

**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 Heidi M. Pasichow

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 Heidi M. Pasichow, Associate Judge, Superior Court of the District of Columbia.

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

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

Sincerely,



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 the Reappointment of the Honorable Heidi M. Pasichow

Dear Mr. President:

The District of Columbia Commission on Judicial Disabilities and Tenure is pleased to report that it has determined Honorable Heidi M. Pasichow to be well-qualified for reappointment as an Associate Judge of the Superior Court of the District of Columbia.¹ Given Judge Pasichow's judicial service and her long-standing and commendable contributions to the court, her colleagues, and the community, a majority of the Commission found her to be 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 Pasichow's term shall be automatically extended for a full term of fifteen years upon the expiration of her 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.

¹ Six (6) Commissioners voted that Judge Pasichow to be "well qualified" for reappointment. One (1) Commissioner voted Judge Pasichow to be "qualified" for reappointment.

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.”² 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

² 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.*

her assigned duties or whose strong positive attributes are materially offset, but not overcome, by negative traits. A finding of “unqualified” means the Commission has found the judge to be unfit for judicial service.

The Commission’s Evaluation of Judge Pasichow as “Well Qualified”

Judge Pasichow formally declared her candidacy for reappointment on January 25, 2023 and submitted her application materials on February 24, 2023, in advance of the statutory deadline. Her materials included updated medical forms confirming her medical fitness for service.³ Thereafter, the Commission publicly announced Judge Pasichow’s candidacy and opened a public comment period seeking inputs from the community, the Bar, and the bench.⁴ 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 Pasichow’s application and written submissions, (ii) conducted interviews and information shared through *inter alia* online surveys and emails, (iv) evaluated Judge Pasichow’s assignments and appellate record; and (v) reviewed her Commission’s files.⁵ On April 12, 2023, the Commission conducted its interview of Judge Pasichow and met with Chief Judge Anita Josey-Herring who confirmed Judge Pasichow’s qualifications and strongly supported her reappointment as an Associate Judge.

³ Judge Pasichow’s medical forms were reviewed by the Commission’s physician who did not have additional questions or concerns regarding Judge Pasichow’s medical fitness.

⁴ See Commission Press Release at [Tenure Commission Conducting Reappointment Evaluation of Judge Heidi M. Pasichow | cjdt \(dc.gov\)](#) (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 Pasichow. To encourage candid and open feedback on the judges’ judicial service and performance, inputs and commentary received by the Commission are treated confidentially, absent the consent of the commenter.

⁵ The Commission’s files include, among other things, Annual Financial Reports filed by Judge Pasichow, DC Bar Evaluations, complaints received and resolved by the Commission over her fifteen (15) year career, judicial timesheets, and correspondence with the Commission.

Overview

Judge Pasichow began her judicial tenure on August 24, 2008, following her appointment by President George W. Bush and confirmation by the United States Senate. She came to her judicial role having served for twenty-four (24) years as an Assistant United States Attorney in the District of Columbia and before that as a judicial law clerk in D.C. Superior Court for the Honorable Sylvia Bacon, one of the earliest female judges to serve in the D.C. Courts. During Judge Pasichow's tenure as an Associate Judge, she has served on the largest and most complex divisions of the Superior Court including: the Criminal, Civil, and Domestic Violence Divisions, and the Family Court. She is known for her hard work, her commitment to justice, fairness, and the community through on and off the bench activities. She has held leadership positions on the Court, most notably as Presiding Judge of the Criminal Division's Mental Health Community Court (MHCC) from 2017-2018. She is respected by her judicial colleagues, staff, and many who appear before her. During her tenure, she has presided over hundreds of evidentiary hearings, as well as bench and jury trials.

Judicial Assignments, Leadership Roles, and Committees

Judge Pasichow's written submission provided a comprehensive review of her judicial assignments, activities, and service since her appointment as an Associate Judge. Her statement of candidacy highlights her many accomplishments during her 15-year tenure, including a timeline of her contributions to court administration and legal education. Her experience is varied, her assignments challenging, and her contributions important.

Since January 2023, Judge Pasichow has served in the Criminal Division⁶ where she is

⁶ Judge Pasichow previously served in the Criminal Division from 2010-2011, and in 2017.

assigned to a Felony II calendar and presides over a wide range of criminal matters, including violent crime. Previously, she served in the Domestic Violence Division from 2008-2010, the Criminal Division (Felony II) from 2011-2013, Family Court from 2014-2016, the Civil Division – Mental Health Community Court from 2017-2018, and the Civil Division from 2019-2022.⁷ While each calendar presented its own significant challenges and requirements, the Commission recognized that the MHCC as particularly important given its specialized mission and important role in our community. The MHCC, established in 2007 by Administrative Order No. 07-03, is a specialized court that “focuses on criminal defendants diagnosed with a serious and persistent mental illness, or with mental illness and co-occurring substance abuse disorders.”⁸ Given the number of essential stakeholders, including MHCC Staff Coordinators, the Superior Court Urgent Care Clinic, District of Columbia's Pretrial Service Agency Specialized Supervision Unit (SSU), D.C. Court Offender and Supervision Agency (CSOSA), St. Elizabeth's Hospital Staff, the U.S. Attorney's Office, the D.C. Office of the Attorney General, and the D.C. defense bar, the calendar required extensive management and coordination responsibilities.

