



**DISTRICT OF COLUMBIA
JUDICIAL NOMINATION COMMISSION**

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The Honorable Emmet G. Sullivan
Chairperson

Katherine L. Garrett
Executive Director

February 12, 2016

The Honorable Kenyan McDuffie
Chairperson, Committee on the Judiciary
Council of the District of Columbia
1350 Pennsylvania Avenue, NW, Suite 506
Washington, DC 20004

Dear Chairperson McDuffie:

On behalf of the District of Columbia Judicial Nomination Commission ("Commission"), I respectfully provide the following responses to the questions set forth in your letter dated January 26, 2016.

General Questions

1. Please provide, as an attachment to your answers, a current organizational chart for the agency, including the number of vacant, frozen, and filled FTEs in each division or subdivision. Include the names and titles of all senior personnel. Also provide the date that the information was collected on the chart.
 - a. Please provide an explanation of the roles and responsibilities for each division and subdivision.
 - b. Please provide a narrative explanation of any changes made during the previous year.

Response:

- (a) See attached organizational chart. Attachment 1.
 - (b) There were no organizational changes made during the year.
2. Please provide, as an attachment, a current Schedule A for the agency, which identifies all employees by title/position, current salaries, fringe benefits, and program. This Schedule A should also indicate if the positions are continuing/term/temporary/contract and whether they are vacant or frozen positions.

- a. For each vacant position, please provide the status of the agency's efforts to fill the position, as well as the position number, the title, the program number, the activity number, the grade, the salary, and the fringe associated with each position. Please also indicate whether the position must be filled to comply with Federal or local law.
- b. For each filled position, please provide the employee's length of service with the agency.

Response:

- (a) See Attachment 2.
- (b) Length of service: Executive Director Katherine L. Garrett EOD April 20, 2015; Executive Assistant Cecelia Harper EOD September 21, 2015.

3. Please list all employees detailed to or from your agency, if any. For each employee identified, please provide the name of the agency the employee is detailed to or from, the reason for the detail, the date of the detail, and the employee's projected date of return.

Response: None.

4. Please provide the Committee with:
 - a. A list of all employees who received or retained cellphones, personal digital assistants, or similar communications devices at agency expense in FY15 and FY16, to date;

Response: Executive Director – Katherine L. Garrett has received and retained an iPhone 6 at agency expense since starting at the agency in April 2015. Former Executive Director – Kim Whatley had a Blackberry issued at agency expense in FY15 until her departure from the agency on December 31, 2014. The former Executive Assistant, Irvie Ozier, had a Blackberry issued at agency expense in FY15 until her departure from the agency on May 29, 2015.

- b. A list of all vehicles owned, leased, or otherwise used by the agency and to whom the vehicle is assigned, as well as a description of all vehicle accidents involving the agency's vehicles in FY15 and FY16, to date;

Response: None.

- c. A list of employee bonuses or special award pay granted in FY15 and FY16, to date;

Response: None.

- d. A list of travel expenses, arranged by employee for FY15 and FY16, to date, including the justification for travel; and

Response: See Attachment 3.

- e. A list of the total overtime and workers' compensation payments paid in FY15 and FY16, to date, including the number of employees who received overtime and workers' compensation payments.

Response: See Attachment 4.

5. With regard to the use of communication devices:

- a. What procedures are in place to track which individuals or units are assigned mobile devices (including, but not limited to smartphones, laptops, and tablet computers)? Please include how the usage of these devices is controlled.
- b. How does your agency limit the costs associated with its mobile devices?
- c. For FY15 and FY16, to date, what was the total cost including, but not limited to, equipment and service plans for mobile communications and devices?

Response: The Commission is an agency with two employees. One employee, the Executive Director, is assigned a mobile device (cell phone). The Executive Director evaluates the Commission's need for additional mobile devices, and has worked with OCTO to ensure that costs are contained and inventory is controlled. In FY15, the Commission had two cellphones, one for the Executive Director and one for the Executive Assistant. On evaluation of usage and need, the current Executive Director reduced this to one cell phone. Cost information is provided in Attachment 5.

6. Please provide a chart showing your agency's approved budget and actual spending, by division, for FY15 and FY16, to date. In addition, please describe any variance between fiscal year appropriations and actual expenditures.

