

DIVISION OF HUMAN RESOURCES

3.2 POLICY ON DISCIPLINARY ACTIONS

(a) Purpose and Scope

(1) Purpose

The purpose of this policy is to establish a uniform practice for the imposition of disciplinary actions within the Maryland Judiciary.

To impose a disciplinary action is to address an employee's deficient employment performance or conduct, including, but not limited to, infractions of Judiciary policies, rules, and standards. A disciplinary action is primarily corrective in nature, not punitive. The Administrative Head, in consultation with the JHRD, may impose whatever form of disciplinary action is warranted.

(2) Scope

(A) This policy applies to:

- (i) employees who are paid through the Central Payroll Bureau of the Comptroller; and
- (ii) employees of the State Board of Law Examiners, the Thurgood Marshall State Law Library, the Commission on Judicial Disabilities, and the Supreme Court of Maryland Standing Committee on Rules of Practice and Procedure.

(B) This policy does not apply to:

- (i) locally funded employees in the circuit courts;
- (ii) employees of the Attorney Grievance Commission and the Client Protection Fund;
- (iii) employees of the Register of Wills or the Orphans' Court; and
- (iv) justices, judges, magistrates, commissioners, and law clerks.

(b) Definitions

(1) Administrative Head:

- (A) For the Supreme Court of Maryland, the Clerk of the Court for all employees under the Clerk's supervision and the Chief Justice for all other employees of that Court;
- (B) For the Appellate Court of Maryland, the Clerk of the Court for all employees under the Clerk's supervision and the Chief Judge for all other employees of that Court;
- (C) For the circuit courts, the Clerk of the Court for all employees under the Clerk's supervision and the County Administrative Judge for all state employees under their supervision;
- (D) For the District Court, the Chief Judge of the District Court, the Chief Clerk, or the Administrative Clerk for all employees under their supervision;
- (E) For the Administrative Office of the Courts (AOC), the State Court Administrator;
- (F) For units, the head of the unit where the employee works; or,
- (G) Any person who serves as the authorized designee, by express written designation, of any of the foregoing persons.

(2) **Director** – The person responsible for the overall operation of a department or office within the AOC, the circuit courts, the District Court Headquarters, or unit.

(3) **Disciplinary Action** – A corrective measure that management imposes upon an employee.

- (4) **Employee** – Any person employed by the Maryland Judiciary or a unit of the Maryland Judiciary, except justices, judges, magistrates, commissioners, elected officials, employees of a Register of Wills Office or Orphans’ Court, and at-will employees as defined in the Policy on At-Will Employment.
- (5) **Exempt Employee** – An employee who is exempt from the overtime provisions of the Fair Labor Standards Act.
- (6) **Grievance** – An employee’s written complaint as defined in the Judiciary Policy on Grievances.
- (7) **Insubordination** – An improper response by an employee to management’s exercise of authority. Common to all forms of insubordination is a willful and deliberate indifference to or defiance of managerial or supervisory authority. However, it is not insubordination to disobey a managerial or supervisory directive that is illegal or places the employee or another individual in immediate physical danger.
- (8) **Judiciary Human Resources Division (JHRD)** – The division within the AOC that is responsible for, but not limited to, the following functions for State employees in the Maryland Judiciary: human resources policy development, administration, and interpretation; talent acquisition; employment and orientation services; employee benefits; position classification and salary administration; and employer-employee relations.
- (9) **Judiciary Premises/Property** – The offices, facilities, and surrounding areas on Judiciary-owned or Judiciary-leased property, parking lots, and storage areas. The term also includes Judiciary-owned or Judiciary-leased vehicles and equipment wherever located.
- (10) **Termination** – An employee’s involuntary separation from employment with the Maryland Judiciary.
- (11) **Termination with Prejudice** – A termination due to misconduct so severe that it warrants permanently barring the employee from future state government employment.
- (12) **Unit** – The State Board of Law Examiners, the Thurgood Marshall State Law Library, the Commission on Judicial Disabilities, and the Supreme Court of Maryland Standing Committee on Rules of Practice and Procedure.
- (13) **Workday** – An employee’s normally scheduled workday.

(c) Employee Responsibilities and Protection

- (1) Employees are responsible for knowing and following the policies, rules, standards, and expectations established by the Judiciary for its employees. The Judiciary’s personnel policies are available on the Judiciary website and on request from the employee’s Administrative Head or the JHRD. Failure to comply with a published policy because the employee has not read it does not excuse the non-compliance.
- (2) An employee may file a grievance when a disciplinary action is imposed, pursuant to the Judiciary Policy on Grievances.

