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AGREEMENT

Between the

STATE OF NEW YORK-
UNIFIED COURT SYSTEM

and

NEW YORK STATE
COURT CLERKS ASSOCIATION

1999-2003

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X- 3/31/2003

87 pages

AGREEMENT

AGREEMENT made by and between the State of New York-Unified Court System (hereafter referred to as the "State") and the New York State Court Clerks Association (hereafter referred to as the "Union"). The term "employees" shall hereafter refer to employees within the bargaining unit as defined in Article 1 of this Agreement.

ARTICLE 1

RECOGNITION

1.1 The State, pursuant to Article 14 of the Civil Service Law (Public Employees' Fair Employment Act), recognizes the Union as the exclusive representative for collective negotiations with respect to salaries, wages, hours and other terms and conditions of employment for full-time and part-time employees in the Unified Court System within the City of New York whose job title or position is set forth in Appendix A.

1.2 The State and the Union further agree that should a classification or reclassification alter or convert present job titles within the City of New York herein specified or create new positions performing essentially similar work within the City of New York, then the Union shall continue to be recognized as the exclusive collective negotiating representative for any employees employed in such new titles and/or positions.

ARTICLE 2

STATEMENT OF POLICY AND PURPOSE

2.1 It is the policy of the State to continue harmonious and cooperative relationships with its employees and to insure the orderly and uninterrupted operations of government. This policy is effectuated by the provisions of the Public Employees' Fair Employment Act granting public

employees the rights of organization and collective representation concerning the determination of the terms and conditions of their employment.

2.2 The State and the Union now desire to enter into an agreement reached through collective negotiations which will have for its purposes, among others, the following:

(a) To recognize the legitimate interests of the employees of the State to participate through collective negotiations in the determination of the terms and conditions of their employment.

(b) To promote fair and reasonable working conditions.

(c) To promote individual efficiency and service to the citizens of the State.

(d) To avoid interruption or interference with the efficient operation of the State's business.

(e) To provide a basis for the adjustment of matters of mutual interest by means of amicable discussion.

ARTICLE 3

UNCHALLENGED REPRESENTATION

The State and the Union agree, pursuant to Section 208 of the Civil Service Law, that the Union shall have unchallenged representation status for the maximum period permitted by law on the date of execution of this Agreement.

ARTICLE 4

EMPLOYEE ORGANIZATION RIGHTS

4.1 **Exclusive Right to Negotiate.** The Union shall have the exclusive right to negotiate with respect to salaries, wages, hours and other terms and conditions of employment on behalf of employees, and the State shall not negotiate or meet with any other employee organization with reference to terms and conditions of employment of employees.

4.2 **Bulletin Boards.**

(a) The State shall provide a reasonable amount of exclusive bulletin accessible place in [illegible]

shall not interfere with work duties or performance and

4.2 **Bulletin Boards.**

(a) The State shall provide a reasonable amount of exclusive bulletin board space in an accessible place in each area occupied by a substantial number of employees for the purpose of posting bulletins, notices and material issued by the Union. All notices shall be on Union stationery and shall be used only to notify employees of matters pertaining to Union affairs. No material shall be posted which is defamatory of the State or its representatives, or which constitutes election campaign material for or against any person, organization or faction thereof. Until such time as a bona fide representation petition has been filed with the Public Employment Relations Board, no other employee organization, except employee organizations which have been certified or recognized as the representative for collective negotiations for other State employees employed at such locations, shall have the right to post material upon State bulletin boards.

(b) The number and location of bulletin boards, as well as arrangements with reference to placing material thereon and removing material therefrom, shall be subject to mutual understandings, provided, however, that any material reasonably objected to by the State shall be removed, which removal may be contested pursuant to the contract grievance procedure provided for herein.

4.3 **Meeting Space.** Where there is appropriate available meeting space, the Union will be permitted to use such space for Union meetings upon prior arrangement with the Deputy Chief Administrative Judge (New York City Courts) or his/her designee.

4.4 **Access to Employees.** The Union shall, on an exclusive basis, have access during working hours to employees it represents for consultations regarding membership services and programs, and for pension counseling services, under mutually developed arrangements with the Deputy Chief Administrative Judge (New York City Courts) or his/her designee. Any such

arrangements shall insure that such access shall not interfere with work duties or performance and shall be reasonable controlled.

4.5 **Employee Lists.** The State shall furnish to the Union, without charge, upon written request, but not more than quarterly, information showing the name, home address, negotiating unit designation, social security number, payroll agency, title, salary and if and when available, work location, of all employees covered by this Agreement.

4.6 **Job Descriptions.** The State agrees to furnish the Union copies of reclassified job descriptions and amendments to the reclassification plan in advance of promulgation.

4.7 **Employee Organization Leave.**

(a) The Union shall designate at least quarterly, in writing, those employees who are authorized to take employee organization leave. The Chief of Employee Relations shall establish uniform procedures regarding the maintenance and submission of monthly reports of employee organization leave.

(b) Individuals duly designated by the Union shall be permitted to perform the following functions without loss of pay or other employee benefits, except as limited by Section 4.7(d):

(1) To investigate grievances, assist in their early resolution, and to process them at all levels of the grievance procedure.

(2) To participate in meetings of the Labor/Management Committee and the Labor/Management Health and Safety Subcommittee.

(3) To meet or confer with the Chief Administrative Judge of the Courts or any of his/her representatives on matters affecting labor/management relations, where such meetings or conferences have been previously approved by the Chief Administrative Judge.

(4) To negotiate, prepare for negotiations, or confer with the Chief of Employee Relations or his/her representative, and to participate in fact finding or other collective bargaining impasse procedures.

(5) To confer with and/or appear before PERB, Department of Audit and Control, New York State Employees' Retirement System, and the Civil Service Commission on matters which may have any effect on labor/management relations.

(6) To confer with and/or appear before any Federal wage regulatory agency or Occupational Health and Safety Commission.

(7) To attend award, honor, graduating and promotional ceremonies as employee representatives, provided that no more than ten workdays in any calendar year are used for such purposes.

(8) To attend funerals and memorial services for employees who are killed in the line of duty (officers of the Union and an honor guard and such others as the Chief of Employee Relations may approve).

(9) To engage in any other activity which may be approved by the Chief of Employee Relations consistent with the conduct of labor/management relations.

(10) To attend meetings as a trustee of Union Welfare Funds, up to four such meetings per year.

(11) No more than eight employees will be granted up to five days plus travel time in any calendar year for the purpose of attending Union conferences, seminars or work shops, and to appear before and confer with members of the Legislature. Travel time shall mean actual and necessary travel time not to exceed five hours each way.

(12) Conferences with counsel to prepare for trial or a hearing or attendance as a witness in an action commenced by or against the Union concerning a claimed violation or the interpretation of this Agreement or a reclassification of employees.

(13) Subject to the reasonable operating needs of the court or court-related agency, the Union shall be granted up to one hour to meet with new employees, in the first six months of service, during working hours, to explain Union services, programs and benefits.

(c) Individuals duly designated by the Union shall be granted leave without pay to perform the following function: To attend Welfare Trustee Conferences offered by a recognized foundation, up to a maximum of two conferences per year per trustee.

(d) Individuals duly designated and authorized in writing by the Union shall be granted employee organization leave for time actually spent performing appropriate employee relations functions as specified in Section 4.7(b) provided that such time shall not exceed 5.5 hours per represented employee per year and, provided further, that unused time shall be carried over from one fiscal year to the next for the term of the Agreement. If employee organization leave is utilized beyond such amount, the Union shall have 30 days to determine whether to repay such amount to the State in cash as provided below or through a charge to the accrued annual leave credits or compensatory time credits of the employee who was absent from work performing such appropriate employee relations functions. Provided, however, that if an employee does not have sufficient annual leave or compensatory time credits to cover such absence from work, appropriate deductions shall be taken from subsequent paychecks. Provided further, however, that if the Union chooses to reimburse the State in cash for such excess time used, such payment shall be based on the hourly rate of the individual for whom such reimbursement is made. Such reimbursement by the Union shall be

made within 30 days after the State has notified the Union by certified mail that a deficit exists. If the Union fails to make such cash payment within 30 days and the Union has not notified the State that a dispute exists concerning the amount of employee organization leave due and owing, the State shall make an appropriate deduction from the affected employee's leave credits or subsequent paychecks. The hourly rate shall be determined by dividing an employee's basic annual salary plus any additional compensation payable because of hours of work or location by 1,827. If the Union notifies the State within 30 days that a dispute exists concerning the amount of employee organization leave due and owing, then the Union must simultaneously notify the State whether it chooses to place the disputed amount of cash or leave credits in escrow pending resolution of the dispute by arbitration pursuant to Article 15 of the Agreement. The Union may elect to place a certified check for the full disputed amount in an escrow account which the State selects. If the Union does not make a timely election when it notifies the State within 30 days of notification of the overage of a dispute, the State will automatically freeze the disputed amount of leave credits of affected employees. Such leave credits cannot be used by affected employees while frozen and such leave credits will not be released until there is a final resolution of the dispute.

In scheduling the use of employee organization leave time for such appropriate employee relations functions, the State shall use its best efforts to accommodate authorized requests for employee organization leave.

ARTICLE 5

MANAGEMENT RIGHTS

Except as expressly limited by other provisions of this Agreement, all of the authority, rights and responsibilities possessed by the State are retained by it, including but not limited to, the right

to determine the purposes and policies of the State Judiciary; the right to determine the facilities, methods, means and number of personnel required for conduct of State Judiciary programs; the right to administer the Merit System pursuant to law: the right to direct, deploy, determine the size of, and utilize, the work force; the right to transfer employees to other work; the right to contract out for goods or services; the right to establish or to change existing positions in accordance with law; and the right to promote, discipline or discharge employees in accordance with law and the provisions of this Agreement.

ARTICLE 6

NO STRIKES

6.1 Neither the Union nor any of its members shall engage in a strike, nor cause, instigate, encourage or condone a strike.

6.2 If a strike occurs, the Union shall promptly take reasonable steps to terminate it as quickly as possible and shall immediately give written orders to the employees involved to return to work.

6.3 Nothing contained in this Agreement shall be construed to limit the rights, remedies or duties of the State, or the rights, remedies or duties of the Union or employees under State Law.

ARTICLE 7

COMPENSATION

7.1 The State and the Union shall prepare, secure introduction, and recommend passage by the Legislature of such legislation as may be appropriate and necessary to provide the benefits described in this Article.

7.2 The lag payroll shall continue. Repayment of such lagged salary shall be made when an employee leaves State service. The employee's final salary check shall be paid at the employee's

then-current salary rate and shall be issued at the end of the payroll period next following the payroll period in which service is discontinued.

7.3(a) **Performance Evaluation.** The State shall continue to utilize a performance evaluation system for all employees. All increments, longevity increments and bonuses will be conditioned on ratings pursuant to the performance evaluation system as provided herein. Such performance evaluation system shall provide for an annual initial and annual final employee performance review by a supervisor and such final review shall be completed no later than February 1 of each year. Additional reviews shall be required of employees who have received an unsatisfactory rating during the previous rating period. Additional informal reviews are encouraged. No increment or longevity payment normally due under Section 37 of the Judiciary Law and provided for in this Agreement under Section 7.9 shall be released unless an employee receives a final annual rating greater than unsatisfactory under the State's performance evaluation system. An employee will receive a copy of the performance evaluation form. An unsatisfactory rating in one year will not be a bar to increments, longevity payments or bonuses in future years, if eligible.

(b) A written appeal of an unsatisfactory performance evaluation review shall be made within ten workdays of the receipt of the final performance evaluation form. Such appeal shall be made on a form acceptable to the State and the Union to a panel to be composed of one Union representative, one management representative and one third-party neutral to be designated by agreement of the parties. The panel shall review whether the unsatisfactory performance evaluation was a reasonable determination by the supervisor considering the performance evaluation form and the written appeal form. The panel may determine, in its discretion, that additional information, oral argument or witnesses are necessary to make an adequate review. The panel shall determine in writing by

March 1 whether the unsatisfactory rating shall be sustained or denied. Such decision shall be final and binding and unreviewable in any forum.

7.4(a) Effective March 31, 1999, a new salary schedule shall be established which will consist of a hiring rate, six interim steps, a maximum rate, a first longevity step and a second longevity step.

7.4(b) Effective April 1, 1999, or on a different day of the biweekly period for administrative convenience as provided for in Section 200(1) of the State Finance Law, each graded employee eligible for an increment pursuant to Section 37 of the Judiciary Law whose performance is rated higher than unsatisfactory shall receive such increment based on the salary schedule in effect on March 31, 1999, added to basic annual salary.

7.4(c) Effective October 1, 1999, or on a different day of the biweekly period for administrative convenience as provided for in Section 200(1) of the State Finance Law, the basic annual salary of each employee shall be increased by 3.0% or $800, whichever is greater. Such percentage increase shall be added to the salary schedule.

7.4(d) Effective as soon as practicable following the execution of this Agreement, each employee in active status on the date of execution shall receive a bonus of $500, which shall not be a part of basic annual salary but which shall be pensionable.

7.5(a) Effective April 1, 2000, or on a different day of the biweekly period for administrative convenience as provided for in Section 200(1) of the State Finance Law, each graded employee eligible for an increment pursuant to Section 37 of the Judiciary Law whose performance is rated higher than unsatisfactory shall receive such increment based on the salary schedule in effect on March 31, 2000, added to basic annual salary.

(b) Effective April 1, 2000, or on a different day of the biweekly period for administrative convenience as provided for in Section 200(1) of the State Finance Law, the basic annual salary of each employee on April 1, 2000, shall be increased by 3.0% or $850, whichever is greater. Such percentage increase shall be added to the salary schedule.

7.6(a) Effective April 1, 2001, or on a different day of the biweekly period for administrative convenience as provided for in Section 200(1) of the State Finance Law, each graded employee eligible for an increment pursuant to Section 37 of the Judiciary Law, whose performance is rated higher than unsatisfactory, shall receive such increment, based on the salary schedule in effect on March 31, 2001, added to basic annual salary.

(b) Effective April 1, 2001, or on a different day of the biweekly period for administrative convenience as provided for in Section 200(1) of the State Finance Law, the basic annual salary of each employee on April 1, 2001, shall be increased by 3.5% or $900, whichever is greater. Such percentage increase shall be added to the salary schedule.

7.7(a) Effective April 1, 2002, or on a different day of the biweekly period for administrative convenience as provided for in Section 200(1) of the State Finance Law, each graded employee eligible for an increment pursuant to Section 37 of the Judiciary Law, whose performance is rated higher than unsatisfactory, shall receive such increment, based on the salary schedule in effect on March 31, 2002, added to basic annual salary.

