

**NEW MEXICO JUDICIAL BRANCH PERSONNEL RULES
PART II
FOR AT-WILL EMPLOYEES**

Supreme Court of New Mexico



July 1, 2014

1

PART 11

**New Mexico Judicial Branch Personnel Rules Part II
for At-Will Employees**

[NOTE: Definitions for both Part I (Career or Classified Employees) & Part II (At-Will Employees) begin on page 63; italicized words are defined.]

**Adopted February 1, 2005
Amended August 1, 2010
Amended July 1, 2014**

**NEW MEXICO JUDICIAL BRANCH PERSONNEL RULES
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Inquires about the

New Mexico Judicial Branch Personnel Rules – Part I for Employees

New Mexico Judicial Branch Personnel Rules – Part II for At-Will Employees

*Adopted by New Mexico Supreme Court Order 10-8500,
Effective August 1, 2010;
Amended July 1, 2014*

General Personnel Policies and Procedures

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**NOTHING CONTAINED IN THIS DOCUMENT SHALL BE CONSTRUED AS TO CREATE ANY
CONTRACTUAL RIGHTS OF CONTINUED EMPLOYMENT OF AN AT-WILL EMPLOYEE**

SECTION 1. GENERAL PROVISIONS AND PURPOSE

15.01 PURPOSE

To create a system of human resource management for *at-will employees*. An *at-will employee* is a person in the *Judicial Branch* in a permanent, term, or *temporary position* who is *FLSA non-covered* on the New Mexico Judicial Branch Job Classification and Pay Schedule, excluding a justice or judge. (Amended 08/01/10)

15.02 CITATION

The rules in this part shall be known as the New Mexico Judicial Branch Personnel Rules - Part II for *At-Will Employees*, and are to be cited as *NMJBPRawe*. (Amended 08/01/10)

15.03 SUPPLEMENTATION OF THE RULES

The *NMJBPRawe* shall be supplemented by general policies and procedures that may be reviewed by the *NMJBPR Committee* and shall be approved by the *Director*. These rules may be subject to interpretative memoranda issued by the *Director*. No policies, procedures, or interpretative memoranda shall be contrary to these rules. A complete set of all policies, procedures, and interpretative memoranda shall be maintained by the *AOC* and shall be made available to all *at-will employees*.

15.04 SUPREME COURT AUTHORITY

The Supreme Court of the State of New Mexico is the superintending authority for the *Judicial Branch*. The *NMJBPRawe* are adopted, amended, or repealed at the discretion of the Supreme Court.

15.05 DISCRIMINATION, RETALIATION AND HARASSMENT

(Ref: Harassment (Including *Sexual Harassment*) Discrimination and Retaliation Policy, Harassment (Including Sexual), Discrimination and Retaliation Complaint Form, and Supreme Court Order No. 06-8500)

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- A. *Discrimination or harassment* based on race, color, religion, sex, age, national origin, ancestry, physical or mental handicap, serious medical condition, sexual orientation, gender identity, socioeconomic status, political affiliation or any other reason not related to work performance shall not be tolerated in the *work place*; nor shall *retaliation* against a person filing a *complaint* or report of such *discrimination or harassment* be tolerated.
- B. *Discrimination, retaliation and harassment* are unacceptable and are grounds for *disciplinary action*.
- C. Any *at-will employee* who is aware of or who is the subject of *discrimination, retaliation, or harassment* should report such action. (Amended (08/01/10))

15.06 NMJBPR COMMITTEE

The *NMJBPR Committee* shall make recommendations regarding the adoption and revision of the *NMJBPR AWE*.

A. Composition and Appointment

Upon the recommendation of the chairperson and the *Director*, the Supreme Court shall appoint the nine (9) members from the *Judicial Branch*. Such *appointments* shall provide for a broad representation of both court type and geographic location.

B. Term and Reappointment

- (1) Each member shall be appointed for a three (3) year term.
- (2) A member may be appointed for one (1) additional three (3) year term.
- (3) A member may serve no more than two (2) successive terms plus the period of any unexpired term for which the member was appointed.
- (4) If any committee member is absent from three (3) consecutive committee meetings, that person is deemed to have resigned from the committee. (Added 08/01/10)

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C. Chairperson and Vice Chairperson

The Supreme Court shall designate the chairperson and vice chairperson from the appointed members.

D. Meetings

(1) The committee shall meet at the call of the chairperson. The meeting shall be open to any person employed by the *Judicial Branch*. The *Director* shall give notice of a meeting along with the agenda to each member and all persons employed by the *Judicial Branch* at least five (5) *business days* in advance.

(2) A majority of the members constitutes the quorum necessary to take action at a meeting.

(3) The chairperson shall be entitled to vote on any matter.

(4) A member may attend a meeting and vote in person or by teleconference. A member may not vote through proxy.

(5) The chairperson shall provide each member with an agenda, the previous meeting's minutes, and copies of any materials to be considered at least five (5) *business days* before the meeting.

(6) The proceedings shall be recorded, minutes shall be prepared, and adopted minutes shall be available from the *AOCHRD*.

15.07 PROCESS

A. Recommended Actions

The committee may make recommendations to the *Director* to adopt, amend, or repeal the *NMJBPRWE* and any associated personnel policy and procedure. (Amended (08/01/10))

B. Policy and Procedure

The *Director* may adopt, amend, or repeal any personnel policy and procedure without a comment period or submission to the Supreme Court.

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(Added 08/01/10)

C. Comment Period - NMJBPRawe

- (1) Before submitting any recommended action to the *Director*, regarding modification of *NMJBPRawe* the committee shall circulate the recommended action within the *Judicial Branch* for a 30 calendar day comment period. (Amended 08/01/10)
- (2) The recommended action shall include a statement of rationale.
- (3) Any person employed by the *Judicial Branch* may submit comments to the committee within the 30 calendar day comment period. (Amended 08/01/10)

D. Submission to the Supreme Court

- (1) After the comment period, the committee and the *Director* shall consider all comments received.
- (2) The *Director* may submit the recommended action to the Supreme Court with or without modification, or may withdraw the recommended action.
- (3) For any recommended action submitted to the Supreme Court, the *Director* shall include a statement of rationale and a digest of the comments received.

