

**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

September 27, 2023

Edward N. Siskel, Esq,
Counsel to the President
The White House
1600 Pennsylvania Avenue, NW
Washington, D.C. 20500

Re: Evaluation Report for the Reappointment of the Honorable Alfred S. Irving, Jr.

Dear Mr. Siskel:

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 Alfred S. Irving, Jr., Associate Judge, Superior Court of the District of Columbia.

In summary, the Commission has conducted a thorough evaluation of Judge Irving's performance, and it has determined by a unanimous vote that Judge Irving is well qualified for reappointment to another term. Therefore, and in accordance with the statute, Judge Irving's term shall be automatically extended for a full term of fifteen years upon the expiration of his current term on December 1, 2023.¹

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

Sincerely,



Amy Conway-Hatcher
Special Counsel

cc: Hon. Colleen Kollar-Kotelly, Chairperson
Hon. Diane Brenneman (Ret.), Vice Chairperson
Cheryl Bozarth, Executive Director

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.

**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

September 27, 2023

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

Re: Evaluation Report - Reappointment of Judge Alfred S. Irving, Jr.

Dear Mr. President:

The District of Columbia Commission on Judicial Disabilities and Tenure is pleased to report that it has unanimously determined Judge Alfred S. Irving, Jr. to be well qualified for reappointment as an Associate Judge of the Superior Court of the District of Columbia. Given Judge Irving's judicial service and his long-standing and commendable contributions to the court, his colleagues, and the community, the Commission unanimously finds him to be deserving of the highest category in which it is statutorily empowered to designate a judge seeking reappointment. Therefore, and in accordance with statute, Judge Irving's term shall be automatically extended for a full term of fifteen years upon the expiration of his current term on December 1, 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 find 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. The Commission will find a judge "unqualified" if he or she is found to be unfit for judicial service.

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

Judge Irving formally declared his candidacy for reappointment on February 8, 2023, and submitted his completed application materials on May 30, 2023, in advance of the statutory

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.*

deadline. His comprehensive materials included information about his: (i) youth and values, (ii) many professional and life accomplishments; (iii) contributions to the Court and the community, (iv) service on Court committees and working groups, (v) appellate record, including selected DC Court of Appeals decisions and related Orders, and (vi) updated medical forms from his physician confirming his medical fitness for service. The Commission publicly announced Judge Irving's candidacy on April 12, 2023, and opened a public comment period seeking input from the community, the Bar, and the bench. The public comment period remained open for over two months until June 19, 2023.²

As part of its evaluation, the Commission: (i) reviewed Judge Irving's application and written submissions, (ii) conducted interviews; (iii) reviewed public comments and other information shared with the Commission during the public comment period, (iv) evaluated Judge Irving's assignments and appellate record; and (v) reviewed the Commission's records.³ On June 26, 2023, two Commissioners met with Judge Irving for an initial interview and background information. The full Commission met with Judge Irving on July 12, 2023. The Commission also met the same day with Chief Judge Anita Josey-Herring who confirmed Judge Irving's qualifications and strongly supported his reappointment as an Associate Judge.

² See Commission Press Release at [Tenure Commission Conducting Reappointment Evaluation of Judge Alfred S. Irving, Jr. | cjdt \(dc.gov\)](#) (April 12, 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 Irving. 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. (The Commission extended the public comment period for Judge Irving on May 31, 2023 until June 19, 2023. ([Tenure Commission Extends the Public Comment Period for Reappointment Evaluation of Judge Alfred S. Irving, Jr.](#)))

³ The Commission's files include, among other things, Annual Financial Reports filed by Judge Irving, 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 Irving was appointed to the Superior Court by President George W. Bush in 2008. Prior to his appointment, he held positions in the private and public sectors, including fourteen years as a trial attorney in the United States Justice Department in the Civil, Criminal, and Environment and Natural Resources Divisions. In 2007, he was selected to serve as a Magistrate Judge in Superior Court by then-Chief Judge Rufus King III. In that role, he handled an extraordinary number of cases and served closely with the leadership of the Civil Division until his appointment as an Associate Judge by President Bush. Judge Irving's strong work ethic, life experiences, and almost two decades of litigation experience provided a strong foundation for his work as a Magistrate Judge and as an Associate Judge. His commitment and experience enabled him to make impactful contributions in service on important Court committees and working groups.