(b) Effective April 1, 2002, or on a different day of the biweekly period for administrative convenience as provided for in Section 200(1) of the State Finance Law, the basic annual salary of each employee on April 1, 2002, shall be increased by 3.5% or $900, whichever is greater. Such percentage increase shall be added to the salary schedule.

7.8(a) **Location Pay.** The location differential in effect on March 31, 1999, shall remain in effect except as modified below.

(b) Effective April 1, 2000, the State shall pay, in addition to basic annual salary, a location differential of $1,000 per annum (prorated for employees working less than full time) to each employee assigned to a workstation in the City of New York.

(c) Effective April 1, 2001, the State shall pay, in addition to basic annual salary, a location differential of $1,100 per annum (prorated for employees working less than full time) to each employee assigned to a workstation in the City of New York.

(d) Effective April 1, 2002, the State shall pay, in addition to basic annual salary, a location differential of $1,200 per annum (prorated for employees working less than full time) to each employee assigned to a workstation in the City of New York.

7.9 **Longevity Bonus.**

(a) Effective April 1, 1999, an employee who has at least 20 years of continuous service in the Unified Court System and who has served the equivalent of 120 workdays in each fiscal year for which eligibility is being determined, shall receive an annual payment of $1,500 (prorated for employees working less than full time at the time of payment) beginning on April 1, 1999, which payment shall not be added to basic annual salary but which shall be pensionable. For the purpose of this section, a break in continuous service shall not include a resignation followed by re-employment within one year.

(b)(1) Effective March 31, 2003, each employee who, during the term of the Agreement was not promoted; did not receive a bonus pursuant to Section 7.9(a) above; did not receive a full increment pursuant to Sections 7.4(a), 7.5(a), 7.6(a) or 7.7(a) but did receive a partial increment the

value of which was less than $850, shall receive the difference between such partial increment and $850 as a one-time, lump-sum, non-recurring bonus which shall not be a part of basic annual salary, but which shall be pensionable. Such payment shall be made on March 31, 2003 or as soon thereafter as is practicable.

(b)(2) Effective March 31, 2003, each employee who is receiving a salary in excess of the second longevity step and previously received a bonus pursuant to Section 7.8(d) of the 1995-99 collective Agreement between the State and the Union; and who did not receive a promotion during the term of the Agreement shall receive a one-time, lump-sum, non-recurring payment of $850 which shall not be a part of basic annual salary, but which shall be pensionable. Such payment shall be made on March 31, 2003, or as soon thereafter as is practicable.

(c) The sole funding source for the bonus payments contained in Sections 7.9(b)(1) and (b)(2) above, shall be provided through a deduction of such amounts as is deemed necessary to effectuate payment from the funding provided in Section 14.5 of the Agreement. It shall be the sole responsibility of the committee established pursuant to Section 14.5 to ensure there is sufficient funding available for these bonus payments.

(d) The bonus provisions of Sections 7.9(b)(1) and (b)(2) shall terminate following their implementation and, in any case, shall not be applicable after the expiration of the Agreement on March 31, 2003.

ARTICLE 8

HEALTH INSURANCE

8.1(a) The State shall continue to provide health and prescription drug benefits administered by the Department of Civil Service. Except as provided below, employees enrolled in such plans

shall receive health insurance benefits to the same extent, at the same contribution level, and in the same form, including the Benefits Management Program, that the majority of represented Executive Branch employees covered by such plans receive such benefits and prescription drug benefits to the same extent, at the same contribution level, and in the same form that State Executive Branch managerial and confidential employees receive such benefits.

(b)(1) Office visit charges by participating providers will be subject to an $8 copayment per covered individual.

(2) All covered surgical procedures rendered by participating providers during any visit will be subject to an $8 copayment.

(3) In the event that there is both an office visit charge and an office surgery charge by a participating provider in any single visit, the covered individual will be subject to a single $8 copayment.

(4) All covered outpatient radiology services rendered by participating providers during any visit will be subject to an $8 copayment.

(5) All covered outpatient laboratory services rendered by participating providers during any visit will be subject to an $8 copayment.

(6) All covered outpatient radiology services and laboratory services rendered by a participating provider during a single visit will be subject to a single $8 copayment.

8.2 The joint committee composed of representatives from the State and all unions representing nonjudicial employees of the Unified Court System shall continue. This committee shall investigate and make recommendations concerning health insurance-related issues including the elimination or duplication of State-provided and Welfare Fund benefits, the restructuring of benefits

or additional benefits, provided such recommendations shall not increase the total cost of such benefits to the State, and the establishment of short-term and long-term disability insurance programs and wellness programs. This committee shall meet as necessary, but not less than twice a year, and shall review all health plan-related matters such as experience of utilization of benefits and premium increases, at meetings specifically scheduled for this purpose.

8.3 The issue of an annual Health Insurance Buy-Out Program shall be subject to reopened negotiations during the term of the Agreement should a similar benefit become permanently available to Executive Branch employees represented by the Civil Service Employees Association, Inc.

8.4 The State and the Union have agreed to participate in a pilot Health Option Program for calendar year 2001. Under this pilot program employees will be permitted to receive a credit of up to $300 toward their health insurance premiums by electing to reduce their sick leave accrual earning rate from 13 to ten days for calendar year 2001. Employees who elect to participate in this pilot program must make such election by November 1, 2000. The State shall advise the Union by October 1, 2001 if this program will be continued.

ARTICLE 9

TIME AND LEAVE

9.1(a) **Attendance.** The Deputy Chief Administrative Judge for Management Support or his/her designee shall establish uniform procedures regarding the maintenance and submission of time and attendance records. Upon the establishment of such uniform procedures, all employees shall sign time and attendance records on a form provided by the Deputy Chief Administrative Judge for

Management Support in accordance with his/her procedures. Until such uniform procedures are established, present practices regarding time and attendance records shall be continued.

(b) **Tardiness.**

(1) The Deputy Chief Administrative Judge for Management Support or his/her designee may establish rules and schedules of penalties for tardiness. Such rules and schedules shall be established after consultation with the Union at Labor/Management Committee meetings. Penalties imposed pursuant to such rules and schedules shall not preclude disciplinary action in cases of excessive tardiness.

(2) In the event of public transportation difficulties, strikes, severe storms or floods, or similar uncontrollable conditions affecting employees, tardiness may be excused by the Deputy Chief Administrative Judge (New York City Courts) or his/her designee.

Tardiness caused by a verified major failure of public transportation, such as a widespread or total power failure of significant duration or other catastrophe of similar severity, shall be excused.

(3) Employees shall charge tardiness to accrued annual leave on a minute-for-minute basis.

(c) The Deputy Chief Administrative Judge (New York City Courts) or his/her designee shall excuse a reasonable amount of tardiness caused by direct emergency duties of duly authorized volunteer firefighters and volunteer ambulance drivers. In such cases, the employee may be required to submit satisfactory evidence that the tardiness was due to such emergency duties.

9.2 **Annual Leave.**

(a)(1) Employees shall be entitled to combined vacation, personal, business and religious holiday leave of 20 days annually and, unless otherwise provided in this section, shall be entitled to

one additional day for each completed year of continuous service in the Unified Court System up to a maximum of 27 workdays annually. Employees heretofore officially entitled to receive additional annual leave and religious holiday leave days shall continue to receive such leave, provided that such leave is limited to a maximum of 30 days annual leave and three days religious holiday leave per year. Religious holiday leave days shall be credited on a calendar year basis. Such days only may be used in the calendar year in which they are credited, and may not be carried over from one calendar year to the next. Religious holiday leave days only may be used for recognized days of religious observance for which the faith requires its members to make religious observance. An employee shall not earn annual leave credit for any biweekly pay period unless he/she is in full pay status for at least seven workdays during such biweekly pay period. Annual leave shall be credited on a biweekly basis.

(2) A part-time, per diem or hourly employee eligible to earn annual leave credits pursuant to Section 9.2(g) shall earn annual leave credits provided herein, but his/her total pay when absent on such leave shall be the amount which would have been due him/her if he/she had worked his/her usual number of hours or days during such period.

(b) A leave of absence without pay, or a resignation followed by re-employment in the Unified Court System within one year following such leave of absence or resignation, or time spent on a preferred list while awaiting reinstatement, shall not constitute an interruption of continuous service for the purpose of this section. However, a leave of absence without pay for more than six months, or the period between resignation and reemployment during which the employee is not in the service of the Unified Court System, shall not be counted in determining eligibility for additional annual leave credits under this section.

(c) After the anniversary date on which an employee has been credited with seven days of additional annual leave credits, he/she shall thereafter earn annual leave for completed biweekly pay periods at a rate which will equal 27 days for 26 such pay periods.

(d) No accumulation of annual leave credits in excess of 54 days may be carried from one fiscal year to the next. Any such accumulation in excess of 54 days at the end of the fiscal year shall be converted into sick leave. The Deputy Chief Administrative Judge (New York City Courts) or his/her designee may grant an employee specific permission to exceed the 54-day maximum for a period of no longer than one year where the needs of the court or court-related agency require that the employee postpone his/her vacation.

(e) The time at which annual leave may be drawn by an employee shall be subject to the prior approval of the Deputy Chief Administrative Judge (New York City Courts) or his/her designee. All requests for use of annual leave shall be initiated by application of the employee on a form provided by the Deputy Chief Administrative Judge (New York City Courts) or his/her designee.

(f) The court or court-related agency to which an employee is appointed, promoted, reassigned or transferred shall credit him/her with all of his/her accumulated annual leave credits not used prior to such appointment, promotion, reassignment or transfer.

(g) **Part-time Definition.** Employees compensated on a part-time, per diem or hourly basis who are employed at least half time and who are expected by the Deputy Chief Administrative Judge for Management Support or his/her designee to be so employed continuously for nine months without a break in service exceeding one full payroll period shall be eligible to observe holidays and to accrue pro rata annual leave and sick leave subject to the same limitations and restrictions as would apply if they were compensated on an annual salary basis.

(h) An employee who has completed 25 years of Unified Court System or State service shall be entitled to one additional annual leave day each year.

(i) An employee who has completed 30 years of Unified Court System or State service shall be entitled to one additional annual leave day each year.

(j) Service officially credited for annual leave earning rates on April 1, 1977 shall be counted in determining eligibility under (h) and (i) above.

(k) Annual leave accruals shall be used in units of not less 15 minutes.

(*l*) Employees entering the service of the Unified Court System shall be entitled to accrue annual leave, retroactive to their date of entry, only after they have completed 13 biweekly pay periods of service. An employee shall not earn annual leave credit for any biweekly pay period unless he/she is in full-pay status for at least seven workdays during such biweekly pay period.

(m) If an employee's properly submitted request for use of accrued leave credits is denied, the employee shall receive, upon written request, a written statement of the reasons for such denial.

(n) In the event the State determines that it will recess operations in a particular court or courts for at least four consecutive workdays, it may require employees during such recess to charge up to four days annual leave in each fiscal year.

9.3(a) **Sick Leave.**

(i) Sick leave is absence with pay necessitated by the illness or disability of the employee, including illness or disability caused by pregnancy or childbirth.

(ii) Effective with the execution of this Agreement, an employee shall be allowed to charge a maximum of ten days of sick leave in any one calendar year for absences from work in the event of illness of the employee's spouse; domestic partner; natural, foster or step: parent; child; or any

relative residing with the employee. Such leave is subject to notice to the supervisor in accordance with Section 9.3(c) and will be used by the employee to enable the employee to care for a family member as defined herein during a time of illness. Sick leave used for this purpose shall be charged separately as part of uniform time and attendance procedures.

(b) Employees shall earn sick leave credits at the rate of one-half day per biweekly pay period. No more than 165 days of such credits may be used for retirement service credit unless a greater benefit is provided by law, UCS rule or UCS regulation, and no more than 200 days of such credits may be used to pay for health insurance in retirement. An employee shall not earn sick leave credit for any biweekly pay period unless he/she is in full-pay status for at least seven workdays during such biweekly pay period.

A part-time, per diem or hourly employee eligible to earn sick leave credits pursuant to Section 9.2(g) shall earn sick leave credits as provided herein, but his/her total pay when absent on such leave shall be the amount which would have been due him/her if he/she had worked his/her usual number of hours or days for such period.

(c) An employee absent on sick leave shall notify his/her supervisor of such absence and the reason therefor on the day of such absence and within ninety minutes after the beginning of his/her workday; provided, however, that an employee assigned to a night shift must report his/her absence at least two hours prior to the beginning of the employee's shift or where any other work is such that a substitute may be required the Deputy Chief Administrative Judge (New York City Courts) or his/her designee may require earlier notification, but not earlier than two hours prior to the beginning of the employee's workday. The Deputy Chief Administrative Judge (New York City Courts) or his/her designee shall waive such notice requirements where he/she has determined that a medical

emergency existed which prevented the employee from complying with such notice requirements. Sick leave accruals shall be used in units of not less than 15 minutes.

(d) Before absence for personal illness may be charged against accumulated sick leave credits, the Deputy Chief Administrative Judge (New York City Courts) or his/her designee may require such proof of illness as may be satisfactory to him/her, provided, however, the State will not routinely require proof of illness for absences of three days or less. Abuse of sick leave shall be cause for disciplinary action.

(e) The Deputy Chief Administrative Judge (New York City Courts) or his/her designee may require any employee who has been absent because of personal illness, prior to and as a condition of his/her return to duty, to be examined at the expense of the State by a physician designated by the Deputy Chief Administrative Judge for Management Support or his/her designee from a mutually acceptable panel of physicians to establish that he/she is not disabled from the performance of his/her normal duties and that his/her return to duty will not jeopardize the health of other employees.

(f) In addition to personal illness of an employee, personal visits to a doctor, dentist, or other medical practitioner by the employee when approved in advance when practicable by the Deputy Chief Administrative Judge (New York City Courts) or his/her designee may be charged against accumulated sick leave credits. Proof of the need for such absence, satisfactory to the Deputy Chief Administrative Judge (New York City Courts) or his/her designee, may be required.

(g) When an employee is transferred or reassigned, his/her accumulated sick leave credits shall be transferred with him/her. When an employee is separated from service, for other than disciplinary reasons, and is subsequently reinstated or reemployed within one year after such separation, or is reinstated by action of the Chief Administrative Judge, or is reinstated or

reemployed while eligible for reinstatement from a preferred list, his/her sick leave credits accumulated and unused at the time of his/her separation shall be restored.

