

**FEBRUARY 14, 2023 SUBMISSION OF
THE COMMISSION ON JUDICIAL DISABILITIES AND TENURE
(PERFORMANCE OVERSIGHT PRE-HEARING QUESTIONS)**

Fiscal Year 2022 Performance Oversight Questions

Commission on Judicial Disabilities and Tenure

PREAMBLE

The District of Columbia Commission on Judicial Disabilities and Tenure (“Commission” or “CJDT”) is pleased to respond to the Committee on the Judiciary & Public Safety (“the J&PS Committee” or “the Committee”) “Fiscal Year 2022 Performance Oversight Questions” in advance of the Chairperson’s appearance for testimony.

This Preamble is intended to provide important background information and context on the Commission, its statutory framework and mission, as well as changes the Commission has been implementing in recent years to improve its internal processes and efficiencies and, where possible, to increase its visibility and accessibility to the community.

While the Preamble and information herein confirm a range of Commission activities and action in recent fiscal years, especially FY 2021-FY 2023, the Commission wishes to emphasize and acknowledge that the District of Columbia Courts has a well-earned reputation for having one of the best Court systems in the country. Unlike other jurisdictions that have dealt with more serious, scandalous, and very public misconduct of judges, the District has not experienced that embarrassment. This is due in no small part to the work of the Commission who over the years has disciplined judges when appropriate and has ensured that only well-qualified Associate Judges were reappointed and only well qualified Senior Judges were recommended for continued judicial service. Further, and while the Commission and judiciary have different roles and do not always agree on these matters, the Commission’s proactive work with a willing, engaged, and thoughtful Court leadership and individual judges who are open to reflection and improvement, also has contributed greatly to productive discussions that are critical to avoiding more serious issues or problems.

I. CJDT Funding for FY 2023 and FY2024

On the present record, the CJDT believes it has sufficient funding for FY 2023 to support its functions, as well as legal and investigative services and planned software upgrades funded by the DC government. For FY 2024, after an appeal, the Commission achieved an increase in federal funding that, if approved in federal appropriations, will support its legal and investigative services, among other operational expenses. However, as discussed below and given the Commission’s transition from a largely paper-based system to a digitized system, the Commission will need supplemental FY 2024 support for permanent upgrades to CJDT’s in-office network infrastructure that exists downstream from the network switch, and to aid in fully implementing CJDT’s paper digitization and case management solutions.¹

¹ The Commission appreciates the support of the DC government in funding critical functions of the Commission in the last fiscal year. As the Committee is aware, the Commission’s budget challenges are well-documented and, in the past decade, CJDT has been under-funded in a number of areas,

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II. Commission Organization, Membership, and Background

The Commission is a unique, independent body, created by federal statute, with limited but important jurisdiction that provides an accountability check on DC judges and, in some instances, the DC court system. The Commission's jurisdiction is limited to judges in the DC Court of Appeals and DC Superior Court, and includes judicial conduct, reappointments, and senior judge reviews.

- Congress created the Commission in Title I of the District of Columbia Court Reorganization Act of 1970 ("Court Reorganization Act").² From the outset and as is true today, the Commission's mission is to maintain public confidence in an independent, impartial, fair, and qualified judiciary and to enforce the high standards of conduct judges in the District of Columbia courts must adhere to both on and off the bench.
- In 1973, the Commission's mission to review complaints of misconduct against judges in the District of Columbia Courts was reaffirmed and expanded by Congress to include reappointment evaluations of Associates Judges by District of Columbia Self-Government and Governmental Reorganization Act of December 24, 1973 (known as the "Home Rule Act").
- It was further expanded to include a decade later the performance and fitness reviews of Senior Judges by the Retired Judge Service Act of October 30, 1984. The District of Columbia Courts within its jurisdiction include the District of Columbia Superior Court and the District of Columbia Court of Appeals.

These statutes, the Commission's Rules, and the DC Code of Judicial Conduct are found on the Commission's website at <https://cjdt.dc.gov/page/governing-provisions-and-regulations>, and are attached for the Committee's background. *See* Attachments PRE. 1.-5.³

The Commission has seven members: One is appointed by the President of the United States, currently Mr. Thomas Fitton. Two are appointed by the Board of Governors of the District of Columbia Bar, currently Hon. Diane Brenneman, Ret. and Ms. Amy Bess, Esq. Two are appointed by the Mayor of the District of Columbia, currently Mr. William P. Lightfoot, Esq. and Ms. Nikki Sertsu. One is appointed by the City Council of the District of Columbia,

including its office operations and its critical function of investigations and legal services. While the quality of the Commission's work remained high during this period, the status quo is not sustainable. Therefore, the Commission greatly appreciates the Committee's willingness to engage and support CJDT in its efforts to correct this serious problem.

² Approved July 29, 1970 (84 Stat. 492; D.C. Official Code § 11-1521 et seq.).

³ *See* Attachments PRE. 1. DC Code §§ 11-1521 et seq (statute creating the Commission);

PRE. 2. DC Code §1-204-31 (Statute Reestablishing the Commission – Reappointments);

PRE. 3. DC Code § 11-1504 (Statute enlarging jurisdiction - retired judges); PRE. 4.

CJDT Rules, 28 DCMR §§ 2011 et seq. (2019); PRE. 5. District of Columbia Code of Judicial Conduct (2018 ed.).

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currently Dr. David P. Milzman, M.D. One is appointed by the Chief Judge of the United States District Court for the District of Columbia, currently Hon. Colleen Kollar-Kotelly.⁴ Our newest member as of October 2022, Ms. Bess, replaced our colleague and former Chairperson, Ms. Jeannine Sanford, Esq., who passed away last summer. Aside from Dr. Milzman, two members of the Commission are non-lawyers, including Mr. Thomas Fitton, President of Judicial Watch, and Ms. Nikki Sertsu, Senior Director, Planet Word. The term of office of the President's appointee is five years. All others serve six-year terms.

By statute and in accordance with the Commission's rules, Commissioners appoint a Chairperson and Vice Chairperson annually. Recently, the Commission unanimously re-elected for a second-term Judge Kollar-Kotelly as Chairperson and Ms. Brenneman as Vice Chairperson. The Chairperson and Vice Chairperson oversee and carry out the routine of Commission business with the assistance of its Staff and, as deemed necessary, other D.C. employees and the Commission's Special Counsel.⁵

III. Commission Operations, Administration, and Support

Since 1973, the Commission has had one permanent staff member, the Executive Director, a career service D.C. government employee, who was tasked with performing all essential operational and day-to-day business functions of the agency. The Executive Director consulted with the Chairperson on important and/or sensitive matters, as needed, and handled routine day-to-day matters independently. During certain periods, at her discretion and with the support of the Commission, the Executive Director hired an assistant or temporary staff contractor to support her on administrative matters.

In and around 2018 to 2019, under the leadership of former Chairperson Sanford, the Commission recognized the need for certain incremental changes and modernization of the Commission's offices and operations. The increasing complexity and volume of its work, increased use of technology in the community, and changes in how courts in the District (and across the country) conduct business also played a role in these changes. Around the same time, the Commission was transitioning its key role of outside Special Counsel following the retirement of Mr. Henry F. Schuelke III, who served the agency with distinction for 36 years until December 2018.⁶

⁴ On May 4, 2022, Chief Justice John Roberts of the United States Supreme Court appointed Judge Kollar-Kotelly to the Judicial Conference Committee on Codes of Conduct.

⁵ See DC Code § 11-1525 (Operations; personnel; administrative services); DC Code §1-204-31(d)(1) (Judicial powers); 28 DCMR § 2001.6 (Transaction of Commission Business).

⁶ Traditionally, the Commission has always been advised on important and sensitive legal matters by a dedicated and highly experienced outside Special Counsel who is knowledgeable about D.C. Court matters and who brings specialized experience, judgement, objectivity, and independence to the types of special, complex and, at times, unique matters before the Commission. The Commission requires this resource and skillset because its members must remain impartial, discreet, and objective in any disciplinary decisions or disposition of complaints involving potential judicial misconduct. Prior to Mr. Schuelke, the role was filled by Mr. Robert Bennett, Esq. Among other things, Special Counsel is tasked with reviewing complaints, conducting preliminary investigations, and advising on potential or actual disciplinary matters.

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Incremental changes between FY 2019 through FY 2023 have included, for example: (1) more formalized documentation around investigations and the review of complaints, as well as

reappointments and senior judge fitness reviews; (2) where possible and use of public statements or letters on matters of broader judicial or public importance; (3) staffing and other enhancements to improve and modernize the Commission's work.

A. Documentation (Complaints, Reappointments, Senior Judge Fitness Reviews)

- The Commission incrementally required more formalized documentation around investigations and the review of complaints to provide current and future Commissioners with better insight into a judge's historical performance and matters of precedent. While the Commission aimed to maintain the very high quality and sophistication of the CJDT's and Special Counsel's work, Commissioners also wanted to leverage historical records and data to facilitate and expedite their analysis of and response to sensitive and/or complex matters involving judges.
- Consistent with its approach to complaints, the Commission similarly encouraged individual Commissioners to enhance documentation prepared related to Reappointment and Senior Judge reviews.
 - During this period of FY 2020 through FY 2023, the Commission published five (5) Reappointment Evaluations, each of which is published on the CJDT website at <https://cjdt.dc.gov/node/574282>. A sixth judge who was up for Reappointment withdrew from consideration and retired. The Commission also conducted forty-five (45) senior judge fitness reviews.
 - In addition, in FY 2023, three (3) additional judges have declared their candidacy for reappointment as Associate Judges and will be under review in the coming months. An additional six (6) senior judges are up for senior judge fitness reviews.

B. Public Statements/Letters within Strict Confidentiality Limitations

- While the Commission is limited in what it can share publicly due to strict statutory confidentiality rules,⁷ the Commission became even more proactive in assessing where and under what circumstances it could share information publicly. The Commission sought to inform the community, litigants, and judges on matters of importance while balancing critically important and statutorily imposed confidentiality restrictions – both of which are essential to the Commission's mission and serve to protect judges, complainants, and witnesses.⁸

⁷ See Attachment PRE. 1. at § 11-1528 (privilege; confidentiality) and Attachment PRE. 4. at 28 DCMR § 2044 (confidentiality).

⁸ See D.C. Code § 11-1528.

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- During this period, the Commission issued in:
 - **FY 2022:**
 - One (1) public statement related to the misconduct of a judge who retired during the Commission’s review of the matter⁹
 - One (1) public statement related to an FY 2022 involuntary retirement and commenting on the obligation of attorneys and judges to comply with reporting requirements of Rules 2.14 and 2.15 of the D.C. Code of Judicial Conduct¹⁰
 - One (1) involuntary retirement in FY 2022 following a significant investigation in FY 2021¹¹
 - **FY 2020:**
 - One (1) public censure in FY 2020¹²
- During this period, the Commission also investigated other non-public concerns or complaints of possible judicial conduct and/or possible disability issues due to medical concerns that resulted in no action, monitoring, private resolutions, and/or retirement. The Commission is statutorily prohibited from releasing further information on these matters.
- Based on its review of complaints and concerns brought to its attention both formally and informally, the Commission recognizes its unique ability to observe actual or potential systemic issues and challenges that may impact an individual judge’s performance and/or ability to perform in accordance with the highest standards imposed by the Code of Judicial Conduct. Where such actual or potential issues and challenges are present, the Commission will interact with Court leadership and/or one or more individual judges to proactively manage appropriate awareness of issues or to stay abreast of systemic challenges and improvements. The Commission’s mission is to assure the public’s access to the fair administration of justice and the fair, impartial, courteous, and timely resolution of issues by judges is preserved.
- In recent years, the Commission engaged with the Court on matters of broader public interest that directly or indirectly impacted the work of the CJDT in a wide

⁹ See Attachment PRE. 6. (Commission Public Statement (Apr. 18, 2022)), also at <https://cjdt.dc.gov/sites/default/files/dc/sites/cjdt/publication/attachments/Public-Statement-Reappointment-Investigation-41922.pdf>.

¹⁰ See Attachment PRE.7. (Commission Public Statement (Dec. 20, 2021), also at <https://cjdt.dc.gov/sites/default/files/dc/sites/cjdt/publication/attachments/berk2.pdf>.

¹¹ See Attachment PRE. 8. (Uncontested Order of Involuntary Retirement of Judge Steven Berk, Associate Judge of the DC Superior Court (Nov. 4, 2021), also at https://cjdt.dc.gov/sites/default/files/dc/sites/cjdt/publication/attachments/3839_001.pdf.

¹² See Attachment PRE. 9. (Determination and Undertaking (Apr. 20, 2020) (relating to an investigation that spanned FY 2020 and FY 2021), also at <https://cjdt.dc.gov/node/1473551>.

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array of matters including, for example: the Court’s response to the COVID-19 pandemic and public emergency; the Court’s response to significant judicial vacancies and their impact on court business, such as management of

increased caseloads/pending motions, etc.; the development, implementation, and updates to the DC Court Employee Dispute Resolution Plan (EDR Plan); and challenges presented by the recent implementation of the DC Superior Court case management system. While the Commission and the DC Courts have different functions and may not always agree on matters, the Commission and the DC Courts have a long-standing tradition of cooperation, and the Commission has always found these discussions to be productive in serving the public interest.

- Although some of the Commission’s inquiries are non-public and confidential, examples of public inquiries are found on its website and include, for example:
 - **FY 2023:** The Commission sent a letter to Chief Judge Anita Josey-Herring of the DC Superior Court regarding challenges with the Court’s new case management system and the CJDT’s concerns about the impact of these technology problems on: (i) fair access to the courts, especially pro se litigants, and (ii) the potential negative impact workarounds may have on overburdening judges who must maintain the highest of ethical standards.¹³
 - **FY 2022:** Following the Commission’s December 20, 2021 Public Statement that reminded attorneys and judges of their obligations under Rules 2.14 and 2.15 of the Code of Judicial Conduct, the Commission re-reviewed and, on January 14, 2022, requested minor updates to the DC Court’s Employee Dispute Resolution (“EDR”) Plan as it pertained to judicial conduct matters. Those changes were adopted and published on January 26, 2022.¹⁴
 - **FY 2021:** The Commission issued a letter to the Chief Judges of DC Superior Court and the DC Court of Appeals regarding a range of

¹³ See Attachment PRE. 10., CJDT Letter to Chief Judge Anita Josey-Herring (DC Superior Court case management system) (Feb. 6, 2023), also at [Commission Letter to Chief Judge Anita Josey-Herring Re: DCSC Case Management System Challenges February 6, 2023 | cjdt.](#)

¹⁴ See Attachment PRE. 11. (EDR Plan, as amended), also found at [Employee Dispute Resolution | District of Columbia Courts \(dccourts.gov\)](#). The EDR plan discussions were not new. The Court had previously briefed the Commission of its staff reporting processes prior to the implementation of the EDR plan and on the ongoing development of the plan itself. See also Attachment PRE. 12. (CJDT Letter to DCCA and DCSC Chief Judges) (encouraging court and judicial staff to report instances of sexual harassment to the Commission, acknowledging concerns often present with such complaints, and confirming the Commission’s confidential process) (Apr. 2, 2018), also found at <https://cjdt.dc.gov/node/1325626>.

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perceived and/or actual ex parte communication concerns brought to its attention and recommending additional training of judges.¹⁵

C. CJDT Staffing and Other Enhancements

As these investigative and complaint review processes were occurring, and considering a noted uptick in the Commission's activities due to a wide range of issues, the Commission also focused on staffing needs and enhancements.

- While the Commission's initial priority focused on interim administrative support and the increased use of technology, by late 2021 through 2022, the Commission's attention increasingly turned to modernization of the Commission's acquisition of and effective use of technology and business continuity. These efforts resulted in the conception of an office technology upgrade project, now referred to as the Commission's "Modernization Project."
- Further, on matters of significant importance and at the recommendation of Special Counsel, the Commission increased its collaboration on highly sensitive and critical matters with the Legal Counsel Division of the District of Columbia Office of the Attorney General (OAG), as well as other District of Columbia agencies who have and continue to provide invaluable assistance to the Commission's operations.
- While no formal plans had been arranged, in recent years, Commission leadership also was keenly aware of the need for succession-planning and the eventual transition of the Executive Director role given her long-standing service and inevitable retirement.

The Commission's current Special Counsel, Amy Conway-Hatcher, Esq., has been assisting and advising Commission leadership on these and other substantive investigative matters since 2019. She is a former prosecutor in the District of Columbia who has - for over twenty years - conducted and advised organizational and individual clients on sensitive internal investigations, as well as proceedings involving federal and state enforcement agencies and high-profile crisis management matters on a wide range of conduct issues. Ms. Conway-Hatcher was selected based on her extensive experience, judgment, and approach to sensitive investigations, risk management, and remediation, as well as her practical approach and experience with organizations undergoing change.

IV. Commission Modernization Project

In the fall of 2021 (FY 2022), with the unanimous support of the Commission and after serving as Vice Chairperson and directly overseeing several Commission investigations of significance, Hon. Colleen Kollar-Kotelly agreed to serve as the new Chairperson to carry

¹⁵ See Attachment PRE. 13. (CJDT Letter to DCCA and DCSC Chief Judges (ex parte matters) (Jun. 14, 2021), also found at https://cjdt.dc.gov/sites/default/files/dc/sites/cjdt/publication/attachments/3674_001.pdf.

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forward the Commission's agenda and the goals initiated under Commissioner Sanford's leadership.

The top priority for Chairperson Kollar-Kotelly's term was and is continuing the Commission's high standard of excellence in appropriately reviewing and resolving delicate judicial matters.¹⁶ In parallel, Chairperson Kollar-Kotelly has been committed to pressing forward with former Chairperson Sanford's agenda including, among other things, the planning, funding, and executing of critical operational upgrades that would allow the Commission to be more nimble, responsive, and proactive in monitoring, reviewing, and addressing concerns of the community as it pertains to the conduct and reappointment of judges – whether raised formally or informally, or directly or indirectly through other sources.

Importantly, as envisioned, these operational upgrades eventually would allow for Commissioners to access precedent including, for example, (i) public and non-public disciplinary actions, (ii) significant investigations, and (iii) trends in concerns or complaints for judges, certain types of conduct or repetitive filings by complainants or about a specific judge – all of which the Commission will be able to review on an individual basis or in the aggregate during a specific discrete time period or over decades of judicial service.

After Chairperson Kollar-Kotelly's testimony in February 2022 and confirmation of funding for FY2023 in late spring 2022, the Chairperson, Vice Chairperson, Executive Director, and Special Counsel, reviewed possible complaint tracking technology solutions alongside the Commission office's specific needs. In the Fall 2022, with various and ongoing inputs from experts at the District of Columbia Office of the Chief Technology Officer (OCTO) and OAG's Chief Information Officer (CIO),¹⁷ the Commission's team selected a new complaint tracking platform that would allow the Commission to achieve its objectives.

The platform design phase has since been expanded to include organization of key data by judge at the "parent level" and will include sub-levels linked to data and various required actions specifically tied to: (i) complaints; (ii) reappointments, (iii) senior judge reviews, and (iv) other Commission actions related to statutorily required judicial annual financial reporting, review of judicial timesheets, and ethics training. The software project is being led by OAG pursuant to an MOU. As of FY 2023, the hardware, connectivity, office upgrades, and data repository/sharing capabilities are being led by OCTO.¹⁸ Both OCTO and OAG have dedicated senior level personnel to advise and coordinate services on behalf of the Commission. Both OCTO and OAG have been essential in advising the Commission on its current and future needs and are working collaboratively together and with the Commission to move these projects ahead quickly.

¹⁶ In her prepared written testimony submission, the Chairperson will outline some important and notable achievements leading up to and including FY 2022 and FY 2023.

¹⁷ The CIO recently changed roles, and the OAG project is now being ably led by the Acting CIO and Director of Practice Technology and Practice Administration.

¹⁸ Although OCTO's survey results are not yet complete, OCTO has stepped in to provide much needed critical short-term assistance. The Commission expects to enter into a separate MOU with OCTO in FY2023.

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As of last week, the Commission was informed that prototypes of the parent level and several sub-level designs will be ready on a rolling basis between February and April 2023. Meanwhile, OCTO is evaluating necessary office and other technology upgrades that will bring the Commission's office in-line with present-day standards.

As of today, the software tracking system element of the project is funded and in progress. Meanwhile, in January and February 2023, using existing resources, OCTO's Citywide Messaging team has resolved account access, file recovery, password reset, training, Office 365, and software access permission issues to CJDT's ongoing operational transition. At the same time, OCTO's DC Net team has installed a temporary upgraded network switch, provided additional bandwidth, and installed Wi-Fi access points on premises to drastically improve CJDT's connectivity. Further, OCTO's DC Net team has provided a senior staff member to serve as CJDT's single point of contact for technical advice as they navigate this stage of the modernization project. CJDT is now awaiting results of the OCTO-led survey of its office, existing hardware, storage, scanning, security, IT services, etc., as well as the estimated budget needs to achieve a largely paperless system, including CJDT historical records, for the future ("OCTO Survey"). CJDT will update the Committee further on both the survey results and related budget impact by March 10, 2023. For more information, see *infra* I.A. Organization and Operations, Response to Question 2.

V. Office Transitions

In November 2022 after forty-seven (47) years of service, the Executive Director announced her retirement, effective December 31, 2022. While Commission leadership anticipated the Executive Director's inevitable retirement, the timing of the decision was not part of a formal or coordinated succession plan. Thereafter, the Commission and the Executive Director began working very quickly in cooperation on essential knowledge transfer and an expedited transition plan.

Since the Executive Director's announcement, the Chairperson, Vice Chairperson, and Special Counsel have been and continue to coordinate with various agencies to assure access to Commission materials and communications, and to assure the agency's continuity and ability to meet all of its important obligations. Agencies that have provided invaluable assistance include:

- District of Columbia Office of the Attorney General (OAG), Legal Counsel Division, Personnel, Labor & Employment Division, and Practice Technology Department (legal, employment, information technology)
- District of Columbia Office of the Chief Technology Officer (OCTO) (technology matters)
- District of Columbia Office of the Chief Financial Officer (OCFO) (financial and budget matters)

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- District of Columbia Human Resources (DCHR) (human resources advice and support)

The Commission has received the necessary support in all areas by senior level personnel, and its operations are continuing uninterrupted.

Further, given the various ongoing projects and her special, unique knowledge of the Commission, the Chairperson has asked Special Counsel, along with the Vice Chairperson, to temporarily fulfill the duties of the Executive Director while the Commission conducts a search for a permanent replacement of this essential role. Due to the Commission's immediate priorities and as informed by guidance from OAG (and DCHR), the search for other permanent staff will be temporarily delayed until an Executive Director is hired.

VI. Conclusion

In summary, the Commission believes it is well-positioned to make significant strides on these and other priorities in FY 2023 on time and with its existing budgeted funds. The Commission will update the Committee on estimated FY 2024 needs by March 10, 2023.

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Fiscal Year 2022 Performance Oversight Questions

Commission on Judicial Disabilities and Tenure

A. ORGANIZATION AND OPERATIONS

1. Please provide a complete, up-to-date organizational chart for the agency and each division within the agency, including the names and titles of all senior personnel. Please include an explanation of the roles and responsibilities for each division and subdivision within the agency.
 - Please include a list of the employees (name and title) for each subdivision and the number of vacant, frozen, and filled positions. For vacant positions, please indicate how long the position has been vacant.
 - Please provide a narrative explanation of any changes to the organizational chart made during the previous year.

Response:

The Commission's most recent organizational chart is included below. Attached are three spreadsheets that show:

- Attachment A.1-1 (CJDT FY 2023 Schedule A – FTE listing). List of three FTE employees, including status, budgeted salary and fringe expenses.
- Attachment A.1-2 (R025 - Budgetary Control Analysis Report YTD_Personal Services Only). Lists three FTE employees and associated funding.
- Attachment A.1-3 (Fiscal Impact for Vacant Executive Director Position). Includes remaining budget for the Executive Director position following the retirement of the Executive Director, including salary and fringe paid from 10/1/2023 through 12/31/2022 and the unexpected unused annual leave payout.

Organization Chart Updates:

As discussed above, there are several updates to the Commission FTE and support positions, summarized below.

- The Commission is an independent body created by federal statute with responsibility for oversight of judicial conduct of DC judges, as well as reappointments and senior judge fitness reviews. Commissioners are duly appointed as prescribed by statute and serve for specified terms. Each year, the Commission elects a Chairperson and a Vice Chairperson, who are tasked with overseeing day-to-day and routine business matters of the Commission (or delegating responsibility for the same). By statute, the

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Commission can hire staff or contract for other services that it deems necessary for the performance of its duties.¹⁹

- For forty-seven (47) years, the Commission has been served by the same Executive Director who was involved in all important aspects of its work. From time-to-time, the Executive Director hired administrative staff to assist her. At times, that position was filled by permanent staff, and at other times, the position was filled by contract personnel. Most recently and until April 2022, the position was filled by temporary, part-time staff hired by the Executive Director on an “as needed” basis.
- As the Chairperson testified in the FY2022 oversight hearings, by Q2 FY2022, the Chairperson and Vice Chairperson determined that more senior level staff was needed to support the agency’s functioning and to provide technology and other skills the Commission office was lacking. The Chairperson and Vice Chairperson also determined that a Deputy Executive Director was prudent in the event the Executive Director was unavailable for any reason and to aid CJDT leadership in continuity, and/or possible succession planning.
- After discussing the Commission’s needs with the J&PS Committee and approval of funding for the position, Commission leadership began the process of planning and conducting a search for the Deputy position. In October 2022, the position was classified by DCHR. The position was posted in November 2022, extended in December 2022 and, after expiration, reposted in January 2023. Commission leadership has been assisted in the posting and review of applicants by OAG’s Chief Counsel and Senior Advisor Personnel, Labor & Employment Division.
- The Executive Director announced her retirement in November 2022, effective December 31, 2022. While Commission leadership anticipated the Executive Director’s inevitable retirement, the timing of the decision was not known in advance nor part of a formal succession plan coordinated with the Commission.
- As of February 8, 2023, the Commission is prioritizing its search for the more critical Executive Director role before reassessing and filling the remaining positions. The Commission is actively working with DCHR and OAG on the position description and announcement of the Executive Director position. Pending the search for the Executive Director, the Commission will suspend the Deputy Executive Director FTE posting. The Commission will re-evaluate its Staffing needs in FY2023.
- At the request of and under the direct supervision of the Chairperson and Vice Chairperson, the functions of the Executive Director are currently being filled by the Commission’s Special Counsel pursuant to a short-term two-month fixed fee contract

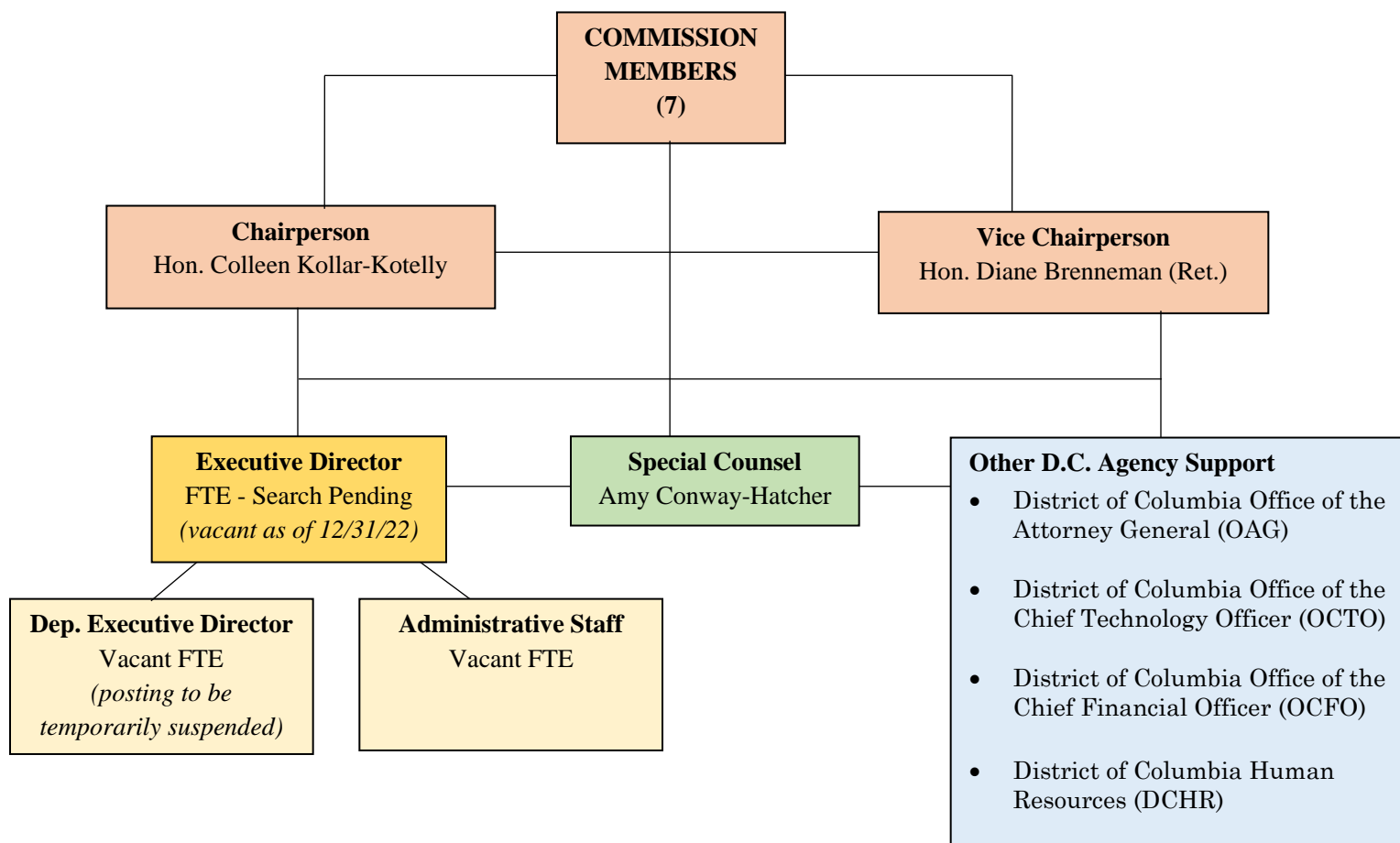
¹⁹ See D.C. Official Code § 11-1525(b) (“The Commission is authorized, without regard to the provisions governing appointment and classification of District of Columbia employees, to appoint and fix the compensation of, or to contract for, such officers, assistants, reporters, counsel, and other persons as may be necessary for the performance of its duties.”)

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that may be extended by the Commission, as needed.²⁰ The fixed fee contract is capped at \$15,000 / month and is intended to manage costs by paying an effectively substantially lower rate than legal services with no hours cap. The legal services continue to be covered under a separate contract.

- The Commission does not have divisions or subdivisions.

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ORGANIZATION CHART**



²⁰ At the request of the Chairperson, the Vice Chairperson also is filling certain functions of the Executive Director.

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2. Please list each **new program** implemented by the agency during FY 2022 and FY 2023, to date. For each initiative please provide:
- A description of the initiative, including when begun and when completed (or expected to be completed);
 - The funding required to implement the initiative;
 - Any documented results of the initiative.

Response:

In FY 2022, the Commission began implementation of the budgeting, acquisition, and initial design phase of its Modernization Project, a technology upgrade project that will positively impact each of the Agency's critical functions. As envisioned, the operational upgrades eventually will allow Commissioners to track and access precedent including, for example, (i) public and non-public disciplinary actions, (ii) significant investigations, and (iii) trends in concerns or complaints for judges, certain types of conduct or repetitive filings by complainants or about a specific judge – all of which the Commission will be able to review on an individual basis or in the aggregate during a specific discrete time period or decades of judicial service. The Commission's goal is to create a largely paperless environment that will allow Commissioners and CJDT staff to access, as needed, important current and historical data.

- The Modernization Project is underway as of Q2 FY 2023. The tracking software and data repository elements for complaints and reappointments are expected to be largely completed in FY 2023, along with critical and more immediate technology infrastructure needs (Phase 1). Given the extent of paper files and lack of and/or outdated technology infrastructure, the Commission expects certain work (e.g., importation of historical data and key precedent), as well as further infrastructure, upgrades, and maintenance in FY 2024 (Phase 2).
- After numerous discussions and assessment of needs, Commission leadership, the Executive Director, and Special Counsel concurred that the project was best led by OAG IT experts who had built a similar system for OAG's Consumer Protection Division, and further supported and supplemented by OCTO on any hardware, connectivity, office upgrades, and data repository/sharing requirements.
- **Phase 1 (Complaint Tracking, Reappointments, Senior Judge Fitness Reviews)**
 - The complaint tracking phase of the project is intended to be substantially completed in FY 2023 with residual steps and ongoing maintenance in FY 2024 (Phase I). The Commission has expanded Phase I to include as part of the

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forward-looking complaint tracking system, digitization of the reappointment, and senior judge fitness reviews on a go-forward basis.

- The funding for this project from the DC government in FY 2023 includes approximately \$303,000.00 (technology project and maintenance). The Commission expects to complete Phase I with available funding.

▪ **Phase 2 (Further CJDT Upgrades and Digitization (existing hardware, storage, scanning, etc.))**

- As described in the Preamble at 7-9, CJDT is awaiting results of the OCTO Survey of its office, existing hardware, storage, scanning, security, IT services, etc., as well as the estimated budget needs to achieve a largely paperless system, including CJDT historical records, for the future. CJDT is coordinating with OAG and OCTO to assure compatibility of solutions to meet its needs. CJDT will update the Committee further on both the survey results and related budget impact by March 10.

3. **Please provide a complete, up-to-date position listing for your agency, ordered by program and activity, and including the following information for each position:**

- **Title of position;**
- **Name of employee or statement that the position is vacant, unfunded, or proposed;**
- **Date employee began in position;**
- **Salary and fringe benefits (separately), including the specific grade, series, and step of position;**
- **Job status (continuing/term/temporary/contract);**
- **Whether the position must be filled to comply with federal or local law.**

Please note the date that the information was collected

Response:

See Response to Questions I.A.1 and 2.

See also Attachment I.A.3.

4. **Does the agency conduct annual performance evaluations of all of its employees, and was this done in FY 2022? Who conducts such evaluations? What are they performance measures by which employees are evaluated? What steps are taken to ensure that all agency employees are meeting individual job requirements? What steps are taken when an employee does not meet individual job requirements?**

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Response:

Although Commission leadership historically has provided informal reviews in the past, CJDT has not conducted formal annual performance reviews in the past. CJDT plans to change this practice upon the hiring of new staff, subject to input by DCHR and OAG given its unique statutory construct.

- 5. Please list all employees detailed to or from your agency, if any. Please provide the reason for the detail, the detailed employee's date of detail, and the detailed employee's projected date of return.**

Response:

The Commission has not detailed any employees to another agency and has not requested any employees to be detailed to the Commission during FY 2022 and thus far in FY 2023.

- 6. Please provide the position name, organization unit to which it is assigned, and hourly rate of any contract workers in your agency, and the company from which they are contracted.**

Response:

Consistent with prior years and as discussed last year, the Commission has a contract that is renewed annually for the legal services of an outside Special Counsel who provides legal and investigative services to the agency. See Preamble at 3, 7, and FN6. To address unexpected interim matters related to the retirement of the Executive Director, the Commission has a new short-term, fixed fee contract with Special Counsel in FY 2023 to fulfill essential duties of the Executive Director.

Special Counsel Contract for Legal Services

In FY 2022, the Chairperson reported to the J&PS Committee the existence of ongoing budgetary shortfalls for legal and investigative services given the increased volume and complexity of matters coming before the Commission. In fact, the budget for legal and investigative services had remained static since before 2010 and was well below market rates. Additional funding was provided and, in FY 2022, the Commission entered into a new NTE contract for legal and investigative services. After appeal in FY 2023 and assuming no further adjustments, the Commission has achieved federal funding for these services in FY 2024. See Preamble at 1, 3-7 and FN1, FN5.

In FY2022 alone, Special Counsel:

- Completed one [1] serious investigation from FY2021. See Preamble at 5 and Attachments PRE. 8.

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- Further executed the Commission’s determination to involuntarily retire an Associate Judge of the D.C. Superior Court, resulting in numerous public documents and a Public Statement. The resolution included preparation for possible litigation if the matter was contested. *See* Preamble at 5 and Attachments PRE. 7.-8.
- Conducted two (2) additional serious investigations initiated and concluded in FY2022, one of which resulted in a Public Statement, *see* Preamble at 4 and Attachment PRE. 6., and one which remains non-public due to the retirement of the judge following a preliminary investigation and the Commission’s inquiries into potential medical issues.
- Reviewed and advised on over 70 complaints and inquiries to the Commission.
- Provided legal advice on a range of matters of importance to the Commission.
- Assisted in special projects assigned and supervised by the Chairperson and Vice Chairperson including, but not limited to, evaluating technology gaps and solutions, staffing, budget matters, non-investigative matters.

In FY2023 to date, Special Counsel:

- Advised and supported the Commission on operational transition matters and related documentation of statutorily required actions and requirements of the Commission. Coordinated with various agencies to support the same.
- Implemented interim improvements to the Commission’s reappointment and senior judge review processes to increase the public’s ability to provide comments and information regarding judges who are seeking new terms, as well as increasing information and time available to Commissioners assigned to review those judges.
- Reviewed and advised on over 37 complaints and inquiries to the Commission, as well as the implementation of interim processes to streamline and increase the Commission’s ability to respond efficiently to concerns brought to its attention.
- Advised the Commission on a range of significant legal matters relevant to the performance of the Commission in its oversight of DC judges and matters that impact litigants in the DC Courts.
- Ongoing review of the Commission’s Rules to propose additional updates in FY 2023.

The Contract terms are as follows:

- Contracting Party: Amy Conway-Hatcher, Esq. (Schertler Onorato Mead & Sears)
- Term: FY 2022 (10/01/21 - 9/30/22); FY 2023 (10/01/22 – 9/30/23)
- Services: See above and Preamble at 3-7 and FN6.
- Contract Amount: Estimated not to exceed \$200,000.00; funded from CJDT budget

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- FY 2022: CJDT budgeted \$200,000.00; pursuant to CJDT NTE waiver, expended \$196,757.00.
- FY 2023 to date: CJDT budgeted \$210,000; expended \$29,802.50 to date.
- Contract Oversight: The contract is monitored by the Chairperson and the Vice Chairperson of the Commission.
- Special Counsel Background: See Preamble at 7 and FN6.

Short-Term Fixed Fee Contract (Term of Contract FY 2023: 1/1/23 - 2/28/2023)

Given the essential nature of Special Counsel's ongoing legal work, her specialized knowledge of critical ongoing matters, current initiatives before the Commission, and her knowledge of the Commission's operations, the Commission executed a short-term fixed fee contract that can be extended, as needed, to fulfill essential duties of the Executive Director while the Commission conducts a search to permanently fill that role. This fixed fee option for operational work provides substantial savings to the Commission while benefiting from counsel's highest quality of service.

- Contract Amount: Fixed fee \$15,000 per month; funded from the CJDT budget.
- Term: FY 2023 (1/1/2023-2/28/2023, with option to extend).
- Contract Oversight: The contract is monitored by the Chairperson and the Vice Chairperson of the Commission.
- Special Counsel Background: See above and Preamble at 8-9.

7. Please provide the Committee with:

- **A list of all employees who receive cellphones or similar communications devices at agency expense.**
 - ◆ **Please provide the total cost for mobile communications and devices at the agency for FY 2022 and FY 2023 to date, including equipment and service plans.**
- **A list of all vehicles owned, leased, or otherwise used by the agency and to whom the vehicle is assigned.**
- **A list of employee bonuses or special award pay granted in FY 2022 and FY 2023, to date.**
- **A list of travel expenses, arranged by employee.**
- **A list of the total overtime and worker's compensation payments paid in FY 2022 and FY 2023, to date.**

Response:

- The Executive Director used a cellphone at the Agency expense. The device was returned on her last day in the office on December 31, 2022. Other devices, including a laptop and printer were also returned.
- The Commission does not own or lease vehicles.
- The Commission did not grant bonuses or special award pay in FY2022 or FY2023, to date. The Executive Office of the Mayor granted a "pay harmonization COLA" adjustment to all DC government employees in FY 2022. The one-time bonus of \$5,175.00 was paid in FY 2022.

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8. Please provide a list of each collective bargaining agreement that is currently in effect for agency employees.
- Please include the bargaining unit (name and local number), the duration of each agreement, and the number of employees covered.
 - Please provide, for each union, the union leader's name, title, and his or her contact information, including e-mail, phone, and address if available.
 - Please note if the agency is currently in bargaining and its anticipated completion date.

Response:

The Commission does not have any collective bargaining agreements in effect.

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

Response:

The Commission office's files are largely paper-based. Based on consultation and input by OAG and OCTO, the Commission will be substantially modernizing its office in FY 2023 including hardware, information tracking, and electronic database. See above Response to Question I.A.2. at 14-55; see also Preamble at 7-9.

- The Commission maintains a website that provides important information about its governing statutes and jurisdiction, disciplinary actions, public statements, and public letters, as well as reappointments and senior judge recommendations.
 - The website includes information about the Commission's complaint, investigation, and disciplinary processes and procedures, as well as options available for the public to file a complaint regarding a judge. Complaints may be filed directly via the Commission's website, or by hand, email, in-person using the Commission's downloadable PDF form, a letter, or any other form of summary, or by phone. Complaints can be made formally or informally. In certain instances, the Commission has reviewed anonymous complaints. The Commission can also initiate an investigation on its own based on public reports or other information.

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- The Commission's website also includes, for example, public announcements of the public comment period for Associate Judge reappointments and for senior judge appointments provides the public with a range of options for participating. See, e.g., <https://cjudt.dc.gov/page/evaluate-candidates> (posting regarding the Reappointment process for Judge Anthony C. Epstein and Judge Heidi M. Pasichow (soliciting comments)).
- The Commission does not have a public-facing tracking system for complaints and is prohibited by statute from releasing information about complaints absent specific exceptions. See Preamble at 4, FN7 (citing Attachments PRE 1. and PRE. 4.). However, the Commission does provide complainants acknowledgement letters, as well as disposition letters once the matter is resolved.

10. Please describe the agency's procedures for investigating allegations of sexual harassment or misconduct committed by or against its employees. List and describe any allegations received by the agency in FY 2022 and FY 2023, to date, and whether and how those allegations were resolved.

Response:

The Commission historically has been an office of one District of Columbia employee and, therefore, has not maintained procedures separate from District of Columbia procedures for investigating allegations of sexual harassment or misconduct committed by or against its employees. The Commission's employees and those doing business with the Commission have the same protections as those identified in Mayor's Order 2017-312, Sexual Harassment Policy, Guidance, and Procedures. To the extent the Commission receives allegations by or against its employees, those allegations will be investigated by the Commission's Special Counsel. The Commission received no such allegations by or against employees in FY2022 or FY2023 to date. The Commission plans to revisit these matters with its employment counsel as part of its plans for hiring and oversight of employees going forward.

11. For any boards or commissions associated with your agency, please provide a chart listing the following for each member:

- The member's name;
- Confirmation date;
- Term expiration date;
- Whether the member is a District resident or not;
- Attendance at each meeting in FY 2022 and FY 2023, to date.
- Please also identify any vacancies.

Response: The Commission is not associated with any other boards, commissions, or task forces.

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12. Please list the task forces and organizations, including those inside the government such as interagency task forces, of which the agency is a member and any associated membership dues paid.

Response: The Commission is not a member of any interagency task forces or organizations. The Commission is a member of the Center for Judicial Ethics, which is a division of the National Center for the State Courts. Historically, the Executive Director has used this membership to stay apprised of developments in other state courts and jurisdictions, as well as programming and written materials that the Center distributes on ethics issues and disciplinary proceedings in other jurisdictions.

13. What has the agency done in the past year to make the activities of the agency more transparent to the public?

Response:

For matters resolved or investigated in FY 2022 and FY 2023, the Commission continues to make a number of its matters public and, where appropriate, has consulted with the Office of the Attorney General, Legal Counsel Division formally and informally on its statutory limits on confidentiality and privilege.

During that period, the Commission issued public statements and inquiries, as well as disciplinary actions. See Preamble at 4-5 and Attachments PRE. 6.-9.

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

- **What is the nature of comments received? Please describe.**
- **How has the agency changed its practices as a result of such feedback?**

Response:

Unlike DC agencies, the Commission is a unique body, created by statute, with jurisdiction over judicial conduct, reappointments, and senior judge reviews. While it relies and encourages members of the community to share their concerns, provide feedback on judges seeking reappointment or senior judge status, and/or file complaints in matters where judicial conduct is a concern, the Commission is upfront that it cannot always share the full extent of how matters are disposed of given statutory restrictions on confidentiality and privilege.

- Where appropriate the Commission does issue public statements from time to time to share important information with judges and the public regarding its work or matters that come to its attention.
- Where appropriate, the Commission also has and will continue to review, update and/or tailor written acknowledgements and other correspondence with complainants to provide helpful, clear information and to avoid unnecessary confusion.

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15. Please complete the following chart about the residency of new hires:

Response: There were no new hires in FY2022 or FY 2023.

Number of Employees Hired in FY 2022 and FY 2023, to date

<i>Position Type</i>	<i>Total Number</i>	<i>Number who are District Residents</i>
Continuing		
Term		
Temporary		
Contract		

16. Please provide the agency's FY 2022 Performance Accountability Report.

Response:

The FY 2022 Performance Accountability Plan and Performance Accountability Report are attached as Attachments I.A.16 and I.A.16-1, also at [OCA District Performance P... - \(dc.gov\)](#).

The FY 2023 Performance Accountability Plan is attached as Attachment I.A.16-2, also at [CJDT23.pdf \(dc.gov\)](#).

CJDT provides links on its website to Office of the City Administrator and relevant plans at <https://cjdtdc.gov/page/about-cjdt>.

B. BUDGET AND FINANCE

17. Please provide a chart showing the agency's approved budget and actual spending, by division, for FY 2022 and FY 2023, to date. In addition, please describe any variance between fiscal year appropriations and actual expenditures for each program and activity code.

Response:

See Attachment B.17-1 for FY 2022.

See Attachment B.17-2 for FY 2023.

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18. Please list any reprogrammings, in, out, or within, related to FY 2022 or FY 2023 funds. For each reprogramming, please list:
- i. The reprogramming number;
 - ii. The total amount of the reprogramming and the funding source (i.e., local, federal, SPR);
 - iii. The sending or receiving agency name, if applicable;
 - iv. The original purposes for which the funds were dedicated;
 - v. The reprogrammed use of funds.

Response:

See Attachment B.18.

19. Please provide a complete accounting for all intra-District transfers received by or transferred from the agency during FY 2022 and FY 2023, to date, including:
- i. Buyer agency and Seller agency;
 - ii. The program and activity codes and names in the sending and receiving agencies' budgets;
 - iii. Funding source (i.e. local, federal, SPR);
 - iv. Description of MOU services;
 - v. Total MOU amount, including any modifications;
 - vi. The date funds were transferred to the receiving agency.

Response:

See Attachment B.19.

20. Please provide a list of all MOUs in place during FY 2022 and FY 2023, to date, that are not listed in response to the question above.

