

COMMISSION ON JUDICIAL DISABILITIES AND TENURE

NOTICE OF FINAL RULEMAKING

The District of Columbia Commission on Judicial Disabilities and Tenure (the Commission), pursuant to the D.C. Court Reform and Criminal Procedure Act of 1970, effective July 29, 1970 (84 Stat. 473, 91 Pub. L. 91-358; D.C. Official Code § 11-1525(a) (2012 Repl.)) and § 431(d)(3) of the District of Columbia Self Government and Governmental Reorganization Act, effective December 24, 1973 (87 Stat. 774, Pub.L. 93-198), hereby amends its rules contained in Chapter 20 (Judicial Disabilities and Tenure) of Title 28 (Corrections, Courts, and Criminal Justice) of the District of Columbia Municipal Regulations (DCMR).

The amended section of this chapter is § 2037.2.

These rules shall be effective immediately upon publication in the *District of Columbia Register*. D.C. Official Code § 11-1525(a) (2012 Repl.) provides that the Commission is an independent agency; therefore, prior public notice and hearings are not required about Rules adopted by the Commission.

Chapter 20, JUDICIAL DISABILITIES AND TENURE, of Title 28 DCMR, CORRECTIONS, COURTS, AND CRIMINAL JUSTICE, is amended to read as follows:

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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 the D.C. Court Reform and Criminal Procedure Act of 1970, effective July 29, 1970 (84 Stat. 473, 91 Pub. L. 91-358; D.C. Official 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 and/or mental examination by a health care professional designated by the Commission after consultation with the judge. The examination and report shall be made at the judge's expense, unless the Commission grants a waiver based on extraordinary circumstances. Such examination is a condition of continued judicial service.
- 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 shall 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 ANNUAL FINANCIAL REPORTS

2003.1 Each judge of the District of Columbia Courts shall file an Annual Financial Report with the Commission disclosing personal financial interests for the preceding calendar year, in accordance with D.C. Code § 11-1530, as amended. Annual Financial Reports shall be made on forms provided by the Commission and are due on or before the first Monday in June of each year.

2003.2 The Commission from time to time may require a judge to provide information to supplement the Annual Financial Report filed.

2003.3 The public may request access to Annual Financial Reports in accordance with the Rules herein.

2003.4 The Commission's responsibility for monitoring public requests for inspection or release of copies of Annual Financial Reports includes the following:

- (a) The Commission will grant or deny requests for inspection or release of copies of Annual Financial Reports in accordance with D.C. Code § 11-1530, as amended, and the Commission's Rules. The Commission will provide additional guidance if questions arise that are not covered in these Rules.
- (b) At the Commission's discretion, the Commission will grant or deny a judge's request for the redaction of statutorily mandated information where the release of the information could endanger a judge or a member of the judge's family.
- (c) The Commission will not permit public access to any Annual Financial Report unless all Annual Financial Reports due for a calendar year have been received. If judicial requests for extension of time for filing reports have been approved by the Commission, none of the Annual Financial Reports for that calendar year will be available until all extension deadlines have expired and all Reports have been received and accepted by the Commission.

- 2003.5 The Commission will not allow the inspection or release of any Annual Financial Report until: (i) requester has filed a completed CJDT Form 10A and any supplemental information requested by the Commission; (ii) the Commission has approved the requester's CJDT Form 10A; and (iii) written notice has been given to the judge as required by statute and the Commission's Rules.
- 2003.6 All requesters who seek to inspect or receive a copy of an Annual Financial Report must submit a completed CJDT Form 10A to the Commission, as well as any supplemental information requested by the Commission. The CJDT Form 10A is available on the Commission's website. The Form must contain the following information:
- (a) A list of the judges whose Reports are being requested;
 - (b) The requester's name, occupation, telephone number, e-mail, and mailing address;
 - (c) The names and addresses of any other persons or organizations on whose behalf the inspection or copy is requested;
 - (d) Written confirmation that the information provided is true, accurate, and complete; and
 - (e) Written confirmation that the requester will comply with any conditions or limitations the Commission deems necessary regarding access to and use of the Annual Financial Report.
- 2003.7 No reports will be released to any individual who fails to complete a CJDT Form 10A or provide supplemental information requested by the Commission.
- 2003.8 Upon receipt of a request for public access to a judge's Annual Financial Report(s) and a completed CJDT Form 10A, the Commission will notify the judge in writing within five (5) business days of the request. The Commission will provide the judge with a copy of the requester's CJDT Form 10A and allow the judge an opportunity to raise any concerns or request redactions. Absent an approved request for an extension of time, the judge will have ten (10) days from receipt of the Commission's notification to respond.
- 2003.9 Requesters will be notified in writing of the Commission's decision to grant or deny a request for inspection or release of Annual Financial Reports.
- (a) If the Commission grants public access to Annual Financial Reports, the requester will be informed of the Commission's decision, how the report will be provided, and any limitations or requirements the Commission has imposed including but not limited to redactions.
 - (b) If the Commission grants public access by inspection only, the inspection shall occur in the Commission's office by appointment and subject to any

