



NEW YORK STATE
Unified Court System

OFFICE OF COURT ADMINISTRATION

HON. JOSEPH A. ZAYAS
CHIEF ADMINISTRATIVE JUDGE

HON. NORMAN ST. GEORGE
FIRST DEPUTY CHIEF ADMINISTRATIVE JUDGE

DAVID NOCENTI
COUNSEL

MEMORANDUM

To: All Interested Persons
From: David Nocenti
Re: Request for Public Comment on a proposal to amend Section 25.15(g) of the Rules of the Chief Judge regarding provisional service credits
Date: December 28, 2023

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The Administrative Board of the Courts is seeking public comment on a proposal to amend Section 25.15(g) of the Rules of the Chief Judge to conform with a recent amendment to Section 63(1) of the Civil Service Law relating to provisional service credit for civil service employees.

On September 7, 2023, Governor Hochul signed Chapter 356 of the Laws of 2023, amending Civil Service Law § 63(1) to provide that any person appointed provisionally under the Civil Service Law, who thereafter receives a permanent appointment to the same title, “shall have all time spent as a provisional appointment credited to any probationary term that is required upon permanent appointment” to the position.

The purpose of the new law is to avoid hardships on civil service employees who are placed in a provisional status for extended periods of time, which often occurs because of the infrequency in which some civil service exams are offered. These employees are not entitled to the normal union disciplinary processes and are subject to termination at will while in provisional status. When a civil service exam is finally offered and the employee passes and is placed in a permanent position, the employee then is subject to a period of probation of up to one year – even though they already have been serving in the exact title for an extended period of time.

The new law simply provides that the time an employee spends in *provisional* status in a title will count towards any required probationary time they are subject to if they achieve *permanent* status in that title. As noted by the bill’s sponsors, probationary periods are intended

to provide managers with a period of time to judge the performance of a new employee in a position, but that is not necessary if the employee has already been serving in that position for an extended period of time as a provisional employee.

Section 25.15(g) of the Rules of the Chief Judge currently states that “[n]o credit . . . shall be granted to any person for any time served as a provisional appointee in the position to which promotion is sought or in any similar position,” and therefore conflicts with the new law and must be amended. *See* Civil Service Law § 211(1)(d) (providing that the personnel practices affecting non-judicial employees “shall be consistent with the civil service law”).

The following amendment to Section 25.15(g) would eliminate the current inconsistency between the Rules of the Chief Judge and the new Civil Service law provision [deletions ~~stricken~~ and additions underscored]:

(g) Credit for provisional service. ~~No credit in a promotion examination shall be granted to any person for any time served as a provisional appointee in the position to which promotion is sought or in any similar position; provided, however, such~~ Any person appointed provisionally who receives a permanent appointment to the same title shall have all time spent as a provisional appointment credited to any probationary term that is required upon permanent appointment to a position. Such provisional appointee by reason of such provisional appointment shall also receive credit in his or her permanent position from which promotion is sought for such time served in such provisional appointment.

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Persons wishing to comment on the proposal should e-mail their submissions to rulecomments@nycourts.gov or write to: David Nocenti, Esq., Counsel, Office of Court Administration, 25 Beaver Street, 10th Fl., New York, New York, 10004. Comments must be received no later than February 2, 2024.

All public comments will be treated as available for disclosure under the Freedom of Information Law and are subject to publication by the Office of Court Administration. Issuance of a proposal for public comment should not be interpreted as an endorsement of that proposal by the Unified Court System or the Office of Court Administration.