Response:

- (FY 2023) Memorandum of Understanding Between the Attorney General and the Commission on Judicial Disabilities and Tenure
 - Description: (i) Modernize and automate certain aspects of CJDT's existing and primarily paper-based judicial complaint, reappointment, and financial disclosure reporting processes; (ii) Provide a robust reporting mechanism that CJDT can use to report its activities to relevant stakeholders; (iii) create a document management system that is linked to the respective systems.
 - Amount: \$240,000.00
- (FY 2023) Memorandum of Agreement Between the Office of the Attorney General and the Commission on Judicial Disabilities and Tenure
 - Description: Provide staffing to CJDT to provide support with its automation project, assist with scanning, and other technology assignments, as necessary.

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- (FY 2022) Memorandum of Understanding Between Office of the Chief Technology Officer and the Commission on Judicial Disabilities and Tenure
 - Description: Development and implementation of the Case and File Management System
 - Amount: \$5,915.00
- 21. Please identify any **special purpose revenue accounts** maintained by, used by, or available for use by your agency during FY 2022 and FY 2023, to date. For each account, please list the following:
 - The revenue source name and code;
 - The source of funding;
 - A description of the program that generates the funds;
 - The amount of funds generated by each source or program in FY 2022 and FY 2023, to date;
 - Expenditures of funds, including the purpose of each expenditure, for FY 2022 and FY 2023, to date.

Response:

CJDT has no special purpose revenue funds.

22. Please provide a list of all projects for which your agency currently has **capital funds** available. Please include the following:
 - A description of each project, including any projects to replace aging infrastructure (e.g., water mains and pipes);
 - The amount of capital funds available for each project;
 - A status report on each project, including a timeframe for completion;
 - Planned remaining spending on the project.

Response:

CJDT has no capital improvement project funds.

23. Please provide a complete accounting of all **federal grants** received for FY 2022 and FY 2023, to date, including the amount, the purpose for which the funds were granted, whether those purposes were achieved and, for FY 2022, the amount of any unspent funds that did not carry over.

Response:

CJDT has no federal grants.

24. Please list each contract, procurement, lease, and grant ("**contract**") awarded, entered into, extended and option years exercised, by your agency during FY 2022 and FY 2023, to date. For each contract, please provide the following information, where applicable:

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- The name of the contracting party;
- The nature of the contract, including the end product or service;
- The dollar amount of the contract, including budgeted amount and actually spent;
- The term of the contract;
- Whether the contract was competitively bid or not;
- The name of the agency's contract monitor and the results of any monitoring activity;
- Funding source;
- Whether the contract is available to the public online.

Response:

See Attachment B.24 for FY 2022 (FY22 CJDT Contract Listing); Attachment B.24-1 (FY23 CJDT Contract Listing).

25. Please provide the details of any surplus in the agency's budget for FY 2022, including:
- i. Total amount of the surplus;
 - ii. All projects and/or initiatives that contributed to the surplus.

Response:

The amount of the FY 2022 surplus is \$13,662.

Net vacancy savings and NPS spending less than estimated.

C. LAWS, AUDITS, AND STUDIES

26. Please identify any legislative requirements that the agency lacks sufficient resources to properly implement.

Response:

Last year, the Commission raised concerns about lack of sufficient funding for legal and investigative services. See Preamble at 1 and FN1. The Commission's concerns were addressed through funding by the DC government in FY 2023 for (i) legal and investigative needs and (ii) the procurement of a complaint tracking system, as well as corresponding requests, including an appeal, for increased Federal funding in FY 2024.

At present, the Commission understands that OMB has authorized Federal funding for its legal and investigation budget needs in FY 2024. While the Commission anticipates completing the implementation of a complaint tracking system (expanded to include reappointments and senior judge fitness reviews) with existing funding in FY 2023, the

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Commission is awaiting the results of the OCTO Survey to address critical infrastructure needs to fully implement CJDT's Modernization Project, resulting in the transition from a largely paper-based system to a digitized system. *See* Preamble at 7-9 and Response to Questions A.2 and A.9.

27. Please identify any statutory or regulatory impediments to your agency's operations or mission.

Response:

The Commission's implementing statute and other legislation that expanded its jurisdiction provide sufficient clarity of the Commission's mission and jurisdiction, as well as restrictions or limitations that are inherent in the nature of investigative bodies to balance the interests of all parties, including judges, complainants, and witnesses. *See also infra* at II. Response to Question 47.

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

Response:

The D.C. Code of Judicial Conduct (2018 ed. and 2019 supp.). *See* Preamble at 2, Attachment PRE-5.

29. Please explain the impact on your agency of any federal legislation or regulations adopted during FY 2022 that significantly affect agency operations or resources.

Response:

None.

30. Please provide a list of all studies, research papers, and analyses ("studies") the agency requested, prepared, or contracted for during FY 2022. Please state the status and purpose of each study.

Response:

None.

31. Please list and describe any ongoing investigations, audits, or reports on your agency or any employee of your agency, or any investigations, studies, audits, or reports on your agency or any employee of your agency that were completed during FY 2022 and FY 2023, to date.

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Response:

None.

32. Please identify all recommendations identified by the Office of the Inspector General, D.C. Auditor, or other federal or local oversight entities during the previous 3 years. Please provide an update on what actions have been taken to address these recommendations. If the recommendation has not been implemented, please explain why.

Response:

The Commission is not aware of any such recommendations.

33. Please list any reporting requirements required by Council legislation and whether the agency has met these requirements.

Response:

The Commission is not aware of any such reporting requirements.

34. Please list all pending lawsuits that name the agency as a party, and provide the case name, court where claim was filed, case docket number, and a brief description of the case.

Response:

None.

35. Please list all settlements entered into by the agency or by the District on behalf of the agency in FY 2022 or FY 2023, to date, including any covered by D.C. Code § 2-402(a)(3), and provide the parties' names, the amount of the settlement, and if related to litigation, the case name and a brief description of the case. If unrelated to litigation, please describe the underlying issue or reason for the settlement (e.g. administrative complaint, etc.).

Response:

None.

36. Please list any administrative complaints or grievances that the agency received in FY 2022 and FY 2023, 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

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from complaints or grievances received. For any complaints or grievances that were resolved in FY 2022 or FY 2023, to date, describe the resolution.

Response:

None

D. EQUITY

37. How does the agency assess whether programs and services are equitably accessible to all District residents?

- i. What were the results of any such assessments in FY 2022?**
- ii. What changes did the agency make in FY 2022 and FY 2023, to date, or does the agency plan to make in FY 2023 and beyond, to address identified inequities in access to programs and services?**
- iii. Does the agency have the resources needed to undertake these assessments? What would be needed for the agency to more effectively identify and address inequities in access to agency programs and services?**

Response:

While the Commission does not conduct such formal assessments, the Commission takes pride in its efforts to assure **all** members of the community and stakeholders have equal access to raise matters of concern.

- The Commission's website affords **all** members of the community, including the hearing-impaired, to file complaints directly through the website or download forms for alternative submissions via email, US mail, hand-delivery, or phone.
- The Commission's complaint page allows members of the community to submit questions about the filing or complaint process. <https://cjdt.dc.gov/service/filing-complaint>.
- The Commission has arranged for translation services to assure access by non-English speaking complainants.
- The Commission has taken steps to assure that all court employees and judicial staff are aware of the Commission, its accessibility, and its mission. See Preamble at 6 and related Attachments.
- The Commission and its Special Counsel carefully review each complaint diligently and thoroughly without regard to any individual characteristics of complainants.

38. Does the agency have a racial or social equity statement or policy? Please share that document or policy statement with the Committee.

- i. How was the policy formulated?**
- ii. How is the policy used to inform agency decision-making?**

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- iii. Does the agency have a division or dedicated staff that administer and enforce this policy?
- iv. Does the agency assess its compliance with this policy? If so, how, and what were the results of the most recent assessment?

Response:

The Commission does not have an internal racial or social equity statement or policy that is different from the District of Columbia. For example, in accordance with the D.C. Human Rights Act of 1977, as amended, D.C. Official Code § 2-1401 *et. seq.* (“Act”), the Commission does not discriminate on the basis of any of the Human Rights Act protected classes. In accordance with D.C. Code § 2-1402.61, the Commission does not “coerce, threaten, retaliate against, or interfere with any person in the exercise or enjoyment of, or on account of having exercised or enjoyed, or on account of having aided or encouraged any other person in the exercise or enjoyment of any right granted” by the D.C. Human Rights Act. D.C. Official Code § 2-1402.61. Like all positions advertised by the District government, the Commission includes an equal employment opportunity statement on its vacancy announcements indicating that all qualified candidates will receive consideration without regard to their status.

- 39. Does the agency have an internal equal employment opportunity statement or policy? Please share that document or policy statement with the Committee.**
- i. How was the policy formulated?
 - ii. How is the statement or policy used to inform agency decision-making?
 - iii. Does the agency have a division or dedicated staff that administer and enforce this policy?
 - iv. Does the agency assess its compliance with this policy? If so, how, and what were the results of the most recent assessment?

Response:

See Response 38. Under its Memorandum of Understanding with the District Department of Human Resources, Commission employees will receive equal employment opportunity training on the District’s policies and counseling to the extent necessary.

E. COVID-19 PANDEMIC RESPONSE

- 40. Please give an overview of any programs or initiatives the agency has started in response to COVID-19, to date, and whether each program or initiative is still in effect.**

Response:

Like many other organizations, where possible, the Commission now conducts many of its meetings virtually. Further, as appropriate, the Commission, as well as its Special Counsel and staff, will hold meetings with judges, stakeholders, complainants, and witnesses

**FEBRUARY 14, 2023 SUBMISSION OF
THE COMMISSION ON JUDICIAL DISABILITIES AND TENURE
(PERFORMANCE OVERSIGHT PRE-HEARING QUESTIONS)**

virtually to assure the health and safety of all. The Commission will continue to use virtual meeting technology as appropriate and to facilitate its work.

41. Which of the agency's divisions are currently working remotely?

- i. What percentage of the agency's total employees currently work remotely?**
- ii. Please provide a copy of the agency's Continuing Operations Plan and any remote working protocol.**

Response:

Prior to the Executive Director's retirement, the Executive Director split her time in the office and working remotely. At present, during this period of transition, Special Counsel and the Vice Chairperson also are working both remotely and in the office depending on day-to-day operational needs.

**STATUTE CREATING THE COMMISSION
D.C. CODE TITLE 11 §15-1521**

§ 11-1521. Establishment of Commission.

There shall be a District of Columbia Commission on Judicial Disabilities and Tenure (hereafter in this subchapter referred to as the “Commission”). The Commission shall have power to suspend, retire, or remove a judge of a District of Columbia court, as provided in this subchapter.

(July 29, 1970, 84 Stat. 492, Pub. L. 91-358, title I, § 111.)

§ 11-1522. Membership.

(a) The Commission shall consist of five members appointed as follows:

(1) The President of the United States shall appoint three members of the Commission. Of the members appointed by the President -

(A) at least one member must be a member of the District of Columbia bar who has been actively engaged in the practice of law in the District of Columbia for at least five of the ten years immediately before appointment; and

(B) at least two members must be residents of the District of Columbia.

(2) The Commissioner [Mayor] of the District of Columbia shall appoint one member of the Commission. The member appointed by the Commissioner [Mayor] must be a resident of the District of Columbia and not an attorney.

(3) The chief judge of the United States District Court for the District of Columbia shall appoint one member of the Commission. The member appointed by the chief judge shall be an active or retired Federal judge serving in the District of Columbia.

The President shall designate as Chair of the Commission one of the members appointed pursuant to paragraph (1) who is a member of the District of Columbia bar who has been actively engaged in the practice of law in the District of Columbia for at least

five of the ten years before the member's appointment.

(b) There shall be three alternate members of the Commission, who shall serve as members pursuant to rules adopted by the Commission. The alternate members shall be appointed as follows:

(1) The President shall appoint one alternate member, who shall be a resident of the District of Columbia and a member of the bar of the District of Columbia who has been actively engaged in the practice of law in the District of Columbia for at least five of the ten years immediately before appointment.

(2) The Commissioner [Mayor] shall appoint one alternate member who shall be a resident of the District of Columbia and not an attorney.

(3) The chief judge of the United States District Court for the District of Columbia shall appoint one alternate member who shall be an active or retired Federal judge serving in the District of Columbia.

(c) No member or alternate member of the Commission shall be a member, officer, or employee of the legislative branch or of an executive or military department of the United States Government (listed in section 101 or 102 of title 5, United States Code); and no member or alternate member (other than a member or alternate member appointed by the chief judge of the United States District Court for the District of Columbia) shall be an officer or employee of the judicial branch of the United States Government. No member or alternate member of the Commission shall be an officer or employee of the District of Columbia government (including its judicial branch).

(July 29, 1970, 84 Stat. 492, Pub. L. 91-358, title I, § 111; June 13, 1994, Pub. L. 103-266, §§ 1(b)(25)-(27), 108 Stat. 713.)

§ 11-1523. Terms of office; vacancy; continuation of service by a member.

(a)(1) Except as provided in paragraph (2), the term of office of members and alternate members of the Commission shall be six years.

(2) Of the members and alternate members first appointed to the Commission --

(A) one member and alternate member appointed by the President shall be appointed for a term of six years, one member appointed by the President shall be appointed for a term of four years, and one such member shall be appointed for a term of two years, as designated by the President at the time of appointment;

(B) the member and alternate member appointed by the chief judge of the United States District Court for the District of Columbia shall be appointed for a term of four years; and

(C) the member and alternate member appointed by the Commissioner [Mayor] of the District of Columbia shall be appointed for a term of two years.

(b) A member or alternate member appointed to fill a vacancy occurring before the expiration of the term of that member's predecessor shall serve only for the remainder of that term. Any vacancy on the Commission shall be filled in the same manner as the original appointment was made.

(c) If approved by the Commission, a member may serve after the expiration of that member's term for purposes of participating until conclusion in a matter, relating to the suspension, retirement, or removal of a judge, begun before the expiration of that member's term. A member's successor may be appointed without regard to the member's continuation in service, but that member's successor may not participate in the matter for which the member's continuation in service was approved.

(July 29, 1970, 84 Stat. 493, Pub. L. 91-358, title I, § 111; June 13, 1994, Pub. L. 103-266, §§ 1(b)(28), (29), 108 Stat. 713.)

§ 11-1524. Compensation.

Members of the Tenure Commission shall serve without compensation for services rendered in connection with their official duties on the Commission.

(July 29, 1970, 84 Stat. 493, Pub. L. 91-358, title I, § 111; Apr. 26, 1996, 110 Stat. [210], Pub. L. 104-134, § 133(a).)

§ 11-1525. Operations; personnel; administrative services.

(a) The Commission may make such rules and regulations for its operations as it may deem necessary, and such rules and regulations shall be effective on the date specified by the Commission. The District of Columbia Administrative Procedure Act (D.C. Official Code, secs. 2-501 to 2-510) shall be applicable to the Commission only as provided by this subsection. For the purposes of the publication of rules and regulations, judicial notice, and the filing and compilation of rules, sections 5, 7, and 8 of that Act (D.C. Official code, secs. 2-504, 2-505, and 2-507), insofar as consistent with this subchapter, shall be applicable to the Commission; and for purposes of those sections, the Commission shall be deemed an independent agency as defined in section 3(5) of that Act (D.C. Official Code, sec. 2-502). Nothing contained herein shall be construed to require prior public notice and hearings on the subject of rules adopted by the Commission.

(b) The Commission is authorized, without regard to the provisions governing appointment and classification of District of Columbia employees, to appoint and fix the compensation of, or to contract for, such officers, assistants, reporters, counsel, and other persons as may be necessary for the performance of its duties. It is authorized to obtain the services of medical and other experts in accordance with the provisions of section 3109 of title 5, United States Code, but at rates not to exceed the daily equivalent of the rate provided for GS-18 of the General Schedule.

(c) The District of Columbia is authorized to detail, on a reimbursable basis, any of its personnel to assist in carrying out the duties of the Commission.

(d) Financial and administrative services (including those related to budgeting and accounting, financial reporting, personnel, and procurement) shall be provided to the Commission by the District of Columbia, for which payment shall be made in advance, or by reimbursement, from funds of the Commission in such amounts as may be agreed upon by the Chair of the Commission and the District of Columbia government. Regulations of the District of

Columbia for the administrative control of funds shall apply to funds appropriated to the Commission.

(July 29, 1970, 84 Stat. 493, Pub. L. 91-358, title I, § 111; June 13, 1994, Pub. L. 103-266, § 1(b)(30), 108 Stat. 713.)

§ 11-1526. Removal; involuntary retirement; proceedings.

(a)(1) A judge of a District of Columbia court shall be removed from office upon the filing in the District of Columbia Court of Appeals by the Commission of an order of removal certifying the entry, in any court within the United States, of a final judgment of conviction of a crime which is punishable as a felony under Federal law or which would be a felony in the District of Columbia.

(2) A judge of a District of Columbia court shall also be removed from office upon affirmance of an appeal from an order of removal filed in the District of Columbia Court of Appeals by the Commission (or upon expiration of the time within which such an appeal may be taken) after a determination by the Commission of -

(A) willful misconduct in office,

(B) willful and persistent failure to perform judicial duties, or

(C) any other conduct which is prejudicial to the administration of justice or which brings the judicial office into disrepute.

(b) A judge of a District of Columbia court shall be involuntarily retired from office when (1) the Commission determines that the judge suffers from a mental or physical disability (including habitual intemperance) which is or is likely to become permanent and which prevents, or seriously interferes with, the proper performance of the judge's judicial duties, and (2) the Commission files in the District of Columbia Court of Appeals an order of involuntary retirement and the order is affirmed on appeal or the time within which an appeal may be taken from the order has expired.

(c)(1) A judge of a District of Columbia court shall be suspended, without salary --

(A) upon --

- (i) proof of conviction of a crime referred to in subsection (a)(1) which has not become final, or
 - (ii) the filing of an order of removal under subsection (a)(2) which has not become final; and
- (B) upon the filing by the Commission of an order of suspension in the District of Columbia Court of Appeals.

Suspension under this paragraph shall continue until termination of all appeals. If the conviction is reversed or the order of removal is set aside, the judge shall be reinstated and shall recover salary and all rights and privileges pertaining to the judge's office.

(2) A judge of a District of Columbia court shall be suspended from all judicial duties, with such retirement salary as the judge may be entitled to pursuant to subchapter III of this chapter, upon the filing by the Commission of an order of involuntary retirement under subsection (b) in the District of Columbia Court of Appeals. Suspension shall continue until termination of all appeals. If the order of involuntary retirement is set aside, the judge shall be reinstated and shall recover the judge's judicial salary less any retirement salary received and shall be entitled to all the rights and privileges of office.

(3) A judge of a District of Columbia court shall be suspended from all or part of judicial duties, with salary, if the Commission, upon the concurrence of three members, (A) orders a hearing for the removal or retirement of the judge pursuant to this subchapter and determines that suspension is in the interest of the administration of justice, and (B) files an order of suspension in the District of Columbia Court of Appeals. The suspension shall terminate as specified in the order (which may be modified, as appropriate, by the Commission) but in no event later than the termination of all appeals.

(July 29, 1970, 84 Stat. 494, Pub. L. 91-358, title I, § 111; June 13, 1994, Pub. L. 103-266, §§ 1(b)(31)-(35), 108 Stat. 713.)

§ 11-1527. Procedures.

(a)(1) On its own initiative, or upon complaint or report of any person, formal or informal, the

Commission may undertake an investigation of the conduct or health of any judge. After such investigation as it deems adequate, the Commission may terminate the investigation or it may order a hearing concerning the health or conduct of the judge. No order affecting the tenure of a judge based on grounds for removal set forth in section 11-1526(a)(2) or 11-1530(b)(3) shall be made except after a hearing as provided by this subchapter. Nothing in this subchapter shall preclude any informal contacts with the judge, or the chief judge of the court in which the judge serves, by the Commission, whether before or after a hearing is ordered, to discuss any matter related to its investigation.

(2) A judge whose conduct or health is to be the subject of a hearing by the Commission shall be given notice of such hearing and of the nature of the matters under inquiry not less than thirty days before the date on which the hearing is to be held. The judge shall be admitted to such hearing and to every subsequent hearing regarding the judge's conduct or health. The judge may be represented by counsel, offer evidence in his or her own behalf, and confront and cross-examine witnesses against the judge.

(3) Within ninety days after the adjournment of hearings, the Commission shall make findings of fact and a determination regarding the conduct or health of a judge who was the subject of the hearing. The concurrence of at least four members shall be required for a determination of grounds for removal or retirement. Upon a determination of grounds for removal or retirement, the Commission shall file an appropriate order pursuant to subsection (a) or (b) of section 11-1526. On or before the date the order is filed, the Commission shall notify the judge, the chief judge of the court in which the judge serves, and the President of the United States.

(b) The Commission shall keep a record of any hearing on the conduct or health of a judge and one copy of such record shall be provided to the judge at the expense of the Commission.

(c)(1) In the conduct of investigations and hearings under this section the Commission may administer oaths, order and otherwise provide for the inspection of books and records, and issue subpoenas [subpoenas] for attendance of witnesses and the production of papers, books, accounts, documents, and testimony relevant to any such investigation or hearing. It may order a judge whose health is in issue to submit to a medical examination by a duly licensed

physician designated by the Commission.

(2) Whenever a witness before the Commission refuses, on the basis of the witness's privilege against self-incrimination, to testify or produce books, papers, documents, records, recordings, or other materials, and the Commission determines that the testimony or production of evidence is necessary to the conduct of its proceedings, it may order the witness to testify or produce the evidence. The Commission may issue the order no earlier than ten days after the day on which it served the Attorney General with notice of its intention to issue the order. The witness may not refuse to comply with the order on the basis of the witness's privilege against self-incrimination, but no testimony or other information compelled under the order (or any information directly or indirectly derived from the testimony or production of evidence) may be used against the witness in any criminal case, nor may it be used as a basis for subjecting the witness to any penalty or forfeiture contrary to constitutional right or privilege. No witness shall be exempt under this subsection from prosecution for perjury committed while giving testimony or producing evidence under compulsion as provided in this subsection.

(3) If any person refuses to attend, testify, or produce any writing or things required by a subpoena [subpoena] issued by the Commission, the Commission may petition the United States district court for the district in which the person may be found for an order compelling that person to attend and testify or produce the writings or things required by subpoena [subpoena]. The court shall order the person to appear before it at a specified time and place and then and there shall consider why that person has not attended, testified, or produced writings or things as required. A copy of the order shall be served upon that person. If it appears to the court that the subpoena [subpoena] was regularly issued, the court shall order the person to appear before the Commission at the time or place fixed in the order and to testify or produce the required writings or things. Failure to obey the order shall be punishable as contempt of court.

(4) In pending investigations or proceedings before it, the Commission may order the deposition of any person to be taken in such form and subject to such limitation as may be prescribed in the order. The Commission may file in the Superior Court a petition, stating gen-

erally, without identifying the judge, the nature of the pending matter, the name and residence of the person whose testimony is desired, and directions, if any, of the Commission requesting an order requiring the person to appear and testify before a designated officer. Upon the filing of the petition the Superior Court may order the person to appear and testify. A subpoena [subpoena] for such deposition shall be issued by the clerk of the Superior Court and the deposition shall be taken and returned in the manner prescribed by law for civil actions.

(d) It shall be the duty of the United States marshals upon the request of the Commission to serve process and to execute all lawful orders of the Commission.

(e) Each witness, other than an officer or employee of the United States or the District of Columbia, shall receive for attendance the same fees, and all witnesses shall receive the allowances, prescribed by section 15-714 for witnesses in civil cases. The amount shall be paid by the Commission from funds appropriated to it.

(July 29, 1970, 84 Stat. 495, Pub. L. 91-358, title I, § 111; June 13, 1994, Pub. L. 103-266, §§ 1(b)(36)-(41), 108 Stat. 713.)

§ 11-1528. Privilege; confidentiality.

(a)(1) Subject to paragraph (2), the filing of papers with, and the giving of testimony before, the Commission shall be privileged. Subject to paragraph (2), hearings before the Commission, the record thereof, and materials and papers filed in connection with such hearings shall be confidential.

(2)(A) The judge whose conduct or health is the subject of any proceedings under this chapter may disclose or authorize the disclosure of any information under paragraph (1).

(B) With respect to a prosecution of a witness for perjury or on review of a decision of the Commission, the record of hearings before the Commission and all papers filed in connection with such hearing shall be disclosed to the extent required for such prosecution or review.

(C) Upon request, the Commission shall disclose, on a privileged and confidential

basis, to the District of Columbia Judicial Nomination Commission any information under paragraph (1) concerning any judge being considered by such nomination commission for elevation to the District of Columbia Court of Appeals or for chief judge of a District of Columbia court.

(b) If the Commission determines that no grounds for removal or involuntary retirement exist it shall notify the judge and inquire whether the judge desires the Commission to make available to the public information pertaining to the nature of its investigation, its hearings, findings, determinations, or any other fact related to its proceedings regarding the judge's health or conduct. Upon receipt of such request in writing from the judge, the Commission shall make such information available to the public.

(July 29, 1970, 84 Stat. 497, Pub. L. 91-358, title I, § 111; Oct. 28, 1986, 100 Stat. 3228, Pub. L. 99-573, § 11; June 13, 1994, Pub. L. 103-266, § 1(b)(42), 108 Stat. 713.)

§ 11-1529. Judicial review.

(a) A judge aggrieved by an order of removal or retirement filed by the Commission pursuant to subsection (a) or (b) of section 11-1526 may seek judicial review thereof by filing notice of appeal with the Chief Justice of the United States. Notice of appeal shall be filed within 30 days of the filing of the order of the Commission in the District of Columbia Court of Appeals.

(b) Upon receipt of notice of appeal from an order of the Commission, the Chief Justice shall convene a special court consisting of three Federal judges designated from among active or retired judges of the United States Court of Appeals for the District of Columbia Circuit and the United States District Court for the District of Columbia.

(c) The special court shall review the order of the Commission appealed from and, to the extent necessary to decision and when presented, shall decide all relevant questions of law and interpret constitutional and statutory provisions. Within 90 days after oral argument or submission on the briefs if oral argument is waived, the special court shall affirm or reverse the order of the Commission or remand the matter to the Commission for further proceedings.

(d) The special court shall hold unlawful and set aside a Commission order or determination found to be --

- (1) arbitrary, capricious, and abuse of discretion, or otherwise not in accordance with law;
- (2) contrary to constitutional right, power, privilege, or immunity;
- (3) in excess of statutory jurisdiction, authority, or limitations, or short of statutory right;
- (4) without observance of procedure required by law; or
- (5) unsupported by substantial evidence.

In making the foregoing determinations, the special court shall review the whole record or those parts of it cited by the judge or the Commission, and shall take due account of the rule of prejudicial error.

(e) As appropriate and to the extent consistent with this chapter, the Federal Rules of Appellate Procedure governing appeals in civil cases shall apply to appeals taken under this section.

(f) Decisions of the special court shall be final and conclusive.

(July 29, 1970, 84 Stat. 497, Pub. L. 91-358, title I, § 111.)

§ 11-1530. Financial statements.

(a) Pursuant to such rules as the Commission shall promulgate, each judge of the District of Columbia courts shall, within one year following the date of enactment of the District of Columbia Court Reorganization Act of 1970 and at least annually thereafter, file with the Commission the following reports of the judge's personal financial interests:

(1) A report of the judge's income and the judge's spouse's income for the period covered by the report, the sources thereof, and the amount and nature of the income received from each such source.

(2) The name and address of each private foundation or eleemosynary institution, and of each business or professional corporation, firm, or enterprise in which the judge was an officer, director, proprietor, or partner during such period;

(3) The identity of each liability of \$5,000 or more owed by the judge or by the judge and the judge's spouse jointly at any time during such period.

(4) The source and value of all gifts in the aggregate amount or value of \$50 or more from any single source received by the judge during such period, except gifts from the judge's spouse or any of the judge's children or parents.

(5) The identity of each trust in which the judge held a beneficial interest having a value of \$10,000 or more at any time during such period, and in the case of any trust in which the judge held any beneficial interest during such period, the identity, if known, of each interest in real or personal property in which the trust held a beneficial interest having a value of \$10,000 or more at any time during such period. If the judge cannot obtain the identity of the trust interest, the judge shall request the trustee to report that information to the Commission in such manner as the Commission shall by rule prescribe.

(6) The identity of each interest in real or personal property having a value of \$10,000 or more which the judge owned at any time during such period.

(7) The amount or value and source of each honorarium of \$300 or more received by the judge during such period.

(8) The source and amount of all money, other than that received from the United States Government, received in the form of an expense account or as reimbursement for expenditures during such period.

(b)(1) Except as provided in paragraph (2) of this subsection the content of any report filed under this section shall not be open to inspection by anyone other than (A) the person filing the report, (B) authorized members, alternate members, or staff of the Commission to determine if this section has been complied with or in connection with duties of the Commission under this subchapter, or (C) a special court convened under section 11-1529 to review a removal order of the Commission.

(2) Reports filed pursuant to paragraphs (2) and (7) of subsection (a) shall be made available for public inspection and copying promptly after filing and during the period they are kept by the Commission, and shall be kept by the Commission for not less than three years.

(3) The intentional failure by a judge of a District of Columbia court to file a report required by this section, or the filing of a fraudulent report, shall constitute willful misconduct in office and shall be grounds for removal from office under section 11-1526(a)(2).

(July 29, 1970, 84 Stat. 498, Pub. L. 91-358, title I, § 111; June 13, 1994, Pub. L. 103-266, §§ 1(b)(43)-(50), 108 Stat. 713.)

**STATUTE REESTABLISHING THE COMMISSION AND
ENLARGING ITS JURISDICTION TO INCLUDE THE
REAPPOINTMENT OF ASSOCIATE JUDGES
D.C. CODE TITLE 1 §1-204-31(d)(1)**

§ 1-204.31. Judicial powers.

(d)(1) There is established a District of Columbia Commission on Judicial Disabilities and Tenure (hereinafter referred to as the “Tenure Commission”). The Tenure Commission shall consist of seven members selected in accordance with the provisions of subsection (e). Such members shall serve for terms of six years, except that the member selected in accordance with subsection (e)(3)(A) shall serve for five years; of the members first selected in accordance with subsection (e)(3)(B), one member shall serve for three years and one member shall serve for six years; of the members first selected in accordance with subsection (e)(3)(C), one member shall serve for a term of three years and one member shall serve for five years; the member first selected in accordance with subsection (e)(3)(D) shall serve for six years; and the member first appointed in accordance with subsection (e)(3)(E) shall serve for six years. In making the respective first appointments according to subsections (e)(3)(B) and (e)(3)(C), the Mayor and the Board of Governors of the unified District of Columbia Bar shall designate, at the time of such appointments, which member shall serve for the shorter term and which member shall serve for the longer term.

(2) The Tenure Commission shall act only at meetings called by the Chairman or a majority of the Tenure Commission held after notice has been given of such meeting to all Tenure Commission members.

(3) The Tenure Commission shall choose annually, from among its members, a Chairman and such other officers as it may deem necessary. The Tenure Commission may adopt such rules of procedures not inconsistent with this chapter as may be necessary to govern the business of the Tenure Commission.

(4) The District government shall furnish to the Tenure Commission, upon the request of the Tenure Commission, such records, information, services, and such other assistance and

facilities as may be necessary to enable the Tenure Commission properly to perform its functions. Information so furnished shall be treated by the Tenure Commission as privileged and confidential.

(e)(1) No person may be appointed to the Tenure Commission unless such person --

- (A) is a citizen of the United States;
- (B) is a bona fide resident of the District and has maintained an actual place of abode in the District for at least ninety days immediately prior to appointment; and
- (C) is not an officer or employee of the legislative branch or of an executive or military department or agency of the United States (listed in sections 101 and 102 of title 5 of the United States Code); and (except with respect to the person appointed or designated according to paragraph (3) (E)) is not an officer or employee of the judicial branch of the United States, or an officer or employee of the District government (including its judicial branch).

(2) Any vacancy on the Tenure Commission shall be filled in the same manner in which the original appointment was made. Any person so appointed to fill a vacancy occurring other than upon the expiration of a prior term shall serve only for the remainder of the unexpired term of such person's predecessor.

(3) In addition to all other qualifications listed in this section, lawyer members of the Tenure Commission shall have the qualifications prescribed for persons appointed as judges of the District of Columbia courts. Members of the Tenure Commission shall be appointed as follows:

- (A) One member shall be appointed by the President of the United States.
- (B) Two members shall be appointed by the Board of Governors of the unified District of Columbia Bar, both of whom shall have been engaged in the practice of law in the District for at least five successive years preceding their appointment.

(C) Two members shall be appointed by the Mayor, one of whom shall not be a lawyer.

(D) One member shall be appointed by the Council, and shall not be a lawyer.

(E) One member shall be appointed by the chief judge of the United States District Court for the District of Columbia, and such member shall be an active or retired Federal judge serving in the District.

No person may serve at the same time on both the District of Columbia Judicial Nomination Commission and on the District of Columbia Commission on Judicial Disabilities and Tenure.

(f) Any member of the Tenure Commission who is an active or retired Federal judge shall serve without additional compensation. Other members shall receive the daily equivalent at the rate provided by grade 18 of the General Schedule, established under section 5332 of title 5 of the United States Code, while actually engaged in service for the Commission.

(g) The Tenure Commission shall have the power to suspend, retire, or remove a judge of a District of Columbia court as provided in § 1-204.32 and to make recommendations regarding the appointment of senior judges of the District of Columbia courts as provided in § 11-1504.

(Dec. 24, 1973, 87 Stat. 792, Pub. L. 93-198, title IV, § 431; Oct. 13, 1977, 91 Stat. 1155, Pub. L. 95-131, § 3(a); Oct. 30, 1984, 98 Stat. 3142, Pub. L. 98-598, § 2(b); Oct. 28, 1986, 100 Stat. 3228, Pub. L. 99-573, § 4; June 13, 1994, Pub. L. 103-266, §§ 2(b)(1), 2(b)(2), 2(b)(3), 108 Stat. 713.)

§ 1-204.32. Removal, suspension, and involuntary retirement.

(a)(1) A judge of a District of Columbia court shall be removed from office upon the filing in the District of Columbia Court of Appeals by the Tenure Commission of an order of removal certifying the entry, in any court within the United States, of a final judgment of conviction of a crime which is punishable as a felony under Federal law or which would be a felony in the District.

(2) A judge of a District of Columbia court shall also be removed from office upon

affirmance of an appeal from an order of removal filed in the District of Columbia Court of Appeals by the Tenure Commission (or upon expiration of the time within which such an appeal may be taken) after a determination by the Tenure Commission of--

- (A) willful misconduct in office,
- (B) willful and persistent failure to perform judicial duties, or
- (C) any other conduct which is prejudicial to the administration of justice or which brings the judicial office into disrepute.

(b) A judge of a District of Columbia court shall be involuntarily retired from office when (1) the Tenure Commission determines that the judge suffers from a mental or physical disability (including habitual intemperance) which is or is likely to become permanent and which prevents, or seriously interferes with, the proper performance of judicial duties, and (2) the Tenure Commission files in the District of Columbia Court of Appeals an order of involuntary retirement and the order is affirmed on appeal or the time within which an appeal may be taken from the order has expired.

(c)(1) A judge of a District of Columbia court shall be suspended, without salary --

- (A) upon --
 - (i) proof of conviction of a crime referred to in subsection (a)(1) which has not become final, or
 - (ii) the filing of an order of removal under subsection (a)(2) which has not become final; and
- (B) upon the filing by the Tenure Commission of an order of suspension in the District of Columbia Court of Appeals.

Suspension under this paragraph shall continue until termination of all appeals. If the conviction is reversed or the order of removal is set aside, the judge shall be reinstated and shall recover any salary and all other rights and privileges of office.

(2) A judge of a District of Columbia court shall be suspended from all judicial duties, with such retirement salary as the judge may be entitled, upon the filing by the Tenure Commission of an order of involuntary retirement under subsection (b) in the District of

Columbia Court of Appeals. Suspension shall continue until termination of all appeals. If the order of involuntary retirement is set aside, the judge shall be reinstated and shall recover judicial salary less any retirement salary received and shall be entitled to all the rights and privileges of office.

(3) A judge of a District of Columbia court shall be suspended from all or part of the judge's judicial duties, with salary, if the Tenure Commission, upon concurrence of five members, (A) orders a hearing for the removal or retirement of the judge pursuant to this part and determines that such suspension is in the interest of the administration of justice, and (B) files an order of suspension in the District of Columbia Court of Appeals. The suspension shall terminate as specified in the order (which may be modified, as appropriate, by the Tenure Commission) but in no event later than the termination of all appeals.

(Dec. 24, 1973, 87 Stat. 794, Pub. L. 93-198, title IV, § 432; June 13, 1994, Pub. L. 103-266, §§ 2(b)(4), (5), 108 Stat. 713.)

§ 1-204.33. Nomination and appointment of judges.

(a) Except as provided in § 1-204.34(d)(1), the President shall nominate, from the list of persons recommended by the District of Columbia Judicial Nomination Commission established under § 1-204.34, and, by and with the advice and consent of the Senate, appoint all judges of the District of Columbia courts.

(b) No person may be nominated or appointed a judge of a District of Columbia court unless the person --

(1) is a citizen of the United States;

(2) is an active member of the unified District of Columbia Bar and has been engaged in the active practice of law in the District for the five years immediately preceding the nomination or for such five years has been on the faculty of a law school in the District, or has been employed as a lawyer by the United States or the District of Columbia government;

(3) is a bona fide resident of the District of Columbia and has maintained an actual

place of abode in the District for at least ninety days immediately prior to the nomination, and shall retain such residency while serving as such judge, except judges appointed prior to the effective date of this part who retain residency as required by § 11-1501(a) shall not be required to be residents of the District to be eligible for reappointment or to serve any term to which reappointed;

(4) is recommended to the President, for such nomination and appointment, by the District of Columbia Judicial Nomination Commission; and

(5) has not served, within a period of two years prior to the nomination, as a member of the Tenure Commission or of the District of Columbia Judicial Nomination Commission.

(c) Not less than six months prior to the expiration of the judge's term of office, any judge of the District of Columbia courts may file with the Tenure Commission a declaration of candidacy for reappointment. If a declaration is not so filed by any judge, a vacancy shall result from the expiration of the term of office and shall be filled by appointment as provided in subsections (a) and (b) of this section. If a declaration is so filed, the Tenure Commission shall, not less than sixty days prior to the expiration of the declaring candidate's term of office, prepare and submit to the President a written evaluation of the declaring candidate's performance during the present term of office and the candidate's fitness for reappointment to another term. If the Tenure Commission determines the declaring candidate to be well qualified for reappointment to another term, then the term of such declaring candidate shall be automatically extended for another full term, subject to mandatory retirement, suspension, or removal. If the Tenure Commission determines the declaring candidate to be qualified for reappointment to another term, then the President may nominate such candidate, in which case the President shall submit to the Senate for advice and consent the renomination of the declaring candidate as judge. If the President determines not to so nominate such declaring candidate, the President shall nominate another candidate for such position only in accordance with the provisions of subsections (a) and (b) of this section. If the Tenure Commission determines the declaring candidate to be unqualified for reappointment to another term, then the President

shall not submit to the Senate for advice and consent the renomination of the declaring candidate as judge and such judge shall not be eligible for reappointment or appointment as a judge of a District of Columbia court.

(Dec. 24, 1973, 87 Stat. 795, Pub. L. 93-198, title IV, § 433; Oct. 28, 1986, 100 Stat. 3228, Pub. L. 99-573, §§ 12, 13; June 13, 1994, Pub. L. 103-266, §§ 2(b)(6), 2(b)(7), 2(b)(8), 108 Stat. 713; Sept. 9, 1996, 110 Stat. 2369, Pub. L. 104-194, § 131(b); Apr. 26, 1996, 110 Stat. 1321 [210], Pub. L. 104-134, § 133(b).)

**STATUTE ENLARGING THE COMMISSION'S JURISDICTION
TO INCLUDE REVIEWS AND RECOMMENDATIONS OF
RETIRED AND SENIOR JUDGES
D.C. CODE TITLE 11 §11-1504**

§ 11-1504. Services of retired judges.

(a)(1) A judge, retired for reasons other than disability, who has been favorably recommended and appointed as a senior judge, in accordance with subsection (b), may perform such judicial duties as such senior judge is assigned and willing and able to undertake. A senior judge shall be subject to reappointment every four years, unless the Senior Judge has reached his or her seventy-fourth birthday, whereupon review shall be at least every two years, in accordance with subsection (b). Except as provided under this section, retired judges may not perform judicial duties in District of Columbia courts.

(2) At any time prior to or not later than one year after retirement, a judge may request recommendation from the District of Columbia Commission on Judicial Disabilities and Tenure (hereinafter in this section referred to as the “Commission”) to be appointed as a senior judge in accordance with this section; except that any retired judge shall have not less than 180 days from the effective date of this Act to file a request for an initial recommendation from the Commission.

(b)(1) A retired judge willing to perform judicial duties may request a recommendation as a senior judge from the Commission. Such judge shall submit to the Commission such information as the Commission considers necessary to a recommendation under this subsection.

(2) The Commission shall submit a written report of its recommendations and findings to the appropriate chief judge and the judge requesting appointment within 180 days of the date of the request for recommendation. The Commission, under such criteria as it considers appropriate, shall make a favorable or unfavorable recommendation to the appropriate chief judge regarding an appointment as senior judge. The recommendation of the Commission shall be final.

(3) The appropriate chief judge shall notify the Commission and the judge requesting appointment of such chief judge's decision regarding appointment within 30 days after receipt of the Commission's recommendation and findings. The decision of such chief judge regarding such appointment shall be final.

(c) A judge may continue to perform judicial duties upon retirement, without appointment as a senior judge, until such judge's successor assumes office.

(d) A retired judge, actively performing judicial duties as of the date of enactment of the District of Columbia Retired Judge Service Act, may continue to perform such judicial duties as he or she may be willing and able to assume, subject to the approval of the appropriate chief judge, for a period not to exceed one year from the date of enactment of such Act, without appointment as a senior judge.

(July 29, 1970, 84 Stat. 491, Pub. L. 91-358, title I, § 111; Oct. 30, 1984, 98 Stat. 3142, Pub. L. 98-598, § 2(a); Oct. 28, 1986, 100 Stat. 3228, Pub. L. 99-573, §§ 14(a), (b).)

COMMISSION ON JUDICIAL DISABILITIES AND TENURE**NOTICE OF FINAL RULEMAKING**

The District of Columbia Commission on Judicial Disabilities and Tenure (the Commission), pursuant to the D.C. Court Reform and Criminal Procedure Act of 1970, effective July 29, 1970 (84 Stat. 473, 91 Pub. L. 91-358; D.C. Official Code, § 11-1525(a) (2012 Repl.)) and § 431(d)(3) of the District of Columbia Self Government and Governmental Reorganization Act, effective December 24, 1973 (87 Stat. 774, Pub.L. 93-198), hereby amends its rules contained in Chapter 20 (Judicial Disabilities and Tenure) of Title 28 (Corrections, Courts, and Criminal Justice) of the District of Columbia Municipal Regulations (DCMR).

The amended sections of this chapter are § 2002.1, § 2002.4, § 2005.4, § 2030.4, § 2030.5, § 2038.2, and § 2038.3, which incorporate the provisions of D.C. Official Code, § 11-1530, as amended.

These rules shall be effective immediately upon publication in the *D.C. Register*. D.C. Official Code § 11-1525(a) (2012 Repl.) provides that the Commission is an independent agency; therefore, prior public notice and hearings are not required on the subject of Rules adopted by the Commission.

Chapter 20, JUDICIAL DISABILITIES AND TENURE, of Title 28 DCMR, CORRECTIONS, COURTS, AND CRIMINAL JUSTICE, is amended to read as follows:

CHAPTER 20 JUDICIAL DISABILITIES AND TENURE

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2099	DEFINITIONS
2000	COMMISSION ON JUDICIAL DISABILITIES AND TENURE
2000.1	The Commission on Judicial Disabilities and Tenure (also referred to in this chapter as "the Commission") is established and shall be operated in accordance with the provisions of the D.C. Court Reform and Criminal Procedure Act of 1970, effective July 29, 1970 (84 Stat. 473, 91 Pub. L. 91-358; D.C. Official Code, §§ 11-1521, <i>et seq.</i>).
2000.2	The Chairperson of the Commission shall be elected annually by the members of the Commission from among the members of the Commission.
2000.3	The Commission may select a Vice Chairperson and other officers as the Commission, from time to time, may deem appropriate.
2000.4	The Chairperson shall preside at each meeting of the Commission.
2000.5	Officers, special counsel, and other personnel who are selected by the Commission shall perform the duties assigned to them by the Commission.
2000.6	The Commission may retain medical or other experts to assist it.

2001 TRANSACTION OF COMMISSION BUSINESS

2001.1 The Commission shall act only at a meeting. The actions of the Commission may be implemented by any appropriate means directed by the Commission.

2001.2 Meetings of the Commission shall be held at times agreed upon by the members of the Commission, or upon call by the Chairperson, or by a majority of the members of the Commission and after notice to all members of the Commission.

2001.3 Minutes shall be kept of each meeting of the Commission. The minutes shall record the names of those present, the actions taken, and any other matters that the Commission may deem appropriate.

2001.4 A quorum for Commission action shall consist of four (4) members.

2001.5 Commission action shall be taken only upon concurrence of four (4) members; Provided, that the concurrence of five (5) members shall be required to suspend a judge from all or part of his or her judicial duties pursuant to § 432(c)(3) of the Self-Government Act.

2001.6 The Chairperson, Vice Chairperson, Acting Chairperson, or a member designated by one of them may carry out the routine of Commission business (such as the granting of postponements pursuant to this chapter, authorization of preliminary inquiry into complaints or information regarding a judge's conduct or health, and authorization of informal and non-determinative communications with a judge or the judge's counsel).

2001.7 A member shall disqualify himself or herself from consideration of matters before the Commission in the following circumstances:

- (a) When involved as a litigant or an attorney in a proceeding pending before a judge who is both the subject of and is aware of a complaint before the Commission;
- (b) When involved as a litigant or attorney in a proceeding pending before an associate judge seeking reappointment, a retiring judge requesting a favorable recommendation for appointment as a senior judge, or a senior judge seeking favorable recommendation for reappointment to senior status.

2002 PHYSICAL EXAMINATIONS AND MEDICAL INFORMATION

2002.1 At the Commission's request, a judge shall submit to a physical and/or mental examination by a health care professional designated by the Commission after consultation with the judge. The examination and report

shall be made at the judge's expense, unless the Commission grants a waiver based on extraordinary circumstances. Such examination is a condition of continued judicial service.

- 2002.2 The physician's report shall be given in writing to the Commission.
- 2002.3 At the Commission's request, a judge shall provide the Commission with all waivers and releases necessary to authorize the Commission to receive all medical records, reports, and information from any medical person, medical institution, or other facility regarding the judge's physical or mental condition.
- 2002.4 The failure of a judge to submit to a physical or mental examination or to provide waivers and releases required under this section shall be considered by the Commission adversely to the judge.
- 2002.5 Copies of all medical records, reports, and information received by the Commission shall be provided to the judge at his or her request.

