

District of Columbia



**2008
ANNUAL
REPORT**

*Commission on Judicial
Disabilities and Tenure*

**DISTRICT OF COLUMBIA COMMISSION ON
JUDICIAL DISABILITIES AND TENURE**

2008 ANNUAL REPORT

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COMMISSION ON JUDICIAL DISABILITIES AND TENURE

2008 ANNUAL REPORT

TABLE OF CONTENTS

	Page
INTRODUCTION.....	i
I. COMMISSION MEMBERS.....	1
Commission Members' Biographies.....	1
II. LEGAL AUTHORITY AND COMMISSION PROCEDURES.....	4
Commission History.....	4
Commission Jurisdiction.....	4
Legal Authority.....	4
Complaint Review and Investigations	5
Complaint Process.....	6
Codes of Conduct and Commission Rules	7
Reappointment Evaluations.....	7
Senior Judge Recommendations	9
III. 2008 STATISTICS.....	10
Complaints Received and Investigated.....	11
Complaints Received FY 2003-FY 2008.....	11
Complaint Allegations	11
Source of Complaints	12
Compliant Dispositions.....	12
Judicial Positions Under the Commission's Jurisdiction.....	12
Associate Judge Reappointments.....	13
Senior Judge Recommendations.....	13
IV. CHIEF JUDGE RUFUS G. KING, III.....	14
V. RESOLUTION.....	15
VI. COMMISSION EXPENDITURES FOR FY 2008.....	16
APPENDIX	
A. Commission Public Actions	
Evaluation Reports	19
Determination and Undertaking	25
B. Commission Rules.....	29
C. Code of Conduct for the District of Columbia Courts	49
D. Complaint Form	91

INTRODUCTION

Since its inception in 1970, 43 individuals have served as members of the District of Columbia Commission on Judicial Disabilities and Tenure. The Commission is grateful to all of the distinguished members who have served on this body and whose contributions and breadth of experience enhanced the Commission's ability to fulfill its statutory duties and responsibilities. The Commission is equally grateful to its staff of many years, Executive Director Cathae J. Hudgins, Staff Assistant Gloria J. Andrews, and Special Counsel Henry F. Schuelke, III, Esq., not only for their outstanding dedication and commitment to the Commission's work, but also for their invaluable assistance and guidance.

Over the past 38 years the Commission's authority has expanded due to the passage of the Home Rule Act (1973) and the Retired Judge Service Act (1984), the number of judges under its jurisdiction has increased, and the workload has grown considerably. The Commission has reviewed over 2,100 complaints, conducted 66 reappointment evaluations of Associate Judges, and performed 62 fitness reviews of retiring judges who requested recommendations for initial appointments as Senior Judges.

Each year since 1976 the Commission has published an Annual Report to keep the legal community and the general public informed of its activities. This year marks the publication of our thirty-third Annual Report reviewing the Commission's work during the fiscal year ended September 30, 2008. It also discusses the Commission's statutory authority and procedures.

The term of Eric H. Holder, Jr., Esq. ended on January 1, 2008. A leading member of the Bar of this community and universally respected, Mr. Holder contributed immeasurably to the Commission's affairs. Mr. Holder was a designee of the Board of Governors of the District of Columbia Bar. That Board chose as his successor Shirley Ann Higuchi, Esq., a prominent attorney who has entered into the Commission's work with vigor and understanding. There were no other changes to the Commission's membership.

As reported in the Commission's FY 2007 Annual Report, a vacancy occurred in 2004 with the resignation of Mr. Ronald Richardson, an appointee of former Mayor Anthony A. Williams. Current Mayor, Adrian M. Fenty, had not appointed Mr. Richardson's successor before the end of the fiscal year. Mr. Richardson fortunately has agreed to continue serving on the Commission until his successor is appointed.

The Commission re-elected William P. Lightfoot, Esq., as Chairperson, and re-elected Judge Gladys Kessler as Vice Chairperson, for fiscal year 2009.

The Commission's public actions for this fiscal year, the Commission's Rules, the Code of Judicial Conduct for the District of Columbia Courts, and the Commission's complaint form, appear under the noted appendices.

We welcome your comments.

I. COMMISSION MEMBERS

The Commission consists of seven members. One is appointed by the President of the United States. Two are appointed by the Board of Governors of the District of Columbia Bar. Two are appointed by the Mayor of the District of Columbia, one of whom shall not be a lawyer. One is appointed by the City Council of the District of Columbia. One is appointed by the Chief Judge of the United States District Court for the District of Columbia. The term of office of the President's appointee is five years, and all others serve six year terms.

The Commission usually meets once a month, except the month of August. The members elect a Chairperson and Vice Chairperson annually, at the beginning of each fiscal year. Commission members do not receive a salary or an expense allowance. In fiscal year 2008 the Commission's membership was as follows: William P. Lightfoot, Esq., Chairperson, appointed by the Mayor; Hon. Gladys Kessler, Vice Chairperson, appointed by the Chief Judge of the United States District Court; Gary C. Dennis, M.D., appointed by the City Council; Noel J. Francisco, Esq., appointed by the President; Shirley Ann Higuchi, Esq. and Claudia A. Withers, Esq. appointed by the D.C. Bar; and Ronald Richardson, appointed by the Mayor.

Commission Members' Biographies

GARY C. DENNIS, M.D., is a graduate of Boston University, and Howard University College of Medicine. He was Chief of the Division of Neurosurgery 1984 - 2007, and an Associate Professor since 1990, both at Howard University College of Medicine. Dr. Dennis is a past president of the National Medical Association and the Medical Society of the District of Columbia. He is a fellow of the American College of Surgeons, and was inducted into the Society of Neurological Surgeons in 1996. He was appointed to the Practicing Physicians Advisory Council by DHH Secretary Louis Sullivan in 1992 and DHH Secretary Donna Shalala in 1996. DHH Secretary Thompson appointed him to the Secretary's Advisory Committee for Regulatory Reform in 2001. Dr. Dennis is the immediate past Chairman of the Board of the Delmarva Foundation of the District of Columbia. In 2000, Dr. Dennis received the Outstanding Service Award from the Howard University Medical Alumni Association and the Caring and Sharing Award from the United Way of the National Capital Area. Dr. Dennis is a recipient of the Howard University Hospital Legacy of Leadership award, is listed in the Who's Who in Medicine and Healthcare, and was listed as one of the top doctors in the field of neurosurgery by Washingtonian Magazine, and Northern Virginia Magazine. He was appointed to the Commission in 2001 by the City Council.

NOEL J. FRANCISCO, ESQ., is a partner in the law firm of Jones Day and represents clients in a variety of complex litigation matters arising under federal and state law. He is also a recognized authority on constitutional and national security law issues. Prior to join-

ing Jones Day, Mr. Francisco served as Associate Counsel to President George W. Bush and as Deputy Assistant Attorney General in the Department of Justice's Office of Legal Counsel, where he advised the President, Attorney General, and other executive branch officials on a wide range of legal issues arising under the U.S. Constitution and other federal, state, and international laws. He is a graduate of the University of Chicago and the University of Chicago Law School, and he served as a law clerk to Supreme Court Justice Antonin Scalia during the 1997 term. Mr. Francisco was appointed to the Commission in 2007 by President George W. Bush.

SHIRLEY ANN HIGUCHI, ESQ., is the Assistant Executive Director of Legal and Regulatory Affairs for the American Psychological Association, and has served in that capacity since 1995. She is responsible for advising and developing policy and strategy on behalf of the 155,000 membership association of psychologists. Ms. Higuchi began her career with the APA in 1989 as a staff attorney, was appointed Assistant Director in 1990, and served as Director of Legal and Regulatory Affairs from 1993 to 1995. Prior to joining the staff of the APA she was an attorney with the firm of Epstein, Becker & Green P.C. Ms. Higuchi graduated with Distinction and High Honors from the University of Michigan, and received her J.D. from Georgetown University Law Center. She is a member of the Board of Trustees of the United Planning Organization and has been an elected member of the Board of Directors of the Bar Association of the District of Columbia since 2004. She has been very active in the District of Columbia Bar as well, serving two elected terms on the Board of Governors from 1994-2000, and serving as Chair of the Bar's Nominations Committee in 2001. In addition, she was elected President of the District of Columbia Bar for 2004. Ms. Higuchi received the Honorable Annice M. Wagner Pioneers Award, of the Young Lawyers Division of the Bar Association of the District of Columbia in 2006 and received the Lever Award in 2002 from the D.C. Law Students in Court Program. She is also a member of the Women's Bar Association. Ms. Higuchi was appointed to the Commission in 2008 by the Board of Governors of the D.C. Bar.

HON. GLADYS KESSLER, was appointed to the United States District Court for the District of Columbia in July 1994. She received a B.A. from Cornell University and an LL.B. from Harvard Law School. Following graduation, Judge Kessler was employed by the National Labor Relations Board, served as Legislative Assistant to a U.S. Senator and a U.S. Congressman, worked for the New York City Board of Education, and then opened a public interest law firm. In June 1977, she was appointed Associate Judge of the Superior Court of the District of Columbia. From 1981 to 1985, Judge Kessler served as Presiding Judge of the Family Division and was a major architect of one of the nation's first Multi-Door Courthouses. She served as President of the National Association of Women Judges from 1983 to 1984, served on the Executive Committee and as Vice President of the ABA's Conference of Federal Trial Judges, and on the U.S. Judicial Conference's Committee on Court Administration and Management for six years. Judge Kessler currently co-chairs the Committee of the National Academy of Sciences on the Development of the Third Edition of the Reference Manual on Scientific Evidence of the Federal Judicial Center. From 2006-2008 she chaired the Board of Directors of Our Place, D.C., a non-profit community organization that provides a range of services to incarcerated women to help re-integrate them into the community, and with their families, so they can return to productive lives. She has served on

the Our Place Board from its inception to present. Judge Kessler was appointed to the Commission in 2001 by the Chief Judge of the United States District Court for the District of Columbia, and has served as Vice-Chairperson of the Commission since 2002.

WILLIAM P. LIGHTFOOT, ESQ., is a graduate of Howard University, and Washington University School of Law in St. Louis, Missouri. A partner in the law firm of Koonz, McKenney, Johnson, DePaolis & Lightfoot, he has practiced law for over twenty years, specializing in personal injury litigation. He is a frequent lecturer to attorneys about personal injury cases and trial advocacy. Mr. Lightfoot is a former Councilmember at Large for the District of Columbia where he chaired the Committee on the Judiciary. He was appointed to the Commission in 2001 by Mayor Anthony A. Williams, and has served as Commission Chairperson since 2004.

