

16.000 RULES AND DISCIPLINE

16.100 Standards of Employee Conduct and Performance

A. A position within the Trial Court is a position of public confidence and trust. Employees should conduct themselves accordingly, should maintain professional behavior, and should follow the rules and regulations of the Trial Court and of their offices.

B. Examples of Conduct Warranting Disciplinary Action

The following is not intended to be an exclusive listing of the types of conduct that warrant disciplinary action.

1. failure or refusal to comply with a reasonable order or to accept or complete a reasonable assignment;
2. inefficiency, incompetence, or negligence in the performance of duties, or failure to be knowledgeable and current in one's area of job responsibility;
3. discourtesy to the public;
4. insubordination, or a demonstrated lack of respect for persons in authority;
5. inability or unwillingness to work cooperatively with others;
6. unauthorized use, sale, or possession of controlled substances, narcotics, or other drugs at any time; or being under the influence of said substances or alcohol while on duty, or during such time as one might reasonably be expected to be called to duty, or while on the premises of the Trial Court; (Note: See Section 27.000 for the policy on substance abuse).
7. violation of or failure to comply with the Federal or State Constitution, statutes, or court rules and regulations;
8. careless, negligent, or improper use or retention of Trial Court property, equipment or funds;
9. theft, willful misuse, damage, or destruction of Trial Court property or property of another on Trial Court premises;

10. use of undue influence to gain, or attempt to gain, promotion, leave, favorable assignment, or other individual benefit or advantage;
11. unauthorized use or release of confidential information;
12. failure to obtain and maintain a current license or certificate required as a condition of employment;
13. threats or abuse of others, fighting, or other disorderly conduct;
14. unlawful discrimination or inappropriate behavior against a member of the public or another Trial Court employee on the basis of race, color, national origin, sex, age, sexual orientation, marital status, gender identity, religion, disability or Vietnam era veteran status;
15. violation of Trial Court policies, including but not limited to: the Policy Prohibiting Discrimination, Harassment, Retaliation, And Complaint Resolution Procedure; Fair and Equal Employment Policy; Trial Court Information Policy;
16. chronic absences or tardiness in reporting to work;
17. unauthorized absence from work;
18. falsification of employment or other court records;
19. failure to comply with travel regulations or failure to account for a travel advance and/or failure to reimburse the Trial Court when necessary;
20. misstatement of fact with regard to a request for sick leave and other leaves or abuse of such leaves;
21. failure or refusal to participate in or cooperate with an investigation or to provide a written statement and/or incident report;
22. conduct that undermines the administration of the court;
23. conduct, whether in the course of one's employment or otherwise, that tends to bring the court into disrepute or lessens public confidence in the administration of justice;

24. conduct unbecoming a Trial Court employee.

16.200 Investigating Employee Misconduct

Before instituting disciplinary action, an appointing authority (or designee) should appropriately investigate whether such discipline is warranted. Depending upon the circumstances, such investigation may include reviewing documents, speaking with witnesses, or seeking specialized assistance (such as a financial audit for missing funds). Except in extraordinary circumstances, the appointing authority should speak with the employee as part of this investigation. If the appointing authority asks questions of the employee while conducting this investigation, the answers to which may lead to discipline, an employee represented by a union may ask for a union representative to be present, and the appointing authority must permit the employee to secure the union steward or union representative before continuing the questioning. Based upon this investigation, the appointing authority may conclude that no discipline is warranted, that informal discussion with the employee is sufficient, or that a formal disciplinary procedure should commence. All formal discipline must be conducted according to the Disciplinary Policy below.

16.300 Disciplinary Policy

The Trial Court is committed to addressing issues of behavior or performance in order to fulfill its mission in a manner that is fair to employees, but consistent with the Trial Court's obligations to operate an efficient, effective system of justice. Therefore, employees with greater managerial authority will be expected to perform their responsibilities at a high level of competence, and violation of Trial Court rules or unsatisfactory job performance may be grounds for discipline or removal at the discretion of the appointing authority, so long as such discretion is not exercised arbitrarily or capriciously, consistent with the provisions of the policy applicable to such employees described in Section 16.500. Employees represented by a union, and confidential employees whose position would otherwise be included in a collective bargaining unit must be disciplined pursuant to the procedures in Section 16.400.

