

LABOR AGREEMENT BETWEEN  
THE NATIONAL ASSOCIATION OF  
IMMIGRATION JUDGES  
AND  
USDOJ, EXECUTIVE OFFICE FOR  
IMMIGRATION REVIEW

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## **PREAMBLE**

This is an Agreement between the National Association of Immigration Judges (NAIJ or Association) and the Office of the Chief Immigration Judge (OCIJ), Executive Office for Immigration Review (EOIR or Agency), U.S. Department of Justice (DOJ).

This Agreement covers all matters relating to the terms and conditions of employment of Immigration Judges that were of concern to the parties at the time they entered into this Agreement and sets forth the entire understanding between the parties. This Agreement fully supersedes any and all prior agreements or understandings between the parties pertaining to the subject matters covered herein and any conflicting practices covered herein. The parties are now bound by the terms of this Agreement and they mutually agree to honor the letter and spirit of the Agreement.

## **ARTICLE 1**

### **REPRESENTATION**

- 1.1 The unit to which this Agreement applies is the group of all Immigration Judges employed by EOIR throughout the United States and its territories, including the Commonwealth of Puerto Rico, Guam and the Virgin Islands, excluding all categories of employees described in 5 U.S.C. § 7112(b).
- 1.2 Employees wishing to be represented by an Association representative must designate the representative in writing to management as much in advance as practicable of the event at which such representation is to take place. The designation may be made by e-mail or hardcopy.

## **ARTICLE 2**

### **EMPLOYEE RIGHTS**

- 2.1 Employee rights under the Federal Service Labor-Management Relations Statute and this contract are detailed at 5 U.S.C. § 7102, which is reproduced as an addendum to the agreement.
- 2.2 **INFORMING EMPLOYEES:** Management shall take such action consistent with law or regulations, as may be required, in order to inform employees of their rights and obligations, as prescribed in the Federal Service Labor-Management Relations Statute.
- 2.3 **NON-DISCRIMINATION:** No employee will be discriminated against by either

Management or the Association because of race, color, religion, sex, national origin, age, marital status, sexual orientation, family status, disability, lawful political affiliation, or Association membership or nonmembership.

- 2.4 **ACCESS TO OFFICIAL RECORDS:** It is agreed that to the extent it is not contrary to law, or to Agency or Office of Personnel Management regulations and policy, each employee shall, upon request and in accordance with applicable procedures, be allowed to review and/or request a photocopy of any document in his or her Official Personnel Folder which is maintained by the Human Resources Staff, EOIR. Employees may also request to review and receive copies of any document maintained by the Agency pertaining to the employee, such as copies of SF-50's, emergency contact forms, reprimands, entry-on-duty documents, etc. (This does not include individual supervisor's personal memory joggers, which are often used for performance evaluations purposes.) In matters involving a grievance or an appeal by the employee, the employee and/or a representative designated in writing by the employee shall have the access described above.

### **ARTICLE 3**

#### **MANAGEMENT RIGHTS**

- 3.1 **GOVERNING LAWS AND REGULATIONS:** In the administration of all matters covered by this Agreement, the parties are governed by existing or future laws and government-wide regulations; by published DOJ, EOIR, and OCIJ Immigration Court policies and regulations in existence at the time this Agreement became effective.
- 3.2 Management specifically retains all rights not specifically waived or restricted by law.

### **ARTICLE 4**

#### **ASSOCIATION RIGHTS AND REPRESENTATION**

- 4.1 **RECOGNITION:** Management recognizes that the Association has the exclusive right to represent employees in the unit in negotiations with Management with regard to personnel policies and practices or other matters affecting general working conditions of employees in the unit. Management respects the rights of the Association and will negotiate with the Association on such matters as described in the previous sentence.
- a. Management will recognize national representatives of the Association, the duly elected Local Officers, and Stewards. The Association will supply Management in writing, and will maintain on a current basis, a list of the Association Stewards and Officers.
  - b. Management will recognize representatives of the IFPTE National Office. The Association will provide reasonable advance notice of visits to the Court by representatives of the National Office. Such visitors will have the same access to

employee work spaces as other non-EOIR visitors and on the same terms.

- 4.2 **REPRESENTATION:** The Association is the exclusive representative of the employees in the unit and is entitled to act for, and negotiate collective bargaining agreements covering, all employees in the unit. The Association is responsible for representing the interests of all employees in the unit without discrimination and without regard to labor organization membership.

The Association shall be given the opportunity to be represented at any formal discussion between one or more representatives of the Agency and one or more employees in the unit or their representatives concerning any grievance or any personnel policy or practices or other general condition of employment; or any examination of an employee in the unit by a representative of the Agency in connection with an investigation if the employee reasonably believes that the examination may result in disciplinary action against the employee and the employee requests representation.

- 4.3 **QUARTERLY MEETINGS:** The Chief Immigration Judge or his/her designee, will meet on a quarterly basis to discuss issues of importance to the Parties. One quarterly meeting shall take place at the annual Immigration Judge's conference at a time mutually agreed upon by the parties. The next quarterly meeting shall be held via teleconference. The following quarterly meeting shall take place in person at the offices of OCIJ at the election of the Association and at its expense, or via teleconference, and be attended by the Association president and vice-president. The next quarterly meeting shall be held via teleconference. The Agency and the Association will work together to establish a cooperative labor-management process for sharing information and considering changes to existing policies and procedures as well as new policies and procedures.
- 4.4 **OTHER MEETINGS:** The Parties agree to conduct other meetings on an as needed basis.
- 4.5 On matters pertaining to the terms and conditions of employment of Immigration Judges and any other matters pertaining to this Agreement, the parties will communicate with each other through their designated representatives, exclusively. The parties agree to keep each other advised in writing regarding the identity of their designated representatives.

## **ARTICLE 5**

### **OFFICIAL TIME**

- 5.1 **DEFINITION OF OFFICIAL TIME:** For purposes of this Article, official time means time expended by Immigration Judges, as Association representatives, during work hours, without charge to leave, and granted by EOIR in accordance with 5 U.S.C. § 7131. Within fifteen (15) calendar days of the execution of this Agreement, the Association will provide the Agency with a list of names of its designated Association representatives. The Association shall update this list within fourteen (14) days of any changes.

- 5.2 USE OF OFFICIAL TIME: Association representatives will receive reasonable official time to travel to, attend and/or perform representative functions in connection with:
- a. discussions between EOIR and one or more Immigration Judges concerning grievances, personnel policies or practices, or other general conditions of employment;
  - b. meetings with EOIR regarding any matters relating to the terms and conditions of the Immigration Judges' employment, including, but not limited to, meetings required by this Agreement;
  - c. grievance proceedings, arbitrations, and statutory appeals procedures;
  - d. representation of an Immigration Judge in connection with an investigation if the Judge reasonably believes that the examination may result in disciplinary action and the Judge requests representation;
  - e. preparation for and participation in negotiations, including work related to the resolution of any negotiability question or any impasse;
  - f. reviewing EOIR proposals concerning negotiations and changes in policies, practices, and matters concerning work conditions;
  - g. official IFPTE conferences, including the triennial IFPTE national convention and annual Congressional lobbying weeks;
  - h. meetings with IFPTE and/or AFL-CIO in connection with the working conditions of Immigration Judges or other issues covered by this agreement;
  - i. responding to Congressional contacts including: requests or subpoenas to attend a meeting, appear at a hearing, or provide other information to Congress or its committees and subcommittees;
  - j. preparing replies to Agency proposals and proposed policy changes submitted to the Association for comment or consideration;
  - k. handling communications from Immigration Judges relating to working conditions, disciplinary issues, and other representational matters; and
  - l. administration of this Agreement and other representative functions relating to the rights and interests of the Immigration Judges.

Official time may not be used to conduct internal Association business.

- 5.3 APPROVAL OF OFFICIAL TIME: Any representative or officer of the Association seeking to use official time must individually request the official time in writing from

the Deputy Chief Immigration Judge, with a copy to their Assistant Chief Immigration Judge (ACIJ). Such requests must be submitted as far in advance as possible and must state the date for which the official time is requested, the anticipated amount of official time to be used, and the purpose for which the official time is requested. Requests complying with the terms of this Agreement will normally be approved, workload and court schedules permitting. All grants and denials of official time will be in writing.

#### 5.4 Agenda Accommodation

Officers of the Association shall have the following time periods set aside on their agendas. Officers agree to use their best efforts to direct representational duties to the time periods set aside on their agendas. If they do not exhaust these periods of time, they agree to return to their regular immigration judge duties. Any official time that is not used during any pay period will not carry over to any other pay period. Officers may request additional time as required, under the procedures set forth in sections 5.2 and 5.3 of this article.

President – 8 hours per pay period  
Executive Vice President – 8 hours per pay period  
Secretary – Treasurer – 4 hours per pay period  
Vice President – East – 4 hours per pay period  
Vice President – West – 4 hours per pay period  
Director of Communications – 4 hours per pay period  
Grievance Chair – 4 hours per pay period

## **ARTICLE 6**

### **ASSOCIATION USE OF OCIJ FACILITIES AND SERVICES**

- 6.1 **FACILITIES AND SERVICES PROVIDED:** The Association will be provided the following:
- a. Use of one lockable file cabinet per Association National officer, with any shipping of the contents of the cabinet to successive Association officers to be at Association expense;
  - b. use of photocopying equipment outside normal office hours (the Association will provide its own copying paper for larger than de minimis tasks);
  - c. use of an appropriate room of suitable size for the conduct of the Association's annual meeting which will take place on the first day of the Annual Judge's Conference, beginning at the close of business, to the extent such a room can be made available by the conference hotel at no additional cost to the Agency;

- d. assistance in obtaining the ability to send and receive facsimile transmissions in their chambers; and
  - e. access to the electronic mail system to facilitate communications between the Association and Immigration Judges regarding representational matters.
- 6.2 OFFICE USE: Association Officers may use their regular office space and telephones to conduct Association business, as long as such use does not interfere with the use of their offices for official business.
- 6.3 LIMITS ON USE: Agency facilities and services will not be used for purposes that involve primarily the solicitation of Association membership, election of Association officials, or collection of Association dues. Additionally, no other Court personnel may be used in relation to any other Association business or similar matter (e.g. research of non-Immigration Court issues, preparation of grievances or appeals of disciplinary actions, preparing or copying of Association documents or communications).
- 6.4 USE OF GOVERNMENT CREDIT CARDS AND GOVERNMENT RATES: To the extent that travel and lodging expenses incurred by Association representatives in the performance of Association business with the OCIJ are not paid or reimbursed by EOIR pursuant to requirements of law or of this Agreement, the use of government credit cards and government rates is authorized to the extent permitted by law. Association representatives will timely submit all necessary documentation to permit such use of the cards and rates.

## **ARTICLE 7**

### **DISSEMINATION OF INFORMATION**

- 7.1 DIRECTIVES: The Agency will provide the Association with access to the EOIR Administrative Manual and the OCIJ Operating Policy and Procedures Memoranda (OPPM) and other Agency policies via the Intranet.
- 7.2 DISTRIBUTION OF AGREEMENT: The Agency will post the Agreement on the Agency Intranet, to which all bargaining unit judges have reasonable access.
- 7.3 INFORMATION REGARDING NEW IMMIGRATION JUDGES: Upon implementation of this Agreement, the Agency will provide to the Association a list of all Immigration Judges employed in the Agency. Thereafter, upon request, but no more frequently than once per quarter, the Agency will provide the Association with a list of new Immigration Judges hired since the previous list.
- 7.4 CONGRESSIONAL HEARINGS AND LEGISLATION: The Agency will provide the Association with the date and time of any Congressional hearing in which an EOIR

representative is scheduled to testify as soon as it becomes aware of any such hearing. The Agency agrees to provide the Association with copies of any testimony and/or documents provided to Congress in relation to any such hearing as soon as possible once the testimony and/or documents have been cleared by the Office of Management and Budget for submission to Congress. The Parties recognize that legislation proposed by Congress relating to the Agency is available on the Internet and the Association has access to the Internet whereby it can access that information.

- 7.5 **ORIENTATION:** The Association will be afforded an opportunity to conduct a presentation for new Immigration Judges at the Annual Judges Conference. The presentation will normally take place on the first day of the conference after the scheduled training presentations for that day are finished. Attendance at the orientation will be optional. The presentation shall not involve a solicitation of membership or a discussion of internal Association business.

## **ARTICLE 8**

### **GRIEVANCE PROCEDURE**

- 8.1 **INFORMAL RESOLUTION:** The parties wish to foster an atmosphere of cooperation and mutual respect between the Agency and the Immigration Judges. Therefore, nothing in this Article shall be construed as precluding discussion between an Immigration Judge and his or her immediate supervisor of a matter of interest or concern to either of them. Once a matter has been made the subject of a grievance under this procedure, nothing herein shall preclude either party from attempting to resolve the grievance informally at the appropriate level, provided the other party voluntarily agrees.
- 8.2 **PURPOSE AND ELECTION:** This article sets out the exclusive procedures by which Immigration Judges, the Association and the Agency can resolve workplace disputes covered by this article. Employees may choose between this procedure or the appropriate statutory procedure to address complaints concerning matters for which a statutory choice of procedure exists. For the purpose of this Section and pursuant to applicable sections in 5 U.S.C. § 7121 of the Act, an Immigration Judge shall be deemed to have exercised their option under this Section when the Immigration Judge files a timely notice of appeal under the statutory procedure or files a formal written complaint under this Article.
- 8.3 **MATTERS COVERED:** A grievance means any complaint concerning any claimed violation, misinterpretation, or misapplication of this Agreement or any law, rule or any regulation, affecting conditions of employment of Immigration Judges; except as listed below.
- 8.4 **EXCLUSIONS:** The following matters are specifically excluded from coverage under this article:

- a. a suspension or removal under Section 7532 of Title 5 of the U.S. Code;
- b. retirement, life insurance, or health insurance;
- c. any examination, certification, or appointment;
- d. the classification of any position which does not result in the reduction in grade or pay of an employee;
- e. the setting of pay upon hire; and
- f. any claimed violation of Subchapter III of Chapter 73 of Title 5 of the U.S. Code (relating to prohibited political activities).

8.5 WHO MAY FILE A GRIEVANCE UNDER THIS ARTICLE: A grievance may be filed under this article by any of the following:

- a. the Association, on its own behalf, on behalf of any Immigration Judge, or on behalf of a group of Immigration Judges;
- b. the Agency, on its own behalf; and
- c. any Immigration Judge or group of Immigration Judges on their own behalf, but the Association would have a right to be present during the grievance proceeding.

8.6 RELATIONSHIP TO AGENCY GRIEVANCE PROCEDURE: Matters not covered by this article that fall within the scope of the Agency Grievance Procedure may be grieved under that procedure.

8.7 PROCEDURES:

- a. Any one or any group of Immigration Judges, the Association, or the Agency may initiate a grievance within thirty (30) workdays either after the grievable incident occurs or after the date when the party becomes aware (or reasonably should have become aware) of a decision about which he or she is aggrieved.
- b. An Immigration Judge who is the subject of a criminal proceeding, may elect to suspend his or her right to file a grievance under this Article until the completion of the criminal proceeding when:
  - (i) the same facts that support the criminal proceeding also support the charges in the adverse action; and
  - (ii) any grievance is filed within thirty (30) calendar days of the date that a verdict, plea or dismissal is issued in the criminal proceeding.
- c. Grievances against the Agency must be filed with the designated Deputy Chief Immigration Judge. Grievances against the Association must be filed with the

Vice President of the Association or his/her designee.

