



PERSONNEL MANUAL



Federal Public Defender Northern District of Texas

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Federal Public Defender
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FEDERAL PUBLIC DEFENDER Northern District of Texas

This manual was developed for the purpose of providing a written guideline of your responsibilities and to give you a clear definition of office policies.

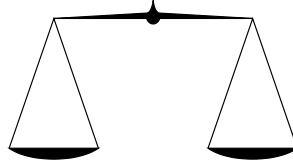
The contents of this Manual are informational and are intended solely as a guide. Where applicable, the reference authority is cited. In the event of any contradiction between this Manual and any statutory authority or rule or guideline issued by the Administrative Office of the United States Courts or other appropriate regulating authority, that statutory or regulating authority would, of course, control.

The language used in this Manual is not intended to constitute or create, nor is it to be construed to constitute or create, the terms of an employment contract between the Office of the Federal Public Defender and any of its employees.

The terms and provisions contained herein are subject to change upon notice. Should you have any questions concerning any of the information contained herein, please contact the Administrative Officer (who will be referred to as the Administrator throughout the personnel manual) or Federal Public Defender (who will be referred to as Defender throughout the personnel manual).

Jason D. Hawkins
Federal Public Defender

**Federal Public Defender
Northern District of Texas
Mission and Goals Statement**



Mission Statement

The mission of the Federal Public Defender of the Northern District of Texas is to ensure that the right to counsel guaranteed by the Sixth Amendment, the Criminal Justice Act (18 U.S.C. 3006A), and other congressional mandates is enforced on behalf of those who cannot afford to retain counsel and other necessary defense services. In fulfilling our mission, the Federal Public Defender Organization helps to maintain public confidence in the commitment to equal justice under the law and to ensure the successful operation of the constitutionally-based adversary system of justice by which both federal criminal laws and federally guaranteed rights are enforced.

Goals

Goal 1: Provide timely assigned counsel services to all eligible persons.

Goal 2: Provide appointed counsel services that are consistent with the best practices of the legal profession.

Goal 3: Provide cost-effective services, limiting increases in cost to those due to inflation and those necessary to respond to changes in the law or changes in prosecutorial, judicial, or law enforcement practices.



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CHAPTER 1

OFFICE HOURS AND GENERAL POLICIES

1. OFFICE HOURS

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OFFICE HOURS AND GENERAL POLICIES

1. OFFICE HOURS

1.1 - Office Hours: The general office hours for Dallas, Lubbock, Fort Worth, and Amarillo Offices are 8:00 a.m. to 5:00 p.m., Monday through Friday, except for legal holidays or approved administrative leave by the Chief Judge and/or Federal Public Defender or the defender's designate. At a minimum, employees are required to work, take leave, or combine work and leave to add up to 8 hours per day (with exception for part-time staff), Monday through Friday. All full-time staff are required to work, take leave or combine work and leave to add up to 80 hours (less for part-time employees as scheduled) per the bi-weekly pay period. Certain staff will be required to adhere to more formal starting and ending hours for the work day so that coverage of phones is accomplished and hearings are attended within the general office hours. We also recognize that certain staff will need more flexible starting and ending time and will allow flexible times of work as needed within the required 80 hours per the bi-weekly pay period. Leave Supervisors will be able to grant flexible work hours as needed and can consult with either the Defender or Administrator before such flexible schedules are granted.

The official start of the day will be the time the staff person arrived at the duty station or the time the staff person arrived (travel time does count as work time while on official defender business) at the non-duty station to start a day (for example, prison, jail, courthouse, or other location that the staff person uses as his or her starting time for a day). Attendance at a training seminar will be counted as an 8 hour work day if the person is out of the office or on travel for training purposes (both sponsored AO and DSO, Defender Services Office. training and other educational training), unless otherwise noted by the Federal Public Defender (see also policy on administrative leave for training).

The Federal Employee's Pay Act of 1945 [5 U.S.C. §5504(b)] establishes a work week of 40 hours. You are entitled to either a morning and afternoon break of 15 minutes each and one hour for lunch, or lunch of thirty minutes with no morning or afternoon break. Other lunch arrangements of greater (used sparingly) or less than one hour or greater or less than 30 minutes may be used as long as coverage on phones is maintained and appointments are met, and an eight hour day is worked or combined with leave to equal eight hours for the day (with exception for part-time staff and scheduled work

time). Lunch periods should also be staggered so that at least **one staff member** will be present in the office at all times during the work day **to answer telephones and greet clients or the public (certain exceptions may apply with Defender or Administrator approval)**. Bathroom breaks are not chargeable to 15 minute breaks, but bathroom breaks should be used sparingly during the work day.

1.2 - Attendance Certification: (A) Daily Attendance Employee attendance shall be monitored each work day through the **Electronic Leave Management Resources (ELMR)**. Employees in travel status, in the field, or in court are responsible for notifying their respective duty station office of their location and status by 8:45 a.m. of the work day (Employees can do this by calendaring their whereabouts on the computerized calendar e-mail system). See Internal Controls, personnel and payroll functions, specifically for time and attendance tracking.

(B) Biweekly Attendance Certification For audit purposes, and to affirm entitlement to full pay and benefits for each preceding pay period, each salaried employees' time and attendance records (located in ELMR) must be certified/approved to by a leave supervisor (reassignments may occur on a temporary basis) assigned to a specific staff person. Finalization of the Biweekly Time and Attendance by each staff person in the ELMR program constitutes an affirmation by that employee that he or she has checked the number of hours worked (or approved leave taken) for a minimum of eighty (80) work hours (excepting official holidays or administrative closing of Court) during the preceding pay period. The Federal Public Defender or designated alternate certifying officer will not certify the biweekly Pay Certification Control List prior to receiving the information from the time and attendance program in ELMR that all of the leave supervisors have approved/certified their staff's time and attendance bi-weekly records.

1.3 - Holidays: The following legal holidays are observed:

- **New Year's Day** (January 1 or Observed Federal Holiday)
- **Martin Luther King's Birthday** (Third Monday in January)
- **George Washington's Birthday** (Third Monday in February),
also known as President's Day
- **Memorial Day** (Last Monday in May)
- **Independence Day** (July 4 or Observed Federal Holiday)
- **Labor Day** (First Monday in September)
- **Columbus Day** (Second Monday in October)
- **Veteran's Day** (November 11 or Observed Federal Holiday)
- **Thanksgiving Day** (Fourth Thursday in November)
- **Christmas Day** (December 25 or Observed Federal Holiday)

Whenever one of the legal holidays falls on Saturday or Sunday, the office is closed on the Friday immediately preceding or the Monday immediately following the holiday, whichever is closer.

The Office of the Federal Public Defender will remain open at all times other than the above holidays unless the Chief Judge (or the senior active judge in the division) directs the closing of the

Court for administrative reasons. In the event of administrative closing of the courts by the Chief Judge (or the senior active judge in the division), administrative leave will be granted.

2. GENERAL POLICIES-

2.1 - Confidentiality: The Office of the Federal Public Defender functions as a law office, and, as such, client case files and records are confidential. Closed case files may not be released without the written consent of the Assistant Federal Public Defender assigned to the case. The AFPD must place a copy of the release form in the file cabinet where the closed file was stored. Open case files may not be released. Confidentiality of all matters pertaining to client representation is essential, and discussion of cases with family members, friends and others should be avoided. No client address or telephone number will be given out without the approval of the Assistant Federal Public Defender representing the client.

There will be occasions when meetings with clients, prosecutors, other attorneys, agents or probation officers are held at the Federal Public Defender office. Because of the requirement for confidentiality, every effort should be made to ensure that the general office areas are kept secure. Visitors should be escorted at all times, and should be taken directly to a private attorney office or a conference room. At no time should anyone who is not a member of the staff be allowed to roam freely through the offices where they might be in a position to overhear confidential communications, telephone conversations, or case-related discussions. Additionally, the staff should make every effort to confine such discussions or communications to areas which can reasonably be expected to be secure. Solid wooden doors on each private office serve the dual purpose of ensuring privacy and reducing general office noise, please utilize them.

2.2. - Dress Code: During business hours, this office functions as a law office and all employees come in contact with clients, other attorneys, and the general public. Accordingly, all employees are to wear appropriate attire in keeping with the professional nature of the office. All attorneys, investigators, and paralegals are expected to have clothing suitable for court appearance readily available.

2.3. - Employee Identification Credentials: Each employee may be issued identification credentials to be used in conjunction with their official duties. The Administrator will arrange through the Administrative Office of U. S. Courts for issuance of IDs to Assistant Federal Public Defenders, and for badges for investigators. If needed, the Administrator will arrange through the Clerk of the U. S. District Court for issuance of a photo ID for all other permanent personnel. Currently, each defender office has their own building card (with the exception of the Amarillo Office), and each office will be responsible for having issued appropriate credentials as required by the building authority. All credentials issued are accountable items and the Administrator must be notified immediately in writing if employee credentials are lost. Upon an employee's resignation or termination of employment, all employee identification credentials must be turned in to the Administrator or accounted for

before final paperwork can be processed.

2.4. - Gifts: Accepting gifts or gratuities from clients and/or their families is contrary to the function of this office. To avoid any appearance of impropriety, they should be refused. Unsolicited perishables (food, flowers, or similar items) or personalized items of a nominal value may be retained if return is impractical or if the return would be offensive to the client. A memo must be forwarded to the Defender advising of the circumstances of the receipt.

2.5. - Housekeeping: All employees are encouraged to assist in maintaining the office in a manner ensuring that a professional appearance is presented to clients at all times. Each employee is responsible for the neatness and cleanliness of his own work area and dusting his/her desk. Personnel using the break room are responsible for cleaning up after themselves. The General Services Administration (directly or through lease agreements) is responsible for overall cleaning and trash removal.

(i) Case files: Attorneys are responsible for maintaining orderliness and internal coherence of case files in all cases to which they are assigned. All internal documents should be coherently arranged and permanently affixed in the file prior to file closure. Court dates and times should be recorded on the front of the printed client files. **As of issuance of this personnel manual, no Federal Public Defender case file may be disposed of or shredded until the Administrative Office of the United States Courts issues a directive on disposal of Federal Public Defender case files.**

2.6 - Library: All library books are inventoried items, and must be accounted for. Accordingly, no books are to be taken off the premises unless signed out with the library custodian or paralegal. Library materials should not be left in individual offices, it is very time-consuming and disruptive to have people going office-to-office inquiring if a volume is out of the library. **Library users** shall shelve all materials at the earliest opportunity for the convenience of other users. The library conference table should not be used to store reference materials for ongoing research projects. If you are using library materials and are called away **temporarily**, you should leave your name, date, and time of day on a slip of paper on top of the materials you are using. Library custodians should shelve all newly-received library materials at the earliest opportunity. The library custodian or paralegal is responsible for maintaining library inventory.

It is the policy of the Federal Public Defender office to provide assistance to CJA Panel attorneys who are representing indigent defendants. Accordingly, CJA attorneys are granted use of the library, including permission to make reasonable copies, to the extent that it does not seriously interfere with the operation of the office. CJA attorneys, however, may not remove books from the premises under any circumstances. **Use of the library by other than Federal Public Defender staff and CJA attorneys in court-appointed cases is prohibited.**

2.7 - Mail: The mailing address of the office is for official

use only. The office address should not be used for personal correspondence unrelated to an employee's employment. Special attention should be paid to letters indicating that the contents are "legal mail" and subject to confidential handling to ensure that the contents are actually privileged communications subject to the privilege. Mail is often **time-critical** and should be stamped with the date of receipt by the party opening the mail. Refer to Standard Operating Procedures for mail policies (a copy is with the primary and alternate mail operator).

2.8 - Malpractice and Personal Injury Claims: The federal government does not insure employees for claims against employees acting in their official capacities, but will in most circumstances provide legal representation for an attorney who is accused of malpractice in the course of his or her employment, or for any employee against whom a claim is made for injury arising out of the course of his or her employment. If you receive notification of a potential claim against you for any reason in connection with your employment, you must notify the Defender immediately so that a decision may be made concerning legal representation. Failure to notify the Defender could result in your having to pay legal expenses from your personal funds.

The Federal Tort Claims Act provides that the Government is solely liable for injuries and property damage that results from the negligent or wrongful acts or omissions of its employees acting within the scope of employment. This is true whether the automobiles are personal, leased, or GSA, driven by government employees in the course of their employment. A federal employee who is injured during official travel may apply for benefits under the Federal Employees' Compensation Act, 5 U.S.C. §8101 et seq. The application is considered by the local Office of Federal Workers Compensation Programs, an agency of the United States Department of Labor.

If an employee becomes injured in his/her official working capacity, said employee should contact the Administrator who will issue Federal Worker's Compensation forms to be completed by the injured employee. Once the forms are completed the forms will be sent to the Human Resources Department of the U.S. Courts whereby processing and a claim number will be issued. Information will be forthcoming from the Office of the Worker's Compensation Program (an agency of the U.S. Department of Labor) and the Human Resources Department of the U.S. Courts as to the approval of the claim.

2.9 - Office Security: Hallway entrances and exits, other than one public entrance, must be kept locked except during business hours. The last individual physically present in the office at the close of business should double check that all doors are locked before leaving. Keys are accountable, inventoried items. Keys must not be loaned and, if a key is lost or stolen, the Administrator must be notified. All keys are to be turned in to the Administrator or designated staff person in that office upon the employee's resignation or termination of employment. Telephone numbers of security (if you are in a Federal Building), police, and fire should be kept and known by each office staff person (usually 911 will put office staff in contact with police and fire resources). The main Federal Protective Service number is 1-877-437-7411 (Denver Control

Panel Dispatch, 24 hour service). The Agency Recorded Message Announcement (ARMA) will be utilized for all emergency situations of building closures and in reference to Continuity of Operations, the number is 1-866-673-8336.

2.10 - Political Activity: Canon 7 of the Code of Conduct for Federal Public Defender Employees stipulates that a Federal Public Defender Employee should refrain from inappropriate political activity. A defender employee should not be a candidate for or hold partisan elective office and should not solicit partisan political contributions. A defender employee should not engage in any political activity while on duty or in the defender employee's workplace and may not utilize any federal resources in any such activity. Political activity includes, but is not limited to displaying campaign literature, badges, stickers, signs or other items of political advertising on behalf of any party, political committee, or candidate for political office and soliciting signatures for political candidacy or membership in a political party.

A defender employee may engage in political activity not otherwise prohibited, provided that such activity does not detract from the dignity of the office or interfere with the proper performance of official duties. A defender employee who participates in political activity should not use his or her position or title in connection with such activity. Note: See also 18 U.S.C. Chapter 29 (elections and political activities).

2.11 - Smoking Policy: Smoking in the Offices of the Federal Public Defender is controlled in federal buildings by building policy. In private space it is a majority decision of the office personnel or the building requirements in terms of no smoking.

2.12 - Telephones: Use of FPD Phone lines is for business purposes.

Any personal calls (either receiving or sending) using the office's phone lines shall not interfere with official business and shall be kept to a minimum during official business hours. Certain staff have an office (FPD) phone card (currently with AT&T Network) and it is to be used for long distance calls when away from the office in reference to FPD business or for teleconferencing (more than three callers, our local phone system will handle three callers). Notify the Defender and Administrator when teleconference calls have to be made so that the Defender and Administrator can budget for the usage. Personal telephone calls are not to be made on the office phone card issued.