limitations or requirements the Commission has imposed. Appointments must be made at least five (5) business days in advance.

2003.10 A judge may request redaction of his or her Annual Financial Report if the judge believes that revealing personal and sensitive information could directly or indirectly endanger the judge or a family member of the judge if such information was disclosed to a person(s) hostile to the judge or a member of the judge's family.

2003.11 The process for determining whether redaction is appropriate is as follows:

- (a) A judge may request redaction(s) either: (i) at the time of the filing of his or her Annual Financial Report; or (ii) upon notification by the Commission that a public request for access and CJDT Form 10A has been received.
- (b) The judge must state with specificity: (i) the information to be redacted; and (ii) the reasons justifying redaction. These reasons may include but are not limited to:
 - (1) The needs of an ongoing protective detail provided by the United States Marshals Service or the D.C. Courts Security Division;
 - (2) Threats, inappropriate communications, or other conduct that is under review or being monitored for security reasons;
 - (3) Involvement in a high threat trial or appeal;
 - (4) Financial harassment of a judge or a member of the judge's family, such as identity theft, or information that could facilitate such financial harassment; or
 - (5) Information that could endanger the judge or a member of the judge's family, directly or indirectly, if possessed by a member of the public hostile to the judge or a member of the judge's family.

2003.12 If the Commission makes a finding that revealing personal and sensitive information could directly or indirectly endanger the judge or a family member of the judge, the Commission may order the redaction of the judge's Annual Financial Report.

- (a) Information shall be redacted from the Report in accordance with such findings to the extent necessary to protect the judge who filed the Report and his or her family.
- (b) Such redactions shall be maintained for the period during which the Annual Financial Report is maintained by the Commission or as long as the danger to the judge or a family member of the judge exists.

2003.13 No redactions will be granted that eliminate disclosure of the existence of an interest in an entity that would disqualify the judge from serving as a judge in

litigation involving that entity, unless disclosure of that interest would reveal the location of a residence of the judge or a member of the judge's family, reveal the place of employment of the judge or a member of the judge's family.

2003.14 The Commission may also, on its own accord based on information provided by the judge, determine that public dissemination of certain information in the Annual Financial Report could endanger the judge or a member of the judge's family directly or indirectly, and order such redactions it deems appropriate. For example, to minimize security risks, the Commission may:

- (a) Redact information not required by statute including but not limited to:
 - (1) Spouse's and dependents' names;
 - (2) Home addresses;
 - (3) Social security numbers;
 - (4) Financial account and bank account numbers;
 - (5) Street addresses of personal properties, financial institutions, and business properties;
 - (6) Ownership codes; and
 - (7) Judge's signature.

2003.15 The Commission staff will notify a judge in writing when an Annual Financial Report is released or inspected and provide the judge with a copy of the released report with any redactions. The staff will maintain a copy of the redacted material for as long as the original Annual Financial Report is maintained.

2003.16 A judge's request for redaction and its supporting documents, except for copies of the Annual Financial Report and any amendments thereto, are considered confidential and will only be used to determine whether to grant a request for redaction.

2003.17 The Commission will make approved CJDT Form 10As available for public inspection for a three (3) year period but in any event no longer than the retention period for the Annual Financial Report(s) requested.

2003.18 Annual Financial Reports filed with the Commission shall be maintained for a period of three (3) years after filing as required by D.C. Code § 11-1530(c).

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 reappointment for a fifteen (15) year term as an associate judge, or initial appointment or reappointment as a senior judge.

