

# MEMORANDUM

**TO:** Honorable Gerald W. VandeWalle, Chief Justice  
**COPY:** Sally Holewa, State Court Administrator  
Amy Klein, Human Resource Director  
**FROM:** Gail Hagerty, Personnel Policy Board Chair  
**SUBJECT:** Personnel Policy Board Actions  
**DATE:** February 12, 2013

The Personnel Policy Board met on February 8, 2013 and is recommending changes to Administrative Rule 33 and changes to the Personnel Policies dealing with Filling Classified Position Vacancies and a related change to the Definitions.

## ADMINISTRATIVE RULE 33

The recommended change to Administrative Rule 33 allows the Personnel Policy Board to forward non-substantive amendments to the Supreme Court without seeking comment. The Board also proposed clerical corrections to Administrative Rule 33. The only comment received was to correct a spelling error.

## FILLING CLASSIFIED POSITION VACANCIES

### Policy 181 and Definitions

The Personnel Policy Board recommends the term *Certificate of Eligibles* be replaced with the term *Referral List*. The term *Certificate of Eligibles* may suggest that those included on the list have been certified as having met the minimum qualifications. However, the determination as to whether a candidate meets minimum qualifications is based on the candidate's statements which are not verified by Human Resources. The online applicant tracking system refers to the list of candidates sent to appointing authorities as the *Referral List* or *Referred*. Because there is no substantive change in policy, the Board did not send this recommendation out for comment.

In order to make this change, the Board recommends the Definitions section of the Personnel Policy Manual be amended to delete the definition of *Certificate of Eligibles* and add a definition of *Referral List*.

Please let me or Amy Klein know if you have any questions.

**Administrative Rule 33 - PROCEDURE FOR ADOPTION OR AMENDMENT OF  
ADMINISTRATIVE POLICIES RELATING TO PERSONNEL**

**Section 1. Statement of Authority and Policy.**

Under Article VI, Section 3 of the North Dakota Constitution and Section 27-02-05.1, NDCC, the Supreme Court has the authority and responsibility to establish personnel policies, procedures, qualifications, duties and compensation for court personnel.

It is the intent of the North Dakota Judicial System to formalize a process whereby the creation and amendment of personnel policies is carried out with full involvement of the judges and personnel of the North Dakota Judicial System.

**Section 2. Personnel Policy Board - Creation, Membership and Staffing**

- A. There is established within the North Dakota Judicial System a Personnel Policy Board.
- B. The Personnel Policy Board will consist of ~~nine~~ eight voting members:
- (1) 1 judge elected by the district court judges;
  - (2) 1 judge elected by the Administrative Council;
  - (3) 1 justice/judge appointed by the Chief Justice;
  - (4) 1 supreme court department or division head appointed by the Chief Justice;
  - (5) 2 district court employees elected by the district court employees, who are not trial court administrators;
  - (6) 1 supreme court employee elected by the supreme court employees; and
  - (7) 1 trial court administrator appointed by the Chief Justice.
- C. The board will elect a chair and a vice-chair from among its membership. The vice-chair will serve in the absence of the chair. The chair and vice-chair may vote on all matters before the board.
- D. The State Court Administrator's Office will provide staff assistance for the board.

**Section 3. Terms**

- A. Members of the Personnel Policy Board will serve a three year term with terms staggered so that no more than three members are up for appointment or election annually.

B. A member may not serve more than three consecutive terms. A former member who served three consecutive terms is eligible for reappointment after a six-year break in service.

**Section 4. Duties and Responsibilities**

A. The Personnel Policy Board will make decisions on:

- (1) Classification and pay grade appeals; and
- (2) Grievance appeals.

B. The board will meet periodically to review and make recommendations relating to:

- (1) Personnel policies;
- (2) Personnel matters affecting employees;
- (3) Providing recommendations to the Chief Justice on such matters deemed appropriate;
- (4) Annually submitting a recommended salary administration plan to the Chief Justice; and
- (5) Other duties and responsibilities as assigned by the Chief Justice.

