

DIVISION OF HUMAN RESOURCES

3.3 POLICY ON GRIEVANCES

(a) Purpose and Scope

- (1) **Purpose.** The purpose of this policy is to establish a uniform policy for the resolution of grievances in the Maryland Judiciary.
- (2) **Scope**
 - (A) This policy applies to:
 - (i) employees who are paid through the Central Payroll Bureau of the Comptroller; and
 - (ii) employees of the State Board of Law Examiners, the Thurgood Marshall State Law Library, the Commission on Judicial Disabilities, and the Supreme Court of Maryland Standing Committee on Rules of Practice and Procedure.
 - (B) This policy does not apply to:
 - (i) locally funded employees in the circuit courts;
 - (ii) employees of the Attorney Grievance Commission and the Client Protection Fund;
 - (iii) employees of the Register of Wills or the Orphans' Court; and
 - (iv) justices, judges, magistrates, commissioners, law clerks and at-will employees as defined in the Policy on At-Will Employment.

(b) Definitions

- (1) **Administrative Head:**
 - (A) For the Supreme Court of Maryland, the Clerk of the Court for all employees under the Clerk's supervision and the Chief Justice for all other employees of that Court;
 - (B) For the Appellate Court of Maryland, the Clerk of the Court for all employees under the Clerk's supervision and the Chief Judge for all other employees of that Court;
 - (C) For the circuit courts, the Clerk of the Court for all employees under the Clerk's supervision and the County Administrative Judge for all state employees under their supervision;
 - (D) For the District Court, the Chief Judge of the District Court, the Chief Clerk, or the Administrative Clerk for all employees under their supervision;
 - (E) For the Administrative Office of the Courts (AOC), the State Court Administrator;
 - (F) For units, the head of the unit where the employee works; or,
 - (G) Any person who serves as the authorized designee, by express written designation, of any of the foregoing persons.
- (2) **Business Day** – A day on which the Maryland Judiciary is open for business.
- (3) **Conference** – A fact-finding meeting of the parties conducted by a conference officer.
- (4) **Conference Officer** – The person designated by the Assistant State Court Administrator of the JHRD to conduct a fact-finding conference.
- (5) **Director** – The person responsible for the overall operation of a department or office within the AOC, the District Court Headquarters, or unit.
- (6) **Employee** – Any person employed by the Maryland Judicial Branch of Government paid through the Central Payroll Bureau of the Comptroller, or employed by a unit, except justices, judges, magistrates,

commissioners, law clerks, elected officials, employees of a Register of Wills Office and at-will employees as defined in the *Policy on At-Will Employment*.

- (7) Employee Representative** – An individual chosen by the employee to represent them in the grievance process.
- (8) Grievance:**
- (A) An employee’s formal written complaint, which alleges a specific injury suffered by the employee, including a disciplinary action, as a direct result of the wrongful application or lack of application of a policy, regulation, procedure, or rule over which management has control.
 - (B) A “grievance” does not include a dispute about the following:
 - (i) A salary range assigned to a classification;
 - (ii) The amount or effective date of a cost-of-living adjustment, merit increase, Judiciary-wide pay increase or decrease, or furloughs;
 - (iii) The establishment of a classification;
 - (iv) The establishment of classification standards;
 - (v) Personnel decisions involving:
 - (I) recruitment and hiring;
 - (II) classification decisions related to an employee’s position;
 - (III) assignment, reassignment, or transfer when such decisions are necessitated by a reorganization of the unit, or when occurring in accordance with the *Policy on Reassignment and Transfer*; and
 - (IV) Probationary employees.
 - (vi) A midyear performance appraisal;
 - (vii) An annual performance appraisal, unless the appraisal has an overall rating that does not meet the minimum standards for that position;
 - (viii) A complaint alleging discrimination, harassment, or retaliation, or a failure to provide a religious accommodation;
 - (ix) A denial of a leave request, unless the employee is entitled to the absence by law, or the denial is a result of an incorrect calculation of leave balances by management;
 - (x) The placement of an employee in leave-without-pay status when the employee is absent without approval, or the employee is ineligible to use paid leave for the absence, or the employee does not have paid leave to cover the absence;
 - (xi) Any policy or section of a policy that specifically states it is not subject to a grievance action;
 - (xii) Any decision or action made, taken, or authorized by the Chief Justice of the Supreme Court of Maryland, the Chief Judge of the District Court, or the State Court Administrator; or
 - (xiii) An employee’s resignation.
- (9) Judiciary Human Resources Division (JHRD)** – The division within the AOC that is responsible for, but not limited to, the following functions for State employees in the Maryland Judiciary: human resources policy development, administration, and interpretation; talent acquisition; employment and orientation services; employee benefits; position classification and salary administration; and employer-employee relations.
- (10) Management Representative** – An individual chosen by the Assistant State Court Administrator of the JHRD, in consultation with management, to represent management in the grievance process.
- (11) Supervisor** – Any individual designated as a supervisor by the appropriate Administrative Head.

