

**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 20, 2023

Mr. Stuart Delery, Esq,
White House Counsel
1600 Pennsylvania Avenue, NW
Washington, D.C. 20500

Re: Evaluation Report for the Reappointment of the Honorable Anthony C. Epstein

Dear Mr. Delery:

At the request of Hon. Colleen Kollar-Kotelly, Chairperson of the Commission on Judicial Disabilities and Tenure for the District of Columbia, enclosed please find the Commission's Evaluation Report for the Reappointment of the Honorable Anthony C. Epstein, Associate Judge, Superior Court of the District of Columbia.

In summary, the Commission has conducted a thorough evaluation of Judge Epstein's performance, and it has determined by unanimous vote that Judge Epstein is "well qualified" for reappointment to another term. Therefore, and in accordance with the statute, Judge Epstein's term shall be automatically extended for a full term of fifteen years upon the expiration of his current term on August 24, 2023.¹

Please do not hesitate to contact us if you have any questions.

Sincerely,

A handwritten signature in blue ink, appearing to read "Amy C. Hatcher", with a long horizontal flourish extending to the right.

Amy Conway-Hatcher
Special Counsel

Copies to:
Hon. Colleen Kollar-Kotelly, Chairperson
Hon. Diane Brenneman (Ret.), Vice Chairperson

¹ Section 433(c) of the District of Columbia Self-Government and Governmental Reorganization Act, 87 Stat. 744, as amended by the District of Columbia Judicial Efficiency and Improvement Act of 1986, P.L. 99-573, 100 Stat. 3228.

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The Honorable Joseph R. Biden
President of the United States
The White House
Washington, D.C. 20500

Re: Evaluation Report for Reappointment of the Honorable Anthony C. Epstein

Dear Mr. President:

The District of Columbia Commission on Judicial Disabilities and Tenure is pleased to report that it has unanimously determined the Honorable Anthony C. Epstein to be well-qualified for reappointment as an Associate Judge of the Superior Court of the District of Columbia. Given Judge Epstein's exemplary judicial service and his extraordinary contributions to the court, his colleagues, and the community, the Commission found him to be exceptionally deserving of the highest category in which it is statutorily empowered to designate a judge seeking reappointment. Therefore, and in accordance with the statute, Judge Epstein's term shall be automatically extended for a full term of fifteen years upon the expiration of his current term on August 24, 2023. This Report provides an overview of the Commission's statutory powers and the basis for the Commission's determination.

Statutory Framework

Among its duties, the Commission is responsible for evaluating Associate Judges in the District of Columbia Courts ("DC Courts") who seek reappointment to additional fifteen (15) year terms. Specifically, if a judge declares his or her candidacy for reappointment, the Commission

must “prepare and submit to the President a written evaluation of the declaring candidate’s performance during his [or her] present term and his [or her] fitness for reappointment to another term.”¹ Under the statute, the Commission has three options:

- If the Commission determines the declaring candidate to be **well qualified** for reappointment to another term, then the term of the declaring candidate shall be automatically extended for another full term, subject to mandatory retirement, suspension, or removal.
- If the Commission determines the declaring candidate to be **qualified** for reappointment to another term, then the President may nominate the candidate and then shall submit the nomination to the Senate for advice and consent to the renomination of the candidate as judge. If the President determines not to so nominate such declaring candidate, he shall nominate another candidate for such position only in accordance with the provisions of subsections (a) and (b).
- If the Tenure Commission determines the declaring candidate to be **unqualified** for reappointment to another term, 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.

The Commission reserves the recommendation of “well qualified” for those judges whose work product, legal scholarship, dedication, efficiency, and demeanor are exceptional on the bench, and where the candidate’s performance consistently reflects credit on the judicial system. The Commission will determine a judge is “qualified” if he or she satisfactorily performs his or her assigned duties or whose strong positive attributes are materially offset, but not overborne, by negative traits. A finding of “unqualified” means the Commission has found the judge to be unfit for judicial service.