E. Action by the Supreme Court

- (1) The Supreme Court may, in the exercise of its discretion, accept or reject the *Director's* recommended action.
- (2) Any accepted recommended action shall be filed in the Office of the Clerk of the Supreme Court. The *AOC HRD* shall distribute copies to each *Administrative Authority*. (Amended 08/01/10)
- (3) An accepted recommended action shall become effective as ordered by the Supreme Court.

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SECTION 16. CLASSIFICATION

(Ref: Classification Policy)

16.01 PURPOSE

To establish and administer a uniform *classification* system; insure *job* descriptions accurately describe duties and establish appropriate qualifications; and evaluate *job* worth based upon the Supreme Court adopted methodology of *job measurement*.

16.02 CLASSIFICATION PLAN

- A. The *Director* shall establish, maintain, and administer a *Classification Plan* for all positions throughout the *Judicial Branch*. (Amended (08/01/10))
- B. The *Classification Plan*, effective July 1, shall be distributed to *Judicial Branch* entities no later than the beginning of each fiscal year. Changes to the *classification* plan shall be distributed when they occur.

16.03 CLASSIFICATION COMMITTEE

A. Composition and Appointment

- (1) Upon the recommendation of the chairperson and the *Director*, the Supreme Court shall appoint 11 members from the *Judicial Branch*. Such *appointments* shall provide for a board representation of *job classification*, court type, and geographic location.
- (2) Upon the recommendation of the chairperson and the *Director*, the Supreme Court shall appoint up to seven (7) *alternate classification committee members* from the *Judicial Branch*. (Added (08/01/10))
- (3) The terms and participation requirements for alternative members are set forth in the *Alternate Classification Committee Member Policy* effective 08/01/08. (Added (08/01/10))

B. Term and Reappointment

- (1) Each member shall be appointed for a three (3) year term.
- (2) A member may be appointed for one (1) additional three (3) year

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term.

- (3) A member may serve an additional third term with the recommendation of the committee and the approval of the Supreme Court.
- (4) Each new committee member shall be trained in the currently used *job* evaluation methodology before becoming a voting member. (Amended (08/01/10))
- (5) If any committee member or alternate member is absent from three (3) consecutive committee meetings, that person is deemed to have resigned from the committee. (Added (08/01/10))

C. Chairperson and Vice Chairperson

The Supreme Court upon recommendation of the *Director* shall designate the chairperson and the vice chairperson from the appointed members. (Amended (08/01/10))

D. Meetings

- (1) The committee shall meet when necessary to review *Judicial Branch job classification* issues and apply the *job* evaluation methodology. All meetings shall be open to any person who is employed by the *Judicial Branch*. (Amended (08/01/10))
 - a. Committee deliberations and *job* evaluations shall be conducted in *closed session*.
 - b. A member shall not be present during the *closed session* at which the committee deliberates and votes on the *job classification* of that member.
 - c. Results of deliberations and *job* evaluations shall be made part of the published minutes.
- (2) A majority of the voting members constitutes the quorum necessary to take action at a meeting.
- (3) The chairperson shall be entitled to vote on any matter.

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- (4) A voting member may attend a meeting and vote in person or by teleconference, but may not vote through a proxy.
- (5) The *Director* shall give notice of a meeting along with the agenda to each member and all persons employed by the *Judicial Branch* at least five (5) *business days* in advance.
- (6) The chairperson shall provide each member with an agenda, the previous meeting's minutes, and copies of any materials to be considered at least five (5) *business days* before the meeting.
- (7) The proceedings shall be recorded, minutes shall be prepared, and adopted minutes shall be available from the *AOC HRD*. (Amended 08/01/10)

16.04 CLASSIFICATION AND JOB MEASUREMENT PROCESS

(Amended (08/01/10))

- A. The committee shall make recommendations to the *Director* regarding its *job measurements* on all existing job classifications. (Amended 07/01/14)
- B. The *AOC HR Director* shall create a job description for newly proposed classifications, and conduct a classification study if applicable. The committee shall make recommendations to the *Director* regarding its *job measurements* on newly proposed *job classifications*. (Added 07/01/14)

16.05 CLASSIFICATIONS STUDIES (Amended (08/01/10))

The *AOC HRD Director* shall conduct *classification studies* in accordance with the Classification Policy.

16.06 POSITION RECLASSIFICATION

A. Vacant Position

- (1) The *Administrative Authority* may initiate a request for position *reclassification* for a vacant position by submitting a *written justification* and if applicable an organizational chart. (Added (08/01/10; Amended 07/01/14))
- (2) The *AOC HRD Director* may approve a position *reclassification*

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when the *job* content assigned to a position has substantially changed, such *reclassification* is appropriate within the *Judicial Entity's* organizational structure, and when funds are available. (Amended 08/01/10)

B. Filled Position (Added 08/01/10)

- (1) *The Administrative Authority* may initiate a request for position *reclassification* on behalf of an *at-will employee* by submitting an approved *Job Analysis Questionnaire* completed by the *at-will employee* along with the *at-will employee's* updated *job* application and, if applicable, an organizational chart. (Amended 07/01/14)
- (2) The *AOC HRD Director* may approve a position *reclassification* when the *job content* assigned has substantially changed, such *reclassification* is appropriate within the *Judicial Entity's* organizational structure, funds are available, and the *at-will employee* meets the minimum qualifications of the *job*.

C. The *AOC HRD Director* shall issue a letter to the *at-will employee* and *Administrative Authority* approving or disapproving the position *reclassification* and shall include the *effective date* of the position's *reclassification*. (Amended (08/01/10)

D. Any change in compensation resulting from a *reclassification* shall be in accordance with *NMJBPRWE* Section 17.03 (B & F) (Amended 08/01/10)

16.07 APPEALS

A. Reclassification (Amended 08/01/10)

Disapproval of reclassifications may be appealed to the *Director* within 10 *business days* of the initial determination of the *AOC HRD Director*.

- (1) The *written* appeal shall state the grounds for consideration.
- (2) The *Director* shall render a final decision within 20 *business days* of receipt.
- (3) The *Director's* decision is final.

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B. Job Measurement (Added 08/01/10)

There is no appeal for any *job measurement* and corresponding *pay range* assignment made by the *Director*.

C. Job Classification Study Implementation (Added 08/01/10)

Job classification assignments associated with movement to a revised or new *job classification* upon implementation of a classification study may be appealed to the *Director* in *writing* within 10 *business days* of the initial determination of the *Administrative Authority*.