Collect calls from clients, except in true emergencies, is strongly discouraged. It is the responsibility of the attorneys, investigators, and paralegals to explain this policy to clients and to encourage them to write or call at their own expense. We also note that in some circumstances that we have to weigh the costs between travel and allowing collect calls from inmates in reference to accomplishing attorney representation. Scheduling issues at the jails that don't work with the attorney's representation can be taken into account when having to accept inmate collect calls in reference

to attorney/client privileges. (See new policy below in reference to inmate calls)

A new policy from the Office of Defender Services and the Bureau of Prisons allows each inmate to have up to 300 minutes a month of toll free inmate calls to FPD offices. While saving both the FPD office and the inmate costs of the call, staff need to be aware that the Inmate Telephone System (ITS) subjects the calls to monitoring, irrespective of whether the call is to an attorney. Calls received via ITS (Inmate Telephone System) should not consist of sensitive or strategic information exchange, but should only be used to update the inmate of his/her case on matters that are already public record. Calls initiated by the inmate's counselor or collect call are still available for transmitting attorney/client information, just have the inmate tell the BOP that the call is in reference to attorney/client privilege when the inmate is requesting a call to his/her attorney and needs to be a non-monitored call, non-ITS call, which may be in all instances a collect call to the FPD office.

2.13 - Office Equipment: All office equipment is inventoried, and should be maintained in the places designated therefor. Breakage or loss should be reported to the Administrator as soon as possible. All equipment must remain in the building unless signed out with the property designee (Custodial Officer). Certain types of equipment (*e.g.*, Blackberry, laptop, digital camera, etc.) may be "permanently" assigned to particular employees. Proper maintenance and storage of permanently assigned equipment is the responsibility of the employee to whom it is assigned.

2.13 (a) Computer diskettes, compact discs, DVDs (computer associated) brought into the office from outside sources **must be scanned for viruses before used** in government machines.

2.13 (b) Personal Use of Government Office Equipment: Judiciary employees are permitted limited use of government office equipment for personal needs if such use does not interfere with official business and involves minimal additional expense to the government. The limited personal use of government office equipment should only occur during employees' non-work time. This privilege to use government office equipment for non-government purposes may be revoked or limited at any time by the Defender and the Administrator (if designated). This policy does not affect employee's use of government office equipment for official business.

Judiciary employees are specifically prohibited from using government equipment in furtherance of a private business. However, employees may, for example use government office equipment to review Thrift Savings Plans or other personal investments; to monitor medical, dependent, or commuter savings accounts; to seek employment; or to communicate with volunteer charity organizations. In using government office equipment for limited personal purposes, employees must, at all times, avoid giving the impression that they are acting in an official capacity. If there is a potential that such limited personal use could be interpreted to represent official business of the judiciary, an adequate disclaimer must be used such as, "The contents of this message are personal and do not reflect any position of the judiciary or the court". Further, judiciary employees shall not lend the prestige of their offices to advance or appear to

advance the private interests of others.

Inappropriate Personal Use includes the following:

any personal use that could cause congestion, delay, or disruption of services to any government system. Examples include, but are not limited to use of greeting cards, video, sound or other large file attachments, "push" technology on the Internet and other continuous data stream uses unless approved by the Defender;

attempting to gain unauthorized access to other systems;

creating, copying, transmitting, or re-transmitting chain letters or other unauthorized mass mailings, regardless of subject matter;

Using equipment for activities that are illegal, inappropriate, or offensive to fellow employees or the public, such as hate speech, or material that ridicules others on the basis of race, creed, religion, color, gender, disability, national origin, or sexual orientation;

creating, downloading, viewing, storing, copying, transmitting, re-transmitting sexually explicit or sexually oriented material;

creating, downloading, viewing, storing copying, transmitting, or re-transmitting material related to illegal gambling, illegal weapons, terrorist activities, and any other illegal or prohibited activities;

using equipment for commercial activities or in support of commercial activities or in support of outside employment or business activity, such as consulting for pay, administering business transactions, or selling good or services;

using equipment for fund-raising activity, endorsing any product or service, participating in any lobbying activity, or engaging any prohibited partisan political activity;

posting judiciary information to external news groups, bulletin boards, or other public sites without authority, including any use that could create the perception that the communication was made in an official capacity as a judiciary employee, and public statements at variance with the judiciary mission or position;

using equipment in a manner that results in loss of productivity, interference with official duties, or greater than minimal additional expense to the government; and

acquiring, using, reproducing, transmitting, or distributing without authorization any controlled information. Controlled information includes propriety data subject to the intellectual property rights of others, such as copyright, trademark or other rights (beyond fair use), as well as computer software and data, e.g., export controlled software or data.

Management and Sanctions for personal use of government

property: Unauthorized or improper personal use of government office equipment may result in loss of the privilege, limitation of the privilege, disciplinary or adverse actions, criminal penalties, or financial responsibility for the costs of improper use. (Refer to J-Net "Personal Use of Government Office Equipment", as approved by Judicial Conference of the United States, September 24, 2002).

2.14 - Client Property: Client property should not be voluntarily accepted. When unavoidable, client property may be temporarily retained. In such cases, the attorney assigned to represent the client shall be personally responsible for the temporary storage and maintenance in the office space assigned to them. Common areas are not to be used for the storage of personal property of clients, witnesses, etc. Attorneys are encouraged to have clients make and sign property inventory forms at the time the property is turned over and return receipts provided when property is returned.

2.15 - Reimbursement for Travel, Per Diem, Out-of-Pocket Expenses: Reimbursement for government related travel will be on the basis of actual cost substantiated by receipt up to the maximum per diem allowable for the particular city visited. Travelers are urged to share rooms where appropriate to reduce government travel costs. Applications for reimbursement for travel, per diem, and out-of-pocket expenses will ordinarily be accepted immediately upon return from overnight travel. Airplane tickets and hotel receipts must be submitted with all requests for reimbursement for the same. All employees who engage in case-related or administrative travel are responsible for maintaining accurate, complete and up-to-date travel records. A monthly travel recording sheet has been provided to each attorney. Investigators are responsible for keeping detailed records of their time, travel, and expenses. Such completed records shall be provided to the employee designated to prepare monthly expense vouchers. Such record shall be copied by said employee and retained in the office records.

(i) Overnight Travel, Air Travel, and Per Diem Requests: All overnight travel, air travel, and per diem requests must be **pre-approved** by the Federal Public Defender (or his designate in his absence). Travelers are encouraged to use government issued credit cards rather than requesting travel advances. Government issued credit cards are **never to be used for personal credit outside the scope of government related travel** and are **expected to be paid in full the month of receipt**.

Travel days for either appellate arguments, administrative matters, educational pursuits, and investigations may be done within sufficient time to get parties to their destination during normal working hours and returning persons should report back to work if they arrive within an **hour** of their normal working time.

If appellate arguments are scheduled for the morning session, flights may be taken late in the afternoon the day before the argument and attorneys are expected to return to work within a reasonable time period, considering the transportation schedule, the

following afternoon. When arguments are set before the court of appeals in afternoon sessions, travel should be accomplished in one day with no overnight stay, unless permission for an overnight stay is approved by the Federal Public Defender or his designate. **Shuttles shall also be utilized to the advantage of the Government whenever possible.** Naturally, if you desire to take personal hours you may do so, with prior approval, in conjunction with this policy.

(ii) Out-of-Pocket Expenditures: Employees may incur nominal case or office-related out-of-pocket expenses without pre-approval of same and as soon as known (the cost of out-of pocket expenditure) employee will send an e-mail or other notification to the Administrator so that the out-of pocket expenditure can be logged internally as an obligation and approved. Excepting emergencies, nominal expenditures should not exceed \$50. Expenditures exceeding \$50 must be pre-approved by the Federal Public Defender or his designate (Administrator or signatory authority for vouchers). Employees must retain receipts for all out-of-pocket expenditures and provide them to the employee designated to prepare monthly expense vouchers. The receipt shall be attached to the public voucher.

(iii) Air Travel: Each traveling employee should familiarize him/herself with the general rules governing air fares, air ticket acquisition, use of frequent flier benefits and related matters. A complete copy of the travel rules is posted to the FPD web page. In addition to these rules, all airline tickets should be purchased using a federal credit card account assigned to this office or to employees personally. Airline tickets may be purchased through designated travel agency of Administrative Office of the U.S. Courts. Travelers may make their own airline reservations in emergencies or as approved, but must provide said reservation and fare information to the Administrator for official confirmation. All air ticket receipts must be retained by the traveler and attached to his/her travel record, and provide the same to the employee designated to prepare monthly expense vouchers. Travelers who do not comply with the general rules governing travel and the more specific rules herein may be held personally liable for loss, or expenses incurred in excess of that which the rules authorize. All travel receipts must be turned over to the person designated to prepare travel vouchers within **30 days** after official Federal Public Defender travel has ended.

2.15(a) Approval of Travel Vouchers for the Federal Public Defender (Only): By order of the Chief Judge of the U.S. Court of Appeals, 5th Circuit and by delegation to the Staff Attorney's Office of the 5th Circuit, approval of the travel vouchers submitted by the Federal Public Defender shall be done by the Staff Attorney of the US. Court of Appeals. The Federal Public Defender shall not approve of his or her own travel voucher. All travel vouchers for the Federal Public Defender will be sent to the appropriate approving agent as directed by the Chief Judge of the US Court of Appeals for the 5th Circuit.

2.16 - Notification to Legal Assistant Staff of Out-of-Office Travel: All employees who engage in out-of-office travel during normal business hours are responsible for notifying legal assistant

staff of their expected itinerary, and how they may be contacted in an emergency. If, due to the particular circumstances of travel, the employee is unable to provide an emergency contact method, the employee shall telephone the office at least once during the day.

2.17 - Procurement and Disbursement Procedures: Refer to Internal Controls for Procurement and disbursement procedures in relation to FAS4T security. Refer to the Guide on Judiciary Policy (located on the J-Net) on Procurement thresholds for GSA and open market requirements.

2.18 - Expenditures for Expert Services: Employees may not obligate funds for case-related expert services without first receiving written authorization from the Federal Public Defender or his designated alternate. To initiate this process, when an Assistant FPD determines that expert services are needed for a case, the AFD shall fill out a "Request/Approval to Expend Funds for Expert Services" (a form is located in internal controls and local office word perfect macro). If the expenditure is authorized, the "Request" form will be given to the Administrator who will record that the funds are obligated for this purpose. No expert is to be hired prior to receiving signed authorization from the Defender. After receiving authorization, the case attorney (AFPD or paralegal) will work with Contracting Officer in drafting the statement of work, setting forth the service expected, the maximum amount authorized, and the expected date of completion (contact the Contracting Officer(s) as they are the only person(s) authorized to sign the contract/agreement and have the contract attachments that must be sent to the expert before any work is performed) (AFPD's can no longer sign any agreement). Every employee should familiarize him/herself with this office's standard written procedure.

2.19 - Utilization of Subpoenas: Assistant Federal Public Defenders must comply with the requirements of Fed. R. Crim. P. 17 for the issuance of subpoenas. It is the policy of this office that ex parte, under seal judicial authorization is required prior to issuance of subpoenas duces tecum or defense fact-witness subpoenas for witnesses.

2.20 - Conduct of Federal Public Defender Investigators: The conduct of Federal Public Defenders is governed by the Investigator's Code of Conduct, all applicable provisions of this Personnel Manual, and by specific internal office memoranda relating to investigators' conduct. In addition to these directives, it should be clear that Federal Public Defender investigators are not authorized to carry firearms and that they are not authorized to perform any law enforcement function. The badge and identification documents issued to Federal Public Defender investigators shall not be used to induce the belief that the investigator has law enforcement authority. Finally, Federal Public Defender investigators must, at all times, never mislead potential witnesses about their identity or themselves and their function. Leaving business cards with interviewees is highly recommended.

2.21 - Drug-Free Workplace Policy. It is the policy of the judiciary for workplaces to be free from the illegal use, possession, or distribution of controlled substances (as defined in the Controlled

Substances Act, 21 U.S.C. §§ 811-812) by officers and employees. Violation of this policy may be a basis for initiation of disciplinary procedures. The policy's primary goal, however, is to ensure that illegal drug use is eliminated and that workplaces be safe, healthful, productive, and secure.

2.22 - Internet Usage and Social Media. Internet usage should be restricted as much as possible to work related activities. Internet web sites and chatting networks that could cause embarrassment to the office shall not be visited. If a case involves a web site or chatting network that is sexual in nature and it is imperative that the site or network must be investigated, the employee will inform through written medium (e-mail, memo, etc.) the Defender, Computer Systems Administrator, and the Administrator before the employee visits the site or chatting network of the visit to the site or chatting network. The documented information will then be kept on file. Confidential information shall never be sent via Internet e-mail. Internet e-mail is sent text format and can be read by anyone as it passes through each computer.

The internet and social media networking pose unique challenges for defender staff. Staff are reminded of your ongoing duty of confidentiality and the importance of keeping all information confidential until it is officially released by the court or defender office. Staff should use common sense in your online activities. Think before you post and assume that nothing is private. Although staff may engage in blogging, social networks and other online activity, none of the posts or messages may relate to the law, politics, or work or workplace related information. Finally, staff should exercise discretion in identifying yourselves in any way with the Federal Judiciary or the Federal Public Defender Office of the Northern District of Texas. Staff should remember that any such identification reflects on the courts and this office could be interpreted as speaking on behalf of the court or the defender office.

2.23 - Performance Evaluations. All staff will be given a performance evaluation on their entry on duty date anniversary or Wage in Grade date (graded staff) or annual performance raise date (non-graded staff), as applicable. The review will cover goals and accomplishments of staff during the year as well as any issues that need to be addressed in reference to performance and/or attitude. The staff person's input on their performance will also be requested.

2.24- Judiciary Telework Program. After careful consideration, the Defender has decided that the Judiciary Telework Program is incompatible with the nature of the federal defender mission in this district and the policy currently for the defender office is to have no telework program. **However, the Defender and Administrator note that the COOP (continuity of operations) plan does have a telework program for staff and has the forms for staff to utilize should a COOP have to be used.**

2.25- Background Checks and Investigations of Employees.

References to the new policy of background checks and investigations are "Guide to Judiciary Policy, Volume 12: Human Resources, Chapter 5 : Employment". There are three categories of position sensitivity designations, 1) Sensitive, 2) Non-Executive High-Sensitive, and 3) Executive High-Sensitive. **Sensitive** positions include all positions held by federal public defender staff that are not non-executive high-sensitive or executive high-sensitive positions. **Sensitive** positions also include all *volunteers and contractors (with special exception for interpreters that don't appear in court, are not required to have their fingerprints taken)* with duties that would otherwise be performed by defender employees. Staff in **sensitive** positions would undergo a technical fingerprint search of the criminal history records maintained by the FBI Criminal Justice Information Services Division. Optional checks for sensitive positions may include a credit check as determined by the Defender (refer to references above for more information). **Non-Executive High-Sensitive** (NEHS) include the positions of administrative officer, computer systems administrator, assistant computer systems administrator, financial administrator, personnel administrator, and property and procurement administrator. **NEHS** staff will undergo fingerprint checks and OPM minimum background investigation, with periodic five year updates (refer to references above for requirements). **Executive High-Sensitive** positions are the federal public defender and the first assistant federal public defender. The Executive High-Sensitive positions have to take fingerprints and undergo an OPM full field background investigation, with periodic five year updates (refer to above references for requirements).

