

Personnel Management

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Personnel Management

5-01 INTRODUCTION

This chapter is designed to provide accurate and authoritative information regarding the subject matter covered. However, a reference book on personnel management cannot substitute for review of particular circumstances in your court by the human resources department of the court or funding unit, or by an experienced labor attorney.

5-02 RELATIONSHIP OF CHIEF JUDGE WITH OTHERS IN THE COURT

A. Authority

The relationship of the chief judge with other judges on a multi-judge bench and with court staff is based on the provisions of MCR 8.110, the Chief Judge Rule.

B. Duties and Responsibilities of the Chief Judge with Other Judges in the Court

MCR 8.110(C)(3) imparts to the chief judge accountability for the hours of work, attendance, productivity, and vacations of his or her fellow judges. The chief judge is responsible and has the authority to:

- “(c) Determine the hours of the court and the judges; coordinate the number of judges ... required to be present at any one time to perform necessary judicial and administrative work of the court; and require their presence to perform that work. ...
- (e) Coordinate judicial ... vacations and absences, subject to the provision of subrule (D).”

A judge may not be absent from the court without the chief judge's prior approval, except for personal illness. In making the decision on a request to approve vacation or other absences, the chief judge may consider, among other factors, the pending caseload of the judge involved, including the judge's latest report pursuant to MCR 8.107; the number of cases ready for trial and awaiting trial; and the length of time the cases have been pending. The chief judge is required to maintain records of absences to be available at the request of the Supreme Court. (MCR 8.110[D][6])

C. Duties and Responsibilities of the Chief Judge with Court Staff

MCR 8.110(C)(3)(d) provides that it is the responsibility of the chief judge to supervise the performance of all court personnel, with authority to hire, discipline, or discharge such personnel, with the exception of a judge's secretary and law clerk, if any.

5-03 PERSONNEL ADMINISTRATION IN TRIAL COURTS

A. Authority

Michigan case law has established trial courts as the employer of record as it relates to court employees.

Examples of Michigan cases include but are not limited to the following: *Judges of the 74th Judicial District v Bay County*, 385 Mich 710 (1971); *Clare and Gladwin Probate Courts v Clare and Gladwin County Boards of Comm'rs*, 155 Mich App 433 (1986); *Ottawa County Controller v Ottawa Probate Judge*, 156 Mich App 595 (1986); and *Judicial Attorneys Ass'n v State of Michigan and County of Wayne*, 459 Mich 291 (1998).

B. Personnel and Labor Relations Administration

Guidance in personnel and labor relations matters may be gained through the management responsibilities listed in MCR 8.110 (Chief Judge Rule), duties imposed by various state and federal laws, and case law. Some of the more relevant laws are as follows.

1. Equal Opportunity and Nondiscrimination – Federal Statutes

Equal opportunity is a legal right of all persons to be accorded full and equal consideration on the basis of merit regardless of protected class with regard to all terms and conditions of employment (e.g., hiring, promotion, layoff, demotion, termination, access to training, and performance evaluation).

a. Civil Rights Act of 1964

Title VII of the Civil Rights Act of 1964, as amended by the Equal Employment Opportunity Act of 1972, bans discrimination in all terms and conditions of employment on the basis of race, color, religion, national origin, or sex. It also created the Equal Employment Opportunity Commission (EEOC), which enforces Title VII. For the full text of Title VII, go to <http://www.dol.gov/oasam/regs/statutes/2000e-16.htm>.

b. Civil Rights Act of 1991

The Civil Rights Act of 1991 amended Title VII of the Civil Rights Act of 1964, the Americans with Disabilities Act of 1990, and the Age Discrimination in Employment Act of 1967. It prohibits impermissible consideration of race, color, national origin, religion, sex, or disability, and allows compensatory and punitive damages – previously available only to racial and ethnic minorities – to be sought by victims of intentional discrimination based on sex, religion, or disability.

A jury trial may be requested by any party to a case in which compensatory or punitive damages are sought. It is enforced by the EEOC. For full text of this act, go to <http://www.eeoc.gov/policy/cra91.html>.

c. Fair Labor Standards Act of 1938 (FLSA)

The FLSA sets minimum wage, equal pay, overtime, recordkeeping, and child labor standards for employees who are covered by the act and are not exempt from specific provisions. Employees who are direct hires of an elected official are not covered by the overtime provisions of the FLSA. This may include law clerks and judicial secretaries.