- (1) The *written* appeal shall state the grounds for reconsideration.
- (2) The *Director* shall render a final decision within 20 *business days* of receipt.
- (3) The *Director's* decision is final.

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SECTION 17. COMPENSATION

17.01 PURPOSE

To pay, motivate, and manage *at-will employees* through a comprehensive system of compensation.

17.02 PAY

- A.** No *at-will employee* shall be paid for hours not worked, unless on approved leave. (Added (08/01/10))
- B.** An *at-will employee* shall report time in compliance with the *NMSA 1978, Section 30-23-2 (1963)*. (Amended 08/01/10)
- C.** The *Administrative Authority* shall determine a *pay rate* for an appointed *at-will employee* as follows:
 - (1)** as mandated by statute; or
 - (2)** as allowed by Supreme Court order; or
 - (3)** at a rate not less than the minimum or more than the maximum of the *classification's pay range or alternative pay range*, except an *at-will employee's pay rate* may exceed the maximum as a result of a downward *pay range* or *job measurement* adjustment. (Amended 08/01/10)
- D.** If an *at-will employee's pay rate* is above the maximum of the range, it shall become frozen until the rate falls within the assigned *pay range*.
- E.** An *at-will employee* at the maximum of the assigned *pay range* may receive a one-time lumpsum payment if eligible for legislatively mandated salary increases. (Added (08/01/10))
- F.** Pay increases shall be funded from balances remaining in the *Judicial Entity's* current appropriation and there shall be no request for deficiency or supplemental appropriation or for emergency funding from the State Board of Finance to fund a pay increase. (Added (08/01/10))

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17.03 PAY SYSTEMS (Section Added 08/01/10)

A. Temporary Salary Increase or Temporary Promotion
(Amended 07/01/14)

The *Administrative Authority* may grant an *at-will employee* a *temporary salary increase* resulting in a *temporary promotion*.

- (1) A temporary salary increase or temporary promotion shall:
 - a. not be for less than 30 consecutive calendar days, and
 - b. not extend beyond the time such temporary condition ceases; or not be for more than 12 consecutive months.
- (2) A *temporary salary increase* or *temporary promotion* is limited to use for a vacant or an *effectively vacant* position.
- (3) A *temporary salary increase* or *temporary promotion* may be awarded only to an *at-will employee* who is temporarily performing higher-level *job* duties that are assigned to a *job* classification with a higher *pay range*.
- (4) The *Administrative Authority* shall increase an employee's pay rate by up to 100% of the new pay range or an increase of up to 15% of the employee's current pay rate without approval from the *Director*.
- (5) At the conclusion of the *temporary salary increase* or *temporary promotion*, the *at-will employee's pay rate* shall revert to the previous *pay rate* plus any pay increases the *at-will employee* would have received during the period of temporary salary increase.
- (6) The *employment status* of the individual receiving a *temporary salary increase* or *temporary promotion* shall remain the same.

B. Lateral Transfer

An *at-will employees* transfer from one position to another position with the same assigned *pay range* and *position status* within the *Judicial Branch* shall not result in a *pay rate* change, unless approved by the *Director* to maintain *salary alignment*. (Amended 08/01/10; 07/01/14)

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C. Reclassification

- (1) Any change in compensation as a result of a *reclassification* shall become effective no later than the first *pay period* following the *effective date* of the position's *reclassification*. Unless, the *Director* has suspended operation of this rule due to budget constraints in which case any change in compensation shall become effective prospectively within 24 months of the *reclassification*. (Amended 08/01/10)

- (2) A *reclassification* resulting in movement to a lower *pay range* shall not result in *lost compensation* unless the hourly rate of the pay exceeds the maximum of the assigned pay range.

D. State Board or Commission Membership

An *at-will employee* who is a member of a state board or commission may, with the approval of the *Administrative Authority*, attend meetings or transact business of the board or commission during *regularly scheduled work hours*, provided the service does not hamper the performance of the *at-will employee's* required duties.

17.04 HOLIDAY PAY

- A. An *at-will employee* who works on a *designated holiday* shall be compensated at time and a half of the regular rate of pay for all hours worked in addition to normal *holiday* compensation pay. (Amended 08/01/10)

- B. When a *designated holiday* falls on an *at-will employee's* regularly scheduled work day and the *at-will employee* is not required to work, the *at-will employee* shall be paid the *employee's* hourly rate for the number of hours the *employee* would have normally worked, up to a maximum of eight (8) hours per day. *At-will employees* working alternative work schedules must revert back to a regular work week of five (5) days a week, eight (8) hours a day in the week a *holiday* falls.

- C. *Part-time at-will employees* whose work schedule includes the day a *holiday* is observed will be compensated for the number of hours the *part-time at-will employee* would normally have worked on that day. *Part-time at-will employees* whose normal work schedule does not include the day a *holiday* is observed will not be compensated for the *holiday*.

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- D. An *at-will employee* shall receive *holiday pay* on *designated holidays* that the *at-will employee* does not work provided the *at-will employee* was in a pay status for no less than one hour, on the *at-will employee's* last scheduled workday before the *holiday* and the *at-will employee's* first scheduled workday after the *holiday*
- E. An *at-will employee* shall not receive *holiday premium pay* and *overtime pay* for the same hours worked on a *holiday*.

17.05 COMPENSATORY TIME AT STRAIGHT TIME (Amended (08/01/10))

- A. An *at-will employee* is not covered by the *FLSA*. However, an *at-will employee* who, with prior approval, works in excess of eighty (80) hours in a *pay period* may accrue *compensatory time at straight time*. No monetary compensation shall be made. (Amended 08/01/10; 07/01/14)
- B. An *at-will employee* shall not have a balance of more than eighty (80) hours of *compensatory time* at the end of the calendar year; however, when special circumstances arise, the *Administrative Authority* may extend the 80 hour limit. (Added 08/01/10; Amended 07/01/14)
- C. Upon separation from the *Judicial Branch*, an *at-will employee* who has *compensatory time* accrued shall not be compensated for that time. (Added 08/01/10; Amended 07/01/14)
- D. Upon transfer to another *Judicial Entity* *compensatory time* accrued by an *at-will employee* may be accepted by the *Administrative Authority*, and if it is not accepted, this time shall be forfeited. (Amended 07/01/14)

17.06 NO COMPENSATION DURING LEAVE WITHOUT PAY

In accordance with *NMJBPRWE* Section 19.12, *Leave Without Pay*, an *at-will employee* on authorized or unauthorized *leave without pay* shall not be compensated, and may experience changes to benefit coverage, leave accruals, and PERA credit.