Response: See Attachment 6.

7. For FY15 and FY16, to date, please list all intra-District transfers to or from the agency.

Response: See Attachment 7.

8. For FY15 and FY16, to date, please identify any special purpose revenue funds maintained by, used by, or available for use by the agency. For each fund identified, provide: (1) the revenue source name and code; (2) the source of funding; (3) a description of the program that generates the funds; (4) the amount of funds generated by each source or program; and (5) expenditures of funds, including the purpose of each expenditure.

Response: None.

9. Please list each contract, procurement, lease, and grant awarded, entered into, extended, and option years exercised, by your agency during FY15 and FY16, to date. For each contract, please provide the following information, where applicable:
- a. The name of the contracting party;
 - b. The nature of the contract, including the end product or service;
 - c. The dollar amount of the contract, including budgeted amount and actually spent;
 - d. The term of the contract;
 - e. Whether the contract was competitively bid;
 - f. The name of the agency's contract monitor and the results of any monitoring activity; and
 - g. Funding source.

Response: The Commission entered into one contract in FY15, and has entered into no other contracts, procurements, leases, or grants in either FY15 or FY16 to date. Details on the contract are:

- a. TycoIS Security System
- b. Contract was to install a security system at the Commission's suite in the District of Columbia Courts Building A, Room 235, to provide for secure, monitored access to the suite.
- c. Contract amount: \$17,747.00 contracted and spent.
- d. Contract was for service (installation of security system), and installation began the week of September 14, 2015 and work was completed on September 22, 2015.
- e. The contract was not competitively bid. The Commission is housed within the District of Columbia Court complex, and the security system is connected to the Courts' infrastructure. Any contractor installing the system would have access to secure areas of the court building and to the secure infrastructure. The Courts required the Commission to contract with TycoIS, which has the security system contract for all District of Columbia Court buildings, including Building A, where the Commission is housed. TycoIS is the nationwide security system provider for all federally-funded courts, including the District of Columbia Courts. Accordingly, the Commission secured approval from the Office of Contracting and Procurement to proceed with a sole source procurement for the security system.
- f. The contract monitor was Katherine L. Garrett. No issues were identified during the monitoring.
- g. Funds for the contract came from the Commission's FY15 federal appropriation.

10. For FY15 and FY16, to date, please list any purchase card spending by the agency, the employee making each expenditure, and the general purpose for each expenditure.

Response: See Attachment 8.

11. Please list all memoranda of understanding (MOU) entered into by your agency during FY15 and FY16, to date, as well as any memoranda of understanding currently in force. For each, indicate the date entered and the termination date.

Response: The Commission has MOUs with the Office of the Chief Technology Officer (OCTO), and the Office of Contracting and Procurement (OCP). See Attachment 9.

12. Please list the ways, other than memoranda of understanding, in which the agency collaborated with analogous agencies in other jurisdictions, with federal agencies, or with non-governmental organizations in FY15 and FY16, to date.

Response: The Commission has entered into an Interagency Agreement with the United States Department of Justice Federal Bureau of Investigation, Records Management Division, to secure information through the National Name Check Program concerning applicants for judicial vacancies. The current Interagency Agreement was signed October 27, 2015 and is in effect through September 30, 2018.

The Commission has contacted Judicial Nomination Commissions around the country to obtain information about the application and vetting processes they use. The Commission has also provided information about judicial vacancies to over 50 non-profit voluntary bar associations in the District of Columbia; a number of those associations have in turn shared the information with their membership, thus expanding the Commission's outreach.

13. Please describe any anticipated spending pressures for FY16. Include a description of the pressure, the estimated amount, and any proposed solutions.

Response: None.

14. Please list all currently open capital projects, including an update on all capital projects under the agency's purview in FY15 and FY16, to date, including the amount budgeted, actual dollars spent, and any remaining balances. In addition, please provide:

- a. An update on all capital projects begun, in progress, or concluded in FY14, FY15, and FY16, to date, including the amount budgeted, actual dollars spent, and any remaining balances.
- b. An update on all capital projects planned for FY16, FY17, FY18, FY19, FY20, and FY21.
- c. Do the capital projects begun, in progress, or concluded in FY14, FY15, or FY16 to date have an impact on the operating budget of the agency? If so, please provide an accounting of such impact.