The act is supplemented by numerous regulations issued by the U.S. Department of Labor. (Title 29 USC Chapter 8, 29 CFR *et seq.*) Adopted by Congress in 1938, initially the act only applied to private employers. In 1974, Congress amended the act to extend its provisions to most state and local governmental employers. In 1976, the U.S. Supreme Court held that the 10th Amendment to the U.S. Constitution rendered the application of the minimum wage and overtime provisions of the FLSA to state and local governments unconstitutional (*National League of Cities v Usery*, 426 US 833 [1976]).

From 1976 until 1985, state trial court employees were covered by virtually identical minimum wage and overtime provisions of state law (MCL 408.381 *et seq.*) by virtue of an Attorney General opinion issued in 1976. (1976 OAG 5115) In April 1985, the U.S. Supreme Court overturned *Usery*, placing state trial court employees once more under the jurisdiction of the U.S. Department of Labor for enforcement of the FLSA (*Garcia v San Antonio Metropolitan Transit Authority*, 469 US 528 [1985]).

d. Equal Pay Act of 1963

The Equal Pay Act of 1963 prohibits sex discrimination in salaries and most fringe benefits. It provides that a man and a woman working for the same employer under similar conditions in jobs requiring substantially equivalent skills, effort, and responsibility must be paid equally, even when job titles and assignments are not identical. This act is enforced by the Wage and Hour Division, U.S. Department of Labor. For the full text of the act, go to <http://www.eeoc.gov/policy/epa.html>.

e. Vietnam-Era Veterans Readjustment Assistance Act of 1974

The Vietnam-Era Veterans Readjustment Assistance Act of 1974 requires employers with federal contracts greater than \$10,000 to take affirmative action to employ and promote qualified disabled veterans and Vietnam-Era veterans. It is enforced by the Office of Federal Contract Compliance Programs (OFCCP), U.S. Department of Labor. For the text of the act, go to <http://www.dol.gov/compliance/laws/comp-vevraa.htm>

f. Age Discrimination in Employment Act of 1967 (ADEA)

The Age Discrimination in Employment Act of 1967, as amended in 1978 and again in 1986, prohibits employment discrimination on the basis of age of anyone age 40 and over. See <http://www.eeoc.gov/types/age.html> for the full text of this act.

g. Americans with Disabilities Act of 1990 (ADA)

The Americans with Disabilities Act of 1990 prohibits discrimination on the basis of disability in access to employment and covers most employers, public entities, and public accommodations. The act requires nondiscrimination, access, and reasonable accommodation, but does not require affirmative action in hiring. It is enforced by the EEOC and the U.S. Department of Justice. For the full text of the act, go to <http://www.ada.gov/pubs/ada.htm>.

h. The Family and Medical Leave Act of 1993 (FMLA)

The Family and Medical Leave Act of 1993 provides in part that eligible employees (employees who have worked for the employer for a total of at least 12 months and have worked at least 1,250 hours over the 12 months prior to the leave) are entitled to up to 12 work weeks of unpaid leave for the birth/care of a newborn, adopted or newly-placed foster child, care of a spouse, child, or parent with a serious illness, or an illness rendering the employee unable to work. Employees who are direct hires of an elected official are not covered by the FMLA. This may include law clerks and judicial secretaries. An employer must maintain the employee's group health insurance coverage and the employee's original or an equivalent position during FMLA leave. For the full text of this act, go to <http://www.dol.gov/esa/whd/regs/statutes/fmla.htm>.