(12) Unit – The State Board of Law Examiners, the Thurgood Marshall State Law Library, the Commission on Judicial Disabilities, the Supreme Court of Maryland Standing Committee on Rules of Practice and Procedure.

(c) Policy Statement

This policy provides for the fair and impartial consideration and equitable disposition of grievances. All employees, supervisors, and management personnel are charged with the responsibility of making reasonable efforts to resolve any dispute informally and amicably, and without resorting to formal proceedings. An employee may present their grievance free from coercion, discrimination, interference, reprisal, or restraint.

Grievances and grievance conferences are confidential matters. The confidentiality requirements apply to anything communicated, exchanged, said, done, or occurring during a grievance or conference, whether oral or written, including discussions between a conference officer and any party or representative of any party, or witness before, during, or after the grievance is concluded, ad infinitum, except as otherwise stated in the confidentiality agreement signed by the participants in the grievance.

(d) Grievance Procedures

- (1) Informal Conference.** An employee and the supervisor shall, in good faith, confer to resolve the dispute informally. This informal conference period does not extend the deadline for filing a grievance.
- (2) Filing a Grievance and Representation.** An employee must file a grievance within seven (7) business days after the dispute arises. The grievance form may be filed in CONNECT for all current Judiciary employees and can be requested from the employee’s Administrative Head, the JHRD, or [here](#). The completed grievance form must be submitted to the Assistant State Court Administrator of the JHRD c/o Employee Relations and Compliance. The contact information is:

Judiciary Human Resources Division
Attn: Employee Relations and Compliance
187 Harry S. Truman Parkway
Annapolis, MD 21401
Fax number: (410) 260-1253
Email address: ER@mdcourts.gov

- (A) The completed grievance form must state, specifically and definitively, any disputed facts or additional facts that support the grievance with sufficient detail to allow management to respond to each disputed fact.
 - (i) The employee must confirm that an informal conference has taken place and applicable remedial actions were attempted.
- (B) The form shall state the specific remedy the employee seeks.
- (C) The official filing date for grievances filed by mail shall be the date postmarked. The official filing date for grievances filed by any other means shall be the date on which Employee Relations and Compliance in the JHRD receives the grievance form.
- (D) **Non-Compliance.** Failure by the employee to file a grievance in compliance with this policy constitutes the employee’s acceptance of the disciplinary action or other matter of dispute.

(3) Representation and Assistance

- (A) An employee may designate any one individual to act as an employee representative to assist and/or represent the employee in the grievance process and shall notify the JHRD of any such representative. However, a representative is not required.
- (B) The Assistant State Court Administrator of the JHRD, may designate any one individual to act as the management representative to assist and/or represent management in the grievance process.