(h) The Deputy Chief Administrative Judge (New York City Courts) or his/her designee may, in his/her discretion, advance sick leave credits to an employee absent due to personal illness who has exhausted his/her accumulated sick leave, annual leave and overtime credits. Such advance sick leave credits shall be repaid, as soon as practicable after the employee's return to duty, from subsequent accumulations of time credits. The outstanding unrepaid sick leave credits advanced to any employee under the provisions of this section shall not at any time exceed the amount earnable in one year of service unless further extended by the Deputy Chief Administrative Judge (New York City Courts) or his/her designee. Upon termination of the employee's services, any such advanced sick leave not offset by subsequent accumulations of sick leave, annual leave and overtime credits, shall be deducted from the salary or wages due the employee.

(i) Charges to an employee's annual leave shall be changed to a charge to sick leave during a period of verified hospitalization. An employee may request that a charge to annual leave be changed to a charge to sick leave during a period of documented verified illness. Such request shall be submitted to the Chief of Employee Relations or his/her designee for final determination.

(j) The Deputy Chief Administrative Judge (New York City Courts) or his/her designee may, in his/her discretion, grant sick leave at half-pay for personal illness to an employee having not less than one year of service, provided all of his/her sick leave, annual leave, compensatory time and overtime credits have been exhausted. Provided, however, that the cumulative total of all sick leave at half-pay granted to any employee during his/her service shall not exceed one pay period for each

completed six months of service. Any such sick leave at half-pay granted shall be from the present position. Hourly paid or per diem employees shall not be eligible for this benefit.

An employee requesting sick leave at half-pay shall submit his/her request for such sick leave benefit to the Chief Clerk on forms to be established by the Deputy Chief Administrative Judge for Management Support. A decision shall be made within 15 days after the request is properly submitted. In the event a request for sick leave at half-pay is rejected, written notice of such rejection shall be sent to the employee and a copy to the employee's Union.

Any such sick leave at half-pay granted pursuant to this section shall be repaid, as soon as practicable after the employee's return to duty, from subsequent accumulations of sick leave and compensatory time credits at the full rate of accumulation and annual leave credits at one-half the rate of accumulation. Upon termination of the employee's services as a result of resignation, retirement or involuntary separation (other than by reason of death), any such sick leave at half-pay not offset by subsequent accumulations of sick leave, annual leave, compensatory time credits and overtime credits, shall be deducted from the salary or wages due the employee including, but not limited to, payments for terminal leave or lag payroll, but only to the extent that such payments are due the employee.

This section shall not be construed to require extension of any employment beyond the time at which it would otherwise terminate by operation of law, rule or regulation.

(k) **Incapacitated Employees.**

(1) When there is reason to believe that an employee to whom the disciplinary procedures contained in the Rules of the Chief Judge apply is physically and/or mentally disabled from performing the duties of his/her position, the Deputy Chief Administrative Judge (New York City

Courts) may require such employee to undergo a physical and/or psychiatric examination at the expense of the State, to be conducted by a medical officer selected by the Chief Administrative Judge of the Courts or his/her designee, to establish whether he/she is able to perform the full duties of his/her position and/or whether his/her continued presence on the job will jeopardize the health and safety of himself/herself or other employees.

(2) Where the continued presence of an employee on the job represents a potential danger to persons or property or would significantly interfere with operations, the Deputy Chief Administrative Judge (New York City Courts) may place such employee on an involuntary leave of absence with pay immediately. After service of written notice pursuant to Section 9.3(k)(6)(a), and notwithstanding Section 9.3(k)(6)(b), such employee may be placed on leave without pay for no more than 30 days. During such period of leave, the employee shall be entitled to draw accumulated and unused sick leave, annual leave, compensatory time and overtime standing to his/her credit. Such employee thereafter may be continued on an involuntary leave of absence with pay notwithstanding the provisions of Section 9.3(k)(6)(b). If such employee is finally determined to be physically and mentally fit to perform the duties of his/her position, he/she shall be restored to his/her position and shall have any leave credits or salary that he/she may have lost because of such involuntary leave of absence restored to him, less any compensation he/she may have earned in other employment or occupation and any unemployment benefits he/she may have received during such period.

(3) An employee who is temporarily disabled from performing the full duties of his/her position may, as far as practicable, be assigned to in-title and related duties in the same title during the period of the employee's disability. If a suitable position is not available, the State may offer the employee any available opportunity for appointment to another title for which the employee is

qualified pursuant to applicable rules of the Chief Administrative Judge. If no suitable position is available, and there is no offer of appointment to another title, or the employee refuses such offer, such employee shall be placed on leave if he/she provides a doctor's certificate containing a prognosis that the employee will be able to return to work within one year. Such leave shall be for not less than one year, unless the employee is capable of returning to work sooner. The total period of leave shall include any time charged to workers' compensation leave pursuant to Section 9.4(d)(1) of the Agreement and any earned and accumulated sick leave, annual leave, compensatory time and overtime credits standing to the employee's credit and such leave without pay as may be necessary to complete one year of leave. Such leave shall be in addition to and shall not be reduced by any time charged to workers' compensation leave pursuant to Section 9.4(d)(2) (assault leave) of the Agreement. Effective April 1, 1986, an employee who draws his/her accumulated leave credits under Section 9.3(k)(3) shall cease to earn and accrue sick and annual leave credits during that period. An employee placed on leave pursuant to this subsection who is not reinstated on or before the date that such leave is exhausted, may be terminated by the Deputy Chief Administrative Judge (New York City Courts) and his/ her position may be filled by a permanent appointment.

(4) When an employee who is not permanently incapacitated from performing the duties of his/her position has been absent from and unable to perform the duties of his/her position by reason of sickness or disability not caused by an assault arising out of and in the course of the employee's employment either for a consecutive period of one year or more or for a cumulative total of 250 workdays or more within a period of 24 consecutive calendar months and who reasonably cannot be expected to be able to resume performing his/her duties on a full-time basis shortly thereafter,

his/her employment status may be terminated by the Deputy Chief Administrative Judge (New York City Courts) and his/ her position may be filled by a permanent appointment.

(5) This section shall not be construed to require extension of any employment beyond the time at which it would otherwise terminate by operation of law, rule or regulation.

(6)(a) Absent exceptional circumstances, prior to being placed on leave pursuant to Section 9.3(k)(2) or Section 9.3(k)(3) or terminated pursuant to Section 9.3(k)(4), or, under exceptional circumstances, as soon thereafter as reasonably possible, an employee shall be provided with written notice thereof, including written notice of the facts relied on therefor and written notice of the employee's right to appeal the determination and of the procedures for perfecting such appeal. Such notice shall be served in person or by first class, registered or certified mail, return receipt requested, upon the employee and the Union. If such person elects to appeal, he/she shall file a written request for a hearing with the Deputy Chief Administrative Judge (New York City Courts) within ten workdays from service of the notice of the determination to be reviewed. The request for such hearing shall be filed by the employee personally or by first class, certified or registered mail, return receipt requested.

(b) Upon receipt of such request, the Deputy Chief Administrative Judge (New York City Courts) shall supply to the employee or his/her personal physician or authorized representative, copies of all diagnoses, test results, observations and other data supporting the determination, and imposition of the leave or termination shall be held in abeyance until a final determination is made by the Deputy Chief Administrative Judge (New York City Courts) as provided in Section 9.3(k)(6)(c).

(c) A hearing shall be held by a hearing officer designated for that purpose by the Deputy Chief Administrative Judge (New York City Courts). The hearing officer shall be vested with all the powers of the Deputy Chief Administrative Judge (New York City Courts), and shall make a record of the hearing which shall, with his/her recommendation, be referred to the Deputy Chief Administrative Judge (New York City Courts) for review and decision and which shall be provided to the employee free of charge. The employee shall, upon request, receive a copy of the transcript of the hearing without charge. The employee may be represented at the hearing by counsel or a representative of the Union and may present medical experts and other witnesses or evidence. The burden of proving mental or physical unfitness shall be upon the State. Compliance with technical rules of evidence shall not be required. The Deputy Chief Administrative Judge (New York City Courts) will render a final determination and may either uphold the original notice of leave of absence, withdraw such notice or modify the notice as appropriate. A final determination of an employee's request for review shall contain notice to the employee of his/her right to appeal from such determination and of the procedures for perfecting such appeal.

(d) If such person elects to appeal, he/she shall make application to the Chief Administrative Judge of the Courts. Such employee shall be afforded an opportunity to present facts and arguments, including medical evidence, in support of his/her position at a time and place and in such manner as may be prescribed by the Chief Administrative Judge of the Courts. The reviewing authority shall make his/her determination on the basis of the medical records and such facts and arguments as are presented.

(7) An employee on leave pursuant to Section 9.3(k)(2) or Section 9.3(k)(3) may, within one year of the commencement of such leave, make application to the Deputy Chief Administrative

Judge (New York City Courts) for a medical examination to be conducted by a medical officer selected for that purpose by the Chief Administrative Judge of the Courts or his/her designee. An employee whose employment status has been terminated pursuant to Section 9.3(k)(3) or Section 9.3(k)(4), may, within one year after the termination of his/her disability, make application to the Deputy Chief Administrative Judge (New York City Courts) for a medical examination to be conducted by a medical officer selected for that purpose by the Chief Administrative Judge of the Courts or his/her designee. If, upon such medical examination, the medical officer shall certify that such person is physically and mentally fit to perform the duties of his/her former position, he/she shall be reinstated to the former position, if vacant, or to a vacancy in a similar position or a position in a lower title in the same occupational field in his/her former promotion unit. If no appropriate vacancy shall exist to which such reinstatement may be made, or if the work load does not warrant the filling of such vacancy, the name of such person shall be placed on a preferred list for his/her former position in his/her former promotion unit, and he/she shall be eligible for reinstatement in such former promotion unit from such preferred list for a period of four years. In the event that such person is reinstated in a position in a title lower than that of his/her former position, his/her name shall be placed on the preferred eligible list for the former position or any similar position in such former promotion unit.

(8) This section shall not be deemed to modify or supersede any other provisions of law applicable to the reemployment of persons retired from the public service on account of disability.

(9) Notwithstanding any other provision of this Agreement, when an employee's disability permanently incapacitates him/her from performing the duties of his/her position, his/her employment status may be terminated and his/her position may be filled by a permanent

appointment. Such employees shall be entitled to due process and hearing as enumerated in Section 9.3(k).

(*l*) **Sick Leave Donation Program.**

(1) An employee who has a sick leave balance in excess of 15 days may assign any sick leave credits in excess of the 15 days to any annual salaried nonjudicial employee who has exhausted all of his/her sick leave, annual leave and compensatory time credits. A donor must assign sick leave credits in full-day, seven hour units on forms developed by the State. Such assigned sick leave credits will be deducted from the donating employee's sick leave accruals immediately upon notification to the State.

(2) An employee who is assigned sick leave under this section may not be credited with a total of more than 130 days of such leave credits and will not be eligible to apply for benefits pursuant to Section 9.3(h) and Section 9.3(j) of the Agreement until all such assigned sick leave, and accrued annual leave and sick leave is exhausted. An employee will continue to earn and accrue annual and sick leave credits while utilizing assigned credits under this section.

(3) Any assigned sick leave credits not used by an employee prior to his/her first return to duty shall not be restored to those employees who made the donations, but shall be retained by the employee-recipient for his/her use. In the event the employee-recipient separates from service, such donated credits shall become property of the State.

(4) Upon separation from State service for reasons other than retirement, and notwithstanding the minimum balance requirements set forth in Subsection (1) above, an employee may elect to donate all of his/her accrued and unused sick leave accruals to any nonjudicial employee eligible to receive such donations or to the Sick Leave Bank if established pursuant to Section 9.3(m) of the

Agreement. Provided, however, that if an employee who donates his/her accruals to the Bank is subsequently reinstated or re-employed he/she shall have his/her sick leave credits restored from the credits of the Bank. No employee who is removed from State service as a result of disciplinary action, or who resigns after charges of incompetency or misconduct have been served upon him/her, shall be entitled to donate his/her accruals under the provisions of this section.

(m) A Labor/Management Committee shall be established for the purpose of discussing and recommending the establishment of a sick leave bank. The committee shall meet as soon as practicable after the execution of this Agreement.

9.4 **Workers' Compensation Leave.**

(1)(a) Effective on the date of execution of this Agreement, employees necessarily absent from duty because of an occupational injury, disease or condition as defined in the Workers' Compensation Law, shall be eligible for a Workers' Compensation Benefit as provided in this Article. Determinations of the Workers' Compensation Board regarding compensability of claims shall be binding upon the parties.

(b) A workers' compensation injury shall mean any occupational injury, disease or condition found compensable as defined in the Workers' Compensation Law.

(2)(a) An employee who suffers compensable occupational injury shall, after completion of a ten-workday waiting period, be placed on a leave of absence without pay for all absences necessitated by such injury and shall receive the benefit provided by the Workers' Compensation Law except as set forth in this Article.

(b) An employee necessarily absent for less than a full day in connection with a workers' compensation injury as defined in Section 9.4(1)(b) due to therapy, a doctor's appointment, or other required continuing treatment, may charge accrued leave for said absences.

(c) The State will make previously authorized payroll deductions for periods the employee is in pay status receiving salary sufficient to permit such deductions. The employee is responsible for making payment for any such deductions during periods of leave without pay, such as those provided in Section 9.4(2)(a) above.

(3) An employee required to serve a waiting period pursuant to Subsection 2(a) shall have the option of using accrued leave credits or being placed on leave without pay. Where an employee charged credits, upon receipt of documentation from the State Insurance Fund issuing a credit to the State for the time charged, the employee shall be entitled to restoration of credits charged proportional to the net monetary award credited to the State by the Workers' Compensation Board.

(4) When annual leave credits are restored pursuant to this Article and such restoration causes the total annual leave credits to exceed 54 days, a period of one year from the date of the return of the credits or the date of return to work, whichever is later, is allowed to reduce the total accumulation to 54 days.

(5) An employee receiving workers' compensation payments for a period of disability found compensable by the Workers' Compensation Board shall be treated as though on the payroll for the length of the disability not to exceed 12 months per injury for the sole purposes of accruing seniority, continuous service, health insurance and Employee Benefit Fund contributions normally made by the State, accrual of annual leave and sick leave. Additionally, such employee shall be treated as

though on payroll for the period of disability not to exceed 12 months per injury for the purposes of retirement credit and contributions normally made by the State and/or the employee.

(6)(a) Where an employee's workers' compensation claim is controverted by the State Insurance Fund upon the ground that the disability did not arise out of or in the course of employment, the employee may utilize leave credits (including sick leave at half pay if eligible) pending a determination by the Workers' Compensation Board.