During Judge Irving's tenure as an Associate Judge, he has served in every division in the Superior Court except the Domestic Violence Division. He is highly respected by his colleagues, staff, and litigants, and he is known for his even temperament, exceptional judgment, sense of fairness, collegiality, and integrity. His leadership roles in his first term included Deputy Presiding and Presiding Judge of the Probate and Tax Divisions. Currently, he serves as the Deputy Presiding Judge of the Civil Division. During his tenure, Judge Irving has not only presided over thousands of matters, he has also dedicated substantial time to court excellence and fairness issues and has been instrumental in implementing administrative reforms and improvements to increase the efficiency of and public access to the DC court system.

Judicial Assignments, Leadership Roles, and Committees

Judge Irving's written submission provided a comprehensive review of his judicial assignments and activities since his appointment in 2008. The record of his tenure and assignments

demonstrates that Judge Irving has had a substantial role on the Superior Court. Judge Irving served in nearly every division in the Superior Court and has been repeatedly selected for leadership positions by separate Chief Judges. To date, he has served on: (1) the Civil II calendar from 2008-2010 and 2016; (2) Family Court from 2011-2014; (3) the Criminal Division in 2015; (4) Probate and Tax Divisions from 2017-2020, including as both Deputy Presiding and Presiding Judge; and (5) the Civil I and Civil II calendars in the Civil Division from 2021-present, where now he serves as the Deputy Presiding Judge. During these assignments, Judge Irving often took on additional work, whether it was retaining an old calendar until a successor was sworn in or assuming calendars with larger than normal case backlogs. He works tirelessly to clear backlogs, administer his calendars efficiently and handle matters fairly, while taking special care to assure citizens who appear pro se in our local courts are informed of court procedures and treated with respect. Simply put, he not only serves where he is needed, he often goes above and beyond the call of duty.

Judge Irving has served on several important Court committees, including the Strategic Planning Leadership Council ("SPLC"), Standing Committee on Fairness and Access to the DC Courts, Committee on Selection and Tenure of Magistrate Judges, Committee on Jury Management, Committee on Superior Court Rules, and the Advisory Committee on Judicial Conduct, which is focused on compliance with judicial ethics. While he has contributed in important ways to each of these committees, the Commission was most impressed with Judge Irving's many accomplishments leading the Probate Division.

During his tenure serving in and leading the Probate Division, his notable contributions included improvements in rules, administration, critical access to justice issues, and fee petition guidelines for court appointed fiduciaries. Additionally, he thoughtfully engaged with stakeholders

on a range of important issues, particularly those addressing the care, safety, and the financial needs of persons whom the court has determined lack the capacity to provide such care for themselves and warrant the appointment of a guardian and/or conservator. Judge Irving's leadership and his collaborative work with colleagues and stakeholders on these and other Probate matters, especially during the Covid pandemic, assured that significant reforms will continue during and beyond his tenure. As a result of Judge Irving efforts, these reforms will undoubtedly enhance public access to the courts, further the fair treatment of unrepresented litigants, and improve important public, attorney, and lawmaker education on complex probate matters that impact vulnerable DC residents.

Since 2021, Judge Irving has served in the Civil Division. From 2021 to 2022, he was assigned to a Civil I calendar, which includes the largest, most complex civil matters in the District. In 2023, he was assigned to a high-volume Civil II calendar and began serving as Deputy Presiding Judge for the Civil Division as a whole. Throughout his time in the Civil Division, Judge Irving has presided over cases on both Civil I and Civil II calendars for a variety of reasons. As is his custom, in addition to his significant leadership role and current time commitments as the Deputy Presiding Judge, Judge Irving continues to take on some of the toughest assignments.

For example, Judge Irving presided over the case of *Michael Patrick Murray, et al. v. Motorola, Inc.*, Case No. 2001 CA 008479 ("*Motorola*"), a highly contested and complex civil matter involving 13 consolidated cases and spanning two decades in the courts concerning the safety of certain cell phones. As the fifth judge to preside over this case, Judge Irving had the responsibility to apply a significant and precedential decision from the DC Court of Appeals on the standard that should be applied for preliminary admissibility decisions on expert testimony in the case. On April 25, 2023, in a major decision that was widely anticipated across the country by

legal and industry interests, Judge Irving published an 81-page ruling, finding that none of Plaintiffs' proffered experts were qualified to present testimony on certain risks alleged to be caused by cell phones. In the months that followed, the Commission heard criticisms about Judge Irving's decision by members of the public who were unhappy with his ruling.