**Section 5. Conflict of Interest**

A. A member of the Personnel Policy Board must be disqualified from voting in appeal proceedings before the board in which the member's impartiality could reasonably be questioned including, when:

- (1) The board member may have a personal or economic interest in the outcome of the proceeding;
- (2) The board member is likely to be a material witness in the proceeding; or
- (3) The board member has a personal bias or prejudice concerning a party or personal knowledge of evidentiary facts concerning the proceedings.

B. If the chair disqualifies in a proceeding before the board, the vice-chair will conduct the proceeding. If both the chair and the vice-chair disqualify themselves, a member will be elected by the remaining board members to conduct the proceedings.

**Section 6. Establishment or Amendment of a Personnel Policy.**

A. *Initiated by the Personnel Policy Board.*

- (1) The Personnel Policy Board may recommend to the Supreme Court a new policy or an amendment to an existing policy. Before forwarding the recommendation, the

board will elicit comment by notifying the judges and personnel of the judicial system by sending copies of the recommendation to each judicial district on the District Court level and each department head on the Supreme Court level at least 15 days prior to forwarding the recommendation. However, notification is not required for amendments to comply with changes in law, to increase wages or benefits offered by the state, to change dollar amounts, or to clarify a policy without affecting the substance of the policy.

- (2) Following the comment period, the board may submit its recommendation to the Supreme Court. When submitting a proposal to the Supreme Court, the chairperson of the board may request a personal appearance to present the proposal.
- (3) If it is determined by the board that circumstances require expedited action, the notification time-frames may be suspended and recommendations made immediately to the Supreme Court along with the justification of the expedited recommendation. When submitting a proposal to the Supreme Court, the chair of the board may request a personal appearance to present the proposals.
- (4) The Supreme Court will act on the board's recommendation.

B. *Initiated by Supreme Court.*

The Supreme Court may initiate or amend personnel policies:

- (1) by referring the proposed policy to the Personnel Policy Board for action; or
- (2) if expedited action is required, by immediately adopting a policy on an interim basis and notifying the Personnel Policy Board of its action pending comment and recommendation.

C. *Initiated by Personnel or Committees.*

Committees of the Supreme Court, Committees of the Judicial Conference, or individuals may initiate personnel policies by forwarding the proposed policy or amendments to the Personnel Policy Board. The board will place the proposal on its agenda and consider it as deemed appropriate by the board. The board will notify the initiating party of any final action taken on the proposal.

**Section 7. Effect of Policies.**

All actions relating to classified judicial system employees including, but not limited to, hiring, promoting, compensating, disciplining, dismissing, accumulating fringe benefits, and taking leave, will be carried out in accordance with policies adopted by the Supreme Court.

[Adopted effective July 1, 1991; Amended effective January 1, 1999; Amended effective June 1, 2009; Amended effective June 1, 2011]

**Klein, Amy**

**From:** Klein, Amy  
**Sent:** Friday, June 29, 2012 1:05 PM  
**To:** (ALL) State Court Employees  
**Subject:** Comments: Administrative Rule 33

In June the Personnel Policy Board considered revisions to Administrative Rule 33. The proposed revisions are intended to correct clerical errors and to allow for non-substantive amendments to be forwarded to the Supreme Court without seeking comment. This [Administrative Rule 33 link](#) shows the proposed changes in red.

Any person wishing to comment on the proposed policy revision may do so in writing before Tuesday, July 17, 2012. Written comments may be e-mailed to [PersonnelPolicyBoard@ndcourts.gov](mailto:PersonnelPolicyBoard@ndcourts.gov)

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[Career Opportunities](#)

**Klein, Amy**

**From:** Rysaw, Don  
**Sent:** Saturday, June 30, 2012 3:12 PM  
**To:** (SUP) Personnel Policy Board  
**Subject:** Comment on Amendment of Admin. Rule 33

I believe there is a typo in the amendment to Sec. 6(A)(1) – “effecting” should be “affecting.”