- d. Grievances must be in writing and specifically cite: (a) the provision of law, rule, regulation or this Agreement alleged to have been violated, (b) the manner in which the provision of law, rule, regulation or this Agreement was violated, (c) the date of the violation, (d) the remedy requested, and (e) the name of the individual representing the party filing the grievance. The grievance shall also state whether a meeting is requested.
- e. If a meeting is requested, it will be held within twenty (20) calendar days after receipt of the grievance. Meetings may be held by video conference, teleconference or in person at the election of the deciding official. Where the deciding official elects to hold an in person meeting, the Agency agrees to pay for the travel and per diem costs of the grievant.
- f. If the party against whom the grievance is filed does not grant the remedy requested within sixty (60) calendar days of receipt of the grievance, or if the parties do not otherwise resolve the grievance, the party initiating the grievance may submit the grievance to arbitration under the procedures detailed in Article 9. The parties to the grievance may mutually agree in writing to extension of this sixty-day period. A copy of the decision will be provided to the Association.
- g. Only the Association or the Agency may advance a grievance to arbitration. Grievances filed by an individual Immigration Judge or group of Immigration Judges may only be submitted to arbitration through the Association.

8.8 DELIVERY OF DOCUMENTS. Delivery of any document called for by this Article may be by fax, electronic mail, United States mail, or other mail delivery services. Each party will deliver such documents at its own expense, except that the Association may use the Agency's electronic mail system gratis to deliver documents to the Agency that are called for by this Article. For purposes of service of any document called for by this Article, the Association and the Agency will provide each other with electronic mail, fax and telephone contact information, and will promptly advise each other of any permanent or temporary changes in this information.

8.9 RIGHTS: The Parties agree that-

- a. An Immigration Judge or Judges filing a grievance under this procedure may be represented by an Association representative. Any Immigration Judge or Judges may choose to present a grievance under this procedure without representation and have it resolved without the assistance of the Association as long as:
  - (i) the resolution is not inconsistent with this Agreement or any other written Agreement between the Parties; and
  - (ii) the Association is given an opportunity to be present during the grievance proceeding, including meetings between the Agency and the individual Judge(s) to resolve the grievance. Any Immigration Judge or Judges filing

a grievance under this procedure may also choose to be represented by counsel at the expense of the Judge(s). The Association will be given advance notice of any grievance meetings.

#### 8.10 MISCELLANEOUS

- a. In presenting a grievance, the grievant and any duly designated Association representative shall be free from any restraint, interference, coercion, discrimination, or any reprisal.
- b. Upon request and subject to supervisory approval which shall not be unreasonably denied, the grievant will be provided a reasonable amount of time to prepare and present the grievance. This includes a reasonable amount of time to travel to and from such presentation.

#### 8.11 EXTENSION OF TIME LIMITS, CALCULATION OF TIME FRAMES AND FILING DATES

- a. Any time limits may be extended upon mutual agreement of the parties in writing provided that such request is presented before the end of the prescribed time limit.
- b. All time frames included in this Article are calendar days unless otherwise indicated. If a deadline under this Article falls on a weekend or Federal holiday, then the following business day is the deadline.
- c. A document will be considered filed on the date that it is postmarked, faxed, e-mailed, or sent by commercial carrier. In the case of personal delivery, the date filed will be the date of delivery to the intended recipient. When documents are filed by mail or commercial carrier, a courtesy copy should normally be provided by e-mail.

## **ARTICLE 9**

### **ARBITRATION**

- 9.1 **TIME TO FILE:** The Association or the Agency may invoke arbitration by giving written notice to the other party within fifteen working days after the expiration of the time period specified in section 8.7(f) of the grievance procedure.
- 9.2 **SELECTING AN ARBITRATOR.** Within ten (10) working days after arbitration is invoked, the parties will request the Federal Mediation and Conciliation Service to submit a list of seven arbitrators, located in the geographic area where the hearing is scheduled to take place, with experience in Federal sector labor relations. Within ten (10) working days from the parties' receipt of the list of arbitrators, the parties will select an arbitrator, either by agreement or by alternately striking names until one name

remains. The Federal Mediation and Conciliation Service shall be empowered to make a direct designation of an arbitrator in the event that either party fails to participate in this selection process in a timely manner.

The party invoking arbitration will provide to the other party a list of proposed witnesses that the party anticipates calling at the arbitration hearing in the notice described above. The purpose of the list is to assist with determining witnesses' availability for potential hearing dates. The party will provide a final witness list in accordance with Section 9.5 of this Article.

- 9.3 **INITIAL SUBMISSIONS TO ARBITRATOR.** Within ten (10) working days after identification of the arbitrator, the parties shall submit to the arbitrator: (a) a copy of this Agreement, (b) a copy of the grievance and the response (if any) to the grievance, and (c) a joint statement of issues, if possible. The arbitrator shall be limited to the statement of the grievance as provided by the grievant under Section 8.7(d) of the grievance procedure, or a joint statement of issues if the parties agree to such a statement.

A party wishing to raise an issue of arbitrability may choose to raise that issue at this point as a threshold issue and request that the arbitrator rule on the arbitrability issue before taking evidence and ruling on the merits of the grievance. Failure to raise an arbitrability issue at this point does not waive a party's right to raise that issue at any other point.

- 9.4 **DOCUMENT EXCHANGE:** No later than ten (10) calendar days before the hearing, the parties shall exchange documents intended to be entered into evidence at the arbitration hearing. If a document is not provided to the other party, it may not be entered into evidence at the arbitration hearing absent a showing of good cause as to why the document was not previously provided to the other party. The arbitrator shall determine if good cause exists.
- 9.5 **WITNESSES:** The parties will exchange a list of witnesses no later than ten (10) calendar days before the hearing. If there is a dispute as to whether a proposed witness is relevant or reasonably available, the arbitrator shall decide the matter. If a witness is not able to be present in person at the arbitration hearing, telephonic hearing will be allowed.
- 9.6 **FACTFINDING:** If there are no material factual issues in dispute, the arbitrator will be asked to render a decision on the grievance based upon the written information submitted to the record by the parties, along with any additional written information that the arbitrator deems necessary. The arbitrator shall hold a hearing to supplement this record if either party requests a hearing or the arbitrator determines that a hearing is necessary. Such hearing will normally be held at a mutually agreed time and location in the Washington, D.C. area. In the event the parties are unable to reach agreement on a place or time to hold a hearing, the matter of place and time will be submitted to the arbitrator as a threshold issue.
- 9.7 **HEARING LOCATION:** Arbitration hearings concerning disciplinary actions, except for adverse action hearings, shall take place where the grievant is located at a mutually agreed time and place. All other arbitration hearings shall take place in the Washington, D.C. area at a mutually agreed time and place. In arbitration hearings concerning an

adverse action, the Agency shall pay the travel expenses of the grievant to attend the arbitration hearing in the Washington, D.C. area.

- 9.8 **TIME FOR DECISION:** The arbitrator will be requested to render his or her decision within thirty (30) calendar days following the conclusion of the hearing, unless the Parties mutually agree to a different time frame.
- 9.9 **CONTENT OF DECISIONS:** If the arbitrator grants the grievance in whole or in part, the decision of the arbitrator must specifically state: (a) the provision of law, rule, regulation or this Agreement violated, (b) the manner in which the provision of law, rule, regulation or this Agreement was violated, (c) the date of the violation, and (d) the remedy to be granted.
- 9.10 A Party may file exceptions to an arbitrator's award with the Federal Labor Relations Authority under 5 U.S.C. § 7122.
- 9.11 The arbitrator's fees, including the costs of a verbatim transcript if either party or the arbitrator requests a transcript of an arbitration hearing, shall be borne equally by the Association and the Agency. Otherwise, each party will pay its own costs, including travel costs for representatives and witnesses called by the party.
- 9.12 Upon request and subject to supervisory approval which shall not be unreasonably denied, the grievant will be provided a reasonable amount of time to prepare for the arbitration hearing. A grievant will remain in official pay status for the arbitration hearing. Agency employees that are scheduled to testify at the arbitration hearing will be made available for the hearing and remain in official pay status.
- 9.13 **REFUSAL TO PARTICIPATE:** If either party refuses to participate in the arbitration process, the other party shall proceed in accordance with the procedures outlined in this Article.
- 9.14 **ARBITRATION OF MULTIPLE GRIEVANCES:** When multiple grievances contain the same or similar facts or issues, and in other appropriate circumstances, the Parties may mutually agree to consolidate them for hearing in the interest of efficiency, consistency and fairness.

## **ARTICLE 10**

### **DISCIPLINARY AND ADVERSE ACTIONS**

- 10.1 **PURPOSE:** Disciplinary and adverse actions will be taken only for such cause as will "promote the efficiency of the service."

## 10.2 DEFINITIONS:

- a. Disciplinary action for the purpose of this Article is defined as a formal written reprimand or a suspension from employment for fourteen (14) calendar days or less.
- b. Adverse action for the purpose of this article is defined as removal, or suspension for more than fourteen (14) calendar days or a furlough without pay for thirty (30) calendar days or less.

## 10.3 APPLICATION OF DISCIPLINARY ACTION:

- a. The parties agree that in imposing discipline, the Agency will abide by the principles of progressive discipline. The parties agree that under the concept of progressive discipline, discipline and adverse actions are used to correct and/or deter future employee misconduct rather than as a form of punishment. The effective use of progressive discipline requires timely application of sanctions to deal with employee misconduct.
- b. The Agency shall apply the principles of *Douglas v. Veterans Admin.*, 5 M.S.P.B. 313 (1981), in setting a penalty for disciplinary and adverse actions.
- c. The parties recognize that circumstances may arise where the timely application of discipline or adverse action may not be possible (including but not limited to, an investigation by the Office of Professional Responsibility or the Office of Inspector General).
- d. The decision and timing of any discipline or adverse action rests with the Agency.
- e. If an Immigration Judge receives a formal counseling or warning, it will usually be reduced to writing and provided to him or her.
- f. In all cases, the Agency will afford the Immigration Judge all procedural and other rights to which the Immigration Judge is legally entitled.

## 10.4 REPRESENTATION:

- a. A bargaining unit employee is entitled to self-representation, or Association representation, when responding to a notice of proposed disciplinary or adverse action. When an Immigration Judge chooses to be represented by the Association, the Judge will provide the Agency with written notice of such designation. Upon receipt of such designation, the Agency will coordinate any meetings with the Association representative.
- b. An Immigration Judge has the right to representation by the Association at any examination in connection with an investigation, including an investigation by the Office of Professional Responsibility or the Office of the Inspector General, if the Judge

reasonably believes that a disciplinary action may result from the examination and the Judge requests representation.

## 10.5 PROCEDURES

- a. **DISCIPLINE:** Except in the case of reprimands, the Employer will provide the employee with at least twenty (20) calendar days advance notice of intent to impose discipline. The notice will state the reasons for the proposed action, with sufficient detail to enable the employee to understand the reasons that the action is being proposed. The evidence relied upon to support the action will also be provided at that time. The employee may respond orally and/or in writing within twenty (20) calendar days from receipt of the notice, and may furnish affidavits and other documentary evidence in support of their response. The employee may be granted an extension of the reply period, at the discretion of the deciding official, provided that the employee provides demonstrated and valid reasons requiring such an extension. After receipt of the written and/or oral response, or the termination of the notice period, whichever comes first, the Employer will issue a written decision to the employee which will include a statement of the employee's appeal rights.

**ADVERSE ACTIONS:** the Employer will provide the employee with at least thirty (30) calendar days advance written notice of an adverse action. The notice will state the reasons for the proposed actions, with sufficient detail to enable the employee to understand the reasons the action is being proposed. The evidence relied upon to support the action will also be provided at that time. The employee may respond orally and/or in writing within twenty (20) calendar days from receipt of the notice, and may furnish affidavits and other documentary evidence in support of their response. The employee may be granted an extension of the reply period, at the discretion of the deciding official, provided that the employee provides demonstrated and valid reasons requiring such an extension. After receipt of the written and/or oral response, or the termination of the notice period, whichever comes first, the Employer will issue a written decision to the employee which will include a statement of the employee's appeal rights.

**CRIME PROVISION:** The above-referenced notice periods do not apply if the crime provision is invoked pursuant to 5 USC § 7513(b)(1).

- b. **APPEAL RIGHTS:** An Immigration Judge against whom any action is taken under this Article may appeal the decision through the negotiated grievance procedure of this Agreement, or file an EEO complaint related to the action, but the Immigration Judge cannot do both. An Immigration Judge against whom an adverse action is taken under this Article is entitled to appeal through a statutory procedure or the negotiated grievance procedure of this Agreement, but not both.

## 10.6 PAY STATUS

- a. Immigration Judges will remain in a pay status during the notice period, unless the crime provision of 5 U.S.C. section 7513(b)(1) is invoked.

- b. If an Immigration Judge appeals a suspension through the negotiated grievance procedure, the Agency will not require the Immigration Judge to serve the suspension until a grievance decision has been issued. This subsection does not apply to actions in which the crime provision of 5 U.S.C. section 7513(b)(1) is invoked, or to indefinite suspensions.

10.7 ADMINISTRATIVE TIME: Immigration Judges are entitled to a reasonable amount of time to prepare a response to proposed discipline or adverse action. Arrangements for use of administrative time must be coordinated with, and approved by, the Immigration Judge's supervisor and are subject to work needs of the court.

#### 10.8 ALTERNATIVE DISCIPLINE

- a. The Agency and Association support the use of alternative approaches to traditional disciplinary actions in certain circumstances ("Alternative Discipline"). Alternative Discipline may provide the opportunity to address employee misconduct in a more positive manner by offering options to traditional discipline.
- b. The Agency has the discretion to impose the following types of Alternative Discipline in lieu of a traditional suspension action: suspension held in abeyance, paper suspension, weekend suspension, counseling, and/or training classes such as anger management. Nothing in this subsection shall limit the Agency's authority to counsel or order training for any Immigration Judge under any circumstances.
- c. The Agency and the Immigration Judge may agree to the following examples of Alternative Discipline in lieu of formal suspension action: a last chance agreement, a formal apology, donation of annual leave to a leave transfer recipient, mediation, and/or a permanent reprimand.
- d. Alternative Discipline may be relied on when applying the concept of progressive discipline.
- e. If an Immigration Judge receives an oral or written counseling, the Immigration Judge may submit a written response.
- f. An Immigration Judge may grieve Alternative Discipline imposed under subsection (b) above in the same manner as traditional discipline.

## **ARTICLE 11**

### **LEAVE**

11.1 PERIODIC ANNUAL LEAVE REQUESTS: The Agency will periodically solicit leave requests from Immigration Judges at individual Courts for upcoming leave periods. The length of the leave period involved and the amount of time in advance that the leave requests will be solicited will be determined by the calendar at the individual Courts. The Immigration Judges will then submit their requests for leave during the specified

period to their ACIJ. Immigration Judges normally need not give a reason for the periodic annual leave that they request.

- 11.2 **APPROVAL OF PERIODIC ANNUAL LEAVE:** The Agency will make every reasonable effort to approve the periodic annual leave requested, subject to the needs of the Court. Once leave is approved for a particular leave period, that leave will be reflected on the Court's schedule and calendars set accordingly. In cases of conflicts between leave requests, such conflicts will be resolved in favor of the leave request that was filed first. Requests for periodic annual leave cannot exceed the amount of leave that will be accrued by the end of the leave year.
- 11.3 **REQUESTS FOR UNSCHEDULED LEAVE:** In addition to scheduled periodic annual leave, Immigration Judges may request to take annual leave at other times and with less notice. Requests for unscheduled leave must be submitted to the appropriate ACIJ and approved in advance. In emergency situations, requests and approvals may be made by e-mail or facsimile..
- 11.4 **LEAVE UNDER THE FAMILY AND MEDICAL LEAVE ACT OF 1993:** Under appropriate circumstances, Immigration Judges may be eligible for leave under the Family and Medical Leave Act of 1993, codified at 5 U.S.C. § 6382. See Appendix 1.
- 11.5 **RELIGIOUS LEAVE:** Immigration Judges will be considered for compensatory time off for religious observances as provided for under 5 U.S.C. § 5550a and 5 C.F.R. § 550.1002. See Appendix 2.
- 11.6 **USE OF SICK LEAVE FOR FAMILY AND DEPENDENT CARE:** Immigration Judges may request and be granted sick leave to fulfill family responsibilities under the Federal Employee Family Friendly Leave Act, codified at 5 U.S.C. § 6307(d)(1) through (d)(4). See Appendix 3.
- 11.7 **EXTENDED LEAVE WITHOUT PAY:** Requests for leave without pay for periods in excess of thirty days will be considered as detailed in DOJ Order 1630.1B. Such requests will be approved or denied at the discretion of the approving official. See Appendix 4.