The complaints, almost identical in language, centered on: (i) his failure to recuse himself for having worked for MCI telecommunications company after graduating from college and while he attended law school for several years in the 1980s; and (ii) his decision to reject the plaintiffs' experts. As is the case with any reappointment, the Commission carefully reviewed the concerns and criticisms received. The Commission found the concerns presented were without merit and did not suggest any lapses in the quality of Judge Irving's judicial service.

First, the Commission found no information to suggest Judge Irving should have recused himself or that he was requested to do so. MCI is a long defunct corporation with no conceivable tie to the litigation or to Judge Irving that would warrant recusal. Second, although the Commission takes no position on a judge's legal decisions in any matter,⁴ the Commission found Judge Irving's decision in this highly complex matter to be thorough, diligent, thoughtful, scholarly, and clear. The Commission found that his Order was consistent with the high standards Judge Irving is known for and was reflective of a judicial record that demonstrates quality legal scholarship, respect for litigants and lawyers, and diligent and careful application of the law.

Further, and importantly, the Commission commends Judge Irving for maintaining his impartiality and focus on his responsibilities in the face of public criticism and pressure, especially at a time that coincided with his candidacy for reappointment. As is emphasized in the Code of Judicial Conduct for the District of Columbia, it is imperative that judges maintain public

⁴ Ultimately, the DC Court of Appeals has sole jurisdiction over whether Judge Irving's legal decisions in *Motorola* or any other case are accurate and correct.

confidence in their independence, impartiality, integrity, and competence at all times. This is no small task in the life of a judge, and it can be especially difficult during the pendency of high-profile and polarizing matters.

In reviewing Judge Irving's record, the Commission found that over the course of his career and in recent times, Judge Irving has navigated these challenges adeptly. The Commission commends his commitment to justice and fairness, hard work and skill at handling complex matters, and his unwavering commitment to service and the citizens who come before the DC Courts.

Appellate Record

The Commission reviewed Judge Irving's appellate record from his first term, as well as decisions by the Court of Appeals on matters over which he presided. Based on the entirety of his record, the overwhelming number of his decisions affirmed by the Court of Appeals is consistent with the Commission's overall view that he is a thorough, intelligent, and highly competent jurist.

Commentary on Judge Irving's Performance, Demeanor and Temperament

The Commission had the opportunity to conduct interviews and review inputs from the public, litigants, colleagues, and staff on Judge Irving's performance, including his demeanor and temperament. Aside from the criticism in the *Motorola* matter discussed above, there was significant, consistent, and enthusiastic support for Judge Irving's reappointment.

The Commission finds that Judge Irving is polite in the court room and at times deferential to lawyers appearing before him. He is self-aware, fair, patient, respectful, and focused on reaching the correct and just outcome. While the Commission does not publish the names of commentators without permission, the Commission notes that one commentator who has practiced in the District

of Columbia local and federal courts for decades stated that Judge Irving ranked “among the most thoughtful, thorough, considerate, efficient, and responsive jurist[s]” he had encountered. He “dignifie[s] the legitimacy of the issues” litigants bring to his attention and is able to “comprehensibly address the salient issues that warranted decision.” He was also described as a “detailed factfinder with a keen grasp of detail and legal nuance,” and was complimented for his knowledge of legal procedures and his rendering of “fair and accurate judgement[s] in even the most convoluted of cases.” These sentiments were echoed further by others, including his judicial colleagues and staff who, without exception, viewed him as exceptionally well qualified for reappointment and an essential contributor on the court. They also commented on his willingness to mentor and support his colleagues.

One colleague, Senior Judge Jeanette Clark, who has worked with Judge Irving for years, said:

He works very well with colleagues, staff, and the public. Judge Irving is intelligent, fair, and performs his duties in a trusting, sensitive, and timely way. Judge Irving has an excellent judicial demeanor, and he is well-qualified to continue to serve the court and the public.