RONALD RICHARDSON, is the retired Executive Vice President of the Hotel Employees and Restaurant Employees International Union, AFL-CIO/CLC. He was formerly the Executive Secretary-Treasurer of the Hotel and Restaurant Employees Local 25, AFL-CIO, of Washington, D.C., a member of the Board of the Rainbow Push Coalition, and a member of the Advisory Board of the D.C. Convention Center. Mr. Richardson is a former Vice President of the Maryland State & D.C. AFL-CIO, and a former member of the Board of Directors of Ayuda, Inc. In 1990 the City Council of the District of Columbia honored him with a Council Resolution for his efforts as an outstanding labor leader, and in 1981 he was awarded the J.C. Turner Award as the “Outstanding Labor Leader in the Metropolitan D.C. Area.” Mr. Richardson was appointed to the Commission by Mayor Sharon Pratt Kelly in 1992, he was reappointed in 1997 by Mayor Marion Barry, and reappointed in 2004 by Mayor Anthony Williams. He served as Commission Vice Chairperson from 1996 - 2000, and served as Commission Chairperson from 2000 - 2004.

CLAUDIA A. WITHERS, ESQ., is a graduate of Duke University and received her J.D. from the University of North Carolina, Chapel Hill. She is currently the Director of Programs for the District of Columbia Bar Foundation, which supports organizations that provide direct 'hands on' legal services to citizens of the District of Columbia who cannot afford legal assistance. Prior to joining the Foundation, she was a principal with Winston Withers and Associates from 2001 to 2006, served as Deputy General Counsel for Departmental and Regulatory Services at the U.S. Department of Education from 1998-2001, and served as Executive Director of the Fair Employment Council of Greater Washington from 1992-1998. Ms. Withers also served from 1983-1992 as Director of Employment Programs for the National Partnership on Women and Families, formerly the Women's Legal Defense Fund. She has been a member of the Adjunct Faculty of both the American University Washington College of Law and the University of the District of Columbia David Clarke School of Law. She serves on the Committee on Admissions for the D.C. Bar, and on the Board of Directors of Wider Opportunities for Women. Appointed by the Board of Governors of the D.C. Bar, Ms. Withers has served on the Commission since 2006.

II. LEGAL AUTHORITY AND COMMISSION PROCEDURES

Commission History

The District of Columbia Commission on Judicial Disabilities and Tenure was created by the District of Columbia Court Reorganization Act of July 29, 1970. The Commission was reorganized, and its jurisdiction significantly enlarged, by the District of Columbia Self-Government and Governmental Reorganization Act of December 24, 1973, known as the “Home Rule Act”, and its jurisdiction was enlarged further by the Retired Judge Service Act of October 30, 1984.

Commission Jurisdiction

The Commission’s jurisdiction extends to all associate and senior judges of the District of Columbia Court of Appeals and the Superior Court of the District of Columbia. Its jurisdiction embraces four areas: (1) a judge’s conduct warranting disciplinary action; (2) involuntary retirement of a judge for reasons of health; (3) evaluation of a judge who seeks reappointment upon the expiration of his or her term; and (4) evaluation of a judge who retires and wishes to continue judicial service as a senior judge.

The Commission does not have jurisdiction over magistrate judges of the Superior Court or administrative law judges.

Legal Authority

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 involuntarily retire a judge 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 judicial duties. In addition, the Commission may, under appropriate circumstances, censure or reprimand a judge publicly.

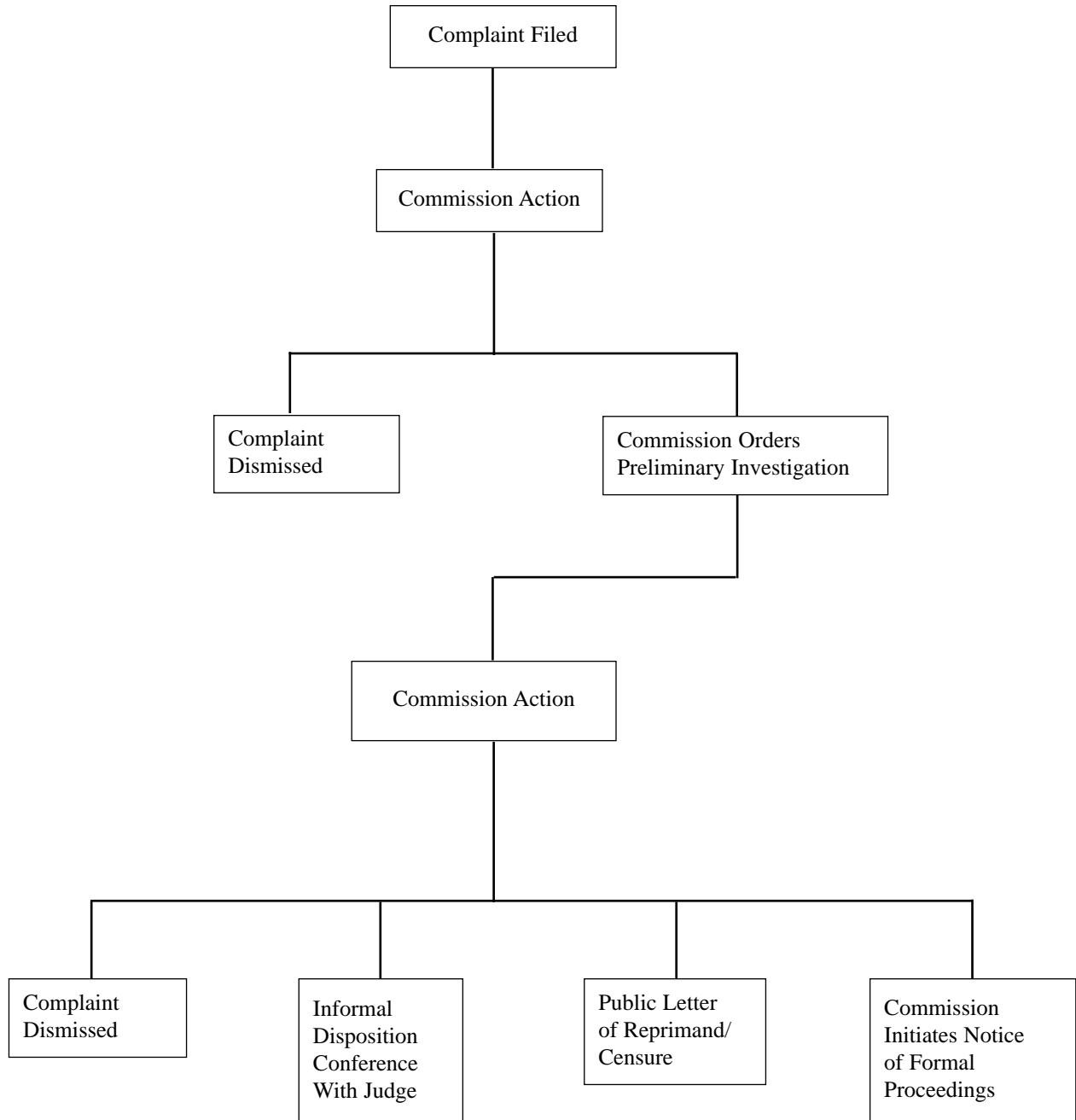
Complaint Review and Investigations

The Commission reviews complaints concerning the misconduct of judges; it does not, however, have jurisdiction to review judicial decisions or errors of law. Examples of judicial misconduct include: rude, abusive and improper treatment of lawyers, witnesses, jurors, court staff or others, showing bias toward anyone in the courtroom based on gender, race, ethnicity, religion, etc., and sleeping or drunkenness or other improper conduct while on the bench. Judicial misconduct also may involve improper off-the-bench conduct such as: criminal behavior, improper use of a judge's authority, publicly commenting on a pending or expected lawsuit, communicating with only one side in a court case or proceeding unless permitted by law, and giving or receiving bribes or favors.

Although the Commission has no prescribed format for lodging a complaint, it does have a suggested complaint form which citizens may use. A copy of the complaint form is reprinted under Appendix D. The Commission will consider information concerning possible misconduct from any source or on its own initiative, and will consider complaints made anonymously. The Commission prefers, but does not require, that a complaint be in writing and be as specific as possible. Receipt of a complaint is acknowledged.

The Commission usually meets once a month to review all new complaints that have been received, to discuss the progress of investigations, and address any other matters within its jurisdiction. Each complaint is considered individually, and decisions are reached on the merits. If the Commission determines that a matter falls within its jurisdiction, it may order an investigation. Commission investigations are conducted by the staff and may include contacting witnesses, reviewing court records and other documents, and observing courtroom proceedings. If the investigation substantiates the complaint, the Commission may resolve a matter through an informal conference with the judge involved, or the Commission may initiate formal disciplinary action against a judge. All of the Commission's disciplinary proceedings and investigations are confidential. Under certain circumstances, however, a decision or action by the Commission may be made public.

COMPLAINT PROCESS



If the allegations are found to be untrue or the investigation reveals that the matter is not within the Commission's jurisdiction, the Commission will dismiss the complaint and advise the complainant or source accordingly. Complainants are also notified, though the nature of the action taken is not divulged, when the Commission has resolved a matter.

Codes of Conduct and Commission Rules

In considering claims of misconduct, the Commission looks to the American Bar Association Code of Judicial Conduct (1995) as adopted by the District of Columbia Joint Committee on Judicial Administration, along with the advisory opinions of the Committee on Codes of Conduct of the Judicial Conference of the United States regarding the Code of Conduct for U.S. Judges, and the advisory opinions of the District of Columbia Courts' Advisory Committee on Judicial Conduct. Judges under its jurisdiction are deemed to be on notice of the Commission's published actions as well.

The Commission conducts its proceedings pursuant to Rules which appear in 28 District of Columbia Municipal Regulations Chapter 20, amended December 21, 2007. The regulations are set forth in Appendix B.

Reappointment Evaluations

Aside from its disciplinary function, the Commission also has the responsibility to determine whether or not a sitting judge whose term is expiring, and who seeks a new term, is to be reappointed. The Home Rule Act requires that the Commission file with the President of the United States a written evaluation of the judicial candidate's performance during the term of office, and his or her fitness for reappointment to another term. Under the Judicial Efficiency and Improvement Act, the Commission in its evaluation is required to place a judge in one of three categories. If the Commission evaluates a sitting judge as "well qualified," the judge is automatically reappointed to a new term of 15 years. If the Commission evaluates the judge as "qualified," the President may, if he chooses, renominate the judge subject to Senate confirmation; if the Commission evaluates the judge as "unqualified," the judge is ineligible for reappointment. The Commission defines the evaluation categories as follows:

Well Qualified - The candidate's work product, legal scholarship, dedication, efficiency, and demeanor are exceptional, and the candidate's performance consistently reflects credit on the judicial system.

Qualified - The candidate satisfactorily performs the judicial function or, if there are negative traits, they are overcome by strong positive attributes.

Unqualified - The candidate is unfit for further judicial service.

At least six months prior to the expiration of the term of office, a judge who seeks reappointment must file a declaration of candidacy with the Commission. The judge must also submit a written statement, including illustrative materials, reviewing the significant aspects of the judge's judicial activities during the term of office. In addition, a judicial medical form completed by the judge's physician must be submitted to the Commission attesting to the judge's mental and physical health.

