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INTERPRETATIVE MEMORANDUM

DATE: July 29, 2011

FROM: Arthur W. Pepin, AOC Director

RE: **Family Medical Leave Act Policy & Same Employer Limitation**

The Federal Family Medical Act (FMLA) regulations speak only of husband and wife. Subpart B – Employee Leave Entitlements Under the FMLA, 29 CFR 825.201, in part states that a "Same employer" limitation applies to a husband and a wife who are eligible for FMLA leave and are employed by the same covered employer may be limited to a combined total of 12 weeks of leave during any 12-month period if the leave is taken to for the birth of the employee's son or daughter or to care for the child after birth."

The Judicial Branch definition of an employee recognizes individuals who hold a permanent or term position within the Judicial Branch.

The Judicial Branch FML Qualifying Reasons for Leave Section 4A(2), states that, eligible employees will be granted up to a total of 12 work weeks of leave during any single 12-month period for listed reasons, of which one is for the birth and care of the newborn child of the employee. Section 4D states that spouses or domestic partners employed by the same employer are jointly entitled to a combined total of 12 work weeks of FML.

The policy does not address every possible parental scenario, such as two individuals who are to be parents of the same child in the same unit and location within the Judicial Branch. The policy did not intend to allow for example, individuals who are not married or declared domestic partners to be afforded more benefits than married couples or domestic partners.

Parents in whatever fashion that this relationship may manifest itself if employed within the Judicial Branch shall receive the same benefits under the policy as married individuals or domestic partners.

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