During her judicial tenure, Judge Pasichow has dedicated much to public service and legal education. In addition to her calendar responsibilities, every year since 2010, Judge Pasichow has served on at least one Court Committee and taken on projects to improve the administration of justice.⁹

⁷ The Commission noted Judge Pasichow's commitment and dedication when she assumed a particularly challenging and large civil calendar in 2019, which required significant work to reduce the backlog.

⁸ [MentalHealthCommunityCourtCaseManagementPlan.pdf \(dccourts.gov\)](#)

⁹ Those Committees included: Domestic Violence Rules Advisory, 2010-2014; Security, 2012-2015, 2017-2020, 2022; Jury Management, 2013, 2015; Family Court Juvenile Subcommittee, 2014; Mental Health Community Court, Chair, 2017-2018; Mental Health Community Court, 2021, 2023; Pretrial Mental Examination and Urgent Care Clinic, 2017-2018; Selection and Tenure of Magistrate Judges, 2021-2023; Criminal Justice Act (CJA) Vouchers, 2023; CJA Investigators, 2023; Public Education & Court Independence, 2023.

Among other things, she served on a working Group, to draft, complete, and distribute the "Family Guide to the District of Columbia Juvenile Justice System" in December 2015 which served as a guide to parents and family members of juvenile participants about the handling of juvenile cases in the D.C. Superior Court. She was selected to attend the 7th Annual Juvenile Justice Summit sponsored by the Criminal Justice Coordinating Council for the District of Columbia, and by September 2016 was responsible for reconstituting the working group for the Truancy Court's Truancy/Runaway Court Implementation Committee. She also worked with the U.S. Attorney's Office and the Office of the Attorney General to approve diversion agreements for certain offenders charged with domestic violence while appropriately addressing evidentiary and safety concerns of witnesses and Agreement enforcement.

Judge Pasichow belongs to several professional associations. Numerous awards and honors have been bestowed for her achievements in the legal profession. She has published legal articles. She also participated in the work of updating the Domestic Violence rules as a member of the Domestic Violence Rules Advisory Committee for over four years. Indeed, her appointment through 2014 culminated in the issuance of the District of Columbia Domestic Violence Rules that were consistent with the D.C. domestic violence statute.

Further, the Commission paid special attention to Judge Pasichow's contributions and service to the National Association of Women Judges (NAWJ), including leadership roles as District of Columbia Chapter Chair, DC Area Director (DC, MD, VA), Finance Committee Chair, Vice President for Publications, Committees Liaison, and Treasurer. As Judge Pasichow noted in her application materials:

The NAWJ mission is to promote the judicial role of protecting the rights of individuals under the rule of law through strong, committed, diverse judicial leadership; fairness and equality in the courts, and equal access to justice. This

mission exactly matches the proactive and often leading role I have pursued in the Superior Court of the District of Columbia, as described in detail in section I of this application where I describe my specific efforts in various Court Divisions. I have learned much from my colleagues in the NAWJ, not only about specific issues of law but also the power and positive impacts of collaborative efforts toward reaching and providing fair and equal access in the judicial system, lessons I have endeavored to make part of my work on the bench. My work in NAWJ is a fine example of how a community of judges can inspire and inform an individual judge in her work for all the parties that come before her.

The Commission recognizes the critical importance of diversity in our local courts and engagement by judges in the community they serve as well as in improving the judicial system as a whole.

Appellate Record and Designation on the Court of Appeals

The Commission reviewed Judge Pasichow's appellate record and noted that of the two hundred sixteen (216) decisions appealed to the District of Columbia Court of Appeals, rarely were her decisions reversed. The Commission reviewed several written opinions provided by Judge Pasichow and found them to be well-written opinions that include sophisticated, thoughtful reasoning that is well-supported by appropriate legal analysis and applicable precedent.

Judge Pasichow's Performance, Demeanor and Temperament

The Commission had the opportunity to review inputs in response to the Commission's outreach, including comments that had been received in response to the Commission's solicitation to the bar and the public for information bearing on the Judge's qualifications for reappointment. The Commission also conducted several interviews of Court staff, judges, and attorneys who appeared before Judge Pasichow in connection with her candidacy.

