

PREAMBLE

This Memorandum of Understanding, hereafter referred to as the Agreement, is entered into by the Superior Court of California, County of Santa Clara, hereinafter referred to as the Court, and the County Employees Management Association, a California corporation, affiliated with Operating Engineers, Local Union #3, AFL-CIO, hereinafter referred to as CEMA. This Agreement is the result of both parties meeting and conferring in good faith.

The Court and CEMA mutually share the following basic principles for the purposes of enhancing the parties' collective relationship and improving the services of the Court:

- Build self-worth, dignity, respect, and trust among the entire Court management;
- Recognize, value and reward each employee's contribution whenever possible;
- Focus on the situation, issue, or behavior and not the individual;
- Encourage and support innovation and professional growth at all times;
- Establish clear expectations and build ownership, accountability and responsibility for high-level performance;
- Address conflict in ways that build joint ownership of win/win resolutions;
- Correct performance and behavior issues as a means for continuous improvement and not punishment;
- Take initiative to make the situation better; and
- Lead by example.

ARTICLE 1 - RECOGNITION

Section 1.1 - Recognition

The Court recognizes CEMA as the exclusive bargaining representative for all full-time and regular part-time employees of the Court in the Supervisory-Administrative bargaining unit, excluding all judges, commissioners, executive management employees, confidential employees as designated by the Court, consultants, independent contractors, extra help employees and employees in the non-supervisory bargaining unit.

Section 1.2 - Status of Employees

(a) Management Employees

Employees in the bargaining unit represented by CEMA are considered Court management employees and are expected to perform the duties and responsibilities required to accomplish the job.

Therefore, the various premium pay and special compensation provisions applicable to other Court employees, such as cash overtime, compensatory time off, evening shift differential, stenography differential, holiday pay, on-call pay, and call-back pay are inapplicable to CEMA-represented employees. Employees in this unit are salaried. The rates of pay shown in the Appendices reflect the appropriate salary in consideration of the level of responsibility and the inapplicability of the various forms of premium pay and special compensation.

Further, as members of management, CEMA-represented employees have an obligation to the Court during the term of this Agreement not to engage in any work stoppage, sickout, picketing, or similar activity. In the event of a work stoppage, sickout, or similar activity by any other bargaining unit, including any other Court bargaining unit, it is expected that CEMA-represented employees will assist in keeping the Court operational under such circumstances. It is understood that CEMA will advise bargaining unit employees of this requirement and that failure to perform assignments under these circumstances may result in appropriate disciplinary action.

(b) Merit System

All persons covered by this Agreement are Court employees and are no longer covered by the Merit System Rules of the County of Santa Clara ("the County"). Any previous distinctions between classified and unclassified status are no longer relevant or operative.

(c) Personnel Rules

The parties recognize the authority of the Court to issue and revise Personnel Rules from time to time. The Personnel Rules of the Court shall be fully effective and enforceable except where inconsistent with any provision of this Agreement, in which case this Agreement will control. CEMA shall be given advance notice of new and revised Personnel Rules prior to implementation, and where such Rules substantially and materially affect the working conditions of employees covered by this Agreement, the Court will discuss with CEMA the reasons for and effects of such Rules, as well as possible alternatives.

Section 1.3 - Probationary Periods

Each new employee shall serve a probationary period of nineteen (19) complete pay periods. Leaves of absence shall not be credited toward completion of the employee's probationary period. Probationary employees do not have the right to grieve disciplinary actions under Article 12 of this Agreement. Thereafter, an employee promoted into a new position shall serve a probationary period of thirteen (13) complete pay periods.

ARTICLE 2 - SALARIES

Section 2.1 – Salary Adjustments

Salaries for all employees in the bargaining unit shall be increased by three percent (3%) retroactive to July 8, 2002.

Employees in part-time and split-code positions shall receive a prorated one-time payment equivalent to the percentage of a full-time position they hold. Full-time employees represented by CEMA on January 20, 2003 shall receive a one-time payment of \$1,000 (one thousand dollars).