(b) If the employee's controverted or contested claim is decided in the employee's favor, any leave credits charged (and sick leave at half pay eligibility) shall be restored proportional to the net monetary award credited to the State by the Workers' Compensation Board.

(c) If the employee was in leave without pay status pending determination of a controverted or contested claim, and the claim is decided in the employee's favor, the employee shall receive the benefits in Section 9.4(5) for the period covered by the award not to exceed 12 months per injury.

(d) Where a claim for workers' compensation is controverted or contested by the State Insurance Fund, the parties will abide by the determination of the Workers' Compensation Board.

(7)(a) If the date of the disabling incident is prior to April 1, 1986, the benefits available shall be as provided in the 1982-85 State/Joint Council Agreement.

(b) If the date of the disabling incident is on or after April 1, 1986 and prior to the date of execution of this Agreement, the benefits available shall be as provided in the 1988-91 State/Court Clerks Agreement.

(c) If the date of the disability incident is on or after September 9, 1993, the benefits available shall be as provided in the 1991-95 agreement.

(d) If the date of the disability is on or after the date of execution of this Agreement, the benefits available shall be as provided herein.

(8) The State and the Court Clerks shall establish a committee whose purpose shall include but not be limited to reviewing and making recommendations on the following: (1) the effects of the implementation and administration of the workers' compensation statutory benefit, including resulting savings and costs associated with it; (2) the accident and injury data focusing on incidence of injuries or accidents in order to develop prevention strategies and means to reduce and/or eliminate the risk of on the job injury.

(9) The State retains all its managerial rights to monitor all workers' compensation claims.

(10) The State and the Union recognize their mutual concern to establish a safe working environment. In an effort to create this environment and minimize work-related accidents and occupational illnesses, the State and the Union agree to meet during the term of this Agreement to investigate and identify potentially hazardous conditions and make recommendations for improvements to address the identified areas of concern.

(11) If an employee dies during the term of this Agreement because of an injury arising out of and in the course of the employee's employment, through no fault of the employee, and in the proper performance of the employee's duties, a payment of $50,000 will be made from funds other than those of the Retirement System in addition to any other payment which may be made as a result of such death. Such payment shall be made to the employee's beneficiary or, if no beneficiary is designated, the payment shall be made to the employee's estate.

9.5 **Other Leaves With Pay.**

(a) **Leave for Subpoenaed Appearance and Jury Attendance.** Upon application to the Deputy Chief Administrative Judge (New York City Courts) or his/her designee, together with proof satisfactory to the State of the necessity of each days absence from work, an employee shall be granted a leave of absence with pay for documented absences resulting from jury service or appearance as a witness pursuant to subpoena or other order of a court or body. Provided, however, that this section shall not apply to any absence by an employee occasioned by such an appearance where the employee, or his/her relative as defined in paragraph (f) of this subdivision, has a personal interest in the underlying action or proceeding; nor shall this section apply to any absence by an employee who receives a fee for testifying as an expert witness.

Employees entitled to leave under this section shall not be entitled to receive any remuneration for jury service except mileage and transportation expenses when serving on a New York State Unified Court System jury. Should an employee receive a New York State Unified Court System jury fee, the State will require reimbursement from the employee.

(b)(1) **Leave for Civil Service Examinations.** An employee shall be allowed leave with pay to take Civil Service examinations at the appropriate examination center for positions in the Unified Court System. An employee also shall be allowed leave with pay to appear for an official investigation or appointment interview for competitive class, noncompetitive class or exempt class positions in the Unified Court System. Prior to such leave being granted, due notice and proof satisfactory to the State shall be submitted by the employee to the Deputy Chief Administrative Judge (New York City Courts) or his/her designee.

(2) **Waiver of Fees for Civil Service Examinations.** The State agrees that to the extent the Chief Administrative Judge of the Courts determines to establish examination fees for Civil Service examinations the State will waive such examination fees for employees.

(3) **Bar Examination Leave.** Upon application to the Deputy Chief Administrative Judge (New York City Courts) or his/her designee, together with proof satisfactory to the State, employees registered to take the New York State Bar examination shall be allowed two days leave with pay to take the Bar examination and, if necessary, one day leave with pay to review the results of such examination.

(c) **Leave for Quarantine.** If an employee who is not ill himself/herself is required to remain absent because of quarantine and presents a written statement of the attending physician or local health officer proving the necessity of such absence, he/she shall be granted leave with pay for the period of his/her required absence, without charge against accumulated sick leave, annual leave or overtime credits. Prior to return to duty, such employee may be required to submit a written statement from the local health officer having jurisdiction that his/her return to duty will not jeopardize the health of other employees.

(d) **Leaves Required by Law.** An employee shall be allowed such other leaves of absence with pay, including military leave, as are required by law.

(e) **Leave for Civil Defense Duties.** Upon certification by the State Director of Civil Defense of the necessity for the participation in State or local Civil Defense drills of an employee enrolled as a Civil Defense volunteer and required to perform Civil Defense duties, pursuant to the State Defense Emergency Act, the Deputy Chief Administrative Judge (New York City Courts) or his/her designee, may allow such employee to absent himself/herself from his/her position, without loss of

pay or charge against leave credits for such time as is necessary for participation in such drills, but not exceeding cumulatively five workdays per calendar year.

(f) **Death in the Immediate Family.** Leave of up to four consecutive State workdays (based on a standard Monday to Friday workweek and not to exceed a total of 28 work hours), shall be allowed immediately following the death of an employee's spouse; domestic partner; natural, foster or step: parent; child; brother or sister. Additionally, such four consecutive State workdays also shall be allowed following the death of an employee's father-in-law or mother-in-law; grandparent or grandchild; any relative residing with the employee; or for an individual for whom the employee has been the primary caregiver. For those employees regularly scheduled to work on a weekend or holiday, such days shall be considered State workdays for purposes of this section only. Prior notice and authorization is not required for leave under this paragraph. When a death in an employee's immediate family occurs while he/she is on annual leave, such time as is excusable for death in the family shall not be charged to annual leave.

(g) **Extraordinary Circumstances.** An employee who has reported for duty, and because of extraordinary circumstances beyond his/her control, is directed to leave work, shall not be required to charge such directed absence during such day against leave credits. An employee who does not report for duty because of circumstances beyond his/her control shall not be required to charge such absence during such day against leave credits if the court or other facility where the employee is required to report is closed due to such extraordinary circumstances. Any release or excusal of employees due to extraordinary circumstances does not create any right to equivalent time off by employees not adversely affected by the extraordinary circumstances. Only designated management officials may direct employees to leave work. The Deputy Chief Administrative Judge

(New York City Courts) or his/her designee shall promulgate a list of personnel who have this authority.

(h) **Terminal Leave.** The terminal leave provision for all employees except as provided in paragraphs (2) and (3) below shall be as follows:

(1) Terminal leave with pay shall be granted prior to final separation to employees who have completed at least ten years of service on the basis of one day terminal leave for each two days of accumulated sick leave up to a maximum of 120 days of terminal leave. Such leave shall be computed on the basis of workdays rather than calendar days.

(2) Any employee who as of January 1, 1975 has a minimum of 15 years of service as of said date may elect to receive upon retirement a terminal leave of one calendar month for every ten years of service prorated for a fractional part thereof in lieu of any other terminal leave. However, any sick leave taken by such employee subsequent to July 1, 1974 in excess of an average annual usage of six days per year shall be deducted from the number of days of terminal leave to which the employee would otherwise be entitled at the time of retirement, if the employee chooses to receive terminal leave under this paragraph.

(3) In a case where an employee has exhausted all or most of the employee's accrued sick leave due to a major illness, the Deputy Chief Administrative Judge for Management Support or his/her designee in his/her discretion, may apply two and one-fifth workdays for each year of paid service as the basis for computing terminal leave in lieu of any other terminal leave.

(4) Notwithstanding any other section in this Article, service accrued with the City of New York shall be used only to compute the ten-year eligibility requirement in Section 9.5(h)(1) and the 15-year eligibility requirement in Section 9.5(h)(2).

(5) The State shall be liable for payment of terminal leave only for that portion of terminal leave accrued by service after April 1, 1977.

(6) Only those employees eligible to receive terminal leave under Sections 9.5(h)(1) and (2) on December 31, 1984 shall be eligible to receive terminal leave benefits under those sections.

(i) **Blood Donations.**

(1) Subject to the reasonable operating needs of the court or court-related agency, an employee shall be allowed three and one-half hours leave with pay for blood donations made during normal working hours. Such leave only shall be used on the day such donation is made and shall include all time spent making such donation (including travel time to and from the collection point).

(2) In the event that an employee donates blood during working hours pursuant to a court-sponsored blood drive and is required to return to work following such donation, he/she shall be granted three and one-half hours of compensatory time. This provision shall not apply to an employee who receives a fee for such donation.

(j) **Conventions.** Subject to prior notice to and authorization by the Deputy Chief Administrative Judge (New York City Courts), leave with pay shall be granted for attendance of delegates and alternates at State or national conventions of veterans' organizations, volunteer firemen's organizations, and other such organizations as may be designated by the Deputy Chief Administrative Judge (New York City Courts).

(k) **Conferences.** Four days leave per annum without charge to an employee's leave credits may be allowed to attend conferences of recognized professional organizations. Such conferences must be directly related to the employee's profession or work duties as described in the applicable

title standard. This leave is subject to approval of the Deputy Chief Administrative Judge (New York City Courts) or his/her designee and the staffing needs of the court.

(*l*) **Internal Discrimination Claims.** Subject to the reasonable operating needs of the court or court-related agency and with the prior written approval of the Unified Court System's Workforce Diversity Office, an employee shall be allowed leave with pay (i) to consult with the Workforce Diversity Office prior to filing an Internal Discrimination Claim pursuant to the Discrimination Claim Policy and Procedure; or, (ii) to attend meetings or consultations with the Workforce Diversity Office in relation to a filed Internal Discrimination Claim. Such leave shall include reasonable travel time.

(m) **Other Leaves With Pay.** The Deputy Chief Administrative Judge (New York City Courts) or his/her designee may grant leaves with pay for reasons not itemized in this section.

9.6 **Leaves Without Pay.**

(a) **Leave of Absence; Duration.** A permanent employee may, in the discretion of the Deputy Chief Administrative Judge (New York City Courts) or his/her designee, be granted a leave of absence, without pay, for a period not exceeding two years. Such leave may be extended beyond two years, for periods aggregating not in excess of an additional two years. In an exceptional case, a further extension may be permitted by the Deputy Chief Administrative Judge (New York City Courts) or his/her designee for good cause shown and where the interests of the government would be served. For the purposes of this section, time spent in active service in the military forces of the United States or of the State of New York shall not be considered in computing the period of leave.

This section shall not be construed to require the extension of any employment beyond the time at which it would otherwise terminate by operation of law, rule or regulation.

(b) **Successive Leaves of Absence.** Where a leave of absence without pay has been granted for a period which aggregates two years, or more if extended pursuant to Subdivision (a) of this section, a further leave of absence without pay shall not be granted unless the employee returns to his/her position and serves continuously therein for six months immediately preceding the subsequent leave of absence.

(c) **Leave for Child Care.** A combined confinement and child care leave of absence without pay shall be granted to an employee (male or female) who becomes the parent of a child up to four years of age, either by birth or by adoption, for a period of up to 12 months. A period beyond 12 months, but not more than another successive 12-month period, may be granted at the discretion of the Deputy Chief Administrative Judge for Management Support or his/her designee subject to the staffing needs of the court. The use of this maximum allowance will be limited to one instance only during the term of this Agreement.

Prior to the commencement of confinement and child care leave, an employee shall be continued in pay status for a period of time equal to all of the employee's unused accrued annual leave. A pregnant employee shall have the option to be continued in pay status for a period of time equal to all or part of her period of disability using accrued sick leave or annual leave.

This section shall not be construed to require extension of the employment of a temporary, provisional, contingent permanent or other employee beyond the time at which it would otherwise terminate by operation of law, rule or regulation.

9.7 **Payment of Accruals Upon Separation from Unified Court System.**

(a) An employee, his/her estate or beneficiary, as the case may be, shall be compensated in cash for overtime credits, compensatory time (except where provision is made for the transfer of

leave credits), annual leave credits accrued and unused as of the effective date of separation up to maximum payment equivalent to one year's salary, except that in the case of resignation, the Deputy Chief Administrative Judge for Management Support or his/her designee may require, as a condition for such payment, that written notice of such resignation be given to the Deputy Chief Administrative Judge (New York City Courts) or his/her designee at least two weeks prior to the last day of work.

(b) An employee on leave from his/her position due to his/her entry into the Armed Forces of the United States for active duty (other than for training as defined by Title 10 of the United States Code) may elect to receive compensation in cash for accrued and unused annual leave and overtime credits in each category accrued and unused as of the last date on which his/her name appeared on the State payroll.

9.8 **Written Agreement Required for Transfer of Leave Credits.** For the purposes of applying the provisions of this Article, employment in the Executive or Legislative branches of State service shall be credited as service in the Unified Court System; provided, however, that except as otherwise provided by law, leave credits may not be transferred upon movement from such positions to positions within the negotiating unit covered by this Agreement except where such credits are earned and accumulated in accordance with attendance and leave provisions which are substantially equivalent to the time and leave provisions of this Agreement and there is a written agreement between the President of the Civil Service Commission and the Chief Administrative Judge of the Courts governing the transfer of leave credits upon such movements. Other public employment may be credited as State service for purposes of determining transferability of leave credits provided such employment was subject to attendance and leave provisions substantially equivalent to the time and

leave provisions of this Agreement, and provided there is a written agreement between the Chief Administrative Judge of the Courts and the public agency wherein such employment occurred governing the crediting of such employment and the transfer of leave credits upon movement of employees to and from such agency and positions included within this negotiating unit.

9.9 **Holidays.** All legal holidays enumerated herein shall be allowed as paid days off, or holiday pay as set forth in Section 9.11 shall be allowed in lieu thereof. The days prescribed by law for the observance of New Year's Day, Martin Luther King, Jr.'s Birthday, Lincoln's Birthday, Washington's Birthday, Memorial Day, Independence Day, Labor Day, Columbus Day, Election Day, Veterans Day, Thanksgiving Day and Christmas Day shall be observed as holidays.

9.10 **Retroactive Time Credits.** Annual leave and sick leave credits accrued for service rendered prior to April 1, 1977 and credited pursuant to this Article shall be challenged or recomputed only by an employee challenge made within 60 days after October 10, 1979.

