

**DISTRICT OF COLUMBIA COMMISSION
ON JUDICIAL DISABILITIES AND TENURE**
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April 18, 2022

COMMISSION PUBLIC STATEMENT

The Commission issues this public statement in connection with a matter that resulted in the retirement of a judge in the Superior Court for the District of Columbia (“Superior Court”).

Purpose of the Public Statement

Public statements are an important tool for the Commission to periodically remind the public, judges, and the courts of the expectations it has for judges’ conduct in both serving the public and interacting with the Commission and its staff on important Commission matters. Further, the Commission may, in its discretion and the public interest, issue public statements to inform the public of the reasons for its actions within the limitations of its statutory powers. Public statements can be particularly important when there is serious misconduct and violations of the Code of Judicial Conduct, and the judge preemptively resigns or retires prior to the completion of the Commission’s investigation and formal proceedings.

For the reasons explained herein, the Commission finds the public interest is best served in this matter by a public statement that, among other things, explains why a judge was not removed pursuant to the Commission’s powers under D.C. Code § 11-1526(a)(2). This statute, in relevant part, authorizes the Commission to remove a judge from office under certain circumstances including, *inter alia*, misconduct in office and conduct that is prejudicial to the administration of justice or which brings the judicial office into disrepute.¹

The Role and Mission of the Commission

The mission of the Commission is to maintain public confidence in an independent, impartial, fair, and qualified judiciary, and to enforce the high standards of conduct judges must adhere to both on and off the bench.

The Commission has two significant statutory obligations in this regard:

¹ See *Halleck v. Berliner*, 427 F. Supp. 1225, 1246 (D.D.C. 1977) (“[T]he Commission may either order removal of the judge or, if it decides that under all the circumstances the judge should not be removed, it may either (a) dismiss the case without making its decision public unless the judge consents, or (b) if it determines that the public interest would be best served by a public announcement of the decision and an explanation of why the judge is not being removed, it may in the sound exercise of its discretion make such a public statement”).

- The Commission has the authority to remove a judge for willful misconduct in office, for willful and persistent failure to perform judicial duties, and for conduct prejudicial to the administration of justice, or which brings the judicial office into disrepute. The Commission also has the authority to retire a judge involuntarily if the Commission determines that the judge suffers from a mental or physical disability which is or is likely to become permanent and which prevents, or seriously interferes with, the proper performance of duties.
- The Commission is responsible for investigating, reviewing, and evaluating the applications of judges seeking reappointment or for those seeking senior status. In the case of reappointments, the President of the United States relies on the Commission's review and recommendation concerning whether a judge is fit to serve an additional fifteen-year term.

To serve its mission, the Commission relies heavily on the candor, truthfulness, and cooperation of the community, judges, court staff, and court leadership who interact with the Commission on important matters.

The Commission has great appreciation for and understanding of the challenges and burdens that judges in the District of Columbia face to meet the extraordinary demands of their roles and responsibilities, especially considering the serious issues they are entrusted to decide, the large number and frequency of judicial vacancies along with expanding caseloads, and the additional burdens presented by disruptive events beyond the courts' control, such as budgetary constraints and the recent Covid-19 pandemic. As appropriate and where possible, the Commission supports judges and the court system in meeting the heavy demands of their obligations to the community.

In return, the Commission and the community expect judges to be accountable for upholding the law and for assuring their own conduct meets or exceeds the highest ethical standards befitting the office they hold and the community they are entrusted to serve. Public confidence in the administration of justice rests fundamentally on a foundation of trust of the judiciary to be ethical in all their professional and personal conduct and to be fair and unbiased in their decisions.