(4) Initial JHRD Processing of a Grievance

- (A) If a grievance is timely filed but does not provide the information required in Section (d)(2)(A), then the JHRD may ask the employee to clarify such information within five (5) business days or face dismissal of the grievance.
 - (i) Any such request for clarifying information shall not serve to expand the scope of the grievance as initially filed.
 - (ii) The Assistant State Court Administrator of the JHRD may dismiss the grievance if this information is not submitted in the time provided.
- (B) If a grievance is filed in a proper and timely manner, then the Assistant State Court Administrator of the JHRD shall:
 - (i) Set the date, time, and place for a fact-finding conference, which shall take place within 30 business days after the JHRD's receipt of the employee's initial grievance form (if sufficiently specific) or supplemented grievance form (if the initial form was insufficiently specific);
 - (ii) Designate a conference officer to preside over the fact-finding conference. The Assistant State Court Administrator of JHRD may choose anyone to be the conference officer, however, special care should be taken to avoid a possible conflict of interest when designating the conference officer. The designation of the conference officer shall not be subject to dispute by the grievant or their representative; and,
 - (iii) Promptly notify the employee, the employee's Administrative Head, the management representative, and the employee representative of the date, time, and place of the fact-finding conference.
 - (iv) If a grievance is not timely filed, the JHRD shall dismiss it unless the employee shows exceptional circumstances, as determined by the Assistant State Court Administrator of the JHRD, for failing to meet the time limits. There is no appeal of a decision by the Assistant State Court Administrator of the JHRD to dismiss a grievance for untimely submission.

(5) Fact-Finding Conference.

- (A) Scope of Conference: A fact-finding conference shall be limited to examining only the disputed points, issues or matters the employee raised on the initial (or timely supplemented) grievance form that have not been resolved by informal conference. The conference officer shall not entertain any other issues or matters.
- (B) Confidentiality and Attendance at the Conference:

- (i) Conferences are confidential as required in Section (c). As such, they shall be closed to the public. Attendance at the conference is restricted to the following:
 - (I) the employee;
 - (II) the employee's representative (if applicable);
 - (III) the Administrative Head or their designee;
 - (IV) management's representative (if applicable);
 - (V) witnesses; and
 - (VI) the conference officer.
 - (ii) Notwithstanding the above, the conference officer, at their discretion, may allow the attendance of a limited number of non-participating Judiciary personnel for training purposes provided the employee and management have no objections.
- (C) Preparation for Fact-Finding Conference.
- (i) An employee shall be allowed up to four hours of work time to prepare for a fact-finding conference. An employee shall not suffer any loss of pay for time spent testifying at a fact-finding conference. No overtime will be paid, and no compensatory leave will be earned, in conjunction with preparing for a conference.
 - (ii) There shall be no written discovery (in the form of written questions, document requests, etc.) before the fact-finding conference.
- (D) Role of the Conference Officer
- (i) Factual Review Only. The conference officer is responsible for determining if the factual allegations on which the disciplinary action or other managerial action was based are true (i.e., if the burden of proof has been met). The conference officer shall not substitute their judgment for that of management by determining a different action would have been more appropriate based on the conference officer's own sense of fairness.
 - (I) If the conference officer determines the facts on which management's action was based are supported and true, then the conference officer must find in favor of management.
 - (II) If the conference officer determines the facts on which management's action was based are not supported or true, then the conference officer must find in favor of the employee.
 - (III) The conference officer is authorized to rule on all procedural matters and motions raised prior to and during the conference, to rule on all matters affecting the conduct of the conference, and to issue a written report on the findings and recommendation. The conference officer has the discretion to conduct the conference in any manner that will enable them to gather the facts needed for an informed finding and recommendation.
 - (IV) The conference officer, for good cause, and in consultation with the JHRD, or at the request of either party, may waive the time limits for holding a conference.
- (E) Conference Procedure
- (i) Opening statements by the parties are optional and, if given, should be brief.
 - (ii) Evidence may be presented, and witnesses may testify, on behalf of the employee and/or management. Witnesses shall be sequestered. The formal rules of evidence in Title 5 of the

Maryland Rules do not apply, but the conference officer may consult them in determining how to decide a disputed question.