Effective the first day of pay period 03/15, July 7, 2003, all salaries shall be adjusted to reflect the reported salary increase (NSI) as given by the State to the Court for fiscal year 2003/04 or 1%, whichever is greater.

Section 2.2 - Realignments, Reclassifications and Title Changes

Salary realignments, reclassifications and title changes for certain positions are listed in the Appendices attached hereto and made a part of this Agreement.

ARTICLE 3 - RETIREMENT

The Court will continue to maintain the same benefit contract as negotiated by the County of Santa Clara with the California Public Employees' Retirement System ("PERS") during the term of this Agreement. The Court will pay the currently required employee contribution to PERS on behalf of employees covered by PERS Miscellaneous. The Court's contributions to PERS under the 2% at 55 Plan and the Court's payment of employees' PERS contributions shall continue to be reflected as part of the effective wage.

ARTICLE 4 - INSURANCE

The Court will continue to offer the same medical, dental, life, and vision insurance plans offered by the County of Santa Clara to employees in the County Supervisory-Administrative bargaining unit, with the same eligibility and participation requirements, for the duration of the Agreement.

The Court will attempt to secure a seat on the Santa Clara County Health Care Cost Containment Committee for one CEMA member from the Court.

ARTICLE 5 - STATE DISABILITY INSURANCE (SDI)

Section 5.1 - Registration and Withholding

The Court will register the employees represented by CEMA with the Employment Development Department for purposes of State Disability Insurance ("SDI") coverage. The Court through its payroll administrator shall withhold wage earner contributions each pay period at the rate established by the Unemployment Insurance Code and forward such withholdings to the State Disability Fund.

Section 5.2 - Integration of Sick Leave and STO Pay with SDI Benefits

An employee who wishes to integrate sick leave and STO pay with SDI benefits must provide the following information to the Court within one week of being disabled from work:

1. The date the disability or illness commenced;
2. The estimated duration of the disability;
3. A telephone number where the employee can be reached;
4. The election of sick leave/STO time usage during the first week of disability;
5. Whether the employee plans to file for SDI benefits; and
6. The election to integrate sick leave and STO time pay with SDI benefits.

An employee who is eligible to receive SDI benefits and who has made a timely election to integrate shall be paid a biweekly amount (accumulated sick leave/scheduled time off) which, when added to SDI benefits, is approximately equal to the employee's normal biweekly net pay after taxes. These payments shall be made on normal Court paydays.

If the employee does not notify the Court of the desire to integrate sick leave and STO pay with SDI benefits, no integration will occur. However, one time only during the disability period, the employee may elect to integrate after the initial week has passed. In such cases, integration will occur at the start of the next pay period, and will be prospective only.

The employee must notify the Court of any change in status (either health or length of disability) that may affect the employee's return to work.

ARTICLE 6 – COURT PROGRAMS

6.1 Educational Reimbursement Program

The Educational Reimbursement Program replaces and combines the Tuition Reimbursement Program and the Professional Development Program. All employees may participate in the Court's Educational Reimbursement Program during the term of this Agreement. The Professional Development funds are available for individual and group programs and seminars with the approval of the Chief Executive Officer or his/her designee. Tuition Reimbursement funds are available to reimburse employees for the successful completion of pre-approved courses. No reimbursement will be made for courses not approved by the Chief Executive Officer or his/her designee prior to enrollment. The coursework undertaken must be related to the employee's occupational area or have demonstrated value to the Court. With regard to the foregoing programs, the Court will reimburse each employee up to \$1,800 per fiscal year (not to exceed \$50,000 per fiscal year for all employees) for courses, books, related costs, seminars and conferences that are related to the employee's occupational area or are of demonstrated value to the Court. Travel, meals, lodging and conference registrations may be reimbursed as Professional Development expenses, subject to the total annual limits set forth above.