## **ARTICLE 12**

### **SAFETY AND HEALTH**

- 12.1 **SAFETY AND HEALTH:** Recognizing that security is of paramount importance in the Immigration Court, the Agency will, to the extent practicable, take actions necessary to minimize the risk of physical and health-related dangers to Immigration Judges whenever and wherever they are holding court. The Agency agrees to solicit the Association's views on safety matters prior to making any major safety-related changes. Further the parties agree to establish a joint safety committee including two Association-designated and two Agency-designated representatives. The committee will meet at least quarterly

via conference call. The committee will monitor safety and security in the courts and recommend safety and security improvements.

- 12.2 SAFETY INSPECTIONS: The Agency will request that required safety and health inspections be conducted by the responsible organizations. If an inspection schedule is prepared, the Association will be furnished a copy. The Agency will make available to the Association, upon request, appropriate reports concerning such inspections.
- 12.3 PRISON FACILITIES: The Agency will consult with, and seek input from, the Association regarding work space configuration and safety features in prison facilities to the extent possible. The Agency will ensure that Immigration Judges working in such facilities have security personnel available on site and easy access to a secure area in the event of a problem.
- 12.4 NON-DETENTION SETTINGS: The Agency will consult and seek input from the Association regarding safety features in the Immigration Courts. At a minimum, each permanent court facility should have a courtroom silent alarm system, a public reception area with a security window separating the clerks from the public (except for satellite courts where case filing takes place at another location), secure doors that allow access from public areas into private work space only through a key/buzzer system, and security personnel available on site.
- 12.5 INOCULATIONS: In its continuing efforts to minimize workplace health risks to Immigration Judges, the Agency will provide training to Immigration Judges regarding communicable diseases and will make available inoculations for those diseases that present a significant hazard to the Immigration Judges in a particular Court.
- 12.6 COMPLIANCE WITH SAFETY AND HEALTH PROCEDURES: For the safety and health of all Immigration Court personnel, Immigration Judges shall timely and fully comply with all safety and health procedures implemented in the Immigration Courts.

## **ARTICLE 13**

### **VACANCIES, TRAVEL, SPECIAL WORK OPPORTUNITIES, AND REASSIGNMENTS**

- 13.1 VACANCIES: The parties recognize that the Agency has the right to fill an Immigration Judge vacancy from several sources. If the Agency decides to fill the vacancy by reassignment among equally qualified incumbent Immigration Judges and does not have a management need for selecting a specific Immigration Judge, the procedures set forth in this Article shall apply. Management needs may include, for example, the need to reassign an incumbent Judge due to a decrease in work load at that Judge's current location or the availability of a specially qualified incumbent Judge to fill the vacancy. If the Agency elects to fill a vacancy based on management need, the Agency shall notify the Association President in writing.

Incumbent Judges on the Reassignment Register may be passed over if the Agency has a good faith belief that the Judge has significant conduct or performance issues. If a Judge is passed over, the procedures set forth in section 13.4.10 will be followed.

The Agency agrees to notify the Association when a vacancy announcement is posted on the Internet for an Immigration Judge position. The Agency will notify the Association of any new Immigration Judge's enter-on-duty (EOD) date, when practicable.

13.2 TRAVEL: Insofar as practicable, when an Immigration Judge is detailed to another court, participates in training, or otherwise performs government business in a remote location, travel to and from the remote location shall be scheduled during the Judge's regular workday.

13.3 SPECIAL WORK OPPORTUNITIES: Where there is a special work opportunity, including a detail or an opportunity to teach or prepare teaching materials such as training videotapes, and the Agency has determined there may be more than one qualified Immigration Judge to perform the assignment, the Agency will solicit volunteers for that work opportunity, unless due to a short deadline such solicitation cannot be accomplished. The ultimate decision as to which Immigration Judge will be assigned to the work opportunity is the Agency's. It is understood that the Agency can direct and assign the work opportunity to an Immigration Judge who did not volunteer.

13.4 REASSIGNMENTS:

13.4.1 To establish a uniform policy for the voluntary reassignment of Judges the following provisions shall apply.

13.4.2 Reassignment Register. The Agency shall create and maintain a Reassignment Register organized by court location that contains the name, appointment date as an Immigration Judge and date of request of each Judge. The Agency shall post a copy of the current Reassignment Register on the IntraNet on a quarterly basis.

13.4.3 New Court Locations. Once the Agency announces the establishment of a court location, the Reassignment Register shall be opened for that location. The Agency shall advise all Immigration Judges via e-mail of the opening of the new location and allow them a reasonable amount of time to request placement on the Reassignment Register for that court location.

13.4.4 Registration. Judges who wish to place their names on the Reassignment Register shall notify the Agency via designated e-mail box: [IJ.reassignments@usdoj.gov](mailto:IJ.reassignments@usdoj.gov). A Judge may request reassignment to no more than three locations at any given time.

13.4.5 Ranking on the Reassignment Register. The names of the Judges on Reassignment Register for each location shall be ranked according to their appointment date as an Immigration Judge. If two or more Judges with the same appointment date request placement on the Reassignment Register for the same location, the earliest service computation date shall be the determining factor for

priority.

#### 13.4.6 Bars to Placement on the Reassignment Register.

- 13.4.6(a) A Judge with less than 24 months of continuous service with the Agency as an Immigration Judge and who has not completed his or her trial period, is not eligible to be placed on the Reassignment Register absent a qualifying hardship as described in 13.5.2.
- 13.4.6(b) If a Judge accepts a reassignment pursuant to these provisions, that Judge shall not be eligible to be placed on the Reassignment Register and shall have his or her name removed from all other court locations on the Reassignment Register for a period of two years following the date of reassignment.
- 13.4.6(c) A Judge who has been disciplined is not eligible for placement on the Reassignment Register for a period of two years from the effective date of the discipline. If already listed on the Reassignment Register, the Judge shall have his or her name removed from the Reassignment Register and shall not be eligible to have his or her name returned to the Reassignment Register until two years from the date of the discipline. In the event that a final adjudication concludes that no discipline should have been imposed, the Judge's eligibility for placement on the Reassignment Register shall become effective immediately and their name will be restored to requested reassignment locations, upon request.

#### 13.4.7 Maintenance of the Reassignment Register

- 13.4.7(a) A Judge may have his or her name removed from a Reassignment Register location by sending an e-mail to the address indicated in section 13.4.4 above. Judges should withdraw their names from the Reassignment Register when they are no longer interested in reassignment to a particular court location.
- 13.4.7(b) If upon notification of selection for a requested reassignment, the notified Judge declines reassignment to a court location that he or she has requested, then he or she shall have his or her name removed from the Reassignment Register for that court location for a period of 12 months.

13.4.8 When a Judge accepts a reassignment pursuant to the provisions of this Article which creates a permanent opening in his or her prior court location, and the Agency elects to fill that vacancy through the Reassignment Register, the Agency will give first consideration to the incumbent Judge who is first on the Reassignment Register for that court location and the provisions of this Article shall cease to apply to any additional permanent openings created by the reassignment of those two Judges.

13.4.9 The Reassignment Register shall be established immediately upon the effective date of this agreement.

13.4.10 If the Agency elects to use the Reassignment Register and does not offer a reassignment to the first Judge who is on the Reassignment Register for a court location, the Agency will notify the Judge, and upon request, provide its reason(s) in writing. The parties agree that hardship to another Judge as set forth in 13.5.2 shall justify the nonselection of an otherwise eligible Judge.

13.4.11 Time Period to Accept. Upon notification that a Judge has been selected for a requested reassignment, he or she shall accept or decline within five working days of the notification.

13.4.12 Selection After Reassignment Has Been Declined. If an eligible Judge refuses the reassignment, the Agency shall select the next eligible Judge in descending order from the Reassignment Register for that court location. This procedure shall be followed until five Judges on the Reassignment Register for that court location have had an opportunity to accept or decline the reassignment. The Agency, at its discretion, may continue down the Reassignment Register for that court location until all Judges have had an opportunity to accept or decline the reassignment. If the Agency has exhausted the Reassignment Register for that court location or no Judge has requested placement on the Reassignment Register for that court location, the Agency may announce the reassignment opportunity for a period of time to be determined by the Agency. Any Judge who is eligible for reassignment must submit his or her e-mail request and the ranking among applicants shall be in accord with Article 13.4.5.

13.4.13 Costs of Reassignment. Because Judge reassignments made under this provision are at the request of the Judge and are primarily for the benefit of the Judge, all personal relocation expenses will be paid by the Judge. Nothing in this Article shall preclude the Agency from paying expenses relating to a reassignment when the Agency determines that it is in the best interests of the government and consistent with law.

## 13.5 HARDSHIP REASSIGNMENTS

13.5.1 Notwithstanding Article 13.4.4, an Immigration Judge may apply for preferential reassignment to an existing or new court site based on hardship.

13.5.2 A hardship is defined as (1) an unforeseeable personal or family crisis resulting from a documented event seriously affecting the health or safety of the Judge or his or her immediate family, and (2) which occurred after the appointment date as a Judge. For purposes of this Article, "immediate family" refers to spouse, son or daughter, stepson or stepdaughter, parents and stepparents of the Judge or his or her spouse.

13.5.3 A Judge who believes he or she deserves priority on the Reassignment Register due to hardship shall notify the Agency via e-mail that he or she has a bona fide

hardship which meets the criteria described in 13.5.2. Upon receipt of this notification, the Agency shall add the individual's name to a separate Hardship Register and annotate the Reassignment Register by indicating that an unnamed Judge with hardship has requested reassignment to that court location.

- 13.5.4 Upon notification by the Agency that a voluntary reassignment opportunity is immediately available, the Judge asserting hardship shall set forth in writing the specifics of his or her particular circumstances which justify the request. This written justification shall be submitted within five workdays and may be accompanied by supplemental documentation.
- 13.5.5 If the circumstances established by a hardship application warrant, the application for reassignment shall take precedence over the applications of any Judges on the Reassignment Register. If more than one Judge has asserted a hardship that justifies his or her reassignment, the Judge with the most compelling circumstances will be given priority.
- 13.5.6 If a hardship transfer application is denied, the Agency shall provide a written explanation of the basis of the denial to the affected Judge.

## **ARTICLE 14**

### **EQUAL EMPLOYMENT OPPORTUNITY**

Management and the Association subscribe fully to the principle of equal employment opportunity and will continue to adhere to all applicable laws, regulations and Department of Justice orders regarding discrimination on the basis of race, color, religion, national origin, age, disability, sex or sexual orientation.

## **ARTICLE 15**

### **DUES WITHHOLDING**

**WITHHOLDING AGREEMENT:** The Agency and the Association have established and will maintain a system for voluntary allotments by the Immigration Judges for the purpose of paying their dues as members of the Association. The procedures, rules, and requirements contained in the Memorandum of Understanding, signed by both Parties on November 16, 1998 (see Appendix 5), are hereby incorporated into this Agreement.

## ARTICLE 16

### TRAINING

- 16.1 The Agency and the Association agree that continuing training and education of Immigration Judges are important objectives of the Immigration Court. Consistent with the Agency's mission and budgetary constraints, the Agency will provide suitable training for all Immigration Judges.
- 16.2 TRAINING INFORMATION: The Parties recognize that information on training opportunities is available on the Internet through a variety of sources. The Agency will provide information on training to Immigration Judges if it becomes aware of such training and determines that it is relevant.
- 16.3 ADMINISTRATIVE LEAVE
- a. Immigration Judges are entitled to 18 hours of administrative leave per calendar year, combined, under subsections b. and c. below. Approval of administrative leave may be conditioned upon rescheduling to accommodate work requirements. Requests for administrative leave beyond the 18-hour allotment may be granted in the sole discretion of the Agency.
  - b. An Immigration Judge shall be approved to take administrative leave to attend a continuing legal education (CLE) course that is related to immigration law and/or the Immigration Judge's duties. Approval of such requests for administrative leave may not be unreasonably withheld.
  - c. An Immigration Judge may request administrative leave to attend or make a presentation at a CLE course that is sponsored by a recognized bar association or attorney organization of which the Immigration Judge is an officer or member, if the event is related to immigration law and/or the Immigration Judge's official duties. The Immigration Judge must receive supervisory and ethics approval prior to requesting administrative leave under this subsection. The condition for granting administrative leave under this subsection is that the Immigration Judge's participation will serve the interests of the Agency. Within these parameters, approval of such requests for administrative leave may not be unreasonably withheld.
  - d. All requests to attend events described above will be subject to guidance and procedures contained in applicable Operating Policy and Procedure Memorandums.
  - e. The 18-hour limitation above does not apply to administrative leave granted for reasons unrelated to Article 16.3.
- 16.4 LIBRARIES: The Agency will periodically review, and upgrade and update as necessary, all libraries and computerized research services used by Immigration Judges. Each Immigration Judge will be provided with access to the Internet where they will have access to relevant research materials including pertinent statutes, rules and regulations. The Association will

periodically provide the Agency with input as to potential improvements to libraries and research services.

## **ARTICLE 17**

### **COMPRESSED AND FLEXIBLE WORK SCHEDULES**

- 17.1 The Parties recognize that there are unique coordination issues related to implementing alternative work schedules (AWS) in the Immigration Courts and that an Immigration Judge's schedule must be coordinated to ensure that the efficiency of court operations is not interrupted. Every effort will be made to comply with an Immigration Judge's selection of an AWS schedule subject to the scheduling needs of the Immigration Court.
- 17.2 **COMPRESSED WORK SCHEDULES:** Immigration Judges may work eight hours a day, five days per week, or, in the alternative, a compressed work schedule. A Judge working a compressed work schedule works eight nine-hour days and one eight-hour day in a biweekly period.
- 17.3 **FLEXIBLE WORK SCHEDULES:** An Immigration Judge on a flexible schedule may set his/her workday to start as early as 7:30 a.m. or end as late as 6:00 p.m., Monday through Friday, as long as each day is eight (8) hours long and the starting time is the same each day. Exceptions as to starting and quitting time may be granted based upon special circumstances.

## **ARTICLE 18**

### **EQUIPMENT AND TECHNOLOGY**

- 18.1 **NEW TECHNOLOGY:** Before the Agency implements new technology that will significantly impact the responsibilities of any Immigration Judges, EOIR shall first give the Association the opportunity to bargain over the impact and implementation of the new technology, as required under 5 U.S.C. § 7106(b)(2) and (3).
- 18.2 **NEW EQUIPMENT:** Before the Agency puts into use a new type of equipment or furniture for one or more Immigration Judges, the Agency shall first give the Association the opportunity to bargain over the impact and implementation of the proposed new equipment or furniture, as required under 5 U.S.C. § 7106(b)(2) and (3).