- (iii) Closing arguments by the parties are optional, and, if made, should be brief.
- (iv) Failure by the employee to appear within 15 minutes of the starting time set for the fact-finding conference shall result in dismissal of the grievance. The dismissal will become final within three business days of the date of the conference unless, within that period, the employee shows good cause for failing to appear. The conference will be rescheduled if the conference officer determines the employee had good cause for failing to appear. The decision of the conference officer is not grievable.
- (F) Standard of Proof. The standard of proof in a fact-finding conference is a preponderance of the evidence. A preponderance of the evidence means to prove that something is more likely so than not. If the evidence is evenly balanced on an issue, then the finding on that issue must be against the party who has the burden of proof.
- (G) Burden of Proof. Management has the burden of proof if the grievance involves a disciplinary action. The employee has the burden of proof in all other grievances.

(6) Conference Officer's Written Report

- (A) Within 10 business days after the date of the conference, the conference officer shall submit a written report of their findings and recommendation to the Assistant State Court Administrator of the JHRD. The Assistant State Court Administrator of the JHRD will then submit the report, as soon as possible, to the State Court Administrator (for an employee who does not work in the District Court) or the Chief Judge of the District Court (for an employee who works in the District Court) for their review and final decision.
- (B) The conference officer shall determine and state in the report whether the preponderance of the evidence supports the facts on which the grieved disciplinary action or other managerial action was based. The conference officer's report shall recommend upholding the grieved action if the preponderance of the evidence supports it and shall recommend not upholding the grieved action if the preponderance of the evidence does not support it.
- (C) The conference officer's findings and recommendation are not final and are not available to the parties. Only the decision of the State Court Administrator or Chief Judge of the District Court is final and available to the parties.

(7) Review of the Report and Final Decision

- (A) The State Court Administrator (for an employee who does not work in the District Court) or the Chief Judge of the District Court (for an employee who works in the District Court) shall render a final decision within 20 business days from receipt of the conference officer's report and notify the Assistant State Court Administrator of the JHRD of the decision. The final decision may:
 - (i) Adopt the conference officer's report in its entirety;
 - (ii) Reject the conference officer's report in its entirety;
 - (iii) Accept the conference officer's report in part and reject it in part; or,
 - (iv) Remand the matter to the conference officer for further proceedings if additional questions of fact need to be addressed. If the matter is remanded, a conference shall be held within 30

business days of the remand directive. The time periods set forth in this policy for rendering an initial decision shall apply to any subsequent decision on remand.

- (B) After reviewing the conference officer's report, the State Court Administrator (for an employee who does not work in the District Court) or the Chief Judge of the District Court (for an employee who works in the District Court) may take whatever remedial action they deem appropriate if they conclude the management decision that was grieved was inconsistent with the facts or Judiciary policy.
- (C) The Assistant State Court Administrator of the JHRD will notify, in writing, the employee and their representative, and the Administrative Head and their representative, of the final decision. The decision of the State Court Administrator or the Chief Judge of the District Court is final and not subject to further administrative review.

(e) Designees: The Administrative Head, Assistant State Court Administrator of the JHRD, State Court Administrator, or the Chief Judge of the District Court may designate any Judiciary employee to serve or act on their behalf in any matter pertaining to this policy.

(f) Filing a Complaint when Discrimination or Retaliation is Alleged

An employee who believes they have been discriminated against or retaliated against may file a complaint under the Judicial Branch *Policy Prohibiting Discrimination, Harassment, and Retaliation*.

(g) Mediation. Nothing in the policy prohibits the use of mediation services provided by the Judiciary, if agreed to by both parties.

(h) Exceptions. The Chief Justice of the Supreme Court of Maryland or the State Court Administrator may make exceptions to this policy.

(i) Interpretive Authority. The JHRD is responsible for the interpretation of this policy.

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