Once the Commission receives the declaration of candidacy, it solicits comments from the bar, court personnel, other judges, and the lay public concerning the candidate's qualifications and contributions to the Court and the community. The Commission also conducts interviews with attorneys who have regularly appeared before the judge, and court personnel who have worked closely with the judge, to gain additional insight concerning the judge's performance and fitness. The Commission respectively interviews the Chief Judge of the judge's court and the judge as well.

If the Commission, in the course of a reappointment evaluation, receives information that raises a substantial doubt that the judge is at least qualified, the Commission will provide in summary form the basis for doubt, and provide the judge an opportunity to confer with the Commission. The final step in the reappointment evaluation process is the Commission's preparation of a written evaluation discussing the judge's performance during the present term of office and his or her fitness for reappointment to another term. The report must be submitted to the President at least 60 days prior to the expiration of the judge's term of office, is furnished simultaneously to the judge, and released to the public immediately thereafter.

Senior Judge Recommendations

In addition to evaluating the performance of associate judges who are eligible for and request reappointment, the Commission performs a virtually identical function for retiring judges who wish to continue their judicial service as senior judges. The Retired Judge Service Act requires a judge seeking senior status to request a recommendation for appointment from the Commission. Once a request is received, the Commission conducts a thorough review of a judge's physical and mental fitness, and evaluates the judge's ability to perform judicial duties. The Commission must submit a written report of its findings to the appropriate Chief Judge, and the report must include the Commission's recommendation concerning a judge's fitness and qualifications to continue judicial service. If the Commission makes a favorable recommendation, the Chief Judge determines if the judge is to be appointed a senior judge. If the Commission makes an unfavorable recommendation, the requesting judge is ineligible for appointment. The recommendation of the Commission and the decision of the Chief Judge regarding appointment are final. A senior judge must be recommended for reappointment every four years, unless the judge has reached age 74, in which case a recommendation and reappointment are required every two years.

Retiring judges who wish to continue their judicial service as senior judges have one year from the date of retirement to request a recommendation from the Commission for an appointment to senior status. Contemporaneous with the filing of the request the judge must submit a written statement reviewing the significant aspects of his or her judicial activities, and the judge must submit a judicial medical form completed by his or her physician attesting to the judge's physical and mental health. The Commission solicits comments from the bar, court personnel, other judges, and the lay public concerning the judge's qualifications and fitness for appointment as a senior judge. The Commission also conducts interviews with attorneys who have regularly appeared before the judge, and court personnel who have worked closely with the judge over the 4-5 year period before the judge's retirement. The Commission respectively interviews the Chief Judge of the judge's court and the judge as well.

If the Commission, in the course of its fitness evaluation, receives information that raises a substantial doubt that the judge is fit for further judicial service, the Commission will provide in summary form the basis for doubt, and provide the judge an opportunity to confer with the Commission.

The Commission has 180 days from receipt of the judge's request to submit its report and make a favorable or unfavorable recommendation to the appropriate Chief Judge. The recommendation standards are as follows:

Favorable - The judge is physically and mentally fit and able satisfactorily to perform judicial duties.

Unfavorable - The judge is unfit for further judicial service.

The Chief Judge notifies the Commission and the judge of the decision regarding appointment within 30 days of receipt of the Commission's report.

III. 2008 STATISTICS

Summary of Commission Activities	
1. Complaints Regarding Conduct	25
2. Misconduct Investigations	13
3. Investigations Pending At Beginning of Year	3
4. Investigations Pending At Year End	2
5. Formal Disciplinary Proceedings	0
6. Involuntary Retirement Matters	0
7. Reappointment Proceedings	1
8. Senior Judge Recommendations	13
9. Commission Meetings	10
10. Meetings With Superior Court Liaison Committee	0

Complaints Received and Investigated

In fiscal year 2008, the Commission received 22 misconduct complaints and initiated three complaints based on information it received. In 12 cases the Commission determined after the initial review that no further inquiry was warranted and dismissed nine matters for lack of jurisdiction and dismissed three matters for lack of merit. Of the 13 matters investigated seven were dismissed when the Commission determined that no further action was warranted. Two matters concerning the same case and judge were resolved with a public reprimand of the judge in question¹, two matters were resolved through informal conferences with the two judges involved, and two investigations concerning two complaints were pending at the end of the fiscal year. The Commission also concluded three investigations pending at the end of fiscal year 2007, and dismissed the matters for lack of jurisdiction.

Complaints Received 2003 - 2008	
Complaints Received in FY 2003	25
Complaints Received in FY 2004	44
Complaints Received in FY 2005	45
Complaints Received in FY 2006	38
Complaints Received in FY 2007	33
Complaints Received in FY 2008	25

Complaint Allegations

The 25 matters reviewed by the Commission concerned allegations of inappropriate demeanor and injudicious temperament, violation of constitutional rights, abuse of judicial discretion, bias and prejudice, due process issues, dissatisfaction with legal rulings, violation of court rules, and ex parte communications. Some complaints named more than one judge, and 24 judges were identified. Five judges had more than one complaint filed against them, and 24 complaints concerned Associate Judges of the Superior Court. The remaining matter concerned two Associate Judges and one Senior Judge of the Court of Appeals.

¹The Determination and Undertaking is reprinted under Appendix A.

Complaint Allegations

1. Inappropriate Demeanor/Injudicious Temperament	7
2. Violation of Constitution Rights	5
3. Abuse of Judicial Discretion	3
4. Bias/Prejudice	5
5. Due Process Issues	2
6. Dissatisfaction With Legal Rulings	2
7. Violation of Court Rules	1
8. Ex Parte Communications	1

Source of Complaints

Litigants or their relatives filed 16 complaints, four complaints were filed by attorneys, three complaints were initiated by the Commission, one complaint was filed by a legal organization, and one complaint was filed by a social worker in a particular case.

The complaints concerned eight criminal matters, seven domestic relations matters, seven civil matters, two juvenile matters, and one probate matter.

Complaint Dispositions

The Commission disposed of 15 complaints in 30 days, three complaints were disposed of in 60 days, three complaints were disposed of in 90 days, and two matters were disposed of in 120 days. As stated earlier, two investigations concerning two complaints were pending at the end of the fiscal year.

The three investigations pending from fiscal year 2007, and disposed of this fiscal year, were completed in 60 days.

Judicial Positions

As of September 30, 2008

Court of Appeals	
Chief Judge and Associate Judges.....	9
Senior Judges.....	11
Superior Court	
Chief Judge and Associate Judges.....	59
Senior Judges.....	23
Total.....	102

Associate Judge Reappointments

The term of Superior Court Associate Judge Russell Canan expired during the fiscal year and he requested reappointment to another fifteen-year term.

The Commission carefully evaluated Judge Canan's qualifications and reviewed his record as an Associate Judge. The Commission conducted confidential interviews with attorneys who had regularly appeared before the Judge, and interviewed Superior Court personnel who had worked closely with him as well. The Commission also received correspondence from attorneys and fellow judges concerning Judge Canan's qualifications. During the course of its investigation, the Commission did not hear a single critical comment about Judge Canan.

As required by the Commission's Rules, Judge Canan submitted a written statement with illustrative materials summarizing his judicial activities and assignments, and his contributions to the Court and the community. In addition, as part of the submission requirement, Judge Canan submitted a Judicial Medical Form than had been completed by his personal physician. The Commission interviewed Judge Canan, and met with Chief Judge Rufus G. King, III to discuss Judge Canan's judicial performance and qualifications for reappointment.

The Commission determined Judge Canan to be well qualified for reappointment, and his term was extended for fifteen years. The Commission's evaluation report to President George W. Bush appears under Appendix A.

In addition, Judge Rafael Diaz filed his declaration of candidacy for reappointment during the fiscal year, but the Commission did not complete its evaluation prior to September 30, 2008.

Senior Judge Recommendations

The terms of Court of Appeals Senior Judges John W. Kern, III, Frank Q. Nebeker, and Frank E. Schwelb, and the terms of Superior Court Senior Judges Leonard Braman, Henry F. Greene, Richard Levie, Truman S. Morrison, III, Nan R. Shuker, Robert S. Tignor, Fred B. Ugast, Ronald Wertheim, and Curtis von Kann expired during the fiscal year, and all requested recommendations for reappointment to senior status. Each Judge submitted a written state-

ment discussing their judicial and non-judicial activities since their last appointment to senior status, and each submitted a Judicial Medical Form completed by their respective physician revealing that all 12 Judges were in good physical and mental health. The Commission met with the Chief Judges to discuss the contributions and qualifications of the Senior Judges from their respective Court. The Commission concluded the fitness evaluations of the 12 Judges, and recommended each Judge for reappointment to senior status. Chief Judge King advised the Commission that he reappointed Senior Judges Braman, Greene, Levie, Morrison, Shuker, Tignor, Ugast, Wertheim, and von Kann to another senior term on the Superior Court, and Chief Judge Eric T. Washington advised the Commission that Senior Judges Kern, Nebeker, and Schwelb were reappointed to senior status on the Court of Appeals.

The Commission also conducted a performance and fitness evaluation of Superior Court Judge Mary A. Terrell who retired during the fiscal year. Judge Terrell withdrew her request for a recommendation for appointment as a senior judge, prior to the Commission submitting its recommendation to the Chief Judge.

In addition, during the fiscal year, Superior Court Judges Rufus G. King, III, and Linda Turner, and Court of Appeals Judge Michael W. Farrell advised the Commission of their intentions to retire and seek senior status. The Commission did not complete its fitness reviews of the three Judges prior to the end of the fiscal year.

IV. CHIEF JUDGE RUFUS G. KING, III

As previously mentioned, Superior Court Chief Judge Rufus G. King, III retired during the fiscal year, and the Commission takes this opportunity to thank him for being most cooperative over the past eight years. Judge King and the Commission maintained a cordial working relationship, and his discussions of the qualifications and contributions of the judges under consideration for reappointment and senior status were invaluable helpful.

The Commission wishes him the best in his retirement and now looks forward to working with his successor, Chief Judge Lee F. Satterfield.

V. RESOLUTION

The District of Columbia Commission on Judicial Disabilities and Tenure wishes to acknowledge and thank Eric H. Holder, Jr., Esq. for his six years of service on the Commission. Mr. Holder was appointed to the Commission on January 9, 2002, by the Board of Governors of the District of Columbia Bar, and his term expired on January 1, 2008. A distinguished and prominent member of the legal community, Mr. Holder had an immediate understanding of the functions and duties of the Commission, and its importance to a strong and independent judiciary for the District of Columbia. He was uniquely aware of the effect the Commission's decisions could have on judges of the District of Columbia courts and on the citizens in our community, having served as a judge of the Superior Court for five years.

Mr. Holder was fully engaged in the Commission's work through his active participation in deliberations, his willingness to accept special assignments no matter how time consuming they proved to be, and his concern that the Commission rigorously and objectively enforce the Code of Judicial Conduct. His dedication to the Commission's work extended beyond January 1, 2008, with his continued assistance to the Commission on a matter begun months before the expiration of his term. He also will be remembered for his cordial and thoughtful manner during discussions of several challenging matters the Commission addressed during his tenure. The Commission is grateful to Mr. Holder for his six years of commendable service, and we appreciate his many contributions that assisted the Commission in fulfilling its statutory duties and responsibilities. He will be missed.