## **ARTICLE 19**

### **WORK SPACE AND COURTROOM APPEARANCE**

- 19.1 **GENERAL:** The Agency recognizes that the quality of the workplace has a significant impact on the efficiency of the Immigration Court. In any design or redesign of the workplace, the Agency will focus on improving the quality of the workplace. A quality workplace requires the efficient use of office space and attention to those factors that provide Immigration Judges adequate and appropriate space to carry out their responsibilities. Generally, space occupied by Immigration Judges should be arranged and maintained so as to ensure a quality workplace.
- 19.2 **CODES:** The Agency agrees that work space configurations must conform to applicable safety, fire and health codes.
- 19.3 **CHANGES:** When a space change is to occur that will have an impact on Immigration Judges, the Agency will notify the Association before a final decision is rendered on the proposed change. Upon request, EOIR will consult with the Association on all aspects of the proposed changes, including the blueprints and such issues as size, design, location of offices and work stations, access to windows, common use space (e.g., break rooms, conference rooms), furniture, carpeting, paint, lighting, location of common use equipment, and storage or file space. In addition, the Agency will provide the Association with the opportunity to bargain to the extent required by law.
- 19.4 **ALLOCATION:** The Agency shall allocate chambers and courtrooms of Immigration Judges at particular Immigration Courts in such a way as to set order of preference in accordance with a Judge's seniority as an Immigration Judge.
- 19.5 **COURTROOM APPEARANCE:** The Parties recognize that the courtroom is the interface between the government of the United States and the individuals appearing before the court. As such, the courtrooms represent the United States as a whole, and must not appear to be the private domain of any individual Immigration Judge. To further this end, Immigration Judges will not place any personal artifacts, decoration, furniture, equipment or similar objects except as provided by the OCIJ, without the prior written consent of the OCIJ.
- 19.6 **JUDICIAL ROBES:** The parties recognize that Immigration Judges must wear judicial robes during all sessions of court. At all other times, Immigration Judges must wear proper business attire. The robes worn by the Immigration Judges in court must be black, neat, clean, and unadorned.

## **ARTICLE 20**

### **MID-TERM BARGAINING**

During the mid-point of this Agreement, either party may elect to reopen up to three (3) existing articles for renegotiation. If the agreement is reopened, all articles remain in full force and effect until mutual agreement is reached.

## **ARTICLE 21**

### **DURATION**

This Agreement shall become effective thirty calendar days after ratification by members of the Association and approval by the head of the Agency, and shall remain in effect for two years thereafter. This Agreement will automatically be renewed for two year periods, unless either party notifies the other in writing, during a window between ninety and sixty calendar days prior to expiration of the agreement, that the party wishes to re-negotiate all or part of the agreement.

## **ARTICLE 22**

### **PERFORMANCE APPRAISALS**

#### **22.1. Introduction**

The parties understand that this agreement will be incorporated as an article into the parties' collective bargaining agreement.

#### **22.2. Appraisal Period**

The appraisal period for Immigration Judges will be two (2) years.

#### **22.3. Method of Performance Appraisals:**

Performance appraisals will be made in a fair and objective manner. They will assess actual work performance in relation to the performance requirements of the position and will be based on a reasonable and representative sample of the Immigration Judge's work.

- a. All performance standards and elements, critical and non-critical, that provide the basis of an Immigration Judge's appraisal will be written and included in the Immigration Judge's Performance Work Plan (PWP).
- b. The Agency recognizes that pursuant to 5 USC § 4302, performance standards will, to the maximum extent feasible, permit the accurate evaluation of job performance on the basis of objective criteria related to the positions in question.
- c. All aspects of each performance standard, including, if requested, specific examples of what is required to meet each element of each performance standard will be communicated preferably through a face-to-face meeting or tele-video conference with the affected Immigration Judge at the time the Immigration Judge receives the PWP. Supervisory expectations will be communicated and discussed as needed. If

requested, a supervisor will describe what is required to meet each element of each performance standard with specificity and will provide a clear means for an Immigration Judge to self-assess whether objectives have been met.

- d. Each standard and each element of each standard included in the PWP will be numbered and/or lettered for identification purposes. The Agency will inform the Immigration Judge in writing, at the time the elements and standards are communicated, whether aspects of any elements or standards are to be accorded different weights.
- e. Prior to rating the Immigration Judge, the supervisor will allow the Immigration Judge to provide a list of cases which he or she feels is representative of the quality of his or her legal ability during the rating period and will take these cases into consideration.

#### **22.4. Communication Regarding Performance Concerns**

- a. The Agency shall appraise performance on a continuing basis and keep employees informed of how they are measuring up to performance standards. At least one formal progress review will be conducted, normally halfway through the appraisal cycle. In addition, the Agency will counsel Immigration Judges in relation to their overall performance on an as needed basis. Such counseling will normally take place when a supervisor notices a decrease in performance. The Agency will provide assistance to any employee whose work is below the Satisfactory level to improve his or her performance, including providing advice, identifying and providing supplemental training, and providing additional coaching, monitoring, mentoring, and other developmental activities, as appropriate, to help improve Immigration Judge performance.
- b. A supervisor may choose to write an evaluative recordation to document a performance issue of an immigration judge. An "evaluative recordation" is a supervisor's written record of a performance deficiency. If a supervisor writes an evaluative recordation, a copy will be furnished to the Immigration Judge within a reasonable time following the event which it addresses. Absent extenuating circumstances, the evaluative recordation will be provided to the immigration judge by the end of the quarter in which it occurs.

#### **22.5. Surveys**

- a. The Agency and NAIJ agree that feedback is an important part of performance management and that Immigration Judges would benefit from feedback from attorneys for both parties, respondents and witnesses, court staff and contract interpreters. To that end, the Agency and NAIJ agree that the labor management performance evaluation review committee established pursuant to part 22.13 of this Article shall be tasked with studying how surveys can effectively be used for this purpose.
- b. Within thirty (30) calendar days of the effective date of this Article, the Agency and NAIJ will name their representatives on the performance evaluation review committee as established in part 22.13 of this article.

- c. The performance evaluation review committee will study the use of surveys as a component of individual performance management and review. The first meeting of the performance evaluation review committee will be arranged within forty five (45) calendar days of the naming of the committee representatives as discussed in paragraph 2 above. The committee's goal shall be to provide a report with its recommendations to the Agency and NAIJ within six (6) months of the naming of the committee members. The committee shall meet as needed to accomplish this task and will not be limited by paragraph 22.13 of this Article. Bargaining unit employees will be provided official time, as appropriate, to attend meetings and perform reasonable amounts of work associated with the committee.
- d. In completing the task of studying how surveys can effectively be used in the performance review process:
  - i. the committee will solicit input from various sources, including but not limited to the Immigration Judges, the attorneys representing the Department of Homeland Security in court, the American Association of Immigration Lawyers, and non-profit or pro bono organizations;
  - ii. the committee will refer to various scholarly works on the subject, including but not limited to the American Bar Association's "Black Letter Guidelines for the Evaluation of Judicial Performance," February 2005, "Transparent Courthouse, A Blueprint for Judicial Performance Evaluation," by the Institute for the Advancement of the American Legal System, University of Denver and "Shared Expectations, Judicial Accountability in Context," by the Institute for the Advancement of the American Legal System, University of Denver, 2006; and
  - iii. the committee will investigate and contact other federal and state bar organizations and organizations such as the National Judicial College in an effort to thoroughly study the role of surveys in the evaluation of judicial performance.
- e. The Agency and NAIJ agree to reconvene negotiations on the use of surveys in the performance review process once the committee has completed its final report on this issue. Unless the parties agree otherwise, no later than forty-five days after the completion of the committee's final report or the one (1) year anniversary of the effective date of this Article, whichever is earlier, the NAIJ will provide the Agency with proposals on the use of surveys in the performance management process. The parties agree to return to the bargaining table as soon as possible thereafter. The parties agree that this paragraph does not preclude the Agency from raising any negotiability issues with respect to the use of specific proposals.

## 22.6. Basis of Ratings

After initial issuance of performance standards, the elements and standards will be reissued at the beginning of each appraisal period, normally within thirty (30) days of the beginning of the appraisal period. Immigration Judges will be evaluated based on a comparison of performance with the standards established for the appraisal period.

## 22.7. Rated Work

- a. Working rules, policies and procedures must be communicated to the Immigration Judges before they can be held responsible for performance errors related to such rules, policies or procedures. An Immigration Judge may request, and the supervisor will provide, a written clarification of a work rule, policy or procedure.
- b. Immigration Judges will not be held accountable or responsible for their elements and standards until they are received by the Immigration Judges.
- c. The Agency has determined that only time spent performing work related to an Immigration Judge's PWP will be considered in performance appraisals. Authorized time spent performing collateral duties and the Association's representational functions will not be considered when evaluating any critical elements.
- d. When Immigration Judges are detailed or temporarily promoted within EOIR and the assignment is expected to last one hundred-twenty (120) days or more, the Agency will provide the Immigration Judges with critical elements and standards as soon as possible (no later than thirty (30) days from the beginning of the assignment). An interim rating must be prepared when the detail or temporary promotion lasts at least 90 days. These ratings will be considered in deriving the Immigration Judge's next rating of record.

## 22.8. Rating Officials

- a. Rating officials will meet with Immigration Judges under their supervision once every six months to discuss elements and standards, during the first rating cycle after this PAP is implemented. The purpose of these meetings will be to clarify any questions that the Immigration Judges have concerning their elements and standards (for example, explanations or examples of what Immigration Judges must do to perform at the "Satisfactory" level). The meetings may take place in-person, by telephone, or by VTC.
- b. Rating Officials will discuss an Immigration Judge's performance appraisal at the time such appraisal is issued to the Immigration Judge. If an Immigration Judge's rating is unsatisfactory, the Agency will allow them to have an Association representative at the performance appraisal meeting. In those instances, the Immigration Judge will be advised in advance of the meeting that they may have an Association representative and allowed a reasonable amount of time to get a representative for the meeting if they so choose.
- c. An Immigration Judge who is designated to act as a supervisory judge must be in a supervisory capacity for at least ninety (90) days before conducting performance appraisals. If the acting supervisor has not been in the position for at least ninety (90) days, the appraisal period will be extended to meet the ninety (90) day requirement.

## 22.9. Mechanics of the Appraisal and its Use

### 22.9.1 Performance Appraisals:

- a. Immigration Judges will sign and date the PWP for each rating cycle to show that it was received and discussed with them. An Immigration Judge's signature on the PWP does not indicate agreement with the Agency's established elements and standards.
- b. An Immigration Judge's signature on his or her performance appraisal indicates only that the performance appraisal has been received and not that the Immigration Judge agrees with the performance appraisal.
- c. Use of Rating on a Performance Appraisal:
  - i. A rating on a performance appraisal record cannot be used to bar or in any way affect placement on the Reassignment Register under Article 13 of this agreement.
  - ii. A rating on a performance appraisal record does not in any way impact the advancement of an Immigration Judge through the Immigration Judge pay levels.
  - iii. A less than satisfactory rating on a performance appraisal record will impact an Immigration Judge's eligibility for a special work opportunity, as defined in article 13.3 of this Agreement, only to the extent that the rating is relevant to the specific work opportunity.
  - iv. An Immigration Judge will be advised each time an appraisal is used in a personnel action.
- d. A written narrative is encouraged for each rating level but is required for any unsatisfactory evaluation.

22.9.2 If the Agency plans to observe a hearing of an Immigration Judge for performance evaluation purposes, the Agency will attempt to notify the Immigration Judge in advance if possible. Feedback from the observation will be provided to the Immigration Judge as promptly as possible, but in any event normally within one week of the observation.

22.9.3 An employee may prepare a written self-appraisal or respond to a performance appraisal or written interim comments. The employee's written comments will be placed in the employee performance folder with the performance appraisal if requested. Upon request, the Agency will provide an Immigration Judge with a reasonable amount of time out of court and away from case-related duties to prepare such written comments.

## 22.10. **General Standards and Principles Agreed upon Regarding Ratings**

- 22.10.1 The performance appraisal process shall strive to provide for the uniform treatment of all similarly situated immigration judges (i.e., immigration judges with similar working conditions performing the same job, in the same court environment). The parties agree that transparency, fairness, and thoroughness are important principles in the evaluation of performance. The Agency has determined that it will use the evaluation process to evaluate and improve an employee's performance and when helpful, will discuss an immigration judge's strengths and weaknesses.
- 22.10.2 The Agency will not prescribe a distribution of levels of ratings or required grading/rating curves for Immigration Judges covered by this agreement.
- 22.10.3 In the application of performance standards to individual employees, the Agency will take into account mitigating factors including, but not limited to, availability of resources and other factors not in the control of the employee.
- 22.10.4 The Agency has determined that in performance standard 3.1 of the PWP, the "goals and priorities established by the Chief Immigration Judge" do not encompass any specific numerical or time-based production standards, such as case completion goals, with the exception of statutorily or regulatory based deadlines.
- 22.10.5 Performance evaluations will not be based primarily on numerical standards such as case completion goals with the exception of statutorily or regulatory based deadlines nor will they be based upon any quota system.
- 22.10.6 The Parties agree that political considerations will not be used when rating an immigration judge.
- 22.10.7 The Agency will not release an individual performance evaluation rating unless required by law, rule or regulation. To the furthest extent possible, the Agency will ensure that performance evaluations (as well as mid-term progress reviews) remain confidential.

## 22.11. **Consequences of Ratings of Less than Satisfactory Performance: Performance Improvement Plans**

### 22.11.1 Addressing Unacceptable Performance

- a. If at any time during the performance appraisal cycle an Immigration Judge's performance is determined to be unsatisfactory in one or more critical elements, the Agency will notify the Judge in writing of the critical element(s) in which performance is unsatisfactory and inform the Judge in writing of the performance requirement(s) or standard(s) that must be attained in order to demonstrate acceptable performance in his or her position. This written notice will be called a "Performance Improvement Plan" (PIP).

- b. The PIP will also inform the Immigration Judge that unless his or her performance in the critical element(s) improves to and is sustained at an acceptable level for at least one year, the Judge may be removed or reassigned.
- c. For each critical element in which the Immigration Judge's performance is unsatisfactory, the Agency shall afford him or her a reasonable opportunity of at least ninety (90) days to demonstrate acceptable performance.
- d. As part of the Immigration Judge's opportunity to demonstrate acceptable performance, the Agency shall offer assistance in improving unacceptable performance.
- e. The Agency will describe with specificity the actions the Immigration Judge must take to bring his or her performance to at least an "Improvement Needed" level. Such description must include a list of the standards to be met from the PWP.

22.11.2 Prior to rating an Immigration Judge unsatisfactory, management will seek input from the Immigration Judge's local mentor if applicable, the OCIJ assigned local liaison judge(s) for the rating period, and will consult with the backup Assistant Chief Immigration Judge.

### 22.11.3 Administration of the PIP

- a. The Agency will meet with the Immigration Judge, preferably in-person, to explain the PIP process and expectations, and to answer any questions. The Immigration Judge will be advised in advance of the meeting that they may have an Association representative and allowed a reasonable amount of time to get a representative for the meeting if they so choose.
- b. An Immigration Judge should be an active participant during the PIP process, including offering suggestions for specific forms of ameliorative assistance. The PIP process is intended to be an interactive process with the goal of improving an Immigration Judge's performance. The process of identifying appropriate forms of ameliorative assistance should include a give-and-take of ideas. The Agency agrees to consider any reasonable request made by an Immigration Judge for assistance including but not limited to CLE's, peer mentoring, observation, and appropriate training. If the Agency denies any written request of the Immigration Judge, it will provide a reason in writing. Once the ameliorative assistance to be given to a judge has been identified, it will be memorialized in writing.
- c. If the Immigration Judge so requests, he or she will be provided a reasonable amount of time off the bench away from case processing duties to provide a self-assessment to be attached to the PIP.

## 22.12. Adverse Actions

Adverse Actions based on unsatisfactory performance shall be taken using the procedures provided in Articles 10.4 and 10.5 of the collective bargaining agreement except as provided below.