¹ Section 433(c) of the District of Columbia Self-Government and Governmental Reorganization Act, 87 Stat. 744, as amended by the District of Columbia Judicial Efficiency and Improvement Act of 1986, P.L. 99-573, 100 Stat. 3228. The Commission must file its report not less than sixty days prior to the expiration of the declaring candidate’s term of office. *Id.*

The Commission's Evaluation of Judge Epstein as "Well Qualified"

Judge Epstein formally declared his candidacy for reappointment and submitted his application materials on January 13, 2023, more than a month before the statutory deadline. His materials included updated medical forms confirming his medical fitness for service.² Thereafter, the Commission publicly announced Judge Epstein's candidacy and opened a public comment period seeking inputs from the community, the Bar, and the bench.³ The public comment period was open for six weeks and closed on March 15, 2023.

As part of its evaluation, the Commission: (i) reviewed Judge Epstein's application and written submissions, (ii) conducted interviews with individuals identified as having worked closely with Judge Epstein during his judicial tenure and legal practitioners who have appeared before him; (iii) reviewed information shared through *inter alia* online surveys and emails, (iv) evaluated Judge Epstein's assignments and appellate record; and (v) reviewed his Commission's files.⁴ On April 12, 2023, the Commission conducted its interview of Judge Epstein and met with Chief Judge Anita Josey-Herring who confirmed Judge Epstein's qualifications and strongly supported his reappointment as an Associate Judge.

² Judge Epstein's medical forms were reviewed by the Commission's physician who did not have additional questions or concerns regarding Judge Epstein's medical fitness.

³ See Commission Press Release at [Tenure Commission Conducting Reappointment Evaluation of Judge Anthony C. Epstein | cjdt \(dc.gov\)](https://www.cjdt.dc.gov/tenure-commission-conducting-reappointment-evaluation-of-judge-anthony-c.-epstein) (Feb. 1. 2023). As part of its broad solicitation of inputs and commentary, the Commission contacted numerous highly regarded legal institutions and organizations in the District of Columbia to encourage input and commentary from a wide range of practitioners who have appeared before or worked with Judge Epstein. To encourage candid and open feedback on a judge's judicial service and performance, inputs and commentary received by the Commission are treated confidentially, absent the consent of the commenter.

⁴ The Commission's files include, among other things, Annual Financial Reports filed by Judge Epstein, DC Bar Evaluations, complaints received and resolved by the Commission over his fifteen (15) year career, judicial timesheets, and correspondence with the Commission.

Overview

Judge Epstein began his tenure on August 24, 2008, following his appointment by President George W. Bush and confirmation by the United States Senate. During his tenure as an Associate Judge on the Superior Court, Judge Epstein has served in the three largest and most complex divisions of the Court: the Criminal and Civil Divisions, and the Family Court. He is known for his extraordinarily work ethic, his sound legal judgement, his integrity and sense of decency, and his commitment to fairness. He has held both formal and informal leadership positions including, most recently, as Deputy and then Presiding Judge of the Civil Division until 2022 and the Court of Appeals designee to the District of Columbia Access to Justice Commission. Judge Epstein is widely respected by his judicial colleagues, staff, and those who appear before him. During his tenure, he has presided over an impressive 171 jury trials and 563 bench trials and major evidentiary hearings.

Judicial Assignments, Leadership Roles, and Committees

Judge Epstein's written submission provided a comprehensive review of his judicial assignments and activities since his appointment as an Associate Judge in 2008. His experience in the various calendars of the Court is significant. Since January 2023, Judge Epstein has served in the Criminal Division⁵ where he is assigned to a Felony 1 calendar and presides over cases involving homicides, sexual assaults, and other violent crimes. Previously, from 2018-2022 and 2012-2013, he was assigned to the Civil Division where he served as the Deputy Presiding Judge from 2019-2020 and then Presiding Judge from 2021-2022. During his leadership of the Civil Division, Judge Epstein maintained an active calendar of cases while also covering other calendars,

⁵ Judge Epstein previously served in the Criminal Division from 2010-2011, and in 2017.

as needed, such as Landlord-Tenant court and the mortgage foreclosure matters. Judge Epstein served in the Domestic Relations Branch of the Family Court from 2014-2016.

