

39. Disciplinary Actions

A. Reasons for Imposing Disciplinary Actions

A supervisor shall take appropriate disciplinary action if an employee commits one or more of the following:

- *1. Violation of, or failure to comply with, the State's Constitution or statutes; an order of a court; codes of conduct; or published rules, regulations, policies, or procedures of the Nebraska Court System or the State of Nebraska.
2. Failure or refusal to comply with a lawful order or to accept a reasonable or proper assignment from an authorized supervisor.
3. Inefficiency, incompetence, or negligence in the performance of duties.
4. Unlawful manufacture, distribution, dispensation possession or use of a controlled substance or alcoholic beverages in the workplace or reporting for duty under the influence of alcohol and/or unlawful drugs.
5. Negligent or improper use of public property, equipment, or funds, or conversion of same to one's own use.
6. Use of undue influence to gain or attempt to gain promotion, leave, favorable assignment, or other individual benefit or advantage.
7. Falsification, fraud, or omission of required information on the employment application/resume.
8. Unauthorized or improper use of any type of leave, or abuse of meal and rest periods.
9. Repeated tardiness, leave abuse, or unauthorized leave, including unauthorized departure from the work area.
10. Failure to maintain satisfactory and harmonious working relationships with the public or other employees.
11. Failure to obtain and maintain current license or certification required by law or policy as a condition of employment.
12. Conviction of a felony.
13. Repeated failure to make reasonable provision for payment of personal debts which result in more than one garnishment except in cases of court ordered child support payments.

14. Insubordinate acts or language which seriously hampers the Nebraska Court System's ability to control, manage or function.

15. Acts which bring discredit upon oneself, the Nebraska Court System, and the state.

16. Acts or conduct (on or off the job) which adversely affect the employee's performance and/or the Nebraska Court System's performance or function.

17. Workplace harassment based in whole or in part on race, color, sex, religion, age, disability or national origin which manifests itself in the forms of comments, jokes, printed material, and/or unwelcome sexual advances, requests for sexual favors or other verbal or physical conduct of a sexual nature.

18. Possession of materials and/or utterance of comments in the workplace that are derogatory toward a group or individual based on race, gender, color, religion, disability, age or national origin.

*Note: Although county court clerk magistrates are governed by the Nebraska Revised Code of Judicial Conduct, they are disciplined in accordance with the Nebraska Supreme Court Personnel Policies and Procedures.

Employees shall not be disciplined more than once for a single specific violation. However, they may be disciplined for each additional violation of the same or similar nature.

Amended 7-9-15.

B. Authority and Responsibility to Impose Disciplinary Actions

Responsibility to impose disciplinary action shall be vested in the employee's supervisor. Disciplinary action shall be taken in response to the employee's failure to meet the standards, objectives, or rules of the Judicial Branch. The objective of discipline is to correct or eliminate inappropriate behavior or conduct.

Amended 7-9-15.

C. Steps for Imposing Disciplinary Actions and Due Process Provisions

Supervisors are responsible for ensuring due process for employees being disciplined. Prior to beginning the disciplinary process, a supervisor is encouraged to consult with the Personnel Administrator.

The following procedures shall be observed:

(1) Investigation

Upon obtaining information about an incident or performance issue which may warrant disciplinary action, the supervisor will conduct a fair investigation, including allowing the employee to respond to the information which may lead to discipline. Based upon the totality of the evidence and the individual circumstances of the case, the supervisor will make an objective decision whether or not to go forward with the disciplinary process.

(2) Notice of Allegations

If, based on the investigation, the supervisor decides a disciplinary action may be appropriate, the employee shall be entitled to written and oral notice of the proposed allegations against him or her, citing the rule or policy violated and an explanation, including any written documentation of evidence against him or her. The explanation should include a description of the incident or performance issues involved and dates of occurrence to the extent the explanation would not impair the function or operation of the Judicial System or expose the System to legal liability. The employee shall acknowledge receipt of the written notice of allegations by signing the document. The employee's signature does not constitute agreement with the content of the document. If the employee refuses to sign, the supervisor and a witness shall sign a notation of the employee's refusal on the document.