- a. The Parties recognize that the regulations governing performance-based actions require a final agency decision to be issued within sixty (60) days of the date the Immigration Judge is notified of the proposed action. Due to the regulatory time constraints, an Immigration Judge shall generally be limited to the twenty (20) day response period provided in Article 10 except:
  1. when the request for an extension of time is based on the Immigration Judge's need to obtain medical information or examination when the Immigration Judge has a medical issue relevant to the proposed action;
  2. when the Immigration Judge has requested to make an oral reply and such reply cannot be arranged within the initial 20 day response period;
  3. when the Immigration Judge plans to raise the issue of a reasonable accommodation of a handicapping condition in his or her response; or
  4. when the Immigration Judge would like to be considered for reassignment to a different position.

In sections 1, 3 and 4 above, the Immigration Judge shall state in his or her request for an extension the basis for the request.

- b. The Agency's notice of a proposed personnel action to an Immigration Judge will include a statement of the Immigration Judge's right to an attorney and/or an Association representative.
- c. At the time the Agency issues its notice of proposed action, it shall include a letter written by the Association which outlines the Immigration Judge's right to representation and his or her appeal rights. The Union's letter will be approved by the Agency before it is included. The Agency will not reject the letter without reasonable grounds.

## 22.13. Mechanism for Continuing Dialogue

The parties will establish a joint labor-management performance evaluation review committee, comprised of three (3) labor and three (3) management representatives. The Association representatives will be bargaining unit employees chosen by the Union. The committee will meet as needed, but generally once per quarter to review the performance appraisal system and address concerns raised by employees. Questions posed by the Union, Management or the Committee left unanswered during the meetings referenced above will normally be responded to within two (2) weeks of the end of the meeting. The

meetings will normally be held via teleconference. If the committee decides to meet in person, unless agreed otherwise, the Association representatives' travel expenses will be paid by the Union, except when the meeting is initiated based on concerns raised by the Agency, in which case the Agency will pay the Union's travel expenses.

If significant, unanticipated problems arise relating to the PAP, the committee will discuss them and provide recommended resolutions to the Agency.

Bargaining unit employees will be provided official time to attend meetings and perform reasonable amounts of work associated with the committee. The committee will make recommendations on issues and concerns that arise concerning the performance evaluation system (including critical elements). Members of the committee will make all reasonable efforts to come to agreement on recommendations, but in circumstances where no agreement can be reached, the labor representatives may issue their own set of recommendations. The Agency will consider all recommendations issued by the committee.

#### 22.14. **Miscellaneous matters**

- 22.14.1 The Agency will not make any changes to the Performance Appraisal Program or Performance Work Plan that affect working conditions of bargaining unit employees for the duration of this agreement, absent a mutual agreement to do so. The Association reserves the right to be provided advance notice and the opportunity to negotiate regarding any policies, procedures, guidance or instructions contemplated by the PAP that affect working conditions issued after the effective date of this agreement or not disclosed in the course of these negotiations.
- 22.14.2 The Agency and the Association recognize that the Employer has embarked upon a program of automation that may have an as yet undetermined impact on working conditions. The Parties further recognize that Article 18 of the labor agreement applies and will be followed.
- 22.14.3 To the extent not prohibited by law, the Agency will provide the Association with copies of unsatisfactory performance appraisals, in the most unsanitized manner allowable by law, simultaneously with their issuance to immigration judges.
- 22.14.4 All aspects of the Performance Appraisal Program are grievable, to the full extent provided by law, under the terms of the negotiated grievance procedure, previously agreed upon by the parties.
- 22.14.5 Nothing in this article is to be construed as a waiver of the Immigration Judge's Union's right to request additional information under other authorities such as the Freedom of Information Act, Privacy Act, or Civil Service Reform Act.

**IN WITNESS WHEREOF, the Parties have executed this Agreement on this 10th  
day of August, 2006**

**FOR THE AGENCY:**

**FOR THE ASSOCIATION:**

\_\_\_\_\_  
Assistant Chief Immigration Judge  
Chief Negotiator

\_\_\_\_\_  
Vice President/Chief Negotiator  
National Association of Immigration  
Judges

\_\_\_\_\_  
Associate General Counsel

\_\_\_\_\_  
President  
National Association of Immigration  
Judges

\_\_\_\_\_  
Labor and Employee Relations Specialist

\_\_\_\_\_  
Negotiator

\_\_\_\_\_  
Labor and Employee Relations Specialist

\_\_\_\_\_  
Negotiator

**EFFECTIVE DATE: October 15, 2006**

## **BARGAINING HISTORY NOTE**

**This version of the Agreement contains all agreements of the parties made on or before April 26, 2012 and is the most current version of all provisions.**

**The initial Agreement, from Preamble to Article 21 was signed by the parties on August 10, 2006, with an agreed effective date of October 15, 2006.**

**On May 1, 2008, the parties signed an agreement modifying Articles 5.3 and 5.4 (Official Time), 13.1, 13.4 and 13.5 (Reassignments).**

**On December 18, 2008, the parties signed an agreement adding Article 22 (Performance Appraisals).**

**On April 26, 2012, the parties signed an agreement modifying Articles 5.2 g through 5.2 l, 5.4 (Official Time), 10 (Disciplinary and Adverse Actions), and 16.3 (Administrative Leave).**

**On April 12, 2016, the parties agreed to modify Article 5.3 (official time request submitted to Deputy Chief IJ versus ACIJ) and Articles 11.1 and 11.3 (leave requests no longer submitted through CA in light of web T&A) to reflect current organizational structure and technological realities.**

**All of the above provisions are incorporated into the original agreement, and all are therefore automatically renewed for two year periods from the October 15, 2006 effective date.**

## ADDENDUM

## 5 U.S.C. § 7102

### TITLE 5 - GOVERNMENT ORGANIZATION AND EMPLOYEES

#### PART III - EMPLOYEES

#### Subpart F - Labor-Management and Employee Relations

#### CHAPTER 71 - LABOR-MANAGEMENT RELATIONS

#### SUBCHAPTER I - GENERAL PROVISIONS

### § 7102. Employees' rights

Each employee shall have the right to form, join, or assist any labor organization, or to refrain from any such activity, freely and without fear of penalty or reprisal, and each employee shall be protected in the exercise of such right. Except as otherwise provided under this chapter, such right includes the right—

- (1) to act for a labor organization in the capacity of a representative and the right, in that capacity, to present the views of the labor organization to heads of agencies and other officials of the executive branch of the Government, the Congress, or other appropriate authorities, and
- (2) to engage in collective bargaining with respect to conditions of employment through representatives chosen by employees under this chapter.

(Added Pub. L. 95-454, title VII, § 701, Oct. 13, 1978, 92 Stat. 1192.)

#### **Prior Provisions**

A prior section 7102, Pub. L. 89-554, Sept. 6, 1966, 80 Stat. 523, related to right of employees to petition Congress, prior to the general amendment of this chapter by Pub. L. 95-454. See section 7211 of this title.

#### **Partial Suspension of Federal Service Labor-Management Relations**

Par. (2) of this section suspended with respect to any matter proposed for bargaining which would substantially impair the implementation by the United States Forces of any treaty or agreement, including any minutes or understandings thereto, between the United States and the Government of the host nation, see section 1(b) of Ex. Ord. No. 12391, Nov. 4, 1982, 47 F.R. 50457, set out as a note under section 7103 of this title.

## TITLE 5--GOVERNMENT ORGANIZATION AND EMPLOYEES

## PART III--EMPLOYEES

## Subpart E--Attendance and Leave

## CHAPTER 63--LEAVE

## SUBCHAPTER V--FAMILY AND MEDICAL LEAVE

## Sec. 6382. Leave requirement

(a) (1) Subject to section 6383, an employee shall be entitled to a total of 12 administrative workweeks of leave during any 12-month period for one or more of the following:

(A) Because of the birth of a son or daughter of the employee and in order to care for such son or daughter.

(B) Because of the placement of a son or daughter with the employee for adoption or foster care.

(C) In order to care for the spouse, or a son, daughter, or parent, of the employee, if such spouse, son, daughter, or parent has a serious health condition.

(D) Because of a serious health condition that makes the employee unable to perform the functions of the employee's position.

(2) The entitlement to leave under subparagraph (A) or (B) of paragraph (1) based on the birth or placement of a son or daughter shall expire at the end of the 12-month period beginning on the date of such birth or placement.

(b) (1) Leave under subparagraph (A) or (B) of subsection (a) (1) shall not be taken by an employee intermittently or on a reduced leave schedule unless the employee and the employing agency of the employee agree otherwise. Subject to paragraph (2), subsection (e) (2), and section 6383(b) (5), leave under subparagraph (C) or (D) of subsection (a) (1) may be taken intermittently or on a reduced leave schedule when medically necessary. In the case of an employee who takes leave intermittently or on a reduced leave schedule pursuant to this paragraph, any hours of leave so taken by such employee shall be subtracted from the total amount of leave remaining available to such employee under subsection (a), for purposes of the 12-month period involved, on an hour-for-hour basis.

(2) If an employee requests intermittent leave, or leave on a reduced leave schedule, under subparagraph (C) or (D) of subsection (a) (1), that is foreseeable based on planned medical treatment, the employing agency may require such employee to transfer temporarily to an available alternative position offered by the employing agency for which

the employee is qualified and that--

(A) has equivalent pay and benefits; and

(B) better accommodates recurring periods of leave than the regular employment position of the employee.

(c) Except as provided in subsection (d), leave granted under subsection (a) shall be leave without pay.

(d) An employee may elect to substitute for leave under subparagraph (A), (B), (C), or (D) of subsection (a)(1) any of the employee's accrued or accumulated annual or sick leave under subchapter I for any part of the 12-week period of leave under such subsection, except that nothing in this subchapter shall require an employing agency to provide paid sick leave in any situation in which such employing agency would not normally provide any such paid leave.

(e)(1) In any case in which the necessity for leave under subparagraph (A) or (B) of subsection (a)(1) is foreseeable based on an expected birth or placement, the employee shall provide the employing agency with not less than 30 days' notice, before the date the leave is to begin, of the employee's intention to take leave under such subparagraph, except that if the date of the birth or placement requires leave to begin in less than 30 days, the employee shall provide such notice as is practicable.

(2) In any case in which the necessity for leave under subparagraph (C) or (D) of subsection (a)(1) is foreseeable based on planned medical treatment, the employee--

(A) shall make a reasonable effort to schedule the treatment so as not to disrupt unduly the operations of the employing agency, subject to the approval of the health care provider of the employee or the health care provider of the son, daughter, spouse, or parent of the employee, as appropriate; and

(B) shall provide the employing agency with not less than 30 days' notice, before the date the leave is to begin, of the employee's intention to take leave under such subparagraph, except that if the date of the treatment requires leave to begin in less than 30 days, the employee shall provide such notice as is practicable.

(Added Pub. L. 103-3, title II, Sec. 201(a)(1), Feb. 5, 1993, 107 Stat. 20.)

#### Section Referred to in Other Sections

This section is referred to in sections 6383, 6384, 6386 of this title; title 2 section 1371.

**APPENDIX 1A 5 U.S.C. § 6382 (updated FMLA - current as of April 2015)**

**§ 6382. Leave requirement**

(a)(1) Subject to section 6383, an employee shall be entitled to a total of 12 administrative workweeks of leave during any 12-month period for one or more of the following:

(A) Because of the birth of a son or daughter of the employee and in order to care for such son or daughter.

(B) Because of the placement of a son or daughter with the employee for adoption or foster care.

(C) In order to care for the spouse, or a son, daughter, or parent, of the employee, if such spouse, son, daughter, or parent has a serious health condition.

(D) Because of a serious health condition that makes the employee unable to perform the functions of the employee's position.

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

(2) The entitlement to leave under subparagraph (A) or (B) of paragraph (1) based on the birth or placement of a son or daughter shall expire at the end of the 12-month period beginning on the date of such birth or placement.

(3) Subject to section 6383, an employee who is the spouse, son, daughter, parent, or next of kin of a covered servicemember shall be entitled to a total of 26 administrative workweeks of leave during a 12-month period to care for the servicemember. The leave described in this paragraph shall only be available during a single 12-month period.

(4) During the single 12-month period described in paragraph (3), an employee shall be entitled to a combined total of 26 administrative workweeks of leave under paragraphs (1) and (3). Nothing in this paragraph shall be construed to limit the availability of leave under paragraph (1) during any other 12-month period.

(b)(1) Leave under subparagraph (A) or (B) of subsection (a)(1) shall not be taken by an employee intermittently or on a reduced leave schedule unless the employee and the employing agency of the employee agree otherwise. Subject to paragraph (2), subsection (e)(2), and subsection (b)(5) or (f) (as appropriate) of section 6383, leave under subparagraph (C) or (D) of subsection (a)(1) or under subsection (a)(3) may be taken intermittently or on a reduced leave schedule when medically necessary. Subject to subsection (e)(3) and section 6383(f), leave under subsection (a)(1)(E) may be taken intermittently or on a reduced leave schedule. In the case of an employee who takes leave intermittently or on a reduced leave schedule pursuant to this paragraph, any hours of leave so taken by such employee shall be subtracted from the total amount of leave remaining available to such employee under subsection (a), for purposes of the 12-month period involved, on an hour-for-hour basis.

(2) If an employee requests intermittent leave, or leave on a reduced leave schedule, under subparagraph (C) or (D) of subsection (a)(1) or under subsection (a)(3), that is foreseeable based on planned medical treatment, the employing agency may require such employee to transfer temporarily to an available alternative position offered by the employing agency for which the employee is qualified and that—

(A) has equivalent pay and benefits; and

(B) better accommodates recurring periods of leave than the regular employment position of the employee.

(c) Except as provided in subsection (d), leave granted under subsection (a) shall be leave without pay.

(d) An employee may elect to substitute for leave under subparagraph (A), (B), (C), (D), or (E) of subsection (a)(1) any of the employee's ac-

crued or accumulated annual or sick leave under subchapter I for any part of the 12-week period of leave under such subsection, except that nothing in this subchapter shall require an employing agency to provide paid sick leave in any situation in which such employing agency would not normally provide any such paid leave. An employee may elect to substitute for leave under subsection (a)(3) any of the employee's accrued or accumulated annual or sick leave under subchapter I for any part of the 26-week period of leave under such subsection.

(e)(1) In any case in which the necessity for leave under subparagraph (A) or (B) of subsection (a)(1) or under subsection (a)(3) is foreseeable based on an expected birth or placement, the employee shall provide the employing agency with not less than 30 days' notice, before the date the leave is to begin, of the employee's intention to take leave under such subparagraph, except that if the date of the birth or placement requires leave to begin in less than 30 days, the employee shall provide such notice as is practicable.

(2) In any case in which the necessity for leave under subparagraph (C) or (D) of subsection (a)(1) or under subsection (a)(3) is foreseeable based on planned medical treatment, the employee—

(A) shall make a reasonable effort to schedule the treatment so as not to disrupt unduly the operations of the employing agency, subject to the approval of the health care provider of the employee or the health care provider of the son, daughter, spouse, parent, or covered servicemember of the employee, as appropriate; and

(B) shall provide the employing agency with not less than 30 days' notice, before the date the leave is to begin, of the employee's intention to take leave under such subparagraph, except that if the date of the treatment requires leave to begin in less than 30 days, the employee shall provide such notice as is practicable.

(3) In any case in which the necessity for leave under subsection (a)(1)(E) is foreseeable, whether because the spouse, or a son, daughter, or parent, of the employee is on covered active duty, or because of notification of an impending call or order to covered active duty, the employee shall provide such notice to the employer as is reasonable and practicable.

(Added Pub. L. 103-3, title II, §201(a)(1), Feb. 5, 1993, 107 Stat. 20; amended Pub. L. 110-181, div. A, title V, §585(b)(2)-(3)(C), Jan. 28, 2008, 122 Stat. 132; Pub. L. 110-417, [div. A], title X, §1061(b)(2), Oct. 14, 2008, 122 Stat. 4612; Pub. L. 111-84, div. A, title V, §565(b)(1)(B), (4), Oct. 28, 2009, 123 Stat. 2311, 2312.)