16.400 Progressive Disciplinary Policy for Union and Confidential Employees

For employees in a bargaining unit covered by a "just cause" standard for discipline and removal, and employees whose positions are deemed "confidential" by the Human Resources Department, the Trial Court has a policy of "progressive discipline." The goal of progressive discipline is to improve behavior or performance. For minor issues, effective communication about expectations along with follow-up discussions with the employee may be all that is required to bring the employee's behavior

or performance to an acceptable level. Levels of discipline may be repeated or omitted depending on the frequency, severity and/or nature of the performance issue or behavior exhibited. It is not necessary to impose progressive discipline in cases of serious misconduct. Cases of serious misconduct could result in termination of employment. The Human Resources Department is available to consult with appointing authorities as necessary.

16.401 Procedure for Imposing Progressive Discipline

Where informal discussion with an employee has not resolved an issue involving minor misconduct, or where the misconduct is repeated or is of a more serious nature, the appointing authority may impose formal discipline as follows:

A. Written Warning

A “written warning” is the first level of formal discipline. A written warning may be issued by the appointing authority or by a supervisor who has been designated by the appointing authority to impose this level of discipline. The written warning should contain an explanation of the reason for the warning, and give the employee notice that repetition of the offense or any other offense may bring further disciplinary action. The written warning shall be placed in the employee's personnel file, and a copy provided to the employee. The written warning should tell the employee that he/she may respond to the warning in writing. Any response should be attached to the written warning and placed in the employee's personnel file. An employee may receive subsequent written warnings for the same or other misconduct, especially if a significant time period has passed, or if the appointing authority thinks that a subsequent written warning, rather than more severe discipline, is appropriate.

B. Discipline Beyond a Written Warning

Where inappropriate employee conduct is either a second offense, represents a course of repeated conduct, or is of a more serious nature, the appointing authority must provide the employee with an opportunity to be heard (a hearing) before imposing a written reprimand, a suspension, a demotion, or termination.

1. Notice of Hearing

The employee should be notified in writing of the nature of the alleged misconduct, the time and place of the hearing,

that the employee may respond either orally or in writing, and that the employee may be represented by a representative of his/her choice. The notice may be hand- delivered, emailed, or mailed to the employee's home address.

2. Conducting the Hearing

The hearing should be conducted by the appointing authority or another management (non-union) employee, who should present the information concerning the alleged misconduct, through documents or witnesses, as appropriate, and should permit the employee and his/her representative to provide a response, including documents, witnesses and questions of the witnesses presented by management.

3. Decision Following the Hearing

After the hearing, the appointing authority or other management employee conducting the hearing should prepare a written decision that describes the hearing process (where it occurred, who attended, etc.,) make findings on the relevant facts, and decide whether there is just cause for discipline. The hearing decision should describe the employee's prior disciplinary record, if any, and should state the disciplinary action to be taken. If the appointing authority has not conducted the disciplinary hearing, the management employee who conducted the hearing should forward the written decision as a recommendation that the appointing authority may accept or reject.

4. Discipline Imposed

In addition to a written warning, described above, the levels of possible discipline include a written reprimand, a demotion, suspension, or removal. A written reprimand is considered the second level of discipline in the progressive discipline system, and it is more serious than a warning. If the appointing authority is considering demoting an employee, the appointing authority must contact the Human Resources Department. If the appointing authority determines that an employee should be suspended, the dates of the suspension should be specified in the decision. The appointing authority should take the necessary steps to insure that the appropriate payroll entries are made. If the

appointing authority determines that the employee should be removed (terminated), the appointing authority must forward a copy of the decision to the Court Administrator.

Considerations in the imposition of discipline include the seriousness of the offense, the employee's disciplinary record, the employee's work history, and the treatment of other employees in similar circumstances. These considerations are part of a determination of whether "just cause" exists to impose discipline.

16.500 Discipline or Removal of Management Employees

Except as otherwise provided by statute, employees compensated through the Trial Court's management classification plan, and employees paid a statutory salary and performing management duties, whose behavior or job performance (including exercising appropriate judgment) is unsatisfactory may be disciplined or removed by the appointing authority. The discipline of most management employees is covered by an arbitrary and capricious standard and nothing in this policy is intended to alter that standard for such employees.

The appointing authority must provide a written explanation of the grounds for the proposed discipline, which may include a warning, suspension, probation, demotion or removal. The Human Resources Department is available to consult with appointing authorities as necessary.

