

COMMISSION ON JUDICIAL DISABILITIES AND TENURE

NOTICE OF FINAL RULEMAKING

The District of Columbia Commission on Judicial Disabilities and Tenure (the Commission) hereby amends its Rules, Title 28, D.C.M.R., Chapter 20. This amendment to the Commission's Rules is promulgated pursuant to D.C. Official Code, §11-1525(a)(2001) and §431(d)(3), of the District of Columbia Self-Government and Governmental Reorganization Act, P.L. 93-198, but does not purport to restate all applicable procedural and substantive provisions of the pertinent statutes. The amended rule is §2001.7. It shall be effective immediately upon publication in the D.C. Register. D.C. Official Code §11-1525(a)(2001) 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.

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 Pub. L. 91-368 (D.C. Code, §11-1521, et seq.).

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 or mental examination by a physician designated by the Commission after consultation with the judge. The examination and report shall be made at the Commission's expense.

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 may 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 (1st) day of June of each year, on forms provided by the Commission, the reports of personal financial interest required by D. C. Code, §11-1530 for the preceding calendar year.

2003.2 The Commission from time to time may require a judge to file pertinent supplemental information.

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 renomination;
- (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.
- 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. 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. 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. Code, §15-714 for witnesses in civil cases.

2021.2 All witnesses shall receive the allowances prescribed by D.C. 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.

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 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 or mental examination by a physician 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 Commission's expense.

2038.3 At the Commission's request, a judge required to submit to a medical 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. Code §§11-709 and 11-909; and
 - (b) Financial data reported pursuant to the provisions of D.C. Code §§11-1530(a)(2) and (a)(7).
- 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. Code, Title 11, §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, Pub. L. 93-198.

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