Response: The Commission has no currently open, or planned, capital projects.

15. Please provide, as an attachment, a list of all budget enhancement requests (including, but not limited to, capital improvement needs), for FY15 and FY16, to date. For each, include a description of the need and the amount of funding requested.

Response: None.

16. Please list, in chronological order, every reprogramming in FY15 and FY16, to date, that impacted the agency, including those that moved funds into the agency, out of the agency, and within the agency. Include the revised, final budget for your agency after the reprogrammings for FY15 and FY16. For each reprogramming, list the date, the amount, the rationale, and the reprogramming number.

Response: None.

17. Please list each grant or sub-grant received by your agency in FY15 and FY16, to date. List the date, amount, and purpose of the grant or sub-grant received.

Response: None.

18. How many FTEs are dependent on grant funding? What are the terms of this funding? If it is set to expire, what plans (if any) are in place to continue funding?

Response: None.

19. Please list all pending lawsuits that name the agency as a party. Please identify which cases on the list are lawsuits that potentially expose the city to significant financial liability and/or will result in a change in agency practices, and the current status of the litigation. Please provide the extent of each claim, regardless of its likelihood of success. For those identified, please include an explanation about the issues involved in each case.

Response: None.

20. Please provide the total number of administrative complaints or grievances that the agency received in FY15 and FY16, to date, broken down by source. Please describe the process utilized to respond to any complaints and grievances received and any changes to agency policies or procedures that have resulted from complaints or grievances received.

Response: None.

21. Please list and describe any ongoing investigations, audits, or reports on the agency or any employee of the agency, or any investigations, studies, audits, or reports on the agency or any employee of the agency that were completed during FY15 and FY16, to date, along with the agency's compliance or non-compliance with any recommendations.

Response: None.

22. Please provide, as an attachment, a copy of the agency's FY15 performance plan. Please explain which performance plan objectives were completed in FY15 and whether or not they were completed on time and within budget. If they were not, please provide an explanation.

Response: See Attachment 10.

23. Please provide, as an attachment, a copy of your agency's FY16 performance plan as submitted to the Office of the City Administrator.

Response: See Attachment 11.

24. Please provide the number of FOIA requests for FY15 and FY16, to date. Include the number granted, partially granted, denied, and pending. In addition, please provide the average response time, the estimated number of FTEs required to process requests, and the estimated number of hours spent responding to these requests.

Response: None.

25. Please provide a list of all studies, research papers, reports, and analyses that the agency prepared, or contracted for, during FY15 and FY16, to date. Please state the status and purpose of each. Please submit a hard copy to the Committee.

Response: The Commission publishes annually an updated report on recommendations to fill judicial vacancies on the Superior Court of the District of Columbia and the District of Columbia Court of Appeals, as well as appointments to the position of Chief Judge of each Court. A copy of the most recent report, published in FY16, and covering activity through September 30, 2015, accompanies this letter.

26. How does the agency solicit feedback from customers? Please describe.

- a. What has the agency learned from this feedback?
- b. How has the agency changed its practices as a result of such feedback?

Response: The Commission frequently inquires of and learns from members of the bar, bench, and public about ways to improve the manner in which the Commission does its work.

(a) The Commission constantly improves its practices as a result of feedback obtained.

(b) The Commission, on an ongoing basis, improves its application materials, website, and outreach as a result of feedback obtained. One concrete example is that in FY15, based on applicant feedback, the Commission provided a 'short form' questionnaire for applicants who had recently applied for a vacancy, thus streamlining the application process for certain applicants.

Personnel

1. Please separately list each employee whose salary was \$100,000 or more in FY15 and FY16, to date. Provide the name, position number, position title, program number, activity number, salary, and fringe. In addition, state the amount of any overtime or bonus pay received by each employee on the list.

Response: See Attachment 12.

2. Please list in descending order the top 25 overtime earners in your agency in FY15 and FY16, to date. For each, state the employee's name, position number, position title, program number, activity number, salary, fringe, and the aggregate amount of overtime pay earned.