VI. FY 2008 EXPENDITURES

OCTOBER 1, 2007 THROUGH SEPTEMBER 30, 2008

Staff Salaries	\$189,414.00
Personnel Benefits	27,695.00
Legal and Investigative Fees	8,165.63
Printing	5,911.50
Communication Services.....	4,055.00
Court Reporting Services	3,239.28
Office Supplies	2,330.53
Office Equipment and Software Purchases.....	1,549.73
Out-of-Town Travel	1,232.49
IT Support	1,200.00
Maintenance Service Agreement	1,192.52
FEDEX Delivery Service	925.14
Postage Meter Rental	719.40
Local Messenger/Delivery Service	622.00
Subscriptions to Periodicals	514.00
Conference Fees	350.00
Postage.....	330.64
Local Travel	240.32
Office Support	200.00
Membership Dues	50.00
TOTAL	<u>\$249,937.00</u>

APPENDIX A

COMMISSION PUBLIC ACTIONS

**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 6, 2008

The Honorable George W. Bush
President of the United States
The White House
Washington, D.C. 20500

Re: Evaluation of the Honorable Russell F. Canan

Dear Mr. President:

The fifteen-year term of the Honorable Russell F. Canan, an Associate Judge of the Superior Court of the District of Columbia, expires on August 8, 2008. He is seeking reappointment to another term.

Pursuant to 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 District of Columbia Commission on Judicial Disabilities and Tenure ("the Commission") hereby submits this evaluation of Judge Canan's performance during his present term of office and his fitness for reappointment. Section 433(c) provides:

Not less than six months prior to the expiration of his term of office, any judge of the District of Columbia courts may file with the Tenure Commission a declaration of candidacy for reappointment. If a declaration is not so filed by any judge, a vacancy shall result from the expiration of his term of office and shall be filled by appointment as provided in subsections (a) and (b). If a declaration is so filed, the Tenure Commission shall, not less than sixty days prior to the expiration of the declaring candidate's term of office, prepare and submit to the President a written evaluation of the declaring candidate's performance during

his present term of office and his fitness for reappointment to another term. If the Tenure Commission determines the declaring candidate to be well qualified for reappointment to another term, then the term of such declaring candidate shall be automatically extended for another full term, subject to mandatory retirement, suspension, or removal. If the Tenure Commission determines the declaring candidate to be qualified for reappointment to another term, then the President may nominate such candidate, 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 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, then 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 term “well qualified” for those judges whose work product, legal scholarship, dedication, efficiency, and demeanor are exceptional on the bench, and the candidate’s performance consistently reflects credit on the judicial system. The Commission will determine a judge is “qualified” if he or she satisfactorily performs his or her assigned duties or whose strong positive attributes are materially offset, but not overborne, by negative traits. A finding of “unqualified” means the Commission has found the judge to be unfit for judicial service.

Judge Canan filed his timely declaration of candidacy for reappointment with the Commission on February 4, 2008. In evaluating Judge Canan’s qualifications for reappointment, the Commission carefully reviewed the extensive written statement Judge

Canan submitted describing his services on the Court. This statement set forth the significant aspects of his judicial, professional, and community activities during the past 15 years. Judge Canan met personally with the Commission on May 14, 2008, to discuss his record, as well as information the Commission had received during the course of its evaluation from Court personnel and members of the D.C. Bar, including the U.S. Attorney's Office for the District of Columbia, who were familiar with his performance. The Commission also reviewed a detailed, confidential statement from Judge Canan's physician attesting to his excellent health and the absence of any medical reason why he cannot continue to perform his judicial duties.

The Commission also reviewed Judge Canan's time reports and annual financial statements, which are required to be filed by every judge. The Commission reviewed its complaint file concerning the Judge, which disclosed nothing of a seriously questionable nature that would adversely affect his appointment.

Finally, the Commission met with Chief Judge Rufus G. King, III, who recommended Judge Canan's reappointment, and reported that he has been an extremely productive member of the Superior Court bench, has an excellent reputation with the Bar and among his colleagues, and has been heavily involved in leadership positions at the Court.

At this time, Judge Canan is the Deputy Presiding Judge of the Criminal Division. This is an extraordinarily important position, one of high public visibility, and one which

has great impact on the residents of the District of Columbia. Judge Canan has done an outstanding job in this position. Judge Canan has welcomed and effectively used the opportunities the position gives him to make the Court system more efficient and to provide greater services to the residents of the District of Columbia. Judge Canan received unstinting praise from observers of the Criminal Division, as well as from lawyers regularly practicing in that Division, for the fair and efficient manner in which he handled the cases.

Indeed, in investigating Judge Canan's qualifications for reappointment, the Commission did not hear a single critical comment about him. On the contrary, the reaction of members of the Bar was universally laudatory about his excellent temperament and demeanor, his respectful treatment of all litigants, lawyers, and court personnel, and his wide-ranging knowledge of the law.


It should be noted that Judge Canan has worked extremely efficiently with both his judicial colleagues and Court staff on a variety of other matters important to the Court. For example, he served as Chairperson of the Judicial Education and Training Committee, Chairperson of the Criminal Rules Advisory Committee-Federal Rules, Chairperson of the Jury Management Committee, member of the Committee on Selection and Tenure of Magistrate Judges, and as the Court's representative on the Lawyers' Counseling Committee sponsored by the D.C. Bar.

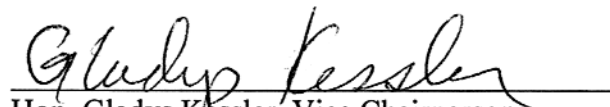
Over the 15 years, Judge Canan has served in every division of the Court except the Probate Division. He has presided over hundreds of trials and countless evidentiary hearings. He has also written a number of opinions on significant legal issues.

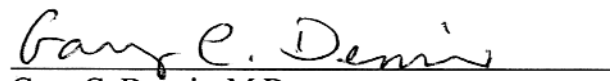
Judge Canan, by virtue of his energy, his integrity, his leadership skills, his legal scholarship, and his patient and evenhanded demeanor, clearly deserves the term "well qualified" for the exceptional service he has provided the citizens of the District of Columbia as a Superior Court Judge. His performance is a credit to our judicial system and of great benefit to the District of Columbia community. For all these reasons, the Commission finds Judge Canan well qualified for reappointment and his term shall be automatically extended for a full term of fifteen years from August 8, 2008.

Respectfully submitted,

DISTRICT OF COLUMBIA COMMISSION
ON JUDICIAL DISABILITIES AND TENURE

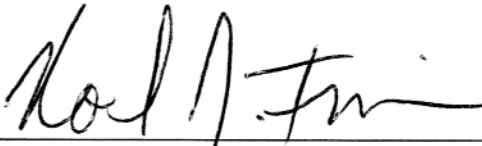

William P. Lightfoot, Esq., Chairperson


Hon. Gladys Kessler, Vice Chairperson

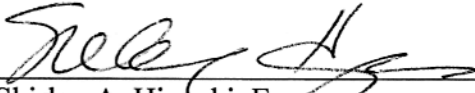

Gary C. Dennis, M.D.

The Honorable George W. Bush
June 6, 2008
Page Six

Report on Judge Canan



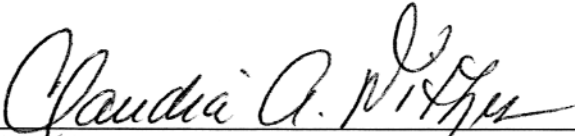
Noel J. Francisco, Esq.



Shirley A. Higuchi, Esq.



Ronald Richardson



Claudia A. Withers, Esq.

cc: The Honorable Russell F. Canan

**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

DETERMINATION AND UNDERTAKING

Re: The Honorable John H. Bayly, Jr., Associate Judge of the Superior Court of
the District of Columbia

The Commission has investigated the circumstances surrounding the detention of Liyah K. Brown at the direction of Judge John Bayly on August 29, 2007. Ms. Brown is an attorney for the Public Defender Service who was appearing before Judge Bayly on behalf of a detained client. During the hearing, Ms. Brown attempted to make an argument on behalf of her client. Judge Bayly indicated that he did not believe that Ms. Brown's arguments were pertinent to the issue before him. He then repeatedly ordered Ms. Brown to "be quiet," indicated that he would "call the case later," and warned that if she continued, she was "going to be in contempt in a minute." Notwithstanding Judge Bayly's repeated admonitions, Ms. Brown continued to make her argument. At that point, Judge Bayly became angry and ordered that Ms. Brown be "stepped back." She was thereafter detained by court Marshals, shackled, subjected to an intrusive patdown search, and incarcerated for approximately forty-five minutes.

The Commission has met with Judge Bayly, discussed the facts with him, and heard his explanation and account of the aforementioned incident. Judge Bayly agrees that his actions were grossly disproportionate to Ms. Brown's conduct. He has also expressed his regret for his actions and has issued Ms. Brown a written apology. The Commission has also met and discussed this matter with Ms. Brown, who provided a detailed account of the in-court hearing and her post-hearing detention. In addition, the Commission has reviewed the transcript and audiotape of this proceeding.

The Commission has determined that Judge Bayly's actions were grossly disproportionate to Ms. Brown's conduct. Based on its careful review of the evidence, it is clear to the Commission that nothing Ms. Brown did warranted that she be "stepped back" and incarcerated. In this regard, the Commission notes that it has been informed that many judges go their entire career without ordering the detention of an attorney appearing before them. The facts surrounding the August 29, 2007 incident with Ms. Brown do not approach the rare circumstances in which this extraordinary exercise of judicial power would be warranted.

The Commission therefore concludes that Judge Bayly's conduct violated Canon 3B(4) of the Code of Judicial Conduct as adopted by the Joint Committee on Judicial Administration of the District of Columbia Courts, which provides that "[a] judge shall be patient, dignified and courteous to litigants, jurors, witnesses, lawyers and others with

whom the judge deals in an official capacity....” The Commentary to that Canon aptly observes:

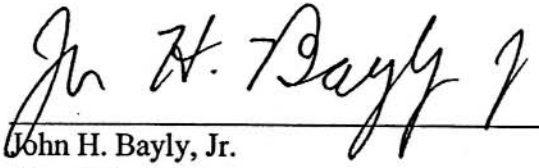
“The duty to hear all proceedings fairly and with patience is not inconsistent with the duty to dispose promptly of the business of the court. Judges can be efficient and businesslike while being patient and deliberate.”

Judge Bayly accepts the Commission’s determinations and conclusions expressed above and recognizes that his conduct in this instance was regrettable and in violation of the applicable provisions of the Code of Judicial Conduct. Judge Bayly hereby undertakes to avoid any such conduct in the future and to conform his conduct to the standards prescribed by the Code.