The Commission found there was favorable support for Judge Pasichow's reappointment. The Commission further observed that Judge Pasichow has earned a reputation of a caring, thoughtful jurist and a helpful colleague who is dedicated to her role as a judge and the D.C. Courts and cares about the people who appear before her as well as the serious legal and human issues

presented for her to decide. She also has been complimented for her dedication to teaching, a role she has embraced throughout her legal career.¹⁰

Judge Pasichow did receive some negative commentary which the Commission discussed with her without attribution.¹¹ These critiques touch on a theme that has been a challenge for Judge Pasichow based on her approach to affording all litigants an opportunity to be fairly and fully heard, sometimes at the expense of calendar management.¹² Judge Pasichow believes that each litigant should have the opportunity to be heard in her courtroom regardless of whether they have a winning argument. She has explained that she cares deeply litigants do not feel they get lost in the system. While admirable, at times this approach can lead to long courtroom days, challenging exchanges, and slow decision-making. The Commission has discussed these criticisms with Judge Pasichow at length, including its belief that all judges must appropriately and carefully balance a litigant's right to be heard with the critical importance of calendar management and timely decisions from the court. Based on its discussions with Judge Pasichow and Court leadership, the Commission is confident that Judge Pasichow has and will continue to improve in this area while not losing her important considerations for those who appear before her.

Interview of Judge Pasichow

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

¹⁰ She currently is an Adjunct Professor at Georgetown University Law School where she teaches Trial Advocacy, and she often is called upon to provide training to her colleagues.

¹¹ The Commission had previously met with Judge Pasichow in response to certain DC Bar Surveys. Judge Pasichow was evaluated in 2015-2016, 2018-2019, and 2021-2022. Certain comments raised similar criticisms regarding Judge Pasichow's management, style, and approach.

¹² The Commission also understands that Judge Pasichow was handling a full calendar while managing serious family health issues during COVID and a few years prior thereto. Both of her parents passed away during this period.

The Commission found Judge Pasichow to be a dedicated and committed judge who constantly challenges herself to make the “right” decisions. Judge Pasichow took to heart criticism she has received. She explained where she has made improvements, sought mentorship from colleagues and leadership, and she shared her goals for continued improvement. The Commission found Judge Pasichow to be very self-aware and open to continued growth while maintaining the exacting standards required for jurists in the D.C. Courts. The Commission was particularly impressed by Judge Pasichow’s commitment to mental health and access to justice, increasing meaningful diversity in the courts, and teaching. Last, the Commission noted Judge Pasichow’s commitment to her role and her enthusiasm to continue her service. “I am purposeful and excited about continuing my role on the bench in service to the Court and to the community,” she wrote in her application.

While bringing the rule of law to all of my work as Associate Judge, I strive to engage all communities involved in the judicial process: those who come to the courthouse to find vindication or to right perceived wrongs; those who seek a lawful means of protection and security; those who seek closure through decisions from a bench or a jury process that provides the opportunity for all litigants to be heard and to feel respected; those fellow jurists on the Superior Court and other courts; and those colleagues in other government and nongovernment agencies whose expertise and experience contribute toward resolving the concerns of all litigants.

While no judge is perfect at every moment, the Commission finds that Judge Pasichow’s words are certainly consistent with her overall record.

Interview of Chief Judge Anita Josey-Herring

The Commission met with Chief Judge Anita Josey-Herring who furnished additional information concerning Judge Pasichow’s qualifications, contributions, leadership, and commendable service to the Court. Chief Judge Josey-Herring concurred with inputs the Commission received during its evaluation of Judge Pasichow. She shared that Judge Pasichow is

well-respected among her colleagues. She further praised Judge Pasichow for her consistent efforts to grow and improve as a judge, a trait not all judges share. She further recognized Judge Pasichow's commitment and value to the Court and recommended her for reappointment.

Commission Files and Medical Fitness

The Commission has examined its own files and, other than the issues noted above, found nothing in its files to cause concern on her reappointment.¹³ The Commission has received a modest number of complaints regarding Judge Pasichow, none of which were deemed to be serious and each of which was dismissed for lack of jurisdiction or lack of merit. The Commission noted that several of the complaints were filed by the same complainant who also had made similar complaints against other judges, sometimes related to the same case. Judge Pasichow has filed all required Annual Financial Reports.

Further, and importantly, the Commission has reviewed the report from Judge Pasichow's physician who stated that she 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 Pasichow is well-suited for this designation and deserves reappointment. Not only is she a valuable member of the leadership team of the Court, she is also collaborative, thoughtful, and proactive supporting the Court and the community, she has a strong

¹³ The Commission previously had been in touch with Judge Pasichow on delay and related concerns. The Commission was aware of the significant civil calendar Judge Pasichow took over from a now retired judge, as well as the additional burdens caused by her family medical challenges.

work ethic and remains committed to her role as a judge, she takes great pride in her work, and she understands the importance that the Bar and litigants have trust and confidence in the Courts. She is compassionate and empathetic to those most vulnerable in our society, and she fully embraces the duties and responsibilities of judicial office, including the willingness to make hard and possibly unpopular decisions that will eventually result in a more efficient and fair institution.

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

We therefore determine Judge Heidi M. Pasichow to be well qualified for reappointment and her term shall be automatically extended for a 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
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cc: The Honorable Heidi M. Pasichow