In addition to his calendar responsibilities and Civil Division leadership and management roles, the Commission noted that Judge Epstein served on more than ten important Court Committees,⁶ most of which focus on judicial ethics and training (including ethics training of new judges and law clerks), rules re-drafting and implementation, and the fair access to justice.

Judge Epstein's strong commitment to assuring fair access to justice is particularly noteworthy. While he was the Deputy and Presiding Judge of the Civil Division, Judge Epstein was appointed by the Chief Judge of the District of Columbia Court of Appeals to serve a four-year term on the District of Columbia Access to Justice Commission. The appointment gave Judge Epstein an opportunity to strengthen the DC Court's partnership with legal services organizations that work to improve access to justice in the DC Courts for all members of the community, regardless of whether they can afford or secure representation by counsel.

Judge Epstein's dedication to helping self-represented parties is long-standing. For example, when he joined the Civil Division for the first time in 2012, on his own initiative, he drafted ~~on~~ a handbook for self-represented litigants, which has become a standard resource to guide self-represented litigants through the civil court process. At the request of the Chief Judge in 2014, Judge Epstein led the drafting of a similar handbook for domestic relations cases, which also has

⁶ Notably, these Committees include: (i) the Advisory Committee on Judicial Conduct which consists of three Court of Appeals judges and two Superior Court judges; (ii) Committee on Superior Court Rules; (iii) the Advisory Committee on Criminal Rules; (iv) the Advisory Committees on Civil Rules, Landlord and Tenant Rules, and Small Claims Rules; (v) the Jury Management Committee; (vi) the Superior Rules for Domestic Relations Proceedings; (vii) the Superior Court Jury Instruction Committee (serving as co-chair or chair for ten years); and (viii) Judicial Education Committee.

become a standard resource for self-represented litigants in divorce and custody cases. There is no doubt these tools have made a lasting and positive impact on those who appear in the DC Courts.

Appellate Record and Designation on the Court of Appeals

The Commission reviewed Judge Epstein's strong appellate record and noted that most of his legal rulings were upheld by the District of Columbia Court of Appeals. The Commission noted that Judge Epstein also sat by designation on the Court of Appeals on six occasions, during which he authored two published opinions, as well as had one published concurring and one dissenting opinion. He was responsible for the primary drafting of four unpublished opinions.

The Commission reviewed Judge Epstein's two published appellate decisions: *Potomac Development Corp. v. District of Columbia*, 28 A.3d 521 (D.C. 2011); and *Miller v. D.C. Office of Employee Appeals*, 237 A.3d 123 (D.C. 2020). The Commission found both decisions to be representative of the Judge Epstein's reputation as a jurist; they are each well-written opinions that include sophisticated, thoughtful reasoning that is well-supported by appropriate legal analysis and applicable precedent. The *Potomac Development Corp.* decision is frequently cited because it adopted the "plausibility standard" for motions to dismiss under Rule 12 (b)(6) of the Superior Court Rules of Civil Procedure. Based on his judicial record, it is no surprise to this Commission that Judge Epstein has twice been nominated for vacancies on the Court of Appeals by the District of Columbia Judicial Nomination Commission (in 2020 and again in 2022).

Commentary by Judge Epstein's Colleagues and the Community

While Judge Epstein's reputation for efficiency, decision-making, and case management is remarkable, his leadership and service to the DC Courts, his colleagues, and the community are particularly impressive. The Commission often receives supportive inputs from judicial colleagues on reappointment matters. The inputs for Judge Epstein, however, were special.