2003 FINANCIAL REPORTS

- 2003.1 Each judge shall file with the Commission on or before the first Monday in June of each year, on forms provided by the Commission, the reports of personal financial interest required by D.C. Official Code § 11-1530, as amended, for the preceding calendar year.
- 2003.2 The Commission from time to time may require a judge to file pertinent supplemental information.
- 2003.3 These Rules govern access to the Annual Financial Reports filed by judges of the District of Columbia Courts, as required by D.C. Official Code § 11-1530, as amended.
- 2003.4 These Rules apply to the processing of all requests for copies of the Annual Financial Reports of judges of the District of Columbia Courts, maintained by the D.C. Commission on Judicial Disabilities and Tenure (the Commission).
- 2003.5 The Commission's responsibility for monitoring the release of the Annual Financial Reports includes the following:
- (a) The Commission will monitor and grant or deny the release of copies of all Annual Financial Reports to ensure compliance with the statute and the Commission's Rules.
 - (b) The Commission will monitor and grant or deny requests for viewing all Annual Financial Reports at the office of the

Commission, to ensure compliance with the statute and the Commission's Rules.

- (c) As provided by D.C. Official Code § 11-1530(a)(1c)(a)(c)(1), as amended, the Commission will review and, within the Commission's discretion, grant or deny any requests for the redaction of statutorily mandated information where the release of the information could endanger a judge or a member of the judge's family. It will review, and grant or deny any requests for waiver of costs associated with a request for the release of an Annual Financial Report. It will also provide guidance when questions not covered in these Rules arise.
- (d) The Commission will not permit public access to any Annual Financial Report unless all of the Reports due for a calendar year have been received by the Commission. If extensions of time have been requested by judges in which to file Reports, none of the Reports for that calendar year will be available until all extension deadlines have expired and all Reports have been received by the Commission.

2003.6 The Annual Financial Reports filed by judges are maintained by the Commission, and in accordance with the statute and the Commission Rules, the Reports are kept for three years subsequent to filing.

2003.7 All requesters who wish to review or obtain a copy of an Annual Financial Report must submit a Form CJDT 10A to the staff of the Commission. The form must be in writing and contain the following information:

- (a) The requester's name, occupation, telephone number, e-mail, and mailing address;
- (b) The name and address of any other person or organization on whose behalf the inspection or copy is requested; and
- (c) That the requester is aware of the prohibitions with regard to obtaining or viewing the Report.
- (d) A list of the judges whose Reports are being requested.

2003.8 Requesters will be notified in writing of the Commission's decision to grant or deny a request for viewing or copying Reports. If the Commission grants a request, the requester will also be advised of the total reproduction cost for the Reports ordered.

2003.9 Requesters will be charged twenty-five cents (\$0.25) per page to cover costs. Only entire Reports will be reproduced, requests for particular

pages or sections will not be honored. The Commission only accepts checks or money orders, which must be made payable to the D.C. Treasurer.

- 2003.10 Requesters must provide a copy of the CJDT 10A form with the check or money order to the Commission. Once the form and payment are received the requester will be notified of the date when the requested Report(s) can be collected from the Commission office.
- 2003.11 Each CJDT 10A form received that results in the release or viewing of a Report will be filed and will be made available to the public throughout the period during which the Report is made available to the public.
- 2003.12 Annual Financial Reports may be viewed in the Commission office by appointment. Appointments must be made at least five working days in advance. Commission staff will provide the requester with a copy of the Report(s) requested, which may be redacted, if so approved by the Commission. In no case will the original file be removed from the Commission office for review by a member of the public. Requesters wishing to view Reports must also complete a CJDT 10A and provide all of the information requested, and will be notified in writing of the Commission's decision to grant or deny the request.
- 2003.13 A copy of the requested Reports may be furnished without charge or at a reduced charge if it is determined that waiver or reduction of the fee is in the public interest. Requests for waivers must be presented in writing to the Commission.
- 2003.14 Annual Financial Reports will not be released to any individual who fails to properly complete a CJDT 10A form or pay costs.
- (a) Commission staff will take every step to ensure that the Reports are maintained securely.
 - (b) Commission staff will not release or allow the viewing of any Report until the Commission has approved the requester's CJDT 10A form, and until written notice has been given to the judge. In accordance with the Commission's direction, Commission staff will minimize security risks by redacting information not required by the statute including without limitation:
 - (1) Spouse's and dependents' names;
 - (2) Home addresses;
 - (3) Social security numbers;

- (4) Financial account and bank account numbers;
- (5) Street addresses of personal properties, financial institutions, and business properties;
- (6) Ownership codes; and
- (7) Judge's signature.

2003.15 The Commission will immediately notify the judge in writing and by e-mail when a Form CJDT 10A is received requesting the release of the judge's Annual Financial Report(s) and will provide each judge with a copy of the requester's CJDT 10A form. A judge will have ten (10) days from receipt of the Commission's notification, to request a redaction.

2003.16 A Report that may be disseminated to the public after release to a requester, may be redacted pursuant to D.C. Official Code § 11-1530(c)(1)(2), as amended, to prevent public disclosure of personal or sensitive information that could endanger the judge or a member of the judge's family, directly, or indirectly, if possessed by a member of the public hostile to the judge or a member of the judge's family.

2003.17 The procedure for determining whether redaction is appropriate will be as follows:

- (a) When an Annual Financial Report is filed, the judge may request redaction(s) believed to be appropriate before release of a Report that may be disseminated to the public. Requests for redaction may also be made after a judge receives a notification of a request to view or copy a Report.
- (b) The judge must state with specificity what material is sought to be redacted. The judge must also state in detail the reasons justifying redaction. These reasons may include, but are not limited to
 - (1) The purposes and need for an ongoing protective detail provided by the United States Marshals Service, or the D.C. Courts Security Division;
 - (2) Particular threats or inappropriate communications;
 - (3) Involvement in a high threat trial or appeal; or
 - (4) Certain information on the form that could endanger the judge or a member of the judge's family directly or indirectly if possessed by a member of the public hostile to the judge or a member of the judge's family.

2003.18 The Commission will determine, whether information sought to be redacted could, if disseminated to the public, endanger the judge or a member of the judge's family directly or indirectly and grant or deny the request accordingly. Information that could facilitate the financial harassment of a judge or a member of the judge's family, such as identity theft, may be deemed information that could endanger a judge or a member of the judge's family.

2003.19 No redactions will be granted that eliminate disclosure of the existence, rather than extent, of an interest in an entity that would disqualify the judge from serving as a judge in litigation involving that entity, unless disclosure of that interest would reveal the location of a residence of the judge or a member of the judge's family, reveal the place of employment of the judge or a member of the judge's family.

(a) Information may be redacted from a Report in accordance with such findings to the extent necessary to protect the judge who filed the Report and his or her family, and the redactions will remain in effect for three (3) years.

(b) The Commission staff will notify a judge in writing and by e-mail when a Report is actually released or reviewed and provide the judge with a copy of the released Report with any redactions. The staff will maintain a copy of the redacted material for as long as the original Report is maintained.

(c) A request for redaction and its supporting documents, except for copies of the Annual Financial Report and any amendments thereto, are considered confidential and will only be used to determine whether to grant a request for redaction.

2004 COMPLAINTS

2004.1 Subject to the confidentiality provisions of § 2044, the Commission may receive information or a complaint from an individual or an organization regarding a judge's conduct or health.

2005 PRECEDENTS

2005.1 The provisions of this section shall apply to determinations by the Commission of grounds for removal under § 432(a)(2) of the Self-Government Act, and to evaluations by the Commission of judges who are candidates for renomination.

2005.2 Each judge shall be deemed to be on notice of the following; Provided, that copies of the decisions, evaluations, reports, or communications have been filed by the Commission with the Chief Judge of each court:

- (a) The Commission's decisions in proceedings;
- (b) The Commission's evaluations of judges who have been candidates for re-nomination;
- (c) The annual reports of the Commission; and
- (d) Any communication by the Commission to either of the Chief Judges of the courts of the District of Columbia specifying that the judges are to take notice of the communication.

2005.3 Expressions by the Commission in the decisions, evaluations, and communications listed in § 2005.2 shall be pertinent precedents to be taken into account by the Commission.

2005.4 Each judge shall be deemed to be on notice of provisions promulgated by the Advisory Committee on Judicial Activities of the Judicial Conference of the United States regarding the Code of Judicial Conduct for United States Judges. Each judge shall also be on notice of the advisory opinions of the District of Columbia Courts' Advisory Committee on Judicial Conduct.

2005.5 Insofar as the opinions of the Advisory Committee on Judicial Activities deal with provisions of the Code of Judicial Conduct that are similar to requirements applicable to judges of District of Columbia courts, the Commission shall regard them as persuasive.

§§ 2006 – 2009: [RESERVED]

2010 INVESTIGATIONS

2010.1 The Commission may investigate to determine whether a proceeding should be instituted on charges of misconduct, failure to perform judicial duties, or disability, upon receiving information regarding the following by complaint or otherwise:

- (a) That a judge may have been guilty of willful misconduct in office or willful and persistent failure to perform his or her judicial duties; or
- (b) That a judge engaged in other conduct prejudicial to the administration of justice or which brings the judicial office into disrepute; or

- (c) That a judge may have a mental or physical disability (including habitual intemperance) which is or is likely to become permanent and which prevents, or seriously interferes with, the proper performance of his or her judicial duties.

2010.2 The investigation may be carried out in a manner that the Commission deems appropriate, including the taking of evidence at Commission meetings or by deposition.

2010.3

- (a) A respondent judge shall cooperate with the Commission in the course of its investigation and shall, within such reasonable time as the Commission may require, respond to any inquiry concerning the conduct of the judge, whether the questioned conduct occurred during the course of a concluded case or matter, a pending case or matter or in an extrajudicial context. The failure or refusal of the judge to respond may be considered a failure to cooperate.
- (b) The failure or refusal of a judge to cooperate in an investigation, or the use of dilatory practices, frivolous or unfounded responses or argument, or other uncooperative behavior may be considered a violation of Canon 1 of the Code of Judicial Conduct and, therefore, an independent ground for disciplinary action.

2010.4 After investigation, if the Commission determines that a proceeding should not be instituted, the Commission shall so inform the judge if he or she was previously informed of the pendency of the complaint by either the complainant or the Commission and shall give notice to the complainant either that there is insufficient cause to proceed or that the complaint poses a legal issue over which the Commission has no jurisdiction, as appropriate.

2011 NOTICE OF A PROCEEDING

2011.1 If, after investigation, the Commission determines that a proceeding is warranted, the Commission, except for good reason, shall notify the judge of its determination.

2011.2 If immediately requested by a judge who has been notified under § 2011.1, the Commission, or a member of the Commission, or a special counsel may, if the circumstances warrant, confer with the judge for the purpose of considering whether the matter may be disposed of without a proceeding.

2011.3 If the matter is disposed of without a proceeding, notice shall be given to the complainant that the matter has been resolved.

2011.4 If notification under § 2011.1 is not given or, if given, if a disposition without a proceeding does not result, the Commission shall issue a written notice to the judge advising him or her of the institution of a proceeding to inquire into the charges.

2011.5 Each proceeding shall be titled as follows:

BEFORE THE DISTRICT OF COLUMBIA COMMISSION
ON JUDICIAL DISABILITIES AND TENURE

Inquiry Concerning A Judge, No. _____

2011.6 The notice of proceeding shall specify concisely the charges and the alleged basis for the charges, and shall advise the judge of the following rights:

- (a) The right to counsel; and
- (b) The right to file a written answer to the notice within twenty (20) days after service of the notice.

2011.7 The notice shall be served by personal service upon the judge.

2011.8 If it appears to the Chairperson of the Commission upon affidavit that, after reasonable effort for a period of ten (10) days, personal service could not be made, service may be made upon the judge by mailing the notice by registered or certified mail, addressed to the judge at his or her chambers or at his or her last known residence.

2012 OFFICIAL RECORD

2012.1 The Commission shall keep a complete record of each proceeding.

2013 ANSWER AND HEARING DATE

2013.1 Within twenty (20) days after service of a notice of proceeding, the judge may file an answer with the Commission.

2013.2 Upon the filing of an answer, unless good reason to the contrary appears in the answer, or if no answer is filed within the time for its filing, the Commission shall order a hearing to be held before it concerning the matters specified in the notice of proceeding.

2013.3 The Commission shall set a time and place for the hearing and shall mail a notice of the hearing time and place to the judge by registered or certified mail addressed to the judge at his or her chambers at least thirty (30) days prior to the date set.

2013.4 The Chairperson may extend the time either for filing an answer or for the commencement of a hearing for periods not to exceed thirty (30) days in the aggregate.

2013.5 The notice of proceeding and the answer shall constitute the pleadings. No further pleadings or motions shall be filed.

2013.6 The judge shall include in the answer all procedural and substantive defenses and challenges which the judge desires the Commission to consider.

2013.7 The Commission may rule on the defenses and challenges at the outset of the hearing or may take them under advisement to be determined during, at the close of, or at a time subsequent to the hearing.

2014 AMENDMENT OF NOTICE OF PROCEEDING

2014.1 The Commission at any time prior to its final decision in a proceeding may amend the notice of proceeding to conform to proof or otherwise.

2014.2 The judge shall be given a reasonable time to answer an amendment and to present his or her defense against any matter charged in an amendment.

2015 HEARINGS

2015.1 At the time and place set for hearing, the Commission shall proceed with the hearing whether or not the judge has filed an answer or appears at the hearing.

2015.2 The failure of the judge to answer or to appear at the hearing shall not, standing alone, be taken as evidence of the truth of facts alleged to constitute grounds for removal or involuntary retirement.

2015.3 The hearing shall be held before the Commission.

2015.4 Evidence at a hearing shall be received only when a quorum of the Commission is present.

2015.5 A verbatim record of each hearing shall be kept.

2016 PROCEDURAL RIGHTS OF JUDGES

2016.1 In a proceeding the judge shall be admitted to all hearing sessions.

2016.2 A judge shall be given every reasonable opportunity to defend himself or herself against the charges, including the introduction of evidence,

representation by counsel, and examination and cross-examination of witnesses.

2016.3 A judge shall have the right to the issuance of subpoenas for attendance of witnesses at the hearing to testify or produce material evidentiary matter.

2016.4 A copy of the hearing record of a proceeding shall be provided to the judge at the expense of the Commission.

2016.5 If it appears to the Commission at any time during a proceeding that the judge is not competent to act for himself or herself, the Commission shall seek the appointment of a *guardian ad litem* unless the judge has a legal representative who will act for him or her.

2016.6 The *guardian ad litem* or legal representative may exercise any right and privilege and make any defense for the judge with the same force and effect as if exercised or made by the judge, if he or she were competent. Whenever the provisions of this chapter provide for notice to the judge, that notice shall be given to the *guardian ad litem* or legal representative.

2017 OATHS OR AFFIRMATIONS

2017.1 Each witness who appears before the Commission in an investigation or proceeding shall swear or affirm to tell the truth and not to disclose the nature of the investigation or of the proceeding or the identity of the judge involved unless or until the matter is no longer confidential under the provisions of this chapter.

2017.2 The provisions of § 2017.1 shall apply to witnesses at Commission meetings or testifying by deposition. Individuals interviewed by a member of the Commission or its staff shall be requested to keep the matter confidential.

2017.3 Each member of the Commission shall be authorized to administer oaths or affirmations to all witnesses appearing before the Commission.

2018 SUBPOENAS AND ORDERS FOR INSPECTION OF DOCUMENTS

2018.1 In aid of any investigation or proceeding, the Commission may order and otherwise provide for the inspection of papers, books, records, accounts, documents, transcriptions, and other physical things, and may issue subpoenas for attendance of witnesses and for the production of papers, books, records, accounts, transcriptions, documents, or other physical things, and testimony.

2018.2 Whenever a person fails to appear to testify or to produce any papers, books, records, accounts, documents, transcriptions, or other physical things, as required by a subpoena issued by the Commission, the Commission may petition the United States District Court for the district in which the person may be found for an order compelling him or her to attend, testify, or produce the writings or things required by subpoena, pursuant to D.C. Official Code § 11-1527(c)(3).

2019 DEPOSITIONS

2019.1 The Commission may order the deposition of any person in aid of any investigation or proceeding.

2019.2 The deposition shall be taken in the form prescribed by the Commission, and shall be subject to any limitations prescribed by the Commission.

2019.3 To compel a deposition, the Commission may petition the Superior Court of the District of Columbia requesting an order requiring a person to appear and testify and to produce papers, books, records, accounts, documents, transcriptions, or other physical things before a member of the Commission or a special counsel or other officer designated by the Commission.

2019.4 The petition to the Superior Court shall state, without identifying the judge, the general nature of the pending matter, the name and residence of the person whose testimony or other evidence is desired, and any special directions the Commission may prescribe.

2019.5 Depositions shall be taken and returned in the manner prescribed by law for civil actions.

2020 GRANTS OF IMMUNITY

2020.1 Whenever a witness refuses, on the basis of his or her privilege against self-incrimination, to testify or produce papers, books, records, accounts, documents, transcriptions, or other physical things and the Commission determines that his or her testimony, or production of evidence, is necessary, it may order the witness to testify or to produce the evidence under a grant of immunity against subsequent use of the testimony or evidence, as prescribed by D.C. Official Code § 11-1527(c)(2).

2021 COMPENSATION OF WITNESSES

2021.1 Each witness, other than an officer or employee of the United States or the District of Columbia, shall receive for his or her attendance the fees prescribed by D.C. Official Code § 15-714 for witnesses in civil cases.

2021.2 All witnesses shall receive the allowances prescribed by D.C. Official Code § 15-714 for witnesses in civil cases.

2022 FINDINGS OF FACT AND DECISIONS

2022.1 Within ninety (90) days after the conclusion of the hearing or the conclusion of any reopened hearing in a proceeding, the Commission shall make written findings of fact, conclusions of law, and a determination regarding the conduct or health of the judge.

2022.2 The findings, conclusions, and determination shall be set forth in an order, as the Commission deems appropriate. A copy of the order shall be sent to the judge and his or her counsel, if any.

2022.3 If the Commission determines that grounds for removal or involuntary retirement of the judge have been established and orders removal or retirement, the Commission shall file its decision, including a transcript of the entire record, with the District of Columbia Court of Appeals.

2022.4 If the Commission determines that grounds for removal or involuntary retirement of the judge have been established, but that removal or retirement should not be ordered, it shall include in its decision a statement of reasons for not so ordering, and, as it deems appropriate under the circumstances, shall order that the record of the proceeding either shall be made public or shall remain confidential.

2022.5 If the record of the proceedings remains confidential under § 2022.4, and if the judge within ten (10) days after a copy of the decision is sent to him or her requests that the record be made public, the Commission shall so order.

2022.6 If the record is to be made public, the Commission shall file its decision, including a transcript of the entire record, with the District of Columbia Court of Appeals.

2022.7 When a decision and transcript of the record are filed with the District of Columbia Court of Appeals pursuant to §§ 2022.3 or 2022.6, the Commission shall provide the judge with a copy of the entire record at the expense of the Commission except for those portions that it previously may have provided to him or her, and it shall notify the Chief Judge of the judge's court of its decision.

2022.8 If the Commission determines that grounds for removal or involuntary retirement of a judge have not been established, it shall ask the judge whether he or she desires the Commission to make public disclosure of information pertaining to the nature of its investigation, its hearing, findings, determination, or other facts related to its proceedings.

2022.9 If the judge, in writing, requests disclosure under § 2022.8, the Commission shall make the information available to the public except for the identity of an informant or complainant other than a witness at the hearing.

2023 CONVICTION OF A FELONY

2023.1 The Commission shall not file in the District of Columbia Court of Appeals an order of removal certifying the entry of a judgment of a criminal conviction, as provided in § 432(a)(1) of the Self-Government Act, without giving to the judge concerned at least ten (10) days' notice of its intention to do so.

§§ 2024 – 2029: [RESERVED]

2030 EVALUATION OF CANDIDATES FOR RENOMINATION

2030.1 Not less than six (6) months prior to the expiration of his or her term of office, a judge seeking reappointment shall file with the Commission a declaration in writing of candidacy for reappointment.

2030.2 Judges shall be urged to file the declaration well in advance of the six (6) month minimum, and shall, if possible, file the declaration nine (9) months prior to the expiration of his or her term.

2030.3 Not less than six (6) months prior to expiration of his or her term, the candidate shall submit to the Commission a written statement, including illustrative materials, reviewing the significant aspects of his or her judicial activities that the judge believes may be helpful to the Commission in its evaluation of his or her candidacy.

2030.4 A judge seeking reappointment shall, contemporaneous with his or her request, submit on a form provided by the Commission a report of an examination by a physician together with a statement of such physician which attests to the physical and mental fitness of the judge to perform judicial duties.

2030.5 When deemed appropriate by the Commission, a judge seeking reappointment shall submit to a physical and/or mental examination by a health care professional designated by it after consultation with the judge. The physician's report shall be given in writing to the Commission. Such examination and report shall be at the judge's expense, unless the Commission grants a waiver based on extraordinary circumstances. Such examination is a condition of continued judicial service pending the Commission's decision on the request for reappointment.

2031 EVALUATION STANDARDS

2031.1 A judge declaring candidacy for reappointment shall be evaluated by the Commission through a review of the judge's performance and conduct during the judge's present term of office.

2031.2 The evaluation categories shall include the following:

- (a) Well Qualified – The candidate's work product, legal scholarship, dedication, efficiency, and demeanor are exceptional, and the candidate's performance consistently reflects credit on the judicial system.
- (b) Qualified – The candidate satisfactorily performs the judicial function or, if there are negative traits, they are overcome by strong positive attributes.
- (c) Unqualified – The candidate is unfit for further judicial service.

2032 COMMUNICATIONS FROM INTERESTED PERSONS

2032.1 The lay public, the bar, court personnel, and other judges may communicate to the Commission, preferably in writing, any information they may have that is pertinent to the candidacy of a judge for renomination.

2033 INTERVIEWS WITH INFORMED PERSONS

2033.1 Ordinarily the Commission shall interview the Chief Judge of the candidate's court.

2033.2 In addition, the Commission may seek pertinent information by interviews with others conducted by the full Commission, by one (1) or more members, or by a special counsel or others of its staff.

2034 DISCLOSURE OF TAX INFORMATION

2034.1 At the Commission's request, the candidate shall execute all waivers and releases necessary for the Commission to secure tax information concerning him or her, including copies of tax returns.

2034.2 The failure of a candidate to provide the waivers and releases required under § 2034.1 may be considered by the Commission adversely to the candidate.

2034.3 Copies of all records received from the taxing authorities shall be provided to the candidate.

2035 CONFERENCES WITH CANDIDATES

- 2035.1 At the Commission's request, the candidate shall confer with the Commission in person and in private on reasonable notice.
- 2035.2 At the candidate's request, the Commission shall confer with him or her in person and in private on reasonable notice.
- 2035.3 At any conference with the candidate, the Commission may allow attendance by one (1) or more special counsel or others of its staff. The candidate may be accompanied by counsel.
- 2035.4 All members of the Commission shall endeavor to be present at any conference with a candidate, but the failure of a member to attend shall not prevent the Commission member from participating in the Commission's evaluation.
- 2035.5 If the Commission has information which, if uncontroverted, the Commission feels would raise a substantial doubt that the candidate is at least qualified, it shall inform the candidate of the nature of the questions raised.
- 2035.6 To the extent feasible, subject to the limitations of §§ 2004 and 2036, the Commission shall provide to the candidate in summary form the basis for doubt under § 2035.5.
- 2035.7 Prior to concluding its evaluation, the Commission shall afford the candidate a reasonable opportunity to confer with it, in accordance with the provisions of §§ 2035.1 through 2035.4, regarding the doubt, and to submit to the Commission any material information not previously presented bearing on the candidacy.

2036 EVALUATION REPORTS

- 2036.1 The Commission shall prepare and submit to the President a written evaluation of the candidate's performance during his or her present term and his or her fitness for reappointment to another term, not less than sixty (60) days prior to the expiration of the candidate's term of office.
- 2036.2 The Commission's evaluation report to the President of the United States shall be furnished, simultaneously, to the candidate.
- 2036.3 The Commission's evaluation report shall be made public immediately after it has been furnished to the President and the candidate.

**2037 EVALUATION OF RETIRED JUDGES REQUESTING
RECOMMENDATION FOR APPOINTMENT AS SENIOR
JUDGES**

- 2037.1 At any time prior to or not later than one (1) year after retirement, a judge seeking favorable recommendation for appointment as a senior judge shall file with the Commission a request in writing for such recommendation. The term of such appointment shall be for a term of four (4) years unless the judge has reached his or her seventy-fourth (74th) birthday in which case the appointment shall be for a term of two (2) years.
- 2037.2 Contemporaneous with the filing of the request, such judge shall submit to the Commission a written statement, including illustrative materials, reviewing such significant aspects of his or her judicial activities as he or she believes may be helpful to the Commission in its evaluation of his or her request.
- 2037.3 A judge requesting recommendation for appointment as a senior judge not more than four (4) years subsequent to the date of his or her appointment or reappointment as a judge of a District of Columbia Court pursuant to § 433 of the Self-Government Act shall submit a written statement as prescribed by § 2037.2 but may limit the matters addressed in his or her statement to those judicial activities performed since the date of such appointment or reappointment.
- 2037.4 A retired judge who did not file a request for an initial recommendation from the Commission prior to April 29, 1985, and who is now willing to perform judicial duties shall file with the Commission not later than April 27, 1987, a request in writing for a recommendation for appointment as a senior judge and, contemporaneous with such request, shall submit a written statement, as prescribed by § 2037.2.
- 2037.5 Not more than one hundred eighty (180) days nor less than ninety (90) days prior to the expiration of each term, a senior judge willing to continue to perform judicial duties shall file with the Commission a request in writing for recommendation for reappointment to an additional term.
- 2037.6 Contemporaneous with the filing of the request prescribed by § 2037.5, such judge shall submit to the Commission a written statement reviewing such significant aspects of his or her judicial activities performed since the date of his or her last appointment or reappointment as he or she believes may be helpful to the Commission in its evaluation of his or her request.
- 2037.7 A judge who does not file a request within the time periods prescribed in §§ 2037.1, 2037.4 and 2037.5 shall not be eligible for appointment as a senior judge at any time thereafter, except for good cause shown.

2038 PHYSICAL EXAMINATION AND MEDICAL INFORMATION

- 2038.1 A judge seeking favorable recommendation for appointment or reappointment as a senior judge shall, contemporaneous with his or her request, submit on a form provided by the Commission a report of an examination by a physician together with a statement of such physician which attests to the physical and mental fitness of the judge to perform judicial duties.
- 2038.2 When deemed appropriate by the Commission, a judge seeking favorable recommendation for appointment or reappointment to a term as a senior judge shall submit to a physical and/or mental examination by a health care professional designated by it after consultation with the judge. The physician's report shall be given in writing to the Commission. Such examination and report shall be at the judge's expense, unless the Commission grants a waiver based on extraordinary circumstances. Such examination is a condition of continued judicial service pending the Commission's decision on the request for appointment or reappointment.
- 2038.3 At the Commission's request, a judge required to submit to an examination as prescribed in §§ 2038.1 and 2038.2 shall provide the Commission with all waivers and releases necessary to authorize the Commission to receive all medical records, reports, and information from any medical person, medical institution or other facility regarding the judge's physical or mental condition.
- 2038.4 The failure of a judge to submit to a physical or mental examination or to provide waivers and releases as required by §§ 2038.1, 2038.2 and 2038.3 may be considered by the Commission adversely to the judge.
- 2038.5 Copies of all medical records, reports, and information received by the Commission shall be provided to the judge at his or her request.

2039 RECOMMENDATION STANDARDS

- 2039.1 A retired judge seeking a favorable recommendation for appointment or reappointment to a term as a senior judge shall be evaluated by the Commission through a review of the judge's physical and mental fitness and his or her ability to perform judicial duties.
- 2039.2 The recommendation standards are as follows:
- (a) Favorable – The judge is physically and mentally fit and able satisfactorily to perform judicial duties.
 - (b) Unfavorable – The judge is unfit for further judicial service.

2040 COMMUNICATIONS FROM INTERESTED PERSONS

- 2040.1 The lay public, the bar, court personnel, and other judges are invited to communicate to the Commission, preferably in writing, any information they may have that is pertinent to a request for recommendation for appointment or reappointment as a senior judge.

2041 INTERVIEWS WITH INFORMED PERSONS

- 2041.1 The Commission shall interview the Chief Judge of the requesting judge's court.
- 2041.2 The Commission may seek pertinent information by interviews with others conducted by the full Commission, by one or more members, or by a special counsel or others of its staff.

2042 CONFERENCES WITH THE CANDIDATE

- 2042.1 At the Commission's request, the judge shall confer with it in person and in private on reasonable notice; and, at the judge's request, the Commission shall confer with the judge in person and in private on reasonable notice.
- 2042.2 At any such conference the Commission may allow attendance by one or more special counsel or others of its staff.
- 2042.3 The judge may be accompanied by counsel.
- 2042.4 All members of the Commission will endeavor to be present at any such conference, but the failure of a member to attend will not prevent his or her participation in the Commission's evaluation.

2043 NOTICE OF SPECIAL CONCERN AND OPPORTUNITY TO CONFER

- 2043.1 In the event the Commission has information which the Commission feels, if uncontroverted, would raise a substantial doubt that the judge is fit for further judicial service, it shall inform the judge of the nature of the questions raised and, to the extent feasible and subject to the limitation of §§ 2044.2 and 2044.3, the Commission shall provide to the judge in summary form the basis for doubt.
- 2043.2 Prior to concluding its evaluation the Commission shall afford the judge a reasonable opportunity to confer with it, in accordance with § 2042.1, regarding the doubt, and to submit to the Commission any material information not previously presented bearing on the request.

2044**CONFIDENTIALITY**

2044.1 Commission records shall not be available for public inspection, except the following;

- (a) Time and attendance data reported pursuant to the provisions of D.C. Official Code §§ 11-709 and 11-909; and
- (b) Financial data reported pursuant to the provisions of D.C. Official Code § 11-1530, as amended.

2044.2 The record of investigations, proceedings, evaluations, and recommendations conducted or made by the Commission, as well as all financial and medical information received by the Commission pursuant to this chapter, other than the financial data referred to in § 2044.1, shall be confidential, except:

- (a) When disclosed, in the Commission's discretion or as provided by this chapter, to the judge who is the subject of the information, investigation, proceeding, evaluation, or recommendation; or
- (b) Where the judge who is the subject of the information, investigation, proceeding, evaluation, or recommendation, consents to disclosure; or
- (c) When disclosed in a proceeding, or in a Commission decision in a proceeding; or
- (d) When disclosed in a Commission evaluation of a judge who is a candidate for reappointment, or to the President of the United States in connection therewith; or
- (e) When disclosed to the Chief Judge of a District of Columbia court in connection with a judge who has requested the Commission's recommendation for appointment as a senior judge; or
- (f) When disclosed, on a privileged and confidential basis, to the District of Columbia Judicial Nomination Commission in response to a request concerning a judge whose elevation to the District of Columbia Court of Appeals or for Chief Judge of a District of Columbia court is being considered; or
- (g) When disclosed, to the extent required, on judicial review of a Commission decision or in the prosecution of a witness for perjury.

For purposes of this Rule, the record of an investigation, proceeding, evaluation, or recommendation shall include all papers filed or submitted

and all information furnished to or considered by the Commission in connection therewith (including, but not limited to, the substance of any complaint by or communications with individuals or organizations, financial and medical information obtained pursuant to this chapter, depositions, grants of immunity, and the notice and transcript of proceedings, if any).

2044.3 Notwithstanding any provision of § 2044.2, the identity of any individual or organization submitting a complaint, or furnishing information to the Commission in connection with an investigation, proceeding, evaluation of a candidacy for reappointment, or request for recommendation for appointment as a senior judge, shall not be disclosed to anyone, including the judge who is the subject of the complaint or information, except:

- (a) Where the individual or organization consents to such disclosure; or
- (b) When disclosed in a proceeding where the individual or a person connected with the organization is called as a witness; or
- (c) When disclosed by the Commission to the President of the United States at his or her request when it concerns a judge evaluated by the Commission as "qualified" whose possible renomination the President is considering; or
- (d) When disclosed, upon request, on a privileged and confidential basis, to the District of Columbia Judicial Nomination Commission, concerning a judge being considered by such Nomination Commission for elevation to the District of Columbia Court of Appeals or for Chief Judge of a District of Columbia Court; or
- (e) When disclosed, to the extent required, on judicial review of a Commission decision or in the prosecution of a witness for perjury.

2044.4 Hearings in proceedings shall be conducted in closed session, unless the judge who is the subject of the proceeding shall consent to make the hearing open to the public.

2099 DEFINITIONS

2099.1 When used in this chapter, the following terms shall have the meanings ascribed:

Chairperson – The Chairperson of the Commission, or the Vice Chairperson or Acting Chairperson designated by the Commission when acting as Chairperson.

Evaluation – The process whereby the Commission, pursuant to § 433(c) of the Self-Government Act, prepares and submits to the President of the United States a written report evaluating the performance and fitness of a candidate for reappointment to a District of Columbia court.

Investigation – An inquiry to determine whether a proceeding should be instituted.

Judge – A judge, senior judge, or retired judge of the District of Columbia Court of Appeals or of the Superior Court of the District of Columbia.

Proceeding – A formal proceeding, initiated by a Notice of Proceeding, to hear and determine charges as to a judge's conduct or health pursuant to § 432 (a)(2) or (b) of the Self-Government Act.

Recommendation – The process whereby the Commission, pursuant to D.C. Official Code § 11-1504, prepares and submits a written report of its recommendation and findings to the chief judge of a District of Columbia court regarding the appointment of senior judges to the court.

Self-Government Act – The District of Columbia Self-Government and Governmental Reorganization Act of 1973, effective December 24, 1973 (87 Stat. 774, Pub. L. 93-198).

Special Counsel – any member of the District of Columbia Bar retained by the Commission to assist it.



Code of Judicial Conduct

2018 Edition

District of Columbia Courts

ADVISORY COMMITTEE ON JUDICIAL CONDUCT DISTRICT OF COLUMBIA COURTS

Honorable Stephen H. Glickman, Chairperson
District of Columbia Court of Appeals

Honorable Corinne A. Beckwith
District of Columbia Court of Appeals

Honorable Anthony C. Epstein
Superior Court of the District of Columbia

Honorable John R. Fisher
District of Columbia Court of Appeals

Honorable Florence Y. Pan
Superior Court of the District of Columbia

Ryan K. Mullady, Counsel to the Committee

PREFACE TO THE 2018 EDITION OF THE CODE OF JUDICIAL CONDUCT

On February 15, 2018, the Joint Committee on Judicial Administration approved this republication of the 2012 Code of Judicial Conduct for the District of Columbia Courts. This 2018 edition does not make substantive changes to the 2012 Code, but includes the following additional material: (1) Appendix A provides an ethical guide concerning the conduct of judicial law clerks; (2) Appendix B lists Opinions of the Advisory Committee on Judicial Conduct through 2017; and (3) Appendix C includes relevant orders and resolutions of the Joint Committee on Judicial Administration.

An online version of the 2018 Edition of the Code of Judicial Conduct is available on the District of Columbia Courts' website (<https://www.dccourts.gov/judicialconduct>). The online version contains internal links allowing the reader to more easily jump between related rules within the document. It also includes hyperlinks to the source materials referenced in the Code and the appendices.

PREFACE TO THE 2012 CODE OF JUDICIAL CONDUCT

The Code of Judicial Conduct of the District of Columbia was adopted by the Joint Committee on Judicial Administration of the District of Columbia Courts on November 15, 2011, with an effective date of January 1, 2012. The 2012 Code replaces the 1995 Code of Judicial Conduct.

The 2012 Code is based on the American Bar Association's 2007 Model Code of Judicial Conduct. At the request of the Chief Judges of the District of Columbia Court of Appeals and the Superior Court of the District of Columbia, the Advisory Committee on Judicial Conduct reviewed the ABA Model Code to recommend whether (and, if so, with what modifications) it should be adopted by the District of Columbia Courts. In doing so, the Advisory Committee followed procedures similar to those followed in studying the ABA's 1990 Model Code, on which the now-superseded 1995 Code of Judicial Conduct for District of Columbia judges was based.

The Advisory Committee's review of the 2007 Model Code spanned three-and-a-half years, from mid-2007 through 2011. The Committee undertook a thorough comparison of the Model Code with the 1995 Code and considered the reasons for the various stylistic and substantive changes proposed by the ABA after extensive deliberations and public hearings. A guiding principle of the Committee's deliberations was to hew to the Model Code insofar as practicable to further consistency and ease of interpretation and implementation. As part of its line-by-line review, however, the Advisory Committee considered modifications that would be necessary or advisable to adapt the Model Code to the particular laws and circumstances of the District of Columbia. Following this review, the Committee prepared a draft Code based on the 2007 Model Code.

In May 2011, the Advisory Committee held meetings in both courts and sought and received comments on the proposed draft Code from all active and senior judges and magistrate judges of the District of Columbia Courts, and from the Auditor-Master. The Advisory Committee also solicited comments from the District of Columbia Commission on Judicial Disabilities and Tenure and the District of Columbia Access to Justice Commission. The comments garnered from these sources led the Advisory Committee to revise the draft Code in significant respects. The Advisory Committee then forwarded the draft to the Joint Committee, which directed that it be released for public comment. To that end, the draft was published to the courts and the public at large in various print and electronic media in September, with a request that any comments be submitted by October 31, 2011. Comments were received from sections of the District of Columbia Bar Association, the Access to Justice Commission, several legal services organizations, and one member of the public. After considering those comments, the Advisory Committee further revised the draft Code and recommended to the Joint Committee that it be approved. The Joint Committee accepted that recommendation on November 15, 2011.

**CODE OF JUDICIAL CONDUCT
DISTRICT OF COLUMBIA COURTS
2018 EDITION**

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CODE OF JUDICIAL CONDUCT DISTRICT OF COLUMBIA COURTS

Preamble

[1] An independent, fair and impartial judiciary is indispensable to our system of justice. The United States legal system is based upon the principle that an independent, impartial, and competent judiciary, composed of men and women of integrity, will interpret and apply the law that governs our society. Thus, the judiciary plays a central role in preserving the principles of justice and the rule of law. Inherent in all the Rules contained in this Code are the precepts that judges, individually and collectively, must respect and honor the judicial office as a public trust and strive to maintain and enhance confidence in the legal system.

[2] Judges should maintain the dignity of judicial office at all times, and avoid both impropriety and the appearance of impropriety in their professional and personal lives. They should aspire at all times to conduct that ensures the greatest possible public confidence in their independence, impartiality, integrity, and competence.

[3] The Code of Judicial Conduct establishes standards for the ethical conduct of judges and judicial candidates. It is not intended as an exhaustive guide for the conduct of judges and judicial candidates, who are governed in their judicial and personal conduct by general ethical standards as well as by the Code. The Code is intended, however, to provide guidance and assist judges in maintaining the highest standards of judicial and personal conduct, and to provide a basis for regulating their conduct through disciplinary agencies.

Scope

[1] The Code of Judicial Conduct consists of four Canons, numbered Rules under each Canon, and Comments that generally follow and explain each Rule. Scope and [Terminology](#) sections provide additional guidance in interpreting and applying the Code. An [Application](#) section establishes when the various Rules apply to a judge or judicial candidate.

[2] The Canons state overarching principles of judicial ethics that all judges must observe. Although a judge may be disciplined only for violating a Rule, the Canons provide important guidance in interpreting the Rules. Where a Rule contains a permissive term, such as “may” or “should,” the conduct being addressed is committed to the personal and professional discretion of the judge or candidate in question, and no disciplinary action should be taken for action or inaction within the bounds of such discretion.

[3] The Comments that accompany the Rules serve two functions. First, they provide guidance regarding the purpose, meaning, and proper application of the Rules. They contain explanatory material and, in some instances, provide examples of permitted or prohibited conduct. Comments neither add to nor subtract from the binding obligations set forth in the Rules. Therefore, when a Comment contains the term “must,” it does not mean that the Comment itself is binding or enforceable; it signifies that the Rule in question, properly understood, is obligatory as to the conduct at issue.

[4] Second, the Comments identify aspirational goals for judges. To implement fully the principles of this Code as articulated in the Canons, judges should strive to exceed the standards of conduct established by the Rules, holding themselves to the highest ethical standards and seeking to achieve those aspirational goals, thereby enhancing the dignity of the judicial office.

[5] The Rules of the Code of Judicial Conduct are rules of reason that should be applied consistent with constitutional requirements, statutes, other court rules, and decisional law, and with due regard for all relevant circumstances. The Rules should not be interpreted to impinge upon the essential independence of judges in making judicial decisions.

[6] Although the black letter of the Rules is binding and enforceable, it is not contemplated that every transgression will result in the imposition of discipline. Whether discipline should be imposed should be determined through a reasonable and reasoned application of the Rules, and should depend upon factors such as the seriousness of the transgression, the facts and circumstances that existed at the time of the transgression, the extent of any pattern of improper activity, whether there have been previous violations, and the effect of the improper activity upon the judicial system or others.

[7] The Code is not designed or intended as a basis for civil or criminal liability. Neither is it intended to be the basis for litigants to seek collateral remedies against each other or to obtain tactical advantages in proceedings before a court.

Terminology

The first time any term listed below is used in a Rule in its defined sense, it is followed by an asterisk (*).

“Appropriate authority” means the authority having responsibility for initiation of disciplinary process in connection with the violation to be reported. See Rules [2.14](#) and [2.15](#).

“Contribution” means both financial and in-kind contributions, such as goods, professional or volunteer services, advertising, and other types of assistance, which, if obtained by the recipient otherwise, would require a financial expenditure. See Rules [3.7](#) and [4.1](#).

“De minimis,” in the context of interests pertaining to disqualification of a judge, means an insignificant interest that could not raise a reasonable question regarding the judge’s impartiality. See Rule [2.11](#).

“Domestic partner” means a person with whom another person maintains a household and an intimate relationship, other than a person to whom he or she is legally married. See Rules [2.11](#), [2.13](#), [3.13](#), and [3.14](#).

“Economic interest” means ownership of more than a de minimis legal or equitable interest. Except for situations in which the judge participates in the management of such a legal or equitable interest, or the interest could be substantially affected by the outcome of a proceeding before a judge, it does not include:

- (1) an interest in the individual holdings within a mutual or common investment fund;
- (2) an interest in securities held by an educational, religious, charitable, fraternal, or civic organization in which the judge or the judge’s spouse, domestic partner, parent, or child serves as a director, an officer, an advisor, or other participant;
- (3) a deposit in a financial institution or deposits or proprietary interests the judge may maintain as a member of a mutual savings association or credit union, or similar proprietary interests; or
- (4) an interest in the issuer of government securities held by the judge.

See Rules [1.3](#) and [2.11](#).

“Fiduciary” includes relationships such as executor, administrator, trustee, or guardian. See Rules [2.11](#), [3.2](#), and [3.8](#).

“Impartial,” “impartiality,” and “impartially” mean absence of bias or prejudice in favor of, or against, particular parties or classes of parties, as well as maintenance of an open mind in considering issues that may come before a judge. See Canons [1](#), [2](#), and [4](#), and Rules [1.2](#), [2.2](#), [2.10](#), [2.11](#), [2.13](#), [3.1](#), [3.12](#), [3.13](#), and [4.1](#).

“Impending matter” is a matter that is imminent or expected to occur in the near future. See Rules [2.9](#), [2.10](#), [3.13](#), and [4.1](#).

“Impropriety” includes conduct that violates the law, court rules, or provisions of this Code, and conduct that undermines a judge’s independence, integrity, or impartiality. See Canon [1](#) and Rule [1.2](#).

“Independence” means a judge’s freedom from influence or controls other than those established by law. See Canons [1](#) and [4](#), and Rules [1.2](#), [3.1](#), [3.12](#), and [3.13](#).

“Integrity” means probity, fairness, honesty, uprightness, and soundness of character. See Canons [1](#) and [4](#) and Rules [1.2](#), [3.1](#), [3.12](#), and [3.13](#).

“Judicial candidate” means any person, including a sitting judge, who is seeking selection for or retention in judicial office. A person becomes a candidate for judicial office as soon as he or she makes a public announcement of candidacy, declares or files as a candidate with the appointment authority, authorizes or, where permitted, engages in solicitation or acceptance of support, or is nominated for appointment to office. See Rules [2.11](#), [4.1](#), and [4.3](#).

“Knowingly,” “knowledge,” “known,” and “knows” mean actual knowledge of the fact in question. A person’s knowledge may be inferred from circumstances. See Rules [2.11](#), [2.13](#), [2.15](#), [2.16](#), [3.6](#), and [4.1](#).

“Law” encompasses court rules as well as statutes, constitutional provisions, and decisional law. See Rules [1.1](#), [2.1](#), [2.2](#), [2.6](#), [2.7](#), [2.9](#), [3.1](#), [3.4](#), [3.6](#), [3.9](#), [3.12](#), [3.13](#), [3.14](#), [4.1](#), and [4.5](#).

“Member of the candidate’s family” means a spouse, domestic partner, child, grandchild, parent, grandparent, or other relative or person with whom the candidate maintains a close familial relationship.

“Member of the judge’s family” means a spouse, domestic partner, child, grandchild, parent, grandparent, or other relative or person with whom the judge maintains a close familial relationship. See Rules [3.7](#), [3.8](#), [3.10](#), and [3.11](#).

“Member of a judge’s family residing in the judge’s household” means any relative of a judge by blood or marriage, or a person treated by a judge as a member of the judge’s family, who resides in the judge’s household. See Rules [2.11](#) and [3.13](#).

“Nonpublic information” means information that is not available to the public. Nonpublic information may include, but is not limited to, information that is sealed by statute or court order or impounded or communicated in camera, and information offered in grand jury proceedings, presentencing reports, dependency cases, or psychiatric reports. See Rule [3.5](#).

“Pending matter” is a matter that has commenced. A matter continues to be pending through any appellate process until final disposition. See Rules [2.9](#), [2.10](#), [3.13](#), and [4.1](#).

“Political organization” means a political party or other group sponsored by or affiliated with a political party or candidate, the principal purpose of which is to further the election or appointment of candidates for political office. See Rules [4.1](#) and [4.3](#).

“Retired Judge” means a former judge of the Superior Court or of the Court of Appeals who is no longer performing or eligible to perform judicial duties upon retirement, pursuant to D.C. Code § 11-1504 (2012 Repl.). See [Application Paragraph I\(B\)](#).

“Senior Judge” means a former active judge of the Superior Court or of the Court of Appeals who has retired from active service and has been favorably recommended by the Commission on Judicial Disabilities and Tenure and appointed as senior judge by the appropriate chief judge, pursuant to D.C. Code § 11-1504 (a) and (b) (2012 Repl.). See [Application Paragraphs I\(C\) and \(D\)](#).

“Third degree of relationship” includes the following persons: great-grandparent, grandparent, parent, uncle, aunt, brother, sister, child, grandchild, great-grandchild, nephew, and niece. See Rule [2.11](#).

Application

The Application section establishes when the various Rules apply to a judge or judicial candidate.

I. Applicability of This Code

(A) All active and senior judges, judges who continue to serve pursuant to D.C. Code § 11-1504 (c) (2012 Repl.), magistrate judges and the Auditor-Master shall comply with this Code except as provided below. Canon 4 applies also to judicial candidates.