Another colleague whom the Commission had the pleasure of recommending for reappointment earlier this year, Judge Anthony Epstein, offered this effusive recommendation:

I want to emphasize Judge Irving’s unselfish commitment to the court – his willingness to take on challenging and often unappreciated administrative responsibilities. That includes not only his service as the Presiding Judge of the Probate Division, but also his willingness to see through several probate-related projects (including compensation of guardians) that continued for months after his term ended. The Court and the Civil Division are fortunate that he was willing to take on new responsibilities when he became the Deputy Presiding Judge of the Civil Division this year. He is one of the relatively few judge[s] regularly asked to pitch in because he is always willing to make the time and can be counted on to do a superb job. I would add that Judge Irving is a wonderful colleague – always willing to listen, supportive, encouraging, and good-humored.

Commission Interviews of Judge Irving

Commissioners' interviews with Judge Irving in June and July 2023 further confirmed to the Commission as a whole that he is a personable, engaged judge. The Commission found him to be exceedingly diligent and committed to excellence, as well as thoughtful and reflective about his career on the bench. He takes seriously his commitment to public service and justice. As he wrote in his application to the Commission:

"I have endeavored to make a positive impact on the Court, the District of Columbia community, and the justice system. I have striven to render well reasoned and legally defensible decisions and have endeavored to do so after affording litigants before me a full and fair opportunity to be heard. . . . It is my sincere hope that the Commission will reappoint me for an additional term so that I may continue my service."

Interview of Chief Judge Anita Josey-Herring

The Commission met with Chief Judge Anita Josey-Herring about Judge Irving's candidacy for reappointment on July 12, 2023. Chief Judge Josey-Herring described Judge Irving as an asset to the court. She stated that Judge Irving is handling significant cases that are "consequential to a lot of people," and that he has performed very well. She further stated that he is not only well-liked, graceful, and respectful to all, he also advises and supports his colleagues on the bench. Chief Judge Josey-Herring strongly recommended Judge Irving's reappointment with enthusiasm and without reservation.

Commission Files and Medical Fitness

The Commission has examined its own files containing historical information regarding Judge Irving's tenure on the Court and found no cause for concern. The Commission has received a modest number of complaints regarding Judge Irving, none of which were deemed to be serious and each of which was dismissed for lack of jurisdiction or lack of merit. The Commission

reviewed the anonymous responses summarized in DC Bar Evaluation Surveys of Judge Irving from 2015-2016, 2018-2019, and 2021-2022. Most of the responses were positive and consistent with information collected by the Commission during this reappointment period. Although there were episodic, individual critiques of his knowledge of the law, rulings, or speed in decision-making in a given case, the majority of responses offered high marks on his temperament, intellect, and reputation as a respected jurist.

Judge Irving has filed all required Annual Financial Reports. Further, and importantly, the Commission and its consultant physician have reviewed the report from Judge Irving's physician. The Commission's physician concurred with Judge Irving's physician that he is in good medical condition and is medically fit for service.

Conclusion

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 Irving's dedication, leadership, judicial decision-making, and commitment to access to courts, respect, and justice for all entitles him to the recommendation of well qualified. His dauntless commitment to achieving reform toward fair and timely administration of justice is of praiseworthy note. He clearly embraces his job in every way and is a strong asset to the Court, his colleagues, and the District of Columbia community.

For the foregoing reasons, the Commission finds that Judge Irving's judicial service merits his automatic reappointment to the bench. His performance as a judge has been exceptional. He has well-earned the highest category rating permitted by statute.

We therefore determine Judge Alfred S. Irving to be well qualified for reappointment and

his term shall be automatically extended for a term of fifteen years upon expiration of his term
on December 1, 2023.

Respectfully submitted,

DISTRICT OF COLUMBIA COMMISSION ON
JUDICIAL DISABILITIES AND TENURE



Hon. Colleen Kollar-Kotelly
Chairperson



Hon. Diane M. Brenneman
Vice Chairperson



William P. Lightfoot, Esq.



David P. Milzman, M.D.



Nikki Sertsu



Thomas Fitton



Amy L. Bess, Esq.

cc: Judge Alfred S. Irving, Jr.