

## DIVISION OF HUMAN RESOURCES

### 3.1 POLICY ON CONFIDENTIALITY

#### (a) Purpose and Scope

##### (1) Purpose

The Maryland Judicial Branch has possession of data and information (hereinafter referred to collectively as “confidential information” or “information”) that it is prohibited from disclosing to the public without a court order or a special provision of the law. Therefore, the Judiciary is committed to maintaining the confidentiality of the information it retains in various forms and formats within its courts, units, entities, or offices. This policy addresses the responsibilities of the Judiciary and its employees and elected Clerks of the Circuit Courts in fulfilling this commitment.

##### (2) Scope

(A) This policy applies to:

- (i) applicants for employment;
- (ii) all persons employed by a court, unit, judicial entity, or office organized within the Judicial Branch including regular, temporary, and contractual employees regardless of the source of the employee’s compensation (*e.g.*, county, state, federal, or grant); and,
- (iii) except for Section (f), Clerks of the Circuit Courts.

(B) This policy does not apply to:

- (iv) employees of the Register of Wills or the Orphans’ Court; and,
- (v) justices, judges, except to the extent that certain judges serve as the Administrative Head of a judicial entity and, therefore, perform administrative duties consistent with this policy.

#### (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;
- (C) 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;
- (D) For the circuit courts, the Clerk of the Court for all employees under the Clerk’s supervision;
- (E) The County Administrative Judge for all employees under the supervision of the Administrative Judge.
- (F) For the District Court, the Chief Judge of the District Court, the Chief Clerk, the Administrative Clerk, or the Administrative Commissioner for all employees under their supervision;
- (G) For the Administrative Office of the Courts (AOC), the State Court Administrator;
- (H) For units organized within the Judicial Branch, the head of the unit where the employee works; and,
- (I) Any person who, by express written designation, serves as the authorized designee of an Administrative Head.

(2) Confidential Information – Information, whether in paper or electronic form, that the Judicial Branch is prohibited by rule, law, or policy from disclosing, including but not limited to:

- (A) Case data;
- (B) Personnel data;

- (C) Financial data;
- (D) Trade secrets;
- (E) Proprietary information;
- (F) Procurement data; and
- (G) Administrative records.

- (3) Judiciary Human Resources Division (JHRD)** – The division within the AOC that is responsible for, but not limited to, the following functions for State-funded employees within the Judicial Branch: human resources policy development, administration, and interpretation; talent acquisition; employment and orientation services; employee benefits; position classification and salary administration; and employer-employee relations.
- (4) Unit** – The Attorney Grievance Commission, the Client Protection Fund, 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.

### **(c) Policy Statement**

The Maryland Judicial Branch has possession of and access to confidential information, in paper and electronic form, that, by law, rule, or policy is not accessible without authorization. An employee and the elected Clerks of the Circuit Courts (Clerks) may have access to such information, or other information that is legally privileged. It is essential that employees and Clerks understand and acknowledge the critical importance of ensuring that the confidentiality of such information is maintained at all times, both during and after the course of employment. Sections (d) and (e) identify their responsibilities and requirements in maintaining the confidentiality of this information.

The Judiciary also must maintain the public’s trust in its protection of confidential information. Therefore, background checks are necessary to ensure that prospective employees and, in certain cases, current employees, have the ability to maintain confidentiality, and can be trusted to so, when accessing confidential information. Section (f) describes the background check requirements for employment purposes (Clerks are not subject to the background check provisions of this policy).

### **(d) Employee Responsibilities**

Employee responsibilities, with respect to maintaining the confidentiality of Judicial Branch information, include, but are not limited to:

- (1)** An employee shall not during, or at any time following, Judicial Branch employment, use, permit to be used, misuse, or divulge to individuals who are not authorized to receive it, any confidential or legally privileged information obtained during their employment.
- (2)** An employee shall not intentionally access, attempt to access, reproduce, or disclose any confidential or legally privileged information, whether in paper or electronic form, unless it is necessary for the performance of the employee’s duties.
- (3)** If an employee mishandles, improperly divulges, or improperly acquires confidential information, the employee will immediately inform their Administrative Head.
- (4)** The Maryland Judiciary shall, at all times, be considered the owner of all research, notes, data, data bases and applications, computations, and estimates or other such information, recordings, videos, work-related emails, and documents, or other work product obtained or created during the

performance of the employee's duties, and of any memoranda, reports or other work product resulting therefrom; and an employee will not use or share any of these materials or information during or after employment with the Maryland Judiciary except as necessary to perform their duties or as expressly allowed by the Maryland Judiciary.

- (5) Upon the termination of employment, an employee will return to the employee's Administrative Head all work product and confidential documents which the employee created or to which the employee had access during their employment, including but not limited to, reports, manuals, computer programs, and all other materials relating in any way to the business of the Judicial Branch. The employee will not allow any third party to examine or make copies of the employee's work product or confidential documents.
- (6) Upon termination of employment, the employee will return to the employee's Administrative Head any electronic device belonging to the Judicial Branch that stores confidential information created or accessed as a result of the employee's relationship with the Judiciary; the employee will not attempt to access that device or disseminate any Judiciary-related information stored within it; and the employee will destroy all Judiciary-related information that they stored on personal devices during the period of employment.
- (7) When in doubt as to whether information is confidential or legally privileged, an employee shall consult with management before disseminating the information.

#### **(e) Clerks of the Circuit Courts**

Clerk responsibilities with respect to maintaining the confidentiality of the Judicial Branch's information include, but are not limited to, those described in Section (d) for employees, as well as restrictions on divulging confidential information described in the General Provisions Article, § 5-507.

#### **(f) Background Check Requirements**

As part of employment with the Judiciary, individuals covered by this policy, excluding Clerks, must undergo a background check prior to the first day of employment and upon certain events thereafter. A background check shall include, at a minimum, social security number verification, sex offender registry search, federal and state civil litigation records and civil citation search, federal and state criminal records and criminal citation search, and motor vehicle records search. Additional background check requirements may apply to specific positions (*e.g.*, District Court Commissioners and positions that carry a firearm).

- (1) For state-compensated employees, background check procedures are contained in the *Policy on Talent Acquisition, Examination, Selection, and Probation*.
- (2) For locally compensated employees in the circuit courts and employees of the Client Protection Fund and Attorney Grievance Commission:
  - (A) A background check will be conducted prior to the first day of employment for new hires.
  - (B) A circuit court, the Client Protection Fund, and the Attorney Grievance Commission shall use locally available background check resources and, if none are available, consult with JHRD to identify possible resources.
  - (C) The Administrative Heads of a circuit court, the Client Protection Fund, and the Attorney Grievance Commission are authorized to review adverse information contained in background check reports and decide the appropriate course of action.

- (3) Individuals covered by this policy are required to report to their Administrative Head an arrest, a citation resulting in a hearing, a court appearance for any reason, or a request for judicial relief within the next business day after becoming aware of the arrest, citation, court appearance, or request for judicial relief, or as soon as practicable, but not later than five workdays. Individuals also must report instances in which they, in the performance of their job duties, are, or may become, directly involved in judicial matters involving a family member.

#### **(g) Failure to Comply**

A violation of any provision of this policy may result in:

- (1) Disciplinary action against the employee, up to and including termination of employment, as determined by the employee's Administrative Head;
- (2) Injunctive relief;
- (3) Damages;
- (4) Criminal liability; and,
- (5) The matter may be reported to the State Ethics Commission.

#### **(h) Interpretive Authority**

The JHRD, in consultation with other Judicial Branch offices, as appropriate, is responsible for the interpretation of this policy.