Current judiciary employees are not required to submit to background checks or investigations to remain in their current positions or to move from one sensitive position to another sensitive position within the judiciary. However, if a current judiciary employee is appointed or promoted to a high-sensitive position, then even a current judiciary employee is subject to these new background check requirements. Appointment or promotion to a high-sensitive position includes a lateral reassignment to a high sensitive position within a court unit, a transfer to another court unit into a high-sensitive position, promotion into a high-sensitive position, or reclassification to a high-sensitive position.

Information on the new background checks process will be included in all vacancy notices after May 15, 2005. The new policy is effective May 16, 2005.

2.26- Ineffective Assistance of Counsel. This policy applies to all Federal Public Defender employees when a client or former client files or alleges a claim of ineffective assistance of counsel in court.¹

A lawyer has a duty of confidentiality to his or her client and normally may not disclose confidential communications to third parties.

¹While the policy does not expressly apply to grievance proceedings, those proceedings are likewise governed by the principles permitting limited disclosure of confidential information to defend the attorney against attack.

Texas Disciplinary Rules of Prof'l Conduct (hereinafter "TDRPC") § 1.05(b). This includes information from the client, advice from the attorney or his/her staff, the results of investigations conducted during the representation of the client and other work product.

A lawyer *may* disclose confidential information to rebut a claim that he or she has been ineffective. See, e.g., Bittaker v. Woodford, 331 F.3d 715, 718 (9th Cir. 2003); see also Doe v. A. Corp., 709 F.2d 1043, 1048-49 (5th Cir. 1983) (noting that it would be an injustice to allow client's confidence to deprive counsel of means of defending his own rights). However, disclosure is limited to that which is necessary to defend against the claim. Bittaker, 331 F.3d at 718-29. See also TDRPC § 1.05(c) (5)-(6), (d) (2).

In order to insure appropriate regard for the duty of confidentiality, the following shall apply to all employees of the Federal Public Defender for the Northern District of Texas:

1. Unless a client claims ineffective assistance of counsel or some other attorney misconduct, the Federal Public Defender will not disclose confidential information to third parties without an express written waiver from the client.

2. If a former client claims ineffective assistance of counsel attacking his or her conviction, e.g. pursuant to 28 U.S.C. § 2255, the Federal Public Defender will not disclose confidential information without an order from the court directing such disclosure. The Federal Public Defender will disclose only such information as necessary to rebut the defendant's claim and will seek to insure that the court's order is limited to such disclosure. See TDRPC § 1.05(c) (4), (5), & comment 14; see also Model Rules of Prof'l Conduct, Rule 1.6(b) (3), comment. Similarly, the Federal Public Defender may respond to inquiry from the court when a current client has alleged ineffective assistance.

3. Under no circumstances shall a disclosure be made or affidavit provided without the client's consent unless it has been reviewed by the Federal Public Defender or his delegate.

CHAPTER 2

PERSONNEL

1. GENERAL POLICIES

1.1 - Address Change: The Administrator must be notified in the event of any address change during employment so personnel files can be updated and the Human Resources Division notified. Staff can now use Jenie (HRMIS) to update their address, W-4, and other information via e-service.

1.2 - Code of Conduct: The operation of this office generally is governed by the Code of Conduct for Federal Public Defenders as amended from time to time by the Judicial Conference of the United States Courts. See the Guide to Judiciary Policies and Procedures for latest updates on Code of Conduct in reference to Federal Public Defender employees (located on the J-Net). See also Guide to Judiciary Policy, Volume 7: Defender Services.

1.3 - Citizenship: All employees are required to be United States citizens or be eligible to work in the United States (check with General Counsel of US Courts as to whether allowed to work in United States before the potential employee is hired). The Immigration Reform Act of 1986 requires all employees to have lawful employment eligibility and each employee must complete Form I-9, Employment Eligibility Verification, within three days of appointment. See J-Net Human Resource section for any updates in reference to forms and requirements.

1.4 - Oath of Office: Federal Public Defenders and all staff members are required to take the oath of allegiance required of all officers and employees of the Government (5 U.S.C. §3331). The oath of office on AO-78 & AO 78A, Application, Oath, and Personal History Form, may be administered by a deputy clerk of the United States District Court, a judge, a notary, or any official who is authorized to administer oaths and to seal documents. This oath must be signed prior to or on the date of entrance on duty.

1.5 - Personnel File: An internal personnel file, or "Local Working Folder," for each employee is maintained in the office of the Administrator and is treated as confidential; however, upon request, each employee may have access to the information contained in his/her file. An "Official Personnel Folder" is maintained in

the Administrative Office of the United States Courts, at Washington, DC. An official electronic personnel file, entitled Eopf is now maintained and staff have access through HRMIS (Jenie software). Staff are encouraged to review their Eopf on a regular basis.

1.6 - Practice of Law: Neither the Federal Public Defender nor any attorney so appointed by him may engage in the private practice of law.

1.7 - Resignation: Any employee who desires to terminate his/her employment is requested to submit a letter of resignation stating the reason for resigning and the expected date of termination. A minimum of two weeks notice is requested for graded personnel and one month for ungraded personnel.

Ethical Obligations: Any employee who **applies** for employment with federal law enforcement agencies or a federal prosecutors offices (DOJ or U.S. Attorney) shall **immediately** notify the Federal Public Defender or the acting designated administrative head of the office. Clients of that person must immediately be notified of that person's seeking employment in an office of adverse interest to their cause and a decision in writing must be obtained from that client as to future representation by that employee.

1.8 - Married Personnel: Married couples within the federal public defender office are not permitted to supervise one another.

2. SALARY STRUCTURE

2.1 - Ungraded Personnel: Assistant Federal Public Defenders are ungraded personnel and not included in the Judicial Salary Plan.

Compensation of Assistant Federal Public Defenders is at the discretion of the Federal Public Defender at rates not to exceed those established by the Administrative Office of the United States Courts, and in any event not to exceed those paid to attorneys of similar qualifications and experience in the Office of the United States Attorney in the district where representation is furnished. Increases, if awarded, normally will be granted on the anniversary date of appointment. Refer to the Defender Organization Classification System for line AFPD, Senior Litigator and Supervisory AFPDs in reference to performance bonuses and AD-Level salary caps. Any performance bonus must have Office of Defender Services approval.

2.2 - Judicial Salary Plan: The salary structure for all graded personnel is governed by the Judicial Salary Plan (JSP) which consists of grade levels and within-grade levels or step increases. The grade levels assigned to each position are classified and authorized by the Office of Defender Services subject to approval of the Human Resources Division of the Administrative Office of the United States Courts based upon the complexity and responsibility of the job assignment. The within-grade step level is based upon the length of time the employee has been assigned to the same grade level.

2.3 - Within-Grade Increase: This is a one-step increase in compensation for graded employees, within the grade, based on length of service and performance rating requirements. It is conditioned on the following: (1) that the employee has received no increase other than a quality increase during the waiting period; (2) that the employee's work performance has been rated as "acceptable" on the within-grade increase certification form; (3) that the employee has not been on leave without pay in excess of 80 hours in the waiting period for steps 1, 2, and 3; 160 hours for steps 4, 5, and 6; and 240 hours for steps 7, 8, and 9; and (4) that the employee has not attained the maximum rate of compensation for the grade for a particular position.

"Waiting period" is the minimum time requirement of satisfactory service without an equivalent increase in compensation in order to be eligible for consideration for a within-grade salary increase. The waiting periods are as follows:

Steps 1, 2, and 3: 52 calendar weeks of service in each step;

Steps 4, 5, and 6: 104 calendar weeks of service in each step;

Steps 7, 8, and 9: 156 calendar weeks of service in each step.

2.4 - Promotions: Advancing from one grade to the next higher grade of a position is a promotion and is not automatic. Promotions are earned based upon work performance and require a formal request to the Human Resources Division. Once it has been determined that an employee has met the requirements necessary for promotion, the Federal Public Defender prepares a written recommendation to Human Resources Division/Office of Defender Services, who reviews each promotion request to ensure that the employee has met the requirements established by JSP to qualify for the promotion and who has the final authority for granting or denying such

requests.

2.5 - Quality Step Increases: QSIs are designed to recognize and reward, on a continuing basis, employees who display continuing high-quality performance.

2.5.1 - Eligibility: All graded personnel who have not reached the top of their grade are eligible for QSIs. No more than one QSI may be granted to an employee within any period of 52 consecutive calendar weeks.

2.5.2 - Requirements: A QSI requires that performance in all major duties be of a high-quality level and substantially exceed normal requirements. The high level of effectiveness must be sustained for a reasonable period, i.e. a minimum of six months, and must give promise of continuing at the high level. An employee must have a minimum of 12 months of continuous service in the Federal Judiciary and have a minimum of 12 continuous months in the same grade immediately prior to the recommendation for a QSI.

2.5.3 - Relationship to Regular Within-Grade Increase: A QSI is in addition to a regular within-grade increase and is not considered to be an equivalent increase in compensation. The employee does not start a new waiting period to meet the time requirements for a regular within-grade increase. However, if a QSI places the employee in the 4th or 7th step of the grade, the waiting period for a regular within-grade increase is extended by 52 weeks.

2.5.4 - Recommendation and Approval Procedures: Upon determination that an employee is eligible and that budgeted funds are available, the Federal Public Defender will send a letter of recommendation stating the employee's duties and qualifications to the Office of Defender Services. ODS will review to determine the employee's eligibility. QSIs are not granted on a routine basis, but are recommended in recognition of an employee's extraordinary achievements.

2.6 - Employee Grievance Procedure:

1. This grievance procedure is intended to promote the swift determination of employee complaints with regard to evaluations, assignments, working conditions, or similar matters that arise as a result of any action by a supervisor or co-worker. This grievance procedure shall not apply to grievances based on evaluations of graded employees who are under the Within-Grade Increase (WGI) Plan, any EEO complaint, nor shall it apply to any grievance that does not seek relief that would benefit the grievant

personally.

2. Employees are encouraged to resolve perceived grievances informally with either their immediate supervisor or the defender. Employees are expected to talk freely with their supervisors on matters that affect their duties and working conditions. Supervisors are expected to make themselves available to employees for these purposes.

3. These procedures shall not interfere with the normal operation of this defender organization, and they must not interfere with the obligation of this office and each employee to competently represent each client.

4. The defender may, within his or her discretion, designate someone other than the defender² to either receive grievances or act as a hearing officer, either for a certain time period or for a certain grievance.

5. Any employee whose grievance is not resolved informally, shall file a written grievance in memorandum form with the defender or his or her designee within five (5) working days following the alleged incident giving rise to the grievance. The memorandum shall detail each allegation, including dates and times of occurrence, and witnesses and specify what remedy the grievant desires. The memorandum shall also include the employee's request for a hearing.

6. The defender or designee, upon receipt of the written statement, will conduct an appropriate investigation of the allegations. Upon completion of the investigation, the defender or designee will attempt to resolve the matter within ten (10) days. The defender or designee may, in his/her discretion, conduct a hearing on the matter. The defender's or designee's decision shall be in writing and shall be final both as to the facts and the law, and shall not be subject to review.

7. Every grievant and witness has the right to be free from retaliation, coercion, or interference because of the filing of a grievance.

8. All documents, materials, witness and other

² The defender may wish to designate another person under this section for any number of reasons including, but not limited to, unavailability, press of other commitments, or because of involvement in the grievance, either as a witness or a party.

written statements filed, gathered or discovered in connection with the investigation of a grievance are confidential, but may be made a part of the personnel file of each party.

9. The employee has the right to be assisted by a person of the employee's choice in the processing of the grievance at the employee's expense, if such person is available.

2.7 - Employee Adverse Action Procedures:

I. Introduction

The Criminal Justice Act, at 18 U.S.C. § 3006A (g) (2) (A), provides that each defender may appoint attorneys and other personnel without regard to the provisions of Title 5 governing appointments in the competitive service. Therefore, all defender employees are terminable at will and are not generally entitled to any defined procedural rights prior to termination.

Despite the power inherent in defender as employer, the success of this organization is heavily dependent upon the confidence of its members in the principles that underlie the mission of the defender office--to protect the constitutional rights of accused persons.

Regardless of that shared goal, occasions will arise when the defender, in the exercise of discretion, deems that disciplinary action or termination of employment is appropriate.

In the absence of statutory or regulatory guidelines, the defender has voluntarily adopted these procedures to provide a framework within which the defender will exercise the ultimate authority to discipline or discharge an employee.

This employee Adverse Action Procedure is neither a contract nor an agreement of employment for a definite period of time; rather, it is a statement of defender organization policies covering adverse actions by the defender. None of the benefits, procedures or responsibilities contained herein are intended by reason of their publication to entitle an employee to be or remain employed in this office. The defender reserves the right to amend policies at any time.

II. Procedures

Step 1. If the defender determines that adverse

action should be taken regarding an employee, the employee shall be given written notice of the deficiency or transgression describing what adverse action is proposed and the reasons therefor, and advising the employee of his or her right to respond pursuant to Step 2. **An adverse action is defined as a reduction in pay or grade, or a suspension or termination.**

Step 2. An employee wishing to contest the notice of adverse action shall file within five (5) working days of receiving the notice, any written objections or response thereto, and may request a hearing. If the employee does not file a timely written objection or response, the employee shall be deemed to have waived any right to contest the adverse action. In the employee's written response or at a hearing, the employee may respond to the particulars of the notice, correct mistaken information, offer evidence in mitigation of the proposed penalty, suggest self-corrective action in lieu of disciplinary action or termination, and provide any other relevant comments. Any hearing shall be conducted by the defender or his or her designee in accordance with the procedure set forth in the "Hearing Procedure." The employee has the right to be assisted by a person of the employee's choice, if such a person is available, and solely at the employee's expense. Any witness or person assisting the employee has the right to be free from retaliation, coercion, or interference as a result of their involvement in this adverse action procedure.

Step 3. Following a review of the employee's response, or otherwise upon expiration of the response period, the defender will take whatever action is deemed appropriate by the defender. The defender shall inform the employee in writing of his or her decision on the proposed adverse action, the reasons for the action taken, and the consideration given to arguments or alternatives raised by the employee. The decision of the defender shall be final and no further review shall be provided.

III. Immediate Suspension Procedure

Nothing stated above shall prevent the immediate suspension or removal of any employee for conduct which the defender or designee deems so serious that the continued presence of the employee may jeopardize the functioning of the office. When the procedure in this paragraph is invoked, the defender or designee shall give written notice of any adverse action within five (5) working days. The employee shall follow the procedure outlined in Step 2, above.

IV. Records of Adverse Actions

Any adverse action taken subsequent to a hearing should reflect, in writing, the reasons for the action taken, and the consideration given to arguments or alternatives raised by the employee.