17.07 PERFORMANCE AND COST-OF LIVING COMPENSATION ADJUSTMENT

Performance and cost-of-living compensation adjustments shall be governed by the legislation creating and authorizing them.

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17.08 OUT-OF-CYCLE COMPENSATION INCREASE

(Ref: Out-of-Cycle Increase Guidelines, Criteria, and Form Instructions, and Supreme Court Order 05-8500) (Section Added 08/01/10)

A. The *Administrative Authority* may recommend to the *Director* an out-of-cycle increase, consistent with the Out-of-Cycle Increase Guidelines, based upon the following criteria:

- (1) demonstrated exceptional performance,
- (2) *salary alignment*, or
- (3) *compensation restoration* as a result of *job measurement*.

Any pay increases associated with *compensation restoration* may be suspended due to budget constraints in which case any change in compensation shall become effective prospectively within 24 months of the adopted new *job measurement*.

B. The *Director* shall issue a letter of explanation to the *Administrative Authority* approving or disapproving the out-of-cycle increase. If the recommendation is approved, the *effective date* shall be no later than the first *pay period* following the *Director's* approval.

17.09 MARKET ADJUSTMENT

(Ref: Market Adjustment Policy)

A. An *Administrative Authority* may request the *Director* to conduct a *market review* of the competitive *pay rates* for a *classification* series within a geographic location or specific market to address critical *recruitment* and retention problems.

B. Based upon the *market review*, the *Director* may recommend to the Supreme Court assignment of *alternative pay ranges*.

C. The *pay rate* for positions within the geographic location or specific market may be adjusted to an *alternative pay range* to meet competition and to remedy *recruitment* and retention problems.

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- D. An *alternative pay range* assignment shall be for no more than a two (2) year duration. The adjustment may be extended thereafter in two (2) year increments with updated and supporting *market review* data.

17.10 COMPENSATION INCREASE FOR CERTIFIED BILINGUAL COMMUNICATION EMPLOYEES (Added 07/01/14)

- A. The *Administrative Authority* may approve an employee's advanced request to have the employee's bilingual certification recognized for additional pay.
- B. A *written* request to the *Administrative Authority* seeking such additional pay shall be provided before the employee begins the certification process.
- C. The approval or disapproval of the *Administrative Authority* is only in regard to additional pay upon certification completion, not the employee's ability to seek certification unless such is funded by the *Judicial Entity*.
- D. To be considered for a certified bilingual compensation increase, an employee must be a certified bilingual employee. A certified bilingual employee is an employee who meets each of the following requirements:
- (1) The employee successfully completes the New Mexico Center for Language Access bilingual communication program, obtaining certification of successful completion.
 - (2) The employee keeps the employee's bilingual communication certification current, including compliance with any continuing education requirements required by the New Mexico Center for Language Access.
- E. A certified bilingual employee shall be given an increase of \$1.00 per hour in addition to an employee's regular hourly rate of pay. This increase shall be in addition to the employee's *base pay*.
- (1) The increased compensation required for a certified bilingual employee shall be funded within the *Judicial Entity's* appropriation, and there will be no request for a deficiency or supplemental appropriation or for emergency funding from the State Board of Finance to implement and maintain the compensation increase.

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- (2) The *Administrative Authority* shall annually determine whether the employee's bilingual communication certification is current and, if not, shall reduce the employee's pay by \$1.00 per hour until such time as the employee's bilingual communication becomes current, at which time the increased compensation of \$1.00 per hour shall be reinstated.

- (3) The *Administrative Authority* within the *Judicial Entity* in which the employee is employed shall determine upon an employee's *job* transfer, *promotion* or *demotion*, whether the employee's bilingual communication certification is required and, if it is not, shall reduce the employee's pay by \$1.00 per hour immediately before any *job* change transpires.

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SECTION 18. APPOINTMENT OF AT-WILL EMPLOYEES

18.01 PURPOSE

To govern the *appointment* of a person to an at-will position in the *Judicial Branch*.

18.02 EQUAL EMPLOYMENT OPPORTUNITY

- A. The *Judicial Branch* is an Equal Employment Opportunity Employer.
- B. All decisions and procedures regarding *recruitment*, selection, *promotion* and other terms and conditions of employment shall be made without *discrimination* on the basis of race, religion, sex, age, national origin, ancestry, disability or medical condition, sexual orientation, socioeconomic status or political affiliation, and shall be in compliance with equal employment laws, the Americans with Disabilities Act, and all other applicable federal and state laws. (42 U.S.C.A. §§12101) (Added 07/01/14)

18.03 NEPOTISM (Amended (08/01/10))

- A. No person shall be appointed, transferred, or promoted to a position and *no at-will employee* shall hold a position in a *Judicial Entity* if that person or *employee* will be within the chain of *supervision* of a *family member*, *household member*, or *domestic partner*.
- B. No person shall be appointed to an at-will position and *no at-will employee* shall hold a position in a *Judicial Entity* in which a *family member*, *household member* or *domestic partner* is an elected or appointed Judge or Justice.
- C. No person shall be appointed to a position or hold a position in the Supreme Court, AOC, Compilation Commission, Building Commission, or Law Library when a *family member*, *household member*, or *domestic partner* is a Supreme Court Justice.
- D. If an *at-will employee* is in one of the above prohibited positions, every effort will be made by the *Administrative Authority* to transfer the affected *at-will employee* to a comparable position for which the *at-will employee* qualifies within the *Judicial Branch*. If a like position is not available, then the affected *at-will employee* shall resign or be terminated.

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18.04 RECRUITMENT AND SELECTION

- A. The *recruitment* procedure for an *at-will employee* shall be at the discretion of the *Appointing Authority*.
- B. The applicant selected shall meet minimum qualifications of the *job* description.
- C. The applicant selected shall not be in violation of the Criminal Offender Employment Act (*NMSA 1978, Section 28-2-1 to 28-2-6, 1974, as amended through 2010*).

18.05 APPOINTMENT

The *Appointing Authority* shall make any offer of employment by a letter, which shall contain, at a minimum, specific at-will conditions of employment.