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 shared by the Commission with the Chief Judge of each court:

- (a) The Commission's decisions in proceedings or other public determinations, actions, or statements by the Commission;
- (b) The Commission's evaluations of judges who have been candidates for reappointment;
- (c) The annual reports of the Commission; and
- (d) Any other 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 considered pertinent precedent to be taken into account by the Commission and judges.

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. Each judge shall also be on notice of the advisory opinions of the District of Columbia Courts' Advisory Committee on Judicial Conduct.

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. Official 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. Official 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. Official Code § 15-714 for witnesses in civil cases.

2021.2 All witnesses shall receive the allowances prescribed by D.C. Official 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 ASSOCIATE JUDGE CANDIDATES FOR REAPPOINTMENT

2030.1 Not less than six (6) months prior to the expiration of his or her term of office, a judge seeking reappointment for a fifteen (15) year term as an associate judge shall file with the Commission a declaration in writing of candidacy for reappointment. If a declaration is not so filed by any judge, a vacancy shall result from the expiration of the term of office and shall be filled by appointment in accordance with D.C. Code Title 1 §1-204-33(a)-(c).

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 Contemporaneous with his or her declaration but 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 and accomplishments that the judge believes may be helpful to the Commission in its evaluation of his or her candidacy. The written statement shall include, but is not limited to, a summary of the judge's history of judicial appointments, calendar and committee assignments, training and education, speaking engagements, awards and accolades, community service activities, as well as illustrative materials that highlight the judge's written and analytical skills.

2030.4 All declarations, written submissions, and illustrative materials must be submitted electronically as directed by the Commission or its staff. Paper records will no longer be accepted.

2030.5 Contemporaneous with his or her declaration, but not less than six (6) months prior to the expiration of his or her term, a judge seeking reappointment shall submit on forms 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 his or her judicial duties.

2030.6 When deemed appropriate by the Commission, a judge seeking reappointment shall submit to a physical and/or mental examination by a health care professional designated by the Commission 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 judge's expense, unless the Commission grants a waiver based on extraordinary circumstances. Such examination is a condition of continued judicial service pending the Commission's decision on the request for reappointment.

2030.7 Contemporaneous with his or her declaration, or at the Commission's request, a judge required to submit to an examination as prescribed in §§ 2030.5 or 2030.6 shall provide the Commission or its authorized designee with all waivers and releases necessary to consult with the health care professional and the judge's physician and 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.

2030.8 The failure of a judge to submit to a physical or mental examination or to provide waivers and releases as required by §§ 2030.5, 2030.6, and 2030.7 may be considered by the Commission adversely to the judge.

2030.9 Copies of all medical records, reports, and information received by the Commission shall be provided to the judge at his or her request.

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, as well as the judge's physical and mental fitness and his or her ability to perform judicial duties.

2031.2 The evaluation categories shall include the following:

- (a) Well Qualified – The Commission has determined the candidate's work product, legal scholarship, dedication, efficiency, and demeanor are exceptional, and the candidate's overall performance consistently reflects credit on the judicial system.
- (b) Qualified – The Commission has determined the candidate satisfactorily performs the judicial function and if there are negative traits, they are overcome by strong positive attributes.
- (c) Unqualified – The Commission has determined the candidate is unfit for further judicial service.

2032 COMMUNICATIONS FROM INTERESTED PERSONS

2032.1 The Commission will issue a public notice of the judge's declared candidacy for reappointment, the Commission's fitness review and the public comment period.

2032.2 The general 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. The Commission will give consideration to all materials submitted as to the judge's suitability for reappointment.

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 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 fifteen (15) year 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.

2036.4 The Commission's evaluation determination, in accordance with § 2031 and D.C. Code Title 1 §1-204-33(c), will control eligibility for the reappointment.

(a) **Well Qualified** – If the Commission determines the judge to be Well Qualified, the judge's term shall be automatically extended for another full term upon expiration of the current term, subject to mandatory retirement, suspension, or removal.

(b) **Qualified** – If the Commission determines the judge to be Qualified, the President may nominate the judge, in which case the President shall submit to the Senate for advice and consent the renomination of the declaring candidate as judge. If the President determines not to so nominate the declaring candidate, the President shall nominate another candidate for the position in accordance with the statute.

(a) **Unqualified** – If the Commission determines the judge to be Unqualified, then the judge shall not be eligible for reappointment or appointment as a judge of a District of Columbia court.