#### AMENDMENTS

2009—Subsec. (a)(1)(E). Pub. L. 111-84, §565(b)(1)(B)(i), added subpar. (E).

Subsec. (b)(1). Pub. L. 111-84, §565(b)(1)(B)(ii), inserted after second sentence "Subject to subsection (e)(3) and section 6383(f), leave under subsection (a)(1)(E) may be taken intermittently or on a reduced leave schedule."

Subsec. (d). Pub. L. 111-84, §565(b)(1)(B)(iii), substituted "(D), or (E)" for "or (D)".

Subsec. (e)(2)(A). Pub. L. 111-84, §565(b)(4), substituted "parent, or covered servicemember" for "or parent".

Subsec. (e)(3). Pub. L. 111-84, § 565(b)(1)(B)(iv), added par. (3).

2008—Subsec. (a)(3), (4). Pub. L. 110-181, § 585(b)(2), added pars. (3) and (4).

Subsec. (b)(1). Pub. L. 110-181, § 585(b)(3)(A)(i), in second sentence, substituted "subsection (b)(5) or (f) (as appropriate) of section 6383" for "section 6383(b)(5)" and inserted "or under subsection (a)(3)" after "subsection (a)(1)".

Subsec. (b)(2). Pub. L. 110-181, § 585(b)(3)(A)(ii), inserted "or under subsection (a)(3)" after "subsection (a)(1)".

Subsec. (d). Pub. L. 110-181, § 585(b)(3)(B), inserted at end "An employee may elect to substitute for leave under subsection (a)(3) any of the employee's accrued or accumulated annual or sick leave under subchapter I for any part of the 26-week period of leave under such subsection."

Subsec. (e). Pub. L. 110-181, § 585(b)(3)(C), as amended by Pub. L. 110-417, inserted "or under subsection (a)(3)" after "subsection (a)(1)" in par. (1) and in introductory provisions of par. (2).

#### EFFECTIVE DATE OF 2008 AMENDMENT

Pub. L. 110-417, [div. A], title X, § 1061(b), Oct. 14, 2008, 122 Stat. 4612, provided that the amendment made by section 1061(b)(2) is effective as of Jan. 28, 2008, and as if included in Pub. L. 110-181 as enacted.

## APPENDIX 2      5 U.S.C. § 5550a & 5 C.F.R.550.1002 (religious leave)

### TITLE 5--GOVERNMENT ORGANIZATION AND EMPLOYEES

#### PART III--EMPLOYEES

#### Subpart D--Pay and Allowances

#### CHAPTER 55--PAY ADMINISTRATION

#### SUBCHAPTER V--PREMIUM PAY

#### Sec. 5550a. Compensatory time off for religious observances

(a) Not later than 30 days after the date of the enactment of this section, the Office of Personnel Management shall prescribe regulations providing for work schedules under which an employee whose personal religious beliefs require the abstention from work during certain periods of time, may elect to engage in overtime work for time lost for meeting those religious requirements. Any employee who so elects such overtime work shall be granted equal compensatory time off from his scheduled tour of duty (in lieu of overtime pay) for such religious reasons, notwithstanding any other provision of law.

(b) In the case of any agency described in subparagraphs (C) through (G) of section 5541(1) of this title, the head of such agency (in lieu of the Office) shall prescribe the regulations referred to in subsection (a) of this section.

(c) Regulations under this section may provide for such exceptions as may be necessary to efficiently carry out the mission of the agency or agencies involved.

(Added Pub. L. 95-390, title IV, Sec. 401(a), Sept. 29, 1978, 92 Stat. 762; amended Pub. L. 96-54, Sec. 2(a)(14), (15), Aug. 14, 1979, 93 Stat. 382.)

#### References in Text

The date of enactment of this section, referred to in subsec. (a), is the date of enactment of Pub. L. 95-390, which was approved Sept. 29, 1978.

#### Amendments

1979--Subsecs. (a), (b). Pub. L. 96-54 substituted ``Office of Personnel Management'' for ``Civil Service Commission'' and ``Office'' for ``Commission''.

#### Effective Date of 1979 Amendment

Amendment by Pub. L. 96-54 effective July 12, 1979, see section 2(b) of Pub. L. 96-54, set out as a note under section 305 of this title.

TITLE 5--ADMINISTRATIVE PERSONNEL

CHAPTER I--OFFICE OF PERSONNEL MANAGEMENT

PART 550\_PAY ADMINISTRATION (GENERAL)--Table of Contents

Subpart J\_Adjustment of Work Schedules for Religious Observances

Sec. 550.1002 Compensatory time off for religious observances.

(a) These regulations are issued pursuant to title IV of Public Law 95-390, enacted September 29, 1978. Under the law and these regulations, an employee whose personal religious beliefs require the abstention from work during certain periods of time may elect to engage in overtime work for time lost for meeting those religious requirements.

(b) To the extent that such modifications in work schedules do not interfere with the efficient accomplishment of an agency's mission, the agency shall in each instance afford the employee the opportunity to work compensatory overtime and shall in each instance grant compensatory time off to an employee requesting such time off for religious observances when the employee's personal religious beliefs require that the employee abstain from work during certain periods of the workday or workweek.

(c) For the purpose stated in paragraph (b) of this section, the employee may work such compensatory overtime before or after the grant of compensatory time off. A grant of advanced compensatory time off should be repaid

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by the appropriate amount of compensatory overtime work within a reasonable amount of time. Compensatory overtime shall be credited to an employee on an hour for hour basis or authorized fractions thereof. Appropriate records will be kept of compensatory overtime earned and used.

(d) The premium pay provisions for overtime work in subpart A of part 550 of title 5, Code of Federal Regulations, and section 7 of the Fair Labor Standards Act of 1938, as amended, do not apply to compensatory overtime work performed by an employee for this purpose.

{43 FR 46288, Oct. 6, 1978, as amended at 51 FR 23036, June 25, 1986}

# APPENDIX 3 5 U.S.C. § 6307(d)(1)-(d)(4) (family friendly leave)

## TITLE 5--GOVERNMENT ORGANIZATION AND EMPLOYEES

### PART III--EMPLOYEES

#### Subpart E--Attendance and Leave

#### CHAPTER 63--LEAVE

#### SUBCHAPTER I--ANNUAL AND SICK LEAVE

#### Sec. 6307. Sick leave; accrual and accumulation

(a) An employee is entitled to sick leave with pay which accrues on the basis of one-half day for each full biweekly pay period, except that sick leave with pay accrues to a member of the Firefighting Division of the Fire Department of the District of Columbia on the basis of two-fifths of a day for each full biweekly pay period.

(b) Sick leave provided by this section, which is not used by an employee, accumulates for use in succeeding years.

(c) Sick leave provided by this section may be used for purposes relating to the adoption of a child.

(d) When required by the exigencies of the situation, a maximum of 30 days sick leave with pay may be advanced for serious disability or ailment, or for purposes relating to the adoption of a child, except that a maximum of 24 days sick leave with pay may be advanced to a member of the Firefighting Division of the Fire Department of the District of Columbia.

(d) (1) \1\ For the purpose of this subsection, the term ``family member'' shall have such meaning as the Office of Personnel Management shall by regulation prescribe, except that such term shall include any individual who meets the definition given that term, for purposes of the leave transfer program under subchapter III, under regulations prescribed by the Office (as in effect on January 1, 1993).

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\1\ So in original. Probably should be ``(e) (1)''.  
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(2) Subject to paragraph (3) and in addition to any other allowable purpose, sick leave may be used by an employee--

(A) to give care or otherwise attend to a family member having an illness, injury, or other condition which, if an employee had such condition, would justify the use of sick leave by such an employee; or

(B) for purposes relating to the death of a family member, including to make arrangements for or attend the funeral of such family member.

(3) (A) Sick leave may be used by an employee for the purposes provided under paragraph (2) only to the extent the amount used for such purposes does not exceed--

(i) 40 hours in any year, plus

(ii) up to an additional 64 hours in any year, but only to the extent the use of such additional hours does not cause the amount of

sick leave to the employee's credit to fall below 80 hours.

(B) In the case of a part-time employee or an employee on an uncommon tour of duty, the Office of Personnel Management shall establish limitations that are proportional to those prescribed under subparagraph (A).

(4) (A) This subsection shall be effective during the 3-year period that begins upon the expiration of the 2-month period that begins on the date of the enactment of this subsection.

(B) Not later than 6 months before the date on which this subsection is scheduled to cease to be effective, the Office shall submit a report to Congress in which it shall evaluate the operation of this subsection and make recommendations as to whether or not this subsection should be continued beyond such date.

(Pub. L. 89-554, Sept. 6, 1966, 80 Stat. 520; Pub. L. 103-329, title VI, Sec. 629(b)(1), Sept. 30, 1994, 108 Stat. 2423; Pub. L. 103-388, Sec. 2, Oct. 22, 1994, 108 Stat. 4079.)

**From DOJ Order 1630.1B:**

**CHAPTER 6. LEAVE WITHOUT PAY (LWOP).**

**GENERAL INFORMATION.**

Leave without pay, commonly referred to as LWOP, is a temporary nonpay status and approved absence from duty granted upon an employee's request. LWOP is an approved absence and is not to be confused with absence without leave or AWOL, which is an unauthorized absence from duty (see paragraph 46).

An employee cannot be placed on LWOP without his or her consent.

LWOP may not be imposed as a penalty nor is it to be used for periods of unauthorized absence.

**LWOP CHARGES.** The minimum charge for LWOP in the Department is fifteen (15) minutes; additional charges are in multiples thereof.

**REQUESTING LWOP.**

**An employee must submit a request for LWOP** as far in advance of the requested period of absence as possible. When LWOP cannot be requested in advance because of illness, injury, or other personal emergency, LWOP may be approved after the fact provided the employee submits any required documentation within the time frame established by the Department component or the approving official.

**An employee requesting LWOP for 30 days or less** must submit the following:

- (1) A Standard Form 71, Application for Leave.
- (2) Such additional documentation as the Department component or approving official may prescribe.

**An employee requesting extended LWOP of more than 30 days must submit the following:**

- (1) A Standard Form 71, Application for Leave.
- (2) A memorandum to the approving official detailing the reason(s) for the absence. If the employee is requesting LWOP for medical reasons, he or she must submit a medical certificate or other administratively acceptable evidence substantiating the reason(s) for the absence.
- (3) Such additional documentation as the Department component or approving official may prescribe.

## **GRANTING LWOP.**

**Administrative Discretion.** The authorization of LWOP is at the discretion of the approving official. Even though an employee has a legitimate reason for requesting LWOP, e.g., sickness, injury, or personal emergency, the request may be denied if the employee's services are required or the employee has not followed prescribed leave procedures. Employees are not entitled to be granted LWOP as a matter of right unless the employee is:

- (1) A disabled veteran who is entitled to LWOP, if necessary, to undergo medical examination or treatment in connection with the disability (see paragraph 30b(6)).
- (2) A reservist or National Guardsman who is entitled to LWOP, if necessary, for military training.

## **Guidance for Granting LWOP.**

- (1) **Where the Granting of LWOP is discretionary**, the circumstances surrounding each request tend to differ from case to case. Initially, an approving official must:
  - (a) Decide whether the employee's services are required.
  - (b) Determine how long the employee can be absent before the component's need for his or her services becomes critical, e.g., the need for the services of an employee in a key position generally becomes critical in a much shorter time than it does for an employee who is not in a key position.
- (2) Each request for LWOP should be examined carefully to assure that the value to the Department or the serious needs of the employee are sufficient to offset the loss of the employee's services and the costs and administrative inconveniences that result when an employee is retained in a LWOP status. Before granting LWOP, approving officials should consider the following:

- (a) Encumbrance of the employee's position.
- (b) Loss of services that may be vital to the organization.
- (c) Obligation to provide employment at the end of the LWOP.
- (d) Six (6) months of LWOP in any calendar year is creditable service for such benefits as retirement and severance pay.
- (e) Eligibility for continued coverage (without cost to the employee) for up to 1 year for life insurance and continued coverage (with payment of employee's portion of the premiums by the employee) for up to 1 year for health insurance benefits.

**LWOP of More Than 30 Days.** Before a request for extended LWOP of more than 30 days is approved, there should be a reasonable expectation that the employee will return to duty at the end of the LWOP. In addition, it should be apparent that **AT LEAST ONE** of the following benefits would result:

- (1) Fulfillment of parental or family responsibilities (see Chapter 8).
- (2) Increased job ability.
- (3) Protection or improvement of an employee's health.
- (4) Retention of a desirable employee.
- (5) Furtherance of a program of interest to the Government.

**Approving LWOP of More Than 30 Days.** Approval of extended LWOP is proper, all other factors being favorable, to allow an employee to:

- (1) Attend to parental or family responsibilities.
- (2) Continue his or her education, when the course of study or research is in line with a type of work performed by the Department component and would contribute to the component's mission.
- (3) Serve temporarily in a non-Federal or private enterprise when there is a reasonable expectation that the employee will return to duty and the employee's service will contribute to the public welfare and/or the experience gained will serve the interests of the Department component.
- (4) Recover from illness or disability not of a permanent or disqualifying nature, when continued employment or immediate return to duty would threaten the employee's health or the health of other employees.
- (5) Protect his or her status and benefits during the period pending an initial decision

by OPM on a disability retirement application.

(6) Protect his or her status and benefits during any period pending action by the Office of Workers' Compensation Programs (OWCP) on a claim resulting from a work-related illness or injury.

(7) Avoid a break in the continuity of service when he or she must relocate to accompany a family member who is employed by the Federal Government or who is a member of the military to a new post of duty.

(8) Serve as an officer or employee of a union representing Federal employees.

#### **Documenting LWOP.**

(1) When an initial request for extended LWOP of more than 30 days is approved, or when consecutive grants of LWOP of less than 30 days exceed 30 days in the aggregate, a Standard Form 52, Request for Personnel Action, **MUST BE SUBMITTED** to the servicing personnel office.

(2) A separate Standard Form 52 **MUST BE SUBMITTED** to the servicing personnel office when the employee returns to duty.

#### **DURATION OF EXTENDED LWOP.**

**Legal/Regulatory Time Limits.** There are no limits prescribed by law or regulation on the amount of LWOP that can be granted.

**Departmental Time Limits.** Department components may not authorize an initial period of LWOP in excess of 52 calendar weeks except in extraordinary or unusual circumstances, or in furtherance of a program of interest to the Department or the Federal Government when it is known in advance that the initial period of absence will exceed one year.

**Approval of LWOP in Excess of One Year.** Heads of Department components must approve any initial request for extended LWOP which exceeds 52 calendar weeks, and any request for additional LWOP which would cause the employee's LWOP to exceed 52 consecutive calendar weeks.

APPENDIX 5      MOU Dues Withholding (11.19.1998)

MEMORANDUM OF UNDERSTANDING

between

NATIONAL ASSOCIATION OF IMMIGRATION JUDGES

and

EXECUTIVE OFFICE FOR IMMIGRATION REVIEW  
U.S. DEPARTMENT OF JUSTICE  
WASHINGTON, D.C.

concerning

VOLUNTARY ALLOTMENT FOR DUES PAYMENT

PREAMBLE

Pursuant to 5 U.S.C. 7115, the Executive Office for Immigration Review, U.S. Department of Justice, Washington, D.C., hereinafter referred to as the Employer, and the National Association of Immigration Judges, hereinafter referred to as the Union, agree to the following dues allotment procedure.

