially by the appointing authority to the administrative authority, if other than the appointing authority.

(2) The administrative authority shall submit the request to the state court administrator 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 shall examine the need for the position, including such on-the-scene study of the requesting court or agency as he deems appropriate.

(4) (i) Upon completion of this examination, the state court administrator shall recommend to the chief justice that the request for the new position be approved or denied.

(ii) The state court administrator's recommendation to the chief justice shall set forth he proposed salary classification, official title, the availability of funds, and the reasons for the recommendation.

(5) No new position shall be approved during a fiscal year, unless sufficient funds are

available. Positions so created shall expire June 30, of the same year, unless fully funded in the subsequent fiscal year.

(c) Request for New Positions in ucceeding Fiscal Years. A request for a new position to be established in a succeeding fiscal year shall be included in the annual budget request.

(d) Periodic Studies. (1) The state court administrator shall conduct periodic studies of the work load, work systems, and personnel for each location.

(2) Upon request of the appropriate administrative authority, the state court administrator shall make such studies for the supreme court and court of appeals.

(3) Upon completion of a study, the state court administrator shall submit his recommendations on work system organization, position allocation, and staffing patterns to the chief justice and the administrative authority.

(4) The administrative authority shall have thirty days to respond to the state court administrator.

(5) Recommendations approved by the chief justice shall be put into effect as soon as practicable, and the staffing pattern amended.

(e) Hiring Unauthorized Staff. No personnel shall be hired in excess of the number authorized, in job classes other than those authorized, nor in grades other than those authorized.

PART IV. APPOINTMENT OF EMPLOYEES

Rule 17. Qualifications of New Employees

(a) Determination of Qualifications. (1) (i) The initial determination as to whether a person meets the specified qualifications for appointment shall be made by the administrative authority after review of the person's academic credentials, work experience, examination results if required, and any other pertinent information.

(ii) This determination shall be subject to review and approval by the state court administrator.

(iii) The effective date of any appointment shall not precede such review and approval 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 pursuant to rule 19.

(b) Exceptions. Alternative or lesser qualifications may be approved by the state court administrator, if he determines that it is not possible to fill the position at the required qualification level in a reasonable length of time.

(c) Unqualified Applicant. A person shall not qualify for a position if the administrative authority or the state court administrator finds the presence of any of the conditions enumerated in rule 19(h), except that any person terminated from prior employment shall not be disqualified from employment in the Colorado judicial system solely on the grounds of prior termination.

(d) Application to Confidential Employees. The qualifications specified in the judicial system personnel plan shall apply to the confidential employee of a justice or judge.

Rule 18. Appointing Authority

(a) Office of State Court Administrator. 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.

(b) Supreme Court. (1) The clerk of the supreme court, the reporter of decisions, and the supreme court librarian shall be appointed by the supreme court.

(2) Other employees of the supreme court clerk's office shall be appointed by the clerk, subject to the approval of the supreme court.

(3) Other employees of the reporter of decisions' office shall be appointed by the reporter of decisions, subject to the approval of the supreme court.

(c) Court of Appeals. (1) The clerk of the court of appeals and the reporter of decisions shall be appointed

by a majority of the judges of that court. If a majority of the judges cannot agree, the authority for making the appointment may be delegated to the chief judge by the chief justice.

(2) The other employees of the court of appeals clerk's office shall be appointed by the clerk, subject to the approval of the chief judge.

(d) District Court. (1) Judicial district administrators and clerks of the district courts shall be appointed by a majority of the judges of the district court, except that appointments in grade 47 and above shall be subject to the approval of the chief justice. If a majority of the district judges cannot agree on the appointment, the authority for making the appointment may be delegated to the chief judge by the chief justice or the appointment may be made by the chief justice.

(2) (i) In districts having a judicial district administrator:

(ii) Employees of the district court in grade 27 and above shall be appointed by the district administrator, after consultation with the clerk of the court and subject to the approval of a majority of the judges of the district court. If a majority of the district judges cannot agree, the authority for making the appointment may be delegated to the chief judge by the chief justice.

(iii) Employees of the district court in grade 26 and below, other than the clerk of a district court, shall be appointed by the clerk after consultation with the district administrator, subject to the approval of the chief judge.

(3) In districts without a judicial district administrator, employees of the district court, other than the clerk, shall be appointed by the chief judge.

(e) County Court. (1) Clerks of county court shall be appointed by a majority of the judges of the county court, subject to the approval of the chief judge. If a majority of the county judges cannot agree on the appointment, the authority for making the appointment may be delegated to the presiding judge of the county court by the chief judge with the approval of the chief justice.

(2) (i) In districts with a judicial district administrator:

(ii) Employees of the county court in grade 27 and above shall be appointed by a majority of the judges of the county court after consultation with the district administrator and the clerk of the county court and subject to the approval of the chief judge. If a majority of the county judges cannot agree, the appointments shall be made by the presiding judge with the approval of the chief judge.

(iii) Employees of the county court in grade 26 and below shall be appointed by the clerk of the county court after consultation with the district administrator and subject to the approval of the presiding judge of the county court and the chief judge.

(3) In districts without a judicial district administrator, employees of the county court shall be appointed by the presiding judge of the county court, subject to the approval of the chief judge.

(f) Confidential Employees. (1) The confidential employees of a justice or a judge shall be appointed by the justice or judge.

(2) Confidential employees of each justice of the supreme court and judge of the court of appeals shall include a secretary and a law clerk.

(3) Confidential employees of a district, probate, superior, or juvenile court judge may include a reporter, division clerk, and either a bailiff or a bailiff-law clerk and none other.

(4) Confidential employees of a county judge in a multi-judge county court may include a reporter, division clerk and a bailiff, or bailiff-law clerk, and none other, except that if mechanical recording equipment is used, the employee shall be a clerk stenographer rather than a reporter.

(5) Positions which are in the classified service, may not be changed to confidential positions, unless the position is vacant, or the incumbent in the position agrees to such a change in writing, after being advised as to the change in employee rights. Any written agreement signed by an employee to change to confidential status must contain a statement that he has been advised as to the change in employee rights.

(g) Probation Departments. (1) Chief Probation officers of adult or combined adult and juvenile probation departments of a judicial district shall be appointed by a majority of the judges of the district court, except that such appointments in grade 47 and above shall be subject to the approval of the chief justice. If a majority of the district judges cannot agree, the authority for making the appointment may be delegated to the chief judge by the chief justice.

(2) The chief probation officer of a probation department which serves more than one district shall be appointed by a majority of the chief judges of those districts, subject to the approval of the chief justice. If a majority of the chief judges cannot agree, the appointment shall be made by the chief justice.

(3) Chief probation officers of juvenile probation departments shall be appointed by a majority of the chief judge and the judges handling juvenile jurisdiction, except such appointments in grade 47 and above shall be subject to approval of the chief justice. If a majority of these judges cannot agree, the authority for making the appointment may be delegated to the chief judge by the chief justice.

(4) In those districts with a chief probation officer or a chief adult probation officer, adult probation department employees shall be appointed by the chief probation officer or the chief adult probation officer, subject to the approval of the chief judge.

(5) In those districts without a chief probation officer or a chief adult probation officer, adult probation department employees shall be appointed by the chief judge, after consultation with the judges handling criminal jurisdiction.

(6) In those districts with a chief probation officer or a chief juvenile probation officer, juvenile probation department employees shall be appointed by the chief probation officer, subject to the approval of the chief judge.

(7) In those districts without a chief probation officer or a chief juvenile probation officer, probation department employees shall be appointed by the chief judge, after consultation with the judges handling juvenile jurisdiction.

(h) Denver Probate Court. The clerk, confidential employees, and other employees in grade 28 and above of the probate court of the city and county of Denver shall be appointed by the presiding judge, appointments in grade 47 and above shall be subject to the approval of the chief justice.

(i) Denver Juvenile Court. (1) The director of court services, who shall have overall responsibility for administration and probation services of the juvenile court of the city and county of Denver, shall be appointed by the judges of that court, subject to the approval of the chief justice.

(2) The director of court services shall appoint all other non-confidential employees subject to the approval of the presiding judge.

(j) Denver Superior Court. (1) The clerk of the superior court of the city and county of Denver shall be appointed by the judge of that court, subject to the approval of the chief justice.

(2) The clerk shall appoint all other non-confidential employees, subject to the approval of the judge.

Rule 19. Examinations and Qualification Reviews

(a) Application of Examinations. (1) subject to the approval of the chief justice, the state court administrator shall determine which positions in the judicial system require written or oral examinations to establish eligibility for appointment or promotion.

(2) The state court administrator, upon request of an administrative authority, may establish a different examination to determine eligibility for appointment or promotion to a specific position.

(3) (i) In lieu of written or oral examinations, the determination of eligibility for appointment or promotion shall be based on an evaluation of education, experience, references, interviews, and job related elements.

(ii) Interviews shall be conducted by the administrative and appointing authorities. The state court administrator may also interview prospective appointees upon request of the administrative authority.

(b) Non-Discrimination. Applicants shall not be discriminated against on the basis of race, religion, sex, national origin or political affiliation. Applicants or employees capable of performing the duties of a position shall not be discriminated against because of a physical handicap.

(c) Responsibility. The administrative authority shall be responsible for recruitment, examining, and referral activities in connection with vacant positions and competitive or promotional examinations, except that the state court administrator shall assist in recruitment as provided in rule 21(a)(1). The administrative authority may request the assistance of the state court administrator in examining and referral activities.

(d) Announcement of Examinations. (1) Announcements shall be distributed to inform interested persons of the opportunity to apply. Announcement shall include such information as the title of the class, grade, the work location of positions covered by the examination, qualifications and standards applicants must meet, primary duties, time limits, and any other pertinent information.

(2) Examination announcements shall be advertised throughout the Colorado judicial system. They shall be posted in the offices of all state courts and in such other places where eligible persons might reasonably be expected to read them. Districts shall post examination announcements in places known by and available to employees.

(3) Positive efforts shall be made by the administrative authority and the state court administrator in all examination and recruitment efforts to advertise employment opportunities in state courts 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.

(e) Extension of Filing Date. Whenever it is found that an insufficient number of applications have been received from qualified persons on any announced examination, the filing date may be extended.

(f) Filing of Applications. (1) All applications for examination shall be made upon forms approved by the state court administrator.

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

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

(4) Late or incomplete applications may be considered, if the time schedule permits.

(g) Oral Examinations. When competition in an oral examination is announced as limited to the best qualified applicants, as determined by preliminary screening or testing, admission to the oral examination may be restricted to the top ranking applicants.

(h) Reason for Rejection. (1) An application may be rejected if the applicant:

(2) Lacks the prescribed qualifications;

(3) Is physically or mentally unfit to perform the duties of the class;

(4) Has reached the mandatory retirement age, unless he is currently employed by the judicial system;

(5) Has a recent history of excessive use of alcohol, narcotics, or other drugs which may affect job performance;

(6) Has a prior record of unsatisfactory employment;

(7) Has made false statements of any material fact or has practiced or attempted to practice deception or fraud in his application or his test; or

(8) Has violated these rules or has been found guilty of violation of any law which affects the applicant's ability to perform the job.

(i) Content of Examinations. (1) The state court administrator shall determine the content of examinations and shall prepare examinations for use as required.

(2) Examination content shall be based on the job elements of the position for which the examination is conducted.

(3) The state court administrator may prescribe alternate clerical or typing tests or other job related tests and may authorize that these tests be administered by the administrative authority or his designee.

(4) The state court administrator may prepare lists of questions to serve as guides for boards conducting oral examinations.

(5) In preparing such lists of questions and determining examination content, the state court administrator shall consult with judges and appropriate court personnel and may establish advisory committees for this purpose.

(6) Test materials shall be confidential and shall be so handled by the state court administrator, members of his staff, and any other persons having access to this material.

(j) Conduct of Examinations. (1) The administrative authority shall administer written examinations as he deems appropriate to meet the personnel needs of his judicial district.

(2) The administrative authority shall determine the general qualifications and composition of examining boards in oral examinations and shall compile a list of appropriate oral examiners after contacting each one to ascertain his willingness to serve. A copy of this list shall be filed with the state court administrator.

(3) When an oral examination has been requested for a position, the administrative authority shall select a panel of three examiners from the list of appropriate oral examiners.

(k) Eligibility for Examinations. (1) A person shall be eligible to take a written or oral examination if he meets the educational and experience standards for the position or if alternative standards are allowed pursuant to rule 17(b).

(2) The determination of whether the specified standards are met or whether alternative standards are to be accepted shall be made by the administrative authority, subject to the approval of the state court administrator.

(3) (i) Attainment of age sixty-five shall be the maximum age for admittance to an examination, unless waived by the state court administrator.

(ii) Except as may otherwise be required by law or supreme court rule, a person must have attained the age of eighteen years to be eligible for an examination.

(l) Rating of Applicants. (1) (i) The administrative authority shall be responsible for rating applicants of all written examinations, subject to the guidelines established by the state court administrator of the results within fifteen days after conclusion of the examination.

(ii) The state court administrator shall establish a minimum passing grade for each written examination.

(iii) When a written examination consists of more than one part, the state court administrator may establish weights for each part of the examination and establish a passing grade for each part of the examination.

(2) (i) Each oral examination board shall rank applicants according to qualifications and suitability for the position, indicating applicants considered not qualified.

(ii) The oral board's evaluation shall be transmitted to the administrative authority, the appointing authority, and the state court administrator.

(iii) The appointing authority shall make his selection, subject to the approval of the administrative authority, from the top three candidates submitted to him.

(iv) In the event of a tie score among the top three positions on an examination, only the top three applicants may be considered, unless the tie occurs in the third position. If there is a tie for third position, all the applicants tied for third may be considered along with the persons in the first and second positions.

(m) Examination Records. The state court administrator and the administrative authority shall maintain examination records, including examination results, applications and test papers for each examinee, names of oral examiners, summary data on number of applicants and examination results, and such other information as he deems pertinent.

(n) Discretion of Administrative Authority. Any one of the top three persons who is admitted to and receives a passing grade on an oral or written examination may be appointed to a vacant position pursuant to rules 18 and 21. The administrative authority shall be responsible for informing all applicants of the examination results.

(o) Veterans Preference. Veterans who, for other than training purposes, served on active duty in any branch of the armed forces of the United States during any period of any declared war or an undeclared war or other armed

hostilities against an armed, foreign enemy or served on active duty in any such branch in any campaign or expedition for which a campaign badge is authorized and who were separated under honorable conditions, and the unremarried widows of such veterans, shall have 5 points added to a passing grade on open competitive examinations. Such a veteran, who because of disability incurred in line of duty is receiving monetary compensation or disability retirement benefits by reason of public laws administered by the department of defense or the veterans administration or any successor thereto, shall have 5 additional points added to a passing grade on open competitive examinations. Applicants claiming such points shall submit the necessary documentation upon request.

Rule 20. Employment Eligibility Lists

(a) Establishment of Eligibility Lists. (1) (i) The state court administrator and administrative authority shall establish and maintain the following employment eligibility lists:

(ii) Examination lists, consisting of persons who have applied for and are eligible to take an examination;

(iii) Qualified applicant lists, consisting of persons who have received a passing grade on an examination or whose educational and experience credentials have been evaluated and were found to meet the qualifications of the position applied for;

(iv) Promotion lists, consisting of judicial system employees who have received a passing rating on an oral or written promotional examination;

(v) Reinstatement lists, consisting of certified employees who were separated in a lay off and who are entitled to priority reinstatement for a period of one year; and

(vi) Reemployment lists, consisting of employees who terminated in good standing and who are entitled to reemployment for a period of one year.

(2) Eligibility lists shall show the name of the person, his last known address, the position for which eligible, and the date eligibility was established.

(3) A person may be carried on an eligibility list for two years, unless the period is extended by the state court administrator. Failure to respond to an official communication from the administrative authority shall result in removal from an eligibility list.

(4) The administrative authority shall furnish a copy of all eligibility lists to the state court administrator.

(b) Use of Eligibility Lists. (1) Employment eligibility lists shall be made available on request to all administrative authorities by the state court administrator.

(2) When a vacancy occurs, appointing authorities may appoint a person from the top three qualified applicants on the eligibility list without further examination or evaluation of his credentials.

(3) Appointments from an eligibility list shall be reported to the administrative authority and the state

court administrator.

Rule 21. Recruitment and Filling Positions

(a) Recruitment. (1) When a vacancy exists or is anticipated the administrative authority shall notify the state court administrator and shall request assistance in recruiting applicants.

(2) The appointing authority shall recruit locally for a position. The vacancy shall be publicized locally, including notification to local newspapers when necessary and posting of the vacancy notice in a public place in the courthouse and all offices of clerks of court in the judicial district.

(3) (i) Positive efforts by the administrative authority and the state court administrator shall be made in recruitment to advertise employment opportunities to minority groups, and agencies specializing in the placement of minority group members, and to seek out, contact, and employ qualified minority candidates.

(ii) Ethnic and racial information on all applicants for positions in the Colorado judicial system shall be collected and transmitted to the state court administrator on the prescribed application for employment form.

(iii) This information shall be treated with strict confidentiality.

(b) No recruitment may be made outside of the state of Colorado without the prior approval of the state court administrator.

Rule 22. Probationary Period

(a) Probationary Period. A newly appointed employee shall serve a six-month probationary period in the position to which he is appointed.

(b) Dismissal or Reduction. (1) Any employee on probationary status may be dismissed at any time for failure to perform his duties properly or any other good and sufficient cause.