For example, the Commission had the opportunity to review several letters of recommendation by colleagues and former staff in support of Judge Epstein's nomination for the Court of Appeals. The letters speak to Judge Epstein's integrity, patience and courtesy, judicial temperament, strong intellect and extensive knowledge of procedural matters, and his selflessness in mentoring and teaching others. In communications with the Commission regarding Judge Epstein's reappointment, his colleagues were unwavering and effusive in their support and praise of Judge Epstein noting his selfless dedication to helping others. One judge and now-former colleague, Hon. Florence Y. Pan who was appointed to the United States Court of Appeals for the District of Columbia Circuit in 2022, said "Judge Epstein is one of the finest judges I have been privileged to know. I have now had colleagues on three different courts, and Judge Epstein is still one of the ones whom I admire most." Among other observations, Judge Pan noted that Judge Epstein is respected and beloved by his staff, his colleagues, and even by those "who are deftly and gently 'managed' by him." Another colleague, Judge Jason Park remarked:

"Judge Epstein is one of the finest judges on our bench. He remains for me an invaluable source of wisdom and support. I've had the pleasure to serve with him on a variety of committees, including the Rules Committee, where his insights and preparation are greatly respected and have contributed again and again to improving the functioning of the Superior Court in innumerable ways. His ability during spirited debates among our colleagues to bridge differences of opinion and find consensus has been critical to the court in this challenging time. He leads through generosity and hard work and is as important to this court as anyone in our courthouse."

The observations by Judge Pan and Judge Park were entirely consistent with other information gathered by the Commission.⁷ Judge Epstein was praised for his thoughtful and empathetic leadership of the Civil Division, which frequently included his efforts to ensure that all stakeholders, including staff, litigants, lawyers, and members of the public were allowed to express

⁷ The Commission received comments from the Bar and the public, as well as Court staff.

their views on the issues facing the Court, including but not limited to access to justice concerns. As commenters noted, he is known for having a patient and respectful judicial temperament with litigants and lawyers in his court room and being especially thoughtful and compassionate with *pro se* litigants. He also was praised for his leadership during the unprecedented COVID-19 pandemic from 2020-2022, and his extraordinary efforts to bring civil trial proceedings online to keep cases moving.

Consistent with the views expressed in letters supporting Judge Epstein's elevation to the Court of Appeals, the Commission found that Judge Epstein is a passionate trainer and mentor of newer judges and law clerks. The Commission was particularly impressed by one such letter, written by three newer judges in March 2020, and their follow-up remarks to this Commission. Associate Judges Kelly Higashi, Shana Matini, and Jason Park remarked:

While we would have felt fortunate to be assigned to any calendar in any division of this court, now that we have worked for several months under the management and tutelage of Judge Epstein, we realize we have won the lottery of judicial appointments. While many judges view the extremely demanding, high-volume Civil II calendar as a difficult assignment, we have had the unique privilege to learn from and be inspired by one of the most learned, thoughtful, wise, and generous judges on this court. . . . Judge Epstein is known throughout the Superior Court for his integrity, his sense of decency, and his commitment to fairness. He is also one of the hardest-working and most productive judges on the court.

Judge Higashi added in response to this Commission's reappointment inquiry: "[Judge] Tony Epstein is one of the finest judges on this Court and I give my strongest endorsement for his reappointment." Judge Higashi further noted Judge Epstein's mastery of "the law, procedure, and practical skills needed to administer justice at the highest level, not just in the Civil Division, but in every division of the Court," adding that some of the best training materials and outlines used in the Family Court (Domestic Relations calendar) to train judges in this assignment were created by Judge Epstein. Judge Shana Matini pointed to Judge Epstein's demonstrated "grace under

pressure,” especially during the COVID-19 pandemic as Court leadership, judges, and staff transformed the way the Court conducted its work.

The Commission found the observations of his current and former colleagues to be astute and accurate assessments of Judge Epstein’s reputation, character, and qualifications as an Associate Judge. He is clearly a role model for others.

Interview of Judge Epstein

The Commission interviewed Judge Epstein on April 12, 2023. The Commission focused not only on Judge Epstein’s qualifications but his reasons and motivation for seeking a second fifteen (15) year term.

The Commission unanimously found Judge Epstein to be an enthusiastic judge who embraces the role of a respected, dedicated jurist and all that it entails. It is not just a job; it is a calling that he finds to be both personally and professionally rewarding. The Commission was particularly impressed by Judge Epstein’s commitment to mentoring other judges and staff, and the importance of this role given the increased pressures on the DC Courts due to the increasing caseloads, judicial shortages in the DC Courts, and the COVID-19 pandemic.