Response: As noted in response to General Question 4e above, no Commission employees earned overtime in FY15. For information about FY16 overtime, see response to General Question 4e and Attachment 4.

3. Please provide each collective bargaining agreement that is currently in effect for agency employees. Please include the bargaining unit and the duration of each agreement.

Response: None.

4. Does the agency conduct annual performance evaluations of all its employees? Who conducts such evaluations? What steps are taken to ensure that all agency employees are meeting individual job requirements?

Response: The Executive Director conducts annual performance evaluations of the Commission's Executive Assistant. The Director meets regularly with the Executive Assistant to discuss work assignments and requirements.

Agency Operations

1. Please list each new program implemented by the agency during FY15 and FY16, to date. For each initiative, please provide:
 - a. A description of the initiative;
 - b. The funding required to implement to the initiative; and
 - c. Any documented results of the initiative.

Response: None.

2. Please explain the impact on your agency of any legislation passed at the federal level during FY15 and FY16, to date, which significantly affected agency operations. If regulations are the shared responsibility of multiple agencies, please note.

Response: None.

3. Please list all regulations for which the agency is responsible for oversight or implementation. Please list by chapter and subject heading, including the date of the most recent revision.

Response: None.

4. Please identify any statutory or regulatory impediments to your agency's operations, including any outstanding legislative requirements of the agency (e.g. implementation of rulemakings).

Response: None.

5. Please identify all electronic databases maintained by your agency, including the following:
 - a. A detailed description of the information tracked within each system;
 - b. The age of the system and any discussion of substantial upgrades that have been made or are planned to the system; and
 - c. Whether the public can be granted access to all or part of each system.

Response: None. A pilot SharePoint database is currently in development in FY16 with OCTO. It currently houses only selected judicial applicant materials. No public access can be granted to those materials. By statute, information, records, and other materials furnished to or developed by the Commission in connection with its duties are privileged, confidential, and expressly exempted from the Freedom of Information Act. D.C. Code § 1-204.34(c)(3).

6. What are your top five priorities for the agency? Please provide a detailed explanation for how the agency expects to achieve or work toward these priorities in FY16.

Response: The Commission's top priorities are:

- Timely recommend to the President of the United States a list of three persons for possible nomination for each vacancy on the District of Columbia Court of Appeals and Superior Court of the District of Columbia;
- Timely select Chief Judges for the District of Columbia Court of Appeals and the Superior Court of the District of Columbia, as required;
- Create and maintain a secure applicant database to streamline the application and review process; and

- Conduct regular outreach to educate the legal community about the judicial application process.

The Commission has created a comprehensive tracking system for determining when judicial terms expire, as term expirations may result in vacancies. In addition, the Commission maintains close contact with District of Columbia Court leadership and the District of Columbia Commission on Judicial Disabilities and Tenure to identify additional vacancies (due, for example, to retirement prior to the conclusion of a judge's 15-year term). This ensures that the Commission is well-positioned to timely notify the public of vacancies and recommend persons for possible nomination to the President. Communication with Court leadership also ensures that the Commission is well-positioned to schedule the process for Chief Judge designations/re-redesignations.

The Commission continues to work towards the goals of providing Commissioners with the ability to review applications online, and online submission of materials by applicants. By way of background, applicant materials include a detailed form that requests applicants to provide extensive personally identifying information (PII), letters of interest, resumes, writing samples, and letters of support and evaluation from the public. Some – but not all – of these materials present risks to the individual applicants if they are accessed by third parties. Further, these materials are designated as privileged and confidential by statute. D.C. Code § 1-204.34(c)(3).

The Commission has made significant progress on its goal of providing for online review of applicant materials, using resources available through OCTO. The Commission developed and launched in September 2015 a limited-access website available only to Commissioners and Commission staff that provides access to selected materials pertaining to each applicant for any active vacancy: letters of interest, resumes, letters of support, and evaluations. The limited-access website is a solid interim step to providing the Commissioners with the ability to review application materials online. This website, however, has finite storage capacity which limits the number of items that can be posted. In addition, although the security of the website is strong, the Commission, in consultation with OCTO, has determined that the documents containing PII should not be uploaded to the site.