2037 EVALUATION OF JUDGES REQUESTING RECOMMENDATION FOR INITIAL APPOINTMENT OR REAPPOINTMENT 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 initial 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 (74th) birthday, in which case the appointment shall be for a term of two (2) years.

2037.2 Contemporaneous with the filing of the request, or at such other time as the Commission allows, such judge shall submit to the Commission a written statement, including illustrative materials, reviewing such significant aspects of his or her judicial activities and accomplishments that he or she believes may be helpful to the Commission in its evaluation of his or her request. The written statement shall include, but is not limited to, a summary of the judge's history of judicial appointments, calendar and committee assignments, training and education, speaking engagements, awards and accolades, community service activities, as well as illustrative materials that highlight the judge's written and analytical skills. The written statement also shall include the hours the judge is eligible to serve as a senior judge, the number of hours the judge intends to serve, and the number of hours the judge has served in the judge's most recent prior senior judge term, if relevant. Further, the written statement shall disclose any current service or intention to serve in a private capacity as a mediator, arbitrator, or legal professional.

2037.3 A judge requesting recommendation for initial appointment as a senior judge not more than four (4) years subsequent to the date of his or her appointment or reappointment as an associate 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 [Repealed.]

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. The term of such appointment shall be for a term of four (4) years unless the judge has reached his or her seventy-fourth (74th) birthday, in which case the appointment shall be for a term of two (2) years.

Contemporaneous with the filing of the request prescribed by § 2037.5, or at such other time as the Commission allows, 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. The written statement shall include, but is not limited to, a summary of the judge's most recent judicial appointments, calendar and committee assignments, training and education, speaking engagements, awards and accolades, community service activities, as well as illustrative materials that highlight the judge's written and analytical skills.

2037.6 A judge who does not file a request within the time periods prescribed in §§ 2037.1 and 2037.5 shall not be eligible for appointment as a senior judge at any time thereafter, except for good cause shown.

2037.7 All requests, written submissions and illustrative materials must be submitted electronically as directed by the Commission or its staff. Paper records will no longer be accepted.

2038 PHYSICAL EXAMINATION AND MEDICAL INFORMATION OF JUDGES REQUESTING RECOMMENDATION FOR INITIAL APPOINTMENT OR REAPPOINTMENT AS SENIOR JUDGES

2038.1 Contemporaneous with his or her request or at such other time as the Commission allows, a judge seeking favorable recommendation for initial appointment or reappointment as a senior judge shall submit on forms 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 his or her judicial duties.

2038.2 When deemed appropriate by the Commission, a judge seeking favorable recommendation for initial appointment or reappointment to a term as a senior judge shall submit to a physical and/or mental examination by a health care professional 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 judge's expense, unless the Commission grants a waiver based on extraordinary circumstances. Such examination is a condition of continued judicial service pending the Commission's decision on the request for appointment or reappointment.

2038.3 Contemporaneous with his or her request, or at the Commission's request, a judge required to submit to an examination as prescribed in §§ 2038.1 and 2038.2 shall provide the Commission or its authorized designee with all waivers and releases necessary to consult with the health care professional and the judge's physician and 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 performance, as well as 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 Commission has determined the judge's fitness to continue to satisfactorily perform his or her judicial duties.
 - (b) **Unfavorable** – The Commission has determined the judge is unfit for further judicial service.
- 2039.3 Upon conclusion of the review, in accordance with D.C. Code §11-1504 (a)-(b), the Commission shall notify the chief judge of the requesting judge's court of its evaluation and recommendation. If the Commission makes a favorable recommendation, the chief judge determines if the judge is to be appointed or reappointed a senior judge, and such appointment must be made within thirty (30) days of receipt of the Commission's recommendation. If the Commission makes an unfavorable recommendation, the requesting judge is ineligible for appointment as a senior judge. The recommendation of the Commission and the decision of the chief judge regarding appointment are final.

2040 COMMUNICATIONS FROM INTERESTED PERSONS

- 2040.1 The Commission will issue a public notice of the judge's fitness review and the public comment period.
- 2040.2 The general 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. The Commission will give consideration to all materials submitted as to the judge's suitability for initial appointment or reappointment.

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 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. Official Code §§ 11-709 and 11-909; and
 - (b) Financial data reported pursuant to the provisions of D.C. Official Code § 11-1530, as amended.
- 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. Official Code § 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, effective December 24, 1973 (87 Stat. 774, Pub. L. 93-198).

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