6.2 Public Transit Programs

- (a) The Court will continue to offer Valley Transit Authority Eco Passes to employees without cost as long as the County permits the Court to participate in the County's Eco pass Program.
- (b) The Court will reimburse an employee up to the maximum of \$100 per month for use of public transit for commuting to and from work.
- (c) An employee must submit receipts of fares and certify that he or she was the person who paid for and used the transit for commuting to and from work.

ARTICLE 7 - TRAINING FUND

The Court will provide in-house training for employees and will authorize attendance by employees at the Court's expense at outside classes, seminars and programs, as it deems necessary and to the extent the Court's budget permits. Court employees will continue to be eligible to attend the Leadership Seminar, County Wide classes and CEMA/County group programs, with the concurrence of the County and to the extent the Court budget permits.

The Court will meet and confer with CEMA if the Court or County elects to terminate participation of CEMA employees in County training programs.

ARTICLE 8 - STATE CERTIFICATES AND LICENSES

The Court agrees to reimburse the employees for the cost of any certificates or licenses required by the State of California or the Court. The Court will also reimburse Staff Attorneys and Attorney-Mediators for their annual dues to the State Bar of California. Each employee requesting reimbursement shall provide the Court with a receipt, or copy thereof, verifying payment of the annual dues, certificate, or license. The Court will reimburse each employee as soon as possible after receipt of proof of payment.

Employees in Staff Attorney; Attorney-Mediator, Attorney-Facilitator, Assistant Director, Family Court Service; Director, Family Court Services; and Senior Mediator classifications will be entitled to reimbursement for the costs for courses completed to obtain Continuing Education Units (CEU) or Minimum Continuing Legal Education (MCLE) to maintain licensure requirements. Reimbursement requests may be submitted for costs associated with obtaining the MCLE or CEU credits necessary for licensure only. Reimbursable costs include registration, fees for the credits, mileage, and parking. Meals may be reimbursed if they are not offered as part of the course and are consistent with Court policy. Receipts are required.

All requests must be pre-approved by the division director or his/her designee. Unless it is an unusual circumstance, courses for CEU or MCLE credits should be taken locally. If this is a taxable event, employees will be required to complete the necessary documents before the reimbursement can be processed. No employee leave banks will be charged for attendance of a course required for CEU or MCLE credits.

ARTICLE 9 - TEMPORARY ASSIGNMENT RESPONSIBILITY DIFFERENTIAL

Employees shall receive a Temporary Assignment Responsibility Differential ("TARD") when assigned to perform additional higher-level duties in the absence of an incumbent. Such assignments and eligibility for TARD must be approved in advance by the Chief Executive Officer or his/her designee. The TARD payment of approximately 10% will be made consistent with promotional pay procedures and will only apply to assignments of one (1) or more full days. When a TARD payment for higher-level duties is appropriate under this Article, it will commence on the first day of the assignment and continue for the duration of the assignment. No TARD assignment may be made to the same position for longer than twenty-six (26) pay periods. An employee assigned TARD duties must meet the minimum qualifications for the position.

The Court will notify affected employees who to contact if a manager is absent without a TARD assignment.

ARTICLE 10 – STO AND SICK LEAVE

Section 10.1 - Scheduled Time Off

(a) STO Bank Accrual

Each employee shall be entitled to annual Scheduled Time Off ("STO"). STO is earned on an hourly basis. For purposes of this section, a day is defined as eight (8) work hours. The accrual schedule shall be as follows:

TOTAL SERVICE YEARS & ORK DAY EQUIVALENT	ANNUAL ACCRUAL IN WORK DAYS	ACCRUAL FACTOR PER HOUR	ACCRUAL FACTOR PER PAY PERIOD	MAXIMUM ALLOWABLE BALANCE*
1 st year 1 st through 261 st days	19	.073076	5.846	57 work days
2 nd – 4 th year 262 nd – 1044 th days	21	.080769	6.461	63 work days
5 th – 9 th year 1045 th – 2349 th days	25	.096153	7.692	75 work days
10 th – 14 th year 2350 th – 3654 th days	27	.103846	8.307	81 work days
15 th – 19 th year 3655 th – 4959 th days	29	.111538	8.923	87 work days
20 th year and thereafter 4960 th day and thereafter	31	.119230	9.538	93 work days

* Base excludes holidays

(b) Pre-Scheduled Usage

Scheduled Time Off may be used for any lawful purpose by the employee; the time requested shall require the approval of management with due consideration of employee convenience and administrative requirements.