18.06 POST OF DUTY (Added 08/01/10) (Ref: Supreme Court Order 05-8200)

- A. An *at-will employee's* post of duty shall be indicated in the employment offer letter.
- B. When it is in the best interest of the *Judicial Entity*, the *Administrative Authority* may transfer an *at-will employee* from one physical location to another.

18.07 PERSONAL STAFF OF JUSTICES AND JUDGES

The employment of an *at-will employee* appointed by a single justice or judge terminates with the expiration of the term of the justice or judge who made the original *appointment*, or with the death, *resignation*, relocation, non-election, non-retention or removal of the appointing judge or justice; provided however, that the *Administrative Authority* may extend the employment of the *at-will employee* for no more than 90 days, when it is in the best interest of the *Judicial Entity*. (Amended (08/01/10))

18.08 RIGHTS OF NEW MEXICO JUDICIAL BRANCH AT-WILL EMPLOYEES
(Added 07/01/14)

- A. *At-will employees* serve at the discretion of his or her judge(s), justice(s), director(s), or commissioner(s), have no rights under the New Mexico

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Judicial Branch Personnel Rules Part I, and may be dismissed by the Court for any reason, and without warning. There may be exclusions that would include not terminating an *at-will employee* for refusing to commit an illegal act, or if the *at-will employee* is on family medical leave. (Added 07/01/14)

- B. *At-will employees* have no right under the New Mexico Judicial Branch Personnel rules Part I, specifically, of grievance or appeal of disciplinary action including termination. (Added 07/01/14)

18.09 APPOINTING AUTHORITY - Ref: General Personnel Policies and Procedures – *Administrative Authority, Appointing Authority and At-Will Employee Job Classification List.*)

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SECTION 19. LEAVE AND HOLIDAYS

19.01 PURPOSE

To establish the procedure for accruing, accumulating and using leave.

19.02 ABSENCE WITHOUT LEAVE

- A. Employees who fail to appear for work without authorized leave or who appear for work but are in violation of policies governing their readiness for work shall be considered to be absent without leave. Employees shall not be paid for any periods of absence without leave and shall not accrue annual or sick leave.
- B. Absence without leave is just case for and must result in disciplinary action up to and including dismissal.

19.03 ADMINISTRATIVE LEAVE

(Ref: Leave Policy; and Inclement Weather Policy)

- A. The Chief Justice may authorize *administrative leave* with pay for any period.
- B. An *Administrative Authority* may authorize an *at-will employee* *administrative leave* with pay for a period not to exceed ten (10) *business days* per calendar year when it is in the best interests of the *Judicial Branch* to do so. (Amended 08/01/10)
- C. The *administrative leave* that is granted by the Chief Justice without a specific day and time, such as for fairs and fiestas, must be pre-approved by the *at-will employee's* immediate supervisor prior to being taken. (Added 08/01/10)
- D. An *Administrative Authority* may not authorize *administrative leave* to supplement *holiday* leave or *administrative leave* granted by the Chief Justice. (Added 08/01/10)
- E. An *Administrative Authority* may grant up to 80 hours of *administrative leave* in a calendar year for an *at-will employee* to participate in an employee assistance program, counseling, or drug or *alcohol* rehabilitation program. (Added 08/01/10)

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19.04 ANNUAL LEAVE

- A. An *at-will employee* in a *temporary position* may accrue annual leave, and may be eligible for annual leave donations. (Added 08/01/10; Amended 4/13/13)
- B. An *at-will employee* in a term or perm position shall accrue annual leave from the first day of employment pursuant to the chart in *NMJBPRawe* Section 19.04 (J) and shall accrue annual leave in proportion to hours worked up to a maximum of 80 hours worked per *pay period*. In addition to service in the *Judicial Branch*, the *period of service* shall include all time in the Executive or Legislative branches of the State of New Mexico including the Public Defender's Office and District Attorney's Office. (Amended 08/01/10; 4/13/13)
- C. The *Administrative Authority of a Judicial Entity* shall accept the accrued annual leave of an *at-will employee* moving from another *Judicial Entity*. (Amended 08/01/10)
- D. The *Administrative Authority of a Judicial Entity* may accept the accrued annual leave of an *at-will employee* moving from an agency of the Executive or Legislative branches of the State of New Mexico. (Added 08/01/10)
- E. A maximum of 240 hours of annual leave may be carried forward after the last *pay period* beginning in December.
- F. An *at-will employee* who changes to a *temporary position* without a *break in service* may accrue annual leave and may carry forward any annual leave balance and use that leave balance in accordance with the *NMJBPRawe*. (See definitions of *temporary position* and *benefited temporary employee*) (Amended 07/01/14)
- G. An *at-will employee* who is *absent without leave*, on *leave without pay*, or unpaid Family Medical Leave, or on any type of unpaid leave shall not accrue annual leave. (Amended 07/01/14)
- H. An *at-will employee* who separates from service shall be compensated for a maximum of 240 hours of accrued annual leave at the *at-will employee's* current hourly rate. (Amended 08/01/10)
- I. The estate of an *at-will employee* who dies while employed by the *Judicial*

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Branch shall be compensated for all of the at-will employee's accrued annual leave at the at-will employee's final hourly rate. (Amended 08/01/10)

J. Annual Leave Accrual Chart

PERIOD OF SERVICE	HOURS EARNED PER PAY PERIOD	HOURS MAXIMUM ACCRUAL
Day 1 - 3 years	4.62	240
Over 3 - 7 years	5.54	240
Over 7 – 14 years	6.46	240
Over 14 years and beyond	7.39	240

K. Use of Annual Leave

An at-will employee may use annual leave only after it has been accrued and only when approved in advance by the immediate supervisor, unless advance approval cannot be obtained because of unforeseen circumstances. Reasonable effort will be made to accommodate the at-will employee's leave request while balancing the operational needs of the Judicial Entity.

19.05 ANNUAL LEAVE DONATIONS

(Ref: Annual Leave Donation Program Policy)

- A.** Only an *at-will employee* who meets the following criteria shall be eligible to receive donations of annual leave.
 - (1) The *at-will employee* shall be on Family Medical Leave, as outlined in the Annual Leave Donation policy and forms. (Added 4/1/14)
 - (2) The *at-will employee* must not be receiving worker's compensation.

[NOTE: Definitions for both Part I (Career or Classified Employees) & Part II (At-Will Employees) begin on page 63; italicized words are defined.]