If the employee was not afforded an opportunity to be heard prior to termination, the reasons for an involuntary separation shall not be recorded in the employee's official personnel file. In such situations, the official personnel file will note only that an involuntary separation occurred, and will not list reasons.

2.8 - Hearing Procedure:

The following procedures govern the conduct of a hearing requested by the employee, or defender or designee, as a result of a grievance or adverse action procedure.

(a) The hearing officer shall be the defender or his or her designee.

(b) The hearing officer shall afford the person subject to the proposed adverse action or person who has filed a grievance, or his or her representative, an opportunity to comment on the proposed action or basis of the grievance and, in the discretion of the hearing officer, to introduce testimony or other information related to the proposed action or grievance.

(c) The hearing will be an informal proceeding conducted without regard to the rules of evidence in such manner and at such time and place as the hearing officer determines. The hearing officer may determine if the hearing will be open to persons other than the parties and their representatives.

(d) The hearing shall be set at such time so as to not interfere with the normal functioning of the defender's office or the duties of the employees.

(e) The decision of the hearing officer shall be final and binding on the parties both as to the facts and the law. There shall be no further review of the hearing officer's decision.

(f) The hearing officer shall render his decision in writing as soon as practicable after the hearing and shall deliver it personally to the parties or mail a copy thereof to the parties. The decision shall reflect the reasons therefor and shall reflect

the consideration given to the facts and arguments of the grievant or the employee who is the subject of the adverse action. If the decision is favorable to the employee, it shall state in appropriate cases what remedial action is to be taken and when.

2.9 Model Equal Employment Opportunity and Employment Dispute Resolution Plan:

See Internal Controls, Attachment F for complete EEO/EDR Plan and Procedure.

The Model Employment and Dispute Resolution Plan shall be fully implemented and take effect as of January 1, 1999 (and as revised and readopted by the 5th Circuit on April 30, 2002). The Fifth Circuit Model Equal Employment Opportunity Dispute Resolution Plan provides for equal employment opportunity to all persons regardless of their race, sex, color, national origin, religion, age (at least 40 years of age at the time of the alleged discrimination), or disability. An employee who believes that his or her rights under Chapters II through VIII of the Plan have been violated may file a formal complaint with the EDR Coordinator, which is the 5th Circuit Executive, currently Gregory A. Nussel, phone number is (504) 310-7777. Mailing address is, Gregory A. Nussel, Circuit Executive, US Courts of Appeals, Fifth Circuit, Circuit Executives Office, 600 Camp Street, Room 300, New Orleans, LA 70130-3425.

2.10 Time-Off and On-the-Spot Awards:

Because the awards program set forth in the Guide to Judiciary Policy specifically excluded FPDO's, only Quality Step Increases (QSIs) for graded employees have been available to FDOs. Effective April 19, 2010, two additional awards are now available to FDOs. FDOs electing to take advantage of these awards must first establish a written employee recognition program that includes guidelines for the awards and specifies how contributions are measured. This program applies to all employees in graded positions and attorneys. AFPDs are permitted to receive special act awards, which include "On-the-Spot" and Time-Off-Awards", in addition to receiving annual pay review (APR) based pay increases (i.e. salary increases and bonuses). The Time-Off-Award (TOA) and On-the-Spot Awards do not count toward the 10% APR-based pay increase limit. AFPDs are not, of course, eligible for QSIs, which are limited to graded employees only. Graded employees are permitted to receive Time-Off and On-the-Spot Awards in addition to QSIs. Federal public defenders are ineligible for awards and bonuses. No additional funding will be provided for implementation of the policy changes and all actions are subject to availability of funds in FDO allotments. **Currently, the Defender is not going to implement the Time-Off and On-the-Spot Awards.** In order to implement a program for these awards, standards of operation would

have to be put in place before any awards are given--See Federal Defender Operations Manual, Ch. 11, Personnel, VI, Comp, I Awards.

CHAPTER 3

LEAVE POLICIES

1. GENERAL POLICIES

1.1 - Authority: The statutory authority for leave is found at 5 U.S.C. § 6301-6326. See also The Guide to Judicial Policies and Procedures, Volume 1, Chapter 10, subchapter 1630.1 for full policies in reference to judiciary leave policy.

1.2 - Commencement of Entitlement: New employees earn leave commencing the first full pay period after employment begins under appointment of 90 days or more. An employee appointed to a position to less than 90 days will not accrue annual leave. However, after being employed for a continuous period of 90 days under successive appointments without a break in service, an employee may begin to accrue annual leave and will be entitled to retroactive credit for annual leave that would have accrued from the first day of continuous employment (5 C.F.R. 6303 (b)). For leave purposes, a break in service is one day or more when an employee is not in federal government employment.

1.3 - Leave Records: Official leave records as of April 14, 2008 for all employees are maintained by the **Electronic Leave Management Resources (ELMR)** System. All employees are encouraged to maintain their own informal record of leave to provide a counter check and to monitor their leave as contained in ELMR so as not to exceed their balance or to lose leave in excess of the 240-hour annual leave ceiling.

2. ANNUAL LEAVE

2.1 - Application for Leave: Requests for annual leave must be submitted thru the ELMR program (as of April 14, 2008) Annual leave is approved by the leave supervisor or grantor of leave as defined in the ELMR program, with consideration being given to workload, the interests of the office, previous leave granted, and seniority. In the absence of any other compelling reasons, leave will be granted on a "first come, first served" basis.

Annual leave is chargeable in increments of one hour only. Leave will not be allowed for less than one hour increments (.25, .5, .75), but can be used in one hour increments of an hour and

half hour increments (for example, 1.5, 2, 2.5, 3 etc.)

For annual leave of less than 8 hours in a given day, staff will need to submit a leave request through the ELMR system to be approved by their leave supervisor or grantor of leave should their leave supervisor be unavailable. If the leave request is disapproved by the leave supervisor or grantor of leave, the staff person will need to resubmit thru ELMR another leave request or we suggest the staff person contact the leave supervisor or grantor of leave by e-mail or phone as to what date would be appropriate for leave. We also suggest that staff e-mail or call their leave supervisor or grantor of leave as needed.

For annual leave of 8 hours or more (consecutive days), but less than five days, Leave requests need to be done in advance of leave taken of at least two days prior to the leave taken for non-emergency leave situations. Staff will need to use the ELMR system to request this type of annual leave from their leave supervisor or grantor of leave. Prior notification is important, so we suggest that you give your supervisor ample time to review the work schedule of other staff.

Leave of five days or more must be approved at least ten working days prior to date of leave (if non-emergency circumstances), and is subject to review by the Defender. We suggest that the staff person also use e-mail or phone to contact their supervisor to make sure that the leave requested will be approved in advance. The staff person will submit the request through the ELMR system.

The basis for having the approval submitted early is so that the leave supervisor, grantor of leave, or defender can evaluate staff attendance in each office and make an informed decision on approving leave before the leave is taken.

2.2 - Accrual Rate: Full time employees, both permanent and temporary, shall earn annual leave based upon length of service as follows:

(A) Less than 3 years service: Four hours for each full biweekly pay period for a total of 13 days per leave year.

(B) Three years service, but less than fifteen years: Six hours for each full biweekly pay period, except that for the last full biweekly pay period in a calendar 10 hours will be earned, for a total of 20 days leave per year.

(C) Fifteen years service or more: Eight hours for each full biweekly pay period for a total of 26 days per leave year.

For part-time employees the following applies to accrual

(1) less than three years: 1 hour for each 20 hours in pay status.

(2) three to 14 years: 1 hour for each 13 hours in pay status.

(3) 15 or more years: 1 hour for each 10 hours in pay status.

Any employee who returns to federal service after prior military service or service at another agency receives credit for time served in establishing a "**service computation date**" for determining the appropriate leave category.

Leave accrual begins at the end of the first **full** biweekly pay period. No leave is earned for service during partial pay periods. If an employee reaches a new leave accrual rate in the middle of a pay period, the new leave rate does not become effective until the start of the next **full** pay period.

Advance of leave is within the administrative discretion of the Federal Public Defender and will not be granted except in case of emergency.

2.3 - Accumulation: Employees may accumulate, and carry forward for use in a succeeding leave year, annual leave not to exceed 240 hours. Any annual leave in excess of that amount which has not been taken as of the end of the leave year is forfeited, unless advanced permission is given in reference to 2.4 Restored Annual Leave.

2.4. - Restored Annual Leave: Restored leave is annual leave in excess of the 240-hour maximum carryover ceiling which is credited to employees who have forfeited leave due to circumstances beyond their control. For leave to be restored, an employee must have made a bona fide, formal, and timely request for leave. Title 5 U.S.C. §6304(d)(1) provides the following limited circumstances for restoration of annual leave forfeited as a result of the 240-hour ceiling:

(1) Administrative error when the error causes a loss of annual leave otherwise accruable;

(2) Exigencies of the public business prevented taking leave when the leave was applied for, scheduled, and approved **in writing prior to the first day of the third pay period before the**

end of the leave year; or

(3) Sickness of the employee when the forfeited annual leave was applied for, scheduled, and approved **in writing prior to the first day of the third pay period before the end of the leave year.**

Any person who desires to apply for restored leave must do so in writing and should consult the Administrator for additional information.

2.5 - Termination of employment: Title 5 U.S.C. §5551 provides for a lump-sum payment of accumulated and current accrued annual leave when an employee terminates employment or transfers to a position not covered by the Leave Act. Lump-sum payments are limited upon separation to a total of 240 hours leave or pay for the amount of leave carried forward from the previous year (the employee's ceiling), whichever is larger. On termination of employment, Record of Leave Date (SF-1150) is transmitted to the Office of Human Resources of the Administrative Office, and the lump-sum payment is processed with regular payroll in the first full pay period after termination of employment or receipt of SF-1150.

Annual leave prior to date of termination is limited to that amount in excess of 240 hours.

Record of Leave Data will not be transmitted to the Administrative Office until all accountable items issued to the employee are returned or otherwise accounted for.

3. COMPENSATORY TIME

3 - Compensation time: Compensatory time is no longer available for use in the Federal Public Defender, Northern District of Texas Office.

4. SICK LEAVE

4.1 - Application for Leave: Requests for sick leave must be submitted through the ELMR system, and approved in advance for planned absences, i.e., appointments or treatments. If an employee is ill and unable to report to work, the office must be contacted at the beginning of the workday. Upon return to work, a request for leave through the ELMR system must be submitted. Sick leave is

chargeable in minimums of **one hour or more half hour increments only (1.0, 1.50, 2, 2.5, 3, etc.)**. The insertion of the rest of the sick leave information is taken from the Guide to Judiciary Policies, Volume 12 Human Resources, Chapter 9 Leave and Attendance, Section 920.20.30 Sick Leave.

§ 920.20.30 Sick Leave

1. (a) Definitions

(1) Communicable Disease

Examples of communicable disease include cholera, diphtheria; infectious tuberculosis; plague; small pox, yellow fever; viral hemorrhagic fevers; Severe Acute Respiratory Syndrome (SARS); and influenza that causes or has the potential to cause a pandemic. This provides an illustrative, but not exhaustive list of the types of diseases that may result in federal quarantine. The use of sick leave for exposure to a communicable disease should be used only in very limited circumstances, and sick leave should not be granted for this purpose without guidance from the appropriate officials (e.g., Centers for Disease Control, OPM).

(2) Family Member

For the purposes of sick leave, "family member" is defined as spouse and parents thereof; sons and daughters and spouses thereof; parents and spouses thereof; brothers and sisters and spouses thereof; grandparents and grandchildren and spouses thereof; domestic partner and parents thereof (including domestic partners of sons and daughters, parents, brothers and sisters, and grandparents and grandchildren); and any individual related by blood or affinity whose close association with the employee is the equivalent of a family relationship. Domestic partner means an adult in a committed relationship with another adult, including both same-sex and opposite-sex relationships. Son or daughter means a biological, adopted, step, or foster son or daughter, or a legal ward or person for whom the employee stands in loco parentis. Parent means a biological, adoptive, step, or foster parent, or a legal guardian or person who stands in loco parentis to the employee. For more specific definitions, **see: [5 CFR 630.201](#)**.

(3) Serious Health Condition

An illness, injury, impairment, or physical or mental condition that involves inpatient care or continuing treatment or evaluation by a health care provider. For example, covered conditions may include cancer, heart attack, stroke, serious injury, asthma, diabetes, epilepsy, Alzheimer's disease, or pregnancy and childbirth, including prenatal care. "Serious health condition" is not intended to cover routine medical or dental exams, or short-term conditions for which treatment and recovery are brief, e.g., common cold, flu, upset stomach, headaches (other than migraines), or routine dental or orthodontia problems. For more information on covered conditions, **see:** [5 C.F.R. 630.1202](#).

(b) Usage

[Sick Leave](#) is accrued paid absence that an employee may use for the following purposes. This may include use of sick leave, as appropriate, during periods when the employee is performing service with the uniformed services.

(1) [Personal Use](#) When an Employee:

- (A) Receives medical, dental, or optical examination or treatment;
- (B) Is incapacitated for the performance of his or her duties by physical or mental illness, injury, pregnancy, or childbirth; or
- (C) Would, as determined by the health authorities having jurisdiction or by a health care provider, jeopardize the health of others by his or her presence on the job because of exposure to a communicable disease (see: § 920.20.30(a)(1)).

(2) Adoption Related Purposes When an Employee:

Must be absent from duty for purposes relating to his or her adoption of a child.

Note: Examples include but are not limited to: appointments with adoption agencies, social workers, and attorneys; court proceedings; required travel; any periods of time the adoptive parents are ordered or required by the adoption agency or by the court to take time off from work to care for the adopted child; and any other activities necessary to allow an adoption to proceed. Adoptive parents who voluntarily choose to be

absent from work to bond with or care for an adopted child may not use sick leave for this purpose. Rather, they may use annual leave or LWOP. An agency may request administratively acceptable evidence for absences related to adoption.

(3) General Family Care and Bereavement When an Employee:

(A) Provides care for a family member who is incapacitated by a medical or mental condition or attends to a family member receiving medical, dental, or optical examination or treatment,

(B) Provides care for a family member who would, as determined by the health authorities having jurisdiction or by a health care provider, jeopardize the health of others by that family member's presence in the community because of exposure to a communicable disease (**see:** § 920.20.30(a)(1)); or

(C) Makes arrangements necessitated by the death of a family member or attends the funeral of a family member.

Note: Sick leave for general family care or funerals may not exceed the number of hours of sick leave the employee normally accrues during one leave year, i.e., 104 hours for a full-time employee, prorated for a part-time employee.

(4) Serious Health Condition When an Employee:

Provides care for a family member with a serious health condition. The amount of leave granted during any leave year to care for a family member with a serious health condition may not exceed 480 hours for a full-time employee, inclusive of any sick leave used during the leave year for general family medical care or funeral attendance or arrangements described above for General family care and bereavement. For a part-time employee, the limit is 12 times the average number of hours worked per week.

(c) Accrual Rate

A full-time employee will accrue four hours of sick leave each full biweekly pay period that the employee is in a pay status, and a part-time employee will accrue one hour for each 20 hours in a pay status.