2. Equal Opportunity and Nondiscrimination – Michigan Statutes

a. Elliott-Larsen Civil Rights Act

The Elliott-Larsen Civil Rights Act is a Michigan statute that parallels Title VII of the Civil Rights Act of 1964. In addition to prohibiting discrimination based on the categories listed in Title VII of the Civil Rights Act, Michigan law added marital status, height, weight, and age as protected categories. There is no age limit specified in the Michigan law. (MCL 37.2101 *et seq.*)

b. Persons with Disabilities Civil Rights Act

The Persons with Disabilities Civil Rights Act bars Michigan employers from discrimination based on handicapping conditions and requires employers to make reasonable accommodations for handicapped employees. (MCL 37.1101 *et seq.*)

c. Polygraph Protection Act of 1981

The Polygraph Protection Act of 1981 prohibits Michigan employers from requiring applicants for employment or employees to submit to a polygraph examination as a condition of employment. (MCL 37.202 *et seq.*)

d. Youth Employment Standards Act

Employment of minors is governed by the Youth Employment Standards Act. (MCL 409.101 *et seq.*)

e. Payment of Wages and Fringe Benefits

Prompt payment of wages and limitations on involuntary deductions from wages are governed by the provisions of this statute. (MCL 408.471 *et seq.*)

3. General Labor Legislation

a. The Michigan Employment Security Act

The Michigan Employment Security Act provides for unemployment benefits for court employees who lose their jobs due to termination or other reasons where good cause is attributable to the employer (with certain exceptions as provided by the act). This act is administered by the Employment Security Act (MCL 421.1 *et seq.*) through the Department of

Consumer and Industry Affairs, Bureau of Workers' and Unemployment Compensation.

b. Michigan Workers' Disability Compensation Act

The Michigan Workers' Disability Compensation Act provides medical care and compensation for court employees or their families if the employee is injured, disabled, or killed during the course of employment. (MCL 418.101 *et seq.*) This act is administered by the Department of Consumer and Industry Affairs, Bureau of Workers' and Unemployment Compensation.

c. Michigan Occupational Safety and Health Act

The prevention of on-the-job injuries through the elimination of hazardous or unsafe working conditions is under the jurisdiction of the Michigan Department of Labor by virtue of this act. (MCL 408.1001 *et seq.*)

d. Uniformed Services Employment and Reemployment Rights Act

Federal law provides reemployment rights for employees who leave their employment to perform training or other military service in the armed forces. (Title 38 USC Part III)

e. Bullard-Plawecki Employee Right to Know Act

Although personnel files are considered property of the employer, state law gives employees the right to inspect, copy, correct, and insert additional explanatory materials into their personnel files. Reasonable access is granted the employee under this act, with restrictions as to time and place of inspection. The act includes the right to charge a nominal cost for reproduction of materials. (MCL 423.501 *et seq.*)

f. Immigration Reform and Control Act

In 1986, Congress passed the Immigration Reform and Control Act, which requires all employers to check certain documents when employing any person in order to assure the employee is legally able to work in the United States. The requirements may be obtained from U.S. Citizenship and Immigration Services at <http://www.uscis.gov/portal/site/uscis>.

g. Consolidated Omnibus Budget and Reconciliation Act (COBRA)

The Consolidated Omnibus Budget and Reconciliation Act (COBRA) requires employers having group health plans to offer employees, their

spouses, and eligible dependents the opportunity for a temporary extension of health-care benefits (medical, dental, and optical) at group rates in certain instances where coverage would otherwise end. (P.L. 99-272)

h. Public Employment Relations Act (PERA)

The trial courts are governed by the provisions of the Public Employment Relations Act. This statute is enforced by the Michigan Employment Relations Commission (MERC), which is part of the Michigan Department of Labor and Economic Growth. For more information, go to http://www.michigan.gov/dleg/0,1607,7-154-10576_17485---,00.html.

The PERA is the collective bargaining law governing public employers and their employees. While PERA provides for the recognition of an exclusive bargaining agent for employees in appropriate units and prohibits certain acts as unfair labor practices, it also prohibits strikes in the public sector. (MCL 423.1 *et seq.*)

Pursuant to PERA, if a union is selected to represent court employees in collective bargaining and contract administration, the court and the union are legally obligated to bargain in good faith. While the parties may bargain over any legal subject, Section 15 of PERA limits the duty to bargain collectively to subjects that fall within the statutory description of wages, hours and other terms and conditions of employment. (*Detroit Police Officers Association v City of Detroit*, 391 Mich 44, 214 NW 2d 803 [1974]) A refusal to bargain collectively over mandatory subjects of bargaining is an unfair practice pursuant to Section 10(1)(e) of PERA if committed by an employer, and Section 10(3)(c) if committed by a union.