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

(c) Attainment of Certified Status. (1) At the conclusion of the six-month probationary period, if the employee's performance is satisfactory, he shall be certified in the position, and officially notified by the administrative authority in writing of his certification.

(2) In exceptional cases, probationary status may be extended by the state court administrator for an additional period of time not to exceed three months upon written request and justification from the administrative authority.

(3) On appointment to a class for which satisfactory completion of a training program approved by the state court administrator is required, the probationary period shall be for the length of the training program, but not to exceed one year.

Rule 23. Trial Service Period

(a) Trial Service Period. A promoted employee shall serve a four-month trial service period in the position to which he is promoted.

(b) Reversion. (1) (i) Any employee serving a trial service period, may revert to the position to which he was previously certified if his performance is unsatisfactory. SUCH REVERSION SHALL BE IN ACCORDANCE WITH THE PROVISIONS OUTLINED IN RULE 27(h)(2).

(ii) EMPLOYEES WHO ARE CERTIFIED TO THEIR CLASSIFICATIONS, AND WHO HAVE BEEN REDUCED IN CLASSIFICATION DUE TO THE REVERSION PROCESS, SHALL HAVE A RIGHT TO RETURN TO THAT CLASSIFICATION TO WHICH THEY HAVE BEEN CERTIFIED WHEN THE FIRST VACANCY OCCURS, PROVIDING, THAT THE VACANCY OCCURS IN THE DEPARTMENT IN WHICH THE REVERSION OCCURRED.

(2) Any employee who has received a promotional transfer shall not revert to his former position.

(c) Salary Adjustment. Salaries for employees receiving promotions or promotional transfers shall be governed by rule 7.

PART V. EMPLOYEE EVALUATION AND DISCIPLINE

Rule 24. Performance Evaluation

(a) Annual Evaluation. Each certified employee shall be rated annually on his job performance. The evaluation shall be initiated at least sixty days prior to the employee's anniversary date.

(b) Evaluation Report Content. (1) The evaluation report shall indicate whether the employee's performance is superior, satisfactory, or unsatisfactory.

(2) The report shall include, but not be limited to, an evaluation of job performance strengths and weaknesses as measured against normal standards, as well as recommendations for improvement.

(c) Responsibility for Evaluations. (1) The evaluation of each employee shall be made by his immediate supervisor. Evaluation of a confidential employee shall be made by the justice or judge to whom he is directly responsible.

(2) The evaluation report of each employee shall be forwarded through the appointing authority to the administrative authority or his designee.

(3) The appointing authority shall review the report and discuss it with the immediate supervisor, after which a review conference with the employee shall be held. Copies of the evaluation form shall be placed in the employee's file, given to the employee, and relevant information contained in the report shall be forwarded to the state court administrator with the personnel action form for the anniversary increase.

(d) Employee Appeal. (1) A certified non-confidential employee may appeal his evaluation in writing to the administrative authority.

(2) The administrative authority shall review the evaluation and the appeal, including interviews with the appellant and rating officials as deemed appropriate for a satisfactory resolution of conflicting judgments. Within thirty days, the administrative authority shall render a decision in writing, which shall be final.

(e) Effect of Evaluation. (1) An employee must receive a written rating of satisfactory or superior to receive his anniversary increase.

(2) If an employee's rating is unsatisfactory, he shall be placed on probationary status for three months.

(3) If, at the end of the probationary period, the employee's overall job performance is rated as satisfactory, he shall be certified with his anniversary date and anniversary increase determined as provided in rule 8.

(4) If, at the end of the probationary period, the employee's overall job performance is still unsatisfactory, he shall be subject to corrective or disciplinary

action pursuant to rule 25. Any corrective or disciplinary action for confidential employees shall be determined by the justice or judge to whom they are directly responsible.

Rule 25. Employee Discipline

(a) Corrective Actions. Corrective actions are written warnings, reprimands, and censures which are taken to correct and improve an employee's job performance and do not affect current pay, current status, or tenure.

(b) Disciplinary Actions. (1) Disciplinary actions are taken to penalize an employee for an offensive act or poor job performance and affect current pay, status, or tenure.

(2) Disciplinary actions may include suspension, demotion, pay adjustment to a lower step in the assigned pay grade, dismissal as provided in rule 26, or any other appropriate action affecting the current pay, status, or tenure of an employee.

(c) Responsibility for Administering Corrective or Disciplinary Actions. (1) Except for confidential employees, the responsibility for initiating and administering corrective or disciplinary actions is vested in the administrative authority after considering recommendations from the appointing authority and the immediate supervisor.

(2) The responsibility for initiating and administering corrective or disciplinary actions applicable to a confidential employee is vested in the justice or judge to whom the employee is responsible.

(d) Causes for Corrective or Disciplinary Actions. (1) Causes for initiating corrective or disciplinary action shall include, but are not limited to:

(2) Violation of, or failure to comply with, the state constitution or statutes, supreme court rules and regulations, or local court rules and regulations;

(3) Failure or refusal to comply with a lawful order or to accept a reasonable and proper assignment from an authorized supervisor;

(4) Documented inefficiency, incompetency, negligence, or brutality in the performance of duties;

(5) Under the influence of or unauthorized possession of alcohol, narcotics, or other drugs while on duty;

(6) Medical evidence of physical or mental incapacity to perform duties;

(7) Careless, negligent, or improper use of state property, equipment, or funds;

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

(9) Failure to obtain and maintain a current license or certificate as a condition of employment, if required by law, supreme court standards, or these rules;

(10) Conduct unbecoming to a state officer or employee;

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

(12) Taking unauthorized leave.

(e) Procedure for Corrective or Disciplinary Actions. (1) Prior to initiating corrective or disciplinary action, the administrative authority shall meet with the employee to discuss the matter and to give him the opportunity to respond to the charges or present mitigating evidence.

(2) If a corrective action is imposed, the administrative authority shall advise the employee at a conference and in writing of his errors or failures, the corrective actions he should take, and the consequences he will face if he fails to follow corrective instructions. A copy shall be placed in the employee's personnel file.

(3) If a disciplinary action is imposed, the administrative authority shall advise the employee at a conference and in writing of the specific disciplinary action being imposed; why it is being imposed, including specific details of the offense; and the corrective actions to be taken and the consequences he will face for future violations. Copies shall be placed in the employee's personnel file and forwarded to the state court administrator.

(f) Corrective and Disciplinary Action Limitations. (1) An employee may not be corrected or disciplined more than once for a single specific act or violation, but he may be corrected or disciplined for each additional act or violation of the same or similar nature.

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

(3) A second disciplinary action disciplining an employee in any consecutive twelve-month period shall be cause for dismissal.

(4) Suspension of an employee without pay shall be limited to thirty calendar days, except as provided by section (g) of this rule.

(g) Suspension of Employees Under Indictment. (1) An employee who is charged with any felony or with a misdemeanor involving moral turpitude shall be indefinitely suspended pending outcome of the action, including any appeal thereon.

(2) If the employee is found guilty, unless later reversed on appeal, he shall not be compensated for the period of suspension and shall be dismissed.

(3) If he is found not guilty, or if the conviction is reversed, he shall be restored to his position and granted full pay and service credit for the period of the suspension.

(h) Charges Filed by Private Citizens. (1) Any private citizen who believes he has been aggrieved or adversely affected by the actions of a non-judicial employee of the judicial system in the performance of his job may file a complaint against the employee with the state court

administrator. The charges shall be in writing and include the name of the employee, the name of the court or judicial agency, and the specific details of the act or acts upon which the charges are based.

(2) The state court administrator shall refer the matter to the proper administrative authority for investigation and appropriate action.

(i) Right of Review. Any certified employee who is disciplined pursuant to this rule, except a confidential employee or an employee suspended pursuant to section (g) of this rule, may request review of the action taken, as provided in rules 45 and 46.

(j) Expungement. (1) Any certified employee who has received a corrective action may request in writing to the administrative authority that action be expunged from his personnel file after a period of two years of satisfactory performance.

(2) The administrative authority may then expunge a corrective action.

Rule 26. Involuntary Termination (Dismissal)

(a) Grounds for Dismissal. (1) A certified employee may be dismissed for any of the reasons enumerated in rule 25(d), whether or not disciplinary action of a lesser nature was taken prior to the dismissal action.

(2) (i) A certified employee shall be dismissed:

(ii) If found guilty of any felony or any misdemeanor involving moral turpitude; or

(iii) If the subject of two disciplinary actions within any twelve month period.

(3) Any district administrator or other employee to whom fiscal authority has been delegated by the chief judge who knowingly overspends the budget for the district or for his court or agency without the approval of the chief judge shall be subject to immediate dismissal by the chief justice.

(b) Responsibility for Dismissal. (1) Dismissal of certified employees shall be the responsibility of the administrative authority after consultation with and upon recommendation of the appointing authority.

(2) Dismissal of confidential employees shall be the right and responsibility of the justice or judge for whom they work.

(c) Right of Review. Except for those listed in rule 46 any certified employee who is dismissed pursuant to this rule may request review of the action taken as provided in rules 45 and 46.

Rule 27. Layoff Procedures

(a) Initiation of Layoff. When permanent positions cannot be continued because of lack of work, lack of funds,

or reorganization, the state court administrator shall determine the number and classes of positions to be abolished or vacated by layoff.

(b) Status Groups. (1) (i) For layoff purposes, judicial system employees shall be classified into the following status groups:

(ii) Certified employees;

(iii) Confidential employes; and

(iv) Probationary employees.

(2) (i) Temporary employees shall be terminated prior to initiating layoff procedures and shall not constitute a status group for layoff purposes.

(ii) Grant funded employees shall be terminated upon the expiration of their grant and shall not constitute a status group for layoff purposes, except employees in positions which became state funded shall have the full rights of the layoff procedures.

(c) Seniority. Employees shall be laid off in reverse order of length of service within each status group.

(d) Veteran's Preference and Rights. (1) An honorably discharged veteran, eligible for veteran's preference under Article 12, Section 15(d) (a) and (b) of the Colorado constitution, shall have preferred retention over non-veterans with equal service in the same status group and class series.

(2) If, prior to entering judicial service, employees in the Colorado judicial system served in any branch of the armed forces of the United States, for other than training purposes, during any period of any declared or undeclared war or other armed hostilities against an armed foreign enemy or served on active duty in any such branch in any campaign or expedition for which a campaign badge is authorized, and were separated under honorable conditions, they are entitled to use such military service as judicial service in determining seniority for layoff purposes.

(3) A husband's or wife's military service shall be counted in determining seniority for an unremarried widow or widower of a veteran entitled to veteran's preference. The same provisions and limitations outlined for veterans above apply.

(e) Preferred Status of Certified Employees. All probationary employees within the same class shall be terminated prior to laying off any certified employees in that class.

(f) Continuous Service. (1) Continuous service shall include all continuous time served in the judicial system in certified, probationary, or temporary status. A regular part-time employee shall have seniority computed on the equivalent amount of full-time service.

(g) Order of Retention Rights. (1) Within his status group, an employee shall have retention rights based on seniority in the following order:

(2) At his work site or place of employment over all other employees with less continuous service in the class from which he is being laid off.

(3) If there are no employees as delineated in subsection 2, then over all other employees with less continuous service in the class from which he is being laid off in the judicial district in which he is employed.

(4) If there are no employees in the categories delineated in subsections (2) and (3), then the employee may exercise his demotion rights to a lower class in the same series to which he is certified at his work site or place of employment, under section (h) of this rule.

(5) If there are no persons over whom he can exercise demotion rights, then he may exercise his retention rights based on seniority in the last previous class series to which he served within four years preceding the date of layoff.

(h) Demotion in Lieu of Layoff. (1) Certified employees scheduled to be laid off shall have the right to request a voluntary demotion in lieu of layoff.

(2) (i) In a lower class in the same series in the judicial district in which they are employed, they are entitled to be certified to:

(ii) Fill vacant positions,

(iii) Displace probationary employees, or

(iv) Displace certified employees with less continuous service.

(3) The continuous service of employees being demoted shall include all continuous time in the judicial system, including that time credited at a higher level.

(4) At the discretion of the administrative authority and with the approval of the state court administrator, a certified employee due to be laid off may voluntarily be demoted to a position in a lower level "related" class in a different series of classes to fill a vacant position, but he shall not displace an employee.

(5) (i) Certified employees who are laid off may request a transfer or voluntary demotion to another district.

(ii) Such action must be initiated by the employee and approved by the receiving district and the state court administrator.

(iii) No employee in the receiving district shall be laid off or demoted to permit such action.

(i) Notification to Employee. When it is determined that an employee is to be laid off, the administrative authority shall notify the state court administrator not less than forty-five days prior to the effective date of the layoff. The state court administrator shall notify the employee at least thirty days in advance, advising him of his retention rights consistent with these rules. The notification may be presented and receipted for in person or sent by certified mail to his home address.

(j) Exercise of Rights by Employee. An employee shall notify the state court administrator of his intention to exercise his retention rights within five days after receipt of the registered or certified notification from the state court administrator.

(k) Declination by Employees. If an employee declines all rights specified herein, he shall be terminated.

(l) Positions with Special Qualifications. Employees filling positions with bona fide special qualifications shall not be displaced by employees exercising retention rights, unless the employee exercising retention rights has those same special qualifications.

Rule 28. Resignations

(a) Written Notification Required. (1) When an employee resigns, he shall notify his superior, and the appointing authority or the administrative authority, in writing fifteen working days prior to the effective date.

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

(3) (i) An employee who resigns for reasons other than disciplinary action may be reemployed without loss of certification within a period of one year after termination.

(ii) If the resignation is due to a change in residence within the state, the employee may apply and be accepted for a similar position in his new place of residence within one year without loss of certification.

(4) The administrative authority or appointing authority may request an exit interview with an employee who resigns.

(b) Withdrawal of Resignation. For good cause and upon approval of the appointing authority, an employee shall have the right to withdraw his resignation before the effective date.

(c) Effect of resignation While Under Suspension or Disciplinary Action. An employee who resigns while under suspension or while under or awaiting disciplinary action shall forfeit all rights to be granted a review, shall not be eligible for reemployment, and shall not be eligible for appointment or admittance to an examination.

Rule 29. Outside Employment

(a) Outside Employment. (1) Judicial system employment shall be the principal vocation of full-time employees.

(2) (i) An employee may engage in outside employment, subject to the following conditions:

(ii) It does not interfere with job performance;

(iii) It does not conflict with the interests of the judicial system or the state of Colorado; and

(iv) It is not the type of employment which could reasonably give rise to criticism or suspicion of conflicting interests or duties.

(b) Approval of Outside Employment. No full-time employee may engage in outside employment without approval of the administrative authority. Outside employment by a confidential employee shall be approved by the justice or judge to whom he is responsible.

Rule 30. Political Activity

(a) Political Activity. Judicial system employees may not hold public office nor office in a political party, nor may they take an active part in the campaign or management of any political party or candidate for public office, except that any employee holding a public office on January 1, 1970 may complete the term for which he was elected or appointed.

(b) Leave without pay to engage in partisan political activity or to serve in an elected office shall not be granted, except that any employee holding an elected office on January 1, 1970 may complete the term for which he was elected and may be granted leave without pay therefore.

Rule 31. Employee Organizations and Representation

(a) Employee Organizations. Judicial employees shall have the right to join employee organizations of their choosing and at their own expense.

(b) Employee Representation. Employees shall have the right to counsel of their choosing at their own expense during classification appeals, grievance procedures, and review procedures.

PART VI. LEAVE, HOLIDAYS, RETIREMENT, AND OVERTIME

Rule 32. Annual Leave

(a) Annual Leave Accrual. (1) Permanent full-time employees shall earn and accrue annual leave as follows:

YEARS OF SERVICE	Days Earned Per Month	Maximum Accrual
	(1)	(12)
First Year	1-1/4	30
Second-Tenth Years	1-1/2	36
Eleventh-Fifteenth Years	1-3/4	42
Sixteenth Year and Over		

(2) Permanent part-time employees shall earn and accrue annual leave on a prorated basis.

(3) Each year of consecutive service in an appellate court, trial court, related court agency, or other Colorado state agency, shall be counted in determining years of service for the accrual of annual leave.

(4) A year shall be considered completed on the first day of the month following actual completion of twelve months of service, except that if twelve months of service is completed on the first working day of the month, that day shall be the completion date.

(5) Employees eligible for annual leave must work or be on paid leave for sixteen scheduled working days in a month to earn annual leave for the month.

(6) Employees on leave without pay in excess of six working days in a month shall not accrue annual leave for that month.

(7) Employees shall earn and accrue annual leave from their date of initial employment; however, they shall not be granted or compensated for accrued annual leave until they complete six full months of service.

(8) Former employees who are reemployed shall earn and accrue leave as though their date of reemployment is the date of initial employment.

(9) Employees shall not earn annual leave for a period in which they are credited with leave-without-pay of any duration for disciplinary reasons.

(b) Granting of Annual Leave. (1) An employee may take annual leave only when authorized by the appropriate administrative authority or his designee.

(2) An employee who takes unauthorized annual leave, without a reason acceptable to the administrative authority, shall be subject to suspension without pay for a period equal to twice the amount of leave used and will not be paid for such unauthorized leave. Repeated violations or unauthorized leave for five days or more shall subject the employee to dismissal.

(c) Annual Leave Accrual. (1) An employee may accrue annual leave above the maximum permitted under section (a)(1) of this rule, but such additional annual leave must be taken in the calendar year in which it is accrued.

Any additional unused leave shall be lost. Responsible supervisory and administrative authorities shall make every effort to avoid the loss of accrued leave by their employees through no fault of their own.