Reappointment Matter and Related Investigation

The Commission was informed that a judge in the Superior Court would seek reappointment as an Associate Judge. The Commission initiated its standard reappointment investigation, evaluation, and review process, consistent with its legal obligations for renominations under Rule 2030 *et seq.*

During the initial stage of its investigation, the Commission received information that the judge had instructed certain witnesses not to disclose particular material information to the Commission that the judge perceived would be detrimental to the Commission's view of the judge's fitness for reappointment. In the following days, the judge made multiple attempts to

reach the witnesses to apologize, acknowledge the judge's lapse in judgment, and retract the request. The judge's request and persistent outreach to the witnesses were unwelcome and very upsetting.

Upon learning of these incidents, the Commission initiated an investigation and convened an emergency meeting. After the emergency meeting and discussions with Superior Court leadership, the Commission requested a meeting with the judge. In addition, Superior Court leadership put the judge on administrative leave pending the Commission's review.

Shortly after the judge's administrative leave and before the judge's meeting with the Commission, the judge notified the Commission that the judge was withdrawing the reappointment request and that the judge had decided to retire.

The judge subsequently admitted to the reported conduct and confirmed to the Commission that the judge would engage in no further judicial activities pending the judge's retirement.

The Commission's Response

While the Commission commended the judge for taking responsibility for the judge's actions, a preemptive retirement to avoid punishment or censure by the Commission does not end the Commission's inquiry.

Although the Commission recognizes the judge's extensive contributions during the judge's career, the Commission cannot ignore egregious conduct where a judge instructs witnesses to lie, withhold material information, or to mislead the Commission.

In this instance, the Commission did not institute removal proceedings given the judge's decision to retire imminently and the procedural requirements for formal proceedings.² However, the Commission remained duty bound to evaluate the judge's conduct in accordance with its statutory obligations and the Canons of the Code of Judicial Conduct for the District of Columbia Courts (2018) (the "Code").

Based on the undisputed facts, the Commission found that:

- The judge's instruction to witnesses to withhold information from the Commission was improper, a serious violation of the Code, and undermined the integrity of the judiciary.
- If witnesses had not objected and complied with the judge's request, such conduct would have impeded and interfered with the Commission's ability to fulfill its statutory obligations in advising the President of the United States.

² The judge would be retired before any formal removal proceedings could be convened under the statute.

- Given the judge's position, the requests of the witnesses were an actual and perceived abuse of power.
- While the Commission commended the judge for retracting the instruction to the witnesses and acknowledging that the request was improper, the Commission also concluded that: (i) the Judge's request violated multiple Rules under the Code and (ii) the judge's conduct undermined the judge's integrity as a judicial officer of the Superior Court.
- Therefore, and despite the judge's years of distinguished service, the Commission found the judge to be unqualified, that is, unfit for further judicial service, including any future service as a judge.

The Commission then took the following steps:

First, the Commission notified Superior Court leadership of the Commission's findings and determinations above including, but not limited to, violations of the Code.³

Second, the Commission found that while such conduct was subject to possible removal from judicial office, the judge's immediate suspension from judicial activity and the decision to retire satisfied the Commission that no further harm would be done to witnesses, the court, or the public.

Third, recognizing the significance of this matter and its potential to undermine the public's confidence in the integrity of the judicial system, the Commission issues this public statement to reaffirm its position that judges, in particular, must hold themselves to the highest ethical standards to maintain the public's trust and confidence in the court system and the judiciary. Judges also must recognize that they are important role models in our society, not just for the public but for young lawyers and court staff. Abuse of their position or their authority will only erode the collective belief and trust in the judicial system that serves our community and that so many judges and court staff work tirelessly and selflessly to uphold.

The Commission commends the witnesses and Superior Court leadership for their professionalism, candor, and immediate response to the matter under such challenging circumstances.

³ The Commission cited to violations of Canon 1, Rule 1.2 (Promoting Confidence in the Judiciary) and Rule 1.3 (Avoiding Abuse of the Prestige of Judicial Office), and Canon 2, Rule 2.12 (Supervisory Duties).

The Commission considers this matter to be closed.

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By: Colleen Kollar-Kotelly
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