In the event an employee's supervisor does not approve vacation time for an employee sufficient to reduce the accumulated STO balance to the maximum allowable balance, the employee may take vacation as a matter of right immediately before the end of the pay period in which STO would be lost.

(c) Scheduled Time Off Bank Carry-Over

In the event an employee does not take all the STO to which he or she is entitled within twenty-six (26) pay periods, the employee shall be allowed to carry over the unused portion. The employee may not accumulate more than three (3) years' earnings except:

1. When absent on full salary due to a work-related injury that prevents the employee reducing STO to the maximum allowable amount, or
2. When vacation requests are denied because of extreme emergencies such as fire, flood, or other similar disasters, employees may be permitted to accrue more than three (3) years' STO earnings if approved by the Chief Executive Officer.

(d) Scheduled Time Off Bank Payoff

Upon termination, an employee shall be paid the cash value of all accrued STO as of the actual date of termination of employment.

10.2 Sick Leave

(a) Rate of Accrual

Each employee shall accrue sick leave on an hourly basis, computed at the rate of sixty-four (64) hours per year. Sick leave may be accrued without limitation. The accrual factor per hour is .030769 and the accrual factor per full pay period is 2.462.

(b) First Day Usage

For each approved absence due to personal illness, or any other reason (applies to all leaves for which sick leave was formerly used), eight (8) hours shall be charged to the STO bank, or if the STO bank is exhausted, to leave without pay. Absences due to verified personal illness beyond the first day shall be charged to the sick leave bank. All use of sick leave must be approved by management.

Notwithstanding the above, an employee who experiences a continuation of a verified personal illness or the illness of a member of the employee's immediate family within fourteen (14) calendar days of the original return to work may charge the renewed absence directly to the accumulated sick leave balance, subject to the restrictions in Section 10.2(c) below.

Exceptions may be granted for absences due to life-threatening illnesses requiring ongoing treatment beyond four (4) incidents of absence in a calendar year, upon approval of the Chief Executive Officer.

(c) Family Care Usage

An employee may be granted permission to use no more than six (6) days of sick leave to care for a member of the employee's immediate family or to obtain a medical consultation. The first day must be charged to the STO bank. Subsequent days shall be charged to sick leave if necessary.

"Immediate family" shall mean the mother, father, grandmother, grandfather of the employee or of the spouse of the employee and the spouse, son, son-in-law, daughter, daughter-in-law, brother or sister of the employee or any person living in the immediate household of the employee.

(d) Medical Verification

Requests to use sick leave with pay in excess of three (3) working days must be supported by a statement from an accredited physician. The Court may require such supporting statements for absences of three (3) or fewer days.

(e) Sick Leave Bank Pay Off

Upon death, retirement or resignation in good standing, an employee shall be paid for any balance in the sick leave bank at the following rate:

Days of Service	% Paid at
0 through 2610	0%
2611 * 2871	20%
2872 * 3132	22%
3133 * 3393	24%
3394 * 3654	26%
3655 * 3915	28%
3916 * 4176	30%
4177 * 4437	32%
4438 * 4698	34%
4699 * 4959	36%
4960 * 4959	38%
5221 * 5481	40%
5482 * 5742	42%
5743 * 6003	44%
6004 * 6264	46%
6265 * 6525	48%
6526 * accumulation	50%

(f) Reinstatement Pay Back

Employees receiving a sick leave bank payoff in accordance with Section 10.2(e) may, if reinstated within one (1) year, repay the full amount of sick leave bank payoff received and have the former sick leave bank balance restored. Repayment in full must be made prior to reinstatement.