9.11 **Holiday Pay.**

(a) An employee who is entitled to time off with pay on days observed as holidays by the State as an employer will receive at his/her option additional compensation for time worked on such days or compensatory time off. Such additional compensation for each full day worked will be at the rate of 1/10 of his/her biweekly rate of compensation. Such additional compensation for less than a full day of work will be prorated. Such rate of compensation will include geographic, location, inconvenience and shift pay, and assignment differentials as may be appropriate to the place or hours worked. In no event will an employee be entitled to such additional compensation or compensatory time off unless he/she has been scheduled or directed to work.

(b) An employee required to work on Thanksgiving Day (the fourth Thursday in November), Christmas Day (December 25) or New Year's Day (January 1) shall receive a 100% cash premium for all hours worked on such day in addition to any holiday pay or compensatory time off granted under Section 9.11(a).

9.12 **Holiday Falling on Saturday or Sunday.** A holiday falling on a Saturday or a Sunday shall be observed on the preceding Friday or following Monday subject to the operational or staffing needs of the court or agency and as determined by the Deputy Chief Administrative Judge (New York City Courts) or his/her designee.

9.13 **Workweek.** The State and the Union recognize their mutual goal of best serving the public. The workweek shall be 35 hours. Wherever practicable the normal workweek shall consist of five consecutive workdays separated by two days off. This shall not constitute a bar to the consideration of a flexible workweek or a flexible workday. Employees currently scheduled workweek or work schedule shall be maintained unless changed in accordance with this provision. Permanent changes in employees' workweek or work schedule shall be made upon reasonable notice to the Union. The impact of permanent changes in employees' workweek or work schedule shall be subject to negotiations with the Union. This section shall not, however. be a bar to consideration of Alternative Work Schedule requests from individuals.

9.14 **Scheduling.** Subject to the reasonable operating needs of the court or court-related agency, employee service in title in the Unified Court System shall be used to resolve conflicts among employees in the same title in scheduling hours of annual leave, holiday work or flexible time. If two or more employees in the same title have the same length of service in title and in the

Unified Court System, a conflict in scheduling shall be resolved by lot. Prior service which was credited by the Unified Court System on April 1, 1977 will be used in determining length of service.

9.15 **Early Release.** If the THI index reaches.80 or above during the months of July and August, the Deputy Chief Administrative Judge (New York City Courts) shall authorize dismissal of employees in non-air-conditioned courtrooms and offices without charge to leave credits no later than 4:00 p.m. In the event it is necessary for an employee to remain on duty as part of a skeleton force, he/she shall receive compensatory time.

ARTICLE 10

OVERTIME

10.1 Employees shall receive compensation for work performed between 35 and 40 hours in an overtime workweek in cash compensation at a straight-time rate as provided in Section 10.7, or compensatory time, pursuant to Section 10.8, at the employee's option.

Employees shall receive compensation for work performed in excess of 40 hours in an overtime workweek at a rate equal to one and one-half times their hourly rate of pay as provided in Section 10.7. It is the policy of the State that overtime work be held to a minimum consistent with the needs and requirements of sound and orderly administration of State government.

10.2 **Definitions.** Wherever used in this Article:

(a) "Overtime" shall mean only hours worked in excess of 35 hours in any overtime workweek by an eligible employee.

(b) An "eligible employee" shall mean any employee who is not deemed ineligible to earn overtime pay, as provided under Section 10.3.

(c) "Scheduled overtime" shall mean overtime which is susceptible to scheduling and approval in advance of need.

(d) "Unscheduled overtime" shall mean overtime which is necessitated by emergency conditions which cannot be anticipated in advance.

(e) "Overtime workweek" shall mean Thursday through Wednesday, coinciding with the State's payroll week.

10.3 **Exclusions.**

(a) Employees who meet the criteria for exclusion from the overtime provision of the Fair Labor Standards Act ("FLSA") shall not be eligible to receive contractual overtime compensation.

(b) With respect to previously-made determinations on contractual overtime exclusions such determinations shall be continued upon execution of this Agreement.

(c) In the event that the State determines that an individual employee whose title had previously been considered as eligible for contractual overtime compensation meets the FLSA criteria for exclusion, it will provide the Union with thirty (30) days prior notice of such determination and afford the Union, during this thirty (30) day period, with the opportunity to assert that such individual employee/title should continue to be eligible for overtime compensation.

(d) With respect to new titles, the State shall undertake a review of all such titles, as they are established, for the purpose of determining overtime eligibility for contractual overtime using FLSA criteria. Upon request by the Union, the State and the Union shall meet to discuss whether the title in question should be eligible to receive contractual overtime compensation.

(e) The Deputy Chief Administrative Judge for Management Support may waive the restriction contained in Section 10.3(a) whenever he/she determines that strict adherence to such

restriction would be detrimental to the sound and orderly administration of the Unified Court System.

(f) Nothing in this section shall be construed as a waiver of the Union's right to appeal the State's determinations to the appropriate forum, or as a waiver of the State's right to implement changes in accordance with the provisions herein.

10.4 **Authorization for Overtime Work.**

(a) Unscheduled overtime work must be authorized in advance by the Administrative Judge[1].

(b) Notification of unscheduled overtime shall be forwarded to the Director of Budget and Finance at the close of the biweekly payroll period in which the overtime is authorized.

(c) Scheduled overtime work must have the prior approval of the Deputy Chief Administrative Judge for Management Support or his/her designee.

(d) The Deputy Chief Administrative Judge (New York City Courts) will take all reasonable steps to provide for an equitable distribution of scheduled overtime opportunities among qualified permanent employees of the appropriate work unit.

(e) There shall be no rescheduling of days off or hours of work to avoid the payment of overtime.

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[1]The term Administrative Judge as used in this article refers to:
Administrative Judge for the Civil Branch, Supreme Court, New York County
Administrative Judge for the Criminal Branch, Supreme Court, New York County
Administrative Judge for the New York City Civil Court
Administrative Judge for the New York City Criminal Court
Administrative Judge for the New York City Family Court
Administrative Judge for the Supreme Court, Bronx County
Administrative Judge for the Supreme Court, Kings County
Administrative Judge for the Supreme Court, Queens County
Administrative Judge for the Surrogate's Court, New York County

(f) In the absence of a sufficient number of volunteers, unscheduled overtime can be required of any employee who, in the judgment of his/her supervisor, is needed to do the work.

(g) Overtime performed in a higher or lower title can be performed only on a voluntary basis. Extra service work can also be performed on a voluntary basis.

(h) Eligible employees shall be eligible for overtime for actual travel and/or service performed while in travel status, provided that:

(1) The trip is not between the employee's residence and his/her official workstation.

(2) The trip is for the purpose of conducting State business and is authorized in advance.

(3) Authorization is granted only when travel during regular work hours is less economical or unduly delays the employee's return to his/her official workstation.

(4) The trip is not taken for the purpose of attending a professional conference or convention.

10.5 **Determination of Overtime Earned.**

(a) Total hours worked shall include all the time worked by an employee when required to be on duty or at a prescribed workplace and shall exclude all absences from duty and all time allowed for meals. For purposes of computing total hours worked in an overtime workweek, time during which an employee is excused from work because of holidays, sick leave at full pay, annual leave, compensatory time off or other leave at full pay shall be considered as time worked by the officer or employee. Compensatory time off granted in the same overtime workweek in which it is earned, except compensatory time off granted in lieu of a holiday worked in such overtime workweek, does not add to the total hours worked and is not to be construed as time worked by an employee.

(b) Employees who volunteer to standby in their homes or who are required, ordered, and/or scheduled on an involuntary basis to standby in their homes subject to recall shall receive payment on the basis of one-half hour overtime for each hour of standby time in cash, if eligible for cash payment or compensatory time off, if eligible for compensatory time.

(c) Employees recalled from home for unscheduled overtime work shall be guaranteed overtime payment in cash for at least four hours, if eligible for cash payment, provided, however, if an employee is ineligible for cash overtime payment, he/she shall be guaranteed compensatory time off for at least four hours.

(d) The smallest unit of time to be credited as overtime in any one day shall be one-quarter hour.

10.6 **Computation of Cash Compensation.** Payment for overtime shall be computed in the following manner:

(a) If an employee works overtime in his/her regular position or title or in a position the title of which is allocated to the same salary grade as his/her regular position, he/she shall be compensated for work between 35 and 40 hours at a straight-time rate and for work in excess of 40 hours at one and one-half times the regular hourly rate of pay.

(b) When the overtime is worked in a position allocated to a salary grade lower than the employee's regular position, he/she shall be compensated for work between 35 and 40 hours at a straight-time rate and in excess of 40 hours at one and one-half times the hourly rate of pay of the maximum salary of the lower position plus such longevity increments to which he/she would otherwise be entitled were he/she in such lower grade position, but in no event in excess of a straight-time rate of pay in his/her regular position for work between 35 and 40 hours and in excess

of one and one-half times the hourly rate of pay of his/her regular position for work in excess of 40 hours.

(c) When the overtime is worked in a position allocated to a higher salary grade than the grade of the employee's regular position, he/she shall be compensated for work between 35 and 40 hours at a straight-time rate and in excess of 40 hours at one and one-half times the hourly rate of compensation he/she would be entitled to if he/she were permanently promoted to the higher position.

(d) The hourly rate of compensation shall be determined by dividing the basic annual rate of compensation plus any additional compensation payable because of an assignment differential, the location of employment, or because work is performed between 6 p.m. and 8 a.m. by 1,827. The hourly rate of compensation for per diem employees shall be determined by dividing the per diem rate by seven.

10.7 **Time of Payment of Cash Compensation.** When cash payment for scheduled overtime has been approved, employees shall be paid for such overtime compensation in excess of 35 but less than 40 hours in an overtime workweek at the employee's option and for more than 40 hours in an overtime workweek by the close of the second biweekly payroll period following the period during which the overtime is earned.

10.8 **Compensatory Time Off.** Eligible employees shall have the option to receive either cash compensation at a straight-time rate or compensatory time off on an hour-for-hour basis for overtime worked in excess of 35 hours but not in excess of 40 hours in an overtime workweek.

10.9 **Overtime Meal Allowances.** A meal allowance of $6 will be paid to:

(a) any employee required to work at least three hours beyond his/her normally scheduled workday unless he/she is receiving cash compensation for such overtime work; or,

(b) any employee required to work at least seven hours on his/her regularly scheduled day off shall be entitled to receive one overtime meal allowance, and a second overtime meal allowance after ten hours on his/her regularly scheduled day off, unless he/she is receiving cash compensation for such overtime work; or,

(c) any employee assigned to a deliberating jury beyond his/her normally scheduled workday, in lieu of overtime compensation during the dinner hours.

10.10 **Time Keeping Procedures.** Employees eligible to receive overtime compensation pursuant to this Article shall be required to follow daily sign-in or sign-out procedures. The periodic time report shall be in such form as is required by the Deputy Chief Administrative Judge for Management Support.

10.11 **Exceptions.** The restrictions and limitations contained in this Article may be waived by the Deputy Chief Administrative Judge for Management Support whenever he/she determines that strict adherence to the rules would be detrimental to the sound and orderly administration of the Unified Court System.

10.12 **Conflict with FLSA.** In the event that a tribunal of competent jurisdiction determines that any determination made pursuant to this Article is in conflict with the Fair Labor Standards Act, then such determination shall be of no force and effect and the applicable portion of the Fair Labor Standards Act shall govern. The grievance and arbitration procedure of the Agreement shall not apply to alleged conflicts between determinations made pursuant to this Article and the Fair Labor Standards Act.

ARTICLE 11

SHIFT DIFFERENTIAL

Employees who work four or more hours on a regularly scheduled shift between the hours of 6 p.m. and 8 a.m. shall be entitled to receive a shift differential of 10 percent for the entire shift.

ARTICLE 12

TRAVEL EXPENSES

12.1 **Per Diem Meal and Lodging Expenses.** The State agrees to reimburse, on a per diem basis, as established by the employee travel rules of the Chief Administrative Judge, employees who are eligible for travel expenses, for their actual and necessary expenses incurred while in travel status in the performance of their official duties for hotel lodging, meals (not including lunches) and incidental expenses related thereto (hotel tips, etc.) for a full day at rates stated in the employee travel rules of the Chief Administrative Judge for managerial or confidential employees.

12.2 **Mileage Reimbursement.** The personal vehicle mileage reimbursement rate for employees in this unit shall be consistent with the maximum mileage allowance permitted by the Internal Revenue Service ("IRS").

12.3 **Extended Travel.** The State agrees to provide $8 additional travel expense reimbursement for each weekend to any employee who is in overnight travel status provided he/she is in overnight travel status for at least ten consecutive days at least 300 miles from his/her home and official station.

ARTICLE 13

PERSONNEL AND PAY PRACTICES

13.1 **Notification to Beneficiary.** If during the term of this Agreement an employee dies, the State shall notify the beneficiary designated by the employee in his/her personnel folder as to what benefits may be available for the employee's beneficiary and as to where claims may be initiated for such benefits. The payroll agency shall promptly notify the appropriate retirement system and request it to communicate with the beneficiary designated in the retirement records.

13.2 **Notification of Change in Title or Compensation.** Any employee who is promoted or who is affected by an individual change in title or rate of compensation of an adverse nature shall be notified in writing no later than two weeks after the effective date of such promotion, change in title or rate of compensation.

13.3 **Release of Paychecks.** Consistent with, and subject to security requirements, paychecks shall be released on the preceding day as soon as possible after 3 p.m. for all employees who would not normally receive their paychecks during their working hours on the scheduled pay day.

13.4 **Salary Garnishments.** The State shall make reasonable efforts to notify employees of pending salary garnishments.

13.5 **Salary Upon Promotion.** Any employee who is promoted from a position covered by this Agreement to a higher-graded position which is also covered by this Agreement shall receive upon promotion either the basic annual salary upon promotion provided by Section 37 of the Judiciary Law or his/her basic annual salary prior to promotion increased by $1,350, whichever is greater.

13.6 **Information on Retirement Benefits.** The State shall make available material describing pension benefits and provisions under the Coordinated-Escalator Retirement Plan (CO-ES Plan). Such material shall be distributed to all newly-hired employees at the time of appointment. To the extent material is available, the State shall supply any other materials describing pension benefits and provisions.

13.7 **Evaluations and Personnel Folders.**

(a) An employee shall be given a copy of every statement concerning his/her work performance or conduct prepared during the term of this Agreement, if such statement is to be placed in his/her permanent personnel folder. Prior to being given a copy of such statement, the employee must sign a form which shall indicate only that he/she was given a copy of the statement but that he/she does not necessarily agree with its contents. The employee shall have the right, but not the obligation, to answer any such statement filed and the answer shall be placed in the employee's personnel folder. Only evaluatory statements prepared by a superior with respect to the employee's work performance or conduct, which are given to the employee in accordance with the procedure outlined above, may be used in any subsequent disciplinary actions against the employee.