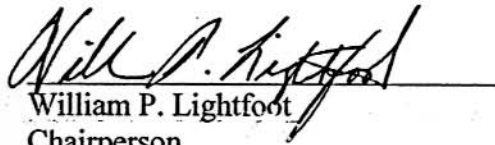
In view of Judge Bayly’s record on behalf of the people of the District of Columbia over some eighteen years, the Commission further concludes that no additional sanctions are warranted.

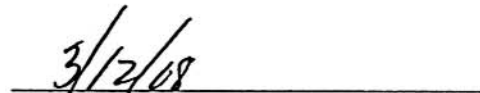
The Commission makes this document public with the agreement of Judge Bayly.

For The Commission:


 John H. Bayly, Jr.
 Associate Judge
 Superior Court of the District of Columbia


 Date


 William P. Lightfoot
 Chairperson


 Date

APPENDIX B

COMMISSION RULES

COMMISSION ON JUDICIAL DISABILITIES AND TENURE

NOTICE OF FINAL RULEMAKING

The District of Columbia Commission on Judicial Disabilities and Tenure (the Commission) hereby amends its Rules, Title 28, D.C.M.R., Chapter 20. This amendment to the Commission's Rules is promulgated pursuant to D.C. Official Code, §11-1525(a)(2001) and §431(d)(3), of the District of Columbia Self-Government and Governmental Reorganization Act, P.L. 93-198, but does not purport to restate all applicable procedural and substantive provisions of the pertinent statutes. The amended rule is §2001.7. It shall be effective immediately upon publication in the D.C. Register. D.C. Official Code §11-1525(a)(2001) provides that the Commission is an independent agency, therefore, prior public notice and hearings are not required on the subject of rules adopted by the Commission.

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 Pub. L. 91-368 (D.C. 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 or mental examination by a physician designated by the Commission after consultation with the judge. The examination and report shall be made at the Commission's expense.

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 may 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 **FINANCIAL REPORTS**

2003.1 Each judge shall file with the Commission on or before the first (1st) day of June of each year, on forms provided by the Commission, the reports of personal financial interest required by D. C. Code, §11-1530 for the preceding calendar year.

2003.2 The Commission from time to time may require a judge to file pertinent supplemental information.

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 renomination.

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

- (a) The Commission's decisions in proceedings;
- (b) The Commission's evaluations of judges who have been candidates for renomination;
- (c) The annual reports of the Commission; and
- (d) Any 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 pertinent precedents to be taken into account by the Commission.
- 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.
- 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. 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. 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. Code, §15-714 for witnesses in civil cases.
- 2021.2 All witnesses shall receive the allowances prescribed by D.C. 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 CANDIDATES FOR RENOMINATION**

2030.1 Not less than six (6) months prior to the expiration of his or her term of office, a judge seeking reappointment shall file with the Commission a declaration in writing of candidacy for reappointment.

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 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 that the judge believes may be helpful to the Commission in its evaluation of his or her candidacy.

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.

2031.2 The evaluation categories shall include the following:

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

2032 **COMMUNICATIONS FROM INTERESTED PERSONS**

2032.1 The lay 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.

- 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 a 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 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.

2037 **EVALUATION OF RETIRED JUDGES REQUESTING RECOMMENDATION FOR APPOINTMENT 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 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 birthday in which case the appointment shall be for a term of two (2) years.

2037.2 Contemporaneous with the filing of the request, such judge shall submit to the Commission a written statement, including illustrative materials, reviewing such significant aspects of his or her judicial activities as he or she believes may be helpful to the Commission in its evaluation of his or her request.

2037.3 A judge requesting recommendation for appointment as a senior judge not more than four (4) years subsequent to the date of his or her appointment or reappointment as a 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 A retired judge who did not file a request for an initial recommendation from the Commission prior to April 29, 1985, and who is now willing to perform

judicial duties shall file with the Commission not later than April 27, 1987, a request in writing for a recommendation for appointment as a senior judge and, contemporaneous with such request, shall submit a written statement, as prescribed by §2037.2.

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.

2037.6 Contemporaneous with the filing of the request prescribed by §2037.5, 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.

2037.7 A judge who does not file a request within the time periods prescribed in §§2037.1, 2037.4 and 2037.5 shall not be eligible for appointment as a senior judge at any time thereafter, except for good cause shown.

2038 **PHYSICAL EXAMINATION AND MEDICAL INFORMATION**

2038.1 A judge seeking favorable recommendation for appointment or reappointment as a senior judge shall, contemporaneous with his or her request, submit on a form 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 judicial duties.

2038.2 When deemed appropriate by the Commission, a judge seeking favorable recommendation for appointment or reappointment to a term as a senior judge shall submit to a physical or mental examination by a physician 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 Commission's expense.

2038.3 At the Commission's request, a judge required to submit to a medical examination as prescribed in §§2038.1 and 2038.2 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.

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 physical and mental fitness and his or her ability to perform judicial duties.

2039.2 The recommendation standards are as follows:

- (a) Favorable - The judge is physically and mentally fit and able satisfactorily to perform judicial duties.
- (b) Unfavorable - The judge is unfit for further judicial service.

2040 **COMMUNICATIONS FROM INTERESTED PERSONS**

2040.1 The lay 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.

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 a 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. Code §§11-709 and 11-909; and
 - (b) Financial data reported pursuant to the provisions of D.C. Code §§11-1530(a)(2) and (a)(7).
- 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. Code, Title 11, §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, Pub. L. 93-198.

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

APPENDIX C

CODE OF CONDUCT FOR THE DISTRICT OF COLUMBIA COURTS

PREFACE

The Code of Judicial Conduct of the District of Columbia was adopted by the Joint Committee on Judicial Administration of the District of Columbia Courts on November 7, 1994. The effective date of the Code is June 1, 1995.

The Code, which is modeled primarily after the American Bar Association 1990 Model Code of Judicial Conduct, replaces the 1972 Code of Judicial Conduct, as amended, heretofore in effect in the District of Columbia. The new Code had its inception in the establishment by the Joint Committee in October, 1990, of an Advisory Committee on Judicial Conduct, consisting of judges of the District of Columbia Court of Appeals and of the Superior Court of the District of Columbia. One of the first tasks of the Advisory Committee was to study the ABA 1990 Model Code and to recommend whether, and, if so, with what modifications, that code should be adopted for the courts of the District of Columbia.

From 1991 through the fall of 1992, the Advisory Committee undertook a Canon-by-Canon comparison of the 1990 and 1972 codes, reviewed criticisms and suggested alterations of the 1990 Model Code received from a wide variety of sources, and considered adaptations of that code to the particular statutory and institutional features of the roles of judicial officers in the District of Columbia. Thereafter, the Advisory Committee transmitted to the active and senior judges of the District of Columbia Court of Appeals and of the Superior Court and to the Superior Court Hearing Commissioners, for comment, a proposed code of judicial conduct (with background materials) patterned heavily after the ABA 1990 Model Code, but revised in numerous particulars. Open meetings were held in November and December, 1992, at which all judges of both courts, as well as the Hearing Commissioners, were invited to comment on the proposed code. The draft was revised in accordance with suggestions made at these meetings. In April, 1993, the revised draft was transmitted to the Joint Committee on Judicial Administration, which made suggestions for the Advisory Committee's consideration. In April, 1994, upon receipt of further revisions by the Advisory Committee, the Joint Committee directed publication of the proposed code in District of Columbia Bar publications for comment by interested members of the Bar. At the same time, all active and senior judges and Hearing Commissioners received finally revised copies for purposes of further comment. Constructive comments were received (including comments from the District of Columbia Bar Section of Courts, Lawyers and the Administration of Justice) and were considered by the Advisory Committee and the Joint Committee on Judicial Administration.

The Code as finally adopted thus represents the product of careful deliberations over nearly a four-year period incorporating the views of all judicial officers concerned. It departs only modestly from the ABA 1990 Model Code, which itself was the product of exhaustive deliberation and public hearings held by the ABA. The purpose and scope of application of the Code are summarized in the Preamble that follows.

Table of Contents

	Page
Preamble	53
Terminology	54
CANON 1	56
A judge shall uphold the integrity and independence of the Judiciary.	
CANON 2	57
A judge shall avoid impropriety and the appearance of impropriety in all of the judge's activities.	
CANON 3	59
A judge shall perform the duties of judicial office impartially and diligently.	
CANON 4	66
A judge shall so conduct the judge's extra-judicial activities as to minimize the risk of conflict with judicial obligations.	
CANON 5	76
A judge or judicial candidate shall refrain from inappropriate political activity.	
APPLICATION	80
APPENDIX	84

Code of Judicial Conduct (1995)

The Code of Judicial Conduct for the District of Columbia Courts (1995) was adopted by the Joint Committee on Judicial Administration of the District of Columbia Courts on November 7, 1994, with an effective date of June 1, 1995.

CODE OF JUDICIAL CONDUCT (1995)

PREAMBLE

Our legal system is based on the principle that an independent, fair and competent judiciary will interpret and apply the laws that govern us. The role of the judiciary is central to American concepts of justice and the rule of law. Intrinsic to all sections of this Code are the precepts that judges, individually and collectively, must respect and honor the judicial office as a public trust and strive to enhance and maintain confidence in our legal system. The judge is an arbiter of facts and law for the resolution of disputes and a highly visible symbol of government under the rule of law.

The Code of Judicial Conduct establishes standards for ethical conduct of active and senior judges of the District of Columbia Court of Appeals and of the Superior Court of the District of Columbia, as well as for the ethical conduct of the Superior Court Hearing Commissioners and Auditor-Master. It consists of broad statements called Canons, specific rules set forth in Sections under each Canon, a Terminology Section, an Application Section and Commentary. The text of the Canons and the Sections, including the Terminology and Application Sections, is authoritative. The Commentary, by explanation and example, provides guidance with respect to the purpose and meaning of the Canons and Sections. The Commentary is not intended as a statement of additional rules. When the text uses “shall” or “shall not,” it is intended to impose binding obligations the violation of which can result in disciplinary action. When “should” or “should not” is used, the text is intended as hortatory and as a statement of what is or is not appropriate conduct but not as a binding rule under which a judge may be disciplined. When “may” is used, it denotes permissible discretion, or, depending on the context, it refers to action that is not covered by specific proscriptions.

The Canons and Sections are rules of reason. They should be applied consistent with constitutional requirements, statutes, other court rules and decisional law and in the context of all relevant circumstances. The Code is to be construed so as not to impinge on the essential independence of judges in making judicial decisions.

The Code is designed to provide guidance to judges and candidates for judicial office and to provide a structure for regulating conduct through disciplinary agencies. It is not designed or intended as a basis for civil liability or criminal prosecution. Furthermore, the purpose of the Code would be subverted if the Code were invoked by lawyers for mere tactical advantage in a proceeding.

The text of the Canons and Sections governs conduct of judges, hearing commissioners, and the Auditor-Master and is binding upon them. It is not intended, however, that every transgression will result in disciplinary action. Whether disciplinary action is appropriate, and the degree of discipline to be imposed, should be determined through a reasonable and

reasoned application of the text and should depend on such factors as the seriousness of the transgression, whether there is a pattern of improper activity and the effect of the improper activity on others or on the judicial system. See ABA Standards Relating to Judicial Discipline and Disability Retirement.