(g) STO Cash Out

Employees who use no sick leave for a period of one (1) year beginning pay period 02/01, December 24, 2001 through pay period 02/26, ending December 22, 2002, and each December to December period thereafter during the term of this Agreement (pay period 2003/01, December 23, 2003 through pay period 2003/26, ending December 21, 2003, or pay period 4/01, December 22, 2004 through pay period 2004/26, ending December 19, 2004) shall be allowed to cash out up to forty (40) hours of STO with an option to cash out an additional forty (40) hours of STO. Eligible employees shall submit their request to the Superior Court Human Resources Division during the month of January 2003 (or January 2004 for the second year, or January 2005 for the period through pay period 04/26) and payment shall be made during the month of February 2003 (or February 2004 during the second year, or February 2005 through the period through pay period 04/26.)

Section 10.3 - Bereavement Leave

A leave of absence with pay of up to five (5) days shall be granted to an employee to discharge the customary obligations arising from the death of a member of the employee's immediate family. "Immediate family" shall mean the mother, father, grandmother, grandfather, son or daughter of the employee, the employee's spouse, or the employee's same-sex domestic partner; the spouse, stepparent, son-in-law, daughter-in-law, brother, sister, brother-in-law, sister-in-law, or grandchild of the employee; or any person living in the immediate household of the employee.

ARTICLE 11 - HOLIDAYS

Employees shall observe the following holidays, as well as any other holidays established by the State for Court employees:

January 1st
Third Monday in January (Dr. Martin Luther King, Jr. Day)
February 12th
Third Monday in February
March 31st (Cesar Chavez Day)
Last Monday in May
July 4th
First Monday in September
Second Monday in October
November 11th
Fourth Thursday in November (Thanksgiving Day)
The Friday following Thanksgiving Day
December 25th

Holidays which fall on Sunday are observed on the following Monday. Holidays which fall on Saturdays shall be observed on the preceding Friday.

ARTICLE 12 – MILITARY LEAVE

The provisions of the Military and Veterans Code of the State of California shall govern the military leave of employees.

Any regular or provisional employee shall be allowed time off with no loss in pay for the time required to receive a physical examination or re-examination as ordered by provisions of a national conscription act or by any branch of the national or state military services.

Every employee who has been called to active military duty in direct connection with an armed conflict, after exhausting salary or compensation to which he or she is entitled to under the California Military and Veterans Code, shall be entitled to salary augmentation of up to one hundred percent (100%) of his or her regular Court base salary in combination with military pay for a period not to exceed 365 calendar days (one year) while engaged in the performance of ordered active military duty. Employees with single coverage shall not be entitled to medical, dental, vision, life insurance or other benefits.

Employees who have family coverage shall be entitled to medical, dental and vision care coverage, with such premiums as customarily paid for by the Court, concurrent with the period that employee is on the partial salary continuation plan.

As used in this section, the term “employee” means an employee who:

- (1) is ordered into active military duty as a member of a reserve component of the armed services of the United States;
- (2) is ordered into active federal duty as a member of the National Guard or Naval Militia;
- (3) enlists, enters, or is otherwise called into active duty as a member of the Armed Forces of the United States.

ARTICLE 13 – ADMINISTRATIVE LEAVE

CEMA employees are salaried employees who are exempt from the Fair Labor Standards Act and are expected to work the number of hours necessary to fulfill the duties of their positions without overtime pay. Recognizing this fact, the Court may grant paid administrative leave to supervisory and management employees in its discretion. CEMA employees may be granted paid administrative time off if the manager determines that services and performance of job functions will not be adversely affected because of the absence. Administrative leave is granted at the sole discretion of the Court, and should not be calculated on an hour-for-hour basis in relation to excess hours worked.

Administrative leave must be scheduled in advance and approved by the employee's manager (for increments of a half-day or less) or the Chief Executive Officer or his/her designee (for increments of more than a half-day). Employees need not state a reason when requesting administrative leave. Approved requests will be tracked by Court Administration for periodic audit.