## DEFINITIONS

- A. *Alternative work schedule* is a set schedule outside normal working hours.
- B. *Appointing authority* is a person authorized by policy to make human resource decisions. An appointing authority is a supervisor unless the appointing authority has otherwise delegated supervisory authority to another employee.
- C. *At will employment* is employment that may be terminated by the Court System or an employee at any time, without cause and without notice.
- D. *Career ladder advancement* is advancement to a higher pay grade. It is advancement from an entry level position to a full performance position.
- E. *Career ladder series positions* are positions eligible for career ladder advancements.
- F. *Cause* is conduct related to the job performance of a classified employee or judicial referee. The conduct may relate to job performance or working relationships that are determined to be detrimental to performance of an employment position.
- ~~G. *Certificate of Eligibles* is a list of candidates for a position who are deemed to be qualified and who are ranked above a cutoff level determined by the appointing authority or designee.~~
- HG. *Child* is defined as a biological, adopted, or foster child; a step-child; and a legal ward under the age of 18 or, if older than 18, incapable of self care because of a mental or physical disability at the time the leave is requested.
- IH. *Classified employee* is an employee who serves in a position for which there must be cause for dismissal after completion of the introductory period.
- JL. *Compensatory time* is time off for which a non-exempt employee is paid because the employee worked more than a standard 40-hour work week.
- KJ. *Corrective action* is an improvement plan that addresses an employee's conduct in the workplace.
- LK. *Demotion* is the involuntary reduction of an employee's salary or the involuntary movement of the employee to a lower job classification.
- ML. *Dismissal* is termination or separation from employment initiated by the Court System.
- NM. *Domestic partner* is a person who is not married or otherwise related to the employee; is the employee's sole domestic partner; resides with the employee and intends to do so indefinitely; and is responsible for the employee's welfare.
- ON. *Exempt employee* is an employee who is not subject to the overtime requirements of the Fair Labor Standards Act.
- PO. *Full-time employee* is an employee who is regularly scheduled to work at least 40 hours each week.

- | QP. *Introductory period* is a period of time used to evaluate whether an employee is able to meet the performance requirements of the position for which the employee has been hired.
- | RQ. *Lateral transfer* is a transfer from one classification to another within the same pay grade.
- | SR. *Non-classified employee* is an employee who is an at will employee.
- | FS. *Non-exempt employee* is an employee who is subject to the Fair Labor Standards Act.
- | UT. *North Dakota Court System (Court System)* includes the Supreme Court and the District Courts.
- | VU. *On-call* is when an employee is required to be accessible by telephone, pager, or other means for scheduled periods of time other than regularly scheduled work hours to respond to requests for service.
- | WV. *Overtime* is time that a non-exempt employee works in excess of a standard 40-hour week.
- | XW. *Part-time employee* is an employee who is regularly scheduled to work fewer than 40 hours each week.
- | YX. *Pay grade adjustment* is the adjustment of a classification because of the requirements of market conditions or because the salary level of the classification requires adjustment.
- | ZY. *Preliminary notice* is a written formal notice to an employee under the corrective action procedure that an employment issue exists which must be addressed. A preliminary notice is documented and provided to the employee, appointing authority, and Human Resource Director.
- | AAZ. *Promotion* is the movement to a position in a higher pay grade.
- | BBAA. *Reclassification* is the movement of a classified position to a higher or lower position because of a substantial and permanent change in duties.
- | CCBB. *Reduction in force* is the reduction in the number of employees for reasons including reduction in funding, lack of work, curtailment of work, or reorganization.
- | DDCC. *Regular employee* is an employee who holds a position funded by the Legislature and is entitled to state benefits paid for by the Court System. A regular employee must be employed more than 20 hours per week for more than 20 weeks per year.
- | DD. *Referral List* is a list of candidates that may be considered for a position and who are ranked above a cutoff level determined by the appointing authority or designee.
- | EE. *Regular rate of pay* is the hourly rate of pay calculated using a 40-hour work week.

- FF. *Supervisor* is an employee or an appointing authority who has the ability or whose suggestions and recommendations are given particular weight to undertake a majority of the following supervisory functions in the interests of the Court System: appoint, employ, hire, assign and direct work, transfer, promote, evaluate, reward, discipline, suspend, demote, or terminate an employee.
- GG. *Suspension* is temporary removal of an employee from the employee's position. A suspension may be unpaid with temporary loss of accrual time for annual and sick leave or paid leave.
- HH. *Temporary employee* is an employee who is employed at will and occupies a position which is not funded as full-time employment by the Legislature.
- II. *Work week* is the time from 12:01 a.m. on each Monday until 12 midnight the following Sunday.
- JJ. *Written reprimand* is written notice given to an employee indicating there is a serious problem related to employment. A written reprimand is documented on a corrective action memo and placed in the employee's personnel file.