The Code of Judicial Conduct is not an exhaustive guide for the conduct of judges. They should also be governed in their judicial and personal conduct by general ethical standards. The Code is intended, however, to state basic standards which govern the conduct of all judges affected and to provide guidance to assist judges in establishing and maintaining high standards of judicial and personal conduct.

TERMINOLOGY

Terms explained below are noted with an asterisk () in the Sections where they appear. In addition, the Sections where terms appear are referred to after the explanation of each term below.*

“Appropriate authority” denotes the authority with responsibility for initiation of disciplinary process with respect to the violation to be reported. See Sections 3D(1) and 3D(2).

“Candidate.” A candidate is a person seeking selection for or retention in judicial office by appointment. A person becomes a candidate for judicial office as soon as he or she makes a public announcement of candidacy, declares or files as a candidate with the appointment authority, or authorizes solicitation of support. The term, “candidate” has the same meaning when applied to a judge seeking appointment to non-judicial office. See Preamble and Sections 5A, 5B, 5D, and 5E.

“Court personnel” does not include the lawyers in a proceeding before a judge. See Sections 3B(7)(c) and 3B(9).

“De minimis” denotes an insignificant interest that could not raise reasonable question as to judge's impartiality. See Sections 3E(1)(c) and 3E(1)(d).

“Economic interest” denotes ownership of a more than de minimis legal or equitable interest, or a relationship as officer, director, advisor or other active participant in the affairs of a party, except that:

- (i) ownership of an interest in a mutual or common investment fund that holds securities is not an economic interest in such securities unless the judge participates in the management of the fund or a proceeding pending or impending before the judge could substantially affect the value of the interest;**

- (ii) service by a judge as an officer, director, advisor or other active participant in an educational, religious, charitable, fraternal or civic organization, or service by a judge's spouse, parent or child as an officer, director, advisor or other active participant in any organization does not create an economic interest in securities held by that organization;
- (iii) a deposit in a financial institution, the proprietary interest of a policy holder in a mutual insurance company, of a depositor in a mutual savings association or of a member in a credit union, or a similar proprietary interest, is not an economic interest in the organization unless a proceeding pending or impending before the judge could substantially affect the value of the interest;
- (iv) ownership of government securities is not an economic interest in the issuer unless a proceeding pending or impending before the judge could substantially affect the value of the securities.

See Sections 3E(1)(c) and 3E(2).

“Fiduciary” includes such relationships as executor, administrator, trustee, and guardian. See Sections 3E(2) and 4E.

“Knowingly,” “knowledge,” “known” or “knows” denotes actual knowledge of the fact in question. A person's knowledge may be inferred from circumstances. See Sections 3D, 3E(1) and 5A(3).

“Law” denotes court rules as well as statutes, constitutional provisions and decisional law. See Sections 2A, 3A, 3B(2), 3B(6), 4B, 4C, 4D(5), 4F, 4I, 5A(2), 5A(3), 5B(2), and 5D.

“Member of the candidate's family” denotes a spouse, child, grandchild, parent, grandparent or other relative or person with whom the candidate maintains a close familial relationship. See Section 5A(3)(a).

“Member of the judge's family” denotes a spouse, child, grandchild, parent, grandparent, or other relative or person with whom the judge maintains a close familial relationship. See Sections 4D(3), 4E and 4G.

“Member of the judge's family residing in the judge's household” denotes any relative of a judge by blood or marriage, or a person treated by a judge as a member of the judge's family, who resides in the judge's household. See Section 3E(1) and 4D(5).

“Nonpublic information” denotes information that, by law, is not available to the public. Nonpublic information may include but is not limited to: information that is sealed by statute or court order, impounded or communicated in camera; and information offered in grand jury proceedings, presentencing reports, dependency cases or psychiatric reports. See Section 3B(11).

“Political organization” denotes a political party or other group, the principal purpose of which is to further the appointment of candidates to political office. See Sections 5A(1) and 5B(2).

“Require.” The rules prescribing that a judge “require” certain conduct of others are, like all of the rules in this Code, rules of reason. The use of the term “require” in that context means a judge is to exercise reasonable direction and control over the conduct of those persons subject to the judge’s direction and control. See Sections 3B(3), 3B(4), 3B(6), 3B(9) and 3C(2).

“Retired judge.” A retired judge is a retired judge of the Superior Court or of the Court of Appeals who is still performing judicial duties upon retirement, pursuant to D.C. Code §11-504(c) (1989 Repl.), until such judge’s successor assumes office (or until such judge has sooner been appointed a senior judge). See Application Section B.

“Senior judge.” A senior judge is a retired judge of the Superior Court or of the Court of Appeals who has been favorably recommended by the Commission on Judicial Disabilities and Tenure and appointed as a senior judge by the appropriate chief judge, pursuant to D.C. Code §11-1504(a) and (b) (1989 Repl.). See Application Section C.

“Third degree of relationship.” The following persons are relatives within the third degree of relationship: great-grandparent, grandparent, parent, uncle, aunt, brother, sister, child, grandchild, great-grandchild, nephew or niece. See Section 3E(1)(d).

CANON 1

A JUDGE SHALL UPHOLD THE INTEGRITY AND INDEPENDENCE OF THE JUDICIARY

A. An independence and honorable judiciary is indispensable to justice in our society. A judge should participate in establishing, maintaining and enforcing high standards of conduct, and shall personally observe those standards so that the integrity and independence of the judiciary will be preserved. The provisions of this Code are to be construed and applied to further that objective.

Commentary:

Deference to the judgments and rulings of courts depends upon public confidence in the integrity and independence of judges. The integrity and independence of judges depends in turn upon their acting without fear or favor. Although judges should be independent, they must comply with the law, including the provisions of this Code. Public confidence in the impartiality of the judiciary is maintained by the adherence of each judge to this responsibility. Conversely, violation of this Code diminishes public confidence in the judiciary and thereby does injury to the system of government under law.

CANON 2

A JUDGE SHALL AVOID IMPROPRIETY AND THE APPEARANCE OF IMPROPRIETY IN ALL OF THE JUDGE'S ACTIVITIES

A. A judge shall respect and comply with the law* and shall act at all times in a manner that promotes public confidence in the integrity and impartiality of the judiciary.

Commentary:

Public confidence in the judiciary is eroded by irresponsible or improper conduct by judges. A judge must avoid all impropriety and appearance of impropriety. A judge must expect to be the subject of constant public scrutiny. A judge must therefore accept restrictions on the judge's conduct that might be viewed as burdensome by the ordinary citizen and should do so freely and willingly.

The prohibition against behaving with impropriety or the appearance of impropriety applies to both the professional and personal conduct of a judge. Because it is not practicable to list all prohibited acts, the proscription is necessarily cast in general terms that extend to conduct by judges that is harmful although not specifically mentioned in the Code. Actual improprieties under this standard include violations of law, court rules or other specific provisions of this Code. The test for appearance of impropriety is whether the conduct would create in reasonable minds a perception that the judge's ability to carry out judicial responsibilities with integrity, impartiality and competence is impaired.

See also Commentary under Section 2C.

B. A judge shall not allow family, social, political or other relationships to influence the judge's judicial conduct or judgment. A judge shall not lend the prestige of judicial office to advance the private interests of the judge or others; nor shall a judge convey or permit others to convey the impression that they are in a special position to influence the judge. A judge shall not testify voluntarily as a character witness.

Commentary:

Maintaining the prestige of judicial office is essential to a system of government in which the judiciary functions independently of the executive and legislative branches. Respect for the judicial office facilitates the orderly conduct of legitimate judicial functions. Judges should distinguish between proper and improper use of the prestige of office in all of their activities. For example, it would be improper for a judge to allude to his or her judgeship to gain a personal advantage such as deferential treatment when stopped by a police officer for a traffic offense. Similarly, judicial letterhead must not be used for conducting a judge's personal business.

A judge must avoid lending the prestige of judicial office for the advancement of the private interests of others. For example, a judge must not use the judge's judicial position to

*See Terminology, "law."

gain advantage in a civil suit involving a member of the judge's family. In contracts for publication of a judge's writings, a judge should retain control over the advertising to avoid exploitation of the judge's office. As to the acceptance of awards, see Section 4D(5)(a) and Commentary.

Although a judge should be sensitive to possible abuse of the prestige of office, a judge may, based on the judge's personal knowledge, serve as a reference or provide a letter of recommendation. However, a judge must not initiate the communication of information to a sentencing judge or a probation or corrections officer but may provide to such persons information for the record in response to a formal request.

Judges may participate in the process of judicial selection by cooperating with appointing authorities and screening committees seeking names for consideration and by responding to official inquiries concerning a person being considered for a judgeship. See also Canon 5 regarding use of a judge's name in political activities.

A judge must not testify voluntarily as a character witness because to do so may lend the prestige of the judicial office in support of the party for whom the judge testifies. Moreover, when a judge testifies as a witness, a lawyer who regularly appears before the judge may be placed in the awkward position of cross-examining the judge. A judge may, however, testify when properly summoned. Except in unusual circumstances where the demands of justice require, a judge should discourage a party from requiring the judge to testify as a character witness.

C. A judge shall not hold membership in any organization that practices invidious discrimination on the basis of race, sex, religion or national origin, or that engages in any discriminatory practice prohibited by the law of the District of Columbia.

Commentary:

Membership of a judge in an organization that practices invidious discrimination gives rise to perceptions that the judge's impartiality is impaired. Section 2C refers to the current practices of the organization. Whether an organization practices invidious discrimination is often a complex question to which judges should be sensitive. The answer cannot be determined from a mere examination of an organization's current membership rolls but rather depends on how the organization selects members and other relevant factors, such as that the organization is dedicated to the preservation of religious, ethnic or cultural values of legitimate common interest to its members, or that it is in fact and effect an intimate, purely private organization whose membership limitations could not be constitutionally prohibited. Absent such factors, an organization is generally said to discriminate invidiously if it arbitrarily excludes from membership on the basis of race, religion, sex or national origin persons who would otherwise be admitted to membership. See New York State Club Ass'n. Inc. v. City of New York, 487 U.S. 1, 108 S. Ct. 2225, 101 L.Ed. 2d 1 (1988); Board of Directors of Rotary International v. Rotary Club of Duarte, 481 U.S. 537, 107 S. Ct. 1940, 95 L. Ed. 2d 474 (1987); Roberts v. United States Jaycees, 468 U.S. 609, 104 S. Ct. 3244, 82 L. Ed. 2d 462 (1984).

A judge's membership in an organization that engages in any discriminatory practice prohibited by the law of the District of Columbia also violates Canon 2 and Section 2A and gives the appearance of impropriety. In addition, it would be a violation of Canon 2 and Section 2A for a judge to arrange a meeting at a club that the judge knows practices invidious discrimination on the basis of race, sex, religion or national origin, or other unlawful discrimination, in its membership or other policies, or for the judge to regularly use such a club. Moreover, public manifestation by a judge of the judge's knowing approval of invidious discrimination on any basis gives the appearance of impropriety under Canon 2 and diminishes public confidence in the integrity and impartiality of the judiciary, in violation of Section 2A.