(d) Types of Disciplinary Actions

- (1) **Available types of Disciplinary Actions include, but are not limited to:**
 - (A) A written reprimand;
 - (B) Suspension without pay (or with forfeiture of accrued leave days). Suspensions may not exceed 80 work hours unless approved in writing by the Assistant State Court Administrator of the JHRD or imposed by the State Court Administrator, the Chief Justice of the Supreme Court of

Maryland, the Chief Judge of the Appellate Court of Maryland, or the Chief Judge of the District Court of Maryland. Exempt employees may not be suspended for less than one workday;

- (C) Denial of a pay raise/merit increase;
- (D) Involuntary demotion or reduction in pay (excluding a reduction resulting from a Judiciary salary reduction plan); and
- (E) Termination of employment.

(2) A Disciplinary Action does not include:

- (A) An instructional communication to the employee, such as a counseling session, a memorandum of instruction, an oral or written warning, or a Performance Improvement Plan.
- (B) An employee on leave-without-pay status for non-disciplinary reasons, including when the employee is absent without approval or when the employee does not have paid leave, or is ineligible to use paid leave for the absence. An employee who is placed on leave-without-pay status for an unapproved absence may also be subject to disciplinary action.
- (C) Being placed on paid administrative leave.

(e) Disciplinary Procedure

(1) Imposing a Disciplinary Action

- (A) The following steps should be followed when imposing a disciplinary action, if the employee is available for them, and unless immediate termination or other immediate action is warranted under Section (e)(2) below. If the employee is unavailable, see Section (e)(1)(B) below.
 - (i) The Administrative Head shall inform the JHRD promptly whenever there may be a cause to impose a disciplinary action.
 - (ii) The JHRD, or with the JHRD's approval, the Administrative Head, will investigate to determine whether the facts warrant disciplinary action. The investigation need not follow a specific format but may include interviewing witnesses with relevant information and reviewing relevant documents. The JHRD has discretion to determine who may attend interviews and participate in the investigation.
 - (iii) The investigator(s) must meet with the employee, if possible, at the beginning of the investigation after the JHRD receives notice of potential cause for disciplinary action under Section (e)(1)(A)(i).
 - (I) The investigator(s) must advise the employee of the conduct that might constitute a violation of Judiciary policies, rules, or standards, and give the employee an opportunity to respond to the allegations.
 - (II) The employee may respond with any explanatory facts within two workdays, in writing, if possible (with email being an acceptable means). If the employee is unavailable for an in-person meeting, then the meeting may take place by telephone.
 - (III) The investigator(s) must consider any mitigating or aggravating factors.
 - (iv) The JHRD and the Administrative Head will determine the appropriate disciplinary action to be imposed, if any, after considering the available information and consulting with other parties as necessary. If the JHRD and the Administrative Head cannot reach agreement, then the determination of the JHRD shall prevail.
 - (v) If the decision is to proceed with the disciplinary action, then the Administrative Head, in consultation with the JHRD, shall provide the employee with written notice of the conduct

being disciplined, the form of disciplinary action, a copy of the *Policy on Grievances*, and a grievance form. The notice must advise the employee to refer to the *Policy on Grievances* for the method and deadline for filing a grievance. Notice may be provided by:

- (I) Hand delivery if the employee is at work;
- (II) Certified mail, return receipt requested, to the last known address of record;
- (III) Fax; or
- (IV) Email.

- (B) If the employee is unavailable at any stage or in any manner during the investigation or is unwilling to participate, the determination of an appropriate disciplinary action may occur without the employee's involvement, and the Administrative Head, in consultation with the JHRD, shall provide the employee with a notice of the disciplinary action by any of the methods in Section (e)(1)(A)(vi).
- (C) Management's failure to follow the steps listed above does not provide grounds for a grievance action or to overturn a disciplinary action.

(2) Management Discretion in Imposing Disciplinary Actions

The Administrative Head, in consultation with the JHRD, has discretionary authority to skip steps in the progression of disciplinary actions, depending on management's interpretation of the frequency and/or seriousness of the offense and the nature of the employee's work assignment. Nothing in this policy precludes the Administrative Head, in consultation with the JHRD, from immediately placing an employee on paid or unpaid administrative leave to protect the interests of the Maryland Judicial Branch of Government or its employees. Such leave may continue pending conclusion of the investigation described in Section (e)(1) of this policy.

(3) Duration of Investigation

Generally, management should complete its investigation and impose any disciplinary action within 45 workdays after first receiving notice of the employee actions that are the potential cause for discipline, except under unusual circumstances (for example, when related non-JHRD investigations warrant continuing the JHRD investigative period beyond 45 workdays). There is no employee right to a decision within any given timeframe.

(4) Records Management

- (A) The supervisor responsible for completing an employee's performance appraisal may keep notes and documents regarding the employee's performance and disciplinary actions imposed in a secure place in the supervisor's office or other secure location not accessible by the employee. The supervisor must promptly provide all records that are used to support a disciplinary action to the JHRD for inclusion in the employee's official personnel file. The supervisor should not retain such records beyond three years.
- (B) An employee may request in writing for the JHRD to remove a disciplinary action from the employee's official personnel file after seven years if there has not been a subsequent disciplinary action. The disciplinary action can be removed only if the Administrative Head and the JHRD concur. A decision to not remove the disciplinary action is not grievable.