For discipline above a written reprimand, the appointing authority must provide the employee with notice of the charges, hold an informal hearing with the employee within a reasonable time to discuss the behavior or job performance, discuss the proposed discipline and provide the employee with an opportunity to respond, either orally or in writing. If the hearing and/or the employee's written response does not resolve the matter, the appointing authority must make a final determination of the discipline to be imposed, if any. The appointing authority must forward a copy of the decision to the Court Administrator and place it in the employee's personnel file along with any response from the employee. If the appointing authority decides to remove (terminate) the employee, the employee shall be placed on paid or unpaid administrative leave as determined by the Human Resources Department pending the review by the Court Administrator.

16.600 Exceptions to Disciplinary Policy for All Employees

A. Employees in a Probationary Period.

During the probationary period, an employee may be removed without a hearing. However, the employee must be given a written notice of removal by the appointing authority, including Forms 21 and 22, and the notice of removal should contain a brief summary of grounds for removal. A copy of the notice of removal must be forwarded to the Court Administrator.

B. Union Employees Charged with Criminal Offenses

An employee who is indicted for misconduct in office (G.L. c. 30, Section 59) or who is the subject of a criminal complaint or indictment for a felony not alleging misconduct in office, shall be suspended without pay until the conclusion of the criminal proceeding. An employee who is the subject of a criminal complaint alleging a misdemeanor may be suspended without pay depending on the circumstances of the criminal complaint. The appointing authority must contact the Human Resources Department to discuss whether suspension is appropriate, or whether the employee may continue to work with or without specific conditions. The appointing authority must notify an employee who is suspended under this provision that the employee may ask to be heard on whether or not suspension is warranted, but such request shall not delay the imposition of the suspension. Following disposition of the criminal case, an employee may be subject to disciplinary action consistent with this section.

B.1 Management and Confidential Employees Charged with Criminal Offenses

1. Indictment or Criminal Complaint for a Felony or Criminal Complaint for a Misdemeanor

Upon notice that an employee has been indicted for a felony, or that an employee has been criminally charged with such a felony or criminally charged with a misdemeanor, the department head must notify the Human Resources Department as soon as possible but no later than two business days after the department head is notified. The Human Resources Department will gather information for the review of this matter by the Court Administrator and consult with the Legal Department as necessary.

Under this Manual, an employee who is the subject of a criminal complaint or indictment for a felony, shall be suspended without pay. An employee who is the subject of a criminal complaint alleging a misdemeanor may be suspended without pay depending on the circumstances of the criminal complaint.

The Court Administrator or designee, in consultation with the

department head, will decide, where applicable, whether to suspend the employee with or without pay, and whether to proceed with an internal investigation, and/or to await the results of the criminal case. The suspension may last until the conclusion of the criminal case, or the results of any internal investigation and the imposition of discipline for the conduct that resulted in the indictment or criminal complaint.

In making this determination, the Court Administrator or designee may consider, but is not limited to, the following factors:

- a. whether the alleged conduct occurred on or off duty;
- b. a reasonable belief that the employee engaged in conduct that violates Section 16.100(B)(7) of the Manual;
- c. the job responsibilities of the employee;
- d. the seriousness of the alleged conduct; and
- e. whether there are appropriate circumstances that would allow the employee to continue to work.

Unless otherwise determined, any suspension imposed is presumed to be under this policy.

2. Criminal Investigation

Upon notice that an employee is the subject of a criminal investigation by an outside law enforcement agency, the department head must contact the Human Resources Department as soon as possible but no later than two business days after the department head is notified. The Human Resources Department will gather information for the review of this matter by the Court Administrator and consult with the Legal Department as necessary.

The Court Administrator or designee, in consultation with the department head, will decide whether to suspend the employee, with or without pay, to proceed with an internal investigation, and/or to await the results of the criminal investigation and/or any criminal complaint that may issue.

In making this determination, the Court Administrator or designee may consider, but is not limited to, the following factors:

- a. whether the alleged conduct occurred on or off duty;
- b. a reasonable belief that the employee engaged in conduct that violates Section 16.100(B)(7) of the Manual;
- c. the job responsibilities of the employee;
- d. the seriousness of the alleged conduct; and
- e. whether there are appropriate circumstances that would allow the employee to continue to work.