When a person who is a judge on the date this Code becomes effective in the District of Columbia learns that an organization to which the judge belongs engages in discrimination that would preclude membership under Section 2C or under Canon 2 and Section 2A, the judge is permitted, in lieu of resigning, to make immediate efforts to have the organization discontinue its discriminatory practices, but is required to suspend participation in any other activities of the organization. If the organization fails to discontinue its discriminatory practices as promptly as possible (and in all events within a year of the judge's first learning of the practices), the judge is required to resign immediately from the organization.

CANON 3

A JUDGE SHALL PERFORM THE DUTIES OF JUDICIAL OFFICE IMPARTIALLY AND DILIGENTLY

A. Judicial Duties in General. The judicial duties of a judge take precedence over all the judge's other activities. The judge's judicial duties include all the duties of the judge's office prescribed by law.* In the performance of these duties, the following standards apply.

B. Adjudicative Responsibilities.

(1) A judge shall hear and decide matters assigned to the judge except those in which disqualification is required.

(2) A judge shall be faithful to the law* and maintain professional competence in it. A judge shall not be swayed by partisan interests, public clamor or fear of criticism.

(3) A judge shall require* order and decorum in proceedings before the judge.

(4) A judge shall be patient, dignified and courteous to litigants, jurors, witnesses, lawyers and others with whom the judge deals in an official capacity,

*See Terminology, "law."

*See Terminology, "require."

and shall require* similar conduct of lawyers, and of staff, court officials and others subject to the judge's direction and control.

Commentary:

The duty to hear all proceedings fairly and with patience is not inconsistent with the duty to dispose promptly of the business of the court. Judges can be efficient and businesslike while being patient and deliberate.

(5) A judge shall perform judicial duties without bias or prejudice. A judge shall not, in the performance of judicial duties, by words or conduct manifest bias or prejudice, including but not limited to bias or prejudice based upon race, sex, religion, national origin, disability, age, sexual orientation or socioeconomic status, and shall not permit staff, court officials and others subject to the judge's direction and control to do so.

Commentary:

A judge must refrain from speech, gestures or other conduct that could reasonably be perceived as sexual harassment and must require the same standard of conduct of others subject to the judge's direction and control.

A judge must perform judicial duties impartially and fairly. A judge who manifests bias on any basis in a proceeding impairs the fairness of the proceeding and brings the judiciary into disrepute. Facial expression and body language, in addition to oral communication, can give to parties or lawyers in the proceeding, jurors, the media and others an appearance of judicial bias. A judge must be alert to avoid behavior that may be perceived as prejudicial.

(6) A judge shall require* lawyers in proceedings before the judge to refrain from manifesting, by words or conduct, bias or prejudice based upon race, sex, religion, national origin, disability, age, sexual orientation or socioeconomic status, against parties, witnesses, counsel or others. This Section 3B(6) does not preclude legitimate advocacy when race, sex, religion, national origin, disability, age, sexual orientation or socioeconomic status, or other similar factors, are issues in the proceeding.

(7) A judge shall accord to every person who has a legal interest in a proceeding, or that person's lawyer, the right to be heard according to law.* A judge shall not initiate, permit, or consider ex parte communications, or consider other communications made to the judge outside the presence of the parties concerning a pending or impending proceeding except that:

(a) Where circumstances require ex parte communications for scheduling, administrative purposes or emergencies that do not deal with substantive matters or issues on the merits are authorized; provided:

(i) the judge reasonably believes that no party will gain a procedural or tactical advantage as a result of the ex parte communication, and

*See Terminology, "require."

*See Terminology, "law."

(ii) the judge makes provision promptly to notify all other parties of the substance of the ex parte communication and allows an opportunity to respond.

(b) A judge may obtain the advice of a disinterested expert on the law* applicable to a proceeding before the judge if the judge gives notice to the parties of the person the judge intends to consult, and affords the parties reasonable opportunity to respond.

(c) A judge may consult with court personnel* whose function is to aid the judge in carrying out the judge's adjudicative responsibilities or with other judges.

(d) A judge may, with the consent of the parties, confer separately with the parties and their lawyers in an effort to mediate or settle matters pending before the judge.

(e) A judge may initiate or consider any ex parte communications when expressly authorized by law* to do so.

Commentary:

The proscription against communications concerning a proceeding includes communications from lawyers, law teachers, and other persons who are not participants in the proceeding, except to the limited extent permitted.

To the extent reasonably possible, all parties or their lawyers shall be included in communications with a judge.

Whenever presence of a party or notice to a party is required by Section 3B(7), it is the party's lawyer, or if the party is unrepresented, the party, who is to be present or to whom notice is to be given.

An appropriate and often desirable procedure for a court to obtain the advice of a disinterested expert on legal issues is to invite the expert to file a brief amicus curiae.

Certain ex parte communication is approved by Section 3B(7) to facilitate scheduling and other administrative purposes and to accommodate emergencies. In general, however, a judge must discourage ex parte communication and allow it only if all the criteria stated in Section 3B(7) are clearly met. A judge must disclose to all parties all ex parte communications described in Sections 3B(7)(a) and 3B(7)(b) regarding a proceeding pending or impending before the judge.

A judge must not independently investigate facts in a case and must consider only the evidence presented.

*See Terminology, "law."

*See Terminology, "court personnel."

A judge may request a party to submit proposed findings of fact and conclusions of law, so long as the other parties are apprised of the request and are given an opportunity to respond to the proposed findings and conclusions.

A judge must make reasonable efforts, including the provision of appropriate supervision, to ensure that Section 3B(7) is not violated through law clerks or other personnel on the judge's staff.

If communication between the trial judge and the appellate court with respect to a proceeding is permitted, a copy of any written communication or the substance of any oral communication should be provided to all parties.

(8) A judge shall dispose of all judicial matters promptly, efficiently and fairly.

Commentary:

In disposing of matters promptly, efficiently and fairly, a judge must demonstrate due regard for the rights of the parties to be heard and to have issues resolved without unnecessary cost or delay. Containing costs while preserving fundamental rights of parties so protects the interests of witnesses and the general public. A judge should monitor and supervise cases so as to reduce or eliminate dilatory practices, avoidable delays and unnecessary costs. A judge should encourage and seek to facilitate settlement, but parties should not feel coerced into surrendering the right to have their controversy resolved by the courts.

Prompt disposition of the court's business requires a judge to devote adequate time to judicial duties, to be punctual in attending court and expeditious in determining matters under submission, and to insist that court officials, litigants and their lawyers cooperate with the judge to that end.

(9) A judge shall not, while a proceeding is pending or impending in any court, make any public comment that might reasonably be expected to affect its outcome or impair its fairness or make any nonpublic comment that might substantially interfere with a fair trial or hearing. The judge shall require* similar abstention on the part of court personnel* subject to the judge's direction and control. This Section does not prohibit judges from making public statements in the course of their official duties or from explaining for public information the procedures of the court. This Section does not apply to proceedings in which the judge is a litigant in a personal capacity.

Commentary:

The requirement that judges abstain from public comment regarding a pending or impending proceeding continues during any appellate process and until final disposition. This Section does not prohibit a judge from commenting on proceedings in which the judge is a litigant in a personal capacity, but in cases such as a writ of mandamus where the judge

*See Terminology, "require."

*See Terminology, "court personnel."

is a litigant in an official capacity, the judge must not comment publicly. The conduct of lawyers relating to trial publicity is governed by Rule 3.6 of the District of Columbia Rules of Professional Conduct.

(10) A judge shall not commend or criticize jurors for their verdict other than in a court order or opinion in a proceeding, but may express appreciation to jurors for their service to the judicial system and the community.

Commentary:

Commending or criticizing jurors for their verdict may imply a judicial expectation in future cases and may impair a juror's ability to be fair and impartial in a subsequent case.

(11) A judge shall not disclose or use, for any purpose unrelated to judicial duties, nonpublic information* acquired in a judicial capacity.

C. Administrative Responsibilities.

(1) A judge shall diligently discharge the judge's administrative responsibilities without bias or prejudice and maintain professional competence in judicial administration, and should cooperate with other judges and court officials in the administration of court business.

(2) A judge shall require* staff, court officials and others subject to the judge's direction and control to observe the standards of fidelity and diligence that apply to the judge and to refrain from manifesting bias or prejudice in the performance of their official duties.

(3) A judge with supervisory authority for the judicial performance of other judges shall take reasonable measures to assure the prompt disposition of matters before them and the proper performance of their other judicial responsibilities.

(4) A judge shall not make unnecessary appointments. A judge shall exercise the power of appointment impartially and on the basis of merit. A judge shall avoid nepotism and favoritism. A judge shall not approve compensation of appointees beyond the fair value of services rendered.

Commentary:

Appointees of a judge include assigned counsel, officials such as referees, commissioners, special masters, receivers and guardians and personnel such as clerks, secretaries and bailiffs. Consent by the parties to an appointment or an award of compensation does not relieve the judge of the obligation prescribed by Section 3C(4).

*See Terminology, "nonpublic information."

*See Terminology, "require."

D. Disciplinary Responsibilities.

(1) A judge who receives information indicating a substantial likelihood that another judge has committed a violation of this Code should take appropriate action. A judge having knowledge* that another judge has committed a violation of this Code that raises a substantial question as to the other judge’s fitness for office shall inform the appropriate authority.*

(2) A judge who receives information indicating a substantial likelihood that a lawyer has committed a violation of the District of Columbia Rules of Professional Conduct should take appropriate action. A judge having knowledge* that a lawyer has committed a violation of the Rules of Professional Conduct that raises a substantial question as to the lawyer’s honesty, trustworthiness or fitness as a lawyer in other respects shall inform the appropriate authority.*

(3) Acts of a judge, in the discharge of disciplinary responsibilities, required or permitted by Sections 3D(1) and 3D(2) are part of a judge’s judicial duties and shall be absolutely privileged, and no civil action predicated thereon may be instituted against the judge.

Commentary:

Appropriate action may include direct communication with the judge or lawyer who has committed the violation, other direct action if available, and reporting the violation to the appropriate authority or other agency or body.

E. Disqualification.

(1) A judge shall disqualify himself or herself in a proceeding in which the judge’s impartiality might reasonably be questioned, including but not limited to instances where:

Commentary:

Under this rule, a judge is disqualified whenever the judge’s impartiality might reasonably be questioned, regardless whether any of the specific rules in Section 3E(1) apply. For example, if a judge were in the process of negotiating for employment with a law firm, the judge would be disqualified from any matters in which that law firm appeared, unless the disqualification was waived by the parties after disclosure by the judge.

A judge should disclose on the record information that the judge believes the parties or their lawyers might consider relevant to the question of disqualification, even if the judge believes there is no real basis for disqualification.

*See Terminology, “knowingly,” “knowledge,” “known” and “knows.”

*See Terminology, “appropriate authority.”