(d) Accumulation

- (1) Unused sick leave earned by an employee may be accumulated without limitation and will be transferred along with an employee who moves from a court or FPDO to another position under [5 U.S.C. chapter 63, subchapter I](#) in another court or FPDO or agency within the judicial branch or to another federal agency.
- (2) There is no lump-sum payment for unused sick leave remaining to an employee's credit upon separation, or upon transfer to a position that is not covered by [5 U.S.C. chapter 63, subchapter I](#).

(A) CSRS and CSRS Offset

Unused sick leave is creditable towards the annuity calculation under the CSRS and the CSRS Offset variation.

(B) FERS

The credit of unused sick leave towards an annuity calculation is phased in for employees enrolled in the FERS.

(i) Between October 28, 2009 and December 31, 2013, 50% of unused sick leave remaining to an employee's credit upon death or separation is creditable towards a FERS annuity.

(ii) Effective January 1, 2014, 100% of sick leave remaining to an employee's credit upon death or separation is creditable towards a FERS annuity.

See: [5 U.S.C. § 8415\(1\)\(2\)\(A\) and \(B\)](#).

- (3) Sick leave may be recredited to an employee without penalty in the event that the employee reenters federal service on or after December 2, 1994, after having separated from federal employment. **See:** [5 CFR 630.502](#).

(e) Requesting and Approval

- (1) An employee must request advanced approval (written, oral, or electronic) for sick leave for the purpose of receiving medical, dental, or optical examination or treatment, and to the extent possible, for family care arrangements necessitated by the death of a family member, or for adoption-related purposes.
- (2) When an employee will be absent from duty due to a personal or family illness or injury, the employee must notify his or her leave-approving official or a delegated contact, in compliance with a court or FPDO policy and within the time limits required by the court or FPDO, usually within one hour of an employee's reporting time. Insufficient justification for absence without advance approval may be charged as absence without leave (AWOL) and may be grounds for disciplinary action.
- (3) Upon return to duty following unscheduled sick leave, an employee must submit a written request for leave approval (usually the first day of return or no later than the last day of the pay period).
- (4) Medical documentation may be required to support a request for sick leave in excess of three consecutive workdays, or for a lesser period when determined necessary by an appointing officer or a leave-approving official. Documentation may also be required to support a request for sick leave to care for a family member with a contagious disease or a serious health condition, a FMLA request, an application to be a Voluntary Leave Transfer Program recipient or a bone marrow or organ recipient or donor, or due to an employee's exposure to a contagious disease which could jeopardize the health of others.
- (5) Denial of a sick leave request should be considered by a leave-approving official only in the absence of conditions described in [§ 920.20.25\(b\)](#).
- (6) When illness occurs within a period of annual leave, the period of illness may be retroactively charged as sick leave, subject to any supporting evidence required by a leave-approving official. An application for such substitution should normally be made within the pay period in which an employee returns to duty or within 30 days after an illness occurs, whichever is earlier.

- (7) An absence that could be charged to sick leave may be charged at an employee's request and with management approval to any available annual leave.

(f) Advancing

- (1) At the beginning of a leave year or at any time thereafter when required by the exigencies of the situation, a court or FPDO may advance a maximum of 240 hours of sick leave to a full-time employee (prorated for a part-time employee):
- (A) Who is incapacitated for the performance of his or her duties by physical or mental illness, injury, pregnancy, or childbirth;
 - (B) For the serious health condition of the employee or a family member;
 - (C) When the employee would, as determined by the health authorities having jurisdiction or by a health care provider, jeopardize the health of others by his or her presence on the job because of exposure to a communicable disease;
 - (D) For purposes relating to the adoption of a child;
or
 - (E) For the care of a covered service member with a serious injury or illness, provided the employee is exercising his or her entitlement under the Family and Medical Leave Act provision of [5 U.S.C. § 6382 \(a\) \(3\)](#).
- (2) At the beginning of a leave year or at any time thereafter when required by the exigencies of the situation, a court or FPDO may grant advanced sick leave in the amount of up to 104 hours to a full-time employee (prorated for a part-time employee):
- (A) When he or she receives medical, dental or optical examination or treatment;
 - (B) To provide care for a family member who is incapacitated by a medical or mental condition or to attend to a family member receiving medical, dental, or optical examination or treatment;
 - (C) To provide care for a family member who would, as determined by the health authorities having jurisdiction or by a health care provider,

jeopardize the health of others by that family member's presence in the community because of exposure to a communicable disease; or

- (D) To make arrangements necessitated by the death of a family member or to attend the funeral of a family member.
- (3) Two hundred forty hours is the maximum amount of advanced sick leave a full-time employee may have to his or her credit at any one time (prorated for a part-time employee).
- (4) When an employee is serving under a limited appointment (e.g., term or temporary) or one which will be terminated on a specified date, a court or FPDO may not advance sick leave beyond that which an employee would otherwise earn during the appointment term. For the purpose of this section, an employee serving a probationary or trial period is not serving under a limited appointment.
- (5) Sick leave may not be advanced if it is known that an employee does not plan to return to duty, except where application for disability retirement has been made and approval thereof has not been received from the Office of Personnel Management (OPM). (After official notice of OPM approval of the disability retirement has been received, no additional sick leave may be advanced).
- (6) In most cases, when an employee who is indebted for advanced sick leave separates from federal service, he or she is required to repay the amount of advanced sick leave for which he or she is indebted, or the amount due may be deducted from final pay.
- (7) When an employee dies, retires for disability, or resigns or is separated because of a disability which prevents an employee from returning to duty and is the basis for the separation, advanced sick leave is not refunded. An employee who enters active military service with a right of restoration is deemed not separated for the purpose of this paragraph.

Limitations and Administration: Employees sick leave balances continue to determine the amount of sick leave that may be used for any family care purpose. Regardless of their sick leave balances, full-time employees may use 104 hours of sick leave each year for family care purposes.

For information on which sick leave to take, please contact the Administrator as needed.

5. LEAVE WITHOUT PAY

Requests for Leave Without Pay must be made through the ELMR system and the staff person must have exhausted all annual and/or sick leave (other approvals may be granted on a case-by case basis) and there is a reasonable expectation that the employee will return at the end of the approved period. In making this decision, the Federal Public Defender in consultation with the leave supervisor may use one of the following criteria: (1) increased job ability, (2) protection or improvement of employee's health, and (3) retention of a desirable employee. **Leave Without Pay is chargeable in increments of one hour only.**

The amount of Leave Without Pay hours used by each employee is monitored on the ELMR system for each leave year. When eighty hours of Leave Without Pay is accumulated, one pay period of annual and sick leave is deducted from the employee's current leave balances. If in a Leave Without Pay status for an entire pay period, the employee will not earn sick or annual leave for that pay period, will not be paid for any holiday that falls in that period, and will be required to pay health benefit premiums. An employee who accumulates more than eighty hours leave without pay may lose entitlement to within grade increases.

6. ADMINISTRATIVE LEAVE

The authorization of administrative leave is at the discretion of the Federal Public Defender and in consultation with the employee and the leave supervisor and, upon approval, employees may be excused from work without being charged with annual or sick leave. The staff person would request administrative leave once the Administrator of the ELMR system posts the administrative leave hours to the ELMR system. Administrative leave generally occurs when normal operations of the office are interrupted due to events beyond the control of either management or employees or where such leave is of general benefit to the FPD office or FPD program. Emergencies of this type may include, but are not limited to, extreme weather conditions, serious interruption to public transportation services, or disasters such as fire, flood, or other natural phenomena which necessitates the closing of the office in whole or in part or prevents individual employees or groups of employees from reporting to work. Examples of administrative leave which the Defender may approve are brief absences and tardiness, blood donation, voter registration, conferences and conventions, participation in a military funeral, equal

employment opportunity counseling, employee assistance counseling, time off to award an employee for extraordinary performance, attend a funeral of law enforcement officer or firefighter who was killed in the line of duty (PL 103-329). The Comptroller General has determined that the amount of excused absence (should be) limited to relatively short periods of time not exceeding three consecutive work days in a single period of excused absence, up to a maximum of 40 hours in a calendar year, See 53 Comp. Gen. 1054 (1974). Other examples are included in 6.1, 6.2, and 6.3.

Below is a listing of appropriate Use of Excused Absence/Administrative Leave:

Appropriate Use of Excused Absence

1. Courts are urged to use discretion and restraint in granting excused absences/ administrative leave. Some of the more common situations in which an agency head may excuse absence without charge to leave include the following:

Registration and voting (see 6.3 below)

Donating blood.

Employment dispute resolution or counseling.

Conferences or conventions.

Bar exams. The Comptroller General has held that an employee may be granted administrative leave for the time required to take a necessary bar examination and to attend a necessary bar admission ceremony (1985 Westlaw 53119(Comp. Gen.)), but not for the time necessary to prepare for the exam (1975 Westlaw 8763 (Comp.Gen.)). An employee may not be granted administrative leave to fulfill requirements for bar membership such as involuntary assignment to represent an indigent defendant or continuing legal education (1982 Westlaw 26689 (Comp. Gen.)).

Time off to award an employee for extraordinary performance

Employee assistance counseling.

An adverse action. The Office of General Counsel of the Administrative Office advises that, consistent with Comptroller General decisions, court units should authorize no more than three to five workdays of

excused absence in order for an employee to respond to an adverse action that specifically involves termination or suspension.

Emergencies, disasters, or hazardous weather conditions when a court facility is closed or services are disrupted, or at the discretion of a chief judge, when employees may be prevented or delayed from reporting for work or faced with personal emergencies because of the emergency conditions and who can be spared from their usual responsibilities.

Volunteer activities.

At the discretion of the defender or designate, absence should be limited to situations that comply with the Judiciary Code of Conduct and Federal Public Defender Code of Conduct, are not specifically prohibited by law, and satisfy one or more of the following criteria: (1) directly related to the court's mission; (2) officially sponsored or sanctioned by the defender or designate; (3) will clearly enhance the professional development or skills of the employee in his or her current position; or (4) brief and is determined to be in the interest of the defender organization. Ultimately, it is the responsibility of each defender office to balance support for employee volunteer activities with the need to ensure that work requirements are fulfilled and that defender operations are conducted efficiently and effectively.

An employee may be excused from duty without loss of pay to assist with disaster relief and recovery if requested by a federal agency or disaster relief organization to assist in emergency law enforcement, relief, and clean-up efforts in affected communities authorized by federal, state, or other officials having jurisdiction, if an employee's participation in such activities has been approved by his or her employing court unit. An employee must provide documentation to his or her employing defender organization of the agency request and time participating in voluntary service (certified by the supervisor or other appropriate agency official). This policy does not apply to judiciary employee members of the National Guard or Reserves who are called up to assist in disaster relief and recovery efforts,

since they are entitled to military leave under 5 U.S.C. 6323(b).

6.1 - Educational Leave: Employees are offered the opportunity to participate in continuing education programs or job-related courses through seminars and workshops sponsored by government or private agencies. Generally, administrative leave is authorized for courses or workshops offered by The Federal Judicial Center or the Administrative Office of the U. S. Courts. Administrative leave may be requested for attendance at workshops offered by associations or for other job-related courses offered by colleges or private agencies.

6.2 - Military Funeral: An employee whose immediate relative dies as a result of wounds, disease, or injury incurred as a member of the Armed Forces in a combat zone (the courts may continue to excuse employees from duty without charge to leave or loss of pay to cover situations involving deaths of servicemen and women incurred in the line of duty elsewhere in the world) is entitled to funeral leave. Immediate relative means the following relatives of a deceased member of the Armed Forces: Spouse and parents thereof; children, including adopted children, and spouses thereof; parents; brothers and sisters and spouses thereof; and any person related by blood or affinity whose close association with the deceased was such as to have been the equivalent of a family relationship. The Defender shall excuse an employee for up to **three** workdays to make arrangements for or to attend the funeral of , or memorial service for funeral leave. (5 U.S.C. § 6326).

6.3. - Voting: Administrative Leave of one hour is authorized, either at the beginning or the conclusion of a work day, for the purpose of voting in local, state, or federal elections. Administrative Leave for voting purposes must be coordinated with the Defender to ensure that an attorney and legal assistant are on staff and that the office is open during normal working hours.

7. COURT LEAVE

Court leave, normally charged to administrative leave (in ELMR leave tracking program labeled at court leave), may be granted to employees for attending court as witnesses in a judicial proceeding on behalf of the United States, the District of Columbia, a State or local government, or for jury duty without charge to annual leave. When an employee is subpoenaed in private litigation or by some other party other than a

government, his/her absence must be charged to annual leave, unless such testimony arises from his/her official capacity.

Any jury fees received for other than mileage expenses, when an employee is on court leave, must be turned in to the Administrator.

Anytime an employee receives a summons for jury duty or a subpoena from a governmental agency, the supervising attorney or Defender should be notified as soon as possible.

8. MATERNITY LEAVE

8.1 - General Policies: Maternity Leave is chargeable to sick leave or any combination of sick leave and/or annual leave.

Maternity leave may be used to cover the time required for physical examinations and to cover the period of incapacitation. The period of authorized maternity leave is normally up to 12 weeks; not more than 4 weeks before the expected date of delivery and not more than 8 weeks after the delivery date. If the period of incapacitation exceeds beyond the 8-week period after delivery, a medical certificate is required. **Sick leave may not be advanced for maternity purposes.** If both sick leave and annual leave expire before return to duty, the employee will be placed on leave without pay.

8.2 - Employee responsibilities: Any employee desiring to take maternity leave will be responsible for ensuring the following:

(A) An employee shall make known her intent to request leave for maternity reasons, including the type of leave to be charged, the approximate dates, and anticipated duration, as soon as pregnancy is confirmed.

(B) Duration of the maternity leave shall be determined by the employee and her physician, subject to the approval of the Defender.

(C) Leave requests shall be processed in accordance with regular office leave policy (via ELMR system).

(D) Employees planning to return to work must indicate this fact to the Defender when applying for maternity leave.

(E) Employees who later decide not to return to work must indicate this fact to the Defender as soon as this decision is

made. An employee planning not to return to work should resign at the expiration of the normal period of leave or be separated at such earlier date as may be required.

8.3 - Paternity Leave: A male employee may request sick leave, and/or annual leave, for purposes of assisting or caring for his minor children or the mother of his newborn child while she is incapacitated for maternity reasons. **Sick leave may not be advanced for paternity leave.** Paternity leave will follow the same time frames and guidelines as maternity leave as stipulated in section 8.1 and 8.2 as applicable. If both sick leave and annual leave expire before return to duty, the employee will be placed on leave without pay status.

9. FAMILY AND MEDICAL LEAVE ACT & FMLA LEAVE TO CARE FOR A COVERED SERVICE MEMBER WITH A SERIOUS INJURY OR ILLNESS.

The Guide of Judiciary Policy has combined the regular FMLA and the FMLA leave to care for a covered service member with a serious injury or illness. For section 9, we have incorporated Volume 12, Chapter 9, Section 920.20.35 entitled Family and Medical Leave Act.