The parties may voluntarily bargain over permissive subjects of bargaining (issues that are not wages, hours, and other terms and conditions of employment), but there is no duty to bargain permissive subjects under the law. Employers and unions may not bargain over illegal subjects (closed union shop, conditions of employment contrary to law).

The duty to bargain under PERA provides, in part, that "... to bargain collectively is the performance of the mutual obligation of the employer and the representative of the employees to meet at reasonable times and confer in good faith with respect to wages, hours, and other terms and conditions of employment, or the negotiation of an agreement, or any terms and conditions of employment, or the negotiation of an agreement, or any question arising thereunder, and the execution of a written contract, ordinance or resolution incorporating any agreement reached if requested by either party, **but such obligation does not compel either party to**

agree to a proposal or require the making of a concession.” (Emphasis added.)

When the parties are unable to agree, there are methods in law that provide for dealing with the impasse. A condition precedent to the determination of impasse is that the issue in dispute is a mandatory subject of bargaining. Parties may not go to impasse on non-mandatory subjects of bargaining. The Michigan Employment Relations Commission provides for mediation and fact-finding in situations where the parties cannot reach agreement over mandatory subjects of bargaining.

5-04 MICHIGAN SUPREME COURT ADMINISTRATIVE ORDER 1998-5

A. Chief Judge Responsibilities and Local Intergovernmental Relations

Michigan Supreme Court Administrative Order 1998-5 addresses several matters related to personnel administration and a court's relationship with its funding unit. For the full text of Administrative Order 1998-5, go to the SCAO website at <http://courtofappeals.mijud.net/rules/documents/3AdministrativeOrders.pdf>.

The following are excerpts from Administrative Order 1998-5.

B. Funding Disputes – Mediation and Legal Action

If, after the local funding unit has made its appropriations, a court concludes that the funds provided for its operations by its local funding unit are insufficient to enable the court to properly perform its duties and that legal action is necessary, the procedures set forth in this order must be followed.

1. Legal action may be commenced 30 days after the court has notified the state court administrator that a dispute exists regarding court funding that the court and the local funding unit have been unable to resolve, unless mediation of the dispute is in progress, in which case legal action may not be commenced within 60 days of the commencement of the mediation. The notice must be accompanied by a written communication indicating that the chief judge of the court has approved the commencement of legal proceedings. With the notice, the court must supply the state court administrator with all facts relevant to the funding dispute. The state court administrator may extend this period for an additional 30 days.
2. During the waiting period in item 1, the state court administrator must attempt to aid the court and the involved local funding unit to resolve the dispute.
3. If, after the procedure provided in item 2 has been followed, the court concludes that a civil action to compel funding is necessary, the state court administrator must assign a disinterested judge to preside over the action.
4. Chief judges or representatives of funding units may request the assistance of the State Court Administrative Office to mediate situations involving potential disputes at any time, before differences escalate to the level of a formal funding dispute.

C. Participation by Funding Unit in Negotiating Process

If a court does not have a local court management council, the chief judge, in establishing personnel policies concerning compensation, fringe benefits, pensions, holidays, or leave, must consult regularly with the local funding unit and must permit a representative of the local funding unit to attend and participate in negotiating sessions with court employees, if desired by the local funding unit.

The chief judge shall inform the funding unit at least 72 hours in advance of any negotiating session. The chief judge may permit the funding unit to act on the chief judge's behalf as negotiating agent.

D. Consistency with Funding Unit Personnel Policies

To the extent possible, consistent with the effective operation of the court, the chief judge must adopt personnel policies consistent with the written employment policies of the local funding unit. Effective operation of the court to best serve the public in multi-county circuits and districts, and in third-class district courts with multiple funding units, may require a single, uniform personnel policy that does not wholly conform with specific personnel policies of any of the court's funding units.

1. Unscheduled Court Closing Due to Weather Emergency

If a chief judge opts to close a court and dismiss court employees because of a weather emergency, the dismissed court employees must use accumulated leave time or take unpaid leave if the funding unit has employees in the same facility who are not dismissed by the funding unit. If a collective bargaining agreement with court staff does not allow the use of accumulated leave time or unpaid leave in the event of court closure due to weather conditions, the chief judge shall not close the court unless the funding unit also dismisses its employees working at the same facility as the court.