ARTICLE 14 - LAYOFF PROCEDURES

Section 14.1 - Seniority Defined

For purposes of layoff, seniority is defined as follows:

- (a) For employees hired by the Court on or before the effective date of this Agreement:
 1. Staff Attorney ; Attorney -Mediator; Senior Mediator; Assistant Director, Family Officer; Manager, Planning and Grant Administration; Project Manager-Facilities; Information Systems Specialist Information Systems Specialist I, Information Systems Specialist II:
Seniority is defined as days of accrued service in the affected classification. Ties shall be broken by all hours with the Court (including the former Santa Clara County Municipal Court, the Santa Clara County Superior Court, and the County Clerk's Office) and the County of Santa Clara.
 2. All other positions: Seniority is defined as days of accrued service with the Court (including the former Santa Clara County Municipal Court, the Santa Clara County Superior Court, and the County Clerk's Office) and the County of Santa Clara. Ties shall be broken by time in the affected classification.
- (b) For all employees hired by the Court after the effective date of this Agreement, seniority is defined as days of accrued service in the affected classification.

Section 14.2 - Effect of Leaves of Absence on Seniority Rights

Employees shall not accrue additional days of service while on an unpaid leave of absence of longer than one (1) full pay period, except for time spent on family care and medical leave, maternity leave, workers' compensation leave, and military leave.

Section 14.3 – Reclassifications/Title Changes

No one shall lose seniority as a result of reclassification, title change or merging of classifications due to unification.

Section 14.4 - Order of Layoff

When one (1) or more employees in the same job classification are to be laid off, the order of layoff shall be in inverse order of seniority as follows:

- (a) Provisional employees;
- (b) Probationary employees; and

- (c) Non-probationary employees.

Section 14.5 - Notice of Layoff

Employees shall be given at least twenty (20) working days' written notice prior to the effective date of layoff. The procedures listed below shall be applied prior to the effective date of the layoff.

Section 14.6 - Reassignment in Lieu of Layoff

- (a) Inplacement

In the event of layoff(s), the Court and CEMA will attempt to identify transfers, promotions and demotions available to laid-off individuals on a voluntary basis prior to displacement.

- (b) Claiming Vacancies

Approximately halfway through the notice period, employees with layoff notices shall be offered, in seniority order, all vacancies in any Court classification in which they held permanent status.

- (c) Displacement

If no vacancies are available in the Court, or the employee and management cannot arrange an inplacement position, an employee with previous status in a classification shall have the right to claim such position by displacing the least senior person, in the next lower classification or equal classification. The person displaced will then have rights under this Article.

- (d) Lower Level Positions

In the event that an employee does not have enough seniority to claim a position under Section 14.6 (b) or (c), the provisions of those sections shall be applied to each subsequent lower level classification in which permanent or non-probationary status was formerly held.

Section 14.7 - Layoff

In the event that an employee is not reassigned in lieu of layoff as provided in Section 14.6, the employee shall be laid off. If an employee elects not to exercise the rights in Section 14.6(c), he or she may be deemed to have been offered and to have declined such work.

Section 14.8 - Recall

If the Court determines to fill a vacancy for a job classification from which employees have been laid off during the preceding twenty-four (24) months, the Court will fill the vacancy by recalling employees laid off from that position in reverse order of layoff. The Court will forward a notice of recall to the employee's last known address.

The employee must, within ten (10) working days of such notice, notify the Court of his or her intent to return to work on the date specified in the recall notice and thereafter return to work on that date. An employee recalled to work shall have all rights acquired prior to layoff restored. An employee will forfeit all recall rights by refusing to accept an offer of re-employment within the same classification of an equal number of hours per week.

Section 14.9 - Temporary Work for Laid-Off Employees

Laid-off employees who elect to be available for temporary work shall be given preference for such work in the classification from which they were laid off or any other vacant position for which they qualify. The election to be available for temporary work may be made at the time of layoff, or in writing at any time. Employees may decline to be available for temporary work or may decline such work itself without affecting any rights under this Article.