§ 920.20.35 Family and Medical Leave Act

(a) Definitions

(1) Covered Active Duty

(A) Duty during the deployment of a member of a regular component of the Armed Forces to a foreign country; or

(B) Duty during the deployment of a member of a reserve component with the Armed Forces to a foreign country under a call or order to active duty under a provision of law referred to in [10 U.S.C. § 101\(a\)\(13\)\(B\)](#) (does not include voluntary active duty under 10 U.S.C. § 12301(d) or annual training duty under 10 U.S.C. § 10147 or § 12301(b)). **See:** [OPM memorandum, March 5, 2010, Recent Changes to the Family and Medical Leave Act.](#)

(2) Covered Service Member

(A) A member of the Armed Forces including a member of the National Guard or Reserves who is undergoing

medical treatment, recuperation, or therapy, is otherwise in outpatient status, or is otherwise on the temporary disability retired list for a serious injury or illness; or

(B) A veteran who is undergoing medical treatment, recuperation, or therapy, for a serious injury or illness and who was a member of the Armed Forces (including a member of the National Guard or Reserves) at any time during the period of 5 years preceding the date on which the veteran undergoes that medical treatment, recuperation, or therapy;

(3) [Family and Medical Leave Act](#) (FMLA)

Provides unpaid leave for certain family and medical needs, in addition to other paid time off (accumulated and accrued sick and annual leave) that may be available to an employee.

(4) Family Member

Family member means the spouse, son, daughter, or parent of the employee for basic FMLA under [920.20.35\(c\)\(1\)](#), and also the next of kin (nearest blood relative) only for the care of a service member under [§ 920.20.35\(c\)\(2\)](#).

(5) Serious Health Condition

An illness, injury, impairment, or physical or mental condition that involves inpatient care in a hospital, hospice, or residential medical care facility; or continuing treatment by a health care provider. For examples, **see:** [§ 920.20.30\(a\)\(2\)](#).

(6) Son or daughter

A biological, adopted, or foster child; a step child; a legal ward; or a child of a person standing in loco parentis, (with day-to-day responsibilities to care for **or** financially support a child) who is (1) under 18 years of age; or (2) 18 years of age or older and incapable of self-care because of a mental or physical disability **See:** [5 CFR 630.1202](#).

Note: Employees standing in loco parentis may include, for example, grandparents and other relatives, and unmarried or same sex partners, who assume ongoing day-to-day or financial responsibility for raising a child, whether or not those situations ultimately lead to

legal relationships (e.g., adoption or legal ward). There is no restriction on the number of parents a child may have under the FMLA. **See:** [OPM memorandum, Aug. 31, 2010, Interpretation of "Son or Daughter" Under the Family and Medical Leave Act.](#)

(7) Spouse

A husband or wife pursuant to a marriage that is a legal union between one man and one woman, including common law marriage between one man and one woman in states where it is recognized **See:** [5 CFR 630.1202.](#)

(8) Veteran

A person who served in the active military, naval, or air service, and who was discharged or released under conditions other than dishonorable. **See:** [38 U.S.C. § 101\(2\).](#)

(b) Coverage

A judiciary employee who is covered by [5 U.S.C. chapter 63, subchapter I](#) and has completed at least 12 months of civilian service with the federal government (not required to be recent or consecutive months) is entitled to FMLA.

(c) Entitlement

(1) Covered employees are entitled to a total of up to 12 workweeks of unpaid leave during any 12-month period for the following purposes:

- (A) The birth of a son or daughter of the employee and the care of such son or daughter;
- (B) The placement of a son or daughter with the employee for adoption or foster care;
- (C) The care of a spouse, son or daughter, or parent of the employee who has a serious health condition; and/or
- (D) A serious health condition of the employee that makes the employee unable to perform the essential functions of his or her positions.
- (E) Any qualifying exigency arising out of the fact that the spouse, or a son, daughter, or parent of the employee is on covered active duty (or has

been notified of an impending call or order to covered active duty) in the Armed Forces. Qualifying exigency leave may include leave to address issues that arise from the covered active duty or the call to active duty, such as the following: short-notice deployment; military events and related activities; childcare and school activities; financial and legal arrangements; counseling, rest and recuperation; and post-deployment or other activities. **See:** [OPM memorandum, March 5, 2010, Recent Changes to the Family and Medical Leave Act.](#)

(2) Care for a Covered Service Member With a Serious Injury or Illness

Under [5 U.S.C. § 6382\(a\)\(3\)](#), an employee who is the spouse, son, daughter, parent, or next of kin (nearest blood relative) of a covered service member with a serious injury or illness is entitled to a total of 26 administrative workweeks of unpaid leave during a single 12-month period to care for the service member.

(A) In the case of a member of the Armed Forces including a member of the National Guard or Reserves, "serious injury or illness" means an injury or illness incurred by the member in line of duty on active duty in the Armed Forces (or that existed before the beginning of the member's active duty and was aggravated by service in line of duty in the Armed Forces) that may render the member medically unfit to perform the duties of the member's office, grade, rank, or rating.

(B) In the case of a veteran who was a member of the Armed Forces (including a member of the National Guard or Reserves) at any time during the period five years preceding the date on which the veteran undergoes medical treatment, recuperation, or therapy, "serious injury or illness" means an injury or illness that was incurred by the member in line of duty on active duty in the Armed Forces (or existed before the beginning of the member's active duty and was aggravated by service in line of duty on active duty in the Armed Forces) and that manifested itself before or after the member became a veteran.

(d) Use

(1) Leave Period

(A) 12 Workweeks of FMLA Leave

The 12-month period referred to in [§ 920.20.35\(c\)\(1\)](#) begins on the date an employee first takes leave for a family or medical need, and continues for 12 months. An employee is not entitled to 12 additional workweeks of basic FMLA leave until the previous 12-month period ends and an event or situation occurs that entitles the employee to another period of family or medical leave. (This may include a continuation of a previous situation or circumstance.)

Note: For birth or placement for adoption or foster care, the 12-month period expires 12 months after the date of birth or placement. If leave for the birth or placement begins prior to the date of the birth or placement, the 12-month period begins on the date the employee first takes leave.

(B) 26 Workweeks of FMLA Leave to Care for a Covered Service Member With a Serious Injury or Illness

Once an employee invokes FMLA to care for a covered service member with a serious injury or illness, during the single 12-month period described by [§ 920.20.35\(c\)\(2\)](#), an employee is entitled to a combined total of 26 administrative workweeks of basic FMLA leave under [§ 920.20.35\(c\)\(1\)](#) and FMLA leave to care for a service member with a serious injury or illness under [§ 920.20.35\(c\)\(2\)](#). However, the 12-month period for purposes of the 26-week entitlement to care for a covered service member begins when the employee invokes that entitlement and begins to care for the service member. For example, an employee may use up to 12 weeks of basic FMLA to care for a child with a serious health condition, and then immediately use up to 26 weeks of FMLA to care for a spouse who is a covered service member with a serious injury or illness (see [5 U.S.C. § 6382\(a\)\(4\)](#)).

(2) Intermittent Leave Use or Reduced Leave Schedule

An employee may use FMLA leave intermittently or on a

reduced leave schedule, with hours of leave subtracted on an hour-for-hour basis under the following conditions.

(A) Only with agreement between the employee and the leave-approving official in the following cases:

- (1) For the birth and/or care of a son or daughter of the employee, or
- (2) The placement of a son or daughter with the employee for adoption or foster care;

(B) When medically necessary for:

- (1) The care of a spouse, son, daughter, or parent of an employee who has a serious health condition;
- (2) A serious health condition of the employee that makes the employee unable to perform the essential functions of his or her position; or
- (3) To care for a service member with a serious injury or illness when an employee is the spouse, son, daughter, parent, or next of kin of a covered service member; or

(C) Because of any qualifying exigency arising out of the fact that the spouse, or a son, daughter, or parent of the employee is on covered active duty (or has been notified of an impending call or order to covered active duty) in the Armed Forces.

Note: When an employee takes leave intermittently or on a reduced leave schedule under [§ 920.20.35\(d\)](#), the court or FPDO may place the employee temporarily in an available alternative position for which the employee is qualified which has equivalent pay, benefits, work schedule, and tenure and that can better accommodate recurring periods of leave.

(3) Prorated for Part-time Work

FMLA leave will be made available equally for a full-time or a part-time employee in direct proportion to the number of hours in the employee's regular workweek, calculated on an hourly basis.

(e) Substitution of or Combination with Annual or Sick Leave

(1) An employee is entitled to substitute any available paid leave for some or all of FMLA unpaid leave. Use of any sick leave is subject to the conditions and requirements stated in [§ 920.20.30](#). For example, only 480 hours of accrued and accumulated sick leave are available for FMLA substitution for the care of a family member with a serious health condition. **See:** [§ 920.20.30 \(b\) \(4\)](#).

Note: The normal leave year limitations on the use and substitution of sick leave to care for a family member do not apply in the case of FMLA leave to care for a covered service member; an employee may substitute any annual or sick leave for any part of the 26-week period of unpaid FMLA leave to care for a covered service member with a serious injury or illness. Further, any sick leave used or substituted under an employee's 12-week basic FMLA entitlement prior to the first use of leave to care for a covered service member does not count towards the "single 12-month period" described in [§ 920.20.35 \(c\) \(2\)](#). For example, an employee who has enough accumulated sick leave may use up to 12 weeks of sick leave to care for a spouse with a serious health condition, and then substitute an additional 26 weeks of sick leave for unpaid FMLA to care for a son or daughter who is a covered service member with a serious illness or injury, --using a total of 38 weeks of sick leave.

(2) An employee may elect to use any combination of available annual leave, sick leave, and/or unpaid FMLA leave (LWOP). An employee may use annual or sick leave in addition to the FMLA entitlement to unpaid leave, as well as substituting paid leave for some or all of the unpaid leave. Use of additional annual leave, apart from leave that is being substituted for unpaid leave under FMLA, remains subject to management approval. **See:** [§ 920.20.25 \(e\)](#). Use of any sick leave is subject to the conditions and requirements stated in [§ 920.20.30](#).

(3) Compensatory time off may not be substituted for FMLA.

(4) An employee may not retroactively substitute paid leave for leave without pay taken under FMLA, except when using donated leave under the Voluntary Leave Transfer Program. **See:** [5 CFR 630.1205 \(e\)](#) and [5 CFR](#)

[630.909\(d\).](#)

(f) Job Benefits and Protection

- (1) Upon return from FMLA leave, an employee must be returned to the same position or to an equivalent position with equivalent benefits, pay, status, and other terms and conditions of employment. FMLA leave will not result in the loss of any employment benefit accrued before leave began.
- (2) However, an employee has no greater right to reinstatement or to other benefits and conditions of employment than if the employee had been continuously employed during the FMLA leave period.
- (3) An employee who takes FMLA leave is entitled to maintain health benefits coverage. An employee on unpaid FMLA leave (LWOP) will incur a debt for the employee share of the Federal Employees Health Benefits (FEHB) premiums which, upon return to work, will be deducted from the employee's pay in scheduled biweekly installments until the debt is repaid.

Note: FEHB coverage is limited to one year on LWOP at the employee's option and expense.

(g) Notification and Certification

- (1) Court or FPDO managers are responsible for informing employees of the entitlements and responsibilities under the FMLA, including employee obligations.
- (2) An employee must invoke his or her entitlement to family and medical leave. An employee may not retroactively invoke his or her entitlement to family and medical leave. However, if an employee and his or her personal representative are physically or mentally incapable of invoking the employee's entitlement to FMLA leave during the entire period in which the employee is absent from work for a FMLA-qualifying purpose, the employee may retroactively invoke his or her entitlement to FMLA leave within two workdays after returning to work. In such cases, the incapacity of the employee must be documented by a written medical certification from a health care provider. In addition, the employee must provide documentation acceptable to the agency explaining the inability of his or her personal representative to contact the agency and invoke the employee's entitlement to FMLA leave during

the entire period in which the employee was absent from work for a FMLA-qualifying purpose.

- (3) An employee must provide 30 days notice of his or her intent to take family and medical leave, when practicable, or within a reasonable period of time appropriate to the circumstances involved when the need for leave is not foreseeable, e.g., a medical emergency or the unexpected availability of a child for adoption or foster care. When FMLA leave is used for a planned medical treatment, the employee must consult with his or her supervisor and make a reasonable effort to schedule medical treatment so as not to disrupt unduly the operations of the court or FPDO, subject to the approval of the health care provider.
- (4) For FMLA leave to care for an employee's spouse, son, daughter, or parent who has a serious health condition or for the serious health condition of the employee, a court or FPDO may require medical certification with the date of onset, prognosis, and statement of need for care. A court or FPDO may require a second opinion, at its expense, if the court or FPDO doubts the validity of the original certification. A court or FPDO may require a third opinion, at its expense, from a health care provider jointly approved by the employee and court or FPDO when the second opinion differs from the original certification. The third opinion is limited to the information in the original certification, and is final and binding on the court or FPDO and the employee.
- (5) A court or FPDO may require a second opinion, at its expense, if the court or FPDO doubts the validity of the original certification. A court or FPDO may require a third opinion, at its expense, from a health care provider jointly approved by the employee and court or FPDO when the second opinion differs from the original certification. The third opinion is limited to the information in the original certification, and is final and binding on the court or FPDO and the employee.
- (6) A court or FPDO may have a uniformly applied practice or policy that requires each employee to obtain certification of a serious health condition from a health care provider concerning the employee's ability to resume work. A court or FPDO may also require periodic status reports on the employee's ability or intention to return to work from a serious health condition.

Note: OPM advises that agencies may use Department of Labor forms for medical certification. **See:** [WH-380-E \(Certification of Health Care Provider for Employee's Serious Health Condition\)](#) and [WH-380-F \(Certification of Health Care Provider for Family Member's Serious Health Condition\)](#).

(h) Court or FPDO Discretion

A court or FPDO may adopt policies that permit granting more LWOP than FMLA requires, but such policies may not provide entitlement to paid time off in an amount greater than that otherwise authorized by law or provide sick leave in any situation in which sick leave would not normally be allowed by law or regulation.

Local FPD Requirements for FMLA & FMLA Military

Notification of Request for Leave

1. An employee shall provide up to 30 days notice of need for leave as practicable.
2. When leave is being requested for a serious health condition (**see sick leave Chapter 3, Section 4, for definition of a serious health condition**) an employee should make a reasonable effort to schedule treatment, subject to the approval of the health care provider, so as not to disrupt unduly the operations of the Federal Public Defender Office.

Medical Certification

1. For leave under FMLA or Military FMLA, the Defender may require medical certification with the date of onset, prognosis, statement of need for care, etc. The Defender may require a second opinion, at the Defender Organization's expense, if the Defender doubts the validity of the original certification.
2. The Defender may require a third opinion, at its expense, from a health care provider jointly approved by the employee and Defender when the second opinion differs from the original certification. (The third opinion is limited to the information in the original certification.) The third opinion is final and binding on the Defender and the employee.
3. The Defender may require periodic re-certification

at the Defender organization's expense.

4. The term "health care provider" includes providers who are recognized by the Federal Employee Health Program, certified under federal or state law, recognized as a Native American "traditional healing practitioner" or who practice in a foreign country.

Return to Employment

1. An employee who takes leave is entitled to be restored to the same or equivalent position, with equivalent benefits, pay status, and other terms and conditions of employment.

2. This leave shall not result in the loss of any employment benefit accrued before leave began. Except as otherwise provided by or under law, the new law will not entitle any restored employee to the accrual of any employment benefits during any period of leave or to any right, benefit, or position of employment other than those to which the employee would have been entitled had the employee not taken the leave.