(B) Retired Judge.* A retired judge is not required to comply with this Code.

(C) Senior Judge.* A senior judge:

(1) is not required to comply with Rules [3.4](#) (Appointments to Governmental Positions), [3.8\(A\)](#) (Appointments to Fiduciary Positions), [3.9](#) (Service as Arbitrator or Mediator), [3.10](#) (Practice of Law), and [3.11\(B\)](#) (Financial, Business or Remunerative Activities); and

(2) shall not practice law in the court on which the judge serves or in any court or administrative agency subject to the appellate jurisdiction of the court on which the judge serves, and shall not act as a lawyer in a proceeding in which the judge has served as a judge or in any other proceeding related thereto.

(D) Senior Judge, Inactive. For purposes of application of this code:

(1) A senior judge may declare himself or herself “inactive” from the date of initial appointment or reappointment as a senior judge, or at any time thereafter, by notifying the appointing chief judge and the Commission on Judicial Disabilities and Tenure, in writing, of that decision before the inactive status is to take effect;

(2) While a senior judge is inactive pursuant to paragraph (D)(1), he or she shall comply with paragraph (C)(2) but shall not otherwise be required to comply with this code.

(3) A senior judge in inactive status may not perform judicial duties. An inactive senior judge may resume active senior judge status by furnishing evidence satisfactory to the Commission on Disabilities and Tenure, as well as to the chief judge of the court on which the judge serves, that the judge has discontinued all activities that would be ethically proscribed for an active senior judge.

Comment

[1] While a retired judge continues to serve as a judge pursuant to D.C. Code § 11-1504 (c) (2012 Repl.), until the retired judge's successor assumes office, the judge shall fully comply with the Code. Thereafter, the retired judge, who by definition is not permitted to perform further judicial service, shall no longer be required to comply with this code unless he or she is appointed a senior judge, in which case the Rules applicable to senior judges shall apply for as long as the appointment is in effect.

[2] When a person is a retired judge who no longer serves under D.C. Code § 11-1504 (c) (2012 Repl.), or who has been a continuing part-time senior judge but is no longer under appointment as a continuing part-time senior judge, including a retired judge no longer subject to recall, that person may act as a lawyer in the District of Columbia in a proceeding in which he or she has served as a judge or in any other proceeding related thereto only with the express consent of all parties pursuant to Rule 1.12 (a) of the District of Columbia Rules of Professional Conduct. However, a person who is under appointment as a senior judge but has elected inactive senior judge status shall fully comply with paragraph (C)(2), as more fully set forth in paragraph (D).

[3] The exceptions under paragraph (C)(1) making Rules [3.9](#) and [3.10](#) inapplicable and thereby permitting a senior judge to act as an arbitrator or mediator and to practice law are subject to [Advisory Opinion No. 3](#) (June 25, 1992), "When Senior Judges May Act As Arbitrators," and [Advisory Opinion No. 10](#) (March 28, 2002), "'Practice of Law' by Senior Judges," issued by the Advisory Committee on Judicial Conduct of the District of Columbia Courts.

[4] In accordance with the reporting requirements of Rule [3.15](#), senior judges shall file financial statements with the Commission on Judicial Disabilities and Tenure as required by D.C. Code § 11-1530 (2017 Supp.) and the regulations of such Commission.

[5] The creation of "Senior Judge, Inactive" status is intended to help meet a very important need: to encourage retiring judges to take senior status. Senior judges perform invaluable service to the Superior Court and the Court of Appeals, often handling regular calendars for substantial periods of time, as well as filling in for active judges who are temporarily absent. And yet some judges who retire may be unsure whether they want to remain available to serve from time to time as senior judges – with the attendant ethical restrictions on their other activities – or instead desire to embark on another career or on other activities that are incompatible with the ethical restrictions on senior judges.

The "Senior Judge, Inactive" category, therefore, is intended to provide an almost ethically unfettered opportunity for a retired judge, sooner or later, to embark on alternative career or activity explorations, without becoming forever barred thereafter from sitting as a senior judge. The inactive senior judge, however, like all senior judges, must comply with paragraph (C)(2) precluding, among other things, the practice of law in any court on which the judge has served. See [Advisory Opinion No. 10](#) (March 28, 2002), "'Practice of Law' by Senior Judges."

A practical reason for creating this inactive senior judge status is the fact that, according to D.C. Code § 11-1504 (2012 Repl.), a retiring judge must apply for senior judge status within one year from retirement. The Commission on Disabilities and Tenure must act on the application within 180 days thereafter, and the appropriate chief judge must make a decision on the Commission's recommendation within 30 days after its receipt. Accordingly, a retiring judge must elect to pursue – and as a result must receive – senior judge status relatively soon after retirement or forever lose that opportunity. If inactive senior status is not available, therefore, a retiring judge will not be able to pursue a full range of options for a temporary alternative career or other activity, unless the judge elects not to seek senior judge status, with its ethical limitations. If, on the other hand, inactive senior status is available, a retiring judge will not have to choose between limiting temporary alternative career choices and electing senior status; the opportunity for beginning or resuming active senior judge status at an appropriate time will remain.

The judicial system of the District of Columbia will significantly benefit from the availability of as many active senior judges as possible. This goal is likely to be achieved, therefore, only if the inactive senior status – call it a sabbatical option – is permitted without significant limitation, as an incentive to retiring judges to seek senior status upon retirement.

II. [Not Adopted] [Retired Judge Subject to Recall]

III. [Not Adopted] [Continuing Part-Time Judge]

IV. [Not Adopted] [Periodic Part-Time Judge]

V. [Not Adopted] [Pro Tempore Part-Time Judge]

VI. Time for Compliance

A person to whom this Code becomes applicable shall comply immediately with its provisions, except that those judges to whom Rules [3.8](#) (Appointments to Fiduciary Positions) and [3.11](#) (Financial, Business, or Remunerative Activities) apply shall comply with those Rules as soon as reasonably practicable, but in no event later than one year after the Code becomes applicable to the judge.

Comment

[1] If serving as a fiduciary when selected as judge, a new judge may, notwithstanding the prohibitions in Rule [3.8](#), continue to serve as fiduciary, but only for that period of time necessary to avoid serious adverse consequences to the beneficiaries of the fiduciary relationship and in no event longer than one year. Similarly, if engaged at the time of judicial selection in a business

activity, a new judge may, notwithstanding the prohibitions in Rule [3.11](#), continue in that activity for a reasonable period but in no event longer than one year.

Canon 1

A JUDGE SHALL UPHOLD AND PROMOTE THE INDEPENDENCE, INTEGRITY, AND IMPARTIALITY OF THE JUDICIARY, AND SHALL AVOID IMPROPRIETY AND THE APPEARANCE OF IMPROPRIETY.

Rule 1.1: Compliance with the Law

A judge shall comply with the law,* including the Code of Judicial Conduct.

Rule 1.2: Promoting Confidence in the Judiciary

A judge shall act at all times in a manner that promotes public confidence in the independence,* integrity,* and impartiality* of the judiciary, and shall avoid impropriety* and the appearance of impropriety.

Comment

[1] Public confidence in the judiciary is eroded by improper conduct and conduct that creates the appearance of impropriety. This principle applies to both the professional and personal conduct of a judge.

[2] A judge should expect to be the subject of public scrutiny that might be viewed as burdensome if applied to other citizens, and must accept the restrictions imposed by the Code.

[3] Conduct that compromises or appears to compromise the independence, integrity, and impartiality of a judge undermines public confidence in the judiciary. Because it is not practicable to list all such conduct, the Rule is necessarily cast in general terms.

[4] Judges should participate in activities that promote ethical conduct among judges and lawyers, support professionalism within the judiciary and the legal profession, and promote access to justice for all.

[5] Actual improprieties include violations of law, court rules or provisions of this Code. The test for appearance of impropriety is whether the conduct would create in reasonable minds a perception that the judge violated this Code or engaged in other conduct that reflects adversely on the judge's honesty, impartiality, temperament, or fitness to serve as a judge.

[6] A judge should initiate and participate in community outreach activities for the purpose of promoting public understanding of and confidence in the administration of justice. In conducting such activities, the judge must act in a manner consistent with this Code.

Rule 1.3: Avoiding Abuse of the Prestige of Judicial Office

A judge shall not abuse the prestige of judicial office to advance the personal or economic interests* of the judge or others, or allow others to do so.

Comment

[1] It is improper for a judge to use or attempt to use his or her position to gain personal advantage or deferential treatment of any kind. For example, it would be improper for a judge to allude to his or her judicial status to gain favorable treatment in encounters with traffic officials. Similarly, a judge must not use judicial letterhead to gain an advantage in conducting his or her personal business.

[2] A judge may provide a reference or recommendation for an individual based upon the judge's personal knowledge. The judge may use official letterhead if the judge indicates that the reference is personal and if there is no likelihood that the use of the letterhead would reasonably be perceived as an attempt to exert pressure by reason of the judicial office.

[3] Judges may participate in the process of judicial selection by cooperating with appointing authorities and screening committees, and by responding to inquiries from such entities concerning the professional qualifications of a person being considered for judicial office.

[4] Special considerations arise when judges write or contribute to publications of for-profit entities, whether related or unrelated to the law. A judge should not permit anyone associated with the publication of such materials to exploit the judge's office in a manner that violates this Rule or other applicable law. In contracts for publication of a judge's writing, the judge should retain sufficient control over the advertising to avoid such exploitation.

Canon 2

A JUDGE SHALL PERFORM THE DUTIES OF JUDICIAL OFFICE IMPARTIALLY, COMPETENTLY, AND DILIGENTLY.

Rule 2.1: Giving Precedence to the Duties of Judicial Office

The duties of judicial office, as prescribed by law,* shall take precedence over all of a judge's personal and extrajudicial activities.

Comment

[1] To ensure that judges are available to fulfill their judicial duties, judges must conduct their personal and extrajudicial activities to minimize the risk of conflicts that would result in frequent disqualification. See Canon [3](#).

[2] Although it is not a duty of judicial office unless prescribed by law, judges are encouraged to participate in activities that promote public understanding of and confidence in the justice system.

Rule 2.2: Impartiality and Fairness

A judge shall uphold and apply the law,* and shall perform all duties of judicial office fairly and impartially.*

Comment

[1] To ensure impartiality and fairness to all parties, a judge must be objective and open-minded.

[2] Although each judge comes to the bench with a unique background and personal philosophy, a judge must interpret and apply the law without regard to whether the judge approves or disapproves of the law in question.

[3] When applying and interpreting the law, a judge sometimes may make good-faith errors of fact or law. Errors of this kind do not violate this Rule.

[4] It is not a violation of this Rule for a judge to make reasonable accommodations to ensure litigants who do not have the assistance of counsel the opportunity to have their matters fairly heard. See Comment [1A] to Rule [2.6](#), which describes the judge's affirmative role in facilitating the ability of every person who has a legal interest in a proceeding to be fairly heard.

Rule 2.3: Bias, Prejudice, and Harassment

(A) A judge shall perform the duties of judicial office, including administrative duties, without bias or prejudice.

(B) A judge shall not, in the performance of judicial duties, by words or conduct manifest bias or prejudice, or engage in harassment, including but not limited to bias, prejudice, or harassment based upon race, sex, gender, religion, national origin, ethnicity, disability, age, sexual orientation, marital status, socioeconomic status, or political affiliation, and shall not permit court staff, court officials, or others subject to the judge's direction and control to do so.

(C) A judge shall require lawyers in proceedings before the court to refrain from manifesting bias or prejudice, or engaging in harassment, based upon attributes including but not limited to race, sex, gender, religion, national origin, ethnicity, disability, age, sexual orientation, marital status, socioeconomic status, or political affiliation, against parties, witnesses, lawyers, or others.

(D) The restrictions of paragraphs (B) and (C) do not preclude judges or lawyers from making legitimate reference to the listed factors, or similar factors, when they are relevant to an issue in a proceeding.

Comment

[1] A judge who manifests bias or prejudice in a proceeding impairs the fairness of the proceeding and brings the judiciary into disrepute.

[2] Examples of manifestations of bias or prejudice include but are not limited to epithets; slurs; demeaning nicknames; negative stereotyping; attempted humor based upon stereotypes; threatening, intimidating, or hostile acts; suggestions of connections between race, ethnicity, or nationality and crime; and irrelevant references to personal characteristics. Even facial expressions and body language can convey to parties and lawyers in the proceeding, jurors, the media, and others an appearance of bias or prejudice. A judge must avoid conduct that may reasonably be perceived as prejudiced or biased.

[3] Harassment, as referred to in paragraphs (B) and (C), is verbal or physical conduct that denigrates or shows hostility or aversion toward a person on bases such as race, sex, gender, religion, national origin, ethnicity, disability, age, sexual orientation, marital status, socioeconomic status, or political affiliation.

[4] Sexual harassment includes but is not limited to sexual advances, requests for sexual favors, and other verbal or physical conduct of a sexual nature that is unwelcome.

Rule 2.4: External Influences on Judicial Conduct

(A) A judge shall not be swayed by public clamor or fear of criticism.

(B) A judge shall not permit family, social, political, financial, or other interests or relationships to influence the judge's judicial conduct or judgment.

(C) A judge shall not convey or permit others to convey the impression that any person or organization is in a position to influence the judge.

Comment

[1] An independent judiciary requires that judges decide cases according to the law and facts, without regard to whether particular laws or litigants are popular or unpopular with the public, the media, government officials, or the judge's friends or family. Confidence in the judiciary is eroded if judicial decision making is perceived to be subject to inappropriate outside influences.

Rule 2.5: Competence, Diligence, and Cooperation

(A) A judge shall perform judicial and administrative duties competently and diligently.

(B) A judge shall cooperate with other judges and court officials in the administration of court business.

Comment

[1] Competence in the performance of judicial duties requires the legal knowledge, skill, thoroughness, and preparation reasonably necessary to perform a judge's responsibilities of judicial office.

[2] A judge should seek the necessary docket time, court staff, expertise, and resources to discharge all adjudicative and administrative responsibilities.

[3] Prompt disposition of the court's business requires a judge to devote adequate time to judicial duties, to be punctual in attending court and expeditious in determining matters under submission, and to take reasonable measures to ensure that court officials, litigants, and their lawyers cooperate with the judge to that end.

[4] In disposing of matters promptly and efficiently, a judge must demonstrate due regard for the rights of parties to be heard and to have issues resolved without unnecessary cost or delay. A judge should monitor and supervise cases in ways that reduce or eliminate dilatory practices, avoidable delays, and unnecessary costs.

Rule 2.6: Ensuring the Right to Be Heard

(A) A judge shall accord to every person who has a legal interest in a proceeding, or that person's lawyer, the right to be heard according to law.*

(B) A judge may encourage parties to a proceeding and their lawyers to settle matters in dispute but shall not act in a manner that coerces any party into settlement.

Comment

[1] The right to be heard is an essential component of a fair and impartial system of justice. Substantive rights of litigants can be protected only if procedures protecting the right to be heard are observed.

[1A] The judge has an affirmative role in facilitating the ability of every person who has a legal interest in a proceeding to be fairly heard. Pursuant to Rule [2.2](#), the judge should not give self-represented litigants an unfair advantage or create an appearance of partiality to the reasonable person; however, in the interest of ensuring fairness and access to justice, judges should make reasonable accommodations that help litigants who are not represented by counsel to understand the proceedings and applicable procedural requirements, secure legal assistance, and be heard according to law. In some circumstances, particular accommodations for self-represented litigants may be required by decisional or other law. Steps judges may consider in facilitating the right to be heard include, but are not limited to, (1) providing brief information about the proceeding and evidentiary and foundational requirements, (2) asking neutral questions to elicit or clarify information, (3) modifying the traditional order of taking evidence, (4) refraining from using legal jargon, (5) explaining the basis for a ruling, and (6) making referrals to any resources available to assist the litigant in the preparation of the case.

[2] The judge plays an important role in overseeing the settlement of disputes, but should be careful that efforts to further settlement do not undermine any party's right to be heard according to law. The judge should keep in mind the effect that the judge's participation in settlement discussions may have, not only on the judge's own views of the case, but also on the perceptions of the lawyers and the parties if the case remains with the judge after settlement efforts are unsuccessful. Among the factors that a judge should consider when deciding upon an appropriate settlement practice for a case are (1) whether the parties have requested or voluntarily consented to a certain level of participation by the judge in settlement discussions, (2) whether the parties and their counsel are relatively sophisticated in legal matters, (3) whether the

case will be tried by the judge or a jury, (4) whether the parties participate with their counsel in settlement discussions, (5) whether any parties are unrepresented by counsel, and (6) whether the matter is civil or criminal.

[3] Judges must be mindful of the effect settlement discussions can have, not only on their objectivity and impartiality, but also on the appearance of their objectivity and impartiality. Despite a judge's best efforts, there may be instances when information obtained during settlement discussions could influence a judge's decision making during trial, and, in such instances, the judge should consider whether disqualification may be appropriate. See Rule [2.11\(A\)\(1\)](#).

Rule 2.7: Responsibility to Decide

A judge shall hear and decide matters assigned to the judge, except when disqualification is required by Rule [2.11](#) or other law.*

Comment

[1] Judges must be available to decide the matters that come before the court. Although there are times when disqualification is necessary to protect the rights of litigants and preserve public confidence in the independence, integrity, and impartiality of the judiciary, judges must be available to decide matters that come before the courts. Unwarranted disqualification may bring public disfavor to the court and to the judge personally. The dignity of the court, the judge's respect for fulfillment of judicial duties, and a proper concern for the burdens that may be imposed upon the judge's colleagues require that a judge not use disqualification to avoid cases that present difficult, controversial, or unpopular issues.

Rule 2.8: Decorum, Demeanor, and Communication with Jurors

(A) A judge shall require order and decorum in proceedings before the court.

(B) A judge shall be patient, dignified, and courteous to litigants, jurors, witnesses, lawyers, court staff, court officials, and others with whom the judge deals in an official capacity, and shall require similar conduct of lawyers, court staff, court officials, and others subject to the judge's direction and control.

(C) A judge shall not commend or criticize jurors for their verdict other than in a court order or opinion in a proceeding, but may express appreciation to jurors for their service to the judicial system and the community.

Comment

[1] The duty to hear all proceedings with patience and courtesy is not inconsistent with the duty imposed in Rule [2.5](#) to dispose promptly of the business of the court. Judges can be efficient and businesslike while being patient and deliberate.

[2] Commending or criticizing jurors for their verdict may imply a judicial expectation in future cases and may impair a juror's ability to be fair and impartial in a subsequent case.

[3] A judge who is not otherwise prohibited by law from doing so may meet with jurors who choose to remain after trial but should be careful not to discuss the merits of the case.

Rule 2.9: Ex Parte Communications

(A) A judge shall not initiate, permit, or consider ex parte communications, or consider other communications made to the judge outside the presence of the parties or their lawyers, concerning a pending* or impending matter,* except as follows:

(1) When circumstances require it, ex parte communication for scheduling, administrative, or emergency purposes, which does not address substantive matters, is permitted, provided:

(a) the judge reasonably believes that no party will gain a procedural, substantive, or tactical advantage as a result of the ex parte communication; and

(b) the judge makes provision promptly to notify all other parties of the substance of the ex parte communication, and gives the parties an opportunity to respond.

(2) A judge may obtain the written advice of a disinterested expert on the law applicable to a proceeding before the judge, if the judge gives advance notice to the parties of the person to be consulted and the subject matter of the advice to be solicited, and affords the parties a reasonable opportunity to object and respond to the notice and to the advice received.

(3) A judge may consult with court staff and court officials whose functions are to aid the judge in carrying out the judge's adjudicative responsibilities, or with other judges, provided the judge makes reasonable efforts to avoid receiving factual information that is not part of the record, and does not abrogate the responsibility personally to decide the matter.

(4) A judge may, with the consent of the parties, confer separately with the parties and their lawyers in an effort to settle matters pending before the judge.

(5) A judge may initiate, permit, or consider any ex parte communication when expressly authorized by law* to do so.

(B) If a judge inadvertently receives an unauthorized ex parte communication bearing upon the substance of a matter, the judge shall make provision promptly to notify the parties of the substance of the communication and provide the parties with an opportunity to respond.

(C) A judge shall not investigate facts in a matter independently, and shall consider only the evidence presented and any facts that may properly be judicially noticed.

(D) A judge shall make reasonable efforts, including providing appropriate supervision, to ensure that this Rule is not violated by court staff, court officials, and others subject to the judge's direction and control.

Comment

[1] To the extent reasonably possible, all parties or their lawyers shall be included in communications with a judge.

[2] Whenever the presence of a party or notice to a party is required by this Rule, it is the party's lawyer, or if the party is unrepresented, the party, who is to be present or to whom notice is to be given.

[3] The proscription against communications concerning a proceeding includes communications with lawyers, law teachers, and other persons who are not participants in the proceeding, except to the limited extent permitted by this Rule.

[4] This Rule applies to judges serving on therapeutic or problem-solving courts, including family treatment courts, drug courts, mental health courts, and community courts. Although judges of these non-traditional courts may assume a more interactive role with parties, treatment providers, and others than is usual for judges, they may not initiate, permit or consider ex parte communications unless expressly authorized to do so by law (including applicable court rules), as stated in paragraph (A)(5).

[4A] The Auditor-Master, to whom this Rule also applies, may initiate, permit or consider ex parte communications, and may investigate facts, to the extent authorized by Rule 53 of the Superior Court Rules of Civil Procedure or other applicable court rule, or by any order of reference that the Auditor-Master is required to execute by D.C. Code § 11-1724 (2012 Repl.).

[5] A judge may consult with other judges on pending matters, but must avoid ex parte discussions of a case with judges who have previously been disqualified from hearing the matter, and with judges who have appellate jurisdiction over the matter.

[6] The prohibition against a judge investigating the facts in a matter extends to information available in all mediums, including on-line databases and the Internet generally.

[7] A judge may consult ethics advisory committees, outside counsel, or legal experts concerning the judge's compliance with this Code. Such consultations are not subject to the restrictions of paragraph (A)(2).

Rule 2.10: Judicial Statements on Pending and Impending Cases

(A) A judge shall not make any public statement that might reasonably be expected to affect the outcome or impair the fairness of a matter pending* or impending* in any court, or make any nonpublic statement that might substantially interfere with a fair trial or hearing.

(B) A judge shall not, in connection with cases, controversies, or issues that are likely to come before the court, make pledges, promises, or commitments that are inconsistent with the impartial* performance of the adjudicative duties of judicial office.

(C) A judge shall require court staff, court officials, and others subject to the judge's direction and control to refrain from making statements that the judge would be prohibited from making by paragraphs (A) and (B).

(D) Notwithstanding the restrictions in paragraph (A), a judge may make public statements in the course of official duties, may explain court procedures, and may comment on any proceeding in which the judge is a litigant in a personal capacity.

(E) Subject to the requirements of paragraph (A), a judge may respond directly or through a third party to allegations in the media or elsewhere concerning the judge's conduct in a matter. A judge shall not discuss the rationale for a decision in a pending case unless the judge is relating what was already made part of the public record.

Comment

[1] This Rule's restrictions on judicial speech are essential to the maintenance of the independence, integrity, and impartiality of the judiciary.

[2] This Rule does not prohibit a judge from commenting on proceedings in which the judge is a litigant in a personal capacity. In cases in which the judge is a litigant in an official capacity, such as a writ of mandamus, the judge must not comment publicly.

[3] A judge may respond to criticism by reiterating without elaboration what is set forth in the public record in a case, including pleadings, documentary evidence, and the transcript of proceedings held in open court. Depending upon the circumstances, the judge should consider whether it may be preferable for a third party, rather than the judge, to respond or issue statements in connection with allegations concerning the judge's conduct in a matter.

Rule 2.11: Disqualification

(A) A judge shall disqualify himself or herself in any proceeding in which the judge's impartiality* might reasonably be questioned, including but not limited to the following circumstances:

(1) The judge has a personal bias or prejudice concerning a party or a party's lawyer, or personal knowledge* of facts that are in dispute in the proceeding.

(2) The judge knows* that the judge, the judge's spouse or domestic partner,* or a person within the third degree of relationship* to either of them, or the spouse or domestic partner of such a person is:

(a) a party to the proceeding, or an officer, director, general partner, managing member, or trustee of a party;

(b) acting as a lawyer in the proceeding;

(c) a person who has more than a de minimis* interest that could be substantially affected by the proceeding; or

(d) likely to be a material witness in the proceeding.

(3) The judge knows that he or she, individually or as a fiduciary,* or the judge's spouse, domestic partner, parent, or child, wherever residing, or any other member of the judge's family residing in the judge's household,* has an economic interest* in the subject matter in controversy or in a party to the proceeding.

(4) [Not Adopted]

(5) The judge, while a judge or a judicial candidate,* has made a public statement, other than in a court proceeding, judicial decision, or opinion, that commits

or appears to commit the judge to reach a particular result or rule in a particular way in the proceeding or controversy.

(6) The judge:

(a) served as a lawyer in the matter in controversy, or was associated with a lawyer who participated substantially as a lawyer in the matter during such association;

(b) served in governmental employment, and in such capacity participated personally and substantially as a lawyer or public official concerning the proceeding, or has publicly expressed in such capacity an opinion concerning the merits of the particular matter in controversy;

(c) was a material witness concerning the matter; or

(d) previously presided as a judge over the matter in another court.

(B) A judge shall keep informed about the judge's personal and fiduciary economic interests, and make a reasonable effort to keep informed about the personal economic interests of the judge's spouse or domestic partner and minor children residing in the judge's household.

(C) A judge subject to disqualification under this Rule, other than for bias or prejudice under paragraph (A)(1), may disclose on the record the basis of the judge's disqualification and may ask the parties and their lawyers to consider, outside the presence of the judge and court personnel, whether to waive disqualification. If, following the disclosure, the parties and lawyers agree, without participation by the judge or court personnel, that the judge should not be disqualified, the judge may participate in the proceeding. The agreement shall be incorporated into the record of the proceeding.

Comment

[1] Under this Rule, a judge is disqualified whenever the judge's impartiality might reasonably be questioned, regardless of whether any of the specific provisions of paragraphs (A)(1) through (6) apply. For example, if a judge were in the process of negotiating for employment with a law firm, the judge would be disqualified from any matters in which that law firm appeared, unless the disqualification was waived by the parties after disclosure by the judge.

[2] A judge's obligation not to hear or decide matters in which disqualification is required applies regardless of whether a motion to disqualify is filed.

[3] The rule of necessity may override the rule of disqualification. For example, a judge might be required to participate in judicial review of a judicial salary statute, or might be the only judge available in a matter requiring immediate judicial action, such as a hearing on probable cause or a temporary restraining order. In matters that require immediate action, the judge must disclose on the record the basis for possible disqualification and make reasonable efforts to transfer the matter to another judge as soon as practicable.

[4] The fact that a lawyer in a proceeding is affiliated with a law firm with which a relative of the judge is affiliated does not itself disqualify the judge. If, however, the judge's impartiality might reasonably be questioned under paragraph (A), or the relative is known by the judge to have an interest in the law firm that could be substantially affected by the proceeding under paragraph (A)(2)(c), the judge's disqualification is required.

[5] A judge should disclose on the record information that the judge believes the parties or their lawyers might reasonably consider relevant to a possible motion for disqualification, even if the judge believes there is no basis for disqualification.

[6] [Not Adopted]

[7] The procedure described in paragraph (C) provides the parties an opportunity to proceed without delay if they wish to waive the judge's disqualification. To assure that consideration of the question of waiver is made independently of the judge, a judge must not solicit, seek or hear comment on possible waiver of the disqualification unless the lawyers jointly propose waiver after consultation as provided in this Rule. A party may act through counsel if counsel represents on the record that the party has been consulted and consents. As a practical matter, a judge may wish to have all parties and their lawyers sign the waiver agreement.

Rule 2.12: Supervisory Duties

(A) A judge shall require court staff, court officials, and others subject to the judge's direction and control to act in a manner consistent with the judge's obligations under this Code.

(B) A judge with supervisory authority for the performance of other judges shall take reasonable measures to ensure that those judges properly discharge their judicial responsibilities, including the prompt disposition of matters before them.

Comment

[1] A judge is responsible for his or her own conduct and for the conduct of others, such as staff, when those persons are acting at the judge's direction or control. A judge may not direct court personnel to engage in conduct on the judge's behalf or as the judge's representative when such conduct would violate the Code if undertaken by the judge.

[2] Public confidence in the judicial system depends upon timely justice. To promote the efficient administration of justice, a judge with supervisory authority must take the steps needed to ensure that judges under his or her supervision administer their workloads promptly.

Rule 2.13: Administrative Appointments

(A) In making administrative appointments, a judge:

(1) shall exercise the power of appointment impartially* and on the basis of merit; and

(2) shall avoid nepotism, favoritism, and unnecessary appointments.

(B) [Not Adopted]

(C) A judge shall not approve compensation of appointees beyond the fair value of services rendered.

Comment

[1] Appointees of a judge include assigned counsel, officials such as referees, commissioners, special masters, receivers, and guardians, and personnel such as clerks, secretaries, and bailiffs. Consent by the parties to an appointment or an award of compensation does not relieve the judge of the obligation prescribed by paragraph (A).

[2] Unless otherwise defined by law, nepotism is the appointment or hiring of any relative within the third degree of relationship of either the judge or the judge's spouse or domestic partner, or the spouse or domestic partner of such relative.

[3] [Not Adopted]

Rule 2.14: Disability and Impairment

A judge having a reasonable belief that the performance of a lawyer or another judge is impaired by drugs or alcohol, or by a mental, emotional, or physical condition, shall take appropriate action, which may include a confidential referral to a lawyer or judicial assistance program.

Comment

[1] “Appropriate action” means action intended and reasonably likely to help the judge or lawyer in question address the problem and prevent harm to the justice system. Depending upon the circumstances, appropriate action may include but is not limited to speaking directly to the impaired person, notifying an individual with supervisory responsibility over the impaired person, or making a referral to an assistance program.

[2] Taking or initiating corrective action by way of referral to an assistance program may satisfy a judge’s responsibility under this Rule. Assistance programs have many approaches for offering help to impaired judges and lawyers, such as intervention, counseling, or referral to appropriate health care professionals. Depending upon the gravity of the conduct that has come to the judge’s attention, however, the judge may be required to take other action, such as reporting the impaired judge or lawyer to the appropriate authority, agency, or body. See Rule [2.15](#).

Rule 2.15: Responding to Judicial and Lawyer Misconduct

(A) A judge having knowledge* that another judge has committed a violation of this Code that raises a substantial question regarding the judge’s honesty, trustworthiness, or fitness as a judge in other respects shall inform the appropriate authority.*

(B) A judge having knowledge that a lawyer has committed a violation of the Rules of Professional Conduct that raises a substantial question regarding the lawyer’s honesty, trustworthiness, or fitness as a lawyer in other respects shall inform the appropriate authority.

(C) A judge who receives information indicating a substantial likelihood that another judge has committed a violation of this Code shall take appropriate action.

(D) A judge who receives information indicating a substantial likelihood that a lawyer has committed a violation of the Rules of Professional Conduct shall take appropriate action.

Comment

[1] Taking action to address known misconduct is a judge’s obligation. Paragraphs (A) and (B) impose an obligation on the judge to report to the appropriate disciplinary authority the known misconduct of another judge or a lawyer that raises a substantial question regarding the honesty, trustworthiness, or fitness of that judge or lawyer. Ignoring or denying known misconduct among one’s judicial colleagues or members of the legal profession undermines a judge’s responsibility to participate in efforts to ensure public respect for the justice system. This Rule limits the reporting obligation to those offenses that an independent judiciary must vigorously endeavor to prevent.

[2] A judge who does not have actual knowledge that another judge or a lawyer may have committed misconduct, but receives information indicating a substantial likelihood of such misconduct, is required to take appropriate action under paragraphs (C) and (D). Appropriate action may include, but is not limited to, communicating directly with the judge who may have violated this Code, communicating with a supervising judge, or reporting the suspected violation to the appropriate authority or other agency or body. Similarly, actions to be taken in response to information indicating that a lawyer has committed a violation of the Rules of Professional Conduct may include but are not limited to communicating directly with the lawyer who may have committed the violation, or reporting the suspected violation to the appropriate authority or other agency or body.

Rule 2.16: Cooperation with Disciplinary Authorities

(A) A judge shall cooperate and be candid and honest with judicial and lawyer disciplinary agencies.

(B) A judge shall not retaliate, directly or indirectly, against a person known* or suspected to have assisted or cooperated with an investigation of a judge or a lawyer.

Comment

[1] Cooperation with investigations and proceedings of judicial and lawyer discipline agencies, as required in paragraph (A), instills confidence in judges' commitment to the integrity of the judicial system and the protection of the public.

Canon 3

A JUDGE SHALL CONDUCT THE JUDGE’S PERSONAL AND EXTRAJUDICIAL ACTIVITIES TO MINIMIZE THE RISK OF CONFLICT WITH THE OBLIGATIONS OF JUDICIAL OFFICE.

Rule 3.1: Extrajudicial Activities in General

A judge may engage in extrajudicial activities, except as prohibited by law* or this Code. However, when engaging in extrajudicial activities, a judge shall not:

(A) participate in activities that will interfere with the proper performance of the judge’s judicial duties;

(B) participate in activities that will lead to frequent disqualification of the judge;

(C) participate in activities that would appear to a reasonable person to undermine the judge’s independence,* integrity,* or impartiality;*

(D) engage in conduct that would appear to a reasonable person to be coercive; or

(E) make use of court premises, staff, stationery, equipment, or other resources, except for incidental use for activities that concern the law, the legal system, or the administration of justice, or unless such additional use is permitted by law.

Comment

[1] To the extent that time permits, and judicial independence and impartiality are not compromised, judges are encouraged to engage in appropriate extrajudicial activities. Judges are uniquely qualified to engage in extrajudicial activities that concern the law, the legal system, and the administration of justice, such as by speaking, writing, teaching, or participating in scholarly research projects. In addition, judges are permitted and encouraged to engage in educational, religious, charitable, fraternal or civic extrajudicial activities not conducted for profit, even when the activities do not involve the law. See Rule [3.7](#).

[2] Participation in both law-related and other extrajudicial activities helps integrate judges into their communities, and furthers public understanding of and respect for courts and the judicial system.

[3] Discriminatory actions and expressions of bias or prejudice by a judge, even outside the judge’s official or judicial actions, are likely to appear to a reasonable person to call into question the judge’s integrity and impartiality. Examples include jokes or other remarks that demean individuals based upon their race, sex, gender, religion, national origin, ethnicity, disability, age, sexual orientation, or socioeconomic status. For the same reason, a judge’s

extrajudicial activities must not be conducted in connection or affiliation with an organization that practices invidious discrimination. See Rule [3.6](#).

[4] While engaged in permitted extrajudicial activities, judges must not coerce others or take action that would reasonably be perceived as coercive. For example, depending upon the circumstances, a judge's solicitation of contributions or memberships for an organization, even as permitted by Rule [3.7\(A\)](#), might create the risk that the person solicited would feel obligated to respond favorably, or would do so to curry favor with the judge.

Rule 3.2: Appearances before Governmental Bodies and Consultation with Government Officials

A judge shall not appear voluntarily at a public hearing before, or otherwise consult with, an executive or a legislative body or official, except:

(A) in connection with matters concerning the law, the legal system, or the administration of justice;

(B) in connection with matters about which the judge acquired knowledge or expertise in the course of the judge's judicial duties; or

(C) when the judge is acting pro se in a matter involving the judge's legal or economic interests, or when the judge is acting in a fiduciary* capacity.

Comment

[1] Judges possess special expertise in matters of law, the legal system, and the administration of justice, and may properly share that expertise with governmental bodies and executive or legislative branch officials.

[2] In appearing before governmental bodies or consulting with government officials, judges must be mindful that they remain subject to other provisions of this Code, such as Rule [1.3](#), prohibiting judges from using the prestige of office to advance their own or others' interests, Rule [2.10](#), governing public comment on pending and impending matters, and Rule [3.1\(C\)](#), prohibiting judges from engaging in extrajudicial activities that would appear to a reasonable person to undermine the judge's independence, integrity, or impartiality.

[3] In general, it would be an unnecessary and unfair burden to prohibit judges from appearing before governmental bodies or consulting with government officials on matters that are likely to affect them as private citizens, such as zoning proposals affecting their real property. In engaging in such activities, however, judges must not refer to their judicial positions, and must otherwise exercise caution to avoid using the prestige of judicial office.

Rule 3.3: Testifying as a Character Witness

A judge shall not testify as a character witness in a judicial, administrative, or other adjudicatory proceeding or otherwise vouch for the character of a person in a legal proceeding, except when duly summoned.

Comment

[1] A judge who, without being subpoenaed, testifies as a character witness abuses the prestige of judicial office to advance the interests of another. See Rule [1.3](#). Except in unusual circumstances where the demands of justice require, a judge should discourage a party from requiring the judge to testify as a character witness.

Rule 3.4: Appointments to Governmental Positions

A judge shall not accept appointment to a governmental committee, board, commission, or other governmental position, unless it is one that concerns the law, the legal system, or the administration of justice.

Comment

[1] Rule 3.4 implicitly acknowledges the value of judges accepting appointments to entities that concern the law, the legal system, or the administration of justice. Even in such instances, however, a judge should assess the appropriateness of accepting an appointment, paying particular attention to the subject matter of the appointment and the availability and allocation of judicial resources, including the judge's time commitments, and giving due regard to the requirements of the independence and impartiality of the judiciary.

[2] A judge may represent his or her country, state, or locality on ceremonial occasions or in connection with historical, educational, or cultural activities. Such representation does not constitute acceptance of a government position.

Rule 3.5: Use of Nonpublic Information

A judge shall not intentionally disclose or use nonpublic information* acquired in a judicial capacity for any purpose unrelated to the judge's judicial duties.

Comment

[1] In the course of performing judicial duties, a judge may acquire information of commercial or other value that is unavailable to the public. The judge must not reveal or use such information for personal gain or for any purpose unrelated to his or her judicial duties.

[2] This Rule is not intended, however, to affect a judge's ability to act on information as necessary to protect the health or safety of the judge or a member of a judge's family, court personnel, or other judicial officers if consistent with other provisions of this Code.

Rule 3.6: Affiliation with Discriminatory Organizations

(A) A judge shall not hold membership in any organization that practices invidious discrimination on the basis of race, sex, gender, religion, national origin, ethnicity, or sexual orientation or engages in any discriminatory practice prohibited by the law of the District of Columbia.

(B) A judge shall not use the benefits or facilities of an organization if the judge knows* or should know that the organization practices invidious discrimination on one or more of the bases identified in paragraph (A). A judge's attendance at an event in a facility of an organization that the judge is not permitted to join is not a violation of this Rule when the judge's attendance is an isolated event that could not reasonably be perceived as an endorsement of the organization's practices.

Comment

[1] A judge's public manifestation of approval of invidious discrimination on any basis gives rise to the appearance of impropriety and diminishes public confidence in the integrity and impartiality of the judiciary. A judge's membership in an organization that practices invidious discrimination creates the perception that the judge's impartiality is impaired.

[2] An organization is generally said to discriminate invidiously if it arbitrarily excludes from membership on the basis of race, sex, gender, religion, national origin, ethnicity, or sexual orientation persons who would otherwise be eligible for admission. Whether an organization practices invidious discrimination is a complex question to which judges should be attentive. The answer cannot be determined from a mere examination of an organization's current membership rolls, but rather, depends upon how the organization selects members, as well as other relevant factors, such as whether the organization is dedicated to the preservation of religious, ethnic, or cultural values of legitimate common interest to its members, or whether it is an intimate, purely private organization whose membership limitations could not constitutionally be prohibited.

[3] When a judge learns that an organization to which the judge belongs engages in invidious discrimination, the judge must resign immediately from the organization.

[4] A judge's membership in a religious organization as a lawful exercise of the freedom of religion is not a violation of this Rule.

[5] This Rule does not apply to national or state military service.

**Rule 3.7: Participation in Educational, Religious, Charitable,
Fraternal, or Civic Organizations and Activities**

(A) Subject to the requirements of Rule [3.1](#), a judge may participate in activities sponsored by organizations or governmental entities concerned with the law, the legal system, or the administration of justice, and those sponsored by or on behalf of educational, religious, charitable, fraternal, or civic organizations not conducted for profit, including but not limited to the following activities:

(1) assisting such an organization or entity in planning related to fund-raising, and participating in the management and investment of the organization's or entity's funds;

(2) soliciting* contributions* for such an organization or entity, but only from members of the judge's family,* or from judges over whom the judge does not exercise supervisory or appellate authority;

(3) soliciting membership for such an organization or entity, even though the membership dues or fees generated may be used to support the objectives of the organization or entity, but only if the organization or entity is concerned with the law, the legal system, or the administration of justice;

(4) appearing or speaking at, receiving an award or other recognition at, being featured on the program of, and permitting his or her title to be used in connection with an event of such an organization or entity, but if the event serves a fund-raising purpose, the judge may participate only if the event concerns the law, the legal system, or the administration of justice;

(5) making recommendations to such a public or private fund-granting organization or entity in connection with its programs and activities, but only if the organization or entity is concerned with the law, the legal system, or the administration of justice; and

(6) serving as an officer, director, trustee, or nonlegal advisor of such an organization or entity, unless it is likely that the organization or entity:

(a) will be engaged in proceedings that would ordinarily come before the judge; or

(b) will frequently be engaged in adversary proceedings in the court of which the judge is a member, or in any court subject to the appellate jurisdiction of the court of which the judge is a member.

(B) A judge may encourage lawyers to provide pro bono publico legal services.

Comment

[1] The activities permitted by paragraph (A) generally include those sponsored by or undertaken on behalf of public or private not-for-profit educational institutions, and other not-for-profit organizations, including law-related, charitable, and other organizations.

[2] Even for law-related organizations, a judge should consider whether the membership and purposes of the organization, or the nature of the judge's participation in or association with the organization, would conflict with the judge's obligation to refrain from activities that reflect adversely upon a judge's independence, integrity, and impartiality. A judge should not accept an award or other recognition from an organization whose members frequently represent or are on the same side in litigation.

[3] Mere attendance at an event, whether or not the event serves a fund-raising purpose, does not constitute a violation of paragraph (A)(4). It is also generally permissible for a judge to serve as an usher or a food server or preparer, or to perform similar functions, at fund-raising events sponsored by educational, religious, charitable, fraternal, or civic organizations. Such activities are not solicitation and do not present an element of coercion or abuse the prestige of judicial office.

[4] Identification of a judge's position in educational, religious, charitable, fraternal, or civic organizations on letterhead used for fund-raising or membership solicitation does not violate this Rule. The letterhead may list the judge's title or judicial office if comparable designations are used for other persons.

[5] In addition to appointing lawyers to serve as counsel for indigent parties in individual cases, a judge may promote broader access to justice by encouraging lawyers to participate in pro bono public legal services, if in doing so the judge does not employ coercion, or abuse the prestige of judicial office. Such encouragement may take many forms, including providing lists of available programs, training lawyers to do pro bono public legal work, and participating in events recognizing lawyers who have done pro bono public work.

Rule 3.8: Appointments to Fiduciary Positions

(A) A judge shall not accept appointment to serve in a fiduciary* position, such as executor, administrator, trustee, guardian, attorney in fact, or other personal representative, except for the estate, trust, or person of a member of the judge's family,* and then only if such service will not interfere with the proper performance of judicial duties.

(B) A judge shall not serve in a fiduciary position if the judge as fiduciary will likely be engaged in proceedings that would ordinarily come before the judge, or if the estate, trust, or ward becomes involved in adversary proceedings in the court on which the judge serves, or one under its appellate jurisdiction.

(C) A judge acting in a fiduciary capacity shall be subject to the same restrictions on engaging in financial activities that apply to a judge personally.

(D) If a person who is serving in a fiduciary position becomes a judge, he or she must comply with this Rule as soon as reasonably practicable, but in no event later than one year after becoming a judge.

Comment

[1] A judge should recognize that other restrictions imposed by this Code may conflict with a judge's obligations as a fiduciary; in such circumstances, a judge should resign as fiduciary. For example, serving as a fiduciary might require frequent disqualification of a judge under Rule [2.11](#) because a judge is deemed to have an economic interest in shares of stock held by a trust if the amount of stock held is more than de minimis.

[2] Judges are cautioned that, pursuant to D.C. Code § 20-303 (2012 Repl.), a judge of "any court established under the laws of the United States" is prohibited from serving as a personal representative of a decedent's estate in the District of Columbia unless the judge is "the surviving spouse or domestic partner of the decedent or is related to the decedent within the third degree."

Rule 3.9: Service as Arbitrator or Mediator

A judge shall not act as an arbitrator or a mediator or perform other judicial functions apart from the judge's official duties unless expressly authorized by law.* This Rule does not prohibit a judge from performing judicial functions pursuant to military service.

Comment

[1] This Rule does not prohibit a judge from participating in arbitration, mediation, or settlement conferences performed as part of assigned judicial duties. Rendering dispute resolution services apart from those duties, whether or not for economic gain, is prohibited unless it is expressly authorized by law.

[2] [Advisory Opinion No. 3](#) (June 25, 1992) of the Advisory Committee on Judicial Conduct addresses the circumstances under which Senior Judges may act as arbitrators.

Rule 3.10: Practice of Law

A judge shall not practice law. A judge may act pro se and may, without compensation, give legal advice to and draft or review documents for a member of the judge's family,* but is prohibited from serving as the family member's lawyer in any forum.

Comment

[1] A judge may act pro se in all legal matters, including matters involving litigation and matters involving appearances before or other dealings with governmental bodies. A judge must not use the prestige of office to advance the judge's personal or family interests. See Rule [1.3](#).

Rule 3.11: Financial, Business, or Remunerative Activities

(A) A judge may hold and manage investments of the judge and members of the judge's family.*

(B) A judge shall not serve as an officer, director, manager, general partner, advisor, or employee of any business entity except that a judge may manage or participate in:

(1) a business closely held by the judge or members of the judge's family; or

(2) a business entity primarily engaged in investment of the financial resources of the judge or members of the judge's family.

(C) A judge shall not engage in financial activities permitted under paragraphs (A) and (B) if they will:

(1) interfere with the proper performance of judicial duties;

(2) lead to frequent disqualification of the judge;

(3) involve the judge in frequent transactions or continuing business relationships with lawyers or other persons likely to come before the court on which the judge serves; or

(4) result in violation of other provisions of this Code.

(D) A person to whom this Code becomes applicable shall comply with this Rule as soon as reasonably practicable, but in no event later than one year after the Code becomes applicable to the person.

Comment

[1] Judges are generally permitted to engage in financial activities, including managing real estate and other investments for themselves or for members of their families. Participation in these activities, like participation in other extrajudicial activities, is subject to the requirements of this Code. For example, it would be improper for a judge to spend so much time on business activities that it interferes with the performance of judicial duties. See Rule [2.1](#). Similarly, it would be improper for a judge to use his or her official title or appear in judicial robes in business advertising, or to conduct his or her business or financial affairs in such a way that disqualification is frequently required. See Rules [1.3](#) and [2.11](#).

[2] As soon as practicable without serious financial detriment, the judge must divest himself or herself of investments and other financial interests that might require frequent disqualification or otherwise violate this Rule.