ARTICLE I - Purpose

- A. This Agreement establishes procedure under which employees included in the Unit certified by the Federal Labor Relations Authority in Case No. 22-09576(RO), for which the Union is the exclusive representative, will voluntarily authorize allotment of membership dues to the Union through payroll deductions.
- B. Nothing in the Agreement will require an employee to become or to remain a member of the Union or to pay money to the Union except pursuant to a voluntary, written authorization by the member for the payment of dues through payroll deductions.

ARTICLE II - Definitions

- A. Dues: The regular, periodic amount or percentage determined by the Union to be required of the member to maintain a good standing in the Union. This amount or percentage will be certified by the Union on the SF-1187 and excludes special assessments, back dues, fines, and similar items not considered to be dues.

- B. SF-1187: "Request for Payroll Deductions for Labor Organization Dues" or a facsimile thereof.
- C. SF-1188: "Cancellation of Payroll Deductions for Labor Organization Dues" or a facsimile thereof.
- D. Personnel Office: U.S. Department of Justice, Executive Office for Immigration Review, Office of the Associate Director, Personnel Staff, 5107 Leesburg Pike, Suite 2300, Falls Church, Virginia 22041.

#### ARTICLE III - Eligible Employees

To be eligible to make voluntary allotment for the payment of Union dues, an employee must:

- A. Be in the Unit covered by this Agreement; and
- B. Request the allotment on an SF-1187 which has been certified by the authorized Union official.

#### ARTICLE IV - Responsibilities of the Union

- A. Inform and educate its members on the voluntary nature of the dues allotment program, including conditions governing revocation of allotments;
- B. Purchase and distribute the SF-1187 to its members;
- C. Certify on the SF-1187 the amount or percentage of dues to be withheld each bi-weekly pay period;
- D. Forward completed SF-1187's to the Personnel Office, Attention: Labor and Employee Relations Officer;
- E. Furnish written notification to the Personnel Office, Attention: Labor and Employee Relations Officer, concerning the names and titles of local Union officials authorized to certify the SF-1187's; and
- F. Provide the Personnel Office, Attention: Labor and Employee Relations Officer, with written notification concerning:
  - 1. Changes in the amount or percentages of Union dues; and
  - 2. The name of any employee who has been expelled or ceases to be a member in good standing in the Union.

ARTICLE V - Responsibilities of the Employer and the Personnel Office

- A. The Personnel Office will, upon receipt of a SF-1187 from the Union, certify that the employee is or is not in the Unit covered by this Agreement and promptly forward the SF-1187 to the appropriate personnel for processing or return to the Union with an explanation of its rejection.
- B. The Personnel Office will notify the Union of employees' revocations of allotments.

ARTICLE VI - Procedures

It is agreed that the following procedures will govern the voluntary allotment of dues:

- A. Withholding of Dues:
  1. Upon receipt of a properly completed SF-1187 form from the Union, the Personnel Office will withhold the Union dues in accordance with existing pay periods.
  2. The dues deduction will be effective as soon as possible, generally no later than the beginning of the first full pay period following receipt of the SF-1187 by the Personnel Office.
  3. If an employee is in a non-pay status during a biweekly pay period or if an employee's net pay is insufficient to cover the minimum dues amount, no deductions will be made. No retroactive withholding will be made for pay periods in which the employee's net pay is insufficient to cover the minimum dues amount.
- B. Changes in Dues:
  1. The amount or percentage of dues certified on the original SF-1187 will remain unchanged until an authorized Union official provides written certification to the Personnel Office that the amount or percentage of dues has changed. New SF-1187's will not be required.
  2. Changes in the amount of the allotment dues to changes in the amount or percentage of Union due will not be made more than once in any twelve-month period.
  3. Changes in the amount deducted for Union dues will be

effective as soon as possible following receipt by the Personnel Office of the Union's certification of changes in its dues.

4. Under a percentage of salary dues structure, a change in the amount of dues deducted because of a change in an employee's pay will be effective simultaneously with the change in pay.

C. Termination of Allotments:

Allotments by employees will be terminated:

1. Automatically:

- a. Upon loss of exclusive recognition by the Union;
- b. When an employee ceases to be eligible for inclusion in the Unit covered by this Agreement; and,
- c. When an employee is expelled or ceases to be a member in good standing of the Union when notified by the authorized Union official.

2. Voluntarily:

An employee may submit a written request, SF-1188, to the Personnel Office for the revocation of an allotment at any time. As provided in 5 U.S.C. 7115(a), no allotment may be revoked for a period of one year. A revocation received on or before the first anniversary of the date the employee authorized withholding will be effective the first pay period which begins on or after the anniversary date. Thereafter, a revocation will be effective as soon as possible, generally no later than the first pay period which begins on or after the date of receipt in the Personnel Office of an SF-1188.

D. Remittance of Dues:

Checks in payment of dues will be made payable and forwarded to the Union at the address of record no later than two weeks after the close of the pay period. Additional correspondence accompanying the check is provided solely upon the Employer's discretion, is not precedent setting and is not evidence of past practice.

ARTICLE VII - Underpayments and Overpayments

Administrative errors in remittance will be corrected by reductions and corrections in subsequent remittance checks. If the Union is not scheduled to receive a remittance check after discovery of an error, the Union agrees to promptly refund the amount of any erroneous overpayment.

ARTICLE VIII - Effective Date

This Agreement becomes effective during the pay period in which approved by the parties. In the event that the parties to this Agreement negotiate a basic agreement, this dues withholding Agreement will be incorporated as the Article concerning dues withholding in the parties' basic negotiated agreement, unless the parties mutually agree otherwise, and the effective dates of the basic negotiated agreement will be controlling.

.....

APPROVED: \_\_\_\_\_

National Association of Immigration Judges

DATE: November 16, 1998

APPROVED: \_\_\_\_\_

Labor and Employee Relations Officer  
Executive Office for Immigration Review  
Office of the Associate Director  
Personnel and Employee Development Branch  
5107 Leesburg Pike, Suite 2300  
Falls Church, Virginia 22041

DATE: 11/19/98

**ARTICLE 5  
OFFICIAL TIME**

5.1 DEFINITION OF OFFICIAL TIME: For purposes of this Article, official time means time expended by Immigration Judges, as Association representatives, during work hours, without charge to leave, and granted by EOIR in accordance with 5 U.S.C. § 7131. Within fifteen (15) calendar days of the execution of this Agreement, the Association will provide the Agency with a list of names of its designated Association representatives. The Association shall update this list within fourteen (14) days of any changes.

5.2 USE OF OFFICIAL TIME: Association representatives will receive reasonable official time to travel to, attend and/or perform representative functions in connection with:

- a. discussions between EOIR and one or more Judges concerning grievances, personnel policies or practices, or other general conditions of employment;
- b. meetings with EOIR regarding any matters relating to the terms and conditions of the Judges' employment, including, but not limited to, meetings required by this Agreement;
- c. grievance proceedings, arbitrations, and statutory appeals procedures;
- d. representation of a Judge in connection with an investigation if the Judge reasonably believes that the examination may result in disciplinary action and the Judge requests representation;
- e. preparation for and participation in negotiations, including work related to the resolution of any negotiability question or any impasse;
- f. reviewing EOIR proposals concerning negotiations and changes in policies, practices, and matters concerning work conditions;
- g. official IFPTE conferences, including the triennial IFPTE national convention and annual Congressional lobbying weeks;
- h. meetings with IFPTE and/or AFL-CIO in connection with the working conditions of Judges or other issues covered by this agreement;
- i. responding to Congressional contacts including: requests or subpoenas to attend a meeting, appear at a hearing, or provide other information to Congress or its committees and subcommittees;
- j. preparing replies to Agency proposals and proposed policy changes submitted to the Association for comment or consideration;
- k. handling communications from Judges relating to working conditions, disciplinary issues, and other representational matters;

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l. education of Association officers and/or representatives on labor law. Official time approved under this sub-section is limited to a total of 240 hours per calendar year, to be shared among all Association officers and representatives;

m. presentations to new Judges about the NAJJ and their rights under labor law;

n. conferring with affected Judges about matters for which remedial relief is available under the terms of this agreement; and

o. meetings or communication with NAJJ local representatives to seek input on agency and Department of Justice proposals and initiatives, to discuss grievances, personnel policies or practices, to advise them on and seek input about collective bargaining initiatives, work performance issues, or other terms and conditions of employment.

Official time may not be used to conduct internal Association business.

5.3 APPROVAL OF OFFICIAL TIME: Any representative or officer of the Association seeking to use official time must individually request the official time in writing from the management official designated by the Agency with a copy to his/her Assistant Chief Immigration Judge (ACIJ). Such requests must be submitted as far in advance as possible and must state the date for which the official time is requested, the anticipated amount of official time to be used, a brief explanation of the purpose for which the official time is requested, and an indication of which category specified in section 5.2 applies to the request. Requests complying with the terms of this Agreement will normally be approved, workload and court schedules permitting. All grants and denials of official time will be in writing.

5.4 AGENDA ACCOMMODATION: Officers of the Association shall have the following time periods set aside on their agendas, with a proportionate decrease in new and existing scheduled hearings. Officers agree to use their best efforts to direct representational duties to the time periods set aside on their agendas. If they do not exhaust these periods of time, they agree to return to their regular immigration judge duties. Any official time that is not used during any pay period will not carry over to any other pay period. Officers may request additional time as required, under the procedures set forth in sections 5.2 and 5.3 of this article.

President – 8 hours per pay period

Executive Vice President – 8 hours per pay period

Secretary – Treasurer – 4 hours per pay period

Vice President – East – 4 hours per pay period

Vice President – West – 4 hours per pay period

Director of Communications – 4 hours per pay period

Two Grievance Chairs – 4 hours per pay period each

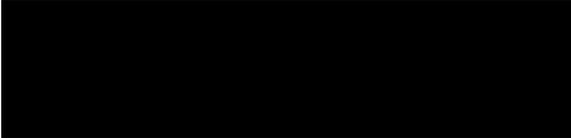
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For the Agency:



11-21-17  
Date

For the National Association of Immigration Judges:



11-21-17  
Date

Effective Date: December 6, 2017

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KHP

## Article 17

### WORK SCHEDULES

17.1 GENERAL. The Parties recognize that there are unique coordination issues related to implementing alternative work schedules (AWS) in the Immigration Courts, and that a Judge's schedule must be established to ensure that the efficiency of court operations is not impaired. The Parties also recognize that the primary responsibility of Immigration Judges is to adjudicate immigration cases. Acceptable tours of duty are established by the Chief Immigration Judge (CIJ) or his/her delegate, and the Agency does not elect to negotiate tours of duty. Rather, a Judge may request a schedule within the acceptable tours of duty that conforms to Agency policy and the negotiated work schedule provisions set forth below, subject to Assistant Chief Immigration Judge (ACIJ) approval and the Agency needs and priorities. Subject to the limitations in this Article, a Judge may select a Fixed Eight-Hour Schedule (17.2.a), a Flexible Eight-Hour Schedule (17.2.b), or a Compressed Work Schedule (CWS) 5/4/9 (17.2.c). On any schedule, administrative time must be worked in the office. Notwithstanding anything in this article, exceptions may be granted on a case-by-case basis by the Judge's ACIJ, with approval of the CIJ or the CIJ's delegate, based on special circumstances, as long as these exceptions do not violate Article 2.3 of this contract or any provision of law.

#### 17.2 SCHEDULE OPTIONS

- a. FIXED EIGHT-HOUR SCHEDULE – A Judge will work ten eight-hour days per pay period. Start and end times remain the same each day.
- b. FLEXIBLE EIGHT-HOUR SCHEDULE - A Judge will work ten eight-hour days per pay period. Start and end times may vary from day to day, but the Judge must work the core hours of 9:00 a.m. to 3:30 p.m. The core hours are subject to modification based on local constraints (e.g., movement of detainees). However, the Agency will seek to alleviate such local constraints where practicable.
- c. COMPRESSED WORK SCHEDULE 5/4/9 - A Judge will work eight nine-hour days and one eight-hour day per pay period, provided that the Judge works 80 hours per pay period. The start time must be the same each day.

#### 17.3 SCHEDULE SELECTION AND CHANGES

- a. A Judge reassigned or transferred to a court must request his/her preferred schedule in the new court as soon as possible, but no later than five work days following the notification of the effective date of the transfer/reassignment. The notification of the effective date of the transfer/reassignment shall notify the Judge of schedule options in Section 17.2 and the deadline. A new Judge must

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request his/her preferred schedule in the new court no later than three work days following entrance on duty (EOD). The Agency shall advise the new Judge of schedule options in Section 17.2 and the deadline when the new Judge is given his/her EOD. All schedule requests must be approved by the Judge's ACIJ.

- b. A Judge on a flexible eight-hour schedule may not continue a case or otherwise manipulate his/her docket for the purpose of using flexible time, and the Judge must ensure that webTA accurately reflects actual start and end times each day.
- c. A Judge who selects a CWS schedule may indicate to the ACIJ his/her preferred day off ("CWS day"). Notwithstanding the Judge's preference, the ACIJ has the authority to select the Judge's CWS day, based on the needs of the court. ACIJs will strive to accommodate a Judge's stated preference for a CWS day and to distribute CWS days for Judges within a court evenly throughout the pay period; for example, in courts with 10 or more Judges on CWS, approximately 10% of Judges will share the same CWS day.
- d. Whenever the Agency determines that the distribution of CWS days in a court must be changed, the following procedures will be used:
  - i. The Agency will seek volunteers from the sitting Judges in that court to change their CWS day.
  - ii. Absent enough volunteers to meet the need for changes in CWS days, Judge seniority nationwide will be used to determine the order in which Judges select preferred CWS days.
  - iii. Any Judge who is given a new CWS day can opt instead to work a fixed eight-hour schedule or flexible eight-hour schedule.
- e. When a Judge is transferred and/or reassigned and requests a CWS schedule in the new court under Section 17.3.a, the ACIJ will strive to accommodate the preferred CWS day requested by the Judge, unless doing so would disrupt the schedules of other Judges in the court.
- f. Any schedule changes must be requested to and approved by the Judge's ACIJ.
- g. Judges in their trial period are not eligible to select a CWS schedule. A Judge in his/her initial judicial training period (approximately the first six weeks on duty) will work a fixed eight-hour schedule.
- h. An ACIJ may change a Judge's previously-established schedule based on the needs of the court. Absent exigent circumstances, the Agency will strive to give 30 days' notice before the effective date of an Agency-initiated schedule change.

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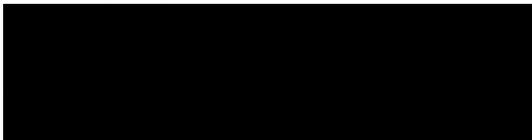
The 30-day notice does not apply if the Agency determines that the change is necessary to prevent serious handicap to the Agency in carrying out its mission, such change is necessary to avoid a substantial increase to costs, or the change is required in light of any other emergency situation.

- i. Despite any schedule selected by a Judge and approved by the Agency, the Agency maintains the option of removing a Judge from a flexible or compressed work schedule based on performance or conduct issues.

#### 17.4 PILOT PROGRAM

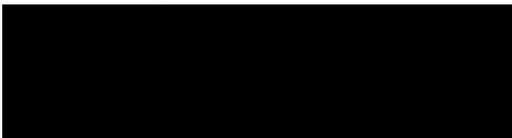
The Agency will work with NAIJ to develop a pilot program in a suitable court (or courts) to offer a compressed 4/10 work schedule, where a Judge may work four days a week, 10 hours per day. In developing the pilot program, the Parties will consider and address its impact on court operations generally (e.g., staff scheduling, interpreter scheduling, security, office/courtroom space, etc.), as well as its impact on scheduled hearing time and case completions. The Parties will strive to develop the plan for the pilot program within six months of the effective date of this Article. If either the Agency or NAIJ determines that the pilot program would be detrimental to court operations or achievement of performance standards, the Agency may elect not to implement it. If the pilot is implemented, the Parties will assess its impact on court operations/performance standards after 120 days of implementation. Based on this assessment, the Agency, with NAIJ input, will determine whether to terminate, continue, or expand the pilot program.