Approved by the Supreme Court 4/1/12

## 181 – FILLING CLASSIFIED POSITION VACANCIES

### A. Internal Posting

1. To encourage career mobility prior notice will be given to Court System employees by opening non-exempt, classified positions to internal application prior to external application, unless prior approval is obtained from the State Court Administrator. Veterans' preference does not apply to internal postings.
2. The Human Resource Director will assist the appointing authority or designee in providing internal notice. The notice must allow 10-30 days for applications. The appointing authority or designee is not required to make a determination about the qualifications of internal candidates prior to opening the position externally. After reaching the deadline for internal applications, the appointing authority or designee may:
  - a. Determine that a wider pool of candidates is needed and open the position externally. Internal applications will be considered with any external applications received.
  - b. Interview the internal candidates and fill the vacancy or open the position externally.

### B. External Posting

When a position is opened to external applications, the Human Resource Director, after consultation with the appointing authority or designee, will advertise the position and receive the applications.

### C. Candidate Screening

1. The Human Resource Director will work with the appointing authority or designee to establish a rating system for the vacant position based on required and preferred qualifications and skills.
2. Candidates will be rated based on the contents of the applications received. If a candidate meets the minimum qualifications of the position and has provided the appropriate documentation showing qualifications for veterans' preference:
  - a. Five points will be added to the rating if the candidate is a veteran or a veteran's spouse.
  - b. Ten points will be added to the rating if the candidate is a disabled veteran.
3. The Human Resource Director will forward the ~~Certificate of Eligibles~~ Referral List ~~listed~~ categorized from highest score down to the appointing authority or designee.
4. The appointing authority or designee will consider the ~~Certificate of Eligibles~~ Referral List from the top down. However, any person on the ~~Certificate of Eligibles~~ Referral List may be selected for an interview and offer.

D. Veterans' Preference

1. When filling classified position vacancies, preference will be given to qualified veterans or veterans' spouses who are residents of North Dakota in the manner prescribed in this policy, unless the position is exempted.
  - a. Classified positions exempt from veterans' preference requirement:
    - (1) Chief Deputy Supreme Court Clerk;
    - (2) Secretary who serves as a private secretary to a judge or justice;
    - (3) Director of Central Legal Staff; and
    - (4) Supreme Court Law Librarian.
  - b. Promotions, transfers, or reclassifications are exempt from veterans' preference. If the position has been opened to external applicants, current employees are entitled to the same preference as non-employees.
2. Veteran means wartime veteran. A wartime veteran is an individual who served in the active military forces, during a period of armed conflict or who received the armed forces expeditionary or other campaign service medal during an emergency condition and who was discharged or released under other than dishonorable conditions. "Wartime veteran" also includes an individual who died in the line of duty in the active military forces, as determined by the armed forces.
3. Disabled Veteran means a veteran who is found to be entitled to a service-connected disability rating as determined by the United States veterans' administration.
4. Veteran's Spouse means the un-remarried spouse of a veteran who died while in service, or later died from a service-connected cause; or the spouse of a veteran who has a one hundred percent service-connected disability as determined by the department of veterans' affairs, or who has an extra-schedular rating to include individual unemployability that brings the veteran's total disability rating to one hundred percent as determined by the department of veterans' affairs and due to the disability is unable to exercise the disabled veteran's right to preference.

E. Veterans' Preference Appeals

1. Any candidate applying for veterans' preference may appeal a determination made by the Human Resource Director or the appointing authority or designee.
2. The Human Resource Director will notify candidates applying for veterans' preference of a determination by certified mail that the candidate did not qualify for veterans' preference.
3. The veteran may appeal the decision in writing by certified mail to the State Court Administrator within 15 calendar days of when the notice was mailed. If the State Court Administrator is the appointing authority the Chief Justice will designate the person to receive the appeal.

Approved by the Supreme Court 4/1/12