Rule 3.12: Compensation for Extrajudicial Activities

A judge may accept reasonable compensation for extrajudicial activities permitted by this Code or other law* unless such acceptance would appear to a reasonable person to undermine the judge's independence,* integrity,* or impartiality.*

Comment

[1] A judge is permitted to accept honoraria, stipends, fees, wages, salaries, royalties, or other compensation for speaking, teaching, writing, and other extrajudicial activities, provided the compensation is reasonable and commensurate with the task performed. The judge should be mindful, however, that judicial duties must take precedence over other activities. See Rule [2.1](#).

[2] Compensation derived from extrajudicial activities may be subject to the reporting requirements of Rule [3.15](#).

**Rule 3.13: Acceptance of Gifts, Loans,
Bequests, Benefits, or Other Things of Value**

(A) A judge shall not accept any gifts, loans, bequests, benefits, or other things of value, if acceptance is prohibited by law* or would appear to a reasonable person to undermine the judge's independence,* integrity,* or impartiality.*

(B) Unless otherwise prohibited by law, or by paragraph (A), a judge may accept the following:

(1) items with little intrinsic value, such as plaques, certificates, trophies, and greeting cards;

(2) gifts, loans, bequests, benefits, or other things of value from friends, relatives, or other persons, including lawyers, whose appearance or interest in a proceeding pending* or impending* before the judge would in any event require disqualification of the judge under Rule [2.11](#);

(3) ordinary social hospitality;

(4) commercial or financial opportunities and benefits, including special pricing and discounts, and loans from lending institutions in their regular course of business, if the same opportunities and benefits or loans are made available on the same terms to similarly situated persons who are not judges;

(5) rewards and prizes given to competitors or participants in random drawings, contests, or other events that are open to persons who are not judges;

(6) scholarships, fellowships, and similar benefits or awards, if they are available to similarly situated persons who are not judges, based upon the same terms and criteria;

(7) books, magazines, journals, audiovisual materials, and other resource materials supplied by publishers on a complimentary basis for official use;

(8) gifts, awards, or benefits associated with the business, profession, or other separate activity of a spouse, a domestic partner,* or other family member of a judge residing in the judge's household,* but that incidentally benefit the judge;

(9) gifts incident to a public testimonial; or

(10) invitations to the judge and the judge's spouse, domestic partner, or guest to attend without charge:

(a) an event associated with a bar-related function or other activity relating to the law, the legal system, or the administration of justice; or

(b) an event associated with any of the judge's educational, religious, charitable, fraternal or civic activities permitted by this Code, if the same invitation is offered to nonjudges who are engaged in similar ways in the activity as is the judge.

Comment

[1] Whenever a judge accepts a gift or other thing of value without paying fair market value, there is a risk that the benefit might be viewed as intended to influence the judge's decision in a case. This risk is especially high when the donor is a party or other person, including a lawyer, who has come or is likely to come before the judge, or whose interests have come or are likely to come before the judge. In such an instance, the acceptance will be appropriate only in rare circumstances, and only after the judge has determined under paragraph (A) that the receipt would not appear to a reasonable person to undermine the judge's integrity, impartiality, or independence.

[2] Gift-giving between friends and relatives is a common occurrence, and ordinarily does not create an appearance of impropriety or cause reasonable persons to believe that the judge's independence, integrity, or impartiality has been compromised. In addition, when the appearance of friends or relatives in a case would require the judge's disqualification under Rule [2.11](#), there would be no opportunity for a gift to influence the judge's decision making. Paragraph (B)(2) places no restrictions upon the ability of a judge to accept gifts or other things of value from friends or relatives under these circumstances, and does not require public reporting.

[3] Businesses and financial institutions frequently make available special pricing, discounts, and other benefits, either in connection with a temporary promotion or for preferred customers, based upon longevity of the relationship, volume of business transacted, and other factors. A judge may freely accept such benefits if they are available to the general public, or if the judge qualifies for the special price or discount according to the same criteria as are applied to persons who are not judges. As an example, loans provided at generally prevailing interest rates are not gifts, but a judge could not accept a loan from a financial institution at below-market interest rates unless the same rate was being made available to the general public for a

certain period of time or only to borrowers with specified qualifications that the judge also possesses.

[4] Rule 3.13 applies only to acceptance of gifts or other things of value by a judge. Nonetheless, if a gift or other benefit is given to the judge's spouse, domestic partner, or member of the judge's family residing in the judge's household, it may be viewed as an attempt to evade Rule 3.13 and influence the judge indirectly. Where the gift or benefit is being made primarily to such other persons, and the judge is merely an incidental beneficiary, this concern is reduced. A judge should, however, remind family and household members of the restrictions imposed upon judges, and urge them to take these restrictions into account when making decisions about accepting such gifts or benefits.

[5] [Not Adopted]

[6] The acceptance of gifts, loans, bequests, benefits, or other things of value may be subject to reporting requirements as set forth in Rule [3.15](#), which requires compliance with D.C. Code § 11-1530 (2017 Supp.) and the Rules of the District of Columbia Commission on Judicial Disabilities and Tenure.

[7] This Rule departs in two, related respects from Model Rule 3.13. First, Model Rule 3.13 divides things of value a judge may accept into two categories (in paragraphs (B) and (C)) depending on whether the judge must publicly report their acceptance, but as the preceding comment states, the duty publicly to report acceptance of things of value is set forth instead in Rule [3.15](#), which refers to disclosure obligations established in D.C. Code § 11-1530 (2017 Supp.) and the Rules of the Commission on Judicial Disabilities and Tenure. Second, although Model Rule 3.13 (C)(3) expressly permits a judge to accept "gifts, loans, bequests, benefits, or other things of value, if the source is a party or other person, including a lawyer, who has come or is likely to come before the judge, or whose interests have come or are likely to come before the judge," acceptance of gifts from such sources is subject to a public reporting requirement. Because D.C. Code § 11-1530 and the Rules of the Commission on Judicial Disabilities and Tenure do not require public reporting of gifts from such sources, a District of Columbia judge should not accept them, except in rare circumstances, as provided in Comment [1]. Paragraph (B) of this Rule permits a judge to accept, unless prohibited by law or by paragraph (A), all other items set forth in Model Rule 3.13(B) and (C).

Rule 3.14: Reimbursement of Expenses and Waivers of Fees or Charges

(A) Unless otherwise prohibited by Rules [3.1](#) and [3.13\(A\)](#) or other law,* a judge may accept reimbursement of necessary and reasonable expenses for travel, food, lodging, or other incidental expenses, or a waiver or partial waiver of fees or charges for registration, tuition, and similar items, from sources other than the judge's employing entity, if the expenses or charges are associated with the judge's participation in extrajudicial activities permitted by this Code.

(B) Reimbursement of expenses for necessary travel, food, lodging, or other incidental expenses shall be limited to the actual costs reasonably incurred by the judge and, when appropriate to the occasion, by the judge's spouse, domestic partner,* or guest.

(C) A judge who accepts reimbursement of expenses or waivers or partial waivers of fees or charges on behalf of the judge or the judge's spouse, domestic partner, or guest shall report such acceptance as required by Rule [3.15](#).

Comment

[1] Educational, civic, religious, fraternal, and charitable organizations often sponsor meetings, seminars, symposia, dinners, awards ceremonies, and similar events. Judges are encouraged to attend educational programs, as both teachers and participants, in law-related and academic disciplines, in furtherance of their duty to remain competent in the law. Participation in a variety of other extrajudicial activity is also permitted and encouraged by this Code.

[2] Not infrequently, sponsoring organizations invite certain judges to attend seminars or other events on a fee-waived or partial-fee-waived basis, and sometimes include reimbursement for necessary travel, food, lodging, or other incidental expenses. A judge's decision whether to accept reimbursement of expenses or a waiver or partial waiver of fees or charges in connection with these or other extrajudicial activities must be based upon an assessment of all the circumstances. The judge must undertake a reasonable inquiry to obtain the information necessary to make an informed judgment about whether acceptance would be consistent with the requirements of this Code.

[3] A judge must assure himself or herself that acceptance of reimbursement or fee waivers would not appear to a reasonable person to undermine the judge's independence, integrity, or impartiality. The factors that a judge should consider when deciding whether to accept reimbursement or a fee waiver for attendance at a particular activity include:

(a) whether the sponsor is an accredited educational institution or bar association rather than a trade association or a for-profit entity;

(b) whether the funding comes largely from numerous contributors rather than from a single entity and is earmarked for programs with specific content;

(c) whether the content is related or unrelated to the subject matter of litigation pending or impending before the judge, or to matters that are likely to come before the judge;

(d) whether the activity is primarily educational rather than recreational, and whether the costs of the event are reasonable and comparable to those associated with similar events sponsored by the judiciary, bar associations, or similar groups;

(e) whether information concerning the activity and its funding sources is available upon inquiry;

(f) whether the sponsor or source of funding is generally associated with particular parties or interests currently appearing or likely to appear in the judge's court, thus possibly requiring disqualification of the judge under Rule [2.11](#);

(g) whether differing viewpoints are presented; and

(h) whether a broad range of judicial and nonjudicial participants are invited, whether a large number of participants are invited, and whether the program is designed specifically for judges.

Rule 3.15: Reporting Requirements

A judge shall comply with the requirements of D.C. Code § 11-1530 (2017 Supp.) and the rules of the District of Columbia Commission on Judicial Disabilities and Tenure in reporting the amount and value of compensation received as permitted by Rule [3.12](#); gifts, loans, bequests, benefits, and other items of value received as permitted by Rule [3.13](#); and reimbursement and waivers or partial waivers of fees received as permitted by Rule [3.14](#).

Canon 4

A JUDGE OR CANDIDATE FOR JUDICIAL OFFICE SHALL NOT ENGAGE IN POLITICAL OR CAMPAIGN ACTIVITY THAT IS INCONSISTENT WITH THE INDEPENDENCE, INTEGRITY, OR IMPARTIALITY OF THE JUDICIARY.

Rule 4.1: Political and Campaign Activities of Judges and Judicial Candidates in General

(A) Except as permitted by law,* or by Rule [4.3](#), a judge or a judicial candidate* shall not:

- (1) act as a leader in, or hold an office in, a political organization*;**
- (2) make speeches on behalf of a political organization;**
- (3) publicly endorse or oppose a candidate for any public office;**
- (4) solicit funds for, pay an assessment to, or make a contribution* to a political organization or a candidate for public office;**
- (5) attend or purchase tickets for dinners or other events sponsored by a political organization or a candidate for public office;**
- (6) publicly identify himself or herself as a candidate of a political organization;**
- (7) seek, accept, or use endorsements from a political organization;**
- (8) [Not Adopted]**
- (9) [Not Adopted]**
- (10) use court staff, facilities, or other court resources in a campaign for judicial office;**
- (11) knowingly,* or with reckless disregard for the truth, make any false or misleading statement;**
- (12) make any statement that would reasonably be expected to affect the outcome or impair the fairness of a matter pending* or impending* in any court; or**

(13) in connection with cases, controversies, or issues that are likely to come before the court, make pledges, promises, or commitments that are inconsistent with the impartial* performance of the adjudicative duties of judicial office.

(B) A judge or judicial candidate shall take reasonable measures to ensure that other persons do not undertake, on behalf of the judge or judicial candidate, any activities prohibited under paragraph (A).

Comment

General Considerations

[1] A judge plays a role different from that of a legislator or executive branch official. Rather than making decisions based upon the expressed views or preferences of the electorate, a judge makes decisions based upon the law and the facts of every case. Therefore, in furtherance of this interest, judges and judicial candidates must, to the greatest extent possible, be free and appear to be free from political influence and political pressure. This Canon imposes narrowly tailored restrictions upon the political and campaign activities of all judges and judicial candidates, taking into account the various methods of selecting judges.

[2] When a person becomes a judicial candidate, this Canon becomes applicable to his or her conduct.

[2A] The prohibition of paragraph (A)(10) on the use of court staff, facilities and other resources is subject to a rule of reason, see [Scope \[5\]](#), and permits incidental use. See Rule [3.1\(E\)](#).

Participation in Political Activities

[3] Public confidence in the independence and impartiality of the judiciary is eroded if judges or judicial candidates are perceived to be subject to political influence. Although judges and judicial candidates may register to vote as members of a political party, they are prohibited by paragraph (A)(1) from assuming leadership roles in political organizations.

[4] Paragraphs (A)(2) and (A)(3) prohibit judges and judicial candidates from making speeches on behalf of political organizations or publicly endorsing or opposing candidates for public office, respectively, to prevent them from abusing the prestige of judicial office to advance the interests of others. This Rule does not prohibit judges or judicial candidates from participating in the process of judicial selection by cooperating with appointing authorities and screening committees. See Rule [1.3](#), Comments [2] & [3].

[5] Although members of the families of judges and judicial candidates are free to engage in their own political activity, including running for public office, there is no “family exception” to the prohibition in paragraph (A)(3) against a judge or candidate publicly endorsing candidates for public office. A judge or judicial candidate must not become involved in, or publicly associated with, a family member’s political activity or campaign for public office. To avoid public misunderstanding, judges and judicial candidates should take, and should urge members of their families to take, reasonable steps to avoid any implication that they endorse any family member’s candidacy or other political activity.

[6] Judges and judicial candidates retain the right to participate in the political process as voters in both primary and general elections.

Statements by Candidates for Judicial Office

[7] Judicial candidates must be scrupulously fair and accurate in all statements. Paragraph (A)(11) obligates candidates to refrain from making statements that are false or misleading, or that omit facts necessary to make the communication considered as a whole not materially misleading.

[8] If a judicial candidate is the subject of false, misleading, or unfair allegations, the candidate may make a factually accurate response, as long as the candidate does not violate paragraphs (A)(12) or (A)(13). If the allegation was made publicly, the candidate may respond publicly.

[9] Subject to paragraph (A)(12), a judicial candidate is permitted to respond directly to false, misleading, or unfair allegations made against him or her, although the candidate should consider whether it is preferable for someone else to respond if the allegations relate to a pending case.

[10] Paragraph (A)(12) prohibits judicial candidates from making comments that might impair the fairness of pending or impending judicial proceedings. This provision does not restrict arguments or statements to the court or jury by a lawyer who is a judicial candidate, or rulings, statements, or instructions by a judge that may appropriately affect the outcome of a matter.

Pledges, Promises, or Commitments Inconsistent with Impartial Performance of the Adjudicative Duties of Judicial Office.

[11] [Not Adopted]

[12] Paragraph (A)(13) makes applicable to both judges and judicial candidates the prohibition that applies to judges in Rule [2.10\(B\)](#), relating to pledges, promises, or commitments that are inconsistent with the impartial performance of the adjudicative duties of judicial office.

[13] The making of a pledge, promise, or commitment is not dependent upon, or limited to, the use of any specific words or phrases; instead, the totality of the statement must be examined to determine if a reasonable person would believe that the candidate for judicial office has specifically undertaken to reach a particular result. Pledges, promises, or commitments must be contrasted with statements or announcements of personal views on legal, political, or other issues, which are not prohibited. When making such statements, a judge should acknowledge the overarching judicial obligation to apply and uphold the law, without regard to his or her personal views.

[14] A judicial candidate may make promises related to judicial organization, administration, and court management, such as a promise to dispose of a backlog of cases, start court sessions on time, or avoid favoritism in appointments and hiring. A candidate may also pledge to take action outside the courtroom, such as working toward an improved jury selection system, or advocating for more funds to improve the physical plant and amenities of the courthouse.

[15] Judicial candidates may receive questionnaires or requests for interviews from the media and from issue advocacy or other community organizations that seek to learn their views on disputed or controversial legal or political issues. Paragraph (A)(13) does not specifically address responses to such inquiries. Depending upon the wording and format of such questionnaires, candidates' responses might be viewed as pledges, promises, or commitments to perform the adjudicative duties of office other than in an impartial way. To avoid violating Rule [2.10\(B\)](#) and paragraph (A)(13) of this Rule, therefore, candidates who respond to media and other inquiries should also give assurances that they will keep an open mind and will carry out their adjudicative duties faithfully and impartially if appointed. Candidates who do not respond may state their reasons for not responding, such as the danger that answering might be perceived by a reasonable person as undermining a successful candidate's independence or impartiality, or that it might lead to frequent disqualification. See Rule [2.11](#).

**Rule 4.2: [Not Adopted] [Political and Campaign Activities
of Judicial Candidates in Public Elections]**

Rule 4.3: Activities of Candidates for Appointive Judicial Office

A candidate for appointment to judicial office may:

(A) communicate with the appointing or confirming authority, including any selection, screening, or nominating commission or similar agency; and

(B) seek endorsements for the appointment from any person or organization other than a partisan political organization.

Comment

[1] When seeking support or endorsement, or when communicating directly with an appointing or confirming authority, a candidate for appointive judicial office must not make any pledges, promises, or commitments that are inconsistent with the impartial performance of the adjudicative duties of the office. See Rule [4.1\(A\)\(13\)](#).

Rule 4.4: [Not Adopted] [Campaign Committees]

Rule 4.5: Activities of Judges Who Become Candidates for Nonjudicial Office

(A) Upon becoming a candidate for a nonjudicial elective office, a judge shall resign from judicial office, unless permitted by law* to continue to hold judicial office.

(B) Upon becoming a candidate for a nonjudicial appointive office, a judge is not required to resign from judicial office, provided that the judge complies with the other provisions of this Code.

Comment

[1] In campaigns for nonjudicial elective public office, candidates may make pledges, promises, or commitments related to positions they would take and ways they would act if elected to office. Although appropriate in nonjudicial campaigns, this manner of campaigning is inconsistent with the role of a judge, who must remain fair and impartial to all who come before him or her. The potential for misuse of the judicial office, and the political promises that the judge would be compelled to make in the course of campaigning for nonjudicial elective office, together dictate that a judge who wishes to run for such an office must resign upon becoming a candidate.

[2] The “resign to run” rule set forth in paragraph (A) ensures that a judge cannot use the judicial office to promote his or her candidacy, and prevents post-campaign retaliation from the judge in the event the judge is defeated in the election. When a judge is seeking appointive nonjudicial office, however, the dangers are not sufficient to warrant imposing the “resign to run” rule.

Appendix A

APPENDIX A – CONDUCT OF LAW CLERKS

INTRODUCTION

Each year, the District of Columbia Courts welcome a new group of law clerks, who make invaluable contributions to the work of the court. Law clerks require training on ethical issues, and confront recurring situations that have ethical implications. Accordingly, the Advisory Committee on Judicial Conduct has prepared the following summary of ethical issues for law clerks, for the convenience of judicial officers and their staff.

This appendix summarizes some important ethical principles. It does not address all ethical concerns that may arise. More comprehensive and specific guidance on ethics issues may be found in two handbooks for federal judicial law clerks: [Maintaining the Public Trust: Ethics for Judicial Law Clerks \(Fourth Edition\)](#) and [Law Clerk Handbook: A Handbook for Law Clerks for Federal Judges \(Third Edition\)](#); as well as the federal [Code of Conduct for Judicial Employees](#). In addition, the Advisory Committee on Judicial Conduct has issued several ethics opinions related to law clerks that may be accessed on the [court's website](#).

If a law clerk has any question about whether particular conduct is consistent with the ethics rules, the law clerk should first speak with the judge for whom he or she is clerking. Judges may adopt policies or impose restrictions on their law clerks that go beyond the Code of Judicial Conduct. The Advisory Committee on Judicial Conduct is available to answer questions and to provide clarification regarding ethics issues.

SUMMARY OF ETHICAL ISSUES

Law clerks hold a special position of trust, based on their close relationships with the judges who employ them. Because law clerks play a unique role in supporting the work of the court, law clerks generally are, like judges, bound by the Code of Judicial Conduct. The Code is designed to ensure that the judiciary is independent, fair, and impartial, both in fact and in appearance. Law clerks must be aware that they have a duty to uphold the independence and integrity of the judiciary, and that their conduct – both at work and in their personal lives – reflects upon the court. Note that the ethics rules also generally apply to legal interns and externs because they work in judicial chambers.

A law clerk's ethical obligations may be roughly categorized into five types:

1. **Confidentiality:** Law clerks must maintain the confidentiality of discussions within chambers. They generally may not disclose any confidential information obtained in the course of their duties. They should never discuss the judge's thinking or decision-making process with respect to any particular case. This obligation of confidentiality extends to the use of social media and other online activities. Law clerks should be especially cautious when posting statements or images online because such information may be accessed and disseminated by members of the public. Further guidance on the use of social media may be found in [Advisory Opinion No. 112](#), issued by the Judicial Conference of the United States, Committee on Codes of Conduct. The obligation of confidentiality should be honored even

after the law clerk leaves the employment of the court. However, the obligation of confidentiality does not prevent a law clerk, or any judiciary employee, from revealing misconduct, including sexual or other forms of harassment, by his or her judge or any person. Law clerks are encouraged to bring such matters to the attention of an appropriate judge or other official.

2. **Communications:** To the extent that law clerks interact with lawyers and parties about matters before the court, law clerks must observe the rules concerning *ex parte* communications. Law clerks should consult with the judges who employ them about what they may say to people who call chambers. For example, a judge may permit a law clerk to provide information about court procedures to self-represented litigants. *See* Comment [1A] to Rule [2.6](#). A judge may also allow a law clerk to discuss scheduling or other procedural issues with parties, subject to appropriate safeguards that provide notice and an opportunity for other parties to respond. *See* Rule [2.9](#). Law clerks should never respond to inquiries from the media. In addition, law clerks may not conduct factual research, on the internet or otherwise, related to cases before the Court. *See* [ABA STANDING COMM. ON ETHICS AND PROF'L RESPONSIBILITY, FORMAL OPINION 478 \(Dec. 8, 2017\)](#).
3. **Conflicts of interest:** Law clerks must avoid conflicts of interest. If a family member or friend of a law clerk is involved in a case before the judge, the law clerk should disclose that information to the judge. The law clerk may be precluded from working on such a case. In addition, a law clerk generally may not have an economic interest, as defined by the Code of Judicial Conduct, in any matter in which the law clerk participates. Further guidance on the meaning of “economic interests” that may be disqualifying is provided in [Advisory Opinion No. 12](#), issued by the Advisory Committee on Judicial Conduct. Law clerks are obligated to keep track of their economic interests so that they can identify any conflicts. Ethics rules also limit gifts that law clerks may receive, especially from people with business before the court.
4. **Community and other outside activities:** Like judges, law clerks may participate in professional activities and community organizations. A law clerk should generally obtain the judge’s permission to engage in any outside activity that may implicate the ethics rules, including but not limited to activities relating to the law or the legal system. Note that court personnel policies prohibit any court employee, including law clerks, from engaging in the practice of law, even on a pro bono basis. A law clerk’s ability to receive compensation for outside activities is also limited. Importantly, law clerks may not engage in partisan and non-partisan political activity, and they should not take a public position on any controversial issue, whether or not the issue is likely to come before the court. This restriction on involvement in political and controversial matters does *not* apply to spouses and other members of a law clerk’s family. Law clerks should avoid engaging in fund-raising because potential contributors may feel pressure to donate due to the law clerk’s position. A law clerk may not use court resources for outside or personal activities, except for incidental use in law-related activities or as otherwise permitted by law.

5. **Career:** Law clerks may ethically pursue post-clerkship employment. [Advisory Opinion No. 1](#), issued by the Advisory Committee on Judicial Conduct, provides guidelines concerning when a law clerk is disqualified from working on a case in which his or her prospective employer is a party. [Advisory Opinion No. 7](#), issued by the Advisory Committee on Judicial Conduct, sets forth guidelines concerning law clerks' acceptance of expenses related to seeking post-clerkship employment, coverage of costs like bar review courses, and pre-employment hiring bonuses. A former law clerk may not participate in any case on which he or she worked as a law clerk.

Resources:

Maintaining the Public Trust: Ethics for Judicial Law Clerks (Fourth Edition):

<https://www.fjc.gov/sites/default/files/2017/Maintaining-Public-Trust-4D-FJC-Public-2013.pdf>

Law Clerk Handbook: A Handbook for Law Clerks for Federal Judges (Third Edition):

<https://www.fjc.gov/sites/default/files/2017/Law%20Clerk%20Handbook.pdf>

Federal Code of Conduct for Judicial Employees:

<http://www.uscourts.gov/file/vol02a-ch03pdf>

Advisory Committee on Judicial Conduct, District of Columbia Courts, Advisory Opinions:

<https://www.dccourts.gov/judicialconduct>

Judicial Conference of the United States, Committee on Codes of Conduct, Advisory Opinion 112:

<http://www.uscourts.gov/sites/default/files/vol02b-ch02.pdf#page=221>

American Bar Association, Standing Committee on Ethics and Professional Responsibility, Formal Opinion 478:

<https://www.americanbar.org/content/dam/aba/images/abanews/FormalOpinion478.pdf>

*Please note that these resources are frequently updated. Checking online for the most recent version is advisable.

Appendix B

APPENDIX B – OPINIONS OF THE ADVISORY COMMITTEE ON JUDICIAL CONDUCT*

Advisory Opinion No.	Issuance Date	Title
1	December 18, 1991	<u>Application for and Acceptance of Future Employment by Judicial Law Clerks</u>
2	April 23, 1992	<u>Disqualification of Judge Because of Past Employment by Law Enforcement Agencies and Spouse's Present Affiliation with Metropolitan Police Department</u>
3	June 25, 1992	<u>When Senior Judges May Act as Arbitrators</u>
4	February 22, 1994	<u>Criteria Governing a Judge's Acceptance of an Invitation to Attend a Bar-Related Function Sponsored by a Specialty Bar Association</u>
5	January 27, 1993	<u>Whether Disqualification of Judge from Criminal Matters Prosecuted by the United States Attorney's Office is Necessary Because of Judge's Past Employment with the Department of Justice</u>
6	September 15, 1995	<u>Whether a Judge of the Superior Court Must Disqualify Himself from Presiding Over Criminal Matters Prosecuted by the Office of the United States Attorney for the District of Columbia Because the Spouse of the Judge is an Assistant United States Attorney Assigned to the Superior Court</u>
7	January 24, 1997	<u>Rules Governing Judicial Clerk's Receipt from Prospective Private Employer of (1) Travel, Meal, and Lodging Expenses to Cover Recruiting Visits, (2) Pre-Employment Payments to Cover Moving, Housing, and Bar Review Expenses, and (3) Pre-Employment Hiring Bonuses as Rewards for Commitment to Future Employment or as Advances on First Year Salary</u>
8	March 21, 2000	<u>Criteria for Use of Judges Name on Letterhead in Solicitation of Funds</u>
9	May 3, 2001	<u>Disqualification of Judge Because of Spouse's Position as Corporation Counsel</u>
10	March 28, 2002	<u>"Practice of Law" by Senior Judges</u>
11	October 29, 2002	<u>Disqualification of a Judge Because of Child's Receipt of Scholarship from University Which is a Litigant Before Judge</u>
12	February 2, 2012	<u>Recusal of a Judge Because of a Relationship with a Financial Institution</u>
13	July 9, 2014	<u>Disqualification When Former Law Clerks Appear Before Judges</u>

*Please note that subsequent advisory opinions may be released after publication. Checking online for new advisory opinions is advisable.

Appendix C



**District of Columbia Courts
Joint Committee on Judicial Administration
Washington, D. C. 20001**



ADVISORY COMMITTEE ON JUDICIAL CONDUCT

AMENDED ORDER

Upon consideration of the proceedings before the Joint Committee on Judicial Administration on this 20th day of April, 2017, it is

ORDERED that:

An Advisory Committee on Judicial Conduct (hereinafter "the Committee") is hereby created, which shall provide informal advice and formal advisory opinions to judges and judicial officers of the District of Columbia court system pursuant to the procedures contained in this order.

I. MEMBERS:

The Committee shall consist of five judicial members, appointed by the Chief Judges of the Court of Appeals and the Superior Court. The Chief Judge of the Court of Appeals shall appoint three members from the Court of Appeals, and shall appoint one of those three members as chair of the Committee, and the Chief Judge of the Superior Court shall appoint two members from the Superior Court of the District of Columbia. Each member shall serve for such time as may be determined by the respective Chief Judge.

II. DUTIES:

(A) A judge or judicial officer may direct a request to the Committee as to whether or not specified action, either contemplated or proposed to be taken, would constitute a violation of the Code of Judicial Conduct for the District of Columbia. The Code is the American Bar Association Code of Judicial Conduct, as adopted by the Joint Committee. *See* Resolution of the Joint Committee on Judicial Administration, Nov. 15, 2011.

(1) A judge or judicial officer, seeking informal, unwritten advice, may direct such a request to any one or more members of the Committee as to whether or not specified action, either contemplated or proposed to be taken, would constitute a violation of the Code of Judicial Conduct for the District of Columbia.

(2) A judge or judicial officer seeking a formal, written advisory opinion, may direct such a request to the Committee as to whether or not specified action, either contemplated

or proposed to be taken, would constitute a violation of the Code of Judicial Conduct for the District of Columbia.

(B) A request shall state in detail the facts involved, and specify the question sought to be answered. The request should, whenever possible, also include reference to any legal authority, such as canons of the American Bar Association Code of Judicial Conduct, or advisory opinions from this or any other jurisdiction, or decisions of the District of Columbia Commission on Judicial Disabilities and Tenure. If additional factual information is required in order to provide either informal, unwritten advice or a formal written opinion, it may be requested from the judge or judicial officer making the request.

(C) The Committee will not provide either informal, unwritten advice or a formal written opinion concerning the conduct of others or conduct which has already occurred, unless the conduct is of an ongoing nature.

III. PROCEDURES: The actions of the Committee shall conform to the following procedures:

(A) When a judge or judicial officer has made a request for informal, unwritten advice to any one or more members of the Committee, that member or members may respond orally. In responding informally, the Committee member or members may call the attention of the judge or judicial officer making the request to particular provisions of the American Bar Association Code of Judicial Conduct, as adopted by the Joint Committee on Judicial Administration, or advisory opinions for this or any other jurisdiction, or decisions of the District of Columbia Commission on Judicial Disabilities and Tenure. Moreover, such Committee member or members may present the substantive issue to the full Committee for its consideration and issuance of a formal written opinion, if the issue is of continuing concern to the judiciary.

(B) When a judge or judicial officer has made a request for a formal, written, advisory opinion, the Committee shall respond issuing a formal written opinion. A formal opinion shall be prepared in cases where a prior opinion does not answer the question presented in the request. Where it appears that an already existing opinion answers the question presented in the request, the Committee shall forward a copy of that opinion to the judge or judicial officer making the inquiry.

(C) The Committee shall not issue an opinion in a matter that is the subject of a pending disciplinary proceeding, unless the District of Columbia Commission on Judicial Disabilities and Tenure requests such an opinion.

(D) Opinions shall be limited to the facts stated in the request, and such supplemental facts provided at the Committee's request, if any, and shall include a statement indicating this limitation.

(E) Opinions shall be published and circulated to the members of the judiciary and judicial officers of the District of Columbia court system and the District of Columbia Commission on Judicial Disabilities and Tenure.

(F) In order to preserve confidentiality for the judges and judicial officers seeking advisory opinions, the opinions shall not name the judge or judicial officer or disclose the judge's or the judicial officer's identity in any other way.

(G) Written opinions will provide a body of guidance for the judges. Action in accordance with an advisory opinion may be considered by the District of Columbia Commission on Judicial Disabilities and Tenure as evidence of good faith in the course of any proceeding or investigation conducted by the Commission.

(H) The Committee shall develop appropriate procedures for the processing and consideration of both informal, unwritten advice and formal written advisory opinions.

IV. CODE REVIEW:

(A) The Committee may receive suggestions or proposals from the Board of Judges of the District of Columbia Court of Appeals, the Board of Judges of the Superior Court of the District of Columbia, any individual judge, judicial officer, or employee, the organized or voluntary Bar, the District of Columbia Commission on Judicial Disabilities and Tenure, or the Committee may initiate its own proposals for necessary or advisable changes to the Code of Judicial Conduct. After reviewing these suggestions, the Committee may submit its recommendations to the Joint Committee on Judicial Administration for its consideration and action.

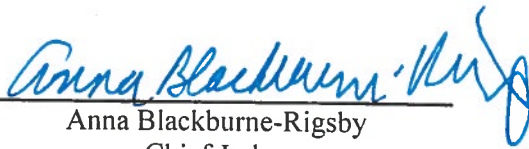
(B) The Committee and the Joint Committee on Judicial Administration shall confer at such times as either shall determine to be appropriate.

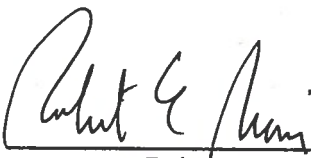
(C) The Committee shall confer from time to time with the District of Columbia Commission on Judicial Disabilities and Tenure when each shall determine such a meeting is appropriate.

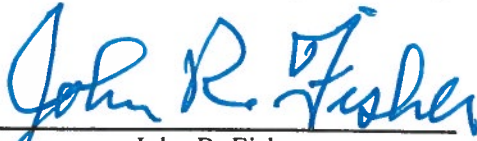
V. STAFF SUPPORT:

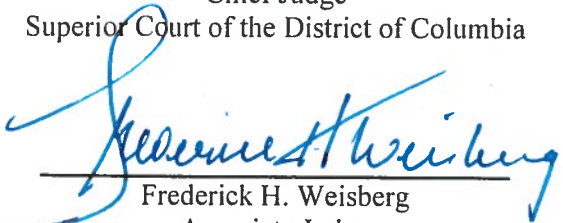
(A) The Executive Officer of the District of Columbia Courts shall provide administrative support for the Committee.

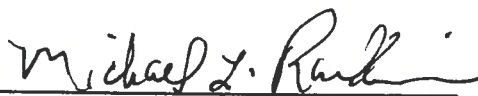
(B) The Executive Officer shall provide a complete set of the Committee's written opinions to each newly appointed judge and judicial officer of the District of Columbia court system. The Executive Officer shall maintain official copies of all written opinions of the Committee and make them available to all judicial officers and the District of Columbia Commission on Judicial Disabilities and Tenure.


Anna Blackburne-Rigsby
Chief Judge
District of Columbia Court of Appeals


Robert E. Morin
Chief Judge
Superior Court of the District of Columbia


John R. Fisher
Associate Judge
District of Columbia Court of Appeals


Frederick H. Weisberg
Associate Judge
Superior Court of the District of Columbia


Michael L. Rankin
Associate Judge
Superior Court of the District of Columbia



**District of Columbia Courts
Joint Committee on Judicial Administration
Washington, D. C. 20001**



ADVISORY COMMITTEE ON JUDICIAL CONDUCT

O R D E R

Upon consideration of the proceedings before the Joint Committee on Judicial Administration on this 1st day of October, 1990, it is

ORDERED that:

An Advisory Committee on Judicial Conduct (hereinafter "the Committee") is hereby created, which shall provide informal advice and formal advisory opinions to judges and judicial officers of the District of Columbia court system pursuant to the procedures contained in this order.

I. MEMBERS:

(A) The Committee shall consist of five members, appointed by the Joint Committee on Judicial Administration chosen from among the members of the judiciary of the District of Columbia courts. Three members will be chosen from the District of Columbia Court of Appeals and two members will be chosen from the Superior Court of the District of Columbia. The chair of the Committee shall be an appellate judge, to be designated by the chair of the Joint Committee on Judicial Administration. Each member shall serve a three year term, except for those members first appointed to the Committee. Initially, the Joint Committee on Judicial Administration shall appoint one member from the Court of Appeals to a four year term, two members, one from the Court of Appeals and one from the Superior Court, to three year terms, and two members, one from the Court of Appeals and one from the Superior Court, to two year terms so that subsequent appointments will be staggered.

(B) No member may serve more than two consecutive three-year terms. If a vacancy occurs during a member's service, the Joint Committee on Judicial Administration shall appoint a new member who will complete the term of the member whose service was interrupted. A member shall serve until a successor is appointed.

II. DUTIES:

(A) A judge or judicial officer may direct a request to the Committee as to whether or not specified action, either

contemplated or proposed to be taken, would constitute a violation of the Code of Judicial Conduct for the District of Columbia. The Code is the American Bar Association Code of Judicial Conduct, as adopted by the Joint Committee. See 1973 Resolution of the Joint Committee on Judicial Administration, reprinted in full in Scott v. United States, 559 A.2d 745 (D.C. 1989) (appendix).

(1) A judge or judicial officer, seeking informal, unwritten advice, may direct such a request to any one or more members of the Committee as to whether or not specified action, either contemplated or proposed to be taken, would constitute a violation of the Code of Judicial Conduct for the District of Columbia.

(2) A judge or judicial officer seeking a formal, written advisory opinion, may direct such a request to the Committee as to whether or not specified action, either contemplated or proposed to be taken, would constitute a violation of the Code of Judicial Conduct for the District of Columbia.

(B) A request shall state in detail the facts involved, and specify the question sought to be answered. The request should, whenever possible, also include reference to any legal authority, such as canons of the American Bar Association Code of Judicial Conduct, or advisory opinions from this or any other jurisdiction, or decisions of the District of Columbia Commission on Judicial Disabilities and Tenure. If additional factual information is required in order to provide either informal, unwritten advice or a formal written opinion, it may be requested from the judge or judicial officer making the request.

(C) The Committee will not provide either informal, unwritten advice or a formal written opinion concerning the conduct of others or conduct which has already occurred, unless the conduct is of an ongoing nature.

III. PROCEDURES: The actions of the Committee shall conform to the following procedures:

(A) When a judge or judicial officer has made a request for informal, unwritten advice to any one or more members of the Committee, that member or members may respond orally. In responding informally, the Committee member or members may call the attention of the judge or judicial officer making the request to particular provisions of the American Bar Association Code of Judicial Conduct, as adopted by the Joint Committee on Judicial Administration, or advisory opinions for this or any other jurisdiction, or decisions of the District of Columbia Commission on Judicial Disabilities and Tenure. Moreover, such Committee member or members may present the substantive issue to the full

Committee for its consideration and issuance of a formal written opinion, if the issue is of continuing concern to the judiciary.

(B) When a judge or judicial officer has made a request for a formal, written, advisory opinion the Committee shall respond issuing a formal written opinion. A formal opinion shall be prepared in cases where a prior opinion does not answer the question presented in the request. Where it appears that an already existing opinion answers the question presented in the request, the Committee shall forward a copy of that opinion to the judge or judicial officer making the inquiry.

(C) The Committee shall not issue an opinion in a matter that is the subject of a pending disciplinary proceeding, unless the District of Columbia Commission on Judicial Disabilities and Tenure requests such an opinion.

(D) Opinions shall be limited to the facts stated in the request, and such supplemental facts provided at the Committee's request, if any, and shall include a statement indicating this limitation.

(E) Opinions shall be published and circulated to the members of the judiciary and judicial officers of the District of Columbia court system and the District of Columbia Commission on Judicial Disabilities and Tenure.

(F) In order to preserve confidentiality for the judges and judicial officers seeking advisory opinions, the opinions shall not name the judge or judicial officer or disclose the judge's or the judicial officer's identity in any other way.

(G) Written opinions will provide a body of guidance for the judges. Action in accordance with an advisory opinion may be considered by the District of Columbia Commission on Judicial Disabilities and Tenure as evidence of good faith in the course of any proceeding or investigation conducted by the Commission.

(H) The Committee shall develop appropriate procedures for the processing and consideration of both informal, unwritten advice and formal written advisory opinions.

IV. CODE REVIEW:

(A) The Committee may receive suggestions or proposals from the Board of Judges of the District of Columbia Court of Appeals, the Board of Judges of the Superior Court of the District of Columbia, any individual judge, judicial officer, or employee, the organized or voluntary Bar, the District of Columbia Commission on Judicial Disabilities and Tenure, or the Committee may initiate its own proposals for necessary or advisable changes to the Code of Judicial Conduct. After

reviewing these suggestions, the Committee may submit its recommendations to the Joint Committee on Judicial Administration for its consideration and action.

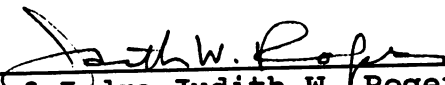
(B) The Committee and the Joint Committee on Judicial Administration shall confer at such times as either shall determine to be appropriate.

(C) The Committee shall confer from time to time with the District of Columbia Commission on Judicial Disabilities and Tenure when each shall determine such a meeting is appropriate.

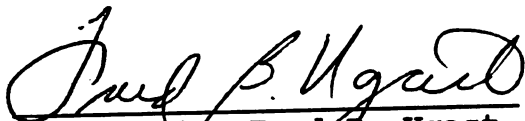
V. STAFF SUPPORT:

(A) The Executive Officer of the District of Columbia Courts shall provide administrative support for the Committee.


(B) The Executive Officer shall provide a complete set of the Committee's written opinions to each newly appointed judge and judicial officer of the District of Columbia court system. The Executive Officer shall maintain official copies of all written opinions of the Committee and make them available to all judicial officers and the District of Columbia Commission on Judicial Disabilities and Tenure.



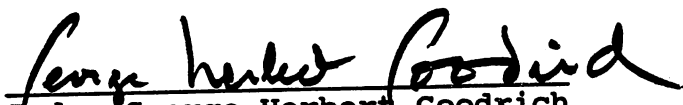
Chief Judge Judith W. Rogers
District of Columbia Court of Appeals
and Chair, Joint Committee on Judicial Administration




Chief Judge Fred B. Ugast
Superior Court of the
District of Columbia



Judge John M. Steadman
District of Columbia
Court of Appeals



Judge George Herbert Goodrich
Superior Court of the
District of Columbia



Judge Gladys Kessler
Superior Court of the
District of Columbia



District of Columbia Courts
Joint Committee on Judicial Administration
Washington, D. C. 20001
Resolution



The Joint Committee on Judicial Administration hereby adopts on this day, February 15, 2018, the 2018 Edition of the Code of Judicial Conduct for the District of Columbia Courts. The 2018 Edition of the Code of Judicial Conduct includes the Code of Judicial Conduct for the District of Columbia Courts, which was adopted by the Joint Committee on Judicial Administration on November 15, 2011, with some minor, non-substantive edits, and the following additional material: (1) Appendix A provides an ethical guide concerning the conduct of judicial law clerks; (2) Appendix B lists Opinions of the Advisory Committee on Judicial Conduct through 2017; and (3) Appendix C includes relevant orders and resolutions of the Joint Committee on Judicial Administration. An online version of the 2018 Edition of the Code of Judicial Conduct is available on the District of Columbia Courts' website (<https://www.dccourts.gov/judicialconduct>). The online version contains internal links allowing the reader to more easily jump between related rules within the document. It also includes hyperlinks to the source materials referenced in the Code and the appendices.

The 2018 Edition of the Code of Conduct for the District of Columbia Courts, as adopted, shall take effect on February 15, 2018. The Joint Committee wishes to express its gratitude to the Advisory Committee on Judicial Conduct for its diligent work in preparing the 2018 Edition of the Code of Judicial Conduct.



Anna Blackburne-Rigsby

Chief Judge
District of Columbia Court of Appeals

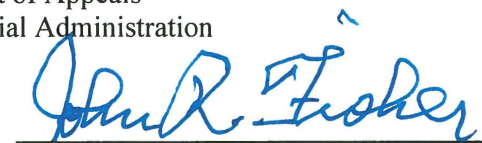
Chair, Joint Committee on Judicial Administration



Robert E. Morin

Chief Judge
Superior Court of the District of Columbia

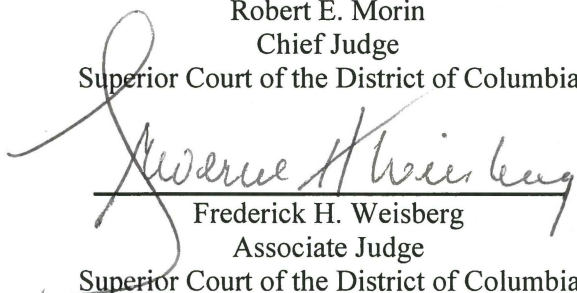
Superior Court of the District of Columbia



John R. Fisher

Associate Judge
District of Columbia Court of Appeals

District of Columbia Court of Appeals



Frederick H. Weisberg

Associate Judge
Superior Court of the District of Columbia

Superior Court of the District of Columbia



Michael L. Rankin

Associate Judge
Superior Court of the District of Columbia

Superior Court of the District of Columbia



Anne B. Wicks

Executive Officer
District of Columbia Courts

Secretary to the Joint Committee

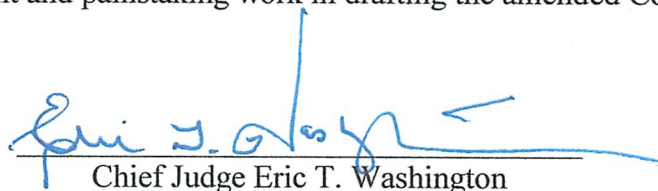


District of Columbia Courts
Joint Committee on Judicial Administration
Washington, D.C. 20001-2131



Resolution

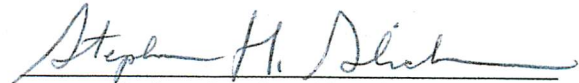
The Joint Committee on Judicial Administration hereby adopts on this day, November 15, 2011, the 2007 ABA Model Code of Judicial Conduct, as amended by the Advisory Committee on Judicial Conduct. The Code of Conduct as adopted shall be entitled "Code of Judicial Conduct for the District of Columbia Courts," and shall take effect on January 1, 2012. The Joint Committee wishes to express its gratitude to the Advisory Committee for its diligent and painstaking work in drafting the amended Code.



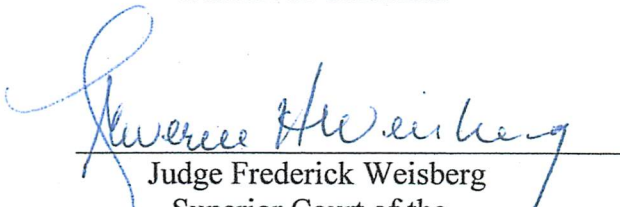
Chief Judge Eric T. Washington
District of Columbia Court of Appeals and
Chair, Joint Committee on Judicial Administration



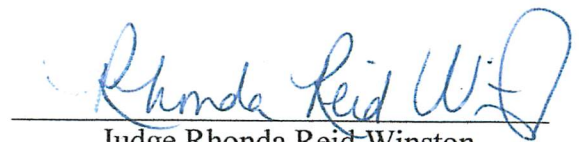
Chief Judge Lee F. Satterfield
Superior Court of the
District of Columbia



Judge Stephen H. Glickman
District of Columbia
Court of Appeals



Judge Frederick Weisberg
Superior Court of the
District of Columbia



Judge Rhonda Reid Winston
Superior Court of the
District of Columbia



Anne B. Wicks
Executive Officer
Secretary to the Joint Committee

**DISTRICT OF COLUMBIA COMMISSION
ON JUDICIAL DISABILITIES AND TENURE**
515 Fifth Street, N.W., Building A, Room 246
Washington, D.C. 20001
(202) 727-1363

April 18, 2022

COMMISSION PUBLIC STATEMENT

The Commission issues this public statement in connection with a matter that resulted in the retirement of a judge in the Superior Court for the District of Columbia (“Superior Court”).