(2) Each January 1, the accrued annual leave of each employee shall be adjusted, so that no employee begins a calendar year with more annual leave credited to his account than the maximum accrual permitted under section (a)(1) of this rule.

(d) Other Limitations and Conditions. (1) Employees shall earn annual leave during periods of authorized leave, except that leave shall be credited only when they return to work, and leave earned during such periods shall be forfeited if they fail to return to work.

(2) Forfeiture of accrued annual leave as a disciplinary action shall not be authorized.

(3) No employee shall lose accrued annual leave when promoted, demoted, or transferred, except as provided in section (c)(2) of this rule.

(e) Compensation for Accrued Annual Leave. (1) Upon termination or retirement, an employee shall be compensated for unused accrued annual leave. The maximum amount of unused accrued annual leave for which an employee shall be compensated shall be based on length of consecutive service as specified in section (a)(1) of this rule.

(2) Upon the death of an employee, compensation for unused accrued annual leave shall be paid to the surviving spouse. If there is no surviving spouse, the payment shall be to the estate of the deceased.

(3) The employee's position shall be left vacant during the period of such payment, unless funds for this purpose have been appropriated or are available.

(f) Transfer of Annual Leave. (1) The judicial system shall accept any transferred annual leave from an employee transferring from another state agency.

(2) No leave shall be accepted which exceeds the maximum amounts permitted under this rule.

Rule 33. Sick Leave

(a) Sick Leave Accrual. (1) Permanent full-time employees shall earn and accrue sick leave with pay at the rate of one and one-fourth days per month.

(2) Permanent part-time employees shall earn and accrue sick leave on a prorated basis.

(b) Other Limitations and Conditions. (1) An employee must work or be on paid leave for sixteen scheduled working days in a month to earn sick leave for that month.

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

(3) An employee shall not lose accrued sick leave when promoted, demoted, or transferred.

(4) Forfeiture of sick leave as a disciplinary action shall not be authorized.

(5) An employee shall earn and accrue sick leave from the date of initial employment, but shall not be granted sick leave until completion of one full month of service.

(6) Sick leave shall be used only for a bona fide illness or injury, or for medical or psychiatric examination or treatment.

(7) Employees on leave without pay in excess of six working days in a month shall not accrue sick leave for that month.

(8) The maximum number of sick days which may be accrued is one hundred and eighty.

(c) Exhaustion of Sick Leave. When an employee has used all of his accrued sick leave and accrued annual leave and is unable to return to work because of illness or injury, he may be granted sick leave without pay for a period not to exceed one year at the discretion of the administrative authority, subject to the approval of the state court administrator, if so delegated by the chief justice.

(d) Certificate of Continuing Illness. An employee on sick leave in excess of five consecutive days may be required to provide a certificate from a physician verifying the illness or injury. If the requested certificate is not provided, sick leave shall be terminated and the employee placed on leave without pay and ordered to return to work by a specific date or be subject to dismissal.

(e) Compensation for Accrued Sick Leave. (1) Upon termination or retirement, an employee shall be compensated for one-fourth of his accrued unused sick leave. Such compensation shall not exceed forty-five days.

(2) Upon the death of an employee, compensation for unused accrued sick leave shall be paid to the surviving spouse. If there is no surviving spouse, the payment shall be to the estate of the deceased.

(3) The employee's position shall be left vacant during the period of such payment, unless funds for this purpose have been appropriated or are available.

(f) Transfer of Sick Leave. Up to fifteen days of sick leave may be accepted by the judicial system from an employee transferring from another state agency.

Rule 34. Maternity Leave

(a) Maternity Leave. When, due to pregnancy or childbirth, an employee's physical condition is such that her continued employment may be injurious to her, as supported by a physician's statement, or if she is unable to perform the duties of her position, she shall be granted maternity leave without pay. Sick leave, must first be exhausted, and then annual leave must be used before maternity leave is granted. The total period of sick leave, annual leave, and maternity leave cannot exceed six months.

(b) Medical Certification. The appointing authority may require the employee to present medical certification of fitness to resume work.

Rule 35. Injury Leave

(a) Granting of Injury Leave. (1) An employee who is injured or who contracts a compensable illness in the line of duty shall be granted injury leave with pay, if the illness or injury is determined to be compensable under workmen's compensation.

(2) Injury leave with pay shall be granted for a period not to exceed ninety days, if the employee assigns his temporary workmen's compensation payments for this period to the judicial system.

(b) Other Limitations and Conditions. (1) If an employee is unable to return to work after ninety days of injury leave, he shall be placed on sick leave with pay. Upon exhausting his sick leave, he shall be placed on annual leave.

(2) If temporary compensation payments are continued to the judicial system during the period the employee is on sick leave or annual leave with pay, the amount of sick leave or annual leave charged against the employee shall be prorated according to the proportion the compensation payments bear to the full salary of the employee while he is on sick leave or annual leave with pay.

(3) If an employee is unable to return to work after using all of his accrued sick and annual leave, the appointing authority may place the employee on sick leave without pay for a period not to exceed one year, if it appears that the employee will eventually be able to return to full-time employment.

(4) When sick leave without pay is granted to an employee because of an injury or compensable illness in the line of duty, the employee does not have to assign temporary compensation payments to the judicial system.

Rule 36. Funeral Leave

(a) Granting of Funeral Leave. (1) At the discretion of the administrative authority, an employee may be granted a maximum of five days funeral leave with pay to attend the funeral of an immediate member of his family or his spouse's family. Immediate members of the family include: a wife, husband, child (including adopted), parent, son-in-law, daughter-in-law, grandchild, grandparent, brother, sister, brother-in-law, sister-in-law, niece, or nephew.

(2) The amount of funeral leave shall be determined according to the distance to be traveled.

(b) Limitations. Funeral leave shall not be granted for settlement of estates, nor for any other reason except the required time to travel, attend, and return from a funeral. Any leave taken in excess of that required to attend the funeral shall be charged to annual leave.

Rule 37. Continuing Education

(a) Policy. Employees are encouraged, and shall be afforded the opportunity, to continue their education outside normal working hours. Local administrative authorities may also authorize flexible work schedules on an individual basis to permit employees to attend job-related courses during normal work hours.

(b) Granting of Educational Leave. When recommended by the administrative authority and approved by the chief justice, an employee may be granted educational leave with full or partial pay for a period not to exceed twelve months. The educational course shall be directly related to court employment or court administration and be designed to improve the employee's performance.

(c) Limitations and Conditions. (1) Upon completion of educational leave, an employee shall return to employment in the judicial system for a period at least equal to the time granted for educational leave. The employee shall sign an agreement to this effect prior to being granted educational leave.

(2) An employee on educational leave with pay shall be credited with service toward anniversary increases.

(3) An employee on educational leave with pay shall earn annual leave and sick leave, which leave shall be credited to him when he returns to work.

Rule 38. Leave Without Pay

(a) Granting of Leave Without Pay. When recommended by the administrative authority and approved by the chief justice, an employee may be granted leave without pay for justifiable personal reasons for a period not to exceed twelve months.

(b) Other Conditions and Limitations. (1) Leave without pay shall not be granted until all accrued annual leave has been exhausted.

(2) No type of leave shall be earned during periods of leave without pay, and periods of leave without pay shall not be credited as service for anniversary increases, increased earning of annual leave, or any other benefits.

Rule 39. Administrative Leave

(a) Granting of Administrative Leave. (1) For good and sufficient reason, and with the approval of the administrative authority, an employee may be granted administrative leave with pay to attend clinics, seminars, and classes which are job related.

(2) This authority may not be delegated.

(b) Granting of Leave for Jury Duty. (1) Upon presenting a summons for jury duty, an employee shall be granted administrative leave with pay for the duration of such compulsory service.

(2) Leave for jury duty shall be paid leave, but the employee taking such leave shall remit to the judicial department any and all payments for such service.

Rule 40. Military Leave

(a) Granting of Military Leave. (1) Upon presenting proper military orders, an employee who is a member of the national guard or military reserve shall be granted a maximum of six months to attend military training. Of this amount of time, a maximum of fifteen calendar days in any calendar year shall be military training leave with pay and shall not be charged as any part of annual or compensatory leave.

(2) Military training leave shall commence the first working day the employee is on military leave from his job and terminate on the last calendar day he is in a military training status, as evidenced by a copy of the military orders covering the leave period.

(b) Military Leave Without Pay. (1) Any employee who enters active military service of the United States in war or national emergency shall be granted military leave without pay for the duration and one year after the expiration of such active service.

(2) An employee who fails to return at the end of this period shall be deemed to have resigned.

(c) Other Conditions and Limitations. (1) Employees granted military leave shall be entitled to all rights and benefits granted such employees by state statutes.

(2) All accrued annual leave shall be paid an employee granted military leave before he is placed on leave without pay, regardless of his length of service.

Rule 41. Holidays

(a) Holiday Designation. (1) The following days are designated by statute as legal holidays in Colorado and shall apply to judicial system employees: New Year's Day; Lincoln's Birthday; Washington's Birthday; Memorial

Day; Independence Day; Colorado Day; Labor Day; Columbus Day; Veterans' Day; Thanksgiving; Christmas; and general election day in even-numbered years.

(2) Additional legal holidays when designated by the President of the United States or the governor of Colorado shall be recognized for judicial system employees upon order of the chief justice.

(3) A special day of observance declared by the President of the United States or by the governor shall not be considered a legal holiday, unless the declaration so states that it is extended to the judicial system by order of the chief justice.

(b) Holiday Leave. (1) Any permanent full-time or part-time employee who is required to work on a legal holiday shall be granted a day of holiday leave at a time determined by the administrative authority.

(2) Upon retirement or termination, an employee shall be compensated for unused accrued holiday leave in the same manner as for accrued annual leave.

(3) Any employee who is on paid leave on a legal holiday falling on a working day shall be granted an additional day of leave.

(c) Other Conditions and Limitations. (1) To be granted holiday leave, an employee must work or be on paid leave the last working day before and the first working day after the holiday, except:

(2) A new employee or an employee returning from leave without pay in a month with a legal holiday on the first regularly scheduled work day of the month shall be granted holiday leave for the day, if he works or is on paid leave on all other scheduled work days in the month.

(3) A terminating employee and an employee taking leave without pay in a month including a holiday on the last scheduled work day of the month shall be granted holiday leave for the day, if he works or is on paid leave on all other scheduled work days in the month.

Rule 42. Retirement

(a) Initial Retirement Age - Extension. (1) All employees, including confidential employees, are required to retire upon reaching age sixty-five, unless their employment is extended.

(2) (i) The initial extension of employment may be for a period not beyond the employee's sixty-eighth birthday.

(ii) The second, and final, extension may be granted not to exceed two years, with mandatory retirement at age seventy.

(3) Extension of employment shall be at the option of the appointing authority, with the approval of the administrative authority, except that extension of employ-

ment for a confidential employee shall be at the option of the judge by whom he is employed.

(4) All extensions are subject to the concurrence of the chief justice.

(b) Exceptions. Employees over the age of sixty-five who had five years of continuous employment in the judicial system prior to January 1, 1970, and who are not eligible for a deferred annuity under a retirement plan, are not subject to these retirement provisions until their eligibility has been established for five years' prior service credit under P.E.R.A.

Rule 43. Hours of Work and Overtime

(a) Hours of Work. The normal work week for full-time employees shall be forty hours.

(b) Overtime.

(1) (i) Employees in the classes listed in paragraph (ii) of this subsection shall be paid overtime at one and one half times the normal hourly rate for each hour of work in excess of forty hours in any one work week.

(ii) The classes eligible for overtime payment are: law library assistant I, law library assistant II, computer operator I, computer operator II, key punch operator I, key punch operator II, PBX operator, microfilm operator I, microfilm operator II, court clerk I, court clerk II, court clerk III, division clerk, division clerk I, division clerk II, court accounting clerk I, court accounting clerk II, court accounting clerk III, unit clerk I, unit clerk II, administrative secretary I, administrative secretary II, administrative secretary III, clerk steno I, clerk steno II, clerk typist I, clerk typist II, bailiff, street worker trainee.

(2) All requests for overtime and payment for overtime work shall be approved in advance by the administrative authority.

(3) Overtime shall be limited to the greatest extent possible by administrative authorities and appointing authorities.

PART VII. GRIEVANCE AND REVIEW PROCEDURES

Rule 44. Grievances

(a) Right to File. (1) Except as otherwise provided in subsection (3) of this section, any employee who is aggrieved by an action relating to his working conditions, court policies, or rules and regulations, which action is not appealable under other provisions of these rules, and which cannot be resolved through informal discussions with his immediate supervisor, may file a grievance.

(2) This rule shall apply only to actions occurring subsequent to its effective date.

(3) (i) Employees in the judicial system who do not have the right of grievance procedures are:

(ii) District administrators;
(iii) Chief probation officers;
(iv) Confidential employees;
(v) Employees of the state court administrator's office in grade 43 and above;
(vi) Clerk of the supreme court;
(vii) Clerk of the court of appeals;
(viii) Clerk of the superior court;
(ix) Clerk of the probate court;
(x) Director of juvenile court services;
(xi) Clerk of district and county courts
(xii) Supreme court reporter of decisions;
(xiii) Court of appeals reporter of decisions;
(xiv) Probationary employees;
(xv) Supreme court librarian;
(xvi) Marriage counselors;
(xvii) Court psychologists;
(xviii) Legal staff assistant III's;
(xix) Legal staff assistant IV's'
(xx) Grievance committee counsel and staff;
(xxi) Law examining board secretary; and
(xxii) Water referees.

(b) Matters Subject to Grievance Procedure. Grievances shall include, but are not limited to, such matters as employee-supervisor relationships, duty assignments not affecting job classification, shift and job location assignments, hours worked, working facilities and conditions, policies for granting leave, and similar matters. Only the grievance presented originally shall be considered on appeal, and a copy shall be filed with the state court administrator.

(c) Procedural Requirements. Any employee may be represented in a grievance procedure by a party of his choosing and at his own expense. Failure of the employee to proceed as prescribed shall terminate the grievance procedure.

(d) (1) If a grievance is filed, it shall be processed in the following manner:

(2) First an employee shall discuss his grievance with his immediate supervisor and shall also request redress of the grievance.

(3) If redress is not granted by the immediate supervisor, or if the grievance is a complaint against actions of the immediate supervisor, the employee may appeal in writing to the administrative authority of the district where he is employed.

(4) The administrative authority may either resolve the appeal informally or appoint a board of three district employees or a disinterested examiner and render a decision on the appeal within thirty days from the date of filing. Decisions shall in all cases be made in writing to the employee.

(5) The employee may appeal to the state court administrator, acting for the chief justice, from the decision of an administrative authority. The appeal to the state court administrator shall be filed within fifteen days of the date of the chief judge's decision.

(6) (i) The state court administrator shall appoint and convene a three member grievance review board to hear the appeal and shall render a decision on the recommendations within thirty days from the date of filing. Decisions of the board shall be final.

(ii) Members of the grievance review board shall include a district judge or county judge, a district administrator, and the state court administrator or his designee.

(7) An aggrieved employee shall have the right to appear in person or be represented by a party of his own choosing in all hearings convened by an appropriate hearing examiner or board regarding the appeal.

Rule 45. Board of Review

(a) Board Established. (1) There is hereby established the judicial system personnel board of review, which shall be composed of five members appointed by the chief justice. Terms of the board shall be three years, except that the initial terms of the district administrator shall be for two years and the employee representative, other than a district administrator, shall be for one year.

(2) (i) One member shall be a supreme court justice who shall serve as chairman.

(ii) One member shall be a district judge other than a chief judge.

(iii) One member shall be a county judge other than a presiding judge in a multi-judge county court.

(iv) One member shall be a district administrator.

(v) One member shall be a court employee other than a district administrator.

(3) At least three of the five board members shall meet for the hearing.

(b) Vacancies. Vacancies on the board of review shall be filled by the chief justice for the unexpired terms.

(c) Disqualification. When a matter comes before the board involving an employee from the court of one of the board members, he shall disqualify himself, and the chief justice shall appoint another person who occupies the same type of position as the person disqualified.

(d) Jurisdiction. (1) The board shall have jurisdiction over employee requests for review concerning discharge, demotion, suspension, or involuntary termination, as provided in rule 44.

(2) All decisions of the board shall be final and binding on all parties.

(e) Hearing Examiner. The board shall appoint one or more hearing examiners, who shall be attorneys who have practiced law in Colorado for at least five years, to conduct hearings in review cases. A hearing examiner may be appointed for a two year term to handle such cases as the board may refer to him during his term. He shall be compensated on the basis of the actual time spent on board matters at a rate to be established by the board, in addition to reimbursement for actual expenses incurred. A hearing examiner and any board member shall have the power to administer oaths and to issue subpoenas and subpoenas duces tecum for hearings conducted under these rules.

Rule 46. Review Procedure

(a) Limitation on Review. Requests for review shall be limited specifically to the circumstances described in section (b)(1) of this rule.

(b) Grounds for Review. (1) Any certified employee, as defined in rule 4(a)(7), may file a complaint requesting review by the board of any action demoting, suspending (except pursuant to rule 25(a)), discharging the employee, or requesting the employee's resignation, on the grounds that such action was without good and justifiable cause. Such complaint must be filed within fifteen working days from the effective date of the action.