For the Agency:



11-21-17  
Date

For the National Association of Immigration Judges:



11-21-17  
Date

December 6, 2017  
Effective Date: \_\_\_\_\_

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## ARTICLE 22

### PERFORMANCE APPRAISALS

#### 22.1. Introduction

The Parties agree that the primary objectives of performance appraisals are to articulate standards for Immigration Judge performance, keep Judges aware of said standards, and improve judicial performance. Nothing in this Article is intended, nor shall be interpreted to infringe upon Judges' authority pursuant to 8 C.F.R. § 1003.10(b) "to exercise their independent judgment and discretion and take any action consistent with their authorities under the Act and regulations that is appropriate and necessary for the disposition of such cases." The parties recognize further that pursuant to 8 C.F.R. § 1003.0(b)(1)(ii), the Director of EOIR has the authority to "[d]irect the conduct of all EOIR employees to ensure the efficient disposition of all pending cases, including the power, in his discretion, to set priorities or time frames for the resolution of cases; to direct that the adjudication of certain cases be deferred; to regulate the assignment of adjudicators to cases; and to otherwise manage the docket of matters to be decided by... the immigration judges."

#### 22.2. Appraisal Period

The appraisal period for Judges will be two (2) years.

#### 22.3. General Standards of Performance Management:

- a. The Parties agree that transparency, fairness, and thoroughness are important principles in the evaluation of performance. Performance appraisals will be made in a fair and objective manner. Performance standards will be used to assess actual work performance in relation to the performance requirements of the position and will be based on a reasonable and representative sample of the Judge's work.
- b. The Agency has determined that it will use the evaluation process to evaluate and improve a Judges performance and when helpful, will discuss a Judge's strengths and weaknesses.
- c. All performance standards and elements, critical and non-critical, that provide the basis of a Judge's appraisal will be written and included in the Judge's Performance Work Plan (PWP).
- d. The Agency recognizes that pursuant to 5 U.S.C. § 4302, performance standards will, to the maximum extent feasible, permit the accurate evaluation of job performance on the basis of objective criteria related to the positions in question.
- e. All aspects of each performance standard, including, if requested, specific examples of what is required to meet each element of each performance standard will be communicated preferably through a face-to-face meeting or tele-video conference with the affected Judge at the time the Judge receives the PWP. Judges will not be held

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accountable or responsible for their elements and standards until they are received by the Judges. Supervisory expectations will be communicated and discussed as needed. If requested, a supervisor will describe what is required to meet each element of each performance standard with specificity and will provide a clear means for a Judge to self-assess whether objectives have been met.

- f. Each standard and each element of each standard included in the PWP will be numbered and/or lettered for identification purposes. The Agency will inform the Judge in writing, at the time the elements and standards are communicated, whether aspects of any elements or standards are to be accorded different weights.
- g. The Agency has determined that only time spent performing work related to a Judge's PWP will be considered in performance appraisals.
- h. When evaluating individual Judge performance with respect to numerical-based performance standards, the Agency will take into account relevant factors that may affect the Judge's ability to meet such performance standards, including:
  - availability of resources;
  - approved leave;
  - changes in the law that substantially increase the time required for adjudication of cases;
  - official duties that do not involve the adjudication of cases;
  - approved official time in accordance with Article 5;
  - that the Judge has been on the bench 24 months or less; and
  - other factors not in the control of the Judge (including, but not limited to, the availability of interpreters, respondents in detained settings, and security).

A Judge's schedule selection pursuant to Article 17 is not a relevant factor when assessing performance.

- i. The Parties agree that a Judge's political affiliation or perceived or actual political ideology will not be considered when rating the Judge.
- j. The Agency will not release an individual performance evaluation rating unless required by law, rule or regulation. To the furthest extent possible, the Agency will ensure that performance evaluations (as well as mid-term progress reviews) remain confidential.
- k. When Judges are detailed or temporarily promoted within EOIR and the assignment is expected to last one hundred-twenty (120) days or more, the Agency will provide the Judges with critical elements and standards as soon as possible (no later than thirty (30) days from the beginning of the assignment). An interim rating must be prepared when the detail or temporary promotion lasts at least 90 days. These ratings will be considered in deriving the Judge's next rating of record.
- l. A Judge who is designated to act as a supervisory Judge must be in a supervisory capacity for at least ninety (90) days before conducting performance appraisals. If the acting supervisor has not been in the position for at least ninety (90) days, the appraisal period will be extended to meet the ninety (90) day requirement.

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- m. It is understood that there is no predetermined distribution of ratings among Judges.

#### 22.4 Communications Regarding Performance

- a. The Agency shall appraise performance on a continuing basis, keep Judges informed of how they are measuring up to performance standards, and provide regular feedback that is constructive and meaningful, including identifying performance strengths and areas for improvement. As part of this process, supervisors may observe and/or listen to judicial proceedings for management purposes. At least one formal progress review will be conducted, normally halfway through the appraisal cycle.
- b. Working rules, policies, and procedures shall be communicated to the Judges before they can be held responsible for performance related to such rules, policies, or procedures. A Judge may request, and the supervisor will provide, a written clarification of a work rule, policy, or procedure. The Agency also may provide appropriate training as it deems necessary.
- c. At the request of the Judge, the Agency will make available on a routine basis reports necessary for the Judge to assess his or her performance based on any numerical standards imposed by the Agency.
- d. In the event the supervisor has concerns about Judge performance, the supervisor should counsel the Judge in relation to his/her performance. The Agency will provide assistance to any employee whose work is below the Satisfactory level to improve his/her performance, including providing advice, identifying and providing supplemental training, and providing additional coaching, monitoring, mentoring, and other developmental activities, as appropriate, to help improve Judge performance. Such counselling and assistance will normally take place when a supervisor notices a decrease in performance.
- e. The supervisor also may write an evaluative recordation to document a performance issue of a Judge. An "evaluative recordation" is a supervisor's written record of a performance deficiency. If a supervisor writes an evaluative recordation, a copy will be furnished to the Judge within a reasonable time following the event which it addresses. Absent extenuating circumstances, the evaluative recordation will be provided to the Judge by the end of the quarter in which it occurs.
- f. If the Agency plans to observe a hearing of a Judge for performance evaluation purposes, the Agency will attempt to notify the Judge in advance if possible. Feedback from the observation will be provided to the Judge as promptly as possible, but in any event normally within one week of the observation.
- g. Whenever performance standards contain an explicit recognition of the possibility of a waiver or excuse, the Agency shall publish to all Judges, at the conclusion of each rating cycle, a list of all known possible bases and reasons which would justify the grant of a waiver.

## 22.5 Mechanics of the Appraisal and its Use

- a. The PWP will be issued at the beginning of each appraisal period, normally within thirty (30) days of the beginning of the appraisal period. Judges will be evaluated based on a comparison of performance with the standards established for the appraisal period. Recognizing that performance standards are subject to change, Judges' performance will be appraised according to the standard that was in effect at the time the work was performed.
- b. Judges will sign and date the PWP for each rating cycle to show that it was received and discussed with them. A Judge's signature on the PWP does not indicate agreement with the Agency's established elements and standards.
- c. Prior to rating the Judge, the supervisor will allow the Judge to provide a list of cases which he or she feels is representative of the quality of his or her legal ability during the rating period and will take these cases into consideration. The Judge may also prepare a written self-appraisal, respond to a performance appraisal, or respond to written interim comments with written comments. The Judge's written comments will be placed in the employee performance folder with the performance appraisal if requested. Upon request, the Agency will provide a Judge with a reasonable amount of time out of court and away from case-related duties to prepare such written comments.
- d. Prior to rating a Judge below Satisfactory in any element, the rating official will give the Judge an opportunity to provide input regarding his/her performance, including any relevant factors that should be considered as described in subsection 22.3.h. of this Article. If the rating official plans to rely on information identified in the review or observation of a specific proceeding when determining his/her rating, the rating official will provide the relevant Alien Registration Number (A number(s)) to the Judge.
- e. The rating official will discuss a Judge's performance appraisal at the time such appraisal is issued to the Judge. A written narrative is encouraged for each rating level but is required for any unsatisfactory evaluation.
- f. A Judge's signature on his or her performance appraisal indicates only that the performance appraisal has been received and not that the Judge agrees with the performance appraisal.
- g. Use of Rating on a Performance Appraisal:
  - i. a rating on a performance appraisal record cannot be used to bar or in any way affect placement on the Reassignment Register under Article 13 of this Agreement.
  - ii. a rating on a performance appraisal record does not in any way impact the advancement of a Judge through the Immigration Judge pay levels.
  - iii. a less than satisfactory rating on a performance appraisal record will

impact a Judge's eligibility for a special work opportunity, as defined in article 13.3 of this Agreement, only to the extent that the rating is relevant to the specific work opportunity.

- iv. a Judge will be advised each time an appraisal is used in a personnel action.

## 22.6 Consequences of Ratings of Less than Satisfactory Performance: Performance Improvement Plans

### 22.6.1 Addressing Unacceptable Performance

- a. If at any time during the performance appraisal cycle a Judge's performance is determined to be unsatisfactory in one or more critical elements, the Agency will notify the Judge in writing of the critical element(s) in which performance is unsatisfactory and inform the Judge in writing of the performance requirement(s) or standard(s) that must be attained in order to demonstrate acceptable performance in his or her position. This written notice will be called a "Performance Improvement Plan" (PIP). The notice will advise the Judge that he/she may request NAIJ representation in this process.
- b. The PIP will also inform the Judge that unless his or her performance in the critical element(s) improves to and is sustained at an acceptable level for at least one year, the Judge may be removed or reassigned.
- c. For each critical element in which the Judge's performance is unsatisfactory, the Agency shall afford him or her a reasonable opportunity of at least ninety (90) days to demonstrate acceptable performance.
- d. As part of the Judge's opportunity to demonstrate acceptable performance, the Agency shall offer assistance in improving unacceptable performance.
- e. The Agency will describe with specificity the actions the Judge must take to bring his or her performance to at least an "Improvement Needed" level. Such description must include a list of the standards to be met from the PWP.
- f. Prior to rating a Judge unsatisfactory, management will consult with the rating official's backup Assistant Chief Immigration Judge, if one has been designated.

### 22.6.2 Administration of the PIP

- a. The Agency will meet with the Judge, preferably in-person, to explain the PIP process and expectations, and to answer any questions. The Judge will be advised in advance of the meeting that he/she may have an Association representative and allowed a reasonable amount of time to get a representative for the meeting if he/she so chooses.
- b. A Judge should be an active participant during the PIP process, including offering

suggestions for specific forms of ameliorative assistance. The PIP process is intended to be an interactive process with the goal of improving a Judge's performance. The process of identifying appropriate forms of ameliorative assistance should include a give-and-take of ideas. The Agency agrees to consider any reasonable request made by a Judge for assistance, including but not limited to CLE's, peer mentoring, observation, and appropriate training. If the Agency denies any written request of the Judge, it will provide a reason in writing. Once the ameliorative assistance to be given to a Judge has been identified, it will be memorialized in writing.

- c. If the Judge so requests, he or she will be provided a reasonable amount of time off the bench away from case processing duties to provide a self-assessment to be attached to the PIP.

## 22.7 Adverse Actions

Adverse Actions based on unsatisfactory performance shall be taken using the procedures provided in Articles 10.4 and 10.5 of the collective bargaining agreement except as provided below.

- a. The Parties recognize that the regulations governing performance-based actions require a final agency decision to be issued within sixty (60) days of the date the Judge is notified of the proposed action. Due to the regulatory time constraints, a Judge shall generally be limited to the twenty (20) day response period provided in Article 10 except:
  - i. when the request for an extension of time is based on the Judge's need to obtain medical information or examination when the Judge has a medical issue relevant to the proposed action;
  - ii. when the Judge has requested to make an oral reply and such reply cannot be arranged within the initial 20 day response period;
  - iii. when the Judge plans to raise the issue of a reasonable accommodation of a handicapping condition in his or her response; or
  - iv. when the Judge would like to be considered for reassignment to a different position.

In sections i, iii and iv above, the Judge shall state in his or her request for an extension the basis for the request.

- b. The Agency's notice of a proposed personnel action to a Judge will include a statement of the Judge's right to an attorney and/or an Association representative.
- c. At the time the Agency issues its notice of proposed action, it shall include a letter written by the Association that outlines the Judge's right to representation and his or her appeal rights. The Association's letter will be approved by the Agency before it is included. The Agency will not reject the letter without reasonable grounds.

## 22.8 Mechanism for Continuing Dialogue on Performance Standards

- a. In the hopes of preventing the need to bargain in the future, and in the recognition that input from the field is helpful to develop and implement standards in an expeditious way, when the Agency plans to revise performance standards, the Agency will provide NAIJ with advance notice of its intent and will meet with NAIJ, at NAIJ's request, to discuss the need and process for revising standards.
- b. Within one week of the meeting, NAIJ may offer and management will consider comments or suggested changes regarding the Agency's numeric performance goals. Any suggested change must include a justification for the proposed change and its impact on docket efficiency and court operations.
- c. The Agency will provide a response to NAIJ's suggested change(s), either in writing or in a meeting, as soon as practicable but before any final decisions are made. The Agency's response will clearly indicate the action(s) that will or will not be taken and the reasons therefor.
- d. These procedures are not required when the Agency decides to relax a numerical performance standard in the Judges' favor.
- e. Nothing in this section is intended to abrogate either parties' rights under labor law.

## 22.9. Surveys

- a. To evaluate the performance of individual Judges to promote judicial self-improvement and enhance the quality of any Judge Corps as a whole, input from sources with personal and current knowledge of a Judge has been found to be valuable and is recommended by professional organizations and scholars in the field.
- b. The Agency will reconstitute the committee to finalize research and development of a survey tool to assess Judge and court performance that will be available to parties appearing before the court, as well as court staff. The Committee will be comprised of one NAIJ designee, one Judge selected by the Agency pursuant to the terms of Article 13.3 (special work opportunities), and up to two Agency representatives as appropriate. The Agency will strive to finalize the survey within six months of the effective date of this article.
- c. The Agency will implement a pilot program to use the surveys within eighteen months of the effective date of this Article.
- d. Information collected from surveys is intended to be used primarily for self-improvement of Judges and improving continuing education programs for Judges.

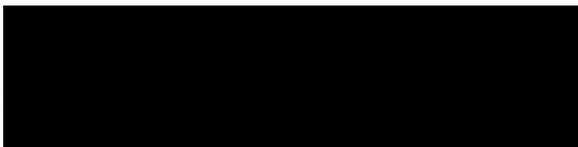
## 22.10 Miscellaneous matters

- a. To the extent not prohibited by law, the Agency will provide the Association with copies of unsatisfactory performance appraisals, in the most unsanitized manner

allowable by law, simultaneously with their issuance to Judges.

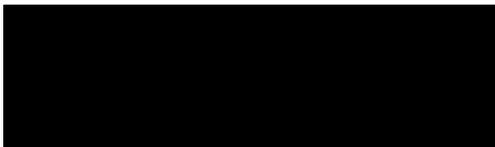
- b. All aspects of the Performance Appraisal Program (PAP) are grievable, to the full extent provided by law, under the terms of the negotiated grievance procedure, previously agreed upon by the parties.
- c. Nothing in this Article is to be construed as a waiver of the Association's right to request additional information under other authorities such as the Freedom of Information Act, Privacy Act, or Civil Service Reform Act.

For the Agency:



11-21-17  
Date

For the National Association of Immigration Judges:



11-21-17  
Date

Effective Date: December 6, 2017

*one*  
*KHR*