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- (3) The *at-will employee* must have exhausted all:
- a. annual leave,
 - b. sick leave,
 - c. *compensatory time* off,
 - d. personal leave, and
 - e. all other accrued leave before donations may be used.
- (2) The purpose of the leave shall be for a *serious health condition* affecting the *at-will employee*, an *immediate family member* or *domestic partner*. (Amended 08/01/10)
- B. An *at-will employee* may donate annual leave to another *at-will employee* or *employee* provided that the *at-will employee* or *employee* has met the eligibility criteria set forth in *NMJBPR* Section 19.05 (A) or *NMJBPR* Section 5.05 (A).
- C. Donation of annual leave shall be administered in accordance with the Annual Leave Donation Program Policy.

19.06 BEREAVEMENT LEAVE

An *at-will employee* may request up to a maximum of five (5) *business days* of bereavement leave with pay to grieve the death of a *family member* or a *domestic partner*. The *at-will employee* shall request approval for this leave from the immediate supervisor. Compensation during bereavement leave shall be commensurate with the employee's usual paid work hours. (Amended 08/01/10)

19.07 BONE MARROW AND ORGAN DONOR LEAVE (Added 4/1/14)

- A. An *at-will employee* may request up to twenty workdays for the purpose of donating an organ or bone marrow. [*NMSA* 24-28-3, 2013]
- B. Medical verification for the purpose of the leave and leave duration will be required.

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- C. An employee may request and use donated annual leave for the purpose of donating an organ or bone marrow. If an employee requests donations of annual leave but does not receive twenty workdays, the *Administrative Authority* may grant the remainder of the leave up to a maximum of the twenty workdays in administrative leave.
- D. Any paid leave of absence granted pursuant to this provision shall not result in a loss of compensation, seniority, annual leave, sick leave or accrued *overtime* for which the employee is otherwise eligible.

19.08 COURT LEAVE

An *at-will employee* called to serve as a juror or subpoenaed in an official capacity as a non-expert *witness* in a case in which the *at-will employee* is not a party shall be entitled to court leave.

- A. When, in obedience to a subpoena, an *at-will employee* appears as a *witness* before a federal or state grand jury or court, or before a federal or state agency, the *at-will employee* shall be entitled to leave with pay for the required period. *Witness* fees received by the *at-will employee* as a non-expert *witness*, excluding reimbursement for meals, travel and *overtime*, shall be remitted to the *at-will employee's Judicial Entity*.
- B. An *at-will employee* shall be entitled to leave with pay for serving on a jury and shall not be entitled to receive any jury fees for the normal working hours but shall be entitled to retain reimbursement for meals and travel and any jury service fees earned in excess of normal working hours. Proof of summons must be provided. Jury fees received shall be resubmitted to the employee's *Judicial Entity*. (Amended 08/01/10; 07/01/14)

19.09 EDUCATIONAL LEAVE

(Ref: Leave Policy; and Application for Educational Leave Form)

An *at-will employee* may be granted educational leave in accordance with the Leave Policy, Section 4. (Amended 08/01/10)

(Note: To avoid affecting PERA and leave accruals, this leave must be recorded in SHARE as "EDLVR" – Ed Leave Taken sub/RTR, or "ADMIN" – Administrative Leave, and not as "EDULV" – Education Leave Paid.)

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19.10 FAMILY EDUCATIONAL LEAVE

A *full-time at-will employee* may be granted up to eight (8) hours per calendar year of family educational leave. The purpose of this leave is to provide an *at-will employee* with the opportunity to participate in academic activities of an *immediate family member or domestic partner*. (Amended 08/01/10) (Note: This leave must be recorded in SHARE as administrative leave and not educational leave or PERA and leave accruals will not be assessed.) (Amended 07/01/14)

- A. An *at-will employee* must request leave in advance from the *at-will employee's* immediate supervisor and explain the academic activity for which leave is requested.
- B. Academic activities include, but are not limited to: parent/teacher conferences and association meetings, organized field trips, college orientations, school registrations, graduations, tutorial sessions and organized educational programs. Each activity will be considered on a case-by-case basis by the immediate supervisor. Athletic events shall not be considered academic activities.
- C. The leave allowed under this rule does not have to be taken in consecutive hours.
- D. This leave is not accrued leave and is forfeited upon separation.
- E. This leave is limited to the maximum eight (8) hours per calendar year regardless of the number of *immediate family members* of an *at-will employee*. (Amended 08/01/10)

19.11 FAMILY MEDICAL LEAVE

(Ref: Family and Medical Leave Act Policy)

Family and medical leave under the federal Family and Medical Leave Act, 29 U.S.C. Section 2601-2654 (FMLA) shall be administered for eligible *at-will employees* in accordance with the Family and Medical Leave Act Policy.

19.12 HOLIDAYS

The Chief Justice declares *holidays* for the *Judicial Branch*.

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19.13 LEAVE WITHOUT PAY

(Ref: Leave Policy; and Request for Leave Without Pay Form)

A. Authorized

An *at-will employee* may be granted *leave without pay* for the justifiable personal reasons as follows:

- (1) **Short Term** – An *at-will employee* shall apply in *writing*, in advance, for *leave without pay* for a period up to 30 consecutive calendar days and may be granted *leave without pay* upon approval of the *Administrative Authority*. (Added 08/01/10)

- (2) **Long Term** – An *at-will employee* shall apply in *writing*, in advance, for *leave without pay* for a period more than 30 consecutive calendar days and up to 12 consecutive months. The *at-will employee* will be granted such leave only when the *Administrative Authority* can ensure the *at-will employee* a position of like status and pay at the same geographic location upon the return from *leave without pay*. However, if the *Judicial Entity* cannot ensure the *at-will employee* a position of like status and pay at the same geographic location and the *at-will employee* agrees in *writing* to waive that requirement, such leave may be granted without the assurance of a position being available at the end of the leave. (Added 08/01/10)

B. Effect on Other Leave

An *at-will employee* is not entitled to accrue any leave while on *leave without pay*.

19.14 MILITARY LEAVE

- A. An *at-will employee* who is a member of the National Guard, a State Defense Force, a reserve component of the uniformed services of the United States, the Civil Air Patrol or who volunteers for such service shall be granted military leave with or without pay in accordance with the Uniformed Services Employment and Re-employment Rights Act (USERRA), 38 U.S.C. Section 4301-4335, for “service in the uniformed services” as defined in that Act, and with the New Mexico Statutes and Rules, including, but not limited to *NMSA* 1978, Sections 20-4-7, 20-5-14, and 20-7-5. The *Administrative Authority*

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may authorize the *Appointing Authority* to temporarily fill a vacancy, and the *at-will employee* may return to work as provided by the law.