ARTICLE 15 - GRIEVANCE PROCEDURE

Section 15.1 - Grievance Defined

(a) Definition

A "grievance" is defined as an alleged violation, misinterpretation or misapplication of the provisions of this Agreement, or an alleged violation, misinterpretation or misapplication of the provisions of the Court's Personnel Rules resulting in disciplinary action or any other adverse consequences to an affected employee. Matters excluded under Section 15.1(b) shall not be subject to the grievance provisions of this Article.

(b) Matters Excluded From Consideration Under the Grievance Procedure

1. Performance evaluations/Management Planning and Appraisal Reports;
2. Release of probationary employees;
3. Position classification;
4. Workload/caseload;
5. Items requiring capital expenditures;
6. Items within the scope of representation that are subject to the "meet and confer process";
7. Items excluded by California Rule of Court 2204(b);
8. The appropriateness of the Personnel Rules of the Court; and
9. Items arising under the Preamble to this Agreement.

Section 15.2 - Grievance Presentation

- (a) Employees shall have the right to present their own grievances. Grievances may also be presented by CEMA.
- (b) CEMA shall receive copies of grievances and responses.
- (c) Grievances shall comply with all of the requirements of this Article. The Court shall not be required to reconsider a grievance previously settled with an employee if renewed by CEMA, unless it is alleged that the settlement violates an existing rule, memorandum of understanding, or this Agreement.

Section 15.3 - Informal Resolution of Grievance

The employee shall discuss any potential grievance with his or her immediate supervisor within ten (10) days after the occurrence or discovery of the alleged grievance to attempt to resolve the matter without the need for a formal grievance.

The supervisor shall give his or her decision to the employee in writing within ten (10) working days after their discussion. Any informal resolution of a grievance at this step must be in accordance with the provisions of this Agreement and shall not set precedent.

Section 15.4 - Formal Grievance

- (a) If the employee is not satisfied with the response from his or her supervisor, the employee or CEMA may present a formal grievance in writing to the Chief Executive Officer or his/her designee within ten (10) working days of the date of the written response. If the employee has not received a response from his or her supervisor within the ten (10) working day limit provided in Section 15.3, a formal grievance may be presented within ten (10) working days of the expiration of that period.
- (b) The grievance form shall contain information identifying:
 - 1. The aggrieved;
 - 2. The specific nature of the grievance;
 - 3. The time and place of its occurrence;
 - 4. The provision(s) of this Agreement alleged to have been violated, improperly interpreted, applied or misapplied;
 - 5. The consideration given or steps taken to secure an informal resolution; and
 - 6. The corrective action desired.
- (c) The Chief Executive Officer or his/her designee shall, within twenty (20) working days, investigate the matter and convey a decision to the aggrieved in writing with a copy to CEMA. If a grievance is filed by an employee who reports directly to the Chief Executive Officer concerning the Chief Executive Officer's acts or omissions, the investigation into the matter and subsequent decision shall be made by a member of the Court's Executive Management with no direct involvement in the matter.

The decision of the Chief Executive Officer or his/her designee shall be final and binding except in cases involving suspension, demotion or termination.

- (d) In cases involving suspension, demotion or termination, if the employee is not satisfied with the decision of the Chief Executive Officer or his/her designee, the employee may request that the grievance be referred to an impartial arbitrator. The request for arbitration shall be directed in writing to the Chief Executive Officer and must be made within twenty (20) working days of the Chief Executive Officer's decision. A pre-arbitration meeting shall be held at the request of either party, at which the employee may be accompanied by a representative from CEMA.
- (e) If no request for arbitration is made within the foregoing time period, the decision of the Chief Executive Officer or his/her designee shall be final and binding. A failure to timely request arbitration shall be deemed a waiver of that right.

Section 15.5 - Arbitration

No grievance shall be arbitrated without the written concurrence of CEMA. Within forty-five (45) calendar days of the receipt of the request for arbitration, the Court and CEMA shall select an arbitrator. The arbitrator shall be selected by mutual agreement or by striking from the panel of arbitrators set forth below. The arbitrator shall be a member of the National Academy of Arbitrators, and must have experience in labor-management and employment matters. The decision of the arbitrator shall be final and binding.