Within 90 days of the issuance of this order, a chief judge shall develop and submit to the State Court Administrative Office a local administrative order detailing the process for unscheduled court closing in the event of bad weather. In preparing the order, the chief judge shall consult with the court's funding unit. The policy must be consistent with any collective bargaining agreements in effect for employees working in the court.

2. Court Staff Hours

The standard working hours of court staff, including when they begin and end work, shall be consistent with the standard working hours of the funding unit. Any deviation from the standard working hours of the funding unit must be reflected in a local administrative order, as required by the chief judge rule, and submitted for review and comment to the funding unit before it is submitted to the State Court Administrative Office for approval.

E. Collective Bargaining

For purposes of collective bargaining pursuant to 1947 PA 336, a chief judge or a designee of the chief judge shall bargain and sign contracts with employees of the court.

Notwithstanding the primary role of the chief judge concerning court personnel pursuant to MCR 8.110, to the extent that such action is consistent with the effective and efficient operation of the court, a chief judge of a trial court may designate a representative of a local funding unit or a local court management council to act on the court's behalf for purposes of collective bargaining pursuant to 1947 PA 336 only, and as a member of a local court management council, may vote in the affirmative to designate a local court management council to act on the court's behalf for purposes of collective bargaining only.

5-05 DETERMINING QUALIFICATIONS OF COURT STAFF

A. Source of Qualifications

Establishing minimum job qualifications for court staff positions is the responsibility of the chief judge, except where specific qualifications have been established by Michigan Court Rules or in the statutes, as follows.

B. Michigan Court Rules and Supreme Court Administrative Orders

Certification requirement for shorthand reporters and electronic recorders (MCR 8.108[G][3]). See also the *Manual for Court Reporters and Recorders* at <http://courts.michigan.gov/scao/resources/publications/manuals/crr.htm>.

Various positions in family division of circuit court (Administrative Order 1985-5, amended by Administrative Order 1988-3).

Referees in family division of circuit court (MCR 3.913).

C. Michigan Statutes

Numerous positions reviewed in Section 4 of this guide have employment qualifications prescribed by law. These include the following.

- Circuit court clerk (Const. 1963, Art. 6, §14, MCL 600.571[a]).
- Friend of the court (MCL 552.523[3]).
- Friend of the court referee (MCL 552.507[1]).
- Domestic relations mediator (MCL 552.513[4]).
- District court magistrate (MCL 600.8507, MCL 600.8512).
- Circuit and district court law clerks (MCL 600.1471[2]).
- Judicial assistant (MCL 600.1481[1]).
- Juvenile court referee (MCL 712A.10).

D. Equal Employment Opportunity

The Michigan Supreme Court has recommended that the leadership of the trial court work with the funding unit to ensure that equal employment opportunity best practices are used when recruiting applicants to the court by making certain to do the following.

1. Clearly communicate to all persons involved in the hiring process that such process should be designed to promote equal employment opportunity, and should be carried out in a nondiscriminatory manner.
2. Clearly communicate to all persons involved in the hiring process that such process should be designed and carried out in compliance with all applicable equal employment opportunity laws.
3. Ensure that job announcements and postings are disseminated widely and in a manner that reasonably ensures the greatest number of qualified applicants.
4. Ensure that job announcements and postings, in their substance, are nondiscriminatory and designed to promote equal employment opportunity.
5. Clearly communicate in all job announcements and postings that the court is an equal employment opportunity employer, and that it does not discriminate on the basis of factors prohibited by law.
6. Develop and implement a nondiscriminatory performance evaluation system for all employees.
7. Ensure that all employees who believe that they have been subjected to discrimination in the performance evaluation system, or in some other aspect of their employment, know to whom such treatment can be communicated.
8. Clearly communicate to all court employees the commitment of the court to a workplace in which there is no discrimination, and in which there is fair treatment and respect for all employees.

E. Administrative Order 1996-11 – Hiring of Relatives by Courts

In order to ensure that the Michigan judiciary is able to attract and retain the highest quality work force and make most effective use of its personnel, the following anti-nepotism policy became effective December 1, 1996 for all courts in Michigan.