- B. An *at-will employee* who is on the military leave with pay shall have the same rights and benefits as any other *at-will employee* who is on leave with pay.

19.15 PERSONAL LEAVE

- A. After one (1) full year of employment in a *Judicial Branch permanent or term position*, a *full-time at-will employee* shall earn personal leave consisting of eight (8) hours each calendar year. *Temporary employees* and *probationary employees* are not eligible for the personal holiday. (Amended 07/01/14)
- B. After one (1) full year of employment, a *part-time at-will employee* shall earn personal leave on a pro-rated basis each calendar year. E.g., employees working 30 hours per week shall receive 6 personal *holiday* hours, employee working 20 hours per week shall receive 4 personal *holiday* hours, etc. (Amended 07/01/14)
- C. Personal leave must be taken in full at one time.
- D. Personal leave must be used within the calendar year during which it is earned or it will be forfeited.
- E. An *at-will employee* who does not take the personal leave day shall not be compensated for it, and shall forfeit it upon separation from the *Judicial Branch*. (Amended 07/01/14)
- F. The personal leave day of an employee transferring to or from an agency of the Legislative or Executive branches including the Public Defender's Office and the District Attorney's Office of the State of New Mexico shall forfeit their personal holiday upon transfer. (Added 07/01/14)

19.16 PHYSICAL FITNESS LEAVE

An *at-will employee* may be granted leave during work hours for physical fitness activity in accordance with the Physical Fitness Activity Policy, if any, of the *Judicial Entity* for which the *at-will employee* works.

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19.17 SICK LEAVE

A. Sick Leave Accrual

A full-time at-will employee, including those holding a benefited temporary position shall accrue sick leave at the rate of 3.69 hours per pay period from the first day of employment. For service of less than 80 hours per pay period, sick leave accrual will be pro-rated. Sick leave may be accrued without limit. (Amended 08/01/10)

B. Other Sick Leave Provisions

- (1) *An at-will employee shall only be granted sick leave with pay for the hours of sick leave accrued or as supplemented by donated annual leave.*
- (2) *An at-will employee abusing sick leave is subject to termination.*
- (3) *An employee who is absent without leave, on leave without pay, on unpaid Family Medical Leave, suspended without pay, or any type of unpaid leave shall not accrue sick leave*
- (4) *The accumulated sick leave of an at-will employee transferring within the Judicial Branch or from an agency of the Legislative or Executive branches including the Public Defender's Office and the District Attorney's Office of the State of New Mexico shall be accepted by the Judicial Entity to which that at-will employee is transferring, provided there is no break in service. (Amended 08/01/10; 07/01/14)*

C. Use of Sick Leave

- (1) *An employee's use of sick leave shall be limited to illness, injury, examination, or treatment of the employee or care of the employee's immediate family member or domestic partner; or for bereavement leave for an employee's immediate family member or domestic partner. (Amended 08/01/10; 07/01/14)*
- (2) *If the at-will employee's reason for the sick leave is known in advance, request for approval shall be made in advance; otherwise, a request for sick leave approval must be made as soon as possible but not later than the at-will employee's return to work. The*

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Administrative Authority may establish notification requirements for sick leave requests.

- (3) An *Administrative Authority* may require a medical release prior to an *at-will employee's* return to work.

D. Health Care Provider's Certificate

- (1) A certificate from a *health care provider* verifying the illness, injury, or treatment may be required by the immediate supervisor.
- (2) If the requested certificate is not provided, sick leave may be denied, and the *at-will employee* ordered to return to work by a specific date. Unauthorized absence shall not be compensated. (Amended 08/01/10)

E. Compensation for the Sick Leave

- (1) In accordance with the provisions of *NMSA* 1978, Section 10-7-10, an *at-will employee* who has accumulated more than 600 hours of unused sick leave is entitled to be paid for unused sick leave in excess of 600 hours at a rate equal to 50% of the *at-will employees* hourly rate of pay for up to 120 hours of sick leave.
- a. Payment for unused sick leave may be made only once per fiscal year on either the payday immediately following the first full *I pay period* in January or the first full *pay period* in July.
- b. Before payment can be authorized, an *at-will employee* must notify Human Resources of the number of unused sick leave hours over the 600 and no more than 120 for which the employee wishes to be compensated. (Amended 07/01/14)
- (2) Immediately prior to retirement from the judicial service, an *at-will employee* who has accumulated more than 600 hours of unused sick leave is entitled to be paid for unused sick leave in excess of 600 hours at a rate equal to 50% of the *at-will employee's* hourly rate for up to 400 hours of sick leave. This subsection does not apply to an *at-will employee* who separates for any reason other than retirement.

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19.18 VOTING LEAVE

An *at-will employee* registered to vote may be absent from work for two (2) hours for the purpose of voting between the time of the opening and the time of the closing of the polls on election day or for early voting. (Amended 08/01/10)

- A. The immediate supervisor may specify the hours during this period in which the *at-will employee* may be absent.
- B. These provisions do not apply to any *at-will employee* whose workday begins more than two (2) hours after the opening of the polls or ends more than three (3) hours prior to the closing of the polls.

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SECTION 20. POLITICAL ACTIVITY

20.01 PURPOSE

To establish guidelines for all *at-will employees* regarding participation in political activities.

20.02 ACTIVITIES

A. Permitted Political Activities

An *at-will employee* may:

- (1) be a candidate,
- (2) register to vote,
- (3) express opinions on all political subjects and candidates,
- (4) engage in political activity to include the following provided no such activity is conducted while on duty:
 - a. serve as party officials and convention delegates,
 - b. attend political rallies,
 - c. sign nominating petitions,
 - d. take an active part in management of political campaigns,
 - e. serve as election officials, or
 - f. make financial contributions to a political party or organization.