(b) An employee shall be permitted to view his/her personnel folder once a year upon request, and when an adverse personnel action is initiated against the employee by the State. The viewing shall be in the presence of a designee of the State and held at such time as the State may prescribe.

(c) Upon an employee's written request, any material in his/her personnel folder of an adverse nature, with the exception of disciplinary actions, personnel transactions and evaluatory statements concerning work performance, shall, if over five years old, be removed from the personnel folder.

Upon an employee's written request, such material may, if over three years old, be removed at the discretion of the Deputy Chief Administrative Judge (New York City Courts).

13.8 **Itemization on Paychecks.** Regular paychecks shall, to the extent permitted by the State Department of Audit and Control, be itemized to include overtime and additional wage benefits (including back pay, differentials and all deductions).

13.9 **Shields.** The State shall furnish all employees who are peace officers pursuant to Section 2.10 of the Criminal Procedure Law with an official shield at no cost to the employee.

The State shall provide appropriate firearms training for any court clerk in accordance with the requirements set forth in law for such training. The State shall consult with the union about when such training will commence for employees seeking firearms training and in no event will such training commence later than April 1, 1994.

13.10 **Orientation Kits.** When an orientation kit is supplied to a new or promoted employee in a title covered by this Agreement, only the Union which represents such new or promoted employee shall be permitted to have Union literature included in the kit. Such Union literature shall be subject to the reasonable approval of the Chief of Employee Relations.

13.11 **Dues Check-Off.**

(a) **Payroll Deduction.** The Union shall have exclusive payroll deduction of membership dues and insurance premiums with this privilege accorded to no other employee organization. Payroll deductions shall also be provided without service charge for savings and loans to credit unions, union dues check-off, government bonds, or any other deductions authorized in writing by an employee and in accordance with the Rules of the Comptroller. Further, to the extent allowed by law, payroll deductions shall also be provided without service charge for approved Individual

Retirement Accounts and Deferred Compensation Programs as authorized in writing by an employee and in accordance with the Rules of the Comptroller.

(b) The Union shall have access to dues check-off authorization cards which are actually in the custody of the Office of Court Administration. With respect to authorization cards in the custody of the State Comptroller, the Office of Court Administration consents to inspection by the Union.

(c) When an employee is (1) reassigned or transferred from one payroll department to another, or (2) is promoted or demoted to another title represented by the same union which represented him/her previously, dues check-off shall continue uninterrupted. When an employee is promoted or demoted to a title covered by this Agreement, any prior dues deduction to another union shall be discontinued.

(d) When an employee returns from an approved leave of absence without pay or is reappointed or temporarily appointed from a preferred list in the same title or in another title represented by the same union, any dues check-off authorization in effect prior to the approved leave or the layoff shall be reactivated.

The State shall issue an appropriate administrative instruction to all payroll departments, subject to the Rules of the State Comptroller.

(e) Subject to the consent and agreement of the State Comptroller, employees shall be allowed to participate in a program established in accordance with Section 200.4 of the State Finance Law for the "direct deposit" of an employee's paycheck to a bank or other financial institution designated by the Comptroller.

13.12 **Computation of Salaries.** Biweekly salaries will be computed on the basis of ten workdays.

13.13 **Request for Reassignment or Transfer.**

(a) No employee shall be transferred for the purpose of imposing discipline.

(b) The State will consider transfer requests by employees for existing vacancies anywhere in the City of New York, and, if the needs or requirements of the service permit, will grant the request to fill such vacancies.

(c) No employee will be transferred to a court outside New York City without his/her consent.

(d) The State and the Union shall meet in a Labor/Management Subcommittee during the term of this Agreement to consider statewide reassignment and transfer practices. If the Subcommittee reaches any conclusions concerning a plan for a modification of current reassignment and transfer practices, it shall reduce such conclusions to writing by March 1, 2002.

13.14 **Working Conditions.**

(a) Adequate, clean, structurally safe and sanitary working facilities shall be provided for all employees.

(b) Motor vehicles and power equipment which are in compliance with minimum standards of applicable law shall be provided to employees who are required to use such devices.

(c) Where necessary, first aid chests, adequately marked and stocked, shall be provided by the State in sufficient quantity for the number of employees likely to need them and shall be reasonably accessible to the employees.

(d) The sole remedy for alleged violations of this section shall be a grievance pursuant to Article 15 of this Agreement. Any employee who withholds services as a means of redressing or

otherwise protesting alleged violations of this section shall be docked pay for any unauthorized non-performance of work and may be subject to any appropriate disciplinary action.

(e) In construing this section, an arbitrator shall initially have the power only to decide whether the subject facilities meet the standards of Subsection (a) of this section but may not affirmatively direct how the State should comply with this section. If the arbitrator determines that the State is in violation of this section, the State shall take appropriate steps to remedy the violation. If in the opinion of the Union the State does not achieve compliance within a reasonable period of time, the Union may reassert the claim to the arbitrator. Upon such second submission, if the arbitrator finds that the State has had a reasonable time to comply with the terms of this section and has failed to do so, then and only then, the arbitrator may order the State to follow a particular course of action which will effectuate compliance with the terms of this section. However, such remedy shall not exceed appropriations available in the current budget allocation for the involved agency for such purposes.

(f) The State shall make reasonable efforts to provide for the personal security of employees working in buildings operated by the State, during such hours as said locations are open to the public.

13.15 **Withholding Paychecks.** The State shall not withhold entire paychecks when an employee has no leave balance to cover absences without pay, due to illness, up to a maximum of five days, provided the affected employee has five years of service as a member of the New York City Employees' Retirement System or the New York State Retirement System. Appropriate deductions shall be made in a subsequent paycheck. Employees with a negative leave balance shall not be covered by this section.

13.16 **Resumption of Deductions.** To the extent practicable and allowed by the State Comptroller, all of an employee's payroll deductions shall be resumed when an employee returns from a leave.

ARTICLE 14

LABOR/MANAGEMENT COMMITTEE

14.1 To facilitate communication between the parties and to promote a climate conducive to constructive employee relations, a joint Labor/Management Committee shall be established to discuss the implementation of this Agreement and other matters of mutual interest. The size of the Committee shall be limited to the least number of representatives needed to accomplish its objectives. Committee size shall be determined by mutual agreement.

14.2 The Committee shall meet quarterly, and shall discuss a mutually accepted agenda at each meeting. A written agenda will be submitted a week in advance of regular meetings. Special meetings will be requested by either party. An agenda will be submitted along with the request. Such special meetings will be scheduled as soon as possible after requested.

14.3 All time spent in such meetings shall not be considered as overtime worked, and shall be charged in accordance with Section 4.7 of this Agreement.

14.4 Labor/Management Committee meetings shall be conducted in good faith. The Committee shall have no power to contravene any provision of this Agreement.

14.5 A Statewide Labor/Management Committee shall be established as soon as practicable after execution of this Agreement to study and recommend proposals concerning the issues of productivity and the quality of work life. The Committee shall address means of improving productivity and quality of work life by exploring and, where appropriate, fostering Quality through

Participation and/or other such initiatives. The Committee shall make recommendations for the establishment of a Quality through Participation program to the Deputy Chief Administrative Judge for Management Support as soon as practicable. Such recommendations shall not waive any rights of the Union to negotiate terms and conditions of employment concerning Quality through Participation nor shall the UCS waive any statutory or contractual rights to implement Quality through Participation. The Deputy Chief Administrative Judge for Management Support shall review the recommendations and plan to implement the Quality through Participation program as soon as practicable.

The UCS shall prepare, secure introduction and recommend passage by the Legislature of such legislation as may be appropriate and necessary to obtain an annual appropriation in the amount of $127,640 for fiscal year 1999-2000; $135,280 for fiscal year 2000-2001; $142,920 for fiscal year 2001-2002; and $150,560 for fiscal year 2002-2003, which shall be carried over from one fiscal year to the next but which shall lapse on March 31, 2003, to fund the operation and implementation of the Quality through Participation program including initiatives on day care, elder care or dependent care; insurance deductible program or such other educational initiatives which seek to improve, professionalize or cross-train the workforce and to develop and train employees or such other purposes as the State and the Union agree. All funding provided in this section must be encumbered by January 31, 2003.

14.6 The State and the Union shall establish a Labor/Management Subcommittee which shall discuss modifications to the current performance evaluation system including the performance evaluation forms and appeals process. The Subcommittee shall make recommendations for any changes to the performance evaluation system to the Chief Administrative Judge by October 1, 2000.

14.7 The State and the Union shall establish a Labor/Management Subcommittee to discuss the disciplinary procedures including the creation of an expedited time and attendance discipline procedure.

14.8 The State and the Union shall establish a Labor/Management Subcommittee to discuss issues pertaining to court facilities and occupational, safety and health concerns (OSHA).

14.9 The State and the Union shall establish a Labor/Management Subcommittee to discuss reassignment and transfer.

ARTICLE 15

GRIEVANCE PROCEDURES

15.1 **Definitions.**

(a) A contract grievance is a dispute concerning the interpretation, application or claimed violation of a specific term or provision of this Agreement.

(b) A non-contract grievance is a dispute concerning:

(1) Unreasonable work assignments or conditions.

(2) Discriminatory supervisory practices except insofar as such practices as alleged would constitute violations of law. With respect to claims alleging such practices as would constitute violations of law, they shall, at the election of the employee, be subject to review in accordance with State and Federal procedures established for such purpose as well as such internal review procedures as may exist, but shall not be subject to review under the provisions of this Article. Use of the internal review procedure shall not deny the employee access to State and Federal procedures; provided, however, that an employee electing pursuit of a claim in accordance with State and/or

Federal procedures shall not be allowed to utilize the Unified Court System's Internal Discrimination Claim Procedure.

(3) A claimed violation, misinterpretation or misapplication of the rules or regulations, written policy or orders of the State.

(4) A claimed assignment of employees to duties substantially different from those stated in their job specifications.

(5) A claimed improper holding of an open competitive rather than a promotional examination.

15.2 The contract and non-contract grievance procedures, except for claims under Section 15.1(b)(4) of the Agreement which shall proceed directly to the Chief of Employee Relations as provided in Section 15.2(b)(2), shall be as follows:

(a) **Step 1.** The employee or the Union shall present the grievance in writing to the Deputy Chief Administrative Judge (New York City Courts) or his/her designee, with a copy to the Administrative Authority in the court or court-related agency to which the employee is assigned, not later than 45 calendar days after the date on which the act or omission giving rise to the grievance occurred or when the employee could reasonably have been expected to become aware of, or to have knowledge, that he/she had a grievance. The Deputy Chief Administrative Judge (New York City Courts) or his/her designee may require the grievant to meet with the grievant's immediate supervisor in an effort to settle the grievance informally. The Deputy Chief Administrative Judge (New York City Courts) or his/her designee shall take any other steps necessary to insure that a proper disposition of the grievance is made and shall reply to the employee or Union within 15 workdays following the date of submission. In the event a grievance is not answered within the prescribed time

limit, the grievance will be considered to have been passed to the second step of the grievance procedure.

(b)(1) **Step 2. Contract Grievances.** In the event the employee or the Union wishes to appeal an unsatisfactory contract grievance decision at Step 1, the appeal must be presented in writing within 15 days of the receipt of the Step 1 decision, to the Chief of Employee Relations. A copy of such appeal shall also be sent to the Deputy Chief Administrative Judge (New York City Courts) or his/her designee who passed upon the grievance at Step 1. Such appeal shall contain a short, clear statement of the grievance and specific references to the section(s) of this Agreement which the employee or the Union claims to have been violated. The Chief of Employee Relations or his/her designated representative shall meet within 20 workdays after receipt of the appeal with the employee or the Union for a review of the grievance and shall issue a written decision by the end of the 25th workday after such review. In the event a grievance is not answered within the prescribed time limit, the Union may demand in writing to the Chief of Employee Relations to move the grievance to the next Step of the procedure.

(2) **Step 2. Non-contract Grievances.** In the event the employee or the Union wishes to appeal an unsatisfactory non-contract grievance decision at Step 1, the appeal must be presented in writing within 15 days of the receipt of the Step 1 decision to the Chief of Employee Relations. A copy of such appeal shall also be sent to the Deputy Chief Administrative Judge (New York City Courts) or his/her designee who passed upon the grievance at Step 1. Such appeal shall contain a short, clear statement of the grievance, the basis for the grievance and the relief sought. The Chief of Employee Relations or his/her designee shall meet within 20 workdays after receipt of the appeal with the employee or the Union for a review of the grievance and shall issue a written decision by

the end of the 25th workday after such review. Such decision shall not be subject to review by arbitration.

(c) **Step 3. Contract Grievances.**

(1) An appeal to arbitration from an unsatisfactory contract grievance decision at Step 2 may be made by the Union within 20 days of the receipt of the decision by the Chief of Employee Relations. A request for arbitration may be initiated by the Union serving upon the Chief of Employee Relations a notice in writing of an intent to proceed to arbitration. The notice shall identify the Agreement provision in dispute, the issue or issues to be determined, the department and the employee or employees involved. Upon receipt of a notice requesting arbitration, the parties shall select an arbitrator from a central panel. Such panel shall be agreed upon as soon as practicable following execution of this Agreement. The method of selecting the arbitrator for a particular case shall be by mutual agreement between both parties to the Agreement, and failing such agreement, by mutual strike from the central panel.

(2) The arbitrator shall have no power to add to, subtract from or modify the provisions of this Agreement in arriving at a decision of the issue presented, and shall confine his/her decision solely to the application and interpretation of this Agreement. The decision or award of the arbitrator shall be final and binding consistent with the provisions of CPLR Article 75. The arbitrator shall confine himself/herself to the precise issue submitted for arbitration and shall have no authority to determine any other issues not so submitted to him/her nor shall he/she submit observations or declarations of opinion which are not essential in reaching the determination.

(3) All fees and expenses of the arbitrator shall be divided equally between the parties. Each party shall bear the cost of preparing and presenting its own case.

15.3 The time limits contained in this Article may be extended by mutual agreement. The time for presenting a Step 1 contract grievance shall be extended by the time an employee is absent from the job through illness or disability.

15.4 A settlement or any award upon a contract grievance may or may not be retroactive, as the equities of each case may demand. A settlement or any award upon a grievance filed under Section 15.1(b)(4) shall be retroactive no earlier than 15 calendar days prior to the date the grievance was filed.