(3) Pre-disciplinary Employee Response Meeting (Mitigation Meeting)

Following receipt of the Notice of Allegations, the employee shall be entitled to an opportunity to present mitigating evidence or present reasons why disciplinary action should not be taken. If the opportunity or explanation is in the form of a meeting, the supervisor shall afford the employee adequate notice as to time, place, and purpose of such meeting. A minimum of 24 hours' notice shall be provided and the supervisor shall make a reasonable effort to reschedule where necessary for sufficient preparation. Upon request the employee shall be allowed representation or may bring a witness.

(4) Delivery of the Notice of Discipline or Notice of No Cause to Discipline

Following the employee's opportunity to provide mitigating evidence, if the supervisor determines disciplinary action is warranted, the employee shall be

- a. advised in writing of the nature of the violation;
- b. advised in writing of the disciplinary action being administered; and
- c. if appropriate, notified in writing of the time allowed for improvement and the consequences (including dismissal) of future violations or failure to improve.

The employee shall acknowledge receipt of the written documentation of disciplinary action by signing the document. The employee's signature does not constitute agreement with the content of the document. If the employee refuses to sign, the supervisor and a witness shall sign a notation of the employee's refusal on the document. A copy of the document shall then be placed in the employee's personnel file and a copy of the document shall be sent to the Administrative Office.

If the supervisor determines there is no cause for disciplinary action, the employee shall be advised in writing that no disciplinary action will be administered.

Amended 7-9-15.

D. Forms of Discipline

The following types and levels of disciplinary actions are described in a progressive manner. The steps are intended to allow the employee to correct the behavior prior to the next stage. However, the type and extent of disciplinary action shall be governed by the nature, severity, and effect of the violation; the type and frequency of previous violations; the period of time elapsed since a prior offensive act; and consideration of extenuating circumstances. More severe levels of disciplinary action may be imposed when a lesser action is deemed inadequate or has not achieved the desired results. One or a combination of any of the following disciplinary actions may be imposed. All disciplinary actions shall be in writing, and if more than one action is imposed, they shall be on a single document and imposed at the same time.

(1) Written Warning

This is typically the first level of disciplinary action, appropriate for first incidents and lesser violations where efforts to counsel the employee have not been effective. This action consists of a written record providing in detail the reasons for the warning and advising the employee of the action required to correct the unsatisfactory performance or behavior, the time allowed for improvement, and the consequences of future violations or failure to improve. The employee shall be required to acknowledge receipt and understanding of the warning in writing. Such signature does not imply agreement. If the employee refuses to sign, the supervisor and a witness shall sign a notation of the employee's refusal on the document. A copy of this documentation shall be placed in the employee's personnel file. The employee has the right to file a written explanation or denial.

An employee shall not have a written warning imposed more than once for a single transgression. However, written warnings for each additional act of the same or similar nature may be imposed.

(2) Disciplinary Probation

This level of disciplinary action is appropriate where a written warning was not effective in resolving an issue or for more frequent or serious violations. A disciplinary probation may be imposed for a period of up to six months. This is a designated time period during which the

employee must improve. Disciplinary probation may be extended for up to one year with Administrative approval. An extension of disciplinary probation shall be considered as a separate disciplinary action. The imposition of a disciplinary probation is to be accompanied by a written explanation concerning the employee's violation, performance shortcomings, etc., that have caused the action to take place; the action required for improvement if appropriate; the time allowed for improvement and notice that if positive action is not taken to correct the noted deficiencies, dismissal may be imminent. The employee shall be required to acknowledge receipt and understanding of the document by signing the document. If the employee refuses to sign, the supervisor and a witness shall sign a notation of the employee's refusal on the document. A copy of the document shall then be placed in the employee's personnel file.