(2) (i) Employees in the judicial system who do not have the right of review procedures are:

(ii) District administrators;

(iii) Chief probation officers;

(iv) Confidential employees;

(v) Employees of the state court administrator's office in grade 43 and above;

(vi) Clerk of the supreme court;
(vii) Clerk of the court of appeals;
(viii) Clerk of the superior court;
(ix) Clerk of the probate court;
(x) Director of juvenile court services;
(xi) Clerk of district and county courts;
(xii) Supreme court reporter of decisions;
(xiii) Court of appeals reporter of decisions;
(xiv) Probationary employees;
(xv) Supreme court librarian;
(xvi) Marriage counselors;
(xvii) Court psychologists;
(xviii) Legal staff assistant III's;
(xix) Legal staff assistant IV's;
(xx) Grievance committee counsel and staff;
(xxi) Law examining board secretary; and
(xxii) Water referees.

(c) Procedure. (1) The employee seeking review shall file a written complaint with the board chairman requesting review and stating all facts the employee deems necessary to show why the action complained of was improper and should be modified or reversed. The employee shall transmit copies of his complaint to the administrative authority whose action is the subject of the complaint and to the state court administrator.

(2) The administrative authority whose action is the subject of the complaint shall file an answer to the employee's complaint with the board chairman within ten days following receipt of the complaint, responding to the allegations of the complaint and stating the reasons for taking the action.

(3) The employee shall be entitled to counsel of his own choosing at his own expense. The administrative authority whose action is complained of shall be represented by the staff legal officer of the judicial system.

(4) (i) One member of the board, selected by rotation of the board members, shall consider the complaint and answer and shall recommend to the board either that the allegations of the complaint and answer justify a hearing or that the matter should be ruled upon by the board without a hearing. The board shall thereupon decide whether or not to hold a hearing.

(ii) If the board determines not to hold a hearing, it shall so notify the parties, stating the matters considered and reasons for denying the hearing. The board shall then decide the matter of the employee's complaint upon the documents submitted by the parties without a hearing and shall dismiss the complaint or order such remedial action as the board deems appropriate in the circumstances, including, but not limited to, reinstatement of the employee to his former status. The board shall notify the employee and the administrative authority whose

action is the subject of the complaint of the board's decision. The decision of the board is final.

(iii) If the board determines to hold a hearing, it shall so notify the parties, the hearing examiner, and all other interested and concerned parties. The hearing examiner shall set a convenient date and place for the hearing, to be held within thirty days after notification by the board. Hearings shall be open to the public, unless a closed hearing is requested by the employee or ordered by the hearing examiner and shall be recorded verbatim either stenographically or electronically.

(iv) Hearings shall be conducted in accordance with the provisions and procedures prescribed by CRS 1963, 3-16-4, as amended, and the hearing examiner shall have the power therein granted, except that where such provisions are in conflict with the provisions of these rules, these rules shall control.

(v) The hearing examiner shall conduct the hearing and shall afford the parties opportunity to introduce evidence, including testimony and statements of the complaining employee, his representative, the person whose action is complained of, the administrative authority, their representatives, and other witnesses, and to cross-examine witnesses. The testimony shall be under oath or affirmation.

(vi) Rules of evidence shall not be applied strictly, but the hearing examiner shall exclude irrelevant or unduly repetitious evidence.

(vii) The burden of initially going forward to show jurisdiction and the factual basis for the review requested shall be upon the complaining employee. If the hearing examiner is satisfied that the employee has met this burden after hearing the employee's evidence, he shall so rule, and the burden of going forward shall then shift to the administrative authority whose action is complained of to show that such action was based upon good or justifiable cause.

(viii) Upon hearing the evidence and statements of the parties, and after such deliberation as necessary, the hearing examiner shall make findings and a recommended decision on the issues of whether or not the action of the administrative authority complained of was without good or justifiable cause, and what, if any, remedial action should be ordered, or whether the complaint should be dismissed. The decision of the hearing examiner shall be based upon the greater weight of the evidence.

(ix) The hearing examiner shall issue a written decision and send copies thereof to the board and to the parties and their representatives. The decision shall contain findings, recommendations for any corrective action required, and notification of the right of either party to appeal to the board. The decision shall include an analysis of the findings and a statement of the reasons for the conclusions reached. Unless an appeal is filed as provided in subsection (5) of this rule, the decision shall

become the decision of the board and shall be carried into effect within twenty calendar days after issuance by the examiner. If an appeal is filed, the decision may not be given effect until the board has adjudicated the appeal.

(5) (i) Either party is entitled to appeal the decision of the hearing examiner to the full board. Such appeal shall be filed with the supreme court justice serving as board chairman. An appeal to the board shall be in writing, setting forth the reasons for the appeal, and shall be filed with the board within fifteen calendar days after the receipt of the decision of the hearing examiner. The board may extend this time limit when a party shows that circumstances beyond his control prevent the filing of the appeal with the time limit.

(ii) The board shall review the record of the proceedings, all relevant written representations, and the decision of the hearing examiner. The record of proceedings may include such portions of the transcript of the hearing as may be necessary to consider the exceptions. Such transcript shall be furnished by the party appealing. The board may, in its discretion, afford the parties opportunity to appear and present oral arguments and representations.

(iii) The board shall issue a written decision, which may consist of an affirmation without comment of the decision of the hearing examiner, and shall send copies thereof to the parties and their representatives. The decision of the board is final, and there is no further right to appeal. When remedial action is ordered, the administrative authority shall report promptly to the board that the remedial action has been effected.

APPENDIX E 2

MAINE COURT SYSTEM
PERSONNEL POLICY AND PROCEDURES MANUAL

Promulgated by the

MAINE SUPREME JUDICIAL COURT

Effective

July 1, 1977

1.0 PURPOSE AND SCOPE OF THE SYSTEM

1.1 System Purpose

This Manual prescribes the personnel policies and procedures of the Maine court system as promulgated by the Supreme Judicial Court of Maine.

1.2 System Scope

The policies and procedures described in this Manual apply to all State court system employees except justices and judges.

2.0 RESPONSIBILITIES OF SYSTEM PARTICIPANTS

2.1 Responsibilities of the Supreme Judicial Court

The Maine Supreme Judicial Court is responsible for the establishment of the Maine Court Personnel System through the promulgation of the rules and procedures contained in this Manual. The Court is also responsible for promulgating any subsequent modifications to the system.

Individual Justices of the Court are responsible for the hiring and periodic review of their secretaries and law clerks in accordance with established system procedures.

2.2 Responsibilities of the State Court Administrator

The State Court Administrator (SCA) is responsible for the implementation, maintenance and operation of the Court Personnel System including:

2.2.1 Determining that all potential court system employees meet minimum standards as defined in the Classification Plan. Such determination will be made prior to the individual being hired.

2.2.2 Ensuring that all court system employees are evaluated at least once each year. Actual evaluations, other than for employees of the Administrative Office of the Courts (AOC), are not the responsibility of the SCA.

2.2.3 Conducting periodic interviews and audits to ensure that the Classification and Compensation Plans are current and accurate.

2.2.4 Maintenance of personnel records, including payroll records, leave balances and personal histories.

Each of these responsibilities may be delegated by the SCA.

2.3 Responsibilities of the Regional Court Administrators

Each of the four Regional Court Administrators (RCAs) have the following personnel system responsibilities within their region:

2.3.1 Determining that all potential court system employees within the region meet minimum standards as defined in the Classification Plan. Employee recruitment and selection, although the responsibility of each clerk's office, will be supervised by the RCAs.

2.3.2 Ensuring that each employee in the region is evaluated at least once each year in accordance with established procedures.

2.3.3 Evaluating the performance of each clerk and court reporter in the region at least once each year in accordance with established procedures.

2.3.4 Serving as liaison between region personnel and the AOC in all matters relating to personnel. This will include the collection and forwarding of leave data, employee evaluations and employee discipline proceedings as well as data concerning all other personnel transactions.

2.3.5 Conducting periodic interviews, audits and organizational analyses of the various offices within the region.

2.4 Responsibilities of the Justices and Judges

Superior Court Justices and District Court Judges are responsible for conducting annual evaluations of secretaries and law clerks working directly for them.

Justices and judges will provide written input to the RCAs in the annual evaluation of clerks and reporters.

2.5 Responsibilities of Clerks

Clerks of Superior or District Courts have the following personnel system responsibilities for employees of their office:

2.5.1 Recruiting and selecting employees to fill job vacancies in accordance with minimum standards defined in the Classification Plan, and under the supervision of the RCAs; submitting statements of their qualifications to the AOC for approval.

2.5.2 Conducting an evaluation of each employee at least once per year, and reviewing such evaluation with the RCA.

2.5.3 Providing orientation and training to employees as appropriate.

2.5.4 Performing disciplinary actions as necessary and in accordance with established procedures.

2.5.5 Collecting and forwarding to the RCA data regarding all personnel transactions, such as leave, resignations and disciplinary actions.

2.6 Responsibilities of all Court System Employees

All court system employees are responsible for adherence to all policies and procedures of the Court Personnel System.

3.0 CLASSIFICATION PLAN

3.1 Position Classification and Descriptions

A detailed description will be maintained at the AOC for each job classification in the Maine court system. These descriptions will contain representative examples of work to be performed, specification of the supervisor of the position and identification of minimum educational or experiential requirements. Appendix A, CLASS DESCRIPTIONS, contains such descriptions for all current positions.

Each job classification will be assigned a specific pay grade in the Compensation Plan.

3.2 Review and Update of Positions

Each position will be reviewed at least once every five years by the AOC to ensure that the position is accurately classified. Personnel may be re-classified upward or downward based upon such reviews. In the event of re-classification, the employee has the right of appeal.

3.3 Re-classification Based Upon Performance

In accordance with established employee evaluation procedures, employees may be re-classified upward or downward. In all such instances employees have the right of appeal.

3.4 Part-time Employees

Permanent part-time employees are those employees employed for a period exceeding thirty days, but for thirty hours per week or less. Such employees must be hired in accordance with the same procedures applying to full-time employees.

Permanent part-time employees are entitled to leave and have access to grievance and appeal procedures, and, if they work twenty (20) hours or more per week, are eligible for insurance and retirement benefits.

3.5 Temporary Employees

Temporary employees may be hired for a period not to exceed thirty (30) days, subject to the approval of the SCA. Such employees are not entitled to any benefits, and will be paid an hourly wage pro-rated from the approved compensation scales.

4.0 COMPENSATION PLAN

4.1 Compensation Scales

Structured compensation scales consisting of a series of pay grades with a series of incremental pay steps within each grade will be maintained by the AOC. Appendix B, COMPENSATION SCALES, contains the current scales.

4.2 Assignment of Positions to Grades

Each job classification contained within the Classification Plan will be assigned a salary grade. Employees will progress through the salary steps and grades in accordance with established employee evaluation procedures.

Appendix C, GRADE ASSIGNMENTS, contains the current classification to grade assignments.

4.3 Compensation Scale Updates

Compensation scales will be reviewed each year to determine whether thev should be modified. When cost-of-living increases (as opposed to merit increases, which are the basis for the step increases on the compensation scale) are deemed necessary, all salary grades and steps will be increased by the appropriate percentage. Such general increases will preserve the basic structure of the scales, and will not affect step increases based upon employee performance.

4.4 Initial Compensation

New employees will be compensated in accordance with the first step of the pay grade of the job classification in which they are hired. This provision can be waived by the SCA.

4.5 Overtime Compensation

No employee will work overtime without the prior approval of the selecting authority. Compensatory time for authorized overtime worked beyond the 37 1/2 hour week will be granted at straight time.

No employee in Grade 22 or above will receive compensatory time for overtime worked beyond the 37 1/2 hour week.

Compensatory time for authorized overtime worked must be taken within the calendar year earned.

4.6 Termination Compensation

A terminating employee, regardless of the nature of the termination, will be paid for each day of annual leave and for 50% of the sick leave accrued to the date of termination. Payment will be made at the salary level at the time of termination.

Employees who resign or are terminated during their six-month probationary period will not be compensated for accumulated annual and sick leave.

4.7 Holiday Compensation

Employees will be paid for holidays only if they are formally on the payroll and working the day prior to the holiday in the case of entering employees or the day immediately following the holiday for terminating employees. Part-time employees will be paid for holidays only if their regularly scheduled work hours fall on the holiday.

4.8 Accumulated Compensatory Time.

Compensatory time accumulated by any employee is not transferrable either when the employee is hired into the system or transferred or promoted within the system.

5.0 HIRING POLICIES AND EMPLOYMENT CONDITIONS

5.1 Selecting Authority

It is the policy of the Maine court system to have employees selected by the personnel who will be responsible for their subsequent daily supervision and evaluation. Determination of whether applicants meet the qualifications of the job classification in which they are being hired is the responsibility of the AOC.

Responsibility for employee selection is as follows:

5.1.1 Each Supreme Judicial Court Justice is responsible for selecting a secretary and law clerk. The SCA will be selected by agreement of the court. The Supreme Judicial Court will be responsible for selecting the RCAs in consultation with the appropriate justices.

5.1.2 Superior Court Justices and District Court Judges are responsible for selecting personnel for secretarial and legal research duties. Where these positions are not allocated full-time personnel, the justices and judges will work with the appropriate RCA to make necessary arrangements.

5.1.3 The SCA is responsible for selecting all AOC personnel and court reporters.

5.1.4 RCAs are responsible for recommending for appointment Superior and District Court clerks in consultation with the appropriate justice or judge.

5.1.5 Each Superior or District Court clerk is responsible for selecting those employees working in the clerk's office.

5.1.6 The Clerk of the Supreme Judicial Court is responsible for selecting employees of that office.

5.2 Hiring Authority

It is the responsibility of each selecting authority to submit a written employment application clearly stating the applicants experience and qualifications to the AOC in order that a review can be conducted prior to hiring.

Regardless of where the responsibility for selecting potential employees resides, none will be hired without the prior approval of the AOC.

5.3 Applicant Testing

The SCA may establish appropriate testing procedures to facilitate the determination of employee qualifications.

5.4 Probationary Period

Once hired, each new court system employee will serve a six-month probationary period. During this period the employee can be terminated at any time at the request of the selecting authority and with the approval of the SCA. Any such termination is final and will not be subject to review or appeal.

5.5 Certification

Prior to the end of a new employee's probationary period the selecting authority must assess the employee's work performance to determine whether the employee should be granted certified status in the court personnel system. Certified status means that the employee is eligible for all the system benefits outlined in the policy and procedures manual, as well as responsible for adherence to all policies and procedures enumerated therein.

If the selecting authority determines that the new employee should be given certified status, he will so inform the Administrative Office of the Courts in writing.

If the selecting authority determines that the new employee should not be given certified status, the employee will be terminated pursuant to Section 5.4.

5.6 Recruitment

Selecting authorities will notify the AOC of any existing or potential position vacancies. Such vacancies will be posted within the court system by the AOC. Advertisement of vacancies is the responsibility of the Administrative Office of the Courts.

5.7 Employee Resignation

All employees will provide written notification of their intent to resign ten (10) working days prior to the final date of their employment.

5.8 Employment of Relatives

No person will be hired, promoted or transferred to a position where the selecting authority will be a relative of the employee.

5.9 Outside Employment

A court system employee may engage in outside employment if it does not interfere with job performance and does not conflict or appear to conflict with the interests of the Maine court system.

No employee may engage in outside employment without the prior knowledge and approval of the selecting authority.

5.10 Political Activity

No employee may hold public office or an office in a political party. They may not take an active part in the campaign or management of any political party or candidate for political office. Any employee holding such office on July 1, 1976 may complete the term for which he or she was elected.

Employees are prohibited from wearing compaign buttons and distributing campaign literature within the courthouse. Employees in Grade 10 and above are prohibited from participation in public political functions or making contributions.

5.11 Practice of Law

No court system employee may engage in the practice of law.

5.12 Equal Employment Opportunity

It is the policy of the Maine court system to recruit, select, train, promote, retain and discipline employees without regard to race, sex, religious creed, national origin, age or physical handicap, unless related to a bonafide occupational qualification.

5.13 Promotion

Promotions must be the result of a competitive application process and must be approved by the Administrative Office of the Courts.

Employees promoted to a new job classification will serve a three-month probationary period. During this period, the employee can be reclassified to the position from which he was promoted.

With the approval of the Administrative Office of the Courts, the compensation of newly promoted employees may be raised one step.

6.0 EMPLOYEE EVALUATION

6.1 Responsibility for Evaluation

Each selecting authority is responsible for evaluating his or her employees' performance by the employee's anniversary date each year.

6.2 Evaluation Procedures

Each selecting authority will review the performance of each employee and submit a written evaluation to the AOC. RCAs are responsible for supervising the evaluation process within their regions. The written evaluation recommendations must indicate whether:

6.2.1 The employee should be advanced one or more steps in grade (number of steps to be specified).

6.2.2 The employee should be promoted in classification and grade (new classification, grade and step to be specified).

6.2.3 The employee should remain at his current classification and salary level.

If an employee is to be advanced more than a single step, the written evaluation must clearly state the circumstances warranting the action.

All promotions and salary increases must be approved by the AOC.

No advancements or increases will be executed without receipt of a written evaluation from the selecting authority, regardless of the period since the last advancement.

All salary increases will be authorized on a merit basis. Yearly increases are not to be considered automatic.

6.3 Unsatisfactory Evaluation

Any permanent employee receiving an unsatisfactory evaluation will be placed on probation for a period of three (3) months. If a subsequent evaluation at the conclusion of the probationary period also indicates unsatisfactory performance, the employee will be terminated.

6.4 Date of Evaluation

Each employee's anniversary date, or date of evaluation, will be the first of the month following his or her hiring or the first of the month following his or her last evaluation.

7.0 EMPLOYEE DISCIPLINE

7.1 Responsibility for Employee Discipline

The initiation of disciplinary action is the responsibility of the selecting authority.