15.5 The contract grievance and arbitration procedure provided for herein shall be the exclusive grievance procedure for the resolution of disputes concerning the interpretation, application or claimed violation of a specific term or provision of this Agreement.

15.6 No employee organization other than the Union may initiate or represent an employee in the processing of contract or non-contract grievances.

15.7 In the event the Union appeals a Step 2 decision to Step 3 and the parties cannot agree as to whether it constitutes an arbitrable grievance, the issue of arbitrability shall be preliminarily submitted to arbitration prior to the resolution of the dispute on the merits in accordance with the procedures for arbitration set forth in Step 3.

ARTICLE 16

BENEFITS GUARANTEED

16.1 With respect to matters not covered by this Agreement, the State will not seek to diminish or impair during the term of this Agreement, any benefit or privilege provided by law, rule or regulation for employees without adequate prior notice to the Union, and, when appropriate, without negotiations with the Union provided, however, that this Agreement shall be construed

consistently with the free exercise of rights reserved to the State by the Management Rights Article of this Agreement.

16.2 To the extent that any rule or practice relating to a term or condition of employment is inconsistent with the terms of this Agreement such rule or practice shall be suspended during the term of this Agreement.

ARTICLE 17

PROTECTION OF EMPLOYEES

17.1 There shall be no loss of present jobs by permanent employees as a result of the State's exercise of its right to contract out for goods and services.

17.2 No permanent employee will suffer reduction in existing salary as a result of reclassification or reallocation of the position he/she holds by permanent appointment.

ARTICLE 18

AGENCY SHOP

The parties agree to the Agency Shop to the extent permitted by law.

ARTICLE 19

WELFARE FUND

19.1(a) Effective April 1, 1999, the State shall contribute a pro rata annual sum of $965 per active employee for remittance to the Union's Welfare Fund. A pro rata contribution of $482.50 to such Fund shall be made by the State for part-time and per diem employees provided they are working on a regular basis at least half the regular hours of full-time employees in the same title.

(b) Effective April 1, 2000, the State shall contribute a pro rata annual sum of $990 per active employee for remittance to the Union's Welfare Fund. A pro rata contribution of $495 to such Fund shall be made by the State for part-time and per diem employees provided they are working on a regular basis at least half the regular hours of full-time employees in the same title.

(c) Effective April 1, 2001, the State shall contribute a pro rata annual sum of $1,015 per active employee for remittance to the Union's Welfare Fund. A pro rata contribution of $507.50 to such Fund shall be made by the State for part-time and per diem employees provided they are working on a regular basis at least half the regular hours of full-time employees in the same title.

(d) Effective April 1, 2002, the State shall contribute a pro rata annual sum of $1,040 per active employee for remittance to the Union's Welfare Fund. A pro rata contribution of $520 to such Fund shall be made by the State for part-time and per diem employees provided they are working on a regular basis at least half the regular hours of full-time employees in the same title.

(e) The State shall contribute a pro rata sum of $940 per employee retired since April 1, 1977 for remittance to the Union's Welfare Fund in each fiscal year of the Agreement.

19.2 The State and the Union shall enter into a separate Supplemental Welfare Fund Agreement which shall specify the obligations of both parties regarding implementation, activities and reporting requirements of the Fund; method and calculation of payments to the Fund; the right and authority of the State Comptroller or the Unified Court System to audit and/or review the financial records of the Fund; and the indemnification of the State for liability regarding Fund activities.

ARTICLE 20

CIVIL SERVICE, CAREER DEVELOPMENT

20.1(a) **Posting of Vacancies.** When vacancies in promotional titles included in this negotiating unit are authorized to be filled, a notice of such vacancy shall be posted at all relevant work locations at least five workdays prior to filling except when such vacancies are to be filled on an emergency basis. An inadvertent failure to post at a particular location shall not invalidate an otherwise valid appointment.

(b) The Union shall receive a copy of proposed changes in job specifications for any title it represents for its perusal at least five workdays in advance of the final approval of such changes. Notices of final revisions shall be sent to the Union.

20.2 **Layoffs.** In the event of a scheduled layoff, the State shall provide the Union with a list of employees placed on a preferred list with the original date of appointment utilized for the purpose of such layoff. A laid-off employee who is returned to service in his/her former title or in a comparable title from a preferred list shall receive the basic salary rate that would have been received by the employee had the employee never been laid off, up to a maximum of two years of general salary increases.

20.3 **Statements of Policy or Procedure.** All statements of policy or procedure which are applicable to employees shall upon promulgation be made known and delivered in writing to the Union.

20.4 **Notice of Public Hearing.** If a public hearing is held pursuant to Section 211 of the Judiciary Law, the Union shall receive at least ten workdays notice.

20.5 **Notice of Promotion Examination.** The Union shall be notified ten days in advance of any promotional examination announcement affecting employees, with a copy of the examination announcement to be provided at the same time.

ARTICLE 21

JOB ABANDONMENT

21.1 When an employee to whom the disciplinary procedures contained in this Agreement apply has been absent from work without notice for 15 consecutive workdays, he/she shall be deemed to have resigned from his/her position if he/she (or, if he/she is medically unable, a member of his/her immediate family as defined in Section 9.5(f)), has not provided a satisfactory written explanation for such absence to the court or court-related agency to which he/she is assigned, on or before the 15th consecutive workday following the commencement of such unauthorized absence.

21.2 Prior to the conclusion of the 15-workday period noted in Section 21.1 above, the court or court-related agency shall send the affected employee notice, to the employee's last known address, by certified mail, return receipt requested, with a copy to the Union, that his/her absence is considered unauthorized and that, as a result of such absence, he/she will be deemed to have resigned from service, effective the 15th workday following the commencement of the unauthorized absence.

21.3 An employee who has been deemed to have resigned pursuant to this section shall have 20 workdays from the date the notice was mailed within which to submit a written explanation (or, if he/she is medically unable, a member of his/her immediate family as defined in Section 9.5(f)), concerning his/her absence to the Deputy Chief Administrative Judge (New York City Courts) or his/her designee. Upon receipt of such explanation, the Deputy Chief Administrative Judge (New York City Courts) or his/her designee, shall reinstate the employee without examination, to the position from which he/she was deemed to have resigned, if vacant, or to any vacant position to which he/she was eligible for transfer or reassignment, and shall have 20 workdays within which to

initiate charges against the employee pursuant to the disciplinary procedures contained in this Agreement.

ARTICLE 22

PERIODIC FITNESS EXAMINATIONS

22.1 **Physical and Mental Fitness Committee.** A Labor/Management Committee shall be established composed of representatives from the State and the Union. This Committee shall investigate and make recommendations to the Deputy Chief Administrative Judge for Management Support regarding standards for the evaluation of the physical and mental fitness of peace officers. The Labor/Management Committee also shall explore the implementation of a wellness program. stress evaluation program and an employee assistance program. Periodic fitness is to be a voluntary program which will be established as part of the Employee Assistance Program.

22.2(a)(1) **Drug Testing.** (i) The Deputy Chief Administrative Judge (New York City Courts) may, with reasonable cause, require an employee to submit to blood tests and/or urinalysis to determine whether such employee has used illegal drugs or abused controlled substances. Such determination that reasonable cause exists to test an employee shall be made in the Deputy Chief Administrative Judge's (New York City Courts) sole discretion and shall not be grievable or otherwise reviewable. (ii) References to positive testing throughout this Article refer to test results which prove that an employee has used illegal drugs or abused controlled substances.

(2) **Voluntary Drug Testing.** An employee who has a substance abuse problem may submit voluntarily to drug testing prior to testing directed by the Deputy Chief Administrative Judge (New York City Courts). Upon positive testing, he/she shall submit to the program outlined in

Subsection (b)(1) provided he/she is not subject to disciplinary charges for reasons other than positive testing.

(b) Positive testing is prima facie evidence of misconduct and may be cause for disciplinary action. Prior to the institution of disciplinary proceedings, a preliminary meeting shall be held with a representative of the Deputy Chief Administrative Judge (New York City Courts), the employee and his/her representative to determine whether the employee chooses to participate in a voluntary program of rehabilitation and the terms of such program. If the employee chooses not to participate, he/she shall be subject to formal disciplinary proceedings.

(1) **Voluntary Rehabilitation.** An employee who agrees to voluntarily participate in a rehabilitation or detoxification program at his/her expense shall be allowed to charge sick leave or annual leave credits while such employee participates in a rehabilitation or detoxification program. If no leave credits are available, such employee will be placed on a leave of absence without pay for the period of the rehabilitation or detoxification program. Upon certification of successful completion of such program and a retest that demonstrates that an employee is not using illegal drugs or abusing controlled substances, the employee shall be returned to his/her position. Such employee may be subject to periodic retesting upon his/her return to his/her position. If such employee tests positively upon completion of such voluntary rehabilitation program or on any subsequent occasion, he/she shall be terminated without further hearing or formal charges.

(2) **Formal Disciplinary Hearing.** An employee who chooses not to voluntarily participate in a rehabilitation or detoxification program will be subject to formal disciplinary charges. A hearing shall be held pursuant to Article 24, Disciplinary Procedure, to determine the appropriate penalty.

Such penalty shall not be limited to those enumerated in the Procedure and may include, but not be limited to, the following:

- medical certification of voluntary participation in a rehabilitation or detoxification program at the employee's expense and successful completion of such program;
- mandatory leave of absence of up to one year with the ability to charge earned and accrued sick leave, compensatory time and annual leave credits, if any, but without the ability to apply for advanced sick leave or sick leave at half-pay credits;
- assignment to light duty;
- removal of weapon on and off duty;
- periodic retesting, including retesting before a return to duty;
- suspension; and,
- termination.

(3) An employee may submit proof satisfactory to the Deputy Chief Administrative Judge (New York City Courts) that he/she is taking a controlled substance for treatment of a medical condition in defense of any proposed disciplinary charges or in mitigation of penalty in a case of positive testing. Voluntary submission to testing and admittance to a rehabilitation or treatment program shall be considered in mitigation of such penalty by the hearing officer.

(c) **Other Disciplinary Charges.** Notwithstanding any other provision of this Article, an employee may not elect to participate in the voluntary rehabilitation program set forth in Subsection (b)(1) where such employee may be subject to disciplinary charges which do not result from positive

testing. Employees who are subject to disciplinary charges as a result of conduct other than positive testing pursuant to this Article may not use positive testing for drugs as a defense in such disciplinary proceeding.

ARTICLE 23

DAY CARE/ELDER CARE DEVELOPMENT COMMITTEE

A Day Care Development Committee shall be established composed of representatives from the State and the Union. This Committee shall develop guidelines and procedures for the implementation of this Article. The State shall provide funding in the amount of $30,100 for fiscal year 1999-2000; $37,625 for fiscal year 2000-2001: $45,150 for fiscal year 2001-2002 and $52,675 for fiscal year 2002-2003, which shall be carried over from one fiscal year to the next but which shall lapse on March 31, 2003, to carry out the program agreed upon by the parties pursuant to this Article.

ARTICLE 24

DISCIPLINARY PROCEDURE

24.1 **Applicability.** An officer or employee described in paragraph (a), (b), or (c) below shall not be removed or otherwise subjected to any disciplinary penalty provided in this section except for incompetency or misconduct shown after a hearing upon stated charges pursuant to this section, unless such officer or employee is granted the option and elects to follow the alternative administrative disciplinary procedure set forth in Section 24.8 of this Article.

(a) An officer or employee holding a position by permanent appointment in the competitive class of the classified service, or,

(b) An officer or employee holding a position by permanent appointment or employment in the classified service, who is an honorably discharged member of the Armed Forces of the United

States having served therein as such member in time of war as defined in the Civil Service Law, or who is an exempt volunteer firefighter as defined in the General Municipal Law, except where the officer or employee described in this paragraph holds a position designated by the Chief Administrative Judge of the Courts as confidential or requiring the performance of functions influencing policy, or,

(c) An officer or employee holding a position in the non-competitive class other than a position designated by the Chief Administrative Judge of the Courts as confidential or requiring the performance of functions influencing policy, who since his/her last entry into the service of the Unified Court System has completed at least five years of continuous service in the non-competitive class in a position or positions not so designated as confidential or requiring the performance of functions influencing policy.

24.2 **Procedure.** An officer or employee against whom removal or other disciplinary action is proposed shall have written notice thereof and of the reasons therefor, shall be furnished a copy of the charges preferred against him/her and shall be allowed at least eight days for answering the same in writing. Service of a copy of the charges shall be made by personal service, if possible. If service cannot be effectuated by personal service. it shall be made by certified mail, return receipt requested. The Union shall be advised by certified mail, return receipt requested, of the name and work location of the officer or employee against whom charges have been preferred. The charges shall be made by the Deputy Chief Administrative Judge (New York City Courts) and the hearing shall be held by a person designated by him/her for that purpose. The Deputy Chief Administrative Judge (New York City Courts) shall, upon consultation with the Union as provided in Section 24.10 establish a panel of qualified persons who may be designated to conduct the hearing.

The person or persons designated to conduct the hearing shall, for the purpose of such hearing, be vested with all the powers of the Deputy Chief Administrative Judge (New York City Courts) and shall make a record of such hearing which shall, be referred to the Deputy Chief Administrative Judge (New York City Courts) for review and decision. The Hearing Officer shall, upon the request of the officer or employee against whom charges are preferred, permit him/her to be represented by counsel, or by a representative of the Union and shall allow him/her to summon witnesses in his/her behalf. The burden of proving incompetency or misconduct shall be upon the State. Compliance with technical rules of evidence shall not be required. The officer or employee against whom charges are preferred shall, upon request, be entitled to a copy of the recommendations of the Hearing Officer and shall be allowed three days to comment upon them, in writing to the Deputy Chief Administrative Judge (New York City Courts).

24.3 **Suspension Pending Determination of Charges.** Pending the hearing and determination of charges of incompetency or misconduct, the officer or employee against whom such charges have been preferred may be suspended without pay for a period not exceeding 30 days. In the sole discretion of the Deputy Chief Administrative Judge (New York City Courts) or his/her designee, such suspension without pay may be charged to an employee's annual leave accruals. Such decision to permit an employee to charge annual leave accruals shall not be grievable or otherwise reviewable in any other forum.

24.4 **Determination of Charges.** If the Hearing Officer recommends acquittal on all charges, the Deputy Chief Administrative Judge (New York City Courts) shall not terminate such employee on those charges. Provided, however, that this restriction on the authority of the Deputy Chief Administrative Judge (New York City Courts) shall terminate on March 31, 2003.

