

# **Public Defender 7th Circuit Telework Program**

## **POLICY**

### **Purpose:**

This policy sets forth the Telework Program for the Office of the Public Defender, Seventh Judicial Circuit of Florida [Office] implementing Florida Statute 110.171 - “State Employee Telework Program”, and establishes procedures and guidelines for Office employees for participation in the Telework Program. This policy shall take effect September 12, 2022, and supersedes the previous “Public Defender 7<sup>th</sup> Circuit Telecommuter Program” signed by James Purdy, as well as any subsequent amendments to that program.

### **Reason for implementation of new Telework Policy:**

This office has previously allowed a limited class of assistant public defenders to partake in the Telework program. Specifically, assistant public defenders engaged in appellate practice and who reside a significant distance from the appellate office have been allowed to engage in Telework in the past.

However, new considerations have caused a re-evaluation of this policy. They include:

- (i) advances in information technology, including the implementation of digital (“paperless”) transmission of appellate records, motions and briefs, and the transfer of the majority of the appellate records into our STAC case management system allow for better oversight;
- (ii) advancements in case load management programs within the office that allow better oversight regarding timely filing of quality work product and monitoring of productivity;
- (iii) for approximately two years COVID-19 has required our trial and appellate offices to periodically work remotely. The experience has proven that, with some limitations, the attorneys working remotely can be as productive as they are in their physical office;
- (iv) the legal workforce in Florida has made a significant shift into telework. The goals of recruitment and retention require that this office make significant strides to adapt to the changing legal landscape.

As a result of these considerations, the implementation of a new Telework Program is deemed necessary and appropriate to balance the previous policy considerations with the current considerations set forth above.

### **Definitions:**

“Telework” is a voluntary work arrangement whereby employees are permitted to perform the entirety of their normal duties and responsibilities of their position at an alternate work site. Teleworkers are expected to report to the designated alternate work site on a regular basis each work day.

“Part-time Telework” is a voluntary work arrangement whereby employees are permitted to perform the normal duties and responsibilities of their position at an alternate work site for a limited number of hours each week. Part-time Teleworkers are expected to report to the designated alternate work site on a regular basis on the days that have been previously scheduled for Part-time Telework.

“STAC” is the document management system used by the Office.

A review of all established positions in the Office has resulted in the following positions being approved for Part-time Telework: assistant public defenders located in the trial and appellate positions.

A review of all established positions in the Office has resulted in the following positions being approved for Telework: assistant public defenders located in appellate positions who reside at least 50 miles from their primary designated location in the Office.

Telework (working full-time out of the office) is limited to appellate practice. The deadlines and procedural requirements of that practice coupled with occasional work-product review allow a supervisor reasonable assurances for evaluating employee performance, reasonable use of equipment, and productivity levels.

### **Policy Statements and Guidelines:**

- Participation in the Telework Program is voluntary and must be mutually agreed to by the employee and the Public Defender. The job responsibilities of the attorney are amenable to performance at an alternate work site inasmuch as they include and are primarily limited to: record review, research, preparation of motions, pleadings and briefs, and telephone or video communication with relevant individuals.
- Employee requests to Telework or Part-time Telework will be considered by the Public Defender on an individual basis so as to determine whether the specific employee has the necessary skills, ability, and experience.
- Minimum Considerations for Telework (full-time):
  - (i) At least five (5) years of experience in the practice of law as a member of the Florida Bar or, alternatively, at least five (5) years of experience in the licensed practice of law in another state or with the federal government, and current membership in the Florida Bar,  
**AND**

(ii) A minimum of one (1) year employment in criminal appellate practice with the appellate division of the Florida Attorney General's Office, one (1) year of practice with one of the criminal appellate divisions within the Florida Public Defender system, one (1) year of practice as a full time appellate attorney with an Office of Regional Counsel (or comparable appellate offices for the federal government, a state government or indigent defense), or as a staff attorney for a state or federal appellate court.

● Minimum Considerations for Part-time Telework:

(i) At least one (1) year of experience in the practice of law as a member of the Florida Bar or, alternatively, at least one (1) year of experience in the licensed practice of law in another state or with the federal government, and current membership in the Florida Bar, **AND**

(ii) A minimum of six (6) months of employment as a criminal appellate attorney in the Office or a minimum of six (6) months of employment as a criminal trial attorney in the Office in a position other than misdemeanor trial attorney.

- The Public Defender reserves the right to waive the minimum considerations for Telework and Part-time Telework on a case-by-case basis.
- In order to establish satisfactory performance standards of the Teleworker or Part-time Teleworker they must be available for telephonic and e-mail communications during regular established office hours unless they are on annual leave, sick leave, or a scheduled break.
- Teleworking employees may be required to report to the official worksite for training, meetings, or other activities requiring the employee's physical presence upon reasonable notice.
- It may be necessary for the office to partially or entirely halt the Telework or Part-time Telework program to meet in-person staffing needs or for any other reason deemed to be in the best interest of the Office. Hours designated for Part-time Telework do not accrue, are not transferable, and are not subject to payout.
- In the event the Office or facility, or any portion thereof, is closed due to a non-emergency or non-disaster condition, Teleworking and Part-time Teleworking employees who are assigned to that office or facility as their official work headquarters, or whose home has been designated as the employee's official work headquarters and is not impacted by the closure, shall continue to perform their assigned work duties at the approved alternative worksite. Because these employees will not be impacted by this closure, they shall not receive special compensatory leave credits for work performed during the period their office or facility, or portion thereof, is closed.
- Teleworking and Part-time Teleworking employees who are unable to perform work at the alternative worksite due to circumstances beyond their control, such as a power outage or loss

of internet access, shall be treated in the same manner as non-teleworking employees who are unable to perform their job duties at the official worksite under similar circumstances. Teleworking and Part-time Teleworking employees must immediately notify their supervisor if they are unable to perform work. Employees may be asked to return to their primary worksite.