(f) Reasons for Disciplinary Actions

Specific reasons for imposing a disciplinary action are numerous and varied. For the benefit of employees and managers, and because of its severity, examples of causes for termination of employment are

identified below. However, termination as well as lesser disciplinary actions may be imposed for causes other than those listed.

(1) The following actions shall result in automatic termination of employment:

- (A) Intentional conduct, without justification, that:
 - (i) Seriously injures another person;
 - (ii) Causes substantial damage to property;
 - (iii) Seriously threatens the safety of the workplace and/or the public;
 - (iv) Seriously impairs the ability of the Judiciary to perform its function; or,
 - (v) Results in a breach of conduct so severe that it compromises, or if known by the public would compromise, the mission, integrity and/or reputation of the Judiciary.
- (B) Theft of Judiciary property with a value of \$100.00 or greater.
- (C) Sale of controlled dangerous substances on the job.
- (D) Use or possession of controlled dangerous substances on the job unless prescribed by a physician.
- (E) Felony conviction.
- (F) Accepting for personal use any fee, gift, or other valuable thing in connection with or during the course of Judiciary employment if given to the employee by any person with the hope or expectation of receiving a favor or better treatment than that afforded to other persons.
- (G) Wantonly careless conduct or unwarranted excessive force in the treatment or care of an individual who is a client, or prisoner in state custody, or any other individual who is lawfully on or in Judiciary premises/property.

(2) The following also may be sufficient cause for Termination of employment:

- (A) Incompetence or ineffectiveness in the performance of assigned duties.
- (B) Inability to perform the essential functions of the employee's position.
- (C) Insubordination, disrespectful, or offensive conduct toward a supervisor or Judiciary official, a fellow employee, or the public.
- (D) Damage to public property or waste of public resources due to the employee's negligence or willful conduct.
- (E) Theft of Judiciary property with a value of less than \$100.00.
- (F) Willfully making a false statement to a supervisor, and/or in any official document, proceeding, investigation, or report.
- (G) Involvement in criminal activity or any other activity, on or off the job, that reasonably calls into question the employee's trustworthiness and honesty, or their ability to perform their duties in a professional, safe, fair, or impartial manner, or that if known by the public, would bring the Judiciary into disrepute.
- (H) Improperly divulging confidential information.
- (I) Misuse of the influence of the employee's position as a Maryland Judicial Branch of Government employee.
- (J) Any use, threatened use, or attempted use of political influence or the influence of any Maryland Judicial Branch of Government employee or officer in any employment related matter, decision or action involving the employee, to include but not be limited to: securing employment, promotion, transfer, leave of absence, or increase in pay; disciplinary actions; and furloughs or reduction-in-force (but not including routine letters or oral statements of reference for employment or promotion).

- (K) Unauthorized use of Judiciary facilities or equipment, including but not limited to, the telephone system, mail system, and/or computer system.
- (L) The employee's failure to follow a Judiciary Human Resources Policy or other applicable Judiciary or state government policy.

(g) Alteration of Duties and Compensation Pending Termination

To protect the interests of the Maryland Judicial Branch of Government pending completion of an investigation prior to termination of employment, the State Court Administrator or the Chief Judge of the District Court, in consultation with the Assistant State Court Administrator of the JHRD, may take action which may include, but is not limited to, reassignment of duties, transferring the employee, or placing the employee on paid or unpaid administrative leave. Actions taken under this Section are not grievable.

(h) Resignation when Termination of Employment is in Process

A resignation that is provided when the termination of employment is in process is not a resignation in good standing and precludes the employee from being rehired by the Judiciary.

(i) Termination Precludes Future Employment

- (1) An individual who is terminated from the Judicial Branch under this policy, or who provides a resignation in-lieu-of termination, will be ineligible for rehire with the Judiciary, unless the Assistant State Court Administrator of the JHRD determines otherwise. The employee still may be eligible for employment with another unit of state government unless the termination was a termination with prejudice.
- (2) An individual who is terminated with prejudice from the Judiciary will be ineligible for rehire with the Judicial or another branch or unit of state government. The Judicial Branch will not hire an individual who was terminated with prejudice from another unit of state government.

(j) Settlement of an Appeal of Termination

An appeal of a termination of employment may not be settled except on terms approved by the Chief Judge of the District Court or the State Court Administrator.

(k) Designees

An Administrative Head or the Assistant State Court Administrator of the JHRD may designate any Judiciary employee to serve or act on their behalf in matters pertaining to this policy.

(l) Exceptions

The Chief Justice of the Supreme Court of Maryland or the State Court Administrator may make exceptions to any provision of this policy.

(m) Interpretive Authority

JHRD is responsible for the interpretation of this policy.

(n) Not a Contract

This policy does not constitute or create an express or implied contract. It is not intended to, and does not, create contractual obligations with respect to any matter it covers.