The fees and expenses of the arbitrator (including transcription fees) shall be borne equally by CEMA and the Court; and each party shall bear its own arbitration expenses.

For the term of this Agreement, the Court and CEMA have agreed to the following panel:

John Kagel
Barry Winograd
Barbara Chvany
Thomas Angelo
Albert Cohn

ARTICLE 16 - PERSONNEL FILES

Section 16.1 - Maintenance of Files

The Court shall maintain a personnel file for each employee. Employees shall have the right to review their personnel files at reasonable times and intervals, or to authorize review by their representative at reasonable times and intervals. No adverse material may be placed into an employee's personnel file without a copy also being furnished to the employee at the same time.

Section 16.2 - Additional Material

Employees shall have the right to respond in writing to adverse material placed in their personnel files and to have their written response placed in the file. In addition, employees may place in their personnel files a reasonable amount of correspondence originating from other sources that is directly related to their job performance.

Section 16.3 - Length of Time in File

- (a) Reports of unfavorable performance or conduct shall be removed from an employee's personnel file after two years, provided no additional reports have been issued during that period. Reports involving gross misconduct, immoral conduct or a criminal act shall not be removed from the file.
- (b) Materials relating to suspensions that have become final will be removed from an employee's personnel file after eight years, provided no other suspensions have occurred during the eight-year period. Suspensions for gross misconduct, immoral conduct or a criminal act shall not be removed from the file. Materials relating to disciplinary actions recommended but not taken, or disciplinary actions overturned at any step or on appeal, shall be removed from the file immediately.
- (c) Reports of unfavorable performance or conduct and materials relating to suspensions may be removed from an employee's personnel file sooner than provided in this section by agreement of the Court and the employee.

16.4 Anonymous Complaints

No anonymous complaints/comments may be used in any adverse action against an employee. Complaints/comments that are signed or identified may be used for individual/group training or employee evaluations, or as a basis for disciplinary action.

ARTICLE 17 - FULL AGREEMENT

It is understood this Agreement represents a complete and final understanding on all negotiable issues between the Court and CEMA. All statutory, constitutional, and inherent managerial rights, prerogatives, and functions are retained and vested exclusively in the Court, including but not limited to the right to issue and revise Personnel Rules from time to time, subject to the provisions of Section 1.2(c).

The Court's failure to exercise any right, prerogative, or function in a particular way shall not be considered a waiver of the Court's right to exercise such right, prerogative, or function or preclude it from exercising the same in some other way not in conflict with the express provisions of this Agreement. This Agreement supersedes all previous memoranda of understanding or memoranda of agreement between the Court and CEMA except as specifically referred to in this Agreement. The parties, for the term of this Agreement, voluntarily and unqualifiedly agree to waive the obligation to negotiate with respect to any practice, subject or matter not specifically referred to or covered in this Agreement even though such practice, subject or matter may not have been within the knowledge of the parties at the time this Agreement was negotiated and signed.

ARTICLE 18 - SAVINGS CLAUSE

If any provision of this Agreement should be held invalid by operation of law or by any court of competent jurisdiction, or if compliance with or enforcement of any provision should be restrained by any tribunal, the remainder of this Agreement shall not be affected thereby, and the parties shall enter into negotiations for the sole purpose of arriving at a mutually satisfactory replacement for such provision.

ARTICLE 19 - TERM OF AGREEMENT

This Agreement shall become effective immediately after midnight of January 20, 2003, and shall continue in full force and effect until midnight, January 16, 2005 and from year to year thereafter; provided, however, that either party may serve written notice on the other of its desire to terminate this Agreement or amend any provision thereof at least sixty (60) days before the expiration date of the Agreement.

DATED:

SANTA CLARA SUPERIOR COURT
NEGOTIATING COMMITTEE

CEMA
NEGOTIATING COMMITTEE