3. The Defender may elect to use the Certification of Health Care Provider form (Form WH-380) issued by the US Department of Labor to obtain certification of a serious health condition from a health care provider concerning the employee's ability to resume work. The Defender may also require periodic status reports on the employee's ability or intention to return to work from a serious health condition.

Health Insurance: Federal Health Employee Benefits (FEHB) coverage is generally continued for an employee on Leave without Pay (LWOP) in connection with FMLA. The Administrative Office will make arrangements to collect the employee FEHB contribution when the employee returns to work. (Note: FEHB coverage is limited to one year on LWOP at the employee's option and expense).

10. LEAVE FOR BONE MARROW OR ORGAN DONATION

A covered judiciary employee may use up to seven days of paid leave in a calendar year to serve as a bone marrow donor (5 U.S.C. § 6327). This is a separate leave category in addition to sick or annual leave. A covered judiciary employee may use up to 30 days of paid leave in a calendar year to serve as an organ donor. This is a separate leave category in addition to sick or annual leave.

11. MILITARY LEAVE & RESERVIST DIFFERENTIAL

Military Leave (5 U.S.C. § 6323; 38 U.S.C. § 2024)

1. Definition

Military leave is time off without loss in pay, time, or performance rating, for certain types of active or inactive duty in the National Guard or the Reserves of the Armed Forces. Inactive duty training is authorized training performed by members of a reserve component not on active duty and performed in connection with the prescribed activities of the reserve component. It consists of regularly scheduled unit training periods, additional training periods, and equivalent training. For further information, see Department of Defense Instruction Number 1215.6, February 7, 2007 (5 U.S.C. § 6323).

2. Coverage

Any judiciary employee covered by the Leave Act, whose appointment is not limited to one year (permanent or temporary indefinite) is entitled to military leave.

3. Accrual

1. A full-time employee who is member of the National Guard or Reserves of the Armed Forces accrues 15 days or 120 hours (prorated for part-time employees) of military leave for active duty (including extended active duty) and active or inactive duty training (5 U.S.C. 6323(a)). Military leave accrues at the beginning of each fiscal year and should be credited on October 1 of each year. An employee's civilian pay remains the same for periods of military leave under this paragraph. An employee may carry over a maximum of 15 days into the next fiscal year.
2. A full-time employee is provided an additional 22 workdays per calendar year (prorated for a part-time employee) for emergency duty as ordered by the President, the Secretary of Defense, or a state governor for employees who perform military duties in support of civil authorities in the protection of life and property or who perform full-time military service as a result of a call or order to active duty in support of a contingency operation as defined in section 101(a)(13) of title 10, United States Code ([5 U.S.C. 6323 \(b\)](#)). An employee's civilian pay is reduced

by the amount of military pay for the days of military leave provided under this paragraph. However, an employee may choose not to take military leave and instead to use annual leave in order to retain both civilian and military pay.

3. Additional military leave may be provided to members of the National Guard of the District of Columbia for certain types of duty ordered or authorized under title 39 of the District of Columbia Code ([5 U.S.C. § 6323\(c\)](#)).
4. Reserve and National Guard Technicians are entitled to 44 workdays of military leave for duties overseas under certain conditions ([5 U.S.C. § 6323\(d\)](#)).

4. Request

A request for military leave should be made in writing and accompanied by a copy of military orders.

5. Charge

1. An employee may be charged military leave only for hours that the employee would otherwise have worked and received pay. The minimum charge to military leave is one hour.
2. Military leave for inactive duty training is charged only to cover the period of training and necessary travel (weekends and holidays within the period of military service are not charged).
3. An employee performing military service is entitled, upon request, to use any accrued annual leave, military leave, or LWOP (either continuous or intermittently) while on active duty or active/inactive duty training.

6. Reservist Differential

On December 8, 2009, the U.S. Office of Personnel Management (OPM) provided guidance to federal agencies on implementing a new law (codified in 5 U.S.C. 5538) which provides "reservist differential" payments to eligible federal civilian employees who are members of the Reserve or National Guard called or ordered to active duty under certain specified provisions of the law. A reservist differential is a payment equal to the amount by which an employee's

projected civilian basic pay for a covered pay period exceeds the employee's actual military pay and allowances allocable to that pay period. This new law became effective on March 16, 2009, for Judicial Branch Employees. Refer to OPM's Reservist Differential website at <http://www.opm.gov/reservist>.

Refer to <http://www.opm.gov/oca/leave/html/military.asp> for more information in reference to various military leave deployments and the number of military leave days per fiscal and calendar year, reference 5 U.S.C. 6323 (a), 5 U.S.C. 6323 (b), 5 U.S.C. 5323 (d).

12. VOLUNTARY LEAVE TRANSFER PROGRAM (MEDICAL)

The purpose of the program is to provide income protection through the transfer of annual leave among federal employees within the agency and federal government. Participation by both donors and recipients is voluntary.

In order to become eligible to be a leave recipient, an employee first must have used all available sick and annual leave. The employee must then establish that there is a medical emergency of the employee or of a family member of the employee that requires the employee to be absent from duty for a prolonged period of time (at least twenty-four hours, three working days), resulting in a substantial loss of income due to the unavailability of paid leave. Leave donors must transfer donated leave to a specifically named recipient.

This office has a leave-sharing plan in effect, and forms for participation may be obtained from the Administrator. Extensive information in reference to the leave sharing program is located below and extracted from the Guide to Judiciary Policies and Procedures:

Policy

A court must administer a Voluntary Leave Transfer Program (VLTP) whereby employees may donate unused annual leave to an employee who has an approved personal or family medical emergency and who has exhausted all available paid leave. Available paid leave is defined as all annual leave plus any sick leave that is available for a medical emergency, i.e., all sick leave for a **personal** medical emergency, or up to twelve weeks of sick leave for the care of a family member with a serious health condition.

Leave Recipient

1. Application

An employee must submit a written request to the court (chief judge or designee). The application must include the reasons transferred leave is needed; a brief description of the nature, severity, and anticipated duration of the medical emergency, and if it is a recurring one, the approximate frequency of the medical emergency; certification from one or more physicians, or other appropriate experts with respect to the medical emergency if the potential leave recipient's employing court so requires; and any additional information that may be required by the potential leave recipient's employing court.

2. Approval

(1) A unit executive must determine that a medical emergency is likely to require an employee's absence from duty for a prolonged period of time and to result in a substantial loss of income to the employee because of the unavailability of paid leave (at least three days without pay for a full-time employee, or 30 percent of the average weekly tour for a part-time employee).

(2) Upon receipt of a request for donated leave, the court shall notify an employee within 10 work days whether the request was approved or denied (with reasons). Approval to participate as a leave recipient does not ensure the availability of donated leave.

(3) Publication of leave donation request.

(a) There is no requirement for a court to solicit leave on behalf of an employee or to publicize an employee's request for donated leave. If a court does solicit leave donations, the notice (paper or email) should be posted only within the court, except for certain conditions listed below in paragraph (4) for leave transfers between courts or other federal agencies.

(b) A court should utilize form [OPM 630](#), "Application to Become a Leave Recipient Under the Voluntary Leave Transfer Program," when posting a leave donation

request. The form allows a leave recipient to indicate whether a description of a medical emergency should be distributed, and if so, how a medical emergency should be described for distribution. A leave recipient may also indicate whether his or her name should be included in a notice for distribution.

(4) Transfer of Leave Between Courts or Other Federal Agencies.

A leave recipient's employing court shall accept the transfer of annual leave from leave donors employed by one or more other courts or other federal agencies only when:

(a) A family member of a leave recipient is employed by another court or another federal agency and requests the transfer of annual leave to the leave recipient;

(b) After an initial request within the court, the amount of annual leave that was donated within the leave recipient's court was not sufficient in the judgment of the agency head (chief judge or designee); or

(c) In the judgment of the chief judge or designee, acceptance of leave transferred from another court or other agency would further the purpose of the court's VLTP.

(5) Donated leave while awaiting approval for disability retirement.

(a) An employee may apply for and receive donated annual leave while an application for disability retirement is being processed. An employee who is experiencing a personal or family medical emergency and has exhausted his or her available paid leave may request to become an approved leave recipient and receive donated annual leave. Once the disability retirement application has been approved by OPM, the leave recipient may no longer receive or use donated annual leave beyond the end of the pay

period in which the agency receives the notice of allowance of disability retirement.

<http://www.opm.gov/oca/leave/html/LeavQA.asp>

(b) Additionally, donated annual leave may be substituted retroactively for periods of LWOP or used to liquidate a debt for advanced annual or sick leave granted on or after a date fixed by the agency as the beginning of the period of the medical emergency for which LWOP or advance annual or sick leave was granted. Courts should advise employees concerning the possible effects on retirement income of substituting donated annual leave for LWOP or advanced leave.

3. Limit

There is no limit on the amount of donated annual leave a leave recipient may receive from donor(s). However, any unused donated leave must be returned to the leave donor(s) on a pro-rated basis when the medical emergency ends (see "Restoration of Transferred Leave," G.7).

Leave Donor

1. In order to donate annual leave, an employee must submit a voluntary written request to his or her own court that a specified number of hours of his or her accrued annual leave be transferred from his or her annual leave account to the leave transfer account of a specified leave recipient.
2. The amount of leave an employee may donate in any one leave year is limited to a total of one-half of the amount of annual leave he or she would be entitled to accrue during the leave year in which the donation was made.

(1) The maximum will be lower for an employee who does not accrue annual leave during the entire leave year due to circumstances such as an

appointment after the beginning of the leave year, or any period of LWOP for 80 hours for a full-time employee. The purpose of this restriction is to ensure that a leave donor retains some annual leave available for emergencies or other extenuating circumstances.

(2) In the case of a leave donor who is projected to have annual leave that otherwise would be subject to forfeiture at the end of the leave year ("use or lose" leave over 240 hours in most cases), the maximum amount of annual leave that may be donated shall be the lesser of one-half of the amount of annual leave he or she would be entitled to accrue during the leave year in which the donation is made; or the number of hours remaining in the leave year (as of the date of the transfer) for which the leave donor is scheduled to work and receive pay.

(3) Each court shall establish written criteria for waiving the limitations on donating annual leave under this section. Any such waiver shall be documented in writing.

3. Subject to the limitations described in this section, all or any portion of the annual leave requested by the leave donor may be transferred to the annual leave account of the specified leave recipient under procedures established by the leave recipient's employing court.
4. The employing court of a leave donor who wishes to donate annual leave to a leave recipient in another court shall verify the availability of annual leave in the leave donor's annual leave account, determine that the amount of annual leave to be donated does not exceed mandatory limitations, and ascertain that the leave recipient's employing agency has approved the request for a leave donation. Upon satisfying these requirements, the leave donor's employing court shall reduce the amount of annual leave credited to the leave donor's annual leave account, as appropriate; and notify the leave recipient's employing court or agency in writing of the amount of annual leave to be

credited to the leave recipient's annual leave account.

5. A leave recipient's employing agency shall not transfer annual leave to a leave donor's immediate supervisor.

Regular Annual and Sick Leave

1. While an employee is using donated leave related to a specific medical emergency, annual and sick leave shall accrue to the credit of the employee up to a maximum of 40 hours each (for part-time employees, the average number of hours in the employee's weekly tour of duty).
2. The annual or sick leave accrued while using donated leave (up to 40 hours each) shall be held in separate set-aside accounts until it is transferred to the regular leave accounts after the medical emergency terminates or the employee has exhausted available leave donations.
3. If a leave recipient is able to work part-time while using leave donations part-time, the employee will earn leave based on time worked. Any leave earned while in part-time work status must be used the following pay period before using additional leave donations.
4. A leave recipient may use annual leave donations only for the medical emergency for which the donation was approved.

(1) Annual leave donations may accumulate without regard to the 240-hour limitation on annual leave.

(2) Annual leave donations may be substituted retroactively for any period of LWOP or used to liquidate an indebtedness for any period of advanced leave that began on or after the date fixed by the court as the beginning of the medical emergency.

(3) Donated leave may not be included in a leave transfer recipient's lump-sum payment at separation, made available for recredit upon

reemployment by a federal agency, or transferred to another leave recipient.

(4) If a leave recipient separates from federal service while in a leave donation recipient status, none of the leave in the special account may be transferred to the leave recipient's regular account (e.g., for transfer or lump-sum annual leave payments).

Termination of Medical Emergency

1. The medical emergency affecting a leave recipient shall terminate when:

(1) the leave recipient's federal service is terminated;

(2) at the end of the biweekly pay period in which the court receives written notice from the leave recipient that the leave recipient is no longer affected by a medical emergency;

(3) at the end of the biweekly pay period in which the court determines, after written notice from the court and an opportunity for the leave recipient or appropriate personal representative to answer orally or in writing, that the leave recipient is no longer affected by a medical emergency or;

(4) at the end of the biweekly pay period in which the leave recipient's employing court receives notice that the OPM has approved an application for disability retirement for the leave recipient under CSRS or FERS.

2. The leave recipient's employing court shall continuously monitor the status of the medical emergency affecting the leave recipient to ensure that the leave recipient continues to be affected by a medical emergency. An agency may deem a medical emergency to continue for the purpose of providing a leave recipient an adequate period of time within which to receive donations of annual leave.

3. When the medical emergency affecting a leave recipient terminates, no further requests for transfer of annual leave to

the leave recipient may be granted, and any unused transferred annual leave remaining to the credit of the leave recipient shall be restored to the leave donors.

Restoration of Transferred Annual Leave

1. Any annual leave donations remaining when the medical emergency terminates shall be restored (returned) back to the donors, prorated as follows:

(1) Divide the number of remaining/unused hours by the total number of hours donated;

(2) For each donor, multiply that ratio by the number of hours donated, and;

(3) Round the result obtained to the nearest whole hour.

(4) If the number of **donors** exceeds the number of excess hours remaining, no annual leave shall be returned (each donor would receive less than a full hour). In no case shall the amount of annual leave returned exceed the amount donated.

2. Unused leave donations shall not be returned to a donor who retires from federal service, dies, or is otherwise separated from federal service before the annual leave can be restored.

3. At the election of the leave donor, unused leave donations are restored (returned) to the leave donor by:

(1) Crediting the restored annual leave to the leave donor's annual leave account in the current leave year;

(2) Crediting the restored annual leave to the leave donor's annual leave account effective as of the first day of the first leave year beginning after the date of election; or

(3) Donating such leave in whole or in part to another leave recipient.

4. If a leave donor elects to donate only part

of his or her restored leave to another leave recipient, the donor may elect to have the remaining leave credited to his or her annual leave account.

5. Annual leave donations that are restored (returned back to a donor), are subject to the 240-hour annual leave limitation at the end of the leave year in which the restored leave is credited.
6. If a leave recipient elects to buy back annual leave as a result of a claim for an employment-related injury approved by the Office of Workers' Compensation Programs, the amount of annual leave bought back by the leave recipient shall be restored to the leave donor(s).

Prohibition of Coercion

An employee may not threaten, coerce, or attempt to intimidate any other employee for the purpose of interfering with any right such employee may have with respect to donating, receiving, or using annual leave under this subpart. This includes conferring or promising to confer any benefit, such as an appointment, promotion or compensation, or effecting or threatening to effect any reprisal such as deprivation of appointment, promotion, or compensation.