1. Purpose

This anti-nepotism policy is adopted to avoid conflicts of interest, the possibility or appearance of favoritism, morale problems, and the potential for emotional interference with job performance.

2. Application

This policy applies to all full-time and part-time non-union employees, temporary employees, contractual employment, including independent contractors, student interns, and personal service contracts. This policy also applies to all applicants

for employment regardless of whether the position applied for is union or non-union.

3. Definitions

- a. As used in this policy, the term "relative" is defined to include spouse, child, parent, brother, sister, grandparent, grandchild, first cousin, uncle, aunt, niece, nephew, brother-in-law, sister-in-law, daughter-in-law, son-in-law, mother-in-law, and father-in-law, whether natural, adopted, step, or foster.
- b. As used in this policy, "state court system" is defined to include all courts and agencies enumerated in Const 1963, art 6, §1 and the Revised Judicature Act of 1961, MCL 600.101 *et seq.*
- c. As used in this policy, the term "court administrator" is defined to include the highest level administrator, clerk, or director of the court or agency who functions under the general direction of the chief justice or chief judge, such as state court administrator, agency director, circuit court administrator, friend of the court, probate court administrator, juvenile court administrator, probate register, and district court administrator/clerk.

4. Prohibitions

- a. Relatives of justices, judges, or court administrators shall not be employed within the same court or judicial entity. This prohibition does not bar the assignment of judges and retired judges by the Supreme Court to serve in any other court in this state for a limited period or specific assignment, provided those assigned shall not participate in any employment related matters or decisions in the court to which they are assigned.
- b. Relatives of employees not employed as justices, judges, or court administrators shall not be employed, whether by hire, appointment, transfer, or promotion, in any court within the state court system (i) where one person has any degree of supervisory authority over the other, whether direct or indirect; (ii) where the employment would create favoritism or a conflict of interest or the appearance of favoritism or a conflict of interest; or (iii) for reasons of confidentiality.
- c. Should two employees become relatives by reason of marriage or other legal relationship after employment, if possible, one employee shall be required to transfer to another court within the state court system if the transfer would eliminate the violation. If a transfer is not possible or if the violation cannot be eliminated, one employee shall be required to resign. The decision as to which employee shall transfer or resign may be made by the employees.

If the employees fail to decide between themselves within 30 days of becoming relatives, the employee with the least seniority shall be required to transfer or resign. However, if one of the two employees holds an elective office, is a judge, or is covered by a union contract, the other employee shall be required to transfer or resign.

5. Required Submissions

If any person, whether employed by hire, appointment, or election, contemplates the creation of a contractual relationship that may implicate this policy, whether directly or indirectly, the proposed contract shall be submitted to the State Court Administrative Office for review to ensure compliance with this policy. (Revised 3/99)

6. Required Disclosure

All current employees, including persons who are elected or appointed, shall disclose in writing to the State Court Administrative Office the existence of any familial relationship as described in this policy within 30 days of the issuance of this policy or creation of the relationship, whichever is sooner.

7. Affected Employees

This policy shall not apply to any person who is an employee of the state court system on December 1, 1996, except that from December 1, 1996 forward, no person shall be transferred or promoted or enter into a nepotism relationship in violation of this policy.

Administrative Order 1996-11 can be accessed on-line at <http://coa.courts.mi.gov/rules/documents/3AdministrativeOrders.pdf>.

F. Oath of Office

All persons now employed or who may be employed by the state of Michigan or any governmental agency thereof, and all other persons in the service of the state or any governmental agency, shall, as a condition of their employment, take and subscribe to the oath or affirmation required of members of the legislature and other public officers by §2, article 16 of the Constitution of 1908 of the State of Michigan. (MCL 15.151)

“All officers, legislative, executive and judicial, before entering upon the duties of their respective offices, shall take and subscribe the following oath or affirmation: I do solemnly swear (or affirm) that I will support the Constitution of the United States and the constitution of this state, and that I will faithfully discharge the duties of the office of . . . according to the best of my ability. No other oath, affirmation, or any religious test shall be required as a qualification for any office or public trust.” (Michigan Constitution, Art.11, §1)

5-06 ETHICS

A. Code of Judicial Conduct – Application to Judges and Staff

Judges and court staff should respect and observe the law and should conduct themselves at all times in a manner that promotes public confidence in the integrity and impartiality of the judicial system. They should not allow family, social, or other relationships to influence their conduct or judgment as they carry out official duties. These general principles are based on Canon 2 of the Code of Judicial Conduct. The code can be used as a general guide for ethical conduct.