If such officer or employee is found guilty of the charge, the penalty or punishment may consist of a reprimand, a fine not to exceed $200 to be deducted from the salary or wages of such officer or employee, suspension without pay for a period not exceeding three months, denial of overtime opportunities pursuant to Section 10.4(d) of the Agreement provided such denial shall not exceed six months, probationary period not to exceed two years, demotion in salary and title, dismissal from the service or a combination of a fine not to exceed $200 and a suspension without pay for a period not exceeding three months, or a combination of a probationary period not to exceed two years and any other penalties as set forth above; provided, however, that the time during which an officer or employee is suspended without pay pursuant to Section 24.3 may be considered as part of the penalty and the officer or employee shall be entitled to continue health insurance, if the employee pays his/her own share of the premiums and have welfare fund payments made on his/her behalf during a period of suspension not exceeding three months. If he/she is acquitted, he/she shall be restored to his/her position with full pay for the period of suspension less the amount of compensation which he/she may have earned in any other employment or occupation and any unemployment insurance benefits he/she may have received during such period. If such officer or employee is found guilty, a copy of the charges, his/her written answer thereto, a transcript of the hearing, and the determination shall be filed with the Office of Court Administration. A copy of the transcript of the hearing shall, upon request of the officer or employee affected, be furnished to him/her without charge.

24.5 **Time for Removal or Disciplinary Proceedings.** Notwithstanding any other provisions, no removal, disciplinary proceeding or alternative disciplinary procedure shall be commenced more than 18 months after the occurrence of the alleged incompetency or misconduct

complained of and described in the charges; provided, however, that such limitation shall not apply where the incompetency or misconduct complained of and described in the charges would, if proved in a court of appropriate jurisdiction, constitute a crime.

24.6 **Review of Penalty or Punishment.** Any officer or employee believing himself/herself aggrieved by a penalty or punishment pursuant to the provisions of this Article, may appeal from such determination by petition to the Chief Administrative Judge of the Courts or by an application to the courts in accordance with the provisions of Article 78 of the Civil Practice Law and Rules.

(a) If such person elects to appeal to the Chief Administrative Judge, he/she shall file a petition in writing within 20 days after receiving notice of the determination to be reviewed.

(b) Where an appeal is taken to the Chief Administrative Judge, he/she shall review the record of the disciplinary proceeding and the transcript of the hearing, and shall determine the appeal on the basis of the record and transcript and such oral and written argument as he/she may determine to be appropriate. He/She may direct that the appeal shall be heard by a person or persons designated by him/her to hear such appeal on his/her behalf, who shall report thereon with recommendations to him/her. Upon such appeal, he/she shall permit the employee to be represented by counsel or a representative of the Union.

(c) **Determination of Appeal.** The determination appealed from may be affirmed, reversed, or modified and the Chief Administrative Judge of the Courts may, in his/her discretion, direct the reinstatement of the appellant or permit the transfer or reassignment of such appellant to a vacancy in a similar position in another court or court agency or direct that his/her name be placed upon a preferred list pursuant to this section. In the event that a transfer or reassignment is not effected, he/she is empowered to direct the reinstatement of such employee. An officer or employee reinstated

pursuant to this subdivision shall receive the salary or compensation he/she would have been entitled by law to have received in his/her position for the period of removal, including any prior period of suspension without pay, less the amount of compensation which he/she may have earned in any other employment or occupation and any unemployment insurance benefits he/she may have received during such period. The decision of the Chief Administrative Judge of the Courts shall be final and conclusive, and not subject to further review in any court.

24.7 **Restoration of Position.** An employee who is removed from his/her position in violation of the provisions of this Article, and who thereafter is restored to such position by order of the Supreme Court, shall be entitled to receive and shall receive from the State, the salary or compensation which he/she would have been entitled by law to have received in such position but for such unlawful removal, from the date of such unlawful removal to the date of such restoration, less the amount of compensation which he/she may have earned in any other employment or occupation and any unemployment insurance benefits he/she may have received during such period. Such employee shall be entitled to a court order to enforce the payment of such salary or compensation. Such salary or compensation shall be subject to the provisions of Section 474 and Section 475 of the Judiciary Law for services rendered, but otherwise shall be paid only directly to such employee or his/her legal representatives.

24.8 **Alternative Disciplinary Procedure.**

(a) Within 18 months of when an act of alleged misconduct or incompetency occurs the Deputy Chief Administrative Judge (New York City Courts) shall determine whether such acts require the initiation of formal disciplinary charges pursuant to Section 24.2 of this Article or if the officer or employee shall be given the option of electing to follow the alternative disciplinary

procedure to ensure that the decision to use the formal or informal proceedings is uniformly determined. For purposes of Section 24.8 only, an eligible officer or employee shall include all officers or employees who are not determined to be personal appointees of a judge by the appropriate appointing authority.

(b) If the Deputy Chief Administrative Judge (New York City Courts) determines that the alternative disciplinary procedure will be offered as an option, the employee shall be given an Initiation of Discipline form. This form shall specify in writing a description of the conduct alleged to constitute misconduct or incompetency and shall specify a recommended penalty. The employee shall make a written election whether or not to accept the alternative disciplinary procedure. An employee who otherwise is eligible for a formal hearing pursuant to Section 24.1 of this Article may opt to pursue a formal hearing or to accept the alternative disciplinary procedure. If such an employee fails to make a written election within ten days of receiving an Initiation of Discipline form, the employee may be served with written notice of the charges preferred against him/her and the procedures set forth in Section 24.2 shall be followed.

(c) An officer or employee who elects to follow the alternative disciplinary procedure shall meet with the designee of the Deputy Chief Administrative Judge (New York City Courts) who shall recommend a penalty after reviewing the relevant facts which form the basis for discipline, the employment history of the employee listed on the Initiation of Discipline form and any facts or arguments submitted in defense or mitigation. The penalty shall be a written reprimand, restitution, probation for up to six months and/or no more than the forfeiture of up to ten days of annual leave, compensatory time or the loss of ten days pay, if appropriate, and/or denial of overtime opportunities pursuant to Section 10.4(d) of the Agreement provided such denial shall not exceed six months. The

Deputy Chief Administrative Judge (New York City Courts) shall review such recommended penalty to ensure that penalties are uniformly applied. The employee thereafter shall be informed in writing of the penalty assessed. The Initiation of Discipline form shall set forth the recommended penalty, the review of the Deputy Chief Administrative Judge (New York City Courts) and the penalty assessed. Such penalty assessed shall be implemented immediately. The determination of the designee of the Deputy Chief Administrative Judge (New York City Courts) and the Deputy Chief Administrative Judge (New York City Courts) shall be final, binding and not reviewable in any forum.

(d) A copy of such Initiation of Discipline form upon completion of the process shall be included in the personnel history folder of the officer or employee, and shall be given to the officer or employee, the supervisor, payroll, the designee of the Deputy Chief Administrative Judge (New York City Courts) and the Deputy Chief Administrative Judge (New York City Courts). Upon an employee's written request, the record of the alternative disciplinary procedure shall be removed from an employee's personnel history folder 18 months after the penalty has been implemented, provided such employee has not been subject to formal disciplinary charges or further administrative disciplinary proceedings within such 18 months.

24.9 For the duration of this Agreement, the State and the Union shall meet in a Labor/Management Subcommittee to discuss the implementation of the disciplinary procedures.

24.10 The State and the Union shall meet in a Labor/Management Subcommittee to discuss the establishment by the State of a panel to act as Hearing Officers on charges made against officers or employees pursuant to this Article. The Subcommittee shall discuss and make recommendations concerning the composition of, and selection from, a fixed panel of persons who are qualified to act

as Hearing Officers and from whom the State selects one or more persons to hear employee appeals of disciplinary charges. Such recommendations shall be submitted to the Deputy Chief Administrative Judge (New York City Courts) on whose behalf such Hearing Officers are designated to hear such charges.

ARTICLE 25

NO DISCRIMINATION

25.1 The Union agrees to continue to admit all employees to membership and to represent all employees without regard to race, color, creed, disability, marital status, Vietnam Era Veteran status, national origin, age, sex or sexual orientation.

25.2 (a) The State agrees to continue its established policy against all forms of illegal discrimination with regard to race, creed, color, disability, marital status, Vietnam Era Veteran status, national origin, sex (including sexual harassment), sexual orientation, age or the proper exercise by an employee of the rights guaranteed by the Public Employees' Fair Employment Act.

(b) An employee who believes that an act of discrimination based on race, color, religion, sex (including sexual harassment), sexual orientation, age, political affiliation, national origin, physical/mental/medical disability or Vietnam Era Veteran status has taken place relating to interviewing, hiring, dismissal, discipline, job assignment, training opportunities, policies of the Unified Court System, shift assignment, promotion, transfer, working conditions, harassment or other terms and conditions of employment, shall be allowed access to the Unified Court System's Internal Discrimination Claim Procedure.

25.3 The State and the Union agree that nothing in this Agreement prevents the State from making reasonable accommodation for a disabled employee when such is required pursuant to the Americans with Disabilities Act.

ARTICLE 26

REIMBURSEMENT FOR PROPERTY DAMAGE

The State agrees to provide for the uniform administration of the procedure for reimbursement to employees for personal property damage or destruction as provided for by Subdivisions 12 and 12-c of Section 8 of the State Finance Law and to provide for payments of up to $75. Effective with the execution of this Agreement, payment for this purpose may be provided in an amount up to $150. Allowances shall be based upon the reasonable value of the property involved and payment shall be made against a reasonable release. A Labor/Management Subcommittee shall be established to resolve disputes regarding reimbursement under this Article.

ARTICLE 27

FLEXIBLE BENEFIT SPENDING PROGRAM

27.1 Effective January 1, 1989, or as soon thereafter as is practicable, the State shall establish a program to provide employees with an opportunity to increase the employees' spendable income by paying for all or part of health insurance premiums paid by the employee with pre-tax dollars.

27.2 Effective January 1, 1990, or as soon thereafter as is practicable, the State shall expand such opportunities for employees to increase their spendable income by also paying for all or part of selected benefits such as child care, elder care and dependent care with pre-tax dollars.

27.3 The State shall secure whatever legislation is necessary to implement such program.

ARTICLE 28

DRESS CODE

Employees whose duties are performed in workplaces which are accessible or visible to the general public shall wear appropriate business attire. For purposes of this Article, the term "appropriate business attire" shall be defined as follows:

(a) for male employees: business suit, dress shirt and tie: or sports coat with coordinated shirt, trousers (jeans not acceptable) and tie;

(b) for female employees: a dress; or skirt with coordinated blouse/sweater/dress shirt; or slacks (jeans not acceptable) with coordinated blouse/sweater/dress shirt; and, at the employee's option, a jacket; and,

(c) business shoes.

The application of this provision shall be subject to the grievance procedure.

A Labor/Management Committee shall be established to discuss problems with the interpretation and implementation of the dress code; exemption from the dress code; and, defining and determining parameters of the code, but in no event will such discussions delay implementation of the Article.

ARTICLE 29

SEVERABILITY

In the event that any portion of this Agreement is found to be invalid by a tribunal of competent jurisdiction, then such provision shall be of no force and effect, but the remainder of this Agreement shall continue in full force and effect. Upon the issuance of such decision, then either party shall have the right to immediately reopen negotiations with respect to a substitute for such provision which has been held to be invalid.

ARTICLE 30

CONFLICT WITH AGREEMENT

Where the Rules of the Chief Judge and Chief Administrative Judge conflict with the Agreement, the provisions of this Agreement shall prevail.

ARTICLE 31

EMPLOYEE ASSISTANCE PROGRAM

A Labor/Management Committee shall be established comprised of representatives from the State and Union. The Committee shall meet as necessary upon demand of the State or the Union. The State shall expend $15 per active employee per fiscal year from April 2, 1999, until March 31, 2003, to carry out a program designed to address the needs of unit members as agreed upon by the parties pursuant to this Article. Any unused EAP funds shall be carried over from one fiscal year to the next for the term of this Agreement.

ARTICLE 32

PROFESSIONAL TRAINING

A Court Clerk Academy shall be created as soon as practicable after execution of this Agreement for the purpose of providing professional training to employees. The content of such professional training shall be developed by the State after consultation with the Union.

ARTICLE 33

CONCLUSION OF COLLECTIVE NEGOTIATIONS

This Agreement is the entire Agreement between the State and the Union, terminates all prior agreements and understandings and concludes all collective negotiations during its term. During the term of this Agreement, neither party will unilaterally seek to modify its terms through legislation or any other means. The parties agree to support jointly any legislation or administrative action necessary to implement the provisions of this Agreement. The parties acknowledge that, except as otherwise expressly provided herein, they waive any rights to further negotiations during the term of this Agreement inasmuch as the parties have fully negotiated with respect to the terms and conditions of employment and have settled them for the term of this Agreement in accordance with the provisions thereof. However, nothing in this Agreement shall impair or diminish the rights of any nonjudicial officer or employee or any employee organization pursuant to the Judiciary Law, the Civil Service Law or any other provision of Law.

ARTICLE 34

APPROVAL OF THE LEGISLATURE

IT IS AGREED BY AND BETWEEN THE PARTIES THAT ANY PROVISION OF THIS AGREEMENT REQUIRING LEGISLATIVE ACTION TO PERMIT ITS IMPLEMENTATION BY AMENDMENT OF LAW OR BY PROVIDING THE ADDITIONAL FUNDS THEREFOR, SHALL NOT BECOME EFFECTIVE UNTIL THE APPROPRIATE LEGISLATIVE BODY HAS GIVEN APPROVAL.

ARTICLE 35

DURATION OF AGREEMENT

The term of this Agreement shall be from April 2, 1999 to March 31, 2003.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be signed by their representatives on June 1, 2000.

STATE OF NEW YORK- UNIFIED COURT SYSTEM	NEW YORK STATE COURT CLERKS ASSOCIATION
Lauren P. DeSole Chief of Employee Relations	Kevin Scanlon, President

APPENDIX A

JOB TITLES OR POSITIONS INCLUDED WITHIN THE NEGOTIATING UNIT

Appellate Court Clerk
Appellate Court Clerk* COMP
Associate Appellate Court Clerk
Associate Court Clerk
Associate Surrogate's Court Clerk
Assistant Deputy Chief Clerk
Coordinating Matrimonial Court Clerk
Court Clerk IV*
Court Clerk-Specialist
Differentiated Case Management
Tracking Coordinator
Deputy Chief Clerk III
Deputy Chief Clerk IV
Deputy Chief Clerk V
Deputy Chief Clerk (Arraignment Part)
Principal Appellate Court Clerk
Principal Court Clerk
Principal Surrogate's Court Clerk
Senior Appellate Court Clerk
Senior Court Clerk
Senior Surrogate's Court Clerk