- Any employee engaged in Part-time Telework will be required as part of their agreement to update STAC with their work. The update shall be related to the case numbers they have been working on in the Events Tab or other location in STAC as directed by the Office a minimum of two (2) times a day to describe in detail the work they have conducted. The updates shall occur at regular intervals in the morning and in the afternoon. In the event an employee has work unrelated to a particular case number the employee shall email their division chief a summary of their work twice a day. Once immediately before their lunch break and once immediately before the end of the day.
- Employees may be required to update their work in STAC in the Event tab more than twice a day at the direction of their supervisor, the chief assistant public defender, or the Public Defender.
- An employee engaged in Telework or Part-time Telework may be required by the Office to provide a phone number that will be provided to clients, judges, court staff, or other parties who may need to reach the employee during work hours. If the employee does not want their personal phone number used in this manner it is their responsibility to provide an alternate phone number where the employee may be reached directly.
- Appropriate electronic information security must be created by the Office's Information Systems personnel for the operation of any electronic equipment used for the benefit of the Office by the Teleworkers and Part-time Teleworkers and they must abide by all established security requirements.
- A Telework agreement or contract will be executed by the Teleworkers and Part-time Teleworkers and the Public Defender. The Telework agreement will incorporate by reference the provisions of Florida Statute 110.171 and this policy.
- Teleworkers and Part-time Teleworkers may elect to cease their participation in the program at any time. Further, the agreement may be cancelled or revised at the discretion of the elected Public Defender, with or without cause, upon compliance with the notice requirements of Florida Statute 110.171(6)(b)&(c). Teleworkers and Part-time Teleworkers will be compensated for all pay, leave, and travel entitlements as if duties were being performed at the official work location.
- Telework and Part-time Telework are subject to the rules and procedures as set forth in the Office of the Public Defender Manual of Personnel Rules and Office Procedures ["the Manual"], located on the Office interoffice website, and they shall be covered by worker's compensation when in the performance of official work duties at the alternate work site. Telecommuting will not adversely affect an employee's eligibility for advancement, pay

increases, or any other employee right or benefit. However, advancement of the employee within the office may require termination of their Telework or Part-time Telework status.

- Teleworkers and Part-time Teleworkers shall verify in writing that their alternate work site provides a work space that is free of safety and fire hazards and shall agree that the State of Florida and Office of Public Defender will be held harmless against any and all claims, excluding worker's compensation claims, resulting from Office work at the alternate work site.
- No employee authorized to Telework or Part-time Telework will be allowed to conduct face-to-face State of Florida business at the alternate work site.
- The Office will not be liable for damages to the employee's property resulting from participation in the Telework program. In signing a Telework agreement, the employee agrees to hold the Office and the State of Florida harmless against any and all claims, excluding workers' compensation claims.
- An employee authorized to Telework or Part-time Telework will be responsible for any and all charges incurred by the employee for work space, utilities, copying, office supplies, internet access, and telephone charges incurred by the employee incidental to the performance of employee's job responsibilities at the alternative work site.
- An employee authorized to Telework or Part-time Telework is prohibited from engaging in the private practice of law. An employee authorized to Telework is prohibited from engaging in any other gainful employment during Public Defender business hours as established by the Manual.
- The Office will provide and maintain necessary equipment and software for the Teleworker or Part-time Teleworker at the alternate work site. The Office will not cover the cost of repair or maintenance of an employee's personal equipment. When requested by a member of the administrative staff of the Office, the Teleworker or Part-time Teleworker will provide an itemized inventory of all Office equipment in the possession of the employee at the alternative work site. Should any office equipment or software malfunction or become damaged, the employee shall promptly notify their division supervisor. Upon termination of employment or teleworker status, they shall return all Office equipment and property in proper working order to the administrative office of the Public Defender, Seventh Judicial Circuit of Florida, located at 251 N. Ridgewood Avenue, Daytona Beach, FL 32114 within 3 business days.
- Employees participating in the Telework or Part-Time Telework Program are expected to maintain Office property and information securely on their alternate work site. Office equipment shall be located behind locked doors when not in active use. Employees shall use the Office virtual private network (VPN) to establish a connection to STAC and use the network to maintain the confidentiality of information related to their employment.
- Employees on a performance improvement plan shall not be eligible for Teleworking or Part-time Teleworking.

- The Public Defender 7th Circuit Telework Program and/or this Policy may be revised or revoked at the discretion of the Public Defender consistent with the notice requirements of Florida Statute 110.171.

Policy approved this   12th   day of  September , 2022

/s/ Matthew Metz

Matthew Metz

Public Defender

Seventh Judicial Circuit of Florida