7.2 Discipline Procedures

Where disciplinary actions beyond oral reprimands are required, the selecting authority may elect to:

7.2.1 Place a formal, written reprimand stating the specific disciplinary action in the employees official personnel file at the AOC.

7.2.2 Demote the employee in grade, step or position.

7.2.3 Place the employee in a suspended, leave without pay status.

7.2.4 Dismiss the employee

In all instances disciplinary action will be documented in writing, specifically stating the circumstances warranting the disciplinary action, with a copy provided to the employee and a copy sent to the AOC. Copies of all disciplinary proceedings will be included in the employee's official personnel file.

Disciplinary actions cannot be executed without approval of the AOC.

7.3 Right of Appeal

All permanent full-time and permanent part-time employees have the right to appeal disciplinary actions in accordance with established grievance and appeal procedures. Probationary employees do not have the right of appeal.

8.0 HOURS OF WORK, LEAVE AND HOLIDAYS

8.1 Hours of Work

The standard work-week for full-time employees of the Maine court system is 37 1/2 hours. Normal clerk's office hours are to be from 8:00 to 4:30, however, the clerk's office will always be open when court is in session.

Deviations from this schedule must be approved by the Supreme Judicial Court.

8.2 Annual Leave

Annual leave will be earned by all full-time and permanent part-time employees from the date of their initial employment. State employees with uninterrupted state service, who transfer into the Judicial Department from either the Executive or Legislative Departments, will earn annual leave based on their entire period of State employment. Leave will be accrued as follows:

Period of Employment	Annual Leave	Accrual Rate in Days	Accrual Rate in Hours
Less than five years	12 days	1 day/month	7.5
Five to ten years	15 days	1.25 days/month	9.5
Ten to fifteen years	18 days	1.5 days/month	11.5
Fifteen years or more	21 days	1.75 days/month	13.5

In the case of permanent part-time employees, leave will be accrued proportionate to hours worked.

Annual leave for the month will accrue on the last day of each calendar month worked. Entering and terminating employees will accrue annual leave proportionate to the total hours worked during the calendar month.

An employee cannot carry forward from one calendar year to the next more than thirty (30) days leave.

8.3 Sick Leave

Sick leave will be earned by all full-time and permanent part-time employees at the rate of 12 days per year from the date of their initial employment. In the case of permanent part-time employees, leave will be accrued proportional to hours worked.

A maximum of ninety (90) days of sick leave can be accrued and carried forward from one calendar year to the next.

Maternity leave and funeral leave will be granted as sick leave. Once an employee's sick leave is exhausted, annual leave or leave without pay may be granted by the selecting authority.

Sick leave for the month will accrue on the last day of each calendar month worked. Entering and terminating employees will accrue sick leave proportional to the total hours worked during the calendar month.

8.4 Leave Without Pay

Leave without pay for a period not to exceed twelve (12) months may be granted an employee subject to the approval of the Chief Justice.

At the conclusion of the leave without pay period, the employee may return to a position similar to that which he or she left. Annual leave and sick leave will not be accrued during the leave period.

8.5 Military Leave

Military leave of two types will be allowable. Active service in any branch of the United States Armed Forces, federal Reserves or National Guard, for a period not to exceed fourteen (14) working days within any

calendar year, will be treated as active work time. During such periods the employee will receive his normal salary, accrue annual and sick leave and be entitled to all benefits accruing under this system.

Military service in excess of fourteen (14) days entered into during time of war or other national emergency or as a result of conscription, will be treated as leave without pay. The employee will not be entitled to salary, leave or benefits. However, he is entitled to return to a similar position within thirty (30) days of his release from the service.

8.6 Personal Leave

Each employee will be granted three days of personal leave per year. The purpose of this leave will be to handle personal business that cannot be accomplished outside working hours or to accommodate non-Christian religious holidays.

Personal leave will not abut other leave time or any holidays.

8.7 Transfer of Leave from other Departments

State employees who transfer into the Judicial Department from either the Executive or Legislative Departments will be allowed to transfer their accrued annual and sick leave balances.

8.8 Leave Responsibility and Scheduling

It will be the responsibility of the selecting authority to approve employees' requests for leave.

All military leave and leave without pay must be requested in writing and approved by the Chief Justice.

8.9 Leave Records

The AOC is responsible for maintaining all leave records. Leave actions will be reported to the AOC monthly by the RCAs.

8.10 Transfer of Leave on July 1, 1976

At the effective date of this Manual, leave accrued by employees under a prior system, as a result of employment by a Maine Superior Court, District Court or the Supreme Judicial Court, will be carried over to the new system (up to a maximum of thirty (30) days annual and ninety (90) days sick leave). Such leave must be certified by the county or District Court.

8.11 Holidays

The following holidays will be observed.

8.10.1 New Year's Day (January 1)

8.10.2 George Washington's Birthday (third Monday in February)

8.10.3 Patriot's Day (third Monday in April)

8.10.4 Memorial Day (May 30)

8.10.5 Independence Day (July 4)

8.10.6 Labor Day (first Monday in September)

8.10.7 Columbus Day (second Monday in October)

8.10.8 Veterans Day (November 1)

8.10.9 Thanksgiving Day

8.10.10 Christmas Day

8.10.11 The day of any State-wide election, including primaries and the choice of presidential electors.

8.10.12 Any other days declared by the President or Chief Justice.

If a holiday falls on Sunday, the observance will be moved to the following Monday.

9.0 INSURANCE AND RETIREMENT BENEFITS

9.1 Insurance Benefits

All permanent full-time and part-time employees who work an average of twenty (20) hours or more per week will be entitled to participate in the State of Maine's health insurance programs.

All permanent full-time and part-time employees who work an average of twenty (20) hours or more per week will be entitled to participate in the State of Maine's live insurance programs.

9.2 Retirement Benefits

All permanent full-time and part-time employees will be entitled to participate in the State of Maine's retirement program.

9.3 Mandatory Retirement Age

All court system employees with twenty years' service must retire at the age of 65. All other court system employees must retire at the age of 70.

10.0 GRIEVANCE AND APPEAL PROCEDURES

10.1 Employee Right of Appeal

Permanent full-time and part-time employees have the right to file a grievance or appeal a position classification, adverse evaluation or disciplinary action.

10.2 Appeal Board

A court system Appeal Board consisting of a member of the Supreme Judicial Court, a Superior Court Justice, a District Court Judge, an RCA and three Judicial Department employees covered by the personnel system will be selected by the Chief Justice and will meet at the direction of the SCA.

The SCA will notify Board personnel concerning appeals when a meeting is required.

10.3 Appeal Process

The appeal process is as follows:

10.3.1 The employee must first attempt to resolve his grievance with his selecting authority.

10.3.2 If a satisfactory solution is not reached, the employee must notify the SCA in writing of his/her intent to appeal. Such notification must be made within ten (10) calendar days of the action being appealed. Upon notification, the appealed action will be suspended until the appeal is resolved.

10.3.3 Subsequent to notification of intent to file an appeal, the employee has ten (10) calendar days in which to file a formal appeal with the SCA. This appeal must include a statement of the problem, efforts made to date to satisfy the grievance and desired results. A copy of the appeal must be sent to the person against whom the appeal is filed. That person must file an answer within ten (10) days.

10.3.4 The Appeals Board will review the appeal and determine whether a hearing is justified.

10.3.5 If determined justified, a hearing will be conducted (within thirty (30) days).

10.3.6 A decision will be reached and the employee notified.

10.3.7 If a hearing is determined not to be justified, the employee will be notified in writing.

If a hearing is to be conducted, the employee will be entitled to counsel at his own expense. Strict rules of evidence need not be followed in conducting the hearing. All grievances and their results will be documented and placed in the employees personnel record.

CONTINUED

3 OF 4

APPENDIX E 3

CIRCUIT COURT OF OREGON
FOURTH JUDICIAL DISTRICT
MULTNOMAH COUNTY COURTHOUSE
PORTLAND, OREGON 97204

PERSONNEL POLICIES FOR

EMPLOYEES OF THE CIRCUIT COURT

MULTNOMAH COUNTY

Adopted by the General Committee

June 27, 1973

OFFICE OF THE CIRCUIT COURT ADMINISTRATOR

July, 1973

SECTION I

GENERAL INTENT

1.00 Purpose: It is the purpose of these rules to provide a uniform, comprehensive and effective system of personnel administration for the Administrative Staff of the Circuit Court. While the provisions of the personnel plan are directly applicable to Administrative Personnel, many provisions are pertinent to Courtroom Staff (courtroom clerk, bailiff-secretary, reporter, clerk and special agents).

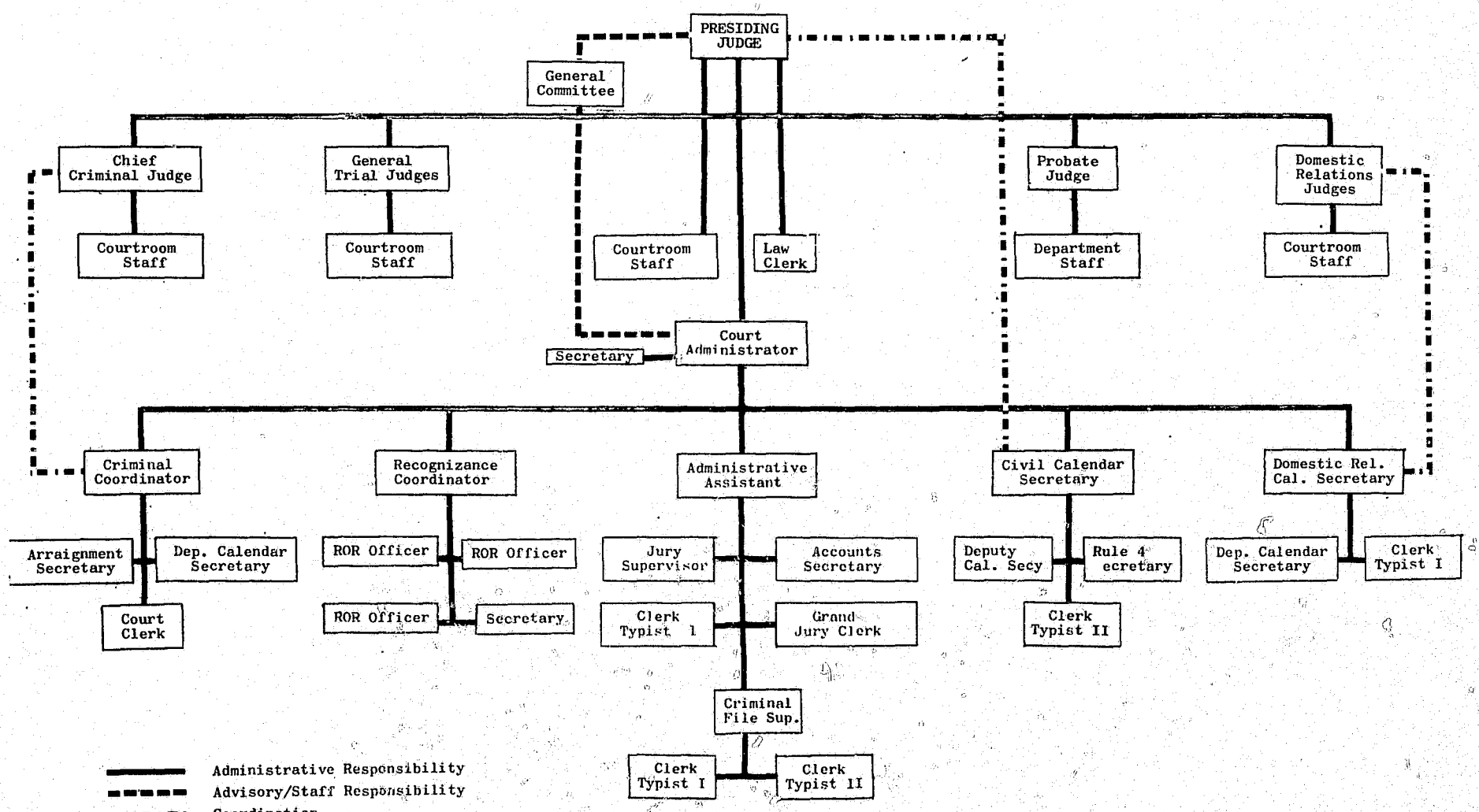
1.10 Objectives: To provide a comprehensive system of personnel administration, the following objectives shall be adhered to:

a. Positions essentially alike in duties and responsibilities will be treated alike in the personnel processes, and positions not alike will be treated with appropriate recognition of the nature and extent of the difference between them.

b. Equitable pay scales will be established for the grades of classes in the court service in the basis of equal pay for equal work.

c. Comprehensive position descriptions will be established to aid appointing authorities in the selection of competent employees for the efficient performance of the functions of the Court.

CIRCUIT COURT--ADMINISTRATIVE STRUCTURE



SECTION II

ORGANIZATION, ADOPTION AND AMENDMENT OF THE PERSONNEL RULES

2.00 Organization.

2.01 The General Committee of Judges shall constitute an advisory committee to the Presiding Judge for personnel policy matters.

2.02 The Court Administrator shall be responsible for developing, implementing and maintaining a personnel plan to assure that all positions substantially similar with respect to the type, difficulty and responsibility of work are included in the same job group or class.

2.03 The Office of the Court Administrator shall serve as the Personnel Office for the Circuit Court, responsible for administering the personnel plan in accordance with the provisions of the plan and the policy guidelines of the Presiding Judge and/or General Committee. A complete personnel record will be maintained on each employee of the Court. The personnel record files shall contain information on classification and salary changes, vacation time, special leave time, sick and medical leave, evaluations, and other pertinent information regarding meritorious service or disciplinary action.

2.10 Adoption and Amendment of Rules.

2.11 These rules are prepared and recommended by the Court Administrator and approved by the General Committee of Judges at its regular monthly meeting.

2.12 The General Committee of Judges may initiate or approve, modify, reject or approve as modified the rules prepared and recommended by the Administrator for carrying out an effective personnel program.

2.13 Personnel actions taken prior to the effective date of new, abolished or amended rules shall be governed by the rules in effect on the effective date of the action.

2.20 Department Rules (Judicial and Non-Judicial)

In accordance with this personnel plan, each appointing authority may establish a set of rules. Such rules shall be established for the purpose of handling personnel matters peculiar to that department.

SECTION III

CLASSIFICATION PLAN

3.00 Intent of Classification Plan. A job classification plan shall be developed and maintained so that all positions substantially similar with respect to the type, difficulty and responsibility of work, are included in the same job group or class and that the same means of recruitment may be used in filling all positions within a class and the same schedule of pay may be applied with equity to all positions in a class.

3.10 Allocation of Positions. When a new position is to be established or a change in duties is prepared for an existing position which is to be filled, the Administrator shall allocate the position to its appropriate class. The allocation shall become effective upon approval by the Board of County Commissioners.

3.20 Class Specifications.

3.21 The Administrator shall provide and may amend written specifications for each class in the classification plan. Each of the Class specifications shall include the class title, a description of the duties and responsibilities of the work, and a statement of qualifications a person shall possess to enable him to enter upon the duties of a position of the class with reasonable prospect of success.

3.22 The specifications of classes of positions in the classification plan and their various parts are hereby declared to have the following force and effect:

a. The definitions are descriptive and not restrictive. They are intended to indicate the kinds of positions that are allocated to the several classes, as determined by their duties and responsibilities and shall not be construed as declaring to any extent or in any way what the duties or responsibilities of any position shall be, or limiting, or in any way modifying the power of any appointing authority to assign, direct, and control the work of employees under

3.22 a.(continued)

his supervision. The use of a particular expression or illustration as to duties shall not be held to exclude others not mentioned that are of similar kind or quality.

b. In determining the class to which any position shall be allocated, the definition of each class shall be considered as a whole. Consideration shall be given to the general duties, specific tasks, responsibilities, qualification requirements and relationship to other classes, which in total affords a picture of employment that the class is intended to embrace.

c. Qualifications commonly required of all incumbents of positions of different classes, such as acceptable physical conditions, freedom from disabling defects, suitable age, honesty, sobriety and industry shall be deemed to be implied as qualification requirements for entrance to each class even though they may not be specifically mentioned in the specifications.

d. The specification for any class shall constitute the basis and source of authority for the examinations or standards by which employees are considered qualified for appointment to a specific class.

3.30 Use of Class Titles

The title of a class shall be the official title of every position assigned to the class for all purposes having to do with the position and shall be used on all payrolls, budget estimates, and official records and reports relating to the position. Any other titles desired by the appointing authority may be used to designate any position for the purposes of internal administration and any other connection not involving personnel processes covered by this plan.

3.40 Amendment to the Classification Plan

Whenever any change in organization, creation of a new position or change in duties or responsibilities of any individual position makes the revision of the classification plan necessary, the Administrator shall effect the necessary revisions.

3.50 Reallocation of Positions

3.51 Whenever the duties of a position or for some other reason a position appears to be improperly allocated, the Administrator upon his own initiative or at the request of a permanent employee, shall investigate the duties of the affected position. Based on the results of the investigation, he may take the initiative to allocate said position to an appropriate class.

3.52 In making a request for a review of a position, the permanent employee shall set forth the changes that have occurred in the particular position or other factors which in his opinion warrants reallocation. When the Administrator initiates a reallocation or denies an application for reallocation, he shall notify the employee affected by his actions.