Purpose of the Public Statement

Public statements are an important tool for the Commission to periodically remind the public, judges, and the courts of the expectations it has for judges’ conduct in both serving the public and interacting with the Commission and its staff on important Commission matters. Further, the Commission may, in its discretion and the public interest, issue public statements to inform the public of the reasons for its actions within the limitations of its statutory powers. Public statements can be particularly important when there is serious misconduct and violations of the Code of Judicial Conduct, and the judge preemptively resigns or retires prior to the completion of the Commission’s investigation and formal proceedings.

For the reasons explained herein, the Commission finds the public interest is best served in this matter by a public statement that, among other things, explains why a judge was not removed pursuant to the Commission’s powers under D.C. Code § 11-1526(a)(2). This statute, in relevant part, authorizes the Commission to remove a judge from office under certain circumstances including, *inter alia*, misconduct in office and conduct that is prejudicial to the administration of justice or which brings the judicial office into disrepute.¹

The Role and Mission of the Commission

The mission of the Commission is to maintain public confidence in an independent, impartial, fair, and qualified judiciary, and to enforce the high standards of conduct judges must adhere to both on and off the bench.

The Commission has two significant statutory obligations in this regard:

¹ See *Halleck v. Berliner*, 427 F. Supp. 1225, 1246 (D.D.C. 1977) (“[T]he Commission may either order removal of the judge or, if it decides that under all the circumstances the judge should not be removed, it may either (a) dismiss the case without making its decision public unless the judge consents, or (b) if it determines that the public interest would be best served by a public announcement of the decision and an explanation of why the judge is not being removed, it may in the sound exercise of its discretion make such a public statement”).

- The Commission has the authority to remove a judge for willful misconduct in office, for willful and persistent failure to perform judicial duties, and for conduct prejudicial to the administration of justice, or which brings the judicial office into disrepute. The Commission also has the authority to retire a judge involuntarily if the Commission determines that the judge suffers from a mental or physical disability which is or is likely to become permanent and which prevents, or seriously interferes with, the proper performance of duties.
- The Commission is responsible for investigating, reviewing, and evaluating the applications of judges seeking reappointment or for those seeking senior status. In the case of reappointments, the President of the United States relies on the Commission's review and recommendation concerning whether a judge is fit to serve an additional fifteen-year term.

To serve its mission, the Commission relies heavily on the candor, truthfulness, and cooperation of the community, judges, court staff, and court leadership who interact with the Commission on important matters.

The Commission has great appreciation for and understanding of the challenges and burdens that judges in the District of Columbia face to meet the extraordinary demands of their roles and responsibilities, especially considering the serious issues they are entrusted to decide, the large number and frequency of judicial vacancies along with expanding caseloads, and the additional burdens presented by disruptive events beyond the courts' control, such as budgetary constraints and the recent Covid-19 pandemic. As appropriate and where possible, the Commission supports judges and the court system in meeting the heavy demands of their obligations to the community.

In return, the Commission and the community expect judges to be accountable for upholding the law and for assuring their own conduct meets or exceeds the highest ethical standards befitting the office they hold and the community they are entrusted to serve. Public confidence in the administration of justice rests fundamentally on a foundation of trust of the judiciary to be ethical in all their professional and personal conduct and to be fair and unbiased in their decisions.

Reappointment Matter and Related Investigation

The Commission was informed that a judge in the Superior Court would seek reappointment as an Associate Judge. The Commission initiated its standard reappointment investigation, evaluation, and review process, consistent with its legal obligations for renominations under Rule 2030 *et seq.*

During the initial stage of its investigation, the Commission received information that the judge had instructed certain witnesses not to disclose particular material information to the Commission that the judge perceived would be detrimental to the Commission's view of the judge's fitness for reappointment. In the following days, the judge made multiple attempts to

reach the witnesses to apologize, acknowledge the judge's lapse in judgment, and retract the request. The judge's request and persistent outreach to the witnesses were unwelcome and very upsetting.

Upon learning of these incidents, the Commission initiated an investigation and convened an emergency meeting. After the emergency meeting and discussions with Superior Court leadership, the Commission requested a meeting with the judge. In addition, Superior Court leadership put the judge on administrative leave pending the Commission's review.

Shortly after the judge's administrative leave and before the judge's meeting with the Commission, the judge notified the Commission that the judge was withdrawing the reappointment request and that the judge had decided to retire.

The judge subsequently admitted to the reported conduct and confirmed to the Commission that the judge would engage in no further judicial activities pending the judge's retirement.

The Commission's Response

While the Commission commended the judge for taking responsibility for the judge's actions, a preemptive retirement to avoid punishment or censure by the Commission does not end the Commission's inquiry.

Although the Commission recognizes the judge's extensive contributions during the judge's career, the Commission cannot ignore egregious conduct where a judge instructs witnesses to lie, withhold material information, or to mislead the Commission.

In this instance, the Commission did not institute removal proceedings given the judge's decision to retire imminently and the procedural requirements for formal proceedings.² However, the Commission remained duty bound to evaluate the judge's conduct in accordance with its statutory obligations and the Canons of the Code of Judicial Conduct for the District of Columbia Courts (2018) (the "Code").

Based on the undisputed facts, the Commission found that:

- The judge's instruction to witnesses to withhold information from the Commission was improper, a serious violation of the Code, and undermined the integrity of the judiciary.
- If witnesses had not objected and complied with the judge's request, such conduct would have impeded and interfered with the Commission's ability to fulfill its statutory obligations in advising the President of the United States.

² The judge would be retired before any formal removal proceedings could be convened under the statute.

- Given the judge's position, the requests of the witnesses were an actual and perceived abuse of power.
- While the Commission commended the judge for retracting the instruction to the witnesses and acknowledging that the request was improper, the Commission also concluded that: (i) the Judge's request violated multiple Rules under the Code and (ii) the judge's conduct undermined the judge's integrity as a judicial officer of the Superior Court.
- Therefore, and despite the judge's years of distinguished service, the Commission found the judge to be unqualified, that is, unfit for further judicial service, including any future service as a judge.

The Commission then took the following steps:

First, the Commission notified Superior Court leadership of the Commission's findings and determinations above including, but not limited to, violations of the Code.³

Second, the Commission found that while such conduct was subject to possible removal from judicial office, the judge's immediate suspension from judicial activity and the decision to retire satisfied the Commission that no further harm would be done to witnesses, the court, or the public.

Third, recognizing the significance of this matter and its potential to undermine the public's confidence in the integrity of the judicial system, the Commission issues this public statement to reaffirm its position that judges, in particular, must hold themselves to the highest ethical standards to maintain the public's trust and confidence in the court system and the judiciary. Judges also must recognize that they are important role models in our society, not just for the public but for young lawyers and court staff. Abuse of their position or their authority will only erode the collective belief and trust in the judicial system that serves our community and that so many judges and court staff work tirelessly and selflessly to uphold.

The Commission commends the witnesses and Superior Court leadership for their professionalism, candor, and immediate response to the matter under such challenging circumstances.

³ The Commission cited to violations of Canon 1, Rule 1.2 (Promoting Confidence in the Judiciary) and Rule 1.3 (Avoiding Abuse of the Prestige of Judicial Office), and Canon 2, Rule 2.12 (Supervisory Duties).

The Commission considers this matter to be closed.

DISTRICT OF COLUMBIA COMMISSION ON
JUDICIAL DISABILITIES AND TENURE

By: Colleen Kollar-Kotelly

Hon. Colleen Kollar-Kotelly
Chairperson

**DISTRICT OF COLUMBIA COMMISSION
ON JUDICIAL DISABILITIES AND TENURE**

515 FIFTH STREET, N.W., BUILDING A, ROOM 246
WASHINGTON, D.C. 20001
(202) 727-1363

COMMISSION PUBLIC STATEMENT

On November 4, 2021, the District of Columbia Commission on Judicial Disabilities and Tenure (“the Commission”) filed with the District of Columbia Court of Appeals an “Uncontested Order of Involuntary Retirement” pursuant to D.C. Code §11-1526(b) regarding Hon. Steven N. Berk, now a former Associate Judge of the Superior Court of the District of Columbia (“the Commission’s Order”).¹ The Commission also requested to file additional materials under seal in support of the Commission’s Order (“Supplemental Materials”).

On the same day, the Chief Judge of the District of Columbia Court of Appeals issued an Order affirming the Commission’s Order and granting the Commission’s request to file under seal the Supplemental Materials.

Given the unusual circumstances of the Commission’s Order and broader issues involved, the Commission believes that the public interest is best served by a public announcement of its decision and an explanation of why the Judge was not removed pursuant to the Commission’s powers under D.C. Code §11-1526(a)(2). This statute authorizes the Commission to remove a judge from office under certain circumstances including, *inter alia*, conduct that is prejudicial to the administration of justice.²

I. Background

In May 2021, the Commission began receiving formal and informal complaints regarding Judge Berk. The concerns involved substantial delays and/or failures by the Judge to: (i) dispose of pending motions by written order; (ii) issue written orders following hearings; and (iii) address delays or respond to inquiries by litigants or counsel who sought information about the status of pending matters (collectively “the Concerns”).

In addition to potential violations of the Code of Judicial Conduct for the District of Columbia resulting from significant delays and failures to issue orders, the Concerns further raised questions of a medical or other issues that could be impacting the ability of the Judge to perform his judicial duties. Certain cases and reports also raised possible

¹ The Commission’s Order was dated November 1, 2021, but was filed several days later following mandatory statutory notifications.

² See also *Halleck v. Berliner*, 427 F. Supp. 1225, 1246 (D.D.C. 1977) (“the Commission may either order removal of the judge or, if it decides that under all the circumstances the judge should not be removed, it may either (a) dismiss the case without making its decision public unless the judge consents, or (b) if it determines that the public interest would be best served by a public announcement of the decision and an explanation of why the judge is not being removed, it may in the sound exercise of its discretion make such a public statement”).

cognitive, confusion, memory, focus, attention, speech, and other issues, as well as speculation over health issues.

At the time the Commission received complaints, Judge Berk was assigned to the Domestic Relations calendar in the Family Court of the Superior Court of the District of Columbia (hereafter “Superior Court”). Because of the seriousness of the Concerns, the nature of the Domestic Relations calendar, and the Commission’s duty to protect the public, the Commission initiated a preliminary review of matters brought to its attention and made additional inquiries.

After the Commission’s preliminary review and informal inquiries appeared to corroborate the Concerns, the Commission raised its Concerns and certain information gathered with Superior Court leadership.³ Thereafter, the Commission directed Judge Berk to appear before the full Commission on June 9, 2021.⁴

On June 8, the day before the Commission meeting, the Commission was informed of the following information:

- The Chief Judge and Judge Berk agreed that Judge Berk would take administrative leave pending a review of ongoing matters by the Commission.
- Superior Court leadership provided the Commission with requested data and statistical information regarding dispositions and pending matters before Judge Berk. The information confirmed wide-spread, extensive, and extraordinary delays, as well as an unusually large number of pending cases on Judge Berk’s calendar, as compared to other judges assigned to the Domestic Relations calendar.
- Judge Berk submitted to the Commission a one-paragraph letter from his physicians indicating their opinion that his medical condition was well-managed

³ By the end of March and into early April 2021, the Commission learned that Family Court leadership and the Chief Judge separately were made aware of concerns regarding delays on Judge Berk’s calendar, as well as the potential existence of medical issues, by members of the public and attorneys appearing before the Judge. From the latter part of March through May 2021, Family Court leadership worked with Judge Berk and his staff to understand and address the backlog. By approximately May 2021, Family Court leadership and the Chief Judge became aware of Judge Berk’s pre-existing medical condition. No disclosures were made to the Commission by Superior Court leadership or Judge Berk regarding the Judge’s pre-existing medical condition, calendar delays or the Concerns until after the Commission began its preliminary investigation and made specific inquiries to the Court.

⁴ Judge Berk was unavailable before that date due to a pre-arranged out-of-town vacation the week of May 30 to June 8.

and stating: “we strongly feel he is able to perform all functions of his job serving as a Judge.”⁵

On June 9, after the Commission shared with Judge Berk a general summary of the Concerns, the Commission took the following steps, all of which were agreed to by Judge Berk:

- The Commission required Judge Berk to undergo an independent medical evaluation by a health care professional designated by the Commission, as a condition of continued judicial service, pursuant to District of Columbia Municipal Regulations (DCMR), Title 28 §§ 2002.1-2002.5. The medical evaluation would be completed on an expedited basis.
- After completion of the independent medical evaluation, the Commission would require Judge Berk to reappear to discuss the Concerns, related information that it was gathering as part of its investigation, and any relevant medical information.

II. The Commission’s Findings Regarding Judge Berk

The Commission’s comprehensive and thorough investigation of the Concerns involved the collection of information from lawyers and litigants, judges, court staff, and the former Chief Judge and the current Chief Judge of the Superior Court. The Commission also reviewed and analyzed court reports, dockets, selected court filings and tapes of certain Court proceedings.

Through its investigation, the Commission found the following:

- Extensive and extraordinary delays of cases throughout Judge Berk’s calendar, well-beyond initial cases brought to its attention, including certain cases in which no written rulings were issued for periods as long as six (6) to nine (9) months.⁶ In some cases, hearings were not set at all, or they were simply continued without resolution for months at a time.
- The delays appear to have: (i) noticeably increased in the late spring and summer of 2020, the year Judge Berk assumed responsibility for his then-assigned Domestic Relations calendar, especially as the Court resumed hearings in a virtual environment due to the unprecedented COVID-19 pandemic; and (ii) significantly

⁵ The Commission did not rely on this letter but, at the time, it was the only medical evidence available until the Commission engaged its own independent expert.

⁶ Delays included cases in which trials and hearings were completed, as well as initial status hearings that were never scheduled. Judge Berk’s clearance rate was 54.4%, almost 30% lower than some other judges with similar caseloads on the Domestic Relations calendar and more than 50% lower than other judges whose clearance rates were higher.

worsened in or around late fall 2020 and into 2021 through the date Judge Berk agreed to administrative leave.

- The delays involved child custody, childcare, and child support, contested divorce cases, as well as other family-related matters. In some instances, the Commission noted actual or potential harm to litigants, including particularly vulnerable individuals such as children.
- Judge Berk did not disclose his medical condition to Court leadership until approximately May 2021, despite (i) having reason to believe that he was experiencing increased health issues as early as the Fall of 2020, and (ii) that certain issues may have occurred or been evident during court hearings. Further, Judge Berk did not request assistance nor notify Family Court leadership or the Chief Judge of the extent of the delays on his calendar.
- Following the independent medical evaluation, the Commission reviewed the results of the evaluation, as well as additional information provided by the Commission's independent health professional, Judge Berk's personal physician, Judge Berk, and his legal counsel.
- Additional findings included:
 - Awareness by Judge Berk that his medical condition was interfering with his duties as a judicial officer, yet he did not take sufficient action nor make sufficient disclosures to assure litigants were not unduly impacted, even after litigants brought concerns to his attention and to the attention of Court leadership.
 - Awareness by certain judges and staff within Superior Court, including certain judges in leadership who became aware of "red flags" that raised concerns regarding Judge Berk's performance. While some steps were taken, those steps were not sufficient to protect the public until after the Commission made inquiries and Judge Berk agreed to take a pause in his judicial responsibilities.
 - The presence of significant and unprecedented challenges due to the global coronavirus pandemic that created an unpredictable and unforeseeable situation where safeguards that might normally be present for in-person court proceedings were lacking or insufficient to detect problems as quickly in a largely virtual environment. These challenges led to a breakdown in the

Superior Court's internal processes that periodically assess judicial workloads and calendar activity.

- Failure of Judge Berk to attend both mandatory and recommended training for Family Court judges, as required by statute and Family Court leadership.

Based on all information presented, the Commission determined that:

- Judge Berk violated Rule 2.5 (Competence, Diligence, and Cooperation), Canon 2 of the Code of Judicial Conduct for the District of Columbia (2018), because of the extraordinary nature and extent of the delays on Judge Berk's calendar, as well as its related impact, harm, and cost to litigants.
- Judge Berk suffered from a mental or physical disability which is or is likely to become permanent and which prevents, or seriously interferes with, the proper performance of his judicial duties.

The Commission further acknowledged Judge Berk's full and complete cooperation with this matter, as well as his acknowledgement of:

- The Concerns raised and the actual and potential harm to the public caused by the extraordinary delays in matters over which he presided.
- Physical and cognitive complications that may have contributed to the delays.

Based on the totality of the circumstances and despite the seriousness of the Code of Judicial Conduct violations, the Commission determined that Judge Berk should be involuntarily retired pursuant to D.C. Code § 11-1526(b).

A judge of a District of Columbia court shall be involuntarily retired from office when (1) the Commission determines that the judge suffers from a mental or physical disability (including habitual intemperance) which is or is likely to become permanent and which prevents, or seriously interferes with, the proper performance of the judge's judicial duties, and (2) the Commission files in the District of Columbia Court of Appeals an order of involuntary retirement and the order is affirmed on appeal or the time within which an appeal may be taken from the order has expired.

III. Commission's Additional Public Statement

The Commission's decision to pursue involuntary retirement in lieu of removal in this matter was based on the totality of the circumstances and the specific challenges presented.

The Commission weighed the harm to the public and the Code of Judicial Conduct violations against Judge Berk's medical issues, the unusual challenges presented by the global pandemic, as well as Judge Berk's overall cooperation with the Commission's review and approach to an appropriate resolution.

However, despite the resolution with Judge Berk, the Commission found more needed to be done to assure these matters are addressed differently in the future. As such, the Commission determined an additional public statement was appropriate to serve the public interest and to assure the public that any systemic failures or weaknesses are addressed by the Superior Court.

The following steps have been taken:

- First, at the direction of the Court leadership and over a period of several months, extensive efforts were made to process and manage Judge Berk's backlogged calendar and to limit actual and potential harm to the public. One judge was assigned full time to Judge Berk's former calendar and was assisted by between six (6) to eight (8) other judges at any given time in making trial findings and judgments, resolving motions, holding hearings, and issuing orders.
- Second, the Commission made inquiries of Superior Court leadership regarding existing procedures for monitoring calendar backlogs, delays, and performance standards for all Divisions. While certain internal processes were temporarily paused during the pandemic, those processes have now been reinstituted, and enhancements in training, oversight, and monitoring have been made. In addition, Superior Court leadership recently has adopted new measures to address possible weaknesses exposed by the Judge Berk matter for periodically monitoring judicial workloads and calendar management. The steps taken by Superior Court leadership are not only intended to address the situation uncovered with Judge Berk but also to improve efficiencies across the Superior Court as the court is resuming hearings and trials delayed by the pandemic. Court leadership will periodically update the Commission on progress made. The Commission will inquire about any significant backlogs, as needed.
- Third, the Commission has asked Court leadership to provide additional training and guidance on the importance of future reporting and transparency with the Commission in the event of medical situations that may require monitoring, accommodations of disabilities, or action to avoid unnecessary challenges or harm to the public. Such reporting and transparency is in the

public interest, which the Courts and the Commission are entrusted to serve. The Commission further notes that such reporting under certain circumstances may be required under the Code of Judicial Conduct. See Rule 2.14 (Disability and Impairment)⁷ and Rule 2.15 (Responding to Judicial and Lawyer Misconduct)⁸ of the Code of Judicial Conduct of the District of Columbia (2018 edition). Knowledge of these rules and their applicable commentary is important for all judges to understand and follow.

The Commission commends the public, including litigators and litigants, who brought their concerns regarding Judge Berk's conduct to the Commission's attention.

The Commission appreciates and is sensitive to challenges present when litigants must raise these issues, especially in pending cases where a judge's conduct calls into question the fairness of the process or fitness of the judge to make decisions or serve in his or her role. However, the Commission cannot serve its mission and protect the public interest without the kind of proactive disclosures, reporting, and cooperation here.

DISTRICT OF COLUMBIA COMMISSION ON
JUDICIAL DISABILITIES AND TENURE

By:


Hon. Colleen Kollar-Kotelly
Chairperson

December 29, 2021

⁷ Rule 2.14 states: "A judge having a reasonable belief that the performance of a lawyer or another judge is impaired by drugs or alcohol, or by a mental, emotional, or physical condition, shall take appropriate action, which may include a confidential referral to a lawyer or judicial assistance program." The comments further define "appropriate action" to include reporting the judge or lawyer to the appropriate authority.

⁸ Rule 2.15 further requires that judges and lawyers, who are aware of conduct that calls into question the fitness of a judge or lawyer to serve, take appropriate action.

**DISTRICT OF COLUMBIA COMMISSION
ON JUDICIAL DISABILITIES AND TENURE**

515 FIFTH STREET, N.W., BUILDING A, ROOM 246
WASHINGTON, D.C. 20001
(202) 727-1363



**BEFORE THE DISTRICT OF COLUMBIA
COMMISSION ON JUDICIAL DISABILITIES AND TENURE**

Inquiry Concerning a Judge, No. 1-2021

Judge Steven N. Berk

A Judge of the Superior Court of the
District of Columbia

UNCONTESTED ORDER OF INVOLUNTARY RETIREMENT

1. This matter comes before the Commission due to concerns brought to its attention during May 2021 regarding the conduct of Judge Steven Berk in his capacity as an Associate Judge assigned to the Domestic Relations calendar in the Family Court of the Superior Court of the District of Columbia (hereafter "Superior Court").
2. The concerns, including both informal concerns and formal complaints filed with the Commission, involved substantial delays and/or failures by the Judge to: (i) dispose of pending motions by written order; (ii) issue written orders following hearings; and (iii) address delays or respond to inquiries by litigants or counsel who sought information about the status of pending matters (collectively "the Concerns"). In addition to potential violations of the Code of Judicial Conduct for the District of Columbia resulting from significant delays and failures to issue orders, the Concerns further raised questions of a medical or other issue that could be impacting the ability of the Judge to perform his judicial duties.
3. Judge Berk has been serving as an Associate Judge of the Superior Court since his appointment in 2015. He has not been the subject of any private or public disciplinary actions by the Commission.
4. During May 2021, the Commission initiated preliminary inquiries and gathered additional information that appeared to corroborate the Concerns.
5. Because of the serious nature of the Concerns, the nature of the Domestic Relations calendar, and the Commission's duty to protect the public, at the end of May 2021, the Commission made additional inquiries and discussed its concerns with the Chief Judge of the Superior Court and the Presiding and Deputy Presiding Judges of the

Family Division.¹ Thereafter, the Commission directed Judge Berk to appear before the full Commission on June 9, 2021.²

6. On June 8, the day before the Commission's scheduled June 9 meeting:
 - a. The Chief Judge and Judge Berk agreed that Judge Berk would take administrative leave pending a review of ongoing matters by the Commission.
 - b. The Chief Judge provided the Commission with data, including statistical information, regarding dispositions and pending matters before Judge Berk. The information confirmed wide-spread, extensive, and extraordinary delays, as well as an unusually large number of pending cases on Judge Berk's calendar, as compared to other judges.
 - c. Judge Berk submitted to the Commission a one-paragraph letter from his physicians indicating their opinion that his medical condition was well-managed and stating: "we strongly feel he is able to perform all functions of his job serving as a Judge."
7. On June 9, after the Commission shared with Judge Berk a general summary of the Concerns, the Commission took the following steps, all of which were agreed to by Judge Berk:
 - a. The Commission required Judge Berk to undergo an independent medical evaluation by a health care professional designated by the Commission, as a condition of continued judicial service, pursuant to District of Columbia Municipal Regulations (DCMR), Title 28 §§ 2002.1-2002.5. The medical evaluation would be completed on an expedited basis.
 - b. After completion of the independent medical evaluation, the Commission would require Judge Berk to reappear to discuss the Concerns, related information that it was gathering as part of its investigation, and any relevant

¹ By the end of March and into early April 2021, Family Court leadership and the Chief Judge separately were made aware of concerns regarding delays on Judge Berk's calendar, as well as the potential existence of medical issues, by members of the public and attorneys appearing before the judge. From the later part of March through May 2021, Family Court leadership worked with Judge Berk and his staff to understand and address the backlog. By approximately May 2021, Family Court leadership and the Chief Judge became aware of Judge Berk's pre-existing medical condition. No disclosures were made to the Commission by Superior Court leadership or Judge Berk regarding the judge's pre-existing medical condition, calendar delays or the Concerns until after the Commission began its preliminary investigation and made specific inquiries to the Court.

² Judge Berk was unavailable before that date due to a pre-arranged out-of-town vacation the week of May 30 to June 8.

medical information.

8. Following the June 9 Commission meeting, the Commission continued its comprehensive and thorough investigation of the Concerns.³ The investigation involved the collection of information from lawyers and litigants, judges, court staff, and the former Chief Judge and the current Chief Judge of the Superior Court. The Commission also reviewed and analyzed court reports, dockets, selected court filings and tapes of certain Court proceedings. Through its investigation, the Commission confirmed the following:
 - a. That extensive and extraordinary delays of cases throughout Judge Berk's calendar, well-beyond initial cases brought to its attention, including certain cases in which no written rulings were issued for periods as long as six (6) to nine (9) months.⁴ In some cases, hearings were not set at all, or they were simply continued without resolution for months at a time.
 - b. The delays appear to have: (i) noticeably increased in the late spring and summer of 2020, the year Judge Berk assumed responsibility for his then-assigned Domestic Relations calendar, especially as the Court resumed hearings in a virtual environment due to the unprecedented COVID-19 pandemic; and (ii) significantly worsened in or around late fall 2020 and into 2021 through the date Judge Berk agreed to administrative leave.
 - c. The delays involved child custody, childcare, and child support, contested divorce cases, as well as other family-related matters.
9. Judge Berk did not disclose his medical condition to Court leadership until approximately May 2021, despite having reason to believe that he was experiencing increased health issues as early as the Fall of 2020, and that certain issues may have occurred or been evident during court hearings. Further, Judge Berk did not request assistance nor notify Family Court leadership or the Chief Judge of the extent of the

³ At the direction of the Commission, the investigation was conducted by the Commission's Special Counsel and assisted by the Commission's Executive Director and designated Commissioners, as needed. During the Commission's investigation, the Commission also received an unrelated complaint filed by a former law clerk of the judge alleging certain misconduct. The Commission undertook a separate extensive and thorough investigation of that matter, including interviews of numerous current and former employees, alleged witnesses, court staff, judges and others. The Commission determined that there was substantial and corroborated evidence that was inconsistent with and contradicted the complaint's factual accounts and allegations. The Commission determined that the complaint lacked merit and, therefore, dismissed the complaint as lacking merit.

⁴ Delays included cases in which trials and hearings were completed, as well as initial status hearings that were never scheduled. Judge Berk's clearance rate was 54.4%, almost 30% lower than some other judges with similar caseloads on the Domestic Relations calendar and more than 50% lower than other judges whose clearance rates were higher.

delays on his calendar.

10. Following the independent medical evaluation, the Commission reviewed the results of the evaluation, as well as additional information provided by the Commission's independent health professional, Judge Berk's personal physician, Judge Berk, and his legal counsel.
11. Based on all of the information presented, the Commission has determined that:
 - a. Judge Berk violated Rule 2.5 (Competence, Diligence, and Cooperation), Canon 2 of the Code of Judicial Conduct for the District of Columbia (2018), as a result of the extraordinary nature and extent of the delays on Judge Berk's calendar, as well as its related impact, harm, and cost to litigants.
 - b. Judge Berk also suffers from a mental or physical disability which is or is likely to become permanent and which prevents, or seriously interferes with, the proper performance of his judicial duties.
12. The Commission further acknowledges Judge Berk's full and complete cooperation with this matter, as well as his acknowledgement of:
 - a. The Concerns raised and the potential harm caused by the extraordinary delays in matters over which he presided.
 - b. Physical and cognitive complications that may have contributed to the delays.
13. According to D.C. Code § 11-1526(b):

A judge of a District of Columbia court shall be involuntarily retired from office when (1) the Commission determines that the judge suffers from a mental or physical disability (including habitual intemperance) which is or is likely to become permanent and which prevents, or seriously interferes with, the proper performance of the judge's judicial duties, and (2) the Commission files in the District of Columbia Court of Appeals an order of involuntary retirement and the order is affirmed on appeal or the time within which an appeal may be taken from the order has expired.
14. Based on the totality of the circumstances, the Commission has determined that Judge Berk should be involuntarily retired pursuant to D.C. Code § 11-1526(b).

15. The Commission has notified Judge Berk and his counsel of its findings. The Commission also has informed Judge Berk of his procedural rights to a formal hearing and appeal, under D.C. Code § 11-1526-28 *et seq.*, DCMR § 28-2022 *et seq.*
16. After having had the opportunity to consult with counsel and being informed of his rights to a formal hearing and appeal, Judge Berk:
- a. Does not contest that the Commission has grounds to Order his involuntary retirement under D.C. Code § 11-1526(b).
 - b. Agrees to waive his procedural and appellate rights under D.C. Code §§ 11-1526-28 and does not contest this public filing. *See* 28 DCMR § 2022.3.

WHEREFORE, it is this 1st day of November 2021, hereby

ORDERED, that Judge Berk is involuntarily retired as an Associate Judge of the Superior Court of the District of Columbia, effective immediately.

BY ORDER OF THE DISTRICT OF
COLUMBIA COMMISSION ON JUDICIAL
DISABILITIES AND TENURE



Hon. Colleen Kollar-Kotelly
Chairperson



BY HON. STEVEN BERK

Date November 1, 2021

**DISTRICT OF COLUMBIA COMMISSION
ON JUDICIAL DISABILITIES AND TENURE**
515 FIFTH STREET, N.W., BUILDING A, ROOM 246
WASHINGTON, D.C. 20001
(202) 727-1363

DETERMINATION AND UNDERTAKING

Re: The Honorable Erik Christian
Associate Judge
Superior Court of the District of Columbia

The following Determination and Undertaking is intended to resolve a number of issues that were brought to the Commission’s attention in 2019, resulting in the Commission’s review of the cases In re: M.T. (Case No. 2017 DEL 0017) and Simon v. Alford (2019 DRB 000474). The Commission met with Judge Christian regarding its findings and concerns. The Commission discussed the facts of each of these cases and listened to his reasons and explanations for his conduct. As discussed in further detail below, based on the Commission’s inquiry, the totality of the circumstances and Judge Christian’s responses and his willingness to address certain issues related to judicial temperament, the Commission finds that this Determination and Undertaking is an appropriate resolution to resolve its inquiry.

I. In re: M.T. (Case No. 2017 DEL 0018)

The Commission found that Judge Christian violated canons of judicial conduct during a February 21, 2017 hearing by taking actions that were intended to send messages to attorneys and the public that were not germane to disposition of M.T.’s case and that were extraneous to the enforcement of law, specifically Judicial Code of Conduct (“the Code”), Canon 1, Rule 1.2 (Promoting Confidence in the Judiciary) and Canon 2, Rule 2.6(A) (Right to be Heard). The factual background and the specific violations of the Code are described below.

By way of background, at the outset of the February 21, 2017 hearing, Judge Christian was aware of the following facts: (i) the government had filed a praecipe to dismiss its case against M.T. the day before, which was a federal holiday; (ii) upon learning of the government’s praecipe, defense counsel had sought M.T.’s release from a youth shelter through the emergency judge on an emergency basis because there was no longer a legal basis to hold him; (iii) the emergency judge had consulted with Judge Christian but did not rule on defense counsel’s motion; (iv) on February 21, 2017, because of his custody status, M.T. did not control the timing of his arrival in court; and (v) when the case was called, Judge Christian’s clerk advised that M.T. was on his way to court.

Judge Christian’s comments at the February 21, 2017 hearing violated the canons in two ways.

First, despite the facts above and even though the case was being dismissed, when the case was initially called and M.T. was not present, Judge Christian stated that he would issue a custody order for M.T. (*i.e.* a bench warrant). Judge Christian explained to the Commission

that although he said he would issue a custody order during the hearing, he only intended to send a message to others in the courtroom not to be late in his courtroom and the custody order was not in fact entered into the system. Under the totality of the circumstances, the Commission finds that Judge Christian's comment about issuing a custody order for M.T. (whether it was entered into the court system or not) and his intent to thereby send a message to others in the courtroom was not germane to the disposition of M.T.'s case and was extraneous to the enforcement of law, which was a misuse of judicial power and created an appearance of unfairness in these and potentially other future proceedings.

Second, when M.T. and his counsel arrived in court later that morning, Judge Christian initially asked the government if it was going to trial. After the government referenced the praecipe filed dismissing the case, Judge Christian asked M.T.'s counsel why she thought her client's release was an emergency and then instructed her: "[I]n the future... this isn't an emergency matter. Just let your office know, these dismissals are not emergencies where you call the emergency judge. So don't do that in the future." The Commission finds, and Judge Christian in hindsight agrees, that counsel's advocacy regarding her client's custody status upon learning of the government dismissal was appropriate and consistent with her ethical duties. Further, the Commission finds that instructing counsel and her office not to raise these issues in the future as an emergency was not appropriate as it was not germane to M.T.'s case or legal status, it conveyed a message that the Court intended to chill similar advocacy in the future by counsel, her office and others in the courtroom, and it left an appearance of unfairness in the proceedings.

The specific Canons and Rules of the Code that are at issue include:

Canon 1, Rule 1.2 requires that "[a] judge shall act at all times in a manner that promotes public confidence in the independence,* integrity,* and impartiality* of the judiciary, and shall avoid impropriety* and the appearance of impropriety." Commentary to Rule 1.2 is instructive in that it describes conduct that may undermine public confidence in the judiciary that the rule is intended to address. *See* Canon 1, Rule 1.2, Comments 1, 3 and 5 ("improper conduct or conduct that creates an appearance of impropriety" (Comment 1); "[c]onduct that compromises or appears to compromise the ... integrity [or] impartiality of the judge" (Comment 3); "conduct reflects adversely on the judge's ... impartiality [or] temperament...." (Comment 5)).

Canon 2, Rule 2.6(A) states "[a] judge shall accord to every person who has a legal interest in a proceeding, or that person's lawyer, the right to be heard according to law.*" Commentary to Rule 2.6(A) is instructive in that it states: "The right to be heard is an essential component of a fair and impartial system of justice. Substantive rights of litigants can be protected only if procedures protecting the right to be heard are observed."

The Commission has discussed with Judge Christian that sending messages to litigants or counsel that are not germane to the disposition of the case or that are extraneous to the enforcement of law are not consistent with the Code. The Commission also discussed with Judge Christian that matters related to an individual's liberty should be treated by the Court with a sense of urgency and without prejudice toward the litigant or counsel who are advocating appropriately and in accordance with their ethical duties. This should be done whether they represent the defendant or the government. In hindsight, Judge Christian agrees with the Commission's views and in the future will conform his conduct and comments accordingly.

II. Simon v. Alford (2019 DRB 000474)

The Commission reviewed in detail several complaints regarding Judge Christian's handling of Simon v. Alford, a contested custody involving a 5-year old minor child.¹ The Commission notes that this was an unusual and complex case, which required consideration of the record and custody proceedings in their totality, as well as careful attention to the distinction between (i) legal error over which the Commission does not have jurisdiction and (ii) judicial misconduct.

To be clear, the Commission does not express any view as to the ultimate custody determination of the child or the legal position of either litigant. Further, the Commission is not basing this Determination and Undertaking on any single decision, action or legal error by Judge Christian. Rather, the Commission based its determinations on the totality of the record and what it found to be a pattern of conduct and disregard for procedural requirements.

The Commission determined that Judge Christian violated the canons of judicial conduct by: (i) creating an appearance of a lack of impartiality and a perception of unfairness under Canon 1, Rule 1.2 (Promoting Confidence in the Judiciary); (ii) not affording Ms. Alford an opportunity to be heard as required by established law under Rule 2.6(A) (Right to be Heard); and (iii) engaging in *ex parte* communications or receiving *ex parte* information, without affording the parties an opportunity to be heard as required by law and that impacted the perception of the fairness of the proceedings under Rule 2.9 (*Ex Parte* Communications). The factual background and the specific Code violations are described below.

Based on the record, the Commission determined that Judge Christian violated the judicial canons in the following three ways.

First, throughout the proceedings, Judge Christian did not follow certain established procedures required by clear and unambiguous law. For example, between February 14, 2019 when Judge Christian awarded temporary sole legal and physical custody of the child to Mr. Simon through May 22, 2019, Judge Christian did not notify or confer with the court in the child's home state² despite multiple requests from Ms. Alford and her counsel, who appeared on a limited basis in two hearings on the issue of jurisdiction.³ Further, Judge Christian did not rule on certain substantive issues raised by Ms. Alford in multiple motions over the pendency of the case, including a motion to recuse in March 2019.⁴

¹ The parties appeared pro se for most of the proceedings, but Ms. Alford was represented by counsel briefly and on a limited basis for purposes of contesting jurisdiction. It is undisputed that prior to February 2019, the child had resided for her entire life in Virginia with her mother.

² See D.C. Code § 16-4604(d) (requiring communication with the home state judge). The home state custody proceedings in Virginia were initiated almost simultaneously with the proceedings in the District of Columbia, including the assignment of a guardian ad litem.

³ In the interim, the parties were required to attend multiple hearings in courts in both states on the same issues with no resolution, no coordination among the courts, and no opportunity for the litigants to be heard on legal and factual arguments as to jurisdiction or other custody and related issues in the best interests of the child.

⁴ While Judge Christian denied motions captioned as "Emergency Motions" by Ms. Alford (approximately 12 in total) because the Court found they did not meet the standard for an "emergency", the Court never ruled on the underlying substance of Ms. Alford's motions, including concerns raised related to the child's medical issues, allegations of intrafamily threats, violence, visitation challenges, among others.

Second, Judge Christian did not afford the parties to be heard as required by law (leading up to and after his *ex parte* communications with the home state judge). When Judge Christian did consult with the child's home state judge on May 22, 2019, he took the call in his chambers; the call was not on the record nor was there any contemporaneous record of the discussion. Judge Christian reported a summary of his call in an Order and a hearing the following day. However, he did not schedule a hearing to allow the parties to be heard and to present legal and factual arguments following the *ex parte* call as required by established and unambiguous law.⁵

Third, in a hearing on July 11, 2019, Judge Christian made comments about possible complaints on the internet by a litigant that (i) were not germane to disposition of the case; (ii) were extraneous to the enforcement of law, (iii) the litigant perceived to be threatening, and (iv) created an impression of unfairness in the proceedings. Given the prevalence of social media and websites that allow for ratings of and commentary about judges, the Commission notes the following regarding this third issue.

- At the hearing, while Ms. Alford was trying to read a prepared statement in which she said that she had consulted with an attorney, Judge Christian inquired whether the attorney gave Ms. Alford legal advice about going on the internet “and commenting on this judge’s decisions....” He further inquired: “They didn’t give you legal advice about not doing this?” Ms. Alford took Judge Christian’s comment as threatening and as demonstrating his bias against her; in the totality of the circumstances, it reinforced Ms. Alford’s perception that Judge Christian was treating her unfairly.
- The Commission notes that by the July hearing, Ms. Alford had in fact complained about Judge Christian on a website called the “Robing Room”. Judge Christian advised the Commission that while he has looked up information about himself on the Robing Room and the internet generally, he did not believe he did so during the time period of this case nor did he recall seeing any complaints by Ms. Alford.
- However, the Commission found that Judge Christian’s comments (intentional or not) were perceived by Ms. Alford as threatening and intimidating. Whether Judge Christian saw the “Robing Room” complaints or not, his statements in Court suggested that he may have been aware that Ms. Alford was making complaints about him on the internet, a fact that was irrelevant to the proceedings or the Court’s role in the fair and just administration of the case.⁶ The statements further added to Ms. Alford’s perception and belief that Judge Christian was biased against her, that the proceedings were not fair and impartial, and she feared that the Judge’s

⁵ See D.C. Code §16-4601.09 (*ex parte* communication between courts on jurisdiction must be recorded and the parties must be given an opportunity to be heard before a decision on jurisdiction is made). The Commission notes that jurisdiction was a highly contested issue, and Ms. Alford filed several motions on this issue, including a substantive motion prepared by counsel, that were not addressed by the Court on their substance.

⁶ By this time, Ms. Alford’s motion to recuse also remained pending for approximately 4 months. The Court made further reference to Ms. Alford complaining about the Court in a subsequent July 17, 2019 order denying an Emergency Motion that she filed.

ability to fairly adjudicate the matters of custody or visitation for her daughter were compromised.⁷

The Commission also noted certain errors related to Judge Christian's November 6, 2019 Order, titled "Permanent Custody Order". According to Judge Christian, the Order was intended to be a default judgement that was subject to a motion to vacate by Ms. Alford. In other words, if Ms. Alford had requested modification of the Order to have visitation with her child, Judge Christian would have granted it. However, the Commission found that there is nothing in the Permanent Custody Order or the transcript that would convey to especially a pro se litigant that was the Court's intent. The Commission need not address these issues in light of Judge Christian's March 20, 2020 letter to the Chief Judge of Superior Court of the District of Columbia, seeking a remand of the case from the District of Columbia Court of Appeals to the Family Court Division of Superior Court for further proceedings.⁸

The specific Canons and Rules of Code are described below.

Canon 1, Rule 1.2. See citation and commentary in M.T. above.

Canon 2, Rule 2.6(A). See citation above. Commentary to the rule is instructive, particularly as it relates to pro se litigants. See Canon 2.6(A), Comments 1 (acknowledging the right to be heard is essential to a fair and impartial system of justice and that substantive rights can be protect only if procedures protecting the right to be heard is observed) and 1A (identifying a judge's affirmative role in facilitating the ability of every person who has a legal interest in a proceeding to be fairly heard, in particular with respect to self-represented litigants).

Canon 2, Rule 2.9(A) requires that "[a] judge shall not initiate, permit, or consider *ex parte* communications, or consider other communications made to the judge outside the presence of the parties or their lawyers, concerning a pending* or impending matter*...." While Rule 2.9(A) provides further guidance regarding where *ex parte* communications may and may not be acceptable, the rule and associated commentary make clear that no party should gain a procedural, substantive or tactical advantage as a result of the *ex parte* communication and that the judge must notify the parties and "give[] the parties an opportunity to respond." Further, Rule 2.9(B) requires that "[a] judge shall not investigate facts in a matter independently, and shall consider only the evidence presented and any facts that may properly be judicially noticed."

Taken together and viewed in the totality of the circumstances in this case, the Commission determined that these issues – even if unintentional - created an appearance of unfairness in the administration of the proceedings. While the Commission is mindful that contested cases like Simon v. Alford may present special and challenging circumstances for judges, many of which are and will continue to be beyond the Commission's jurisdiction, the Commission also recognizes

⁷ See Belton v. United States, 581 A.2d 1205 (D.C. 1990) (concluding that the sentencing hearing was unfair because the trial judge had engaged in *ex parte* communication based upon which his impartiality might be reasonably questioned; reversing conviction); In re M.C., 8 A.3d 1215 (D.C. 2010) (finding that the judge was required to recuse herself after receiving emails from another judicial officer about a party, which constituted extrajudicial knowledge acquired outside of the judge's judicial functions and that was important to key issues in the case, including her ability to assess credibility of a critical witness).

⁸ The case has been remanded by the Court of Appeals on March 25, 2020. See 19-FM-1182. Judge Christian is no longer assigned to the Family Court and thus, will not be assigned to handle this matter on remand.

the importance for judges in such cases to assure that (i) required procedures are followed, (ii) *ex parte* facts are appropriately disclosed, (iii) the parties are afforded the right to be heard and the opportunity to respond, and (iv) the fairness of the proceedings receive their utmost attention.

In its discussions, the Commission was encouraged that Judge Christian recognized his mistakes that were made in both cases and credits his actions to request that the case of Simon v. Alford be remanded by the District of Columbia Court of Appeals back to the Family Division of the Superior Court of the District of Columbia for further proceedings.

The Commission commends Judge Christian's willingness to seek advice and mentoring from other experienced judges on the Superior Court, and his commitment to the Commission that he will continue to consult with them as needed.

Given Judge Christian's approach to these matters, his willingness to reflect on and improve the issues raised in this Determination and Undertaking, to conform his conduct to the standards of the Code of Judicial Conduct, and his overall service to the citizens of the District of Columbia, the Commission concludes that no further action or sanction is warranted.

The Commission makes this document public with the agreement of Judge Christian.

Erik P. Christian

Erik P. Christian
Associate Judge
Superior Court of the
District of Columbia

Date: 4/17/20

Jeannine C. Sanford, Esq.

Chairperson
District of Columbia Commission
on Judicial Disabilities and Tenure

Date: April 20, 2020

**DISTRICT OF COLUMBIA COMMISSION
ON JUDICIAL DISABILITIES AND TENURE**
515 Fifth Street, N.W., Building A, Room 246
Washington, D.C. 20001
(202) 727-1363

February 6, 2023

The Honorable Anita Josey-Herring
Chief Judge
Superior Court of the District of Columbia
500 Indiana Avenue, N.W.
Washington, D.C. 20001

Dear Chief Judge Josey-Herring:

Thank you for taking the time to meet with me, Vice Chairperson Diane Brenneman, and Special Counsel Amy Conway-Hatcher last week.

We appreciate your candor in sharing the range of issues the Court has been facing with its Odyssey Portal case management solution (“IJIS2” as implemented in D.C. Superior Court), the Court’s new online case search system for auditor master, civil, tax (civil), and probate cases, as well as the interim remedial steps taken by the Court to date and its consideration of more permanent solutions.

As you know, the Commission’s greatest concern is assuring public access to the courts and the fair administration of cases before the courts, both for represented parties and, importantly, for pro se litigants who may not have the same level of technical skills and resources at their disposal.

Like the Court, the Commission has received concerns regarding the challenges presented by the Odyssey Portal and its impact on litigants in D.C. Superior Court. Therefore, on behalf of the Commission, Vice Chairperson Brenneman and I request the following:

- i. By close of business on Friday, February 10, 2023, a high-level written summary of the Odyssey Portal issues and the current interim remedial steps in place to assure fair access to the courts, as well as any additional more permanent solutions under consideration. We will share your letter with the full Commission thereafter and further advise you of any additional questions or issues Commissioners raise or seek to have clarified.
- ii. Ongoing updates contemporaneous with or in advance of any public announcements regarding Odyssey Portal developments, such as the D.C. Bar announcement you directed us to in our meeting. (<https://www.dcbbar.org/news->

[events/news/many-document-images-now-available-on-superior-cou](#)).

- iii. A more fulsome in-person report by you (and anyone you deem appropriate to join you) at the Commission's March 8, 2023 meeting. At that time, the Commission will look forward to hearing additional updates and, if possible, more permanent solutions the Court will implement to resolve case search and filing system problems across all court calendars.

We appreciate that you and your colleagues share in our public access concerns, and you are working hard to assure the public is not unduly impacted by the Court's unanticipated technology challenges. We also are keenly aware of the pressures Superior Court judges face given increased calendar loads in the wake of the COVID-19 pandemic and current judicial vacancies. We are further mindful of the potential negative impact that unexpected and onerous case management responsibilities may have in overburdening judges who must uphold the highest ethical standards in the performance of their duties. (*See* Canons 1 and 2, District of Columbia Code of Judicial Conduct (2018 edition)). For all these reasons, we ask you, your colleagues, and your vendor to continue to treat these matters with the highest priority.

The Commission will continue to proactively monitor the situation and request that you continue to keep us apprised of any developments, positive or negative.

We look forward to hearing from you and your colleagues. Again, thank you for your candor and cooperation on these extraordinarily important and challenging matters.