Employees placed on disciplinary probation may not be promoted or granted any salary increase authorized by the Supreme Court other than the "across the board" increase. The termination of an employee on disciplinary probation does not preclude recourse in the form of the filing of a grievance by the employee.

An employee may be placed on disciplinary probation upon return to work following a suspension without pay providing the employee was so informed when the suspension was imposed. Employees granted leave while serving disciplinary probation, may have their probation extended by the number of days absent on leave. An employee may be removed from disciplinary probation at any time.

(3) Suspension Without Pay

This level of disciplinary action is appropriate where previous disciplinary acts were not effective in resolving an issue and/or for more frequent or serious violations. Suspension without pay may be imposed in conjunction with another form of discipline such as a written warning or disciplinary probation.

Suspension without pay shall not exceed 20 workdays and shall be imposed in writing. The document imposing this form of action shall be dated and shall include the reason for the suspension and the number of days the suspension will last and the effective date(s) of the suspension.

Employees placed on suspension without pay shall not be granted vacation, sick, or holiday leave or unused compensatory time off while in a suspended without-pay status, nor shall they earn vacation, sick, or holiday leave credit during the period of suspension.

If the same or an additional violation is committed while serving the disciplinary probation period, the employee may be suspended without pay as a result of the new violation. In such instances the period of suspension without pay shall not be credited to the original probation period. Upon completion of the period of suspension without pay, the employee shall complete the probationary period plus any additional period of probation imposed as a result of the violation which caused suspension without pay.

The notice of a period of suspension is to be accompanied by a written explanation of the reasons for the suspension and the fact that failure to improve may result in further discipline. The employee shall be required to acknowledge in writing receipt and understanding of such information. If the employee refuses to sign this document, the supervisor and a witness shall sign a notation of the employee's refusal to sign the document. A copy of the document shall

then be placed in the employee's personnel file. In cases in which the employee is to be placed on disciplinary probation upon return from suspension without pay, the employee shall be informed of this fact at the time the suspension is imposed.

(4) Reduction in Salary Within Salary Grade

This level of disciplinary action is appropriate where previous disciplinary acts were not effective in resolving an issue and/or for more frequent or serious violations. Supervisors may recommend a reduction in an employee's salary within salary grade as a disciplinary action in consultation with the Administrative Office. Supervisors may recommend restoration of an employee to his/her previous salary when circumstances justify. An employee's salary may be reduced to no lower than the minimum permanent rate of the salary grade.

(5) Demotion

This level of disciplinary action is appropriate where despite attempts to improve performance, an employee is not successful at doing so, and may be successful in a lower job classification. The employee's duties shall be changed to reflect the new classification. Upon demotion of an employee for disciplinary reasons, the Administrative Office shall reduce the employee's salary a minimum of 5 percent and the salary may not be above the maximum rate of the new salary grade. However, a demoted employee's salary may be reduced no lower than the minimum permanent rate of the new salary grade.

(6) Dismissal

This level of disciplinary action is appropriate where previous disciplinary acts were not effective in resolving an issue and for the most serious violations, such as theft, physical altercations, law violations, and participating in harassment based on protected class.

Employees dismissed shall be provided with written notice of their dismissal 2 weeks prior to dismissal, or, at the discretion of the Administrative Office, granted 2 weeks' pay in lieu of the 2-week notice where the employee's continued presence in the workplace would potentially be disruptive or otherwise adverse to effective operations.

Employees granted 2 calendar weeks pay in lieu of notice shall not be eligible to accrue sick or vacation leave for the period for which payment in lieu of notice is made.

An employee who commits a violation or an act which endangers or threatens the safety, health, or well-being of another person or persons, or a violation or act which is of sufficient magnitude that the consequences thereof cause irreparable disruption of work presently performed, or to be performed in the future, may be dismissed forthwith and shall not be entitled to a 2-week notice of dismissal or 2 calendar weeks pay in lieu of notice.

Amended 9-17-03; Amended 12-22-10; amended 7-9-15.