3.60 Effect of Reallocation of Positions

3.61 The employee may request a review by the Presiding Judge when the Administrator denies a requested allocation based on the following grounds:

a. That the action of the Administrator is not in accordance with the Personnel rules.

b. That the action of the Administrator was unwarranted by the evidence presented to him or was procured by fraud, coercion or the improper conduct of any party in interest.

3.62 The Presiding Judge, after receiving any application for review of allocation, may request that the Administrator submit to him a record upon which he acted, and upon that record may sustain, reverse or modify the action of the Administrator, or in his discretion may order that further evidence be taken to be submitted to the Committee and considered by it.

SECTION IV

COMPENSATION PLAN

4.00 Compensation Plan. The salary plan adopted by the General Committee and approved by the County Board, together with the provisions of these rules and with such amendments as shall be made, shall constitute the official compensation plan for all positions in the Circuit Court.* Adjustments in salary range assignments shall normally be made effective at the beginning of the payroll period.

4.10 Administration of the Compensation Plan. The following provisions assume that funds are available and expenditures have been authorized by the County.

a. Beginning Salary. The minimum rate of pay for a class shall normally be paid upon appointment to that class, unless justified by exceptional qualifications of the employee. When a permanent employee is promoted and has been paid at a rate equal to or exceeding the minimum of the new position, the appointing authority may make the appointment at a rate within the range which grants a minimum of a one-step salary increase.

b. Salary Increases. Salary increases within an established range shall normally be one step and shall occur once each year on the individual's anniversary date or one year from the date of the individual's last increase, unless the individual is at the top or last step of his appropriate salary classification. However, the Administrator may propose salary increases of more than one step or more frequently than once every year upon detailed written statements to the Presiding Judge specifying the employee's exceptional performance or the unusual employment conditions that make such action necessary. Such action is contingent upon approval by the Board of County Commissioners.

Once a year the Administrator and/or Section Head shall review the salary of each employee to determine whether the employee's pay rate should be advanced in the salary range, based upon the quality of performance.

*ORS Chapter 8.

4.10 Administration of the Compensation Plan (continued)

c. Total Remuneration. Whenever an employee works for a period less than the regularly established number of hours a day, days a week, or weeks a month, the amount paid shall be proportionate to the time actually employed.

d. Exceptional Performance. An employee performing significantly above the objectives established for the position or class to which he is assigned may be recommended for a one step increase after reaching the maximum of the pay range for his class. Such increase may be granted only after completion of a performance evaluation detailing the employee's achievements which reflect such exceptional performance and only with the approval of the Presiding Judge and subsequently the Board.

e. Temporary Extra Responsibility Pay (TERP). An employee temporarily having additional duties or responsibilities may be considered for additional compensation. Each person must be recommended by the Administrator and approved by the Board of County Commissioners in order to receive TERP. (Reference: Memorandum from John Rice dated 2/8/73).

4.20 Employee Life and Medical Insurance. Any employee of the county who is employed full time at least thirty five hours per week, in a continuing position is eligible for county-paid life and medical insurance. Temporary, trainee, intermittent, or summer seasonal employees are specifically excluded from such insurance.

4.30 Medical - Hospital. The county contributes for each full time employee the amount equal to the cost of either of the two available plans (Blue Cross or Kaiser Foundation) for an employee and his immediate family. However, where two spouses in the same family are employed by the county, only one shall be entitled to more than individual coverage. In this case, an employee's immediate family is defined as spouse and dependent children. Employees on a leave of absence will be covered for their first month of leave; payment for subsequent months will be billed to the employee, up to a total of three months only of total leave of absence. Coverage for new employees begins on the first day of the month following their date of employment, unless their first day should be on the first of the month, in which case they would be covered from their first day.

4.40 Life Insurance. The County provides each full time employee with term life insurance in the amount of six thousand dollars ($6,000.00) for each employee. Upon retirement, employees with fifteen (15) years or more of service will be provided with two thousand dollars ($2,000.00) coverage. Employees will designate their beneficiaries. Employees at their option may purchase from the same carrier a term policy for five dollars ($5.00) per month with benefits varying according to the age of the employee.

4.50 Pension Plan. All employees shall participate in and be covered by the Multnomah County Retirement Plan to the extent that they are eligible (see SECTION

4.60 Non-Accrual of Benefits. No benefits shall accrue to employees when they are not on payroll status.

4.70 Rates of Pay. The standard payroll period is bi-weekly. Monthly rates of pay shall be converted to hourly rates for computation purposes based on the formula listed below. In adjusting monthly rates to hourly rates, the following formula shall be used:

$$\text{Hourly rates} = \frac{\text{Monthly Rate} \times 12 \text{ months}}{2088 \text{ hours/year}}$$

4.80 Overtime. Overtime may be paid upon authorization to an employee, except those that the Administrator might exempt from such payment. Overtime shall be computed on the basis of one and one-half times the regular rate of pay computed on an hourly basis. Overtime shall be confined to necessary emergency work. Compensatory time may be granted in lieu of overtime pay on a basis of one and one half hours off for each hour of overtime work. The following shall constitute overtime work:

a. All authorized work performed in excess of eight (8) hours in any work day.

b. All authorized work performed in excess of forty (40) hours in any work week.

4.80 Overtime. (continued)

c. All authorized work performed on Saturday, except as excluded below. All work performed on Sunday shall be paid for at the rate of two (2) times the employee's regular rate of pay, except as follows:

d. The overtime rate specified above for Saturday and Sunday work shall not be paid employees for whom these days fall regularly within the employee's normally designated work week.

e. All Courtroom personnel, employees attached to a specific judicial department and Administrative personnel in pay grade 23A and above are excluded from all overtime provisions. A professional employee is often involved beyond normal work hours. There is no reimbursement for such work.

4.90 Compensatory Time

a. When the special needs of the Administrative Office require employees to spend considerable extra time beyond the amount normally prescribed, compensatory time, when approved, may be granted.

b. Compensatory time shall be allowed in the case of employees working on recognized holidays or other days which are designated as days off.

4.100 Severence Pay.

4.101 An employee who has completed one (1) full year of service with the County and who shall be laid off as a result of causes other than dismissal, retirement, or resignation, shall receive one (1) full week's pay for each completed year of service with the employer. Such severence pay shall be in addition to any other accrued pay to which the employee is entitled. However, should the employee be offered and refuse transfer, reclassification within the same pay scale, or retraining, his refusal shall be considered as a resignation. (Reference: Article 9 of the 1972-73 Agreement between Multnomah County and Employees' Union Local 88).

4.102 At the discretion of the Court, an employee may be granted severence pay.

4.110 Transfers, Promotions, Demotions and Allocations. When an employee is transferred, promoted or demoted, his rate of pay for the new position shall be determined as follows:

a. If his rate of pay in his previous position was less than the minimum rate established for the class of the new position to which he is promoted, his rate of pay shall be advanced to the minimum for the class of the new position or in any event at least one step.

b. If his rate of pay in his previous position was more than the maximum rate established for the class of the new position to which he is demoted, his pay shall be reduced to a point within the range for the class of the new position to be determined by the Administrator.

c. When a position is reallocated to a class in a lower salary range, the Administrator may give consideration to the employee's long or outstanding service, exceptional or technical qualifications, age or health. When, as a result of such consideration, the Administrator determines that the best interest of the court will be served by such action, the position shall be reallocated, but the employee shall continue at the same rate of pay. Thereafter, as long as he remains in the same position, such employee may not be eligible to receive any salary increases until such time as his salary once again may be within the range of the class to which his position has been reallocated. For employees above the maximum of the pay range, the appointing authority may recommend an adjustment to the class to which the employee is assigned resulting from an increase in the adjustment in the salary range assignment for that class subject to the approval of the Administrator.

d. If his rate of pay in his previous position falls within the range of pay established for the class of the new position and does not correspond to a step in the salary plan, it shall be adjusted to the next higher step.

4.120 Amendment to the Compensation Plan. The General Committee and/or Presiding Judge shall consider amendments to the compensation plan as presented by the Administrator. All adopted amendments will be presented to the Board of County Commissioners by the Court Administrator.

SECTION V

SELECTION OF PERSONNEL CONDITIONS OF SERVICE

5.00 Announcement. Job announcements for positions shall specify the title and salary of the class for which the position exists. The announcement shall also identify the nature of the work to be performed, the qualifications, the time, place and manner of making application and other pertinent information.

Whenever possible, all new positions or vacant positions to which appointments can be made and all opportunities for advancement to other positions shall be made known to all employees. Every effort shall be made to secure the best qualified personnel from either within or without Court resources.

5.10 Age and Residence Requirements

a. Minimum age requirements of applicants for employment must be in accordance with state law.

b. Applicants for employment must be citizens of the United States and become a resident of the State of Oregon.

c. There shall be no discrimination on account of race, color, religion, creed, sex, national origin or ancestry.

5.20 Application. Applications for Administrative positions within the court are to be submitted to the Court Administrator. Applicants must fulfill all requirements for the position for which they are applying. The Administrator may require the presentation of special qualifications when necessary. The resume shall be assumed to be accurate and correct. Should it be determined on a subsequent date that statements on the resume were fradulent, the employee shall be subject to immediate dismissal.

5.30 Rejection of Applications. The Administrator may reject applications from persons who are found to lack any of the requirements established for the position or employment for which he applies or who is physically so disabled as to be rendered unfit for proper performance of the duties of the position to which he seeks appointment. He may reject any applicant who:

5.30 Rejection of Applications (continued).

a. Is addicted to the habit-forming drugs or a habitual user of intoxicating liquors to excess;

b. Has been guilty of any crime involving moral turpitude or notoriously disgraceful conduct;

c. Has been dismissed from employment for delinquency or misconduct;

d. Has made a false statement of any material fact;

e. Directly or indirectly shall render or pay or promise to give any money, service or other valuable things to any person in connection with his appointment;

f. Practice or attempts to practice any deception or fraud in his application or appointment.

When the Administrator refuses to accept an application as provided in this section, then upon the request of the person rejected, the Administrator shall furnish a statement of the reasons for such refusal. Any false statement, fraudulent conduct, or attempt at any deception by any applicant, or by others with his connivance in any application shall bar such applicant from employment with the court.

5.40 Vacancies.

a. It shall be the responsibility of the Court Administrator to fill any vacancy for a new or existing position which may occur in the Administrative Staff.

b. At the request of the Judge in whose department a vacancy exists, the Court Administrator shall assist that judge to whatever degree required in filling said vacancy.

5.50 Permanent Appointments. Unless otherwise specified, all appointments will be made to a permanent position, with the employee required to work a minimum of thirty-five (35) hours each week. Such employees will be eligible for County benefits i.e., Medical and Life Insurance, Vacation Time, Personal Holiday, etc.

5.60 Part-Time Appointments. Personnel who work less than thirty-five (35) hours each week or who do not work four (4) consecutive weeks each month will be deemed Part-Time employees and therefore not eligible for any County benefits.

5.70 Intermittent Appointment. An intermittent appointment may be made by the Administrator when work to be done is of a continuous or regular nature. When the position involved is filled by a current employee in another classification such employee shall be compensated at the rate of pay for the appropriate intermittent class to which the employee is assigned.

5.80 Temporary, Emergency or Trainee Appointments. Such appointments may be made by the Administrator when work to be done necessitates such action. Compensation for such services may be in accordance with rates specified in the Compensation Plan, minimal or non-existent. The appointee shall be subject to removal at any time without specification of cause, and shall acquire no status by virtue of such appointment. Such employees are not eligible for County benefits.

5.90 Transfers. The Court Administrator may transfer or reassign administrative personnel as required for the effective and efficient operation of the Administrative Office and the Court. All transfers shall be preceeded by a written evaluation and discussion with the employee.

5.100 Employment of More Than One Family Member. The permanent employment of relatives is discouraged. It is not the intent of this provision of the Personnel Plan to change the status of any present employees.

5.110 Probation. The probationary period shall be regarded as an integral part of the qualifying process and shall be utilized for closely observing the employee's work, for securing the most effective adjustment of a new employee to his position, and for rejecting any employee whose performance does not meet the required work standards.

5.120 Duration of Probationary Period.

a. All Administrative appointments shall be tentative and subject to a probationary period of six (6) months of actual service. Any interruption of service during the probationary period shall not be counted as part of the total service.

b. Employees transferred from another County agency to the Court shall be subject to a probationary period as provided above.

c. A probationary period of six (6) months is also required for personnel who are advanced or promoted to higher positions or are otherwise reclassified.

d. Time served in emergency, temporary, part-time, intermittent or trainee positions shall not be considered as part of the probationary period.

e. When performance or conditions indicate, the probationary period may be extended an additional three (3) months.

5.130 Dismissal During the Probationary Period. Should a probationary employee be found incompetent or unqualified to perform the duties of the position to which he was appointed, he may be dismissed at any time, at the discretion of the Court Administrator. However, an employee serving a probationary period following a transfer or promotion shall not be dismissed during the first 30 calendar days of service.

5.140 Demotion During the Probationary Period. Demotion of a promotable probationary employee shall be subject to the provisions of Section 7.

5.150 Certification After Probation. Upon completion of the probationary period, barring any reasons to the contrary, the employee shall have permanent status.

5.160 Term of Service. Continued employment in a position in the Court is based on the employee's satisfactory performance. In the event it may be necessary to reduce or redeploy personnel, their training, competence, experience, seniority and the convenience of the Court will be considered in said reduction or redeployment.

5.170 Professional Attire. All employees are expected to dress and maintain their appearance in a manner appropriate to the dignity of the Court.

5.180 Outside Activities. An employee's outside activities shall not conflict with his Court employment nor reflect negatively on the Court.

5.190 Conflict of Interest. No employee shall take or accept any gifts, gratuities or services for performing their duties and responsibilities of employment.

5.200 Judicial Appointments. All staff directly attached to a judicial department are employed directly by the Judge, who establishes all conditions of employment. This specifically pertains to courtroom clerks, bailiff-secretaries, and court reporters.

SECTION VI

HOURS OF WORK
LEAVES OF ABSENCE

6.00 General Statement of Work Week (BCC 4120.1)

a. The normal work hours shall be from 9:00 a.m. to 5:00 p.m., Monday through Friday. Lunch shall normally be taken from 12:00 noon to 1:00 p.m. Variations to these hours and days may be set according to the needs of the particular office. Two relief periods are allowed employees during the working day, 15 minutes in the morning and 15 minutes in the afternoon. The appointing authority shall determine the actual hours of employment, lunch hour and rest periods for his employees.

b. Courtroom Personnel--Regular hours of work may differ from one court to another, but will ordinarily be somewhere within the hours of 8:30 a.m. to 5:00 p.m.

c. Administrative personnel may be temporarily assigned to shift III should the requirements of their job so demand; or should an employee become delinquent in his job duties and responsibilities. There is no additional compensation for Shift III.

Shift I	-	8:30 a.m. to 4:30 p.m.
Shift II	-	9:00 a.m. to 5:00 p.m.
Shift III	-	8:00 a.m. to 5:00 p.m.

d. Employees shall notify their supervisor no later than 30 minutes after their starting time when they find it necessary to be unexpectedly late or absent from the office.

e. Planned absences to take vacation time, compensatory time, special leave time, or medical leave must be approved in advance.

f. All absences shall be posted in the employee's personnel and payroll files.

g. Whenever an employee works for a period less than the regularly established hours, the amount paid will be proportionate to the time actually worked.

6.10 Holidays.

a. The following days shall be recognized as paid holidays:

New Year's Day (January 1)
Lincoln's Birthday (1st Monday in February)
Washington's Birthday (3rd Monday in February)
Memorial Day (Last Monday in May)
Independence Day (4th day of July)
Labor Day (1st Monday in September)
Veterans Day (November 11)
Thanksgiving Day (4th Thursday in November)
Christmas Day (December 25)

b. Any day the President of the United States and/or the Governor of Oregon declares a Holiday.

c. Whenever a Holiday shall fall on a Sunday, the succeeding Monday shall be observed as the Holiday. Whenever a Holiday shall fall on a Saturday, the preceeding Friday shall be observed as the Holiday. Holidays which occur within an employee's vacation or sick leave period will not be chargeable to the employee's vacation or sick leave time.

d. Employees must be on the payroll on the work day immediately preceeding and the day immediately following a Holiday to be eligible for that Holiday.

e. Holidays falling during a period of approved vacation time are not considered as chargeable vacation days.

f. Temporary employees earn no compensatory time or benefits when their services are performed on holidays.

6.20 General Policies on Vacations (BCC-EX #19).

a. Each person employed on a full-time basis in a continuing position in the Circuit Court shall earn vacation with pay at the rate of pay for the class to which the employee is permanently assigned. Vacation leave shall not be earned by employees on a trainee, student, intermittent, temporary, or emergency basis. Accrued vacation may not be used by an employee until he has completed six months of continuous full time or

6.20 General Policies on Vacations (continued).

equivalent probationary employment. However, vacation shall be granted at the end of this time as accrued for the six month period. For purposes of computing periods of employment, an employee shall have his years of service computed from the first day of the payroll period in which he commenced service. (See Section 6.03 for computation of vacation accrual)

b. So far as practicable, grants of leave shall be made prior to the beginning of the periods of absence and no payment for any absence shall be made until the leave is properly approved.

c. Deductions from leave accumulations for an employee on leave with pay shall be made on a working day basis, and no charge shall be made from leave accumulations for holidays or non-work days.

d. Part time employees are entitled to vacation and sick and medical leave with pay at a monthly rate proportional to their time employed.

e. Temporary employees do not accrue vacation or sick and medical leave time.

f. No employee shall be allowed to be absent from work on a vacation for more than 30 consecutive calendar days nor shall he be allowed to take his vacation 1 or 2 days a week on several succeeding weeks without prior approval.

g. Accrual of vacation leave and sick leave during the period of leave of absence with pay shall continue. If the employee is granted additional leave without pay, he will not be credited with vacation or sick leave accruals for the period of leave without pay.

h. Time on layoff, suspension, or leave without pay, except as otherwise provided by these rules, shall not be counted in determining the date of completion of a full payroll period of periods of continuous service. If an employee is being paid for less than the full payroll period, his vacation accruals will be prorated in accordance with the time worked during that payroll period.