B. Rules of Professional Conduct

Beyond the provisions of the Code of Judicial Conduct, judges and court staff who are members of the State Bar of Michigan are also subject to the requirements of the Rules of Professional Conduct.

C. Adopting a Code of Conduct

A court may wish to consider adopting a code of conduct that specifies staff conform to ethical standards and avoid a conflict of interest or the appearance of a conflict of interest. A Model Code of Conduct for Court Employees has been developed by the Michigan Judicial Institute. The Model Code of Conduct for Court Employees can be accessed at <http://courts.michigan.gov/mji/resources/ModelCodeOfConduct.pdf>. As with any other personnel rule or contract provision, the trial court should consult with labor counsel and the human resources department in the development and application of these rules.

5-07 ABSENCES FROM THE COURT

A. Authority

The chief judge has the authority and responsibility to coordinate judicial and staff absences. (MCR 8.110[C][3][e])

B. Judicial Vacations

A judge is expected to take an annual vacation leave of 20 days with the approval of the chief judge to ensure docket coordination and coverage. A judge may take an additional 10 days of annual vacation leave with the approval of the chief judge. A maximum of 30 days of annual vacation unused due to workload constraints may be carried from one calendar year into the first quarter of the next calendar year and used during that quarter, if approved by the chief judge. Vacation days do not include attendance at Michigan judicial conferences; attendance, with the chief judge's approval, at educational meetings or seminars; attendance, with the chief judge's approval, at meetings of judicial committees or committees substantially related to judicial administration of justice; absence due to illness; or administrative leave with the chief judge's approval. (MCR 8.110[D][3])

C. Court Holidays

Michigan has a Legal Holidays Act, which designates the holidays to be observed in the holding of court and the continuance of suits. After setting forth the holidays, the act provides: "This act shall not prevent or invalidate the entry, issuance, service, or execution of a writ, summons, or confession of judgment, or other legal process, the holding of court" (MCL 435.101) Because holidays are a negotiable item between employer and employee and because the Legal Holidays Act allows courts to conduct business on legal holidays, many trial courts have established a holiday schedule that varies from the Legal Holidays Act.

Courts are encouraged to adopt an administrative order, if appropriate, to accommodate or achieve uniformity with the holiday practices of local government units regarding local public employees. The court rule addresses a practical reality: it is easier for the local government unit operating a public building and for the public using government services if a public building is either open or closed for all services provided within the building. (MCR 8.110[D][2][c])

The chief judge rule provides a list of holidays to be observed by all state courts except those that have adopted a holiday schedule by administrative order. This holiday schedule is consistent with the holiday schedule adopted by the state. (MCR 8.110[D][2]) A judge may continue a trial in progress or dispose of judicial matters on any of the listed holidays if he or she finds it necessary. (MCR 8.110[D][2][d]) Any action taken by a court on February 12, Lincoln's birthday or on the second Monday in October (Columbus Day) shall be valid. (MCR 8.110[D][2][e])

5-08 STAFFING PROBLEMS FOR MULTI-LOCATION COURTS

Multi-county circuit, district, and probate courts experience unique personnel problems because they have groups of employees at each court location. Usually the employees share a facility with local government employees, and the personnel policies are usually more like the policies of local government employees than the policies for other court employees in single location counties. Because compensation for the court employees is provided by local funding units, the chief judge must recognize the effect the local political reality has for each group of employees. Often, personnel issues must be carefully negotiated with the local funding unit of each location. Regional state court administrators are available to assist chief judges and court administrators with the difficult problems created by multi-location courts.

5-09 CONTRACTING WORK

Many courts contract for services with individuals as independent contractors. However, it is important to ensure that individuals engaged as independent contractors are bona fide independent contractors. The Internal Revenue Service provides guidance on whether a person is an employee or an independent contractor in the Employer's Supplemental Tax Guide, publication 15-A, located at <http://www.irs.gov/pub/irs-pdf/p15a.pdf>.