In discussing his mentorship, the value of his commitment to supporting his colleagues, and his reputation as a judge with the Commission, Judge Epstein humbly said: “I am as enthusiastic about my calling now as I was when I became a judge. The satisfaction and challenge are undiminished. I continue to be immensely grateful for the opportunity to serve as a judge, and I would appreciate the opportunity to do so in a second term.”

Interview of Chief Judge Anita Josey-Herring

Chief Judge Josey Herring concurred with inputs the Commission received during its evaluation of Judge Epstein. She shared that Judge Epstein is universally well-respected by all the

judges on the Court and pointed out that many newer judges will seek out Judge Epstein for his gifted and thoughtful mentorship. She reported on the importance of Judge Epstein's able leadership of the Civil Division during the challenges presented by the global pandemic, not only moving to virtual hearings but then working with stakeholders to assess when and how to get staff, judges, and litigants safely back into the court building. She noted that Judge Epstein's tenure as Presiding Judge of the Civil Division coincided with a period in which there was a significant shortage of Associate Judges, a problem compounded by unexpected retirements of three Civil Division judges. Judge Epstein took personal responsibility to help resolve a significant number of unresolved motions and bench trials during the periods, even while carrying significant management responsibilities when he was Deputy Presiding and then Presiding Judge of the Civil Division. Chief Judge Josey-Herring praised Judge Epstein's thoughtful, reassuring and sensitive leadership during this difficult time. She also commented on his impressive work ethic, his promptness in issuing opinions and decisions and his ability to manage his docket effectively and efficiently.

Commission Files and Medical Fitness

The Commission has examined its own files containing historical information regarding Judge Epstein's tenure on the Court and found nothing in its files to cause concern. The Commission has received a modest number of complaints regarding Judge Epstein, none of which were deemed to be serious and each of which was dismissed "at first review" for lack of jurisdiction or lack of merit. The Commission noted that several of the complaints were filed by the same complainant who also has made similar complaints against other judges, sometimes related to the same case. Judge Epstein was evaluated in DC Bar Surveys in 2015-2016, 2018-2019, and 2021-2022. The DC Bar Evaluations were consistent in praising Judge Epstein for his

intellect, fairness, and management of cases. While a few anonymous commenters critiqued his demeanor and temperament, other anonymous commenters praised his demeanor. Judge Epstein has filed all required Annual Financial Reports.

Further, and importantly, the Commission has reviewed the report from Judge Epstein's physician who stated that he is in very good health and mentally and physically fit to continue performing judicial duties.

The Commission's Recommendation of Well Qualified

The Commission reserves the recommendation of "well qualified" for those judges whose work product, legal scholarship, dedication, efficiency, and demeanor are exceptional on the bench, and where the candidate's performance consistently reflects credit on the judicial system.

The Commission finds that Judge Epstein is clearly well-suited for this designation and unquestionably deserves reappointment. Not only is he a valuable member of the Court, but he also has an extraordinary work ethic, takes great pride in his work, understands the need for the bar and litigants to have trust and confidence in the Courts, and he is willing to make hard decisions that will eventually result in a more efficient and fair institution. He is compassionate and empathetic to those most vulnerable in our society, and he fully embraces the duties and responsibilities of judicial office. Simply put, his presence, dedication, and leadership make the DC Courts better and stronger.

For the foregoing reasons, the Commission finds that Judge Epstein's judicial service merits his automatic reappointment to the bench. His performance as a judge has been exemplary and has entitled him to a rating in the highest category in which this Commission is statutorily empowered to place a judge.

We therefore determine Judge Anthony C. Epstein to be well qualified for reappointment and his term shall be automatically extended for a full term of fifteen years from August 24, 2023.

Respectfully submitted,

DISTRICT OF COLUMBIA COMMISSION ON
JUDICIAL DISABILITIES AND TENURE



Hon. Colleen Kollar-Kotelly
Chairperson



Hon. Diane M. Brenneman
Vice Chairperson



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Nikki Sertsu



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Amy L. Bess, Esq.

cc: The Honorable Anthony C. Epstein