Sincerely,



Hon. Colleen Kollar-Kotelly
Chairperson



Hon. Diane Brenneman (Ret.)
Vice Chairperson

CKK/DB/ach

Cc: Sherri E. Harris, Esq.
General Counsel & Ethics Officer, District of Columbia Courts

EMPLOYMENT DISPUTE RESOLUTION PLAN

I. INTRODUCTION

The District of Columbia Courts is committed to a workplace that is free from discrimination and harassment. All judges and employees are expected to treat each other with respect, civility, fairness, tolerance, and dignity. These values are essential to the judiciary, which holds its judges and court employees to the highest standards.

This Employment Dispute Resolution Plan (“Plan”), which supplements rather than replaces the D.C. Courts’ existing grievance processes, provides options for the reporting and resolution of allegations of wrongful conduct (discrimination, sexual harassment, racial or other discriminatory harassment, bullying and retaliation) in the workplace. Early action is the best way to maintain a safe work environment. The entire workforce has a responsibility to promote workplace civility, prevent harassment or bullying, and take appropriate action under this Plan upon receipt of reliable information indicating a likelihood of wrongful conduct.

This Plan applies to wrongful conduct allegations against: Associate Judges, Senior Judges, and Magistrate Judges of the Superior Court of the District of Columbia and District of Columbia Court of Appeals. The following persons may seek relief under this Plan: current and former employees (including all judicial administrative assistants and law clerks), paid and unpaid interns, externs, volunteers, and applicants for employment who have been interviewed and who filed within the timeline provided in this Plan. The effective date of this Plan is May 1, 2021. The following persons cannot seek relief under this Plan: Associate Judges, Senior Judges, Magistrate Judges, applicants for judicial appointment, court-appointed attorneys and applicants (e.g. Criminal Justice Act Panel Attorneys; Counsel for Child Abuse and Neglect Attorneys; and Guardian Ad Litem Attorneys), investigators and service providers, voluntary mediators, and any other independent contractors or other persons not specified above. *See Appendix 1 for full definitions of judges and employees.* Nothing in this Plan prohibits the Courts’ employees or applicants who apply for paid or unpaid employment with a judge from exercising their rights pursuant to the District of Columbia Courts Comprehensive Personnel Policies.

On June 1, 2018, the *Report of the Federal Judiciary Workplace Conduct Working Group to the Judicial Conference of the United States* (“Report”) was published as a call to action for the federal judiciary to enhance EDR Plans and create procedures for addressing behavior “to ensure an exemplary workplace for every judge and every court employee.” Report at 1. This Plan is based on the Model EDR Plan of the Judicial Conference of the United States issued in March 2010 as amended in September 2018 based on the June 1, 2018, Report and revised in September 2019. The Model EDR Plan provides protections comparable to those afforded to legislative branch employees under the Congressional Accountability Act of 1995 (“Act”).¹ Any modification of this Plan must be approved by the Joint Committee on Judicial Administration. The Plan will be posted on the Courts’ intranet and internet websites. A report on the implementation of the Plan will be included in the EEO Annual Report.

¹ The Congressional Accountability Act of 1995, Pub. Law No. 104-1, gave legislative branch employees certain rights and established a dispute resolution procedure for legislative branch entities that emphasizes counseling and mediation for the early resolution of disputes. Although the Act does not cover the judicial branch, the federal judiciary proactively required all federal courts to follow the model. In March 2010, the Judicial Conference of the United States adopted a Model EDR Plan, which all 13 circuits of the federal judiciary have adopted with modifications. The Model EDR Plan was amended in September 2018 and revised in September 2019.

II. WRONGFUL CONDUCT

- A. This Plan prohibits wrongful conduct (which may or may not constitute an adverse employment action) that occurs during the period of employment or the interview process (for an applicant). Wrongful conduct includes:

- discrimination;
- sexual harassment;
- racial, and other discriminatory harassment;
- bullying; and
- retaliation.

Wrongful conduct can be verbal, non-verbal, physical, or non-physical.

Wrongful conduct also includes conduct that would violate the following employment laws:

- Title VII, Civil Rights Act of 1964, including the Pregnancy Discrimination Act;
- Age Discrimination in Employment Act of 1967;
- The Americans with Disabilities Act and the Rehabilitation Act of 1973;
- Family and Medical Leave Act of 1993; and
- Uniformed Services Employment and Reemployment Rights Act of 1994.

- B. **Discrimination** is (a) the taking of an adverse employment action (such as hiring, firing, failing to promote, or a significant change in benefits) on account of race, color, religion, national origin, sex, age, marital status, personal appearance, sexual orientation, gender identity or expression, family responsibilities, pregnancy, genetic information, disability, matriculation, political affiliation, status of a victim or family member of a victim of domestic violence, a sexual offense, or stalking, or credit information of any individual; or (b) the creation of a hostile work environment that materially affects the terms, conditions, or privileges of employment on account of race, color, religion, national origin, sex, age, marital status, personal appearance, sexual orientation, gender identity or expression, family responsibilities, pregnancy, genetic information, disability, matriculation, political affiliation, status of a victim or family member of a victim of domestic violence; a sexual offense; or stalking; or credit information of any individual.
- C. **Harassment.** *Examples of conduct that may give rise to or constitute discriminatory harassment:* racial slurs; derogatory comments about a person's ethnicity, culture or foreign accent; or jokes about a person's age, disability or sexual orientation.

Examples of conduct that may give rise to or constitute sexual harassment: suggestive or obscene notes, emails, text messages, or other types of communications; sexually degrading comments; display of sexually suggestive objects or images; unwelcome or inappropriate remarks of a sexual nature or about physical appearance; or an employment action affected by submission to, or rejection of, sexual advances.

- D. **Bullying** includes repeated mistreatment involving abusive conduct that is threatening, oppressive, or intimidating, and interferes with an individual's ability to do one's job. It can be physical, verbal, non-verbal, psychological or involve abusive or retaliatory work assignments, social ostracism as well as demeaning treatment and comments. Bullying is not consistent with a workplace that aims to treat all individuals fairly and with respect.
- E. **Retaliation** is a materially adverse action taken against an employee for reporting wrongful conduct, assisting in the defense of rights protected by this Plan, or opposing wrongful conduct. Retaliation against a person who reveals or reports alleged wrongful conduct constitutes wrongful conduct.

III. REPORTING WRONGFUL CONDUCT

The District of Columbia Courts encourages all employees to report alleged wrongful conduct early. Additionally, Associate Judges, Senior Judges, Magistrate Judges, members of the executive leadership team, division directors, and supervisors who observe or learn of reliable evidence of discrimination; sexual, racial, or other discriminatory harassment; bullying; or retaliation must take appropriate action pursuant to this EDR Plan. Therefore, individuals serving in these positions must report wrongful conduct to the appropriate authority or authorities as outlined in this Plan. This Plan does not prevent individuals who are the subject of wrongful conduct or who witness such conduct from reporting that conduct to authorities despite confidentiality requirements that may apply to legitimate information obtained in a work setting.

IV. OPTIONS FOR RESOLUTION

The District of Columbia Courts will address alleged wrongful conduct as soon as possible and provide information about a range of flexible options available to address it. In addition to the options provided under this Plan, detailed in Sections A-C below, an employee is always free to civilly address an alleged wrongful conduct issue directly with the person whose conduct is of concern, contact the Diversity, Equity, Inclusion and Equal Employment Opportunity (EEO) Officer or, when a judge's conduct is at issue, report the alleged wrongful conduct to the applicable Chief Judge and/or to the District of Columbia Commission on Judicial Disabilities and Tenure.

The options provided for under this Plan are detailed below. Employees may choose any option or options they deem appropriate.

- A. **Plan Options.** Under this Plan, employees may choose to pursue:
 - 1. **Informal Advice;**
 - 2. **Assisted Resolution; or**
 - 3. **Formal Complaint.**
- B. **General Rights.** All options for resolution under the EDR Plan are intended to respect the privacy of the participants to the greatest extent possible and to protect the fairness and integrity of the process involving the alleged wrongful conduct from initiation to resolution.

1. **Confidentiality.** All individuals involved in the processes under this Plan must protect the confidentiality of information related to allegations, investigation, and case resolution. Information should be shared only to the extent necessary and only with those whose involvement is necessary to address the situation. Notwithstanding, an assurance of confidentiality must yield when there is reliable information that: the wrongful conduct threatens the safety or security of any person, the wrongful conduct is deemed serious or egregious or the alleged wrongful conduct threatens the integrity of the District of Columbia Courts. Should a third-party witness misconduct covered by this Plan, they are encouraged to report the incident to the appropriate official unless they are otherwise required to independently report misconduct, as noted in Section III above. Such action may include informing the Diversity, Equity, Inclusion and EEO Officer of complaints against employees or the appropriate Chief Judge of reports of wrongful conduct by a judge.
2. **Impartiality.** All hearings and other processes under this Plan must be conducted in a fair and impartial manner. The presiding officer must be impartial and may not act as an advocate for either party. The presiding officer must recuse himself/herself if they participated in, witnessed, or were otherwise involved with the conduct or employment action giving rise to the claim. Recusal is also required if the presiding officer's participation in the matter would create an actual conflict or the appearance of one.
3. **Right to representation.** Employees have the right to consult with a non-court representative, including legal counsel retained at the employee's own expense. Only an attorney who is authorized to engage in the practice of law pursuant to D.C. App. R. 49 may represent the employee in a hearing.
4. **Interim Relief.** An employee who pursues any of the options under this Plan may request a temporary transfer or an alternative work assignment if the employee alleges egregious conduct by a judge which makes it untenable to continue working for that person. Any such request must be made to the Diversity, Equity, Inclusion and EEO Officer or the applicable Chief Judge (for reports of wrongful conduct by a judge) to determine whether interim relief is appropriate, taking into consideration the impact on any court office.
5. **Additional Forums.** Individuals covered by this Plan alleging wrongful conduct as described herein may use options for resolution as set forth in Section C. Additionally, complaints against the Chief Judges or Associate Judges and Senior Judges of the Superior Court of the District of Columbia or the District of Columbia Court of Appeals for conduct covered by the Code of Judicial Conduct for the District of Columbia (2018 ed.) may be filed with the District of Columbia Commission on Judicial Disabilities and Tenure pursuant to D.C. Code §§ 11-1526-27 (2012 Repl.). To bring such a complaint, an electronic form can be filed on the website at www.cjdt.dc.gov and a hard copy can be obtained by calling (202) 727-1363. Further, complaints against Magistrate Judges may be filed with the Committee on Selection and Tenure of Magistrate Judges by emailing Committee.MagistrateJST@dcsc.gov.

C. Information Specific to Each Option

1. **Informal Advice.** An employee may contact the Diversity, Equity, Inclusion and EEO Office for confidential advice and guidance about a range of topics including:
 - the rights and protections provided by this Plan;
 - ways to respond to wrongful conduct as it is happening; or
 - options for addressing the conduct, such as informal resolution, participating in assisted resolution, or pursuing a formal complaint provided by this Plan.
2. **Assisted Resolution.** Assisted resolution is an interactive, flexible process that may involve:
 - discussing the matter with the person whose behavior is of concern;
 - conducting a preliminary investigation, including interviewing persons alleged to have violated rights under this Plan and witnesses to the conduct;
 - engaging in voluntary mediation between the persons involved (Shared Neutral Program); or
 - resolving the matter by agreement.
 - a. To pursue this option, an employee must contact the Diversity, Equity and Inclusion and EEO Office and complete a “Request for Assisted Resolution” (Appendix 2). An employee asserting any claim of bullying must first use assisted resolution before filing a formal complaint. Filing a Request for Assisted Resolution will toll (extend) the time for filing a formal complaint.
 - b. If the allegations concern the conduct of a judge or chambers staff, the Chief Judge of the appropriate Court must be notified and will direct coordination of any assisted resolution or take appropriate actions under the circumstances. The Chief Judge may deny the Request for Assisted Resolution at any time if he or she concludes that the allegations are frivolous; the allegations do not allege conduct covered by this Plan; the alleged conduct arises out of the same facts and circumstances, and was resolved by, a previous EDR Complaint or other claim process or procedure; or there are other appropriate grounds for denial.
 - c. If assisted resolution is successful in resolving the matter, the parties will so acknowledge that resolution in writing. The parties by mutual assent, or the Diversity, Equity, Inclusion and EEO Officer in their discretion, will determine when to conclude the assisted resolution process. If the assisted resolution is not successful in resolving the matter, the Diversity, Equity, Inclusion and EEO Officer will advise the employee of their rights to file a formal complaint under the EDR Plan.

3. **Filing a Formal EDR Plan Complaint.** An employee may file a formal complaint (“complaint”) under this Plan with the Diversity, Equity, Inclusion and EEO Office to address a claim of wrongful conduct. Chapter V below discusses the procedural details of how a formal complaint is processed, once filed.
 - a. To file a complaint, an employee must submit a “Formal Complaint” (Appendix 3) to the Diversity, Equity, Inclusion and EEO Officer within 180 calendar days of the alleged wrongful conduct or within 180 calendar days of the time the employee became aware, or reasonably should have become aware of such wrongful conduct. Use of the informal advice or assisted resolution options will toll (extend) this 180-day deadline. The Chief Judge of the applicable Court, or the presiding officer handling the complaint may grant an extension of the deadline for good cause. Any such extension[s] shall be in writing and provided to the person subjected to the wrongful conduct.
 - b. An employee asserting any claim of bullying must first use assisted resolution before filing a formal complaint.
 - c. The employee filing the complaint is called the complainant. The party responding to the complaint is the court office that is responsible for providing any appropriate remedy and is called the respondent. The complaint is not filed against any specific individual(s) but against the applicable court office.

CHAPTER V. FORMAL COMPLAINT PROCESS REGARDING A JUDGE

- A. **Initiation.** Once an employee has filed a complaint alleging wrongful conduct pursuant to Section IV.C.3 above, the Diversity, Equity, Inclusion and EEO Officer must immediately provide a copy of the complaint to the appropriate Chief Judge (or the next most senior active Associate Judge or a Joint Committee member of the respective court, if the allegation is against the Chief Judge), who will oversee the EDR complaint process. If a judge becomes the subject of both a complaint under this Plan and a complaint with the District of Columbia Commission on Judicial Disabilities and Tenure, the Chief Judge will confer with the District of Columbia Commission on Judicial Disabilities and Tenure in determining the timing of when to proceed with the EDR process. Regardless of whether there is a formal complaint filed with the District of Columbia Commission on Judicial Disabilities and Tenure, the Chief Judge should consider the need for any necessary or appropriate interim relief.
- B. **General Procedures for a Formal Complaint.**
 1. **Appointment of Presiding Officer.** Upon receipt of the complaint, the Diversity, Equity Inclusion and EEO Officer will immediately send a copy of the complaint to the Chief Judge of the applicable Court who will appoint a presiding officer. The presiding officer may be a retired judge or any other credentialed professional with expertise in employee dispute resolution (e.g. arbitrator).

2. **Role of the Presiding Officer.** The presiding officer oversees the complaint proceeding. The presiding officer must provide the individual alleged to have violated rights under this Plan notice that a complaint has been filed and a copy of the complaint or allegations.

The presiding officer will allow and set the time for discovery, allow for settlement discussions, determine any written submissions to be provided by the parties, determine if a hearing is needed, determine the time, date and place of the hearing, issue a written decision, and recommendations if warranted.

3. **Disqualification and Replacement.** If the Chief Judge decides to appoint a Retired Judge, the Chief Judge will submit the names of three potential judges to the parties from which each party may, within seven business days, strike a prospective judge. In the event each party strikes different judges, the judge who was not stricken will be the presiding officer. In any other event (i.e., where the parties strike the same judge or one or both parties fail to exercise a strike), the Chief Judge will make the selection from the remaining judge or judges who have not been stricken.
4. **Response.** The respondent may file a response to the complaint by submitting the response in writing to the Diversity, Equity, Inclusion and EEO Office within **30 calendar days** of receiving the complaint. The Diversity, Equity, Inclusion and EEO Officer must immediately send the response to the presiding officer and to the complainant.
5. **Discovery.** The presiding officer will provide for such discovery to the complainant and respondent as is necessary and appropriate. The presiding officer will also determine what evidence and written arguments, if any, are necessary for a fair and complete assessment of the allegations and response.
6. **Case preparation.** The complainant may use eight hours to prepare their case, so long as it does not unduly interfere with their performance of duties.
7. **Extensions of Time.** Any request for an extension of time must be in writing. The presiding officer may extend any of the deadlines set forth in this EDR Plan for good cause, except for the deadline to issue a written decision, which may only be extended by the applicable Chief Judge.
8. **Established Precedent.** In reaching a decision, the presiding officer should be guided by judicial and administrative decisions under relevant rules and statutes, as appropriate. The District of Columbia's rules of evidence and procedure do not apply.
9. **Notice of Written Decision.** The Diversity, Equity, Inclusion and EEO Officer or presiding officer will immediately send a copy of the written decision to the parties, the Chief Judge of the applicable Court, and to any individual alleged to have violated rights protected by this Plan.

10. **Records.** After the proceedings under this Plan, all papers, files and reports will be filed with the Diversity, Equity, Inclusion and EEO Office. No papers, files or reports relating to a dispute shall be filed in an employee's personnel folder, except as necessary to implement an official personnel action. Records relating to violations under this Plan shall be kept confidential to the extent possible and only shared on a need-to-know basis. Records may be discoverable in a court action or subject to disclosure to the District of Columbia Commission on Judicial Disabilities and Tenure.
- C. **Resolution of Formal Complaint Without a Hearing.** After notifying the parties and giving them an opportunity to respond, the presiding officer may resolve the matter without a hearing in the following circumstances:
1. **Dismissals.** The presiding officer may dismiss a complaint and issue a written decision at any time in the proceedings because it: is untimely filed; is frivolous; fails to state a claim or does not allege violations of the rights or protections in this Plan; arises out of the same facts and circumstances of and was resolved by a previous EDR complaint or other claim process or procedure; or should be dismissed on other appropriate grounds.
 2. **Written Decision.** After completion of discovery, the presiding officer may, on their own initiative or at the request of either party, issue a written decision if the presiding officer determines that no relevant facts are in dispute and one of the parties is entitled to a favorable decision on the undisputed facts.
 3. **Settlement.** The parties may enter into an agreed written settlement if approved in writing by the presiding officer and the applicable Chief Judge.
- D. **Resolution of Complaint with a Hearing.** If the complaint is not resolved in its entirety by dismissal, decision without a hearing, settlement or by other means, the presiding officer will order a hearing on the merits of the complaint.
1. **Hearing.** The hearing will be held no later than **60 calendar days** after the appointment of the presiding officer unless there is an extension of the deadline for good cause. The presiding officer will determine the place and manner of the hearing.
 2. **Record of Proceedings.** A verbatim record of the hearing must be made and will be the official record of the proceeding. This may be a digital audio recording or a transcript.
 3. **Written Decision.** The presiding officer will make findings of fact and conclusions of law and issue a written decision no later than **60 calendar days** after the conclusion of the hearing, unless an extension for good cause is granted by the Chief Judge. If applicable, the Chief Judge of Superior Court, in his or her discretion, may disclose the written decision to the Committee on the Selection and Tenure of Magistrate Judges.

CHAPTER VI. REMEDIES

If the presiding officer decides that the complainant has established by a preponderance of the evidence (more likely than not) that a substantive right protected by this Plan has been violated, the presiding officer will recommend appropriate remedies. The recommended remedies are limited to providing relief to the complainant, should be tailored as closely as possible to the specific violation(s) found, and take into consideration the impact on any court office. The Chief Judge and the court office (respondent) may take appropriate action to carry out the remedies recommended in the written decision, subject to any applicable law, policies or procedures.

1. Allowable Remedies may include:

- placement of the complainant in a position previously denied;
- placement of the complainant in a comparable alternative position;
- reinstatement to a position from which the complainant was previously removed;
- prospective promotion of the complainant;
- priority consideration of the complainant for a future promotion or position;
- records modification or expunged records;
- granting family and medical leave; and
- any other appropriate remedy to address the wrongful conduct.²

2. Unavailable Remedies. Monetary damages are not available.

Appendices Attached:

1. Definitions
2. Request for Assisted Resolution
3. Formal Complaint Form

² The issue in an EDR complaint is whether the court office is responsible for the alleged conduct; it is not an action against any individual. The presiding officer and Diversity, Equity, Inclusion and EEO Officer lack authority to impose disciplinary or similar action against an individual. However, when there has been a finding of wrongful conduct in an EDR proceeding, an appointing official, or official with delegated authority, such as the Committee on Selection and Tenure of Magistrate Judges, should separately assess whether further action, in accordance with any applicable policies and procedures, is necessary to correct and prevent wrongful conduct and promote appropriate workplace behavior, such as:

- requiring counseling or training;
- ordering no contact with the complainant;
- reassigning or transferring an employee;
- reprimanding the employee who engaged in wrongful conduct;
- issuing a suspension, probation or demotion of the employee who engaged in wrongful conduct; or
- terminating employment for the employee who engaged in wrongful conduct (applicable only to employees and Magistrate Judges).

APPENDIX 1

DEFINITIONS

Courts: The District of Columbia Courts (to include the District of Columbia Court of Appeals, Superior Court of the District of Columbia, and Court System).

Court Office/Respondent: The office of the Courts that is responsible for providing any appropriate remedy. For judges and judicial staff, the court office is the Superior Court of the District of Columbia or the District of Columbia Court of Appeals, as applicable.

Division Director: The top court administrators of court offices, programs and divisions.

Diversity, Equity, Inclusion and EEO Officer: A Court employee, other than a judge or division director, designated by the Executive Officer to coordinate all options for resolution provided for in this Plan. The Diversity, Equity, Inclusion and EEO Officer coordinates workplace conduct issues and the implementation of the Court EDR Plan within the Court. The Diversity, Equity, Inclusion and EEO Officer provides informal advice and assisted resolution under the EDR Plan; assists in, provides or arranges for training throughout the Courts on workplace conduct, discrimination and sexual harassment; and collects and analyzes statistical data and other information relevant to workplace conduct matters. The Diversity, Equity, Inclusion and EEO Officer maintains and preserves all Court files pertaining to matters initiated and processed under this Employee Dispute Resolution Plan.

Employee: All Court employees, including: division directors and their staff, judicial assistants and other employees, law clerks, executive assistants and special counsels.

Judge: All Associate Judges, Senior Judges and Magistrate Judges of the District of Columbia Court and District of Columbia Court of Appeals.

Parties: The applicable court office (respondent) and the employee who has filed a request for assisted resolution or a formal complaint (complainant).

Protected Categories: The District of Columbia's protected categories include race, color, religion, national origin, sex, age, marital status, personal appearance, sexual orientation, gender identity or expression, family responsibilities, pregnancy, genetic information, disability, matriculation, political affiliation, status of a victim or family member of a victim of domestic violence; a sexual offense; or stalking; or credit information of any individual.

APPENDIX 2
REQUEST FOR ASSISTED RESOLUTION

**USE OF ASSISTED RESOLUTION EXTENDS THE 180-DAY DEADLINE
TO FILE A FORMAL COMPLAINT**

Submitted under the Procedures of the District of Columbia Courts' EDR Plan

Court: _____

Full Name:

Mailing Address:

Your mailing address:

Your email address:

Your phone number(s):

Office in which you are employed:

Name and address of court office from which you seek assistance (the court in which the applicable judge serves):

Applicants for Employment Only

The position you applied for:

Date of interview:

Dates of alleged incidents for which you seek assisted resolution:

Summary of the actions or occurrences for which you seek assisted resolution (attach additional pages as needed):

Names and contact information of any witnesses to the actions or occurrences for which you seek assisted resolution:

Describe the assistance or corrective action you seek (*attach additional pages as needed*):

Alleged Wrongful Conduct for which you seek assisted resolution (*check all that apply*):

☐ Discrimination based on (*check all that apply*):

- ☐ Age
- ☐ Disability
- ☐ Ethnicity
- ☐ Gender
- ☐ Gender identity or expression
- ☐ Marital Status
- ☐ National Origin
- ☐ Political Affiliation
- ☐ Race
- ☐ Religion
- ☐ Sex
- ☐ Sexual orientation
- ☐ Status as a victim or family member of a victim of domestic violence, a sexual offense, or stalking
- ☐ Credit information

☐ Harassment based on (*check all that apply*):

- ☐ Age
- ☐ Disability
- ☐ Ethnicity
- ☐ Gender
- ☐ Gender identity or expression
- ☐ Marital Status
- ☐ National origin
- ☐ Political Affiliation
- ☐ Race
- ☐ Religion
- ☐ Sex
- ☐ Sexual orientation
- ☐ Status as a victim or family member of a victim of domestic violence, a sexual offense, or stalking
- ☐ Credit information

☐ Bullying

☐ Family and Medical Leave

☐ Uniform Services Employment and Reemployment Rights

☐ Retaliation

☐ Other (describe)

Do you have an attorney or other person who represents you?

☐ Yes

Please provide name, mailing address, email address, and phone number(s):

☐ No

I acknowledge that this Request will be kept confidential to the extent possible. However, information may only be shared, to the extent necessary, with those whose involvement is necessary to resolve this matter, as explained in the EDR Plan.

Your signature _____

Date Submitted _____

APPENDIX 3
FORMAL COMPLAINT FORM

Submitted under the Procedures of the District of Columbia Courts' EDR Plan

Court: _____

Full Name:

Mailing Address:

Your email address:

Your phone number(s):

Office in which you are employed:

Name and address of court office from which you seek assistance (the court in which the applicable judge serves):

Applicants for Employment Only

The position you applied for:

Date of interview:

Dates of alleged incidents for which you seek assisted resolution:

Summary of the actions or occurrences for which you seek assisted resolution (*attach additional pages as needed*):

Describe the remedy or corrective action you seek (*attach additional pages as needed*):

Identify, and provide contact information for, any persons who were involved in this matter, who were witnesses to the actions or occurrences, or who can provide relevant information concerning the Complainant (*attach additional pages as needed*):

Identify the Wrongful Conduct that you believe occurred (*check all that apply*):

☐ Discrimination based on (*check all that apply*):

- ☐ Age
- ☐ Disability
- ☐ Ethnicity
- ☐ Gender
- ☐ Gender identity or expression
- ☐ Marital Status
- ☐ National Origin
- ☐ Political Affiliation
- ☐ Race
- ☐ Religion
- ☐ Sex
- ☐ Sexual orientation
- ☐ Status as a victim or family member of a victim of domestic violence, a sexual offense, or stalking
- ☐ Credit information

☐ Harassment based on (*check all that apply*):

- ☐ Age
- ☐ Disability
- ☐ Ethnicity
- ☐ Gender
- ☐ Gender identity or expression
- ☐ Marital Status
- ☐ National origin
- ☐ Political Affiliation
- ☐ Race
- ☐ Religion
- ☐ Sex
- ☐ Sexual orientation
- ☐ Status as a victim or family member of a victim of domestic violence, a sexual offense or stalking
- ☐ Credit information

☐ Bullying

☐ I have already sought assisted resolution for this bullying claim.

Provide date request for assisted resolution submitted and concluded, and describe the resolution, if any:

☐ Retaliation

☐ Uniform Services Employment
and Reemployment Rights

☐ Family and Medical Leave

☐ Other (describe)

Do you have an attorney or other person who represents you?

☐ Yes

Please provide name, mailing address, email address, and phone number(s):

☐ No

☐ I have attached copies of any documents that relate to my Complaint (such as emails, notices of discipline or termination, job application, etc.

I acknowledge that this Request will be kept confidential to the extent possible. However, information may only be shared, to the extent necessary, with those whose involvement is necessary to resolve this matter, as explained in the EDR Plan.

I affirm that the information provided in this Complaint is true and correct to the best of my knowledge:

Complainant signature

Date Submitted

**DISTRICT OF COLUMBIA COMMISSION
ON JUDICIAL DISABILITIES AND TENURE**

515 FIFTH STREET, N.W., BUILDING A, ROOM 246
WASHINGTON, D.C. 20001
(202) 727-1363

April 2, 2018

The Honorable Anna Blackburne-Rigsby
Chief Judge
District of Columbia Court of Appeals
430 E Street, N.W.
Washington, D.C. 20001

The Honorable Robert E. Morin
Chief Judge
Superior Court of the District of Columbia
500 Indiana Avenue, N.W.
Washington, D.C. 20001

Dear Chief Judges Blackburne-Rigsby and Morin:

The Commission has been requested to address the issue of sexual harassment, and to provide guidance concerning the appropriate office where such complaints should be filed.

As you know, the Commission has the authority to remove a judge for willful misconduct in office, for willful and persistent failure to perform judicial duties, and for conduct prejudicial to the administration of justice or which brings the judicial office into disrepute. The Commission reviews complaints concerning the misconduct of all Associate and Senior Judges of the District of Columbia Court of Appeals and the Superior Court of the District of Columbia. In considering claims of misconduct, the Commission first looks to the ABA Code of Judicial Conduct (2018) as adopted by the District of Columbia Joint Committee on Judicial Administration.

The Code of Judicial Conduct has four Canons that judges must adhere to, and Canon 2, Rule 2.3(B) unmistakably prohibits judges from engaging in any type or form of harassment, it states:

“A judge shall not, in the performance of judicial duties, by words or conduct manifest bias, or engage in harassment, including but not limited to bias, prejudice, or harassment based upon race, sex, gender, religion, national origin, ethnicity, disability, age, sexual orientation, marital status, socioeconomic status, or political affiliation, and shall not permit court staff, court officials, or others subject to the judge’s direction and control to do so.”

The Honorable Anna Blackburne-Rigsby
The Honorable Robert E. Morin
April 2, 2018
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In addition, Comment [4] of the Canon is even more definitive in its description of what constitutes sexual harassment:

“Sexual harassment includes but is not limited to sexual advances, requests for favors, and other verbal or physical conduct of a sexual nature that is unwelcome.”

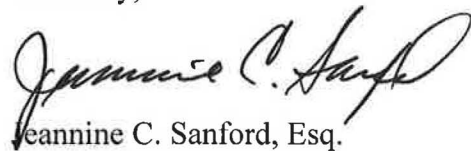
A judge who engages in any conduct or behavior as described in Canon 2, Rule 2.3(B), and Comment [4] of the Canon, will be deemed in violation of the Code, and such conduct or behavior will prompt the Commission’s attention. The Commission also considers retaliation by a judge against a complainant or other involved party to be a violation of the Code.

Any Court employee, law clerk, or judge who believes that they have been the subject of sexual harassment by an Associate or Senior Judge of the D.C. Courts, should file a complaint with the Commission forthwith. This also applies to sexual harassment not directed at a complainant but observed as a third party, or to a supervisor who receives information from an employee who has been sexually harassed. Complaints can be filed electronically through the Commission’s website, www.cjdt.dc.gov, and a complaint form can be obtained by calling the Commission office on (202) 727-1363. The Commission also accepts complaints sent to its agency email address, dc.cjdt@dc.gov, and it will review mailed, oral, and anonymous complaints. Questions concerning the filing of complaints or the complaint process should be directed to the Commission’s Executive Director, Ms. Cathaee Hudgins, who can be reached on (202) 727-1363 or cathaee.hudgins@dc.gov.

The Commission is sensitive to the concerns and fears that some may have in filing a complaint against a judge. Nevertheless, the Commission is powerless to act in the absence of any information, and I would emphasize that Commission complaints, investigations and proceedings are, by law, confidential.

The Commission would appreciate you circulating this letter to all Court personnel, law clerks, and judges of your Court. The Commission hopes the information provided is helpful.

Sincerely,

A handwritten signature in black ink, appearing to read "Jeannine C. Sanford".

Jeannine C. Sanford, Esq.
Chairperson

jcs/cjh

DISTRICT OF COLUMBIA COMMISSION
ON JUDICIAL DISABILITIES AND TENURE

515 FIFTH STREET, N.W., BUILDING A, ROOM 246
WASHINGTON, D.C. 20001
(202) 727-1363

June 14, 2021

The Honorable Anna Blackburne-Rigsby
Chief Judge
District of Columbia Court of Appeals
430 E Street, N.W.
Washington, D.C. 20001

The Honorable Anita Josey-Herring
Chief Judge
Superior Court of the District of Columbia
500 Indiana Avenue, N.W.
Washington, D.C. 20001

Dear Chief Judges Blackburne-Rigsby and Josey-Herring:

In recent years, the Commission on Judicial Disabilities and Tenure for the District of Columbia (“the Commission”) has noted an increase in complaints with respect to actual or perceived *ex parte* communications by judges of the District of Columbia courts. The allegations and concerns expressed have covered a range of circumstances that include *ex parte* communications during Court proceedings, in chambers, and after dismissal of a case. The potential impact of such communications on the administration of justice is very real, as it directly affects every litigant’s perception of whether a judge was fair, impartial, and provided an opportunity for all parties to be heard. The Commission reminds judges of the importance and significance of Canon 2 of the Code of Judicial Conduct for the District of Columbia Courts. Specifically,

Rule 2.9 provides that, with limited exceptions, “[a] judge shall not initiate, permit, or consider *ex parte* communications, or consider other communications made to the judge outside the presence of the parties or their lawyers, concerning a pending* or impending matter.” Rule 2.9 and its commentary offers guidance to judges in the event a judge comes into contact with *ex parte* information.

Other rules may be implicated where Rule 2.9 is at issue. For example, Rule 2.6 provides that “[a] judge shall accord to every person who has a legal interest in a proceeding, or that person’s lawyer, the right to be heard according to law.” Further, Rule 2.2 governs impartiality and fairness to all parties in litigation.

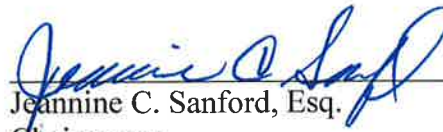
The Commission recognizes that judges often face unpredictable and challenging situations in the performance of their duties, however, compliance with Rule 2.9 must be followed when such occasions arise.

The Honorable Anna Blackburne-Rigsby
The Honorable Anita Josey-Herring
June 14, 2021
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The Commission recommends that the Chief Judges of the Superior Court of the District of Columbia and the District of Columbia Court of Appeals consider additional training for judges of their Court to discuss events that may increase the risk of *ex parte* communications, as well as guidance in handling circumstances where a judge receives *ex parte* information, inadvertently or otherwise.

The Commission requests the Chief Judges to circulate this letter to the judges of their Court, so they may be aware of the Commission's concern regarding this matter. The Commission makes this recommendation in accordance with its mission to maintain public confidence in the judiciary and to assure that judges continue to be ever attentive to the fair and impartial administration of justice.

DISTRICT OF COLUMBIA COMMISSION
ON JUDICIAL DISABILITIES AND TENURE



Jeannine C. Sanford, Esq.
Chairperson

JCS/cjh

Judicial Disabilities and Tenure
FY 2023 SCHEDULE A

Vacancy Status	FTE
Filled	0.00
Vacant	3.00
Total	3.00

Agency Code	Fiscal Year	Program Code	Filled, Vacant or Frozen	Position Title	Employee Name	Hire Date	Salary	Fringe	FTE	Reg/Temp/ Term	Hiring Status	Filled by Law Y/N
DQ0	23	100151	V	Executive Director	VACANT		172,500.00	21,907.50	1.00	Reg		
DQ0	23	100151	V	Deputy Director	VACANT		89,834.00	11,139.42	1.00	Reg		
DQ0	23	100151	V	Administrative Support Specialist	VACANT		60,129.00	7,636.38	1.00	Reg		
AGENCY GRAND TOTAL							\$ 322,463.00	\$ 40,683.30	3.00			

CJDT Attachment
I.A.1.-1 - CJDT FY 2023 SCHEDULE A - FTE listing

					Data					
Appropriated Fund	Appropriated Fund Description	Account Category Description	Account Group	Account Group Description	Sum of Initial Budget	Sum of Revised Budget	Sum of Commitment	Sum of Obligation	Sum of Expenditure	Sum of Available Budget
1010	LOCAL FUND	PERSONNEL SERVICES	701100C	CONTINUING FULL TIME	89,834.00	89,834.00	0.00	0.00	0.00	89,834.00
			701400C	FRINGE BENEFITS - CURR PERSONNEL	11,139.00	11,139.00	0.00	0.00	0.00	11,139.00
		PERSONNEL SERVICES Total			100,973.00	100,973.00	0.00	0.00	0.00	100,973.00
	LOCAL FUND Total				100,973.00	100,973.00	0.00	0.00	0.00	100,973.00
4015	FEDERAL PAYMENTS	PERSONNEL SERVICES	701100C	CONTINUING FULL TIME	232,629.00	232,629.00	0.00	0.00	44,559.16	188,069.84
			701300C	ADDITIONAL GROSS PAY	0.00	0.00	0.00	0.00	68,824.81	(68,824.81)
		701400C	FRINGE BENEFITS - CURR PERSONNEL	29,543.88	29,543.88	0.00	0.00	4,827.82	24,716.06	
	PERSONNEL SERVICES Total			262,172.88	262,172.88	0.00	0.00	118,211.79	143,961.09	
FEDERAL PAYMENTS Total				262,172.88	262,172.88	0.00	0.00	118,211.79	143,961.09	
Grand Total					363,145.88	363,145.88	0.00	0.00	118,211.79	244,934.09

CJDT Attachment

I.A.1.-2 - Budgetary Control Analysis Report YTD_Personal Services Only

Fiscal Impact for Vacant Executive Director Position

Agency Code	Fiscal Year	Program Code	Filled, Vacant or Frozen	Position Title	Employee Name	FTE	FY23 Approved Salary	FY23 Approved Fringe	Total FY23 Approved Salary + Fringe	Total FY23 Salary + Fringe Paid YTD	Additional Gross Pay - Terminal Leave Paid	Total FY23 Approved Salary + Fringe Remaining
DQ0	23	100151	V	Executive Director	Hudgins, Cathae	1.00	172,500.00	21,907.50	194,407.50	49,386.48	68,824.81	76,196.21

CJDT Attachment

I.A.1.-3 - Fiscal Impact for Vacant Executive Director Position

Commission on Judicial Disabilities and Tenure FY2022

Agency Commission on Judicial Disabilities and Tenure

Agency Code DQ0

Fiscal Year 2022

Mission The mission of the Commission on Judicial Disabilities and Tenure (CJDT) is to maintain public confidence in an independent, impartial, fair, and qualified judiciary, and to enforce the high standards of conduct judges must adhere to both on and off the bench.

Strategic Objectives

Objective Number	Strategic Objective
1	Review and Investigate Judicial Misconduct Complaints
2	Conduct Reappointment Evaluations of Eligible Associate Judges of the D.C. Courts
3	Conduct Performance and Fitness Reviews of Retiring and Senior Judges
4	Conduct Involuntary Retirement Proceedings

Attachment I.A.16 - CJDT_FY22.Plan

Key Performance Indicators (KPIs)

Measure	Directionality	FY 2019 Actual	FY 2020 Actual	FY 2021 Actual	FY 2022 Target
1 - Review and Investigate Judicial Misconduct Complaints (3 Measures)					
Percent of complaints leading to misconduct investigations	Neutral	51%	43%	33%	38%
Percent of complaints resolved within 60 days	Up is Better	20%	33%	33%	40%
Percent of complaints resolved within 30 days	Up is Better	61%	57%	51%	50%
2 - Conduct Reappointment Evaluations of Eligible Associate Judges of the D.C. Courts (1 Measure)					
Percent of reappointment evaluation reports submitted before 60 days of term expiration	Up is Better	100%	100%	100%	100%
3 - Conduct Performance and Fitness Reviews of Retiring and Senior Judges (1 Measure)					
Percent of fitness and performance reviews submitted within 180 days of judge's request	Up is Better	100%	100%	100%	100%

Operations

Operations Title	Operations Description	Type of Operations
1 - Review and Investigate Judicial Misconduct Complaints (2 Activities)		
Commission Administration And Support	Review complaints arising during monthly meetings.	Daily Service
Commission Administration And Support	Misconduct investigations.	Daily Service
2 - Conduct Reappointment Evaluations of Eligible Associate Judges of the D.C. Courts (4 Activities)		
Commission Administration And Support	Interview attorneys in the public and private sectors who have appeared before the judge.	Daily Service
Commission Administration And Support	Interview Court personnel who have worked with the judge.	Daily Service
Commission Administration And Support	Interview the Chief Judge of the judge's Court.	Daily Service
Commission Administration And Support	Solicit comments concerning a judge's qualifications from the legal community and the general public.	Daily Service
3 - Conduct Performance and Fitness Reviews of Retiring and Senior Judges (4 Activities)		
Commission Administration And Support	Interview attorneys in the public and private sectors who have appeared before the senior judge.	Daily Service
Commission Administration And Support	Interview Court personnel who have worked with the senior judge.	Daily Service
Commission Administration And Support	Interview the Chief Judge of the judge's Court.	Daily Service
Commission Administration And Support	Solicit comments concerning a senior judge's qualifications to continue judicial service from the legal community and the general public.	Daily Service
4 - Conduct Involuntary Retirement Proceedings (4 Activities)		
Commission Administration And Support	Receive information concerning a judge's health/disability and commences an investigation.	Daily Service
Commission Administration And Support	Determine if an involuntary retirement hearing is warranted.	Daily Service
Commission Administration And Support	Make findings of fact and a determination regarding the judge's health.	Daily Service

Operations Title	Operations Description	Type of Operations
Commission Administration And Support	File Orders of Involuntary Retirement.	Daily Service

Workload Measures (WMs)

Measure	FY 2019 Actual	FY 2020 Actual	FY 2021 Actual
1 - Commission Administration And Support (1 Measure)			
Number of complaints received	68	70	60
2 - Commission Administration And Support (1 Measure)			
Number of reappointment evaluations	4	3	2
3 - Commission Administration And Support (1 Measure)			
Number of fitness and performance reviews	10	11	7
4 - Commission Administration And Support (1 Measure)			
Number of involuntary retirements handled	0	0	1



COMMISSION ON JUDICIAL DISABILITIES AND TENURE

FY 2022 PERFORMANCE AND ACCOUNTABILITY REPORT

JANUARY 15, 2023

CONTENTS

Contents	2
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2 2022 Objectives	4
3 2022 Operations	5
4 2022 Key Performance Indicators and Workload Measures	6

1 COMMISSION ON JUDICIAL DISABILITIES AND TENURE

Mission: The mission of the Commission on Judicial Disabilities and Tenure (CJDT) is to maintain public confidence in an independent, impartial, fair, and qualified judiciary, and to enforce the high standards of conduct judges must adhere to both on and off the bench.

Services: The services provided by the Tenure Commission are as follows: reviewing complaints concerning the misconduct of judges; conducting performance evaluations of associate judges eligible for reappointment; conducting fitness and qualification reviews of retiring and senior judges; and processing the involuntary retirement of judges for health reasons.

2 2022 OBJECTIVES

Strategic Objective	Number of Measures	Number of Operations
Review and Investigate Judicial Misconduct Complaints	3	2
Conduct Reappointment Evaluations of Eligible Associate Judges of the D.C. Courts	1	4
Conduct Performance and Fitness Reviews of Retiring and Senior Judges	1	4
Conduct Involuntary Retirement Proceedings	0	4

3 2022 OPERATIONS

Operation Title	Operation Description	Type of Operation
Review and Investigate Judicial Misconduct Complaints		
Commission Administration And Support	Review complaints arising during monthly meetings.	Daily Service
Commission Administration And Support	Misconduct investigations.	Daily Service
Conduct Reappointment Evaluations of Eligible Associate Judges of the D.C. Courts		
Commission Administration And Support	Interview attorneys in the public and private sectors who have appeared before the judge.	Daily Service
Commission Administration And Support	Interview Court personnel who have worked with the judge.	Daily Service
Commission Administration And Support	Interview the Chief Judge of the judge's Court.	Daily Service
Commission Administration And Support	Solicit comments concerning a judge's qualifications from the legal community and the general public.	Daily Service
Conduct Performance and Fitness Reviews of Retiring and Senior Judges		
Commission Administration And Support	Interview attorneys in the public and private sectors who have appeared before the senior judge.	Daily Service
Commission Administration And Support	Interview Court personnel who have worked with the senior judge.	Daily Service
Commission Administration And Support	Interview the Chief Judge of the judge's Court.	Daily Service
Commission Administration And Support	Solicit comments concerning a senior judge's qualifications to continue judicial service from the legal community and the general public.	Daily Service
Conduct Involuntary Retirement Proceedings		
Commission Administration And Support	Receive information concerning a judge's health/disability and commences an investigation.	Daily Service
Commission Administration And Support	Determine if an involuntary retirement hearing is warranted.	Daily Service
Commission Administration And Support	Make findings of fact and a determination regarding the judge's health.	Daily Service
Commission Administration And Support	File Orders of Involuntary Retirement.	Daily Service

4 2022 KEY PERFORMANCE INDICATORS AND WORKLOAD MEASURES

Key Performance Indicators

Measure	Directionality	FY 2020	FY 2021	FY 2022 Target	FY 2022 Q1	FY 2022 Q2	FY 2022 Q3	FY 2022 Q4	FY 2022	Was 2022 KPI Met?	Explanation of Unmet KPI
Review and Investigate Judicial Misconduct Complaints											
Percent of complaints leading to misconduct investigations	Neutral	43%	33%	38%	Annual Measure	Annual Measure	Annual Measure	Annual Measure	38%	Neutral Measure	
Percent of complaints resolved within 60 days	Up is Better	33%	33%	40%	Annual Measure	Annual Measure	Annual Measure	Annual Measure	21%	Unmet	
Percent of complaints resolved within 30 days	Up is Better	57%	51%	50%	Annual Measure	Annual Measure	Annual Measure	Annual Measure	79%	Met	
Conduct Reappointment Evaluations of Eligible Associate Judges of the D.C. Courts											
Percent of reappointment evaluation reports submitted before 60 days of term expiration	Up is Better	100%	100%	100%	Annual Measure	Annual Measure	Annual Measure	Annual Measure	100%	Met	
Conduct Performance and Fitness Reviews of Retiring and Senior Judges											
Percent of fitness and performance reviews submitted within 180 days of judge's request	Up is Better	100%	100%	100%	Annual Measure	Annual Measure	Annual Measure	Annual Measure	100%	Met	

Workload Measures

Measure	FY 2020	FY 2021	FY 2022 Q1	FY 2022 Q2	FY 2022 Q3	FY 2022 Q4	FY 2022
Commission Administration And Support							
Number of complaints received	70	60	Annual Measure	Annual Measure	Annual Measure	Annual Measure	70
Number of reappointment evaluations	3	2	Annual Measure	Annual Measure	Annual Measure	Annual Measure	0
Number of fitness and performance reviews	11	7	Annual Measure	Annual Measure	Annual Measure	Annual Measure	15
Number of involuntary retirements handled	0	1	Annual Measure	Annual Measure	Annual Measure	Annual Measure	0

Commission on Judicial Disabilities and Tenure FY2023

CJDT - PRE. 1.

Agency Commission on Judicial Disabilities and Tenure

Agency Code DQ0

Fiscal Year 2023

Mission The mission of the Commission on Judicial Disabilities and Tenure (CJDT) is to maintain public confidence in an independent, impartial, fair, and qualified judiciary, and to enforce the high standards of conduct judges must adhere to both on and off the bench.