3. Right of Employee to be Heard on Unpaid Suspension

A decision to suspend an employee without pay as a result of an indictment, complaint or criminal investigation is a separate personnel action from any discipline that results from the underlying conduct.

- a. An employee notified of a suspension without pay under paragraph B.1(1) above may ask to be heard, within 10 days of receiving notice of the suspension, on whether such suspension without pay is appropriate under the circumstances. A request for such hearing shall not stay the imposition of the suspension.
- b. An employee who has not yet been charged criminally is entitled to a hearing before being suspended without pay under B.1(2).

4. Investigation and/or Disciplinary Action Notwithstanding Criminal Charges or Investigation

Nothing in this Section limits the authority of the Trial Court to investigate or take disciplinary action against an employee consistent with the provisions of Section 16.000 of this Manual:

- a. while law enforcement is conducting an investigation of the employee's conduct;
- b. while criminal charges are pending against the employee;
or
- c. following the conclusion of the criminal matter regardless of the outcome.

5. Consideration of Backpay

A determination of whether an employee suspended without pay under Section 16.600B.1(1) or B.1(2) herein is entitled to back pay (minus interim earnings) will be made on a case-by-case basis. The Court Administrator, or designee, may consider such factors as:

- a. the sufficiency of the evidence that the employee engaged in conduct in violation of Section 16.100(B) of this Manual;
- b. the disposition of the criminal complaint or indictment;
- c. the employee's employment history; or
- d. any other factors deemed relevant to the analysis.

C. Administrative Leave with Pay

With approval from the Human Resources Department, an employee may be sent home and placed on administrative leave with pay. This administrative leave should be reserved for exceptional circumstances such as those cases where keeping the employee at the workplace hampers the operations of the court, impairs the orderly administration of justice or the investigation of the alleged misconduct, is a threat to the well being of the employee, other employees, or the public, or is necessary pending disciplinary action.

16.700 Appeal and Review of Disciplinary Action for Non-union Employees

A. Appeal and Review of Discipline

The procedures of this section apply to confidential and management employees. Employees covered by a collective bargaining agreement shall utilize the grievance provisions of their agreement.

- B. Except as otherwise provided by statute, the decision to remove or suspend for more than 2 days an employee must be approved by the Court Administrator, after review and recommendation by the Human Resources Department. The Human Resources Department may request additional information from the appointing authority and/or the employee to conduct its review. The Court Administrator will not approve the removal of an employee if such removal is deemed to be arbitrary or capricious or, in extraordinary cases, the removal decision was fundamentally unfair or inequitable. The Human Resources Department will notify the appointing authority and the employee of the results of the review.

- C. If the Court Administrator affirms the removal of an employee, the employee shall have the right to appeal such removal to the Advisory Committee on Personnel Standards as described in Section 16.800. The employee must request the appeal in writing within thirty calendar (30) days of receiving notice of their removal. Except for good cause shown, the Advisory Committee on Personnel Standards shall meet to review a termination within 60 calendar days of notification of the request.

16.800 Appeal to the Advisory Committee on Personnel Standards for non-Union Employees

The following rules shall govern all appeals to the Advisory Committee on Personnel Standards regarding the removal of officers and employees pursuant to G.L. c. 211B, s. 8:

A. General Provisions

1. Committee Responsibility

Upon notification by the Court Administrator that he/she has removed an officer or employee pursuant to G.L. c. 211B, s. 9A, or that he/she has made a written review of the decision of an appointing authority requiring the removal of an officer or employee pursuant to the provisions of this Manual, and that the officer or employee seeks review by the Committee, the Committee shall review the matter and shall vote to affirm or disaffirm the same as required by G.L. c. 211B, s. 8 and in the manner provided for in these rules.

2. Review by the Committee

Each member of the Committee shall receive a copy of the written decision made by the Court Administrator or appointing authority, including the written review made by the Court Administrator.

Any Committee member may also request and shall be given access to any other materials that are a part of the record before the Court Administrator or his/her designee or the appointing authority.

3. Personal Appearances before the Committee

An officer or employee who has served three full years in a position, appointment which is subject to the provisions of G.L. c. 211B, s. 8 has the right to appear personally before the Committee upon request to the Court Administrator. The Court Administrator will notify the employee of the date, time

and place of the appearance.

Other officers or employees have no right to personally appear before the Committee, and review of the discharge of such officer or employee will be made upon the written record.