B. Prohibited Political Activities

An *at-will employee* is prohibited from:

- (1) engaging in any political activity while on duty, including but not limited to wearing buttons, posting signs, circulating petitions or

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sending e-mails; or

- (2) using official authority or influence for the purpose of interfering with or affecting the result of an election or a nomination for office or for any political purpose; or
- (3) using *Judicial Entity* supplies, equipment or facilities in connection with any political activity; or
- (4) directly or indirectly coercing, attempting to coerce, commanding or advising a state or local officer, employee or *at-will employee* to buy tickets for political fund raiser, to pay, lend or contribute anything of value to a party, committee, organization, *Judicial Entity* or person for a political purpose; or
- (5) threatening to deny *promotions* to any employee or *at-will employee* who does not vote for certain candidates; or
- (6) requiring or compelling an employee or *at-will employee* to apply for membership in or become a member of a political organization or in any manner to take part in political activity.

20.03 CANDIDACY

A. Candidacy

An *at-will employee* becomes a candidate when the *at-will employee* files a petition or nomination papers, pays a filing fee, or is nominated by a political party for a public office.

B. Partisan Political Election

- (1) An *at-will employee* may, subject to NMJBRAWE 20.03 (B)(2) below, be a candidate in a *partisan election* including a judicial position, but the *at-will employee* shall use annual leave or *leave without pay*, subject to the approval of the *Administrative Authority*, if campaigning requires that *at-will employee* be absent from assigned duties.
- (2) At the discretion of the *Administrative Authority*, an *at-will employee* who is a candidate for an incumbent's office within the same court

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that the *at-will employee* is employed may be required to use annual leave or shall be granted an unpaid leave of absence while the candidacy is pending. If elected, the *at-will employee* shall continue to use annual leave or the unpaid leave of absence until *resignation*.

- (3) If elected, the *at-will employee* shall resign prior to taking the oath of office.

C. Non-Partisan Political Election

An *at-will employee* may use annual leave or *leave without pay*, subject to the approval of the *Administrative Authority*, to campaign in a *non-partisan election* and if elected, may be granted *administrative leave* to participate in the work of a legally constituted state or local board or commission. (Amended 08/01/10)

20.04 HATCH ACT (5 U.S.C. 1501 – 1508) (Added (08/01/10))

An *at-will employee* is responsible for determining if candidacy is in any way limited by the Hatch Act.

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SECTION 21. RECORDS MANAGEMENT, INSPECTION AND RETENTION

21.01 PURPOSE

To establish general guidelines regarding the management and inspection of records.

21.02 RECORDS MANAGEMENT

The *Administrative Authority* shall establish and maintain a records management program in accordance with federal and state law.

21.03 RECORD INSPECTION BY THE PUBLIC

(Ref: Employee Records Management and Inspection Policy)

Inspection of public records of the *Judicial Branch* shall be governed by the provisions of the New Mexico Public Records Act, *NMSA* 1978, Section 14-2-1. There are exceptions to right to inspect public records and any record not subject to public inspection shall be in accordance with the Public Records Act.

21.04 EMPLOYEE RECORDS

(Ref: Employee Records Management and Inspection Policy)

21.05 EMPLOYEE RECORDS RETENTION

At will-employee personnel records shall be retained for 55 years after the *at-will employee's* date of separation and shall be in accordance with the Records Retention and Disposition Schedules for Personnel Records.

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SECTION 22. OUTSIDE EMPLOYMENT

22.01 PURPOSE

To allow outside employment under certain circumstances.

22.02 ENGAGING IN OUTSIDE EMPLOYMENT

(Ref: Outside Employment Form and NM *Judicial Branch* Code of Conduct, Cannon 4)

- A.** Before an *at-will employee* may engage in outside employment (including self-employment) compensated or non-compensated *the at-will employee* shall complete an Outside Employment Approval Form, and have such outside employment approved by the *Administrative Authority*., as provided in *NMJBPRWE* Section 22.02 (B).
- B.** The *Administrative Authority* shall review the information provided on the form and at the *Administrative Authority's* discretion may approve the request if:
- (1) no conflicts of interest result,
 - (2) the outside employment does not interfere with the *at-will employee's* job performance, and is not otherwise detrimental to the interests of the *Judicial Branch*, (Amended 08/01/10)
 - (3) the outside employment is not directly related to the *practice of law* unless it is *pro bono work* approved by the *Administrative Authority*, and
 - (4) the *at-will employee* gives *written* notice to the *Administrative Authority* before the work is commenced. The notice shall include the name of the *employer* and the type of work to be performed. (Amended 08/01/10)
- C.** Approval may be withdrawn anytime at the discretion of the *Administrative Authority*. Once approval has been granted, the *Administrative Authority* may request the *at-will employee* provide an updated Outside Employment Form, and may approve or disapprove the outside employment as provided in *NMJBPRWE* Section 22.02 (B) (Added 08/01/10)

**NEW MEXICO JUDICIAL BRANCH PERSONNEL RULES
PART II
FOR AT-WILL EMPLOYEES**

SECTION 23. EMPLOYEE FITNESS TO WORK

This section is subject to any limitation of the Worker's Compensation Act.

23.01 PURPOSE

To assure an *at-will employee* is capable of performing essential duties and responsibilities in a safe manner.

23.02 HEALTH EXAMINATIONS

Due to an *at-will employee's* apparent physical or mental impairment, the *Administrative Authority* may:

- A. require an *at-will employee* to provide a certificate from a *health care provider* before allowing the *at-will employee* to continue working or allowing the *at-will employee* to return to work, and
- B. send an *at-will employee* to a *health care provider* of the *Judicial Entity's* choice and at the *Judicial Entity's* expense for a second opinion. The *at-will employee* shall be on administrative leave with pay during the examination and for a reasonable period of transportation time to and from the examination. The *Administrative Authority* shall provide the *at-will employee* with a copy of any examination reports. (Amended 08/01/10)

23.03 DRUG/ALCOHOL TESTING

(Ref: Drug and Alcohol Free Work Place Policy; and Drug/Alcohol Testing Policy)

The *Administrative Authority* may require an *at-will employee* to undergo *drug* and *alcohol* testing based on *reasonable suspicion* that the *at-will employee* is impaired to any extent by *drugs* and/or *alcohol* while on duty. *Drug* and *alcohol* testing shall be conducted in compliance with the Drug/Alcohol Testing Policy. (Amended 08/01/10)

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See Glossary of Terms at end of Personnel Rules Part I.
The definitions apply to both
Personnel Rules Part I (for Employees) and Part II (for *At-Will Employees*),
and General Policies and Procedures.