13. EMERGENCY LEAVE TRANSFER PROGRAM

1. Authority. Section 6391 of title 5, United States Code, provides that in the event of major disasters or emergencies declared by the President, such as floods, hurricanes, earthquakes, tornadoes, or bombings that result in severe adverse effects for a substantial number of employees, the President may direct the Office of Personnel Management (OPM) to establish an emergency leave transfer program (ELTP) to permit employees to donate unused annual leave for transfer to employees who are adversely affected by the disaster and who need time off from work without having to use their own paid leave. Coverage was extended to the

judicial branch by Public Law 109-229, effective May 31, 2006.

2. Delegated Authority. OPM has delegated authority to agencies and courts to decide when ELTP is needed and to administer ELTP programs within regulatory specifications outlined by this policy (see [5 C.F.R. § 630.1103](#) for details).
3. Policy. When the President declares a major disaster and authorizes OPM to establish an ELTP, a chief judge Or FPD may, at his or her discretion, approve the use of donated annual leave as an additional management tool along with telework, excused absence, and other leave programs where applicable.

While a facility is closed, or once a facility is reopened or operations are reestablished at an alternate work site, a chief judge or FPD may authorize the use of donated leave by impacted employees who need time off related to the disaster (balancing a court's need to reestablish communications and services, with an employee's need for time to take care of personal and family issues that are related to the disaster).

4. Statutory Requirements.

An employee who is approved to receive ELTP may not be required to exhaust his or her annual or sick leave balances prior to using ELTP.

The defender or designate of a court impacted by a disaster may determine whether and how much donated annual leave is received by the court, based on the court's need to maintain adequate staffing and the extent to which potential leave recipients are adversely impacted by the disaster; and may vary the amount of leave donated to individual employees according to individual employee needs, at the sole discretion of, and based on evidence that is administratively acceptable to the chief judge.

A court unit may advance annual or sick leave

to a potential ELTP recipient during the interim period while leave donations are solicited, even if the employee has accrued annual and sick leave available, so that an ELTP recipient is not required to use accrued leave before donated annual leave becomes available.

Donated annual leave may be substituted retroactively for any leave without pay used by the emergency leave recipient during the disaster or may be used to liquidate an indebtedness incurred by the emergency leave recipient for advance annual or sick leave.

While an emergency leave recipient is using donated annual leave from an ELTP, annual and sick leave will accrue to the credit of the employee at the same rate as if the employee were in a regular paid leave status, and annual leave will be subject to the accumulation limit imposed by [5 U.S.C. § 6304\(a\)](#).

An emergency leave recipient may not receive more than 240 hours of donated annual leave per request (an additional request may be approved by a chief judge/FPD).

The minimum amount of annual leave a donor may contribute in a leave year is one hour, and the maximum amount is 104 hours (although a donor court or federal public defender organization may waive the 104 hour limitation if a recipient court requests additional annual leave because sufficient leave was not donated).

A leave recipient must use donated leave for purposes related to the major disaster for which the leave was donated.

Leave must be donated from court to court, at the discretion of the chief judges of the receiving and donating courts. Individual employees may not identify or designate donations for specific individuals, courts, court units, or federal public defender organizations.

A recipient court unit is responsible for ensuring that annual leave donations are used appropriately; tracked separately from regular annual leave; and not used for lump-sum payments, recredit upon reemployment, retirement eligibility, or retiree health benefits.

A donor court is responsible for approving or denying donations after certifying each donor's available annual leave balance and certifying that the transfer is for an established ELTP for a declared disaster.

A recipient court will return any unused leave donations back to the donor court, in aggregate.

A donor court is responsible for applying unused leave donations back to individual donors in proportion to the amount donated. Donations for one disaster may not be transferred to another program for a different major disaster.

An employee may not directly or indirectly intimidate, threaten, or coerce any other employee for the purpose of interfering with any right such employee may have with respect to donating, receiving or using annual leave under an ELTP.

Implementation

Implementation procedures will be provided with an InfoWeb tool to enable automated realtime court-to-court donations of ELTP. The InfoWeb tool will only permit donations to a recipient court up to the maximum limit designated by the donor court, thereby reducing the amount of excess or unused ELTP donations that might otherwise occur.

14. VOLUNTARY LEAVE TRANSFER TO FEDERAL EMPLOYEES WHO ARE WOUNDED VETERANS

Section 1675 amends 5 U.S.C. 6333(b) to allow certain wounded veterans to participate in the Voluntary Leave Transfer Program without first

having to exhaust their own available paid leave. This provision will apply to an employee who sustains a combat-related disability while serving as a member of the Armed Forces (including a reserve component) and is undergoing medical treatment for that disability. A qualified leave recipient is eligible to receive donated annual leave for up to 5 years from the start of the employee's treatment, as long as the employee continues to undergo such medical treatment. The amendments made by section 1675 take effect on the date of enactment. For an employee who is already undergoing medical treatment on the date of enactment, the 5-year period begins on the date of enactment. OPM will revise the Voluntary Leave Transfer Program regulations to conform with this statutory change.

15. THE GUIDE-VOLUME 12 Human Resources CHAPTER 9: Leave and Attendance, by reference.

CHAPTER 4

BENEFITS

1. HEALTH INSURANCE

The Federal Employees' Health Benefits Program is available on a voluntary basis, with costs partially financed by the Government. On employment, all eligible employees will be provided health benefit information which describes the various provider programs and insurance available.

1.1 - Enrollment: Every eligible employee must register to enroll in a health plan or decline to enroll by completing SF-2809, Health Benefits Registration form, **within 60 days from the date of entry on duty.** Submit the SF-2809 to <http://judiciary.adp.com> or 1-888-442-3539. ADP Judiciary Benefits Center, will transmit the appropriate information to the selected carrier. The carrier selected by the employee will provide a detailed benefits brochure usually within 30-60 days. Until receipt of an enrollment card from a particular carrier, the employee copy of SF-2809, Registration Form, may be used as evidence of insurance in the event of emergency.

1.2 - Changes in Enrollment: To make a change in your enrollment, a modified SF-2809 Registration Form must be filed with ADP, see their web site <http://judiciary.adp.com>. There may be limitations on the time periods in which you may elect changes; permissible time frames are printed on the reverse of the SF-2809 and you can contact ADP Judiciary Benefits Center at 1-888-442-3539.

1.3 - Effective Date: Enrollments and changes in enrollment, as well as associated costs, become effective the first day of the first pay period after the one in which (1) ADP (administrator of the FEHB) receives the SF-2809 Registration Form, and that (2) follows a pay period during any part of which the employee was in a pay status. The pay status requirement does not apply to a change from Self &

Family to Self Only or a change from Self Only to Self & Family due to the birth of a child or addition of a child as a new family member.

1.4 - Filing Claims: All claims are filed by the employee with the carrier selected on SF-2809 in accordance with the guidelines established by that carrier and detailed in their benefits brochure.

1.5 - Open Season: Every year, employees are provided an opportunity to review their coverage and choose another plan if they so desire. This normally has occurred annually in approximately November. The Administrator will distribute appropriate literature at that time to all employees.

2. LIFE INSURANCE

Under the Federal Employees' Group Life Insurance Act, all eligible employees are automatically provided basic life insurance unless such coverage is waived or subsequently canceled by filing the required waiver form, SF-2817. This form must be completed either accepting or waiving coverage and submitted to the ADP Judiciary Benefits Center, web site <http://judiciary.adp.com> within 60 days of entry on duty. On employment, a life insurance policy booklet is provided each employee for a description of basic coverage, options for additional coverage, and rates.

3. RETIREMENT

3.1 - CSRS (Civil Service Retirement System): Employees hired prior to 01/01/84 and who have not elected to transfer to FERS are covered under CSRS (Civil Service Retirement System). The current deduction rates are 7.00% for CSRS and 1.45% to Medicare tax (subject to change with Health Reform Act) for a total of 8.45%. See the FPD website, FERS/CSRS Retirement for further details and computation of annuity and also www.opm.gov.

3.2 - FERS (Federal Employees Retirement System) & CSRS Offset: All employees hired on or after 01/01/84 are covered under FERS (Federal Employees Retirement System). See booklet RI-90-1 provided on employment for a complete description of the program. Current rates of deduction are .8% for FERS, 1.45% for

Medicare (subject to change due to Health Reform Act), 6.20% for Social Security for a total of 8.45%. The taxable Wage Base for 2001 for Social Security is \$80,400, there is no limit to the wages subject to the medicare tax. See the FPD website, FERS/CSRS Retirement for further details and computation of annuity and also www.opm.gov.

4. THRIFT SAVINGS PLAN

Employees are eligible for participation in a special tax-deferred savings plan entitled "Thrift Savings Plan," which is managed by the Federal Retirement Thrift Investment Board. New employees will need to read Thrift Savings Plan material to see eligibility to enroll and criteria for matching funds by employee agency. New employee orientation information will explain current policy of enrollment. CSRS employees may participate but are not eligible to receive matching funds. Visit website for more information, www.tsp.gov.

5. DIRECT DEPOSIT OF SALARY CHECK

Effective January 1, 1994, direct deposit of an employee's salary check is mandatory. Upon employment employees will be given a SF-1199A Direct Deposit Form to be completed and returned to the Administrator. Direct deposit guarantees that an employee's payroll funds will be transferred to the employee's account after Thursday midnight of each payday. Should an employee need to change their direct deposit financial institution, an updated SF-1199A would need to be completed on line at the HRMIS (Jenie) website, new employees will be trained to use e-service on the Jenie program. See Administrator if reason for not having direct deposit, there are some exceptions.

6. SAVINGS ALLOTMENT

Employees may establish an automatic savings deduction from salary checks for deposit to a financial institution upon completion of SF-1199A, Direct Deposit Sign-Up Form. **A word of caution:** savings allotment funds do not receive the same priority as salary checks, and are not guaranteed to be deposited at the same time as the direct deposit of

your salary. Savings allotments can be changed on HRMIS under e-service.

7. U. S. SAVINGS BONDS

U.S. Savings Bonds are no longer offered through payroll deduction. Employees interested in purchasing savings bonds should contact their local bank.

8. DISABILITY BENEFITS

8.1 - FERS (Federal Employees Retirement System)

Employees: See booklet RI-90-1, pages 9-10, FERS (Federal Employees Retirement System) for a description of eligibility and benefits. See FPD website entitled FERS/CSRS Retirement Handbook for the latest information or www.opm.gov.

8.2 - CSRS (Civil Service Retirement System)

Employees: An employee must become totally disabled for useful and efficient service in the position occupied, and have completed five years of service to become eligible for disability retirement. See FPD website entitled FERS/CSRS Retirement Handbook or www.opm.gov.

9. Judicial Branch Federal Employee Group Long Term Disability Plan

The Federal Employee Group Long Term Disability Plan is underwritten by Metlife Insurance Group. New employees are provided brochures and enrollment materials by the Administrator. Any staff interested in information on the long term disability program should see the Administrator or visit www.federalfirst.com.

10. Long Term Care Insurance

New employees will be provided brochures and enrollment materials by the Administrator. Open season enrollment will be from time to time. Currently two different organizations offer plans, CNA through the judiciary and the Office of Personnel Management. See administrator for other than new employee or open season enrollment.

11. Flexible Benefit Program

The Flexible Benefit Program has three components 1) a premium payment plan, which allows enrollees to deduct the cost of their health insurance premiums from their gross salary before taxes are withheld; 2) a medical flexible spending account which allows payment of certain medical expenses not covered by a health insurance plan; and 3) a dependent care flexible spending account to pay for qualified dependent care expenses. The advantage of these flexible spending accounts is that all deductions up to a maximum amount are taken from gross salary before federal, state (in most cases), and FICA taxes are computed. The program administrator of the plan will send information to new employees on how to enroll and other information on the plan, also visit <http://judiciary.adp.com>. The Administrator for new employees may also give the new employee an enrollment package also. Open season will be on a yearly basis before the first month of a new calendar year.

12. Commuter Benefit Program

As of January 1, 2001, a commuter benefit program is being offered through the SHPS administrator. The program is set up to cover costs of commuting to work specifically for public transportation costs and parking at work costs, on a pre-tax basis. The administrator will distribute literature and enrollment on the program. This program is flexible and can be entered into or dropped at any time during a calendar year. Go to web site is <http://judiciary.adp.com>.

13. Worker's Compensation (US DOL OWCP)

If you are ever hurt or have an illness and you received while working for the Federal Public Defender Organization, please contact the administrator and defender immediately. The administrator will inform you what to do and will provide you with forms to complete, should you seek worker's compensation and be unable to return to work (either temporarily or indefinitely).

14. FEDVIP, supplemental Vision and Dental insurance

As of 2006 open season, supplemental vision and dental insurance is offered to employees. The administrator will provide a packet of information to include enrollment information. There are several choices in reference to vendors and prices. An open season is provided each year if an employee wants to enroll or change vendors, carry over of the vendor is also accepted. See website: www.benefeds.com and select Federal Judiciary.

15. Judiciary's Employee Assistance Program (EAP)

The Judiciary's Employee Assistance Program (EAP) provides free, confidential, professional help with personal and /or family matters that are causing concern, stress or inability to focus on your job. Counselors are available anytime, day or night at 1-800-222-0364 or TTY 1-888-262-7848. Ask the Administrator for link to EAP program on the J-Net or visit <https://www.magellanassist.com>.

16. Student Loan Forgiveness for Public Service Employees

1. Interim Fact Sheet Pending Additional Information from the [Department of Education](#)

H.R. 2669 was signed by the President on September 27, 2007 and became Public Law 110-084.

Section 401 "Loan Forgiveness for Public Service Employees" applies to any employee who

has an eligible student Federal Direct Loan under an income-based repayment plan, a standard repayment plan with a ten-year repayment period, a plan with repayment of not less than the monthly amount calculated under ten-year repayment period, or an income contingent repayment plan;

has made 120 monthly payments on an eligible Federal Direct Loan after October 1, 2007;

is employed in a public service job at the

time of application for loan forgiveness;
and has been employed in a public service
job during the period in which the borrower
makes each of the 120 payments.

Loan cancellation amount: After the ten year period
and 120 monthly payments, the Secretary of
Education will cancel the obligation to repay the
balance of principal and interest due on the
eligible Federal Direct Loans made to the
borrower.

Eligible Federal Direct Loan: A Federal Direct
Stafford Loan, Federal Direct PLUS Loan, or
Federal Direct Unsubsidized Stafford Loan, or a
Federal Direct Consolidation Loan.

Public service job: A full-time job in emergency
management, government (including the judicial
branch), military service, public safety, law
enforcement, public health, public education,
social work, public interest law services
(including prosecution or public defense or legal
advocacy in low-income communities at a nonprofit
organization), public child care, public service
for individuals with disabilities, public service
for the elderly, public library sciences, school-
based library sciences and other school-based
services, or teaching as a full-time faculty
member at a Tribal College or University and
other faculty teaching in high-needs areas, as
determined by the Secretary of Education.

Additional details on this program will be provided
as they are made available from the [Department of
Education](#).

**For any forms, information, or questions in
reference to personnel matters, please contact the
Defender or Administrator.**