Strategic Objectives

Objective Number	Strategic Objective
1	Review and Investigate Judicial Misconduct Complaints
2	Conduct Reappointment Evaluations of Eligible Associate Judges of the D.C. Courts
3	Conduct Performance and Fitness Reviews of Retiring and Senior Judges
4	Conduct Involuntary Retirement Proceedings

Attachment I.A.16-2 -
CJDT_FY23 Plan

Key Performance Indicators (KPIs)

Measure	Directionality	FY 2020 Actual	FY 2021 Actual	FY 2022 Target	FY2022 Actual	FY 2023 Target
1 - Review and Investigate Judicial Misconduct Complaints (3 Measure records)						
Percent of complaints leading to misconduct investigations	Neutral	43%	33%	38%	38%	38%
Percent of complaints resolved within 60 days	Up is Better	33%	33%	40%	21%	40%
Percent of complaints resolved within 30 days	Up is Better	57%	51%	50%	79%	50%
2 - Conduct Reappointment Evaluations of Eligible Associate Judges of the D.C. Courts (1 Measure)						
Percent of reappointment evaluation reports submitted before 60 days of term expiration	Up is Better	100%	100%	100%	100%	100%
3 - Conduct Performance and Fitness Reviews of Retiring and Senior Judges (1 Measure)						
Percent of fitness and performance reviews submitted within 180 days of judge's request	Up is Better	100%	100%	100%	100%	100%

Operations

Operations Title	Operations Description	Type of Operations
1 - Review and Investigate Judicial Misconduct Complaints (2 Activity records)		
Commission Administration And Support	Review complaints arising during monthly meetings.	Daily Service
Commission Administration And Support	Misconduct investigations.	Daily Service
2 - Conduct Reappointment Evaluations of Eligible Associate Judges of the D.C. Courts (4 Activity records)		
Commission Administration And Support	Interview attorneys in the public and private sectors who have appeared before the judge.	Daily Service
Commission Administration And Support	Interview Court personnel who have worked with the judge.	Daily Service
Commission Administration And Support	Interview the Chief Judge of the judge's Court.	Daily Service
Commission Administration And Support	Solicit comments concerning a judge's qualifications from the legal community and the general public.	Daily Service

Operations Title	Operations Description	Type of Operations
3 - Conduct Performance and Fitness Reviews of Retiring and Senior Judges (4 Activity records)		
Commission Administration And Support	Interview attorneys in the public and private sectors who have appeared before the senior judge.	Daily Service
Commission Administration And Support	Interview Court personnel who have worked with the senior judge.	Daily Service
Commission Administration And Support	Interview the Chief Judge of the judge's Court.	Daily Service
Commission Administration And Support	Solicit comments concerning a senior judge's qualifications to continue judicial service from the legal community and the general public.	Daily Service
4 - Conduct Involuntary Retirement Proceedings (4 Activity records)		
Commission Administration And Support	Receive information concerning a judge's health/disability and commences an investigation.	Daily Service
Commission Administration And Support	Determine if an involuntary retirement hearing is warranted.	Daily Service
Commission Administration And Support	Make findings of fact and a determination regarding the judge's health.	Daily Service
Commission Administration And Support	File Orders of Involuntary Retirement.	Daily Service



Workload Measures (WMs)

Measure	FY 2020 Actual	FY 2021 Actual	FY2022 Actual
1 - Commission Administration And Support (1 Measure)			
Number of complaints received	70	60	70
2 - Commission Administration And Support (1 Measure)			
Number of reappointment evaluations	3	2	0
3 - Commission Administration And Support (1 Measure)			
Number of fitness and performance reviews	11	7	15
4 - Commission Administration And Support (1 Measure)			
Number of involuntary retirements handled	0	1	0

COMMISSION ON JUDICIAL NOMINATION AND TENURE (DQ0)
Available Balances by Agency Fund, Activity Code and Comptroller Source Group (CSG) - Local Funds

Reporting Period: Fiscal Year: 2022 Fiscal Month: 12

Agy Fund	Activity Center Total	Comp Source Group	FY 2022 Approved Budget	Pre-Encumbrances (Requisitions)	Encumbrances (P.O.'s)	Expenditures (Vouchers & Checks)	Intra-Districts Advances (MOU's)	Total Obligations & Expenditures	Available Balance	Percent Available	Comments
0100 - LOCAL FUNDS	2100 - COMMISSION ADMINISTRATION AND SUPPORT	0040 - OTHER SERVICES AND CHARGES	35,236.00	0.00	0.00	24,318.48	0.00	24,318.48	10,917.52	30.98%	support costs less than estimated.
		0041 - CONTRACTUAL SERVICES - OTHER	30,000.00	0.00	0.00	30,000.00	0.00	30,000.00	0.00	0.00%	
		Non-Personnel Sevices - Total	65,236.00	0.00	0.00	54,318.48	0.00	54,318.48	10,917.52		
0100 - LOCAL FUNDS - Total			65,236.00	0.00	0.00	54,318.48	0.00	54,318.48	10,917.52	16.74%	

CJDT Attachment

I.B.17-1 FY22 Available Balance Report - (by Fund_CSG) - DQ0

COMMISSION ON JUDICIAL NOMINATION AND TENURE (D00)

Available Balances by Agency Fund, Activity Code and Comptroller Source Group (CSG) - Federal Payment Funds

Reporting Period: Fiscal Year: 2022 Fiscal Month: 12

Agy Fund	Activity Center Total	Comp Source Group	FY 2022 Approved Budget	Pre-Encumbrances (Requisitions)	Encumbrances (P.O.'s)	Expenditures (Vouchers & Checks)	Intra-Districts Advances (MOU's)	Total Obligations & Expenditures	Available Balance	Percent Available	Comments
8110 - FEDERAL PAYMENTS - INTERNAL	2100 - COMMISSION ADMINISTRATION AND SUPPORT	0011 - REGULAR PAY - CONT FULL TIME	167,830.00	0.00	0.00	173,149.62	0.00	173,149.62	(5,319.62)	(3.17%)	FY22 COLA impact Approved one-time merit award
		0013 - ADDITIONAL GROSS PAY	0.00	0.00	0.00	5,175.00	0.00	5,175.00	(5,175.00)		
		0014 - FRINGE BENEFITS - CURR PERSONNE	30,839.41	0.00	0.00	18,763.38	0.00	18,763.38	12,076.03	39.16%	
		Personnel Services - Total	198,669.41	0.00	0.00	197,088.00	0.00	197,088.00	1,581.41	0.80%	
		0020 - SUPPLIES AND MATERIALS	2,000.00	0.00	0.00	0.00	0.00	0.00	2,000.00	100.00%	Cost for office supplies less than estimate budgeted
		0031 - TELECOMMUNICATIONS	6,415.32	0.00	0.00	6,320.64	0.00	6,320.64	94.68	1.48%	
		0040 - OTHER SERVICES AND CHARGES	214,673.08	0.00	0.00	204,687.45	0.00	204,687.45	9,985.63	4.65%	investigations less than estimate budgeted
		0041 - CONTRACTUAL SERVICES - OTHER	0.00	0.00	0.00	0.00	0.00	0.00	0.00		
		Non-Personnel Services - Total	223,088.40	0.00	0.00	211,008.09	0.00	211,008.09	12,080.31	5.42%	
		8110 - FEDERAL PAYMENTS - INTERNAL - Total	421,757.81	0.00	0.00	408,096.09	0.00	408,096.09	13,661.72	3.24%	Surplus applied to FY23 carryover
All Funds - Total		486,993.81	0.00	0.00	462,414.57	0.00	462,414.57	24,579.24	5.05%		

Commission on Judicial Disabilities and Tenure (DQ0)

FY 2023 Budget vs Actuals

As of January 31, 2023

Agency	DQ0
Agency Description	COMMISSION ON JUDICIAL DISABILITIES AND TENURE

					Data					
Appropriated Fund	Appropriated Fund Description	Account Category Description	Account Group	Account Group Description	Sum of Initial Budget	Sum of Revised Budget	Sum of Commitment	Sum of Obligation	Sum of Expenditure	Sum of Available Budget
1010	LOCAL FUND	PERSONNEL SERVICES	701100C	CONTINUING FULL TIME	89,834.00	89,834.00	0.00	0.00	0.00	89,834.00
			701400C	FRINGE BENEFITS - CURR PERSONNEL	11,139.00	11,139.00	0.00	0.00	0.00	11,139.00
		PERSONNEL SERVICES Total			100,973.00	100,973.00	0.00	0.00	0.00	100,973.00
		NON-PERSONNEL SERVICES	712100C	ENERGY COMM & BLDG RENTALS	50,520.00	50,520.00	0.00	0.00	0.00	50,520.00
			713100C	OTHER SERVICES & CHARGES	287,836.00	287,836.00	0.00	0.00	0.00	287,836.00
			713200C	CONTRACTUAL SERVICES - OTHER	210,000.00	210,000.00	0.00	134,443.75	75,556.25	0.00
		NON-PERSONNEL SERVICES Total			548,356.00	548,356.00	0.00	134,443.75	75,556.25	338,356.00
	LOCAL FUND Total			649,329.00	649,329.00	0.00	134,443.75	75,556.25	439,329.00	
4015	FEDERAL PAYMENTS	PERSONNEL SERVICES	701100C	CONTINUING FULL TIME	232,629.00	232,629.00	0.00	0.00	44,559.16	188,069.84
			701300C	ADDITIONAL GROSS PAY	0.00	0.00	0.00	0.00	68,824.81	(68,824.81)
			701400C	FRINGE BENEFITS - CURR PERSONNEL	29,543.88	29,543.88	0.00	0.00	4,827.82	24,716.06
		PERSONNEL SERVICES Total			262,172.88	262,172.88	0.00	0.00	118,211.79	143,961.09
		NON-PERSONNEL SERVICES	711100C	SUPPLIES & MATERIALS	2,000.00	2,000.00	0.00	0.00	0.00	2,000.00
			712100C	ENERGY COMM & BLDG RENTALS	8,112.30	8,112.30	5,078.47	0.00	114.70	2,919.13
			713100C	OTHER SERVICES & CHARGES	17,930.48	17,930.48	0.00	0.00	0.00	17,930.48
			713200C	CONTRACTUAL SERVICES - OTHER	39,784.34	39,784.34	0.00	3,562.14	4,055.36	32,166.84
		NON-PERSONNEL SERVICES Total			67,827.12	67,827.12	5,078.47	3,562.14	4,170.06	55,016.45
	FEDERAL PAYMENTS Total			330,000.00	330,000.00	5,078.47	3,562.14	122,381.85	198,977.54	
Grand Total				979,329.00	979,329.00	5,078.47	138,005.89	197,938.10	638,306.54	

CJDT Attachment

I.B.17-2 CJDT FY23 Available Balance Report (as of 01 31 23)

PUBLIC SAFETY AND JUSTICE AGENCY					
FY 2022 REPROGRAMMING LIST					
LOCAL FUNDS				Starting Budget	
FISCAL YEAR	FUND	DATE	SOAR DOC #	DESCRIPTION	AMOUNT
Final Budget					\$0.00

FEDERAL PAYMENTS				Starting Budget	\$330,000.00
FISCAL YEAR	FUND	DATE	SOAR DOC #	DESCRIPTION	AMOUNT
2022	8110	8/15/2022	BJDQ0522	Moved \$75,000 from PS to NPS for additonal judicial investigative support	(\$75,000.00)
2022	8110	8/15/2022	BJDQ0522	Moved \$75,000 to NPS from NPS for additonal judicial investigative support	\$75,000.00
Final Budget					\$330,000.00

PUBLIC SAFETY AND JUSTICE AGENCY					
FY 2022 REPROGRAMMING LIST					
FEDERAL GRANT FUNDS				Starting Budget	
FISCAL YEAR	FUND	DATE	SOAR DOC #	DESCRIPTION	AMOUNT
Final Budget					\$0.00

PUBLIC SAFETY AND JUSTICE AGENCY					
FY 2022 REPROGRAMMING LIST					
PRIVATE FUNDS				Starting Budget	
FISCAL YEAR	FUND	DATE	SOAR DOC #	DESCRIPTION	AMOUNT
Final Budget					\$0.00

SPECIAL PURPOSE REVENUE FUNDS				Starting Budget	
FISCAL YEAR	FUND	DATE	SOAR DOC #	DESCRIPTION	AMOUNT
Final Budget					\$0.00

PUBLIC SAFETY AND JUSTICE AGENCY					
FY 2023 REPROGRAMMING LIST					
LOCAL FUNDS				Starting Budget	
FISCAL YEAR	FUND	DATE	SOAR DOC #	DESCRIPTION	AMOUNT
Final Budget					\$0.00

FEDERAL PAYMENTS				Starting Budget	
					\$330,000.00
FISCAL YEAR	FUND	DATE	SOAR DOC #	DESCRIPTION	AMOUNT
Final Budget					\$330,000.00

PUBLIC SAFETY AND JUSTICE AGENCY					
FY 2023 REPROGRAMMING LIST					
FEDERAL GRANT FUNDS				Starting Budget	
FISCAL YEAR	FUND	DATE	SOAR DOC #	DESCRIPTION	AMOUNT
Final Budget					\$0.00

PUBLIC SAFETY AND JUSTICE AGENCY					
FY 2023 REPROGRAMMING LIST					
PRIVATE FUNDS				Starting Budget	
FISCAL YEAR	FUND	DATE	SOAR DOC #	DESCRIPTION	AMOUNT
Final Budget					\$0.00

SPECIAL PURPOSE REVENUE FUNDS				Starting Budget	
FISCAL YEAR	FUND	DATE	SOAR DOC #	DESCRIPTION	AMOUNT
Final Budget					\$0.00

FY 2022 Intra-District Summary - BUYER

PUBLIC SAFETY AND JUSTICE AGENCY

SELLING AGENCY	DESCRIPTION OF SERVICES PROVIDED	FUNDING SENT	FUNDING DUE
The Office of Contracting and Procurement (OCP)	Agency Purchase Cards - Sent 10/4/21	10,000	
Office of Finance and Resource Management (OFRM)	RTS Costs: DCNet and Non-DCNet - Sent 10/1/21	6,415	
Office of the Chief Technology Officer (OCTO)	IT Assessments/Telecommunications Sweep - Sent 10/1/21	7,451	
TOTAL		23,866	0

FY 2022 Intra-District Summary - SELLER			
PUBLIC SAFETY AND JUSTICE AGENCY			
BUYING AGENCY	DESCRIPTION OF SERVICES PROVIDED	FUNDING RECEIVED	FUNDING OWED
TOTAL		0	0

FY 2023 InteragencySummary - BUYER			
PUBLIC SAFETY AND JUSTICE AGENCY			
SELLING AGENCY	DESCRIPTION OF SERVICES PROVIDED	FUNDING SENT	FUNDING DUE
The Office of Contracting and Procurement (OCP)	Agency Purchase Cards	18,192	
Office of Finanace and Resource Management (OFRM)	RTS Costs: DCNet and Non-DCNet	8,112	
DC Deparatment of Human Resources	HR Support Services for Independent Agencies	5,000	
Office of the Chief Technology Officer (OCTO)	IT Assessments/Telecommunications Sweep	9,523	
TOTAL		40,827	0

FY 2023 Interagency Summary - SELLER			
PUBLIC SAFETY AND JUSTICE AGENCY			
BUYING AGENCY	DESCRIPTION OF SERVICES PROVIDED	FUNDING RECEIVED	FUNDING OWED
TOTAL		0	0

Commission on Judicial Disabilities and Tenure (DQ0)

FY 2022 Contract List

Contract Number	Vendor	Description	Contract Amount	Amount Budgeted	Amount Spent	Contract Type	Term	Contract Monitor	Funding Source
DQFY2022	Schertler and Onorato, LLC	Judicial legal and investigative services	226,757.00	234,673.00	196,757.00	Sole Source	1 Year	OCP	Federal Payment

**CJDT Attachment I.B.24. FY22 CJDT
Contract Listing**

Commission on Judicial Disabilities and Tenure (DQ0)

FY 2023 Contract List

Contract Number	Vendor	Description	Contract Amount	Amount Budgeted	Amount Spent	Contract Type	Term	Contract Monitor	Funding Source
DQ2023-1	Schertler and Onorato, LLC	Judicial legal and investigative services	210,000.00	210,000.00	29,802.50	Sole Source	1 Year	OCP	Federal Payment
230002	Schertler and Onorato, LLC	Agency oversight and project management	30,000.00	30,000.00	0.00	Sole Source	60 Day	OCP	Federal Payment

CJDT Attachment I.B.24.-1 FY23 CJDT Contract Listing

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Fiscal Year 2022 Performance Oversight Questions (Part 2)
Commission on Judicial Disabilities & Tenure

- 45. How many times did the agency meet in FY 2022 and FY 2023, to date? What percentage of members were present at each meeting?**
- a. Are there currently any vacancies on the Commission? What is the status of filling those vacancies?**
 - b. Which Commission members, if any, will have their term end during calendar year 2023?**
 - c. Did the Commission ever have to postpone or cancel a meeting due to failing to meet quorum?**

Response:

The Commission met a total of 15 times in FY 2022, including eleven (11) regularly scheduled meetings, two emergency meetings (2), and two (2) executive sessions. To date the Commission has met a total of six (6) in FY 2023, including five (5) regularly scheduled meetings and one (1) executive session. There are no vacancies on the Commission. In FY 2022 and FY 2023, the Commission did not have to postpone or cancel a meeting due to failing to meet a quorum.

46. Please complete the following tables:

Response:

The tables below include the requested information with a few caveats. On review of the CJDT complaints files and related records, the Chairperson and Vice Chairperson have determined that the distinction between complaints “reviewed” versus complaints “investigated” leads to unnecessary confusion and perhaps a misimpression of the Commission’s processes. Therefore, the Commission has simplified the reported information to reflect the Commission’s activities and processes more accurately.¹

The Commission reviews all complaints and, with the assistance of its Special Counsel, conducts a preliminary investigation to determine: (i) first, whether the complaint is within the jurisdiction of the Commission; and (ii) second, whether the complaint raises a question of judicial conduct that should be subject to further preliminary investigation to assess whether formal disciplinary actions are appropriate. The Commission’s jurisdiction is limited to judicial conduct by DC judges in the DC Court of Appeals and the DC Superior Court only. Further, the Commission’s jurisdiction is limited to conduct covered by the DC Code of Judicial Conduct. The Commission has no legal authority to decide matters of law or fact that are exclusively within the jurisdiction of the courts. Therefore, if the complainant

¹ The first and second rows of the chart provided are now included in one row. The basis for reporting the prior reporting as to “investigated” was not documented nor is it able to be replicated based on CJDT leadership and Special Counsel’s review of the files and assessment of the work that was completed.

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disagrees with a judge's legal ruling, the complainant's remedy is to raise the matter with the Court of Appeals; the Commission has no authority to overrule the judge.

- If the Commission has no jurisdiction over the judge or the conduct at issue, the inquiry will end, and the complaint will be dismissed or, in some instances, the complainant may be referred to the correct jurisdiction.
- By contrast, if the Commission has jurisdiction over the judge and the conduct at issue, the Commission will review the alleged conduct to determine whether there is sufficient grounds to conduct additional preliminary investigation, such as review docket sheets, court records, hearing tapes, or to interview potential witnesses. At times, this initial review is conducted by Special Counsel with the assistance of CJDT staff, prior to the initial report to the Commission to expedite the Commission's ability to respond to the complaint or inquiry.
- If the Commission determines further preliminary investigation is warranted, it will direct Special Counsel accordingly and, as needed, provide ongoing direction and oversight depending on the issues involved.

Following the preliminary investigation,² and with the input and recommendation of Special Counsel and CJDT staff, the Commission will determine whether formal disciplinary proceedings or other remedies are appropriate.

These processes are explained on the Commission's website at <https://cjudt.dc.gov/node/603922>, as well as in the Commission's enabling statute and its Rules. See Attachments PRE. 1. and PRE. 4. In the event of questions, CJDT's website also provides contact information for the Commission's offices (phone, mailing address, and email), and includes an "Ask the Director" form which is electronically directed to CJDT's office.

Further, the charts below included requested statistical information regarding complaints that resulted in involuntary retirement proceedings, disciplinary actions, and/or that were disposed of informally (conference or letter to the judge). With regard to those inquiries, the Commission notes that public dispositions of any nature are listed on its website by calendar year. See <https://cjudt.dc.gov/page/Determinations>. To the extent the Commission is able to provide information on a particular matter or groups of matters it has considered or addressed, it has done so.

² As with any investigative process, the extent of review by the Commission or on its behalf is dependent entirely on the nature and seriousness of the complaint, the scope of the issues involved, the information provided by the complainant, and the need for independent investigation and/or validation and corroboration of the same.

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**Commission on Judicial Disabilities & Tenure Activities,
FY 2021 and 2022, to Date**

<i>Case Type</i>	<i>FY 2022</i>	<i>FY 2023, To Date</i>
Judicial Misconduct Complaints Reviewed/ Investigated	70 ³	36
Senior Judge Fitness Reviews Completed	15	0 (6 planned)
Associate Judge Reappointment Evaluations	0	0 (3 pending)

Complaint Disposition Summary, FY 2020, 2021, and 2022, To Date

<i>Complaint Summary</i>	<i>FY 2021⁴</i>	<i>FY 2022⁵</i>	<i>FY 2023, To Date⁶</i>
Complaints Received / Investigation	60	70	37
Dismissed for Lack of Jurisdiction & Lack of Merit ⁷			12
Dismissed for Lack of Jurisdiction	42	See FN5.	17
Dismissed for Lack of Merit	15	See FN5.	1
Dismissed / Referral (wrong jurisdiction) ⁸			2
No Further Action Warranted/Matter Moot	0	See FN5.	1
Length of Time Under Review ⁵			
a. 30 Days	30	55 ⁹ (79%)	12

³ This case statistic was provided by the Executive Director to the Office of the City Administrator for the Commission's Performance Plan Report. While the Commission believes that all FY 2022 complaints and inquiries of concern have been addressed either by decision or action of the Commission, a letter or email response to the inquiry by a citizen, or through a referral if the matter involved a case or judge in a different jurisdiction (state or federal), this number likely underreports actual complaints or inquiries to the Commission. The number of complaints, concerns, or inquiries to the Commission about alleged judicial misconduct is likely closer to 90. The Commission's future complaint tracking system will allow it to track these contacts more definitively with the Commission, as well as actions and resolutions.

⁴ FY 2021 statistics are based on prior reporting by the Executive Director to the J&PS Committee and the Office of the City Administrator. They have not been independently validated.

⁵ FY 2022 statistics are based on prior reporting by the Executive Director to the Office of the City Administrator. They have not been independently validated and, based on materials reviewed in the Commission's office, the total population of complaints or concerns are likely to be higher (between 80-90 complaints). Where the numbers are blank, the CJDT has not yet reported a number and the records are still being reviewed.

⁶ FY 2023 statistics have been validated based on available information and documentation to date.

⁷ This category was not previously tracked or reported but it a common outcome where a complaint raises both legal and non-legal issues.

⁸ This category was not previously tracked or reported.

⁹ The numbers here are based on percentages previously provided by the Executive Director to the Office of the City Administrator. They have not been independently validated. The CJDT notes that

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b. 60 Days	18	15 ¹⁰ (21%)	17
c. 90 Days	7	See FN5.	3
d. 120 Days	2	See FN5.	1
e. > 120 Days	2	See FN5.	
Pending	1	0	4

47. Of the complaints the agency received in FY 2022 and FY 2023, to date, how many came from attorneys? How many came from judges?

Response:

For reasons we explain below and given the highly sensitive nature of these matters, the Commission will not maintain or share statistics on attorneys and judges who bring complaints or concerns, either voluntarily or in accordance with ethical rules, to the Commission.

Confidentiality of Commission’s Review and Investigation of Complaints

In general, and for reasons that are wholly understandable, citizens – including lay persons, attorneys, judicial or court staff, or judges – are reticent: (i) to bring forward allegations of potential misconduct or potential disability concerns regarding a sitting judge; (ii) to cooperate in an investigation or proceeding that involves potential misconduct or potential disability concerns regarding a sitting judge; or (iii) to take sides in a complaint process involving a citizen and a sitting judge.

Nevertheless, to fulfill its mission of maintaining public confidence in the judiciary and to enforce the high standards of judicial conduct, the Commission must encourage and rely upon citizens to step forward with complaints, concerns, or as witnesses. Whether the matter involves conduct in pending litigation, in chambers, the courtroom, the courthouse, or outside in the community, the Commission can only address such matters if it is made aware of and can, through evidence, evaluate them. This can only happen through the cooperation of citizens. Further, and equally important, the cooperation of citizens is essential to the Commission’s ability to evaluate whether a complaint has merit; simply put, whether the evidence provided by the complainant is corroborated or refuted by other evidence.

the increased percentage of complaints resolved within thirty (30) days likely was due to a new procedure the Chairperson and Vice Chairperson implemented in Q1 FY 2022. The procedure, which required the Executive Director to send complaints to Special Counsel within two [2] business days of receipt and a prompt review by Special Counsel, allowed for: (i) early assessment as to whether a complaint should be escalated to Commission leadership; and (ii) time for preliminary investigation before the next Commission meeting so that matters could be resolved promptly. Although the new process was not perfect, it generally resulted in fewer deferrals of complaints. Importantly, the new process also resulted in certain matters being escalated for consideration by Commission leadership when appropriate.

¹⁰ The numbers here are based on percentages previously provided to the Office of the City Administrator. They have not been independently validated.

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In these situations, subject to statutorily authorized disclosures, confidentiality protects those who complain to or cooperate with the Commission against retaliation by the judge and, also importantly, it protects judges from misinformation related to false or spurious allegations by complainants or, in some cases, it protects witnesses who do not support a complainant's or a judge's version of events.

The Commission's Enabling Statute (DC Code § 11-1528 (Privilege; confidentiality))

The Commission's enabling statute recognizes the delicate balancing act that the Commission must strike in these matters, and it affords broad privilege and confidentiality protections over the Commission's consideration of complaints for a reason. For the Commission to achieve cooperation by citizens, and to protect those who participate in the process, Commission investigations of misconduct are privileged and confidential, absent certain defined exceptions.

For the most part, cooperation with the Commission is voluntary.¹¹ However, there are certain instances in which attorneys and judges are ethically bound to inform the Commission of a disability, impairment, or a conduct matter, a circumstance the Commission recently commented publicly on following the investigation and uncontested involuntary retirement of then-Associate Judge Steven N. Berk ("the Judge Berk matter"). See Attachment PRE. 7. (Commission Public Statement (Dec. 20, 2022) (reminding lawyers and judges of ethical obligations under Canon 2, Rules 2.14 and 2.15 of the D.C. Code of Judicial Conduct)), also at <https://cjudt.dc.gov/sites/default/files/dc/sites/cjudt/publication/attachments/berk2.pdf>.

For further context of the Commission's Public Statement, the Commission offers the following, all of which is based on the public record.

The Judge Berk matter was initiated in May 2021 following a series of formal and informal concerns regarding alleged significant delays on the judge's calendar and a potentially serious health condition (collectively "Complaint #1"). Two months later, the investigation was expanded in scope and scope time period (increased by several years) due to a new and unrelated complaint filed by a former law clerk which raised serious allegations of harassment and other mistreatment by the judge.¹² ("Complaint #2").

As is common in complex investigations, the several months-long investigations regarding Complaint #1 and Complaint #2 involved not only the meticulous review of court records, hearing tapes, emails, other documents, and medical records,¹³ it relied upon relevant

¹¹ The Commission can use a compulsory process at a formal hearing stage but such a process is rarely used or required.

¹² The Commission was advised that the former law clerk also had filed a complaint with the DC Superior Court through the Court's new EDR Plan, and that the former law clerk was represented by counsel. During the Commission's investigation, all communications and interactions with the former law clerk were conducted in the presence of and/or through the former law clerk's lawyers.

¹³ The Commission reviewed a wide range of documentary evidence including those provided by citizens and those obtained independently. The Commission's investigation also included independent medical testing and evaluation of evidence provided by medical professionals.

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information provided by citizens who cooperated in the Commission's investigation, and without whom the Commission could not do its job. While citizens cooperated voluntarily, many understandably expressed their discomfort being involved.¹⁴

Based on the totality of the evidence and on conclusion of its review, the Commission determined the following:

- As to Complaint #1 (complaints of alleged delays and health concerns litigants and attorneys), the Commission found that complaints and concerns brought to its attention had merit. The Commission determined that Judge Berk violated Rule 2.5 of the Code of Judicial Conduct due to the extraordinary nature and extent of the delays on his calendar, as well as its related impact, harm, and cost to litigants. The Commission further found that Judge Berk suffered from a mental or physical disability which was or was likely to become permanent and which prevented, or seriously interfered with, the proper performance of his judicial duties.
- As to Complaint #2 (complaint of alleged misconduct by former law clerk), based on the totality of the evidence,¹⁵ the Commission found that "there was substantial and corroborated evidence that was inconsistent with and contradicted the complaint's factual accounts and allegations" and "the complaint lacked merit and, therefore, dismissed the complaint . . .".¹⁶
- The Commission initiated the formal notice of Involuntary Retirement proceedings to Judge Berk through his counsel, which Judge Berk ultimately did not contest. Judge Berk was involuntarily retired on November 4, 2022.¹⁷

¹⁴ Of the over twenty (20) interviews conducted and other communications to gather information from various citizens and institutional litigants, the Commission encountered only one witness who declined to submit to an interview or provide any information.

¹⁵ For example, the Commission found numerous instances in which the former law clerk's account was unsupported and contradicted by other evidence including, among others: (i) the circumstances and reasons for the judge's early termination of the former law clerk's clerkship due to the issuance of a court order without the judge's authorization, (ii) the circumstances of the former law clerk's recusal from a criminal trial due to the defendant's objection (conveyed through counsel) to the former law clerk's presence in light of informal discussions the former law clerk had with the prosecuting Assistant United States Attorney about the former law clerk's interest in applying to the US Attorney's Office; (iii) contradictions by witnesses whom the former law clerk asked the Commission to interview; and (iv) contradictions by witnesses who were present contemporaneously with events the former law clerk alleged. Months after the Commission's dismissal of the matter, the Commission is aware of ongoing public statements by the former law clerk that continue to misstate the evidence in the Judge Berk matter, including information previously provided or known by the former law clerk. To protect those witnesses who provided information to the Commission in this matter, it will not provide further information or details.

¹⁶ See Attachment 7, also at In Re Judge Steven N. Berk, Uncontested Order of Involuntary Retirement (Nov. 4, 2021), at 3 FN3 and https://cjdt.dc.gov/sites/default/files/dc/sites/cjdt/publication/attachments/3839_001.pdf.

¹⁷ The Commission's action of involuntarily retiring Judge Berk was affirmed by the DC Court of Appeals on the same day. See Attachment II.47.

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The Judge Berk matter was important not only for its outcome but because it highlighted the complexity of the Commission's work and sensitivities involved in the review and investigation of sitting judges. As was demonstrated in the public filings, the cooperation of citizens (non-lawyers, lawyers, and judges alike), combined with other evidence, was instrumental both in: (i) understanding the extent of the impact on Judge Berk's ability to manage his calendar and make decisions due to his medical condition; and (ii) providing evidence that ultimately did not support and, in some instances, directly contradicted the serious allegations of misconduct by Judge Berk's former law clerk whose complaint was dismissed.

Therefore, and to continue to encourage ongoing and future cooperation and participation of the citizens in these matters:

- The Commission issued a Public Statement to, among other things, reconfirm and remind lawyers and judges alike of potential obligations and affirmative duties to report matters pursuant to Rule 2.14 (Disability and Impairment) and Rule 2.15 (Responding to Judicial and Lawyer Misconduct).
- The Commission also re-reviewed and requested minor updates to the DC Court's Employee Dispute Resolution ("EDR") Plan on January 14, 2022, which were adopted and published on January 26, 2022.¹⁸ See PRE. 11. and [Employee Dispute Resolution | District of Columbia Courts \(dccourts.gov\)](https://dccourts.gov) .

In conclusion, for the reasons stated herein, the Commission will not maintain or share statistics on attorneys or judges who report complaints or concerns. However, the Commission will persist in its efforts to encourage all citizens, including the legal and judicial communities, to continue to bring matters of concern to its attention, either formally or informally.

Exceptions to the Confidentiality

While the Commission will not report on statistics, the Commission can report on one attorney complaint.

As noted above, the statute affords limited exceptions to confidentiality, as defined by DC Code § 11-1528. However, in the Judge Berk matter, the Commission and the judge are aware that the former law clerk in Complaint #2 has made a wide range of public statements on the matter, including with regard to the complaint and the Commission's review of the matter. With the permission of Judge Berk under § 11-1528(a)(2)(A), the Commission can confirm that at least one lawyer filed a formal complaint that was filed in FY 2021 and was resolved in FY 2022, and after a full and thorough investigation, the complaint was dismissed

¹⁸ As discussed in the Preamble, the Commission has engaged with Court leadership on matters related to potential court and judicial staff concerns over the years, and it has been apprised of the Court's development and implementation of the court's EDR Plan in Spring 2021. See Preamble at 6 and FN14.

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without merit. The Commission's disposition letter is attached and redacted to remove the complainant's address. *See* Attachment II.47-1.

48. In FY 2022 and FY 2023, to date, how many requests has the Commission received under the Judicial Financial Transparency Act? Does the Commission affirmatively review filings required under the Act?

Response:

The Commission was informed that it received and responded to one request under the Act in FY 2022. The Commission's Executive Director reviewed responses received under the Judicial Financial Transparency Act in FY 2022. The Commission is not aware of any requests in FY 2023. The Commission does not collect new filings for FY 2023 until the spring.

49. How many judges are being considered for reappointment?

Response:

The Commission received declarations of candidacy for reappointment in January 2023 by Judge Anthony C. Epstein and Judge Heidi M. Pasichow, whose terms expire on August 24, 2023. The reappointment process is currently in the public comment period, which closes on March 8, 2023. The reappointment recommendations are due to the President of the United States on June 24, 2023.

The Commission expects to begin its review process soon for Judge Alfred Irving, Jr., whose term expires later this year on December 1, 2023.

50. Please provide the Commission's process for soliciting, reviewing, and taking action on a complaint.

Response:

The Commission does not "solicit" complaints. However, the Commission does provide information to the public to create awareness of its mission and accessibility in the event concerns regarding a judge's conduct may arise. In addition to responses already provided, the Commission's website has a page that describes the overall complaint process. <https://cjudt.dc.gov/node/603922>, and includes links for the public to submit a complaint or concern directly to the Commission via the website or to download a form that can be submitted in any other manner such as email, U.S. mail, or in-person. The form includes a series of simple questions that guide the individual through the kind of information the Commission looks for to help identify specific hearing(s) or event(s) that forms the basis for the complaint. While completion of the form is not a requirement, many choose to use the form to provide all or initial information. The complaint process also is described in the Commission's Rules.

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Through its public statements and recent case dispositions, the Commission also has outlined how its processes are applied in practice.

Further, and as part of its Modernization Project, the Commission intends to review and update relevant forms and its website, as needed, to provide further clarity.

51. Please describe any public education or other efforts by the Commission to make residents aware of the Commission and the process to file a complaint?

Response:

The Commissioner leadership, the Executive Director, and Special Counsel have participated in programs arranged by organizations in the legal community from time-to-time, the Commission has not been as active in recent years. In the spring and summer of FY 2022, the Commission discussed as an action item additional public outreach as a specific goal in FY 2023, and it directed the Executive Director to develop a media and public outreach plan. Although it has not yet been formalized due to the Executive Director's transition, this action remains on the Commission's agenda for FY 2023.

In the interim, in summer FY 2022, Commission leadership was informally contacted about an opportunity to participate in a panel discussion on judicial accountability for a panel discussion and program the D.C. Bar was contemplating in summer FY 2022. After agreeing to participate, Commission leadership was informed that the program would not go forward as planned. The Commission thereafter agreed to discuss future programming.

52. Please describe the Commission's participation as member of the Center for Judicial Ethics. What benefits does membership provide to the Commission, and how has participation informed the Commission's work?

Response:

The Commission and its Executive Director have a longstanding relationship with the Center for Judicial Ethics (CJE). Through the CJE, the Commission stays apprised of developments in other state commissions on relevant ethical investigations, resolutions, disciplinary actions, and other developments. The Executive Director provides periodic updates to Commissioners based on reporting from CJE. On occasion, the Commission has directed the Executive Director to contact CJE to evaluate precedent on ethics matters in other jurisdictions. In FY 2022, and through these connections, the Executive Director also had occasion to explore digitized case management systems in other jurisdictions.

53. The Commission's responses to the Committee's FY 2021 performance oversight questions noted that the Commission does not maintain any electronic databases. How does the Commission track reviews, complaints, investigations, and other matters?

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Response:

The Commission office's case management and filing system has been manual, paper-based, and very cumbersome. Given the historically low budget for CJDT, the Executive Director did not see a need to invest in or evolve the system. As the pace of the complaint flow, communications with the public, complexity of investigations, use of technology during COVID-19, and expectations of the CJDT's constituencies increased substantially in recent years, the paper-based system became much harder for staff to manage. The Commission recognized the system was outdated, inefficient, and time-consuming, leading to its decision to modernize the office and its operations and to increase its use of technology. The Commission believes the investments it is making now will vastly improve on its ability to more efficiently, effectively, and accurately track reviews, complaints, investigations, and other matters, as well as to report on metrics and trends.

54. The Commission reported using outside counsel to provide legal and investigative services in FY 2021, and planned to continue that practice in FY 2022. What were the costs for outside counsel in FY 2022? Would the Commission benefit (both in terms of cost and services provided) from a staff attorney to provide these services?

Response:

The FY 2022 costs for outside counsel are included in the attached schedule. See Attachment 54. Total costs for outside counsel were \$196,757.00. During this period, Special Counsel's services were invaluable in:

- Completing a significant investigation in FY 2021 in which a judge was required to take a pause in his judicial duties. The investigation initially focused on calendar delays and medical concerns, but later was expanded due to allegations of serious misconduct by a former law clerk which were then fully investigated and dismissed.
- Preparation for the Commission's unprecedented involuntary retirement proceedings and potential litigation if the judge contested involuntary retirement.
- Navigating the complexities of the Commission's desire to issue a separate public statement related to the investigation that provided additional detail and also reminded attorneys and judges of their obligations to comply with reporting requirements of Rules 2.14 and 2.15 of the D.C. Code of Judicial Conduct
- Incorporating language regarding Commission resources into the DC Superior Court's existing Employee Dispute Resolution plan in FY 2022
- Conducting a highly sensitive investigation of judicial misconduct in FY 2022, in which the judge decided to retire before the Commission could formally act, and then working closely with Commissioners and the OAG's Legal Counsel Division to craft

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a public statement that informed the public without running afoul of statutorily imposed confidentiality restrictions.

- Conducting an initial but extensive review of matters involving a judge with potential medical concerns, during which the judge elected to retire, as well as advising on additional matters that involved medical reviews by the Commission.
- Advising the Commission on matters related to modernization, including data security, data retention, use of technology, development of new procedures that will support investigations, the Commission's consideration of precedent and judicial histories, and the efficient and effective review and resolution of complaints.

The Commission has always engaged an outside legal counsel with highly specialized skill sets, experience, knowledge, and both familiarity with and independence from the D.C. government and the local courts. These attributes are invaluable for the type of investigative work and legal services the Special Counsel is called upon to handle. The Commission and its leadership have evaluated the possibility of a staff legal position over the years. However, on balance, and in years like FY 2022, the Commission is reminded of the importance and uniqueness of the Special Counsel role, including the value it brings to assuring the Commission's independence and objectivity on these sensitive matters. The Commission believes the greatest cost and service efficiencies will come from modernizing its office and operations, and upgrading its staff technology capabilities.

55. Please provide the Committee with an update on the Commission's progress in achieving the five priorities shared with the Committee in the Commission's FY 2021 performance oversight responses. Specifically:

- a. Review and resolve judicial misconduct complaints in a timely manner;
- b. Conduct and complete thorough and comprehensive judicial misconduct investigations as expeditiously as possible;
- c. Conduct and complete thorough and comprehensive reappointment evaluations of Associate Judges and conduct thorough and comprehensive Senior Judge performance evaluations;
- d. Complete a comprehensive review of the Commission's Rules to clarify the Commission's legal processes and obligations, as appropriate, and to reassess and confirm their relevance to current statutory provisions; and
- e. Developing and deploying enhance technology solutions to facilitate and streamline the work of the agency.

Response:

The Commission has provided information responsive to this question throughout Part I and Part II. The following additional information is provided to further exemplify the Commission's progress in each of the areas above:

- a. **Timely resolution of complaints:** Commission leadership's process requirements on new complaints to assure they are reviewed by Special Counsel early has resulted in the Commission's ability to respond to more complaints within the initial thirty (30)

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days, as well as to escalate serious matters quickly. See above at FN 9. The Commission's response time will only improve with the implementation of its Modernization Project.

- b. **Comprehensive investigations in an expeditious manner:** While complex investigations take time to conduct in a thorough manner, the Commission demonstrated in two FY 2022 public matters that it can and does react quickly to serious matters, including the escalation of serious matters to Commission leadership, convening of emergency full Commission meetings, and focused timely investigations by Special Counsel with ongoing updates for Commission members. See Attachments PRE. 6., and Attachments PRE. 7.-8.
- c. **Thorough and comprehensive reappointment and senior judge fitness evaluations:** As discussed in the Preamble, the Commission has increased documentation around these evaluations. Further, during the transition and at the recommendation of Special Counsel, the Commission is implementing new timelines for increasing the period for public comment in these matters, and assuring more time for Commissioners to complete their investigation and review prior to statutory deadlines and term expirations. In addition and based on observations in the Berk and other investigations, the Commission recently updated its Judicial Medical Forms (JMF) to require treating/certifying physicians to provide baseline information regarding the cognitive ability of judges, including any deficits noted.
- d. **Commission's Rules:** In parallel with the transition, documentation or updating of various procedures, and observations noted in recent investigations, the Commission, Commission leadership, and Special Counsel are noting areas where further clarification or supplementation of the Commission's Rules may be helpful and/or appropriate. The more formal Rules review process is expected to take place later in FY 2023 and beginning of FY 2024.
- e. **Technology:** See Preamble at 7 (Modernization Project) and Part I Question A.2. (discussion of technology project).

56. Please identify whether, and if so, in what way, the agency engaged The Lab @ DC in FY 2021 or FY22, to date.

Response:

The Commission has not engaged with The Lab @DC in FY 2021 or FY 2022.

57. Please describe the Commission's relationship with the Judicial Nominations Commission.

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Response:

The Judicial Nominations Commission is responsible for the selection and nomination of new judge candidates in the DC Courts. The CJDT interacts with the Judicial Nominations Commission in a few ways:

- The Judicial Nominations Commission will notify CJDT of new judges who are nominated by the United States President, confirmed by the United States Senate, and due to be sworn as a judge in the D.C. Courts. This helps CJDT maintain accurate information on term start dates as well as prepare for new judge ethics training.
- Similarly, when CJDT becomes aware of judicial vacancies after a judge announces his or her retirement or in the event of removal or involuntary retirement due to a disciplinary matter, it will notify the Judicial Nominations Commission of the vacancy so that it can begin its own process to find new candidates.

58. Are there any barriers, statutory or otherwise, that unnecessarily slow or hamper the Commission's work?

- a. Does the Commission have sufficient staff support?**
- b. How could the Committee better support the work of the Commission?**

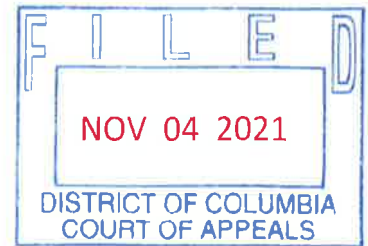
Response:

The Commission's biggest challenge at this time is technology and the paper-based system it is modernizing into a digitized system. The modernization project is funded and is being fully supported by expertise provided by the OAG and OCTO, in collaboration. As is common in any transformative project, unknowns and additional costs arise. However, to date and based on available information, the Commission believes it can manage the most critical aspects of this project in FY 2023. As noted in the Preamble and in response to Question 2 of Section A, the Commission will provide updated information regarding the FY 2024 budget no later than March 10.

* * *

The Commission thanks the Committee for the opportunity to provide answers to the questions above in advance of the Committee hearing.

**District of Columbia
Court of Appeals**



No. 21-BS-765

IN RE: THE HONORABLE STEVEN BERK

ORDER:

Affirming Uncontested Order of Involuntary Retirement and Granting Unopposed Motion for Leave to File an Exhibit Under Seal

On consideration of the November 1, 2021, Uncontested Order of Involuntary Retirement filed by the District of Columbia Commission on Judicial Disabilities and Tenure (“the Commission”), wherein it ordered that Judge Steven Berk be involuntarily retired as an Associate Judge of the Superior Court of the District of Columbia, effective November 1, 2021, *see* D.C. Code § 11-1526(b) and the Commission’s Unopposed Motion for Leave to File an Exhibit to the Uncontested Order of Involuntary Retirement Under Seal; it is

ORDERED that the Commission’s Motion for Leave to File an Exhibit to the Uncontested Order of Involuntary Retirement Under Seal is granted and the Clerk shall file the lodged exhibit as a sealed exhibit to the Commission’s November 1, 2021, order. *See* 28 DCMR § 2044.2 (providing that subject to certain exceptions not relevant here that, *inter alia*, financial and medical information provided to the Commission shall be confidential). It is

FURTHER ORDERED that as a review of the Commission’s Uncontested Order of Involuntary Retirement, signed by Judge Berk, establishes he waived his procedural and appellate rights under D.C. Code §§11-1526, -1527, -1528 and he does not contest the Commission’s decision to file its order with this court, *see* 28 DCMR § 2022.3, the Uncontested Order of Involuntary Retirement is **hereby affirmed and the effective date of Judge Berk’s retirement is November 1, 2021**, pursuant to the Commissions’ order, which was uncontested and duly signed by Judge Berk. *See* D.C. Code § 11-1526(b); *see also* District of Columbia Court of Appeals Internal Operating Procedures Part No. 1.

ANNA BLACKBURNE-RIGSBY
Chief Judge

**DISTRICT OF COLUMBIA COMMISSION
ON JUDICIAL DISABILITIES AND TENURE**

515 FIFTH STREET, N.W., BUILDING A, ROOM 246
WASHINGTON, D.C. 20001
(202) 727-1363

November 4, 2021

Ms. Kate Muetting, Esq.
Sanford Hensley Sharp, LLP

[REDACTED]
[REDACTED]
[REDACTED]

Ms. Aliza Shatzman

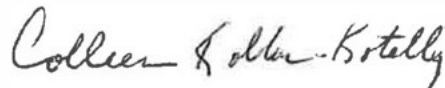
[REDACTED]
[REDACTED]
[REDACTED]

Dear Ms. Muetting and Ms. Shatzman:

The District of Columbia Commission on Judicial Disabilities and Tenure has carefully reviewed and thoroughly investigated Ms. Shatzman's complaint concerning Judge Steven N. Berk, which was filed with the Commission earlier this year.

The Commission's investigation included a review of all information provided by Ms. Shatzman as well as information gathered independently by the Commission. As the Commission's Special Counsel communicated to Ms. Muetting previously in response to her inquiry this fall, the Commission's investigation did not support (and, in some instances, refuted) material aspects of Ms. Shatzman's complaint and, therefore, the Commission has dismissed the complaint for lack of merit.

Sincerely,



Hon. Colleen Kollar-Kotelly
Chairperson

CKK/cjh