An officer or employee who requests a personal appearance before the Committee may be represented by counsel or by a representative of his/her choice. The officer or employee or his/her representative shall be allotted 30 minutes to make his/her presentation to the Committee. Additional time for presentation in extraordinary circumstances may be granted by the Court Administrator in his/her discretion.

Following the presentation by the officer or employee or his/her representative, a representative of the Court Administrator shall be allotted that amount of time granted to the employee to make a rebuttal presentation to the Committee.

The Committee shall not hear any witnesses and no additional documentation shall be accepted, but the Committee retains the discretion to ask questions of the officer or employee or his/her representative or of the representative of the Court Administrator.

The Committee shall not be required to keep a record of the proceedings.

The appearance of the officer or employee before the Committee and the deliberations of the Committee shall be closed to the public and the press.

Following the conclusion of the proceeding, the Committee shall vote to affirm or disaffirm the removal. The officer or employee shall not be permitted to be present during the deliberation and the vote of the Committee.

4. Standard of Review

The Committee members shall review the written decision and written review by the Court Administrator, any other requested materials that are part of the record, and the presentation of an employee or counsel if permitted a personal appearance, and the presentation of the representative of the Court Administrator, if any.

After review of the record, the Committee shall approve the

removal unless the Committee finds that, under the circumstances at the time of the appointing authority's decision: (1) the removal decision was arbitrary or capricious or (2) in extraordinary cases, the removal decision was fundamentally unfair or inequitable. If the Committee does not approve the removal, the matter is remanded to the appointing authority (or designee) to determine appropriate discipline, if any.

5. Requirement for Meeting of Committee

In the case of a review by the Committee of a written decision and review regarding the removal of an officer or employee who is not entitled to appear personally before the Committee, the Committee members may conduct their review either as a group at a meeting called for that purpose or individually through written communications at the discretion of the Court Administrator.

6. Number of Votes Needed to Affirm Removal

The removal of an officer or employee shall be affirmed upon the concurring vote of a majority of those Committee members who participate in the review process and who are not required to recuse themselves as provided for in these rules.

All Committee members shall be sent notice and documentation of reviews pending before the Committee. However, no vote to affirm the removal of an officer or employee taken by a majority of Committee members who are not required to recuse themselves as provided for in these rules shall be invalid on the ground that fewer than all Committee members received actual notice of, participated in, or voted on said review.

7. Recusal of Committee Members

The Court Administrator may participate in the review, but shall not vote on the affirmation of any removal presented to the Committee.

Any Committee member who commenced the disciplinary action that culminated in the removal of an officer or employee or who exercised decision-making authority regarding the disposition of any step of the disciplinary or appeals process leading up to the removal of a particular officer or employee may participate in the review, but he/she shall not vote on the affirmation of the removal of that officer or employee.

Any Committee member who believes that he/she should recuse him/herself for other reasons should contact the Human Resources Department.

8. Form of Vote

In the event that the review by the Committee members is conducted on an individual basis through written communication, the vote of each Committee member participating in the review shall be recorded in writing and forwarded to the Court Administrator not later than 15 calendar days following the receipt by the Committee member of the written decision and review of the Court Administrator.

A vote to affirm the removal shall state that the Committee member has reviewed the written decision and portions of the record provided by the Court Administrator and determined that the removal was neither arbitrary or capricious nor, in extraordinary cases, fundamentally unfair or inequitable. A vote to disaffirm the removal shall recite that the vote to disaffirm is based upon the conclusion of the Committee member that the removal was arbitrary or capricious or in extraordinary cases, the removal decision was fundamentally unfair or inequitable.

In the event that the review by the Committee is conducted in a meeting, each Committee member shall be polled as to whether he/she has reviewed the written decision and portions of the record provided by the Court Administrator. Each Committee member shall vote to affirm the removal unless he/she finds that the removal was arbitrary or capricious or, in extraordinary cases, fundamentally unfair or inequitable. The name and vote of each Committee member shall be recorded, and a vote to disaffirm shall contain a recital that the vote was based upon the conclusion of the Committee member that the removal was either arbitrary and capricious or fundamentally unfair or inequitable in extraordinary cases. The votes so recorded shall become a part of the case file maintained by the Court Administrator.

The Court Administrator shall inform the employee in writing of the decision of the Committee, copies of which shall be sent to the Departmental Office/Commissioner, where appropriate, and the appointing authority.