As the Committee is aware, in 2014, the Commission initiated the development of the Judicial Application System, which was originally envisioned to be accessible by both Commissioners and applicants for judicial vacancies. The breach of the U.S. Office of Personnel Management (OPM) database, announced in June 2015, highlighted the vulnerability of databases, and caused the Commission to re-evaluate this approach to collecting and securing data. As the system would have been hosted by an outside contractor, the Commission worked closely with OCTO and other database experts to analyze and understand the benefits and risks of maintaining a database housing the type of PII the Commission collects. The Commission is also mindful of the costs of this approach as implementing and maintaining a database, updating it when changes are made to Commission forms, and maintaining and regularly updating the highest levels of security for the database, could add significantly to the Commission's fixed expenses. For these

reasons, the Commission is working with OCTO to achieve two goals. The first goal is to create a database that will streamline the review of applications by Commissioners by providing greater online storage capacity, and ensure secure, limited user access. The second goal is to provide a secure portal through which applicants can submit applications online. Revising the Commission's judicial application form, to limit collection, and thus potential exposure, of some of the most sensitive PII, is the first step in this latter process, and is underway.

The Commission continues to expand its outreach efforts in the legal community. One outreach event was held in January 2016 through a voluntary bar association, and two more are scheduled in the coming months. The Commission continues to explore additional means for reaching prospective applicants.

7. Please provide a current list of Commission members, including the appointing authorities and term expiration dates.

Response: See Attachment 13.

8. Please discuss the following:
 - a. Exploring ways to improve the process by which applicants apply for judicial vacancies;
 - b. Implementing and maintaining an automated recordkeeping and archiving system;
 - c. Launching the online application system; and
 - d. Expanding outreach efforts.

Response: Please see Response to Agency Operations Question 6, above.

The Commission has put in place a tracking system for applicant files that will automatically identify folders ready to be archived. At this point, all files continue to be maintained securely in the Commission's office. Because of the confidentiality of the records, however, the archiving process is complex and is still underway.

9. Please populate a chart indicating the candidates recommended by the Commission to the President of the United States for appointments to the Superior Court of the District of Columbia and the District of Columbia Court of Appeals. Please include the following:
 - a. Number of candidates confirmed by the Senate and when;
 - b. Existing judicial vacancies;
 - c. Upcoming vacancies;
 - d. Appointments awaiting a hearing;
 - e. Upcoming vacancies; and
 - f. Existing vacancies for which the Commission has not nominated candidates.

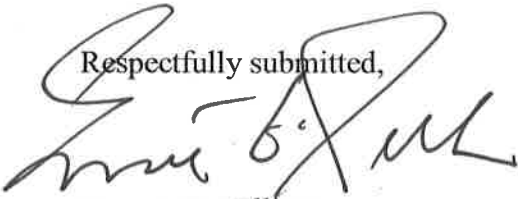
Response: Comprehensive historical information for judicial vacancies, Commission

recommendations, Presidential nominations, Senate confirmations, and Presidential appointments, current through September 30, 2015, is found in the Commission's report provided in response to General Question No. 25, above, and accompanying this letter. A vacancy exists when a judicial officer gives notice that she or he will not seek reappointment, retire or take senior status upon conclusion of a 15-year term, or when a judicial officer gives notice that he or she will retire prior to conclusion of his or her term. In addition, the Commission becomes aware of an upcoming vacancy if a judicial officer is nearing the mandatory retirement age of 74. The chart included as Attachment 14 provides information on all vacancies that were open in FY2015 through the date of this response, listing for each the information requested. See Attachment 14.

10. Please outline the challenges the District of Columbia Court of Appeals and the Superior Court of the District of Columbia experience as a result of unfilled judicial vacancies.

Response: The Commission does not have responsibility for the operations of the District of Columbia Court of Appeals and the Superior Court of the District of Columbia. However, the Chief Judges of these courts submitted letters to the United States Senate in November 2015 addressing the substance of your question. A copy of these letters is, with permission of the Chief Judges, attached. Attachment 15.

Respectfully submitted,



Emmet G. Sullivan
Chairperson

Attachments (15)

Enclosure (Report of Commission Recommendations 2015)