6.20 General Policies on Vacations (continued).

i. The Administrative Secretary or other designated personnel shall maintain records of vacation and sick leave and overtime accrued and used by each employee. Such records shall be maintained in the form and manner prescribed by the county.

j. Each employee will be given a statement of his vacation leave and sick leave in effect as of March 30 of each year.

k. Termination for any reason shall not cancel any rights to accrued vacation time not used. All permanent employees who permanently terminate their employment shall be eligible for a lump sum payment for unused vacation leave time. An employee must have been in a pay status on the last working day of the pay period in which separated or no vacation leave time accrues for that last pay period.

l. Absence during inclement weather will be charged against accrued vacation or sick leave time.

6.30 Accrual of Vacation Time. In order to give recognition to permanent employees for length of continuous service they shall accrue vacation leave benefits on the following basis:

a. Courtroom Clerks and specified Administrative positions:

(1) Less than five (5) years service, five-sixths (5/6) work day for each month service (3.077 hours/pay period) for each month service cumulative to twenty-five (25) work days.

After one (1) year of service, an employee shall be entitled to two (2) weeks (ten (10) work days) vacation.

(2) Five (5) years, but less than fifteen (15) years of service, one and one-fourth (1-1/4) work days for each month of service (4.6154 hours/pay period) cumulative to thirty (30) work days; and shall be entitled to three (3) weeks (fifteen (15) work days vacation.

6.30 Accrual of Vacation Time. (continued)

a. Courtroom Clerks and specified Administrative Positions (continued)

(3) Fifteen (15) or more years service, one and two-thirds (1-2/3) work days for each month of service cumulative to forty (40) work days; and shall be entitled to four (4) weeks (twenty (20) work days) vacation.

(4) Twenty-five (25) or more years service, two and one twelfth (2-1/12) work days for each month of service cumulative to forty (40) work days; and shall be entitled to five (5) weeks (twenty-five (25) work days) vacation.

(5) After six (6) months of service, upon the termination of an employee for any reason, all accumulated vacation shall be paid to the employee or his heirs.

(6) Personnel must be employed for six (6) consecutive months preceeding the use of accrued vacation time.

(7) Vacation time shall be credited for new employees from the first day of the payroll period in which they are employed.

b. Courtroom Bailiff-Secretaries, Court Reporters and specified Administrative personnel:

(1) Courtroom Bailiff-Secretaries and Court Reporters shall be allowed up to one calendar month vacation during a period when:

(a) The judge of that judicial department is on vacation, or,

(b) At a time when a replacement is not necessary.

(2) If necessary, Court Reporters will have to arrange for their replacement if they take vacation time other than that of the Judge for whom they work.

6.30 Accrual of Vacation Time. (continued)

b. Courtroom Bailiff-Secretaries, Court Reporters and specified Administrative personnel (continued):

(3) Specified Administrative personnel shall be allowed up to one calendar month (20) working days vacation during a period when:

(a) Workload does not demand their immediate attention, or

(b) When a replacement is not necessary, or

(c) When approved by the Section Head and/or Court Administrator.

(4) Accrual shall be at the rate of 5 days per calendar quarter.

(5) Each vacation of one month shall be deemed to to be a vacation credit for the entire calendar year in which taken.

(6) Vacation time may not be cumulative or transferred to a subsequent calendar year.

(7) Any exceptions to the above shall be in accordance with the policy governing "Absence Without Leave," Section 6.70.

6.40 Personal Holiday. Employees are entitled to a personal holiday after they have been continuously employed full time for a period of six months. The personal holiday shall be one day off per fiscal year, at the discretion of the employee with the consent of the appointing authority. The personal holiday may not be carried over to a subsequent fiscal year. Holiday time granted shall be in accordance with the provisions of Section 6.30 of this Personnel Plan.

6.50 Request for Vacation.

a. Request for vacation and/or personal holiday must be made at least three (3) weeks in advance of the anticipated vacation period to the appointing authority. Vacation time granted shall be in accordance with Section 6.30 of the Personnel Plan.

b. Three (3) weeks notification of any change in vacation plans is required to assure adequate work coverage in all offices.

c. Other leaves are to be requested and approved at least three (3) weeks prior to the leave date.

6.60 Leaves of Absence With Pay

a. Court Duty. (BCC 4150.1). Employees subpoenaed as witnesses or called and selected for Jury Duty shall be granted leave with full pay, in lieu of Jury or witness fees. If an employee is excused or dismissed at noon, he shall report for work.

b. Voting Time. Employees shall be granted two (2) hours to vote on any election day if due to shift scheduling they would not be able to vote otherwise.

c. Attendance at Meetings, Conventions or Training Sessions (BCC 4200.1). Court personnel may be authorized to attend such institutes, meetings or training programs when it is determined that such attendance is in the best interest of the Court. Such attendance shall not be deducted from any leave time. (See Section 6.180).

d. Leave for Death in Family (BO #8592). Permanent employees will be granted leave with pay not to exceed 3 working days for a death in their immediate family. Leave taken in excess of 3 days shall be charged to vacation leave, sick and medical leave, or leave without pay as is necessary for the occasion. Determination of such family death and the type of leave chargeable after said 3 days shall be made by the Administrator. The degree of relationship includes: spouse, parents (in-law), children, brothers and sisters (in-law), aunts, uncles, nieces, nephews, grandparents.

e. Armed Forces Leaves (BO #9909). Employees who are members of any reserve component of the Military forces of the United States shall be granted leave of absence with pay not to exceed thirty (30) calendar days in one annual or fiscal year when ordered to active duty for such training periods as are necessary to their participation in a reserve training program. The leave time shall not be deducted from their vacation time.

Leaves of absence with pay other than the foregoing will not be authorized unless approved by the appointing authority and the Board.

6.70 Leaves of Absence Without Pay.

a. Leaves of absence without pay for a limited period, not to exceed thirty (30) days, shall be granted for any reasonable purpose, and such leaves shall be renewed or extended for any reasonable period.

b. Court staff wishing to take a leave of absence at a time other than that time when the judicial department which he or she serves is closed for the annual vacation period, shall seek the approval of the Judge of said department, and advise the Administrative Office of the following at least three (3) weeks prior to the anticipated time of absence:

(1) Dates of absence.

(2) Whether a replacement is required.

c. Leaves granted under the provisions of this rule shall be in a leave without pay status, regardless of vacation time status or earned sick leave. It is intended that courtroom staff shall take their vacations at the same time as that of the judge in whose department they serve. Administrative personnel wishing to take a leave of absence at a time other than their designated vacation time shall apply for such leave at least three (3) weeks prior to the anticipated absence, to the section head and/or Court Administrator. Leave may be granted, provided trained personnel are available for replacement or if said replacement is not required. Personnel granted leave under the provisions of this rule shall be in a leave without pay status.

6.80 Special Leaves of Absence--Without Pay

a. Maternity Leave. Permanent employees shall be granted a leave without pay for a period not to exceed six months. Such leave shall be granted by the appointing authority upon the written request of the employee, supported by the written statement from a licensed physician (this statement must indicate the expected date of birth and how long the employee may work during her pregnancy).

b. Military Leave of Absence Without Pay. Employees in the county service shall be entitled to Military leaves of absence without pay for services in the armed forces of the United States and reinstatement at the expiration of such leave. Such leave shall be authorized only in cases where the employee has been officially called to active duty in the military service as required by the government.

6.80 Special Leaves of Absence--Without Pay

c. Sick Leave Without Pay. Upon application of a probationary or permanent employee, a leave of absence without pay may be granted by an appointing authority for the entire period of disability because of sickness or injury. Such leave will require that the employee submit a certificate from the attending physician or from a designated physician. In event of a failure or refusal to supply such certificate or if the certificate does not clearly show sufficient disability to preclude the employee from the performance of his duties, the appointing authority may cancel such sick leave and require the employee to report for duty on a specified date. Should the employee not report for duty on such specified date, it will be considered that he has resigned in accordance with Section 6.90.

d. Educational Leave. After completing three (3) years of service, an employee, upon request, may be granted a leave of absence without pay for educational purposes at an accredited school, when it is related to his employment. The period of such leave of absence shall not exceed one (1) year but it may be renewed or extended at the request of the employee when necessary.

One (1) year leaves of absence, with any requested extension, for educational purposes may not be provided more than once in any three (3) year period. Employees shall also be granted leaves of absence with or without pay for educational purposes, for reasonable length of time, to attend conferences, seminars, briefing sessions, or other functions of a similar nature that are intended to improve or upgrade the individual's skill or professional ability, provided it does not interfere with the operation of the court.

e. Special Leave. Special leave without compensation may be granted to an employee at the discretion of the appointing authority.

6.90 Cancellation of Leaves of Absence Without Pay. All leaves of absence shall be subject to the condition that the appointing authority may cancel the leave at any time upon prior notice to the employee specifying a reasonable date of termination of the leave. The Administrator, upon prior notice to the employee, may cancel an approved leave of absence at any time he finds that the employee is using the leave for purposes other than those specified at the time of approval.

6.100 Reinstatement from Leave of Absence. In accordance with these rules, an employee granted a leave of absence must be returned to employment within the class in which he served at the time the leave was granted at the expiration of his leave, unless the position he occupied has been abolished and no person with less seniority is employed in the same class in the same department or organization unit at the date of expiration of the leave. Subject to the same exception, such employee may be returned to his employment at any time prior to the expiration of his leave by the action of the appointing authority.

6.110 Absence Without Leave. Any employee who is absent from duty shall report the reason to his supervisor as soon as possible. Deductions from compensation, suspension, or termination, at the discretion of the appointing authority, shall result after two (2) days of unreported and unauthorized absence.

6.120 Sick Leave.

a. General Sick Leave Regulation. Each person employed on a full-time basis in a continuing position in the Circuit Court shall earn sick leave with pay as described below.

b. Accumulation of Sick Leave.

(1) Employees shall accrue sick leave at the rate of one (1) day for each month worked. Sick leave may be accrued up to a maximum of one hundred and eighty (180) days.

(2) Court Reporters shall accumulate sick leave at the rate of one (1) day for each month accumulated to a maximum of thirty (30) days.

c. Utilization of Sick Leave. Employees may use sick leave for the following reasons, keeping in mind that when at all possible they should notify the appointing authority ahead of time when sick leave is to be taken:

(1) When an employee is unable to perform his duties by reason of illness or injury.

(2) Necessity for doctor or dental appointments.

(3) Exposure to contagious diseases, by which other employees or the public may be endangered by contact.

6.120 Sick Leave. (continued)

(4) Serious illness of the employee's spouse, child, mother, father, brother, sister, legal wards, mother-in-law and father-in-law.

(5) For pre and post-natal care.

d. Verification. A written medical statement may be required as confirmation of the above.

6.130 Other Sick Leave Policies.

a. In case of leave to attend any of the persons listed in section 6.12.c(4), an employee may use up to three (3) sick leave days.

b. Permanent and probationary employees may use sick leave as accumulated.

c. A doctor's statement may be required as confirmation of illness that extends over three (3) working days. If illiness persists, additional doctor's statements may be required.

d. Absences of more than two but less than four hours shall be figured as a half-day sick leave time. Absences in excess of four hours will be considered a full day sick leave. Absences of less than two hours will be totaled on the basis that seven hours are equivalent to one work day.

6.140 Exception to Sick Leave Plan - Court Reporters. A Court Reporter taking sick leave is responsible for paying a replacement to cover his court for the first day of illness; thereafter the county will pay for the replacement in addition to sick leave pay for the reporter.

6.150 Payment for Accrued Sick Leave. Upon retirement, an employee shall be compensated for sick leave on the following basis:

a. One-tenth (1/10) of a day's salary shall be paid for every day accumulated up to sixty (60) days, except that there shall be no compensation made to those employees who have accumulated less than thirty (30) days sick leave.

6.150 Payment for Accrued Sick Leave. (continued).

b. One-fifth (1/5) of a day's salary shall be paid for every day accumulated over sixty (60) days.

c. Payment for accrued sick leave shall also be paid to those persons who are compulsory retired at age 65 but have not accrued the necessary 15 years service to retire under the County retirement plan.

6.160 Sick Leave Without Pay. When earned sick leave time with pay is not sufficient to cover an illness or injury, leave without pay may be granted to an employee.

6.170 Absence Because of Illness or Injury for Which Compensation is Paid Through Workman's Compensation Benefits. (BCC 4131)

a. All employees are insured under the provisions of the Oregon State Workman's Compensation Act for injuries received while at work.

b. The County shall supplement the amount received by the employee from the State Workman's Compensation for on-the-job injuries in an amount to ensure the injured employee one hundred per cent (100%) of his bi-weekly net take home pay, subject to the following conditions:

(1) The day of injury shall be considered a work day and the employee will receive his normal salary for that day.

(2) The day following the day of injury, and the next succeeding day, shall be charged as sick leave unless the employee is hospitalized (treatment in hospital, not outpatient care.) In the event of hospitalization for more than seven (7) days due to injury, or absence for fourteen (14) or more days due to injury, the employee will receive supplemental payments for each day of absence for which he receives State Workman's Compensation.

(3) If the absence due to injury is for a period of six (6) months or more the injured employee must present to the Board of County Commissioners a physician's statement setting forth the nature of the injuries, current conditions, and anticipated length of absence or date of return. Based upon circumstances, it shall be at the discretion of the Board whether or not to continue supplemental payments.

c. All accidents are to be reported to the Administrative Secretary.

6.180 Travel Authorization and Reimbursement:

a. Travel Requests and Approval. The Administrator shall budget for all anticipated conferences, meetings and training sessions.

Conferences or travel not listed in the fiscal budget or an increase in the number of participants scheduled shall require an individual request for supplemental budgetary funds.

b. Travel. Judicial and non-judicial personnel may be reimbursed for the cost of transportation by airline, railroad, or other common carrier.

(1) Airlines--Tourist accommodations shall be the standard mode of travel. First class accommodations may be authorized if tourist accommodations are not available.

(2) Private Car--When official travel is authorized, the use of the individual's private car may be authorized by the Board. On trips of less than 300 miles from the County seat, the regular private car mileage will be paid. On trips exceeding 300 miles from the County seat, reimbursements will not exceed the amount payable for the usually acceptable commercial transportation. For travel to points with regularly established air terminal, reimbursements will be based upon the cost of tourist class air coach. When travel is made to points without a regularly established air terminal, reimbursements will be made on the basis of first class rail transportation. When travel is made to points without a rail terminal, reimbursements will be made on the basis of bus service accommodations. In those cases where the combination of these facilities would be used for the travel, reimbursements will be based upon the combination of travel facilities.

When travel is authorized by private car for the convenience of the employee and the destination is less than 300 miles, reimbursement will be made at the rate of 10¢ per mile for the first 500 miles and 8¢ a mile for mileage in excess of 500 miles and the mileage will be determined by the Auditor from the Table of Official Mileage from Portland, Oregon to the destination and return.

6.180 Travel Authorization and Reimbursement, continued.

(3) Baggage and cab fare--Reimbursement will be made for reasonable expenses such as baggage and cab fare incurred in traveling to and from transportation terminals.

c. Per Diem. When travel on official business for Multnomah County extends beyond 24 hours, an allowance for incidental expenses is authorized. The amount of per diem requested shall be indicated on the Request for Travel under the recommendations of the Department Head. This allowance is made for the purpose of reimbursing the employee for his meals, transportation at his destination, and incidental expenses. No accounting is required for this reimbursement, and $7.00 per diem is considered adequate in most cases. In no case will the rate exceed $15.00 per diem.

(1) Room Accommodations--Personnel will be reimbursed for reasonable motel or hotel accommodations consistent with the facilities available. The single occupancy rate must be certified on the receipts.

(2) Meals--Meals and other incidental expenses in conjunction with such meeting or convention shall be reimbursed up to $15 per day.

(3) Registration, Tuition, etc.--Personnel will be reimbursed for registration or conference fees.

d. Travel Advances. An advance expense allowance may be authorized by the Board if requested by the traveler. When the advance expense allowance is requested and approved by the Board, the Auditor will draw a warrant in the amount approved. The amount so drawn will be considered an indebtedness by the traveler to Multnomah County until liquidated by the filing of reimbursement for travel expenses.

e. Expense Reports. Personnel shall file with the travel expense report receipts for railroad or air fare, hotel or motel accommodations, and other items of expense except items such as meals, baggage, cab fare and incidental items.

f. Travel time. Personnel may be authorized expenses and leave time for travel the day prior to and the day following institute or meeting date(s).

6.180 Travel Authorization and Reimbursement, continued.

g. Travel by Temporary Employees. Trips taken by temporary, part-time or intermittent employees and trainees are normally not authorized or payed for by the County. Exceptions may be granted if they are in the best interests of the Court and County.

h. County Vehicles. All requests for use of County operated vehicles are to be submitted to the Administrative Office for processing. Normally the use of the county car will not be authorized for travel a distance of more than 300 miles from the County seat. When a county car is utilized for official travel, no reimbursement greater than actual expenses incurred for the operation of the vehicle will be authorized. Receipts will be required for all reimbursements.

SECTION VII

SEPARATION, SUSPENSION, DEMOTION AND RETIREMENT

7.00 Resignation.

a. An employee may resign from the service by presenting his resignation in writing to the appointing authority. To resign in good standing, an employee must give the appointing authority at least 15 working days prior notice. In certain professional and administrative classifications an employee must give the appointing authority at least 30 days prior notice.

b. No form of resignation filed without date or with a future date and that is not intended to be a bona fide and voluntary resignation to be acted upon at the time of filing, shall be accepted by the Administrator as a resignation. Any separation under such circumstances shall be deemed a dismissal and the provisions of the plan relating to dismissals shall apply.

c. Such notice cannot include vacation days, sick or compensatory leave days.

d. The resignation shall be submitted to the employee's immediate supervisor who in turn shall notify the Court Administrator.

e. Failure to give proper resignation notice will be recorded in the employee's file and may be used for denying the person future reemployment. Such failure may also result in the forfeiture of the lump sum payment of any unused vacation or sick leave time.

7.10 Suspensions. The appointing authority may suspend an employee without pay for disciplinary reasons for a reasonable period, not exceeding 30 days. The employee must be furnished with a statement in writing setting forth the reasons for the suspension. No appointing authority may suspend the same subordinate more than twice, or for a total of more than 45 days, during any one year.

7.20 Layoff. The appointing authority may lay off an employee by reason of abolition of position, shortage of work or funds, or other reasons outside the employee's control which do not reflect discredit on the service of the employee.

7.20 Layoff, continued.

The duties formerly performed by the laid off employee may be assigned to other permanent employees who, in the opinion of the Administrator, hold positions in appropriate classes, or said function may be discontinued.

7.30 Order of Layoff. No probationary or permanent employee shall be laid off from any position while any temporary appointee is continued in a position of the same class in the section or organizational unit involved.

The order of layoff shall be determined by the appointing authority in such a manner as to conserve to the court the services of those employees deemed most valuable.

a. Merit, training, competence, experience, as well as seniority, shall determine which employee will be retained.

b. Employees layed off shall be placed at the top of an eligibility list and called back to work as there are openings in their job classifications.

7.40 Layoff Notice. In every case of layoff of an employee, the appointing authority shall, at least five work days before the effective date, give written notice to the employee. In the case of seasonal, intermittent, part-time or other occasional employment of employees with status, the appointing authority may indicate to the employee at the time of appointment the approximate date of working conditions that will cause termination of employment and such notice shall be considered to meet the requirement of this section.

7.50 Demotion.

a. An appointing authority may demote an employee for inefficient performance of his duties, for disciplinary reasons, or for other just causes. A permanent employee shall, before the action is taken, be furnished with a statement in writing setting forth the reasons for the demotion. He shall be permitted five days time to reply thereto, in writing or upon request, to appear personally and reply to the head of the department. A copy of the statement and the employee's reply, if any, shall be filed with the Administrator prior to the effective date of demotion. The permanent employee upon written request may seek a review by the Presiding Judge, as provided for in Section 9.

b. At any time during the probationary period of a promoted employee an appointing authority

7.50 Demotion, continued.

determines that the employee's performances do not meet work standards, he may demote the employee to his former class except that no employee serving a probationary period following his transfer or promotion shall be demoted except for just cause or with his consent during the first 30 calendar days of the probationary period.

c. An appointing authority with the consent of the employee may demote in lieu of layoff a permanent or probationary employee to replace any employee with less seniority in the next lower class in which he previously served unless he elects to be laid off. Such action shall not entitle the employee to a hearing on the demotion.

7.60 Dismissal. (Administrative Personnel)

a. Employees who do not have permanent status may be dismissed at any time at the discretion of the appointing authority, except those serving the first 30 calendar days of a probationary period following a transfer or promotion. No employee who has permanent status shall be dismissed from his position except for just cause. A permanent employee shall before the action is taken be furnished with a statement in writing, setting forth the reasons for the dismissal. He shall be permitted five days time to reply thereto in writing or upon request to appear personally and reply to the head of the department. A copy of the statement and employee's reply, if any, shall be filed with the Administrator prior to the effective date of the dismissal. Any such employee who is dismissed may seek a hearing before the Presiding Judge in the manner prescribed by Section 9.

b. Reasons for dismissal shall include physical or mental disability (when the employee can no longer perform assigned duties), incompetence, insubordination, misconduct (such as a moral or criminal offense), failure to return from leave or to report regularly for work, excessive tardiness or absenteeism, using sick leave benefits in a manner deemed to be excessive or unnecessary by the appointing authority, repeated garnishments of wages or suspensions, unsatisfactory performance of assigned duties, and such other causes

7.80 Retirement, continued.

c. The continuation of service under subsections(a) of this Section shall be for a period of one year only and for each additional year a new request must be made and approved. No employee shall be continued in service after he has attained the age of 72 years.

7.90 Summary of Retirement Plan.

a. Participation. All full-time County employees (at least 35 hours per week), except those entering after age 50. Persons holding County elective offices are included, and also regular County employees whose entire salaries are not paid by the County

b. Exception. The following employees are excepted from retirement deduction, being considered and declared temporary by the County:

Temporary Personnel

Pro-Tem Personnel

Part-Time Personnel

Interns

c. Normal Retirement Age. 65 (with one-year extensions, if approved by employer, but not beyond age 72). An employee age 55 or over who has at least 15 years of service may elect early retirement.

d. Retirement Benefits. A monthly benefit equal to 1-1/2% of final four-year average salary times the number of years of continuous service. The minimum monthly benefit is $65, plus $3.50 for each year of service in excess of 15. An employee who takes early retirement receives a benefit which has been actuarially reduced for his age at retirement.

e. Disability Benefit. None, the the Board may retire a member who has at least 15 years of service and who becomes incapacitated. This benefit is not actuarially reduced.

7.60 Dismissal, continued.

which reflect negatively on the Court. Charges alleging deception or fraud in an application, certificate or securing eligibility or appointment may be initiated by the appointing authority for whom the employee is working at the time or by the Administrator in conformity with the provisions of the rules relating to notice of discharge and hearing before the Presiding Judge.

c. Two weeks written notice of dismissal and the reasons therefore shall be given to permanent employees terminated under honorable conditions. Immediate removal can be required for good cause. Probationary and temporary employees may be dismissed immediately without notice for good cause.

d. No Administrative employee shall be dismissed without a personal discussion with the Court Administrator.

7.70 Court Property

a. All Court property in the possession of employees at the time of their separation of employment shall be returned to the Court before they may receive their final paycheck and payment of lump sum benefits, i.e., courtroom keys.

b. Court Reporters shall be responsible for the proper filing of all stenographic notes and orderliness of their offices before they may receive their final paychecks, lump sum benefits and any outstanding transcript fees from the County.

7.80 Retirement (BCC 4700)

a. Any employee who has attained the age of 65 years of age shall be retired effective the first day of the month following his 65th birthday unless the employee shall request that he be continued in service and his continuation in service is approved by his appointing authority.

b. The request for continuation in service shall be made by the employee at least 30 days and not more than 45 days before his effective date of retirement, in writing to his appointing authority.

7.90 Summary of Retirement Plan, continued.

f. Vesting. Upon separation from service, an employee who is then age 40 or over with at least 15 years of service is vested in his accrued benefit and will receive normal or early retirement benefits.

g. Employee Contributions: 2% of total salary; some job classifications pay 4%.

h. Employer Contributions: 6% of total salary; on behalf of employees who contribute 2%; 4% of total salary on behalf of employees who contribute 4%.

i. Return of Employee Contributions. Upon separation from service and in consideration of waiver of all other benefits under the plan, or upon death before retirement, the terminating employee's contributions are returned without interest. Upon death after retirement, the excess (if any) of his contributions over benefits paid to him are returned without interest.

j. Optional Retirement Benefits. An employee may elect to receive an actuarially reduced benefit with the provision that 100% or 50% (depending on which option is selected) of the monthly benefit will be continued to a joint annuitant after his death, provided the joint annuitant is then alive.

SECTION VIII

RULES OF CONDUCT

8.00 Compliance With the Personnel Plan and These Rules. All Administrative employees of the Court shall conform to and aid in all proper ways in carrying into effect the provisions of the Personnel Plan and these rules. Any willful violation of the Plan or these rules by employees of the Court shall be deemed insubordination and subject to disciplinary action by the appointing authority.

8.10 General Rules of Conduct.

a. Except as otherwise authorized or provided for by the Personnel Plan or these rules, no employee of the Court shall have any substantial interest, direct or indirect, or engage in any business or transaction or professional activity, or incur any obligation of any nature which is in conflict with the proper discharge of his duties.

b. No employee of the Court shall use his position to secure special privileges or exemptions for himself or others.

c. No employee of the Court shall directly or indirectly receive or agree to receive any compensation, gift, reward or gratuity from any source except the Circuit Court, for any matter or proceeding connected with or related to the duties of such employee unless otherwise provided for by this section. However, honoraria or expenses paid for papers, talks, demonstrations, or appearances made by employees on their own time shall not be deemed a violation of this section.

d. All employees giving a series of lectures or speeches before groups during the normal work hours and for which a fee is received may retain the fee. All such appearances, however, must be approved in advance in writing by the Court. If it is deemed by the Court that the time expended for the lecture or series of lectures is such as to remove the employee from the normal practices of his employment, the Court may either

(1) arrange for the employee to make up the lost time or,

(2) give the employee leave without pay for that specific period of time.

8.10 General Rules of Conduct, continued.

e. No employee of the Court shall accept other employment which may reasonably be expected to impair his independence of judgment in the exercise of his official duties.

f. No employee of the Court shall act as representative of the prosecution of any claim before any court, commission or other tribunal against the county, nor shall he aid or assist in the prosecution or support of any such claim otherwise than in the proper discharge of his official duties, nor receive any gratuity or any share or interest in any such claim. Nothing in this section shall be construed to prevent such employee from pursuing any such claim on his own behalf.

g. No employee of the Court shall accept employment or engage in any business or professional activity which he might reasonably expect would require or induce him to disclose confidential information acquired by him by reason of his official position.

h. No employee of the Court shall disclose confidential information gained by him by reason of his official position, nor shall he otherwise use such information for his personal gain or benefit.

i. No employee shall conduct himself in any manner which shall reflect negatively on the Court. Such conduct shall include drinking while on duty, or working while under the influence of drugs or alcohol, misappropriation or abuse of county property or funds.

8.20 Release of News Information. These rules shall not restrict the rights of the individual employee to comment in his capacity as a private citizen on any public matter. However, no employee covered by the provisions of these rules shall volunteer any information on Court business. If requests are made by any representative of communication media, the employee shall refer such request to the appointing authority.

8.30 Compliance with Rules of Conduct. The rules of conduct set forth above shall be deemed conditions of employment in the county service and violation of these rules of conduct may constitute just cause for disciplinary action or dismissal.

SECTION IX

GRIEVANCE PROCEDURE

9.00 Grievance Procedure. In order to provide an orderly means for considering and resolving grievances and problems relating to the conditions of employment in the Circuit Court, the following procedure is established. The word "grievance" shall mean a complaint or a view on an opinion to employment conditions or relationships or their betterment for which solution or redress is not provided by these rules.

9.10 Presentation of Grievance.

a. Informal. Grievances that are of a specific nature shall be presented by the employee to his immediate supervisor and a mutual agreement shall be reached within five (5) working days.

b. Formal. If the grievance is not mutually resolved, the nature of the grievance and the desired solution shall be submitted in writing by the employee to the Court Administrator. The Administrator shall arrange for a meeting of the parties concerned and be responsible for settling the grievance and shall inform the employee of his decision in writing within ten (10) working days following receipt of the grievance.

c. Grievance Appeal. If the disposition of the grievance by the Court Administrator is not satisfactory to the employee or a decision is not made within ten (10) working days, the employee may in writing refer his grievance to the Presiding Judge. This action must be filed by the employee within five (5) working days following receipt of the Court Administrator's decision.

9.20 Appeal from Reallocation of Positions. Any permanent employee whose position is reallocated, upon written request made within ten (10) calendar days of the date of notice of reallocation of the position, shall be entitled to appeal the action to the Administrator and subsequently to the Presiding Judge. Each appeal submitted under this section shall include a statement of the basis for the appeal and any exhibits or written material setting forth all facts, additional to those constituting a part of the personnel files and records, which the employee desires to have reviewed.

9.30 Appeals from Dismissal, Demotion or Suspension. Any permanent employee who is removed, discharged, or suspended without pay for more than ten (10) days, reduced in pay or position may appeal to the Administrator within ten (10) days after such action is taken. Upon such appeal, the appealing employee shall respond in writing to the appointing authority's written charges.

9.40 Other Appeals and Investigations.

a. The Court Administrator shall receive and consider any protests and any other matters concerned with the administration of the Personnel Plan or these rules. On the basis of such protests or on his own initiative, he shall make such investigation as he deems appropriate concerning all matters touching the enforcement and effect of the provisions of the Personnel Rules.

b. The Presiding Judge may receive and consider any protest by any employee or appointing authority in any matter concerned with the administration of the Personnel Plan or these rules and, after such investigation and review as the Presiding Judge may deem desirable, shall indicate to the Administrator such remedial action as it may deem warranted.

c. The Presiding Judge may grant appellant review and consider any protest by any employee or appointing authority in any matter concerned with the administration of the Personnel Rules, once such matters have been considered and ruled upon by the Court Administrator. After such investigation and review as deemed necessary by the Presiding Judge, he shall indicate to the Court Administrator such action as may be warranted.

9.50 Reviews.

a. In reviews requested by employees against whom disciplinary action (dismissal, demotion, suspension) has been taken, the burden of proving the reasonableness of such action shall be upon the appointing authority initiating such disciplinary action.

b. In all other reviews except those disciplinary in nature, the burden of proof shall be upon the party requesting the review.

9.50 Reviews, continued.

c. If the Presiding Judge finds that the action complained of was taken by the appointing authority for any political, racial, or religious reasons, or if the Presiding Judge finds that there were no reasonable grounds for institution of disciplinary proceedings, the employee shall be reinstated at once to his former position and all wages and other benefits lost during his time off shall be reinstated to his credit. If in the judgment of the Presiding Judge disciplinary action taken against an employee appears to be appropriate but the specific action taken by an appointing authority appears to be inappropriate, the Presiding Judge may modify such action and notify the appointing authority and employee concerned of the appropriate action to be taken.

SECTION X

MISCELLANEOUS

10.00 Private Solicitations.

a. There shall be no private solicitations of funds of any sort by any employee or outside organizations. The only exception to this will be charitable Fund Campaigns and to any employee gift and/or flower fund.

b. Authorization for all solicitations must be obtained from the Court Administrator.

c. There shall be no solicitation for the purchase of products during working hours.

10.10 Violation of Personnel Policies. Any Administrative Employee who fails to comply with the provisions of these policies may be suspended without pay, or terminated.

10.20 Amendments to Policies.

a. These Personnel Policies may be amended from time to time by the Court en banc.

b. These policies shall be effective July 30, 1973.

SECTION XI

DEFINITIONS

Unless otherwise indicated, the following words and terms whenever used in this plan shall have the meaning indicated below:

1. Administrator - Circuit Court Administrator.

2. Allocation - the original assignment of an individual position to an appropriate class on the basis of kind, difficulty, and responsibility of the work performed in the position.

3. Appointing Authority - the head of a department, Judge, Court Administrator or other person delegated to make appointments to positions in the court service.

4. Appointment - a regular appointment to a position established within the court.

5. Board - Board of County Commissioners.

6. Class - one or more positions sufficiently similar with respect to duties and responsibilities that the same descriptive title may be used with clarity to designate each position allocated to the class, that the same general qualifications are needed for performance of the duties of the class, that the same test of fitness may be used to recruit employees, and that the same schedule of pay can be applied with equity to all positions in the class under the same or substantially the same employment conditions.

7. Classification - the act of grouping positions into classes with regard to duties and responsibilities.

8. Days - unless otherwise indicated, this means working days.

9. Demotion - a change by an employee from a position in one class to a position in another class with less responsible duties and a lower salary range.

10. Judicial Appointment - the direct employment of courtroom staff, consisting of courtroom clerk, bailiff-secretary and court reporter.

11. Layoff - employees who have been separated from service by layoff necessitated by lack of work or lack of funds and without delinquency or misconduct on their part.

12. Organization Unit - organizational or other unit such as section which is approved by the Administrator as a unit for the purpose of employment or layoff or both.

13. Permanent Employee - an employee in Court service who has successfully completed his probationary period.

14. Personnel Department - Office of the Court Administrator.

15. Position - a group of current duties and responsibilities assigned or delegated by competent authority requiring the full-time or part-time employment of one person.

16. Probationary Period - a working test period during which a new employee is required to demonstrate his fitness for the position to which he is appointed by actual performance of the duties of the position.

17. Promotion - a change of an employee from a position of one class to a position of another class with more responsible duties and a higher salary range.

18. Re-Allocation - a reassignment or change in classification of an individual position by raising it to a higher class, reducing it to a lower class, or moving it to another class at the same level on a basis of significant change in kind, difficulty or responsibility of the work performed in such a position.

19. Reinstatement - appointment of a former court employee who had permanent or probationary status to a class to which he was assigned prior to such termination.

20. Temporary Employment - employment in the court service on a non-continuous basis. Such employees are not entitled to county benefits, paid holidays or vacation period.

21. Transfer - a change by an employee from one position to another position of the same class or to another class in the same salary range, usually involving the performance of similar duties and requiring essentially the same basic qualifications.

END