By decisional law, the rule of necessity may override the rule of disqualification. For example, a judge might be required to participate in judicial review of a judicial salary statute, or might be the only judge available in a matter requiring immediate judicial action, such as a hearing on probable cause or a temporary restraining order. In the latter case, the judge must disclose on the record the basis for possible disqualification and use reasonable efforts to transfer the matter to another judge as soon as practicable.

(a) the judge has a personal bias or prejudice concerning a party or a party's lawyer, or personal knowledge* of disputed evidentiary facts concerning the proceeding;

(b) the judge served as a lawyer in the matter of controversy, or a lawyer with whom the judge previously practiced law served during such association as a lawyer concerning the matter, or the judge has been a material witness concerning it;

Commentary:

A lawyer in a government agency does not ordinarily have an association with other lawyers employed by that agency within the meaning of Section 3E(1)(b); a judge formerly employed by a government agency, however, should disqualify himself or herself in a proceeding if the judge's impartiality might reasonably be questioned because of such association.

(c) the judge knows* that he or she, individually or as a fiduciary, or the judge's spouse, parent or child wherever residing, or any other member of the judge's family residing in the judge's household,* has an economic interest* in the subject matter in controversy or in a party to the proceeding or has any other more than de minimis* interest that could be substantially affected by the proceeding;

(d) the judge or the judge's spouse, or a person within the third degree of relationship* to either of them, or the spouse of such a person:

(i) is a party to the proceeding, or an officer, director or trustee of a party;

(ii) is acting as a lawyer in the proceeding;

(iii) is known* by the judge to have a more than de minimis* interest that could be substantially affected by the proceeding;

(iv) is to the judge's knowledge* likely to be a material witness in the proceeding.

*See Terminology, "knowingly," "knowledge," "known" and "knows."

*See Terminology, "member of the judge's family residing in the judge's household."

*See Terminology, "economic interest."

*See Terminology, "de minimis."

*See Terminology, "third degree of relationship."

Commentary:

The fact that a lawyer in a proceeding is affiliated with a law firm with which a relative of the judge is affiliated does not of itself disqualify the judge. Under appropriate circumstances, the fact that “the judge’s impartiality might reasonably be questioned” under Section 3E(1), or that the relative is known by the judge to have an interest in the law firm that could be “substantially affected by the outcome of the proceeding” under Section 3E(1)(d)(iii), may require the judge’s disqualification.

(2) A judge shall keep informed about the judge’s personal and fiduciary* economic interests,* and make a reasonable effort to keep informed about the personal economic interests of the judge’s spouse and minor children residing in the judge’s household.

F. Remittal of Disqualification. A judge disqualified by the terms of Section 3E may disclose on the record the basis of the judge’s disqualification and may ask the parties and their lawyers to consider, out of the presence of the judge, whether to waive disqualification. If following disclosure of any basis for disqualification other than personal bias or prejudice concerning a party, the parties and lawyers, without participation by the judge, all agree that the judge should not be disqualified, and the judge is then willing to participate, the judge may participate in the proceeding. The agreement shall be incorporated in the record of the proceeding.

Commentary:

A remittal procedure provides the parties an opportunity to proceed without delay if they wish to waive the disqualification. To assure that consideration of the question of remittal is made independently of the judge, a judge must not solicit, seek or hear comment on possible remittal or waiver of the disqualification unless the lawyers jointly propose remittal after consultation as provided in the rule. A party may act through counsel if counsel represents on the record that the party has been consulted and consents. As a practical matter, a judge may wish to have all parties and their lawyers sign the remittal agreement.

CANON 4

A JUDGE SHALL SO CONDUCT THE JUDGE’S EXTRA-JUDICIAL ACTIVITIES AS TO MINIMIZE THE RISK OF CONFLICT WITH JUDICIAL OBLIGATIONS

A. Extra-judicial Activities in General. A judge shall conduct all of the judge’s extra-judicial activities so that they do not:

- (1) cast reasonable doubt on the judge’s capacity to act impartially as a judge;**
- (2) demean the judicial office; or**
- (3) interfere with the proper performance of judicial duties.**

*See Terminology, “fiduciary.”

*See Terminology, “economic interest.”

Commentary:

Complete separation of a judge from extra-judicial activities is neither possible nor wise; a judge should not become isolated from the community in which the judge lives.

Expressions of bias or prejudice by a judge, even outside the judge's judicial activities, may cast reasonable doubt on the judge's capacity to act impartially as a judge. Expressions which may do so include jokes or other remarks demeaning individuals on the basis of their race, sex, religion, national origin, disability, age, sexual orientation or socioeconomic status. See Section 2C and accompanying Commentary.

B. Avocational Activities. A judge may speak, write, lecture, teach and participate in other extra-judicial activities concerning the law,* the legal system, the administration of justice and non-legal subjects, subject to the requirements of this Code.

Commentary:

As a judicial officer and person specially learned in the law, a judge is in a unique position to contribute to the improvement of the law, the legal system, and the administration of justice, including revision of substantive and procedural law and improvement of criminal and juvenile justice. To the extent that time permits, a judge is encouraged to do so, either independently or through a bar association, judicial conference or other organization dedicated to the improvement of the law. Judges may participate in efforts to promote the fair administration of justice, the independence of the judiciary and the integrity of the legal profession and may express opposition to the persecution of lawyers and judges in other countries because of their professional activities.

In this and other Sections of Canon 4, the phrase, “subject to the requirements of this Code” is used, notably in connection with a judge’s governmental, civic or charitable activities. This phrase is included to remind judges that the use of permissive language in various Sections of the Code does not relieve a judge from the other requirements of the Code that apply to the specific conduct.

C. Governmental, Civic or Charitable Activities.

(1) A judge shall not appear at a public hearing before, or otherwise consult with, an executive or legislative body or official except on matters concerning the law,* the legal system or the administration of justice or except when acting pro se in a matter involving the judge or the judge’s interests.

Commentary:

See Section 2B regarding the obligation to avoid improper influence.

(2) A judge shall not accept appointment to a governmental committee or commission or other governmental position that is concerned with issues of fact or policy on

*See Terminology, “law.”

matters other than the improvement of the law,* the legal system or the administration of justice. A judge may, however, represent a country, state or locality on ceremonial occasions or in connection with historical, educational or cultural activities.

Commentary:

Section 4C(2) prohibits a judge from accepting any governmental position except one relating to the law, legal system or administration of justice as authorized by Section 4C(3). The appropriateness of accepting extra-judicial assignments must be assessed in light of the demands on judicial resources created by crowded dockets and the need to protect the courts from involvement in extra-judicial matters that may prove to be controversial. Judges should not accept governmental appointments that are likely to interfere with the effectiveness and independence of the judiciary.

Section 4C(2) does not govern a judge's service in a non-governmental position. See Section 4C(3) permitting service by a judge with organizations devoted to the improvement of the law, the legal system or the administration of justice and with educational, religious, charitable, fraternal or civic organizations not conducted for profit. For example, service on the board of a public educational institution, unless it were a law school, would be prohibited under Section 4C(2), but service on the board of a public law school or any private educational institution would generally be permitted under Section 4C(3).

(3) A judge may serve as an officer, director, trustee or non-legal advisor of an organization or governmental agency devoted to the improvement of the law,* the legal system or the administration of justice or of an educational, religious, charitable, fraternal or civic organization not conducted for profit, subject to the following limitations and the other requirements of this Code.

Commentary:

Section 4C(3) does not apply to a judge's service in a governmental position unconnected with the improvement of the law, the legal system or the administration of justice; see Section 4C(2).

See Commentary to Section 4B regarding use of the phrase "subject to the following limitations and the other requirements of this Code." As an example of the meaning of the phrase, a judge permitted by Section 4C(3) to serve on the board of a fraternal institution may be prohibited from such service by Sections 2C or 4A if the institution practices invidious discrimination or if service on the board otherwise casts reasonable doubt on the judge's capacity to act impartially as a judge.

Service by a judge on behalf of a civic or charitable organization may be governed by other provisions of Canon 4 in addition to Section 4C. For example, a judge is prohibited by Section 4G from serving as a legal advisor to a civic or charitable organization.

*See Terminology, "law."

(a) A judge shall not serve as an officer, director, trustee or non-legal advisor if it is likely that the organization

(i) will be engaged in proceedings that would ordinarily come before the judge, or

(ii) will be engaged frequently in adversary proceedings in the court of which the judge is a member or in any court subject to the appellate jurisdiction of the court of which the judge is a member.

Commentary:

The changing nature of some organizations and of their relationship to the law makes it necessary for a judge regularly to reexamine the activities of each organization with which the judge is affiliated to determine if it is proper for the judge to continue the affiliation. For example, in many jurisdictions charitable hospitals are now more frequently in court than in the past. Similarly, the boards of some legal aid organizations now make policy decisions that may have political significance or imply commitment to causes that may come before the courts for adjudication.

(b) A judge as an officer, director, trustee or non-legal advisor, or as a member or otherwise:

(i) may assist such an organization in planning fund-raising and may participate in the management and investment of the organization's funds, but shall not personally participate in the solicitation of funds or other fund-raising activities, except that a judge may participate in solicitations of funds, other than from lawyers and from the general public, on behalf of an organization or governmental agency devoted to the improvement of the law, the legal system or the administration of justice, and may solicit funds from other judges over whom the judge does not exercise supervisory or appellate authority;

(ii) may make recommendations to public and private fund-granting organizations on projects and programs concerning the law,* the legal system or the administration of justice;

(iii) shall not personally participate in membership solicitation if the solicitation might reasonably be perceived as coercive or, except as permitted in Section 4C(3)(b)(i), if the membership solicitation is essentially a fund-raising mechanism;

(iv) shall not use or permit the use of the prestige of judicial office for fund-raising or membership solicitation.

*See Terminology, "law."

Commentary:

A judge may solicit membership or endorse or encourage membership efforts for an organization devoted to the improvement of the law, the legal system or the administration of justice or a nonprofit educational, religious, charitable, fraternal or civic organization as long as the solicitation cannot reasonably be perceived as coercive and is not essentially a fund-raising mechanism. Solicitation of funds for an organization and solicitation of memberships similarly involve the danger that the person solicited will feel obligated to respond favorably to the solicitor if the solicitor is in a position of influence or control. A judge must not engage in direct, individual solicitation of funds or memberships in person, in writing or by telephone except in the following cases: 1) a judge may solicit for funds or memberships other judges over whom the judge does not exercise supervisory or appellate authority, 2) a judge may solicit other persons for membership in the organizations described above if neither those persons nor persons with whom they are affiliated are likely ever to appear before the court on which the judge serves and 3) a judge who is an officer of such an organization may send a general membership solicitation mailing over the judge's signature.

Use of an organization letterhead for fund-raising or membership solicitation will violate Section 4C(3)(b) if the letterhead lists the judge's name, unless the solicitation for which the letterhead is used is directed to a governmental agency. This limitation (other than the exception for solicitations of governmental agencies) incorporates the position of ABA Advisory Opinion No. 22 (March 30, 1971) under Canon 25 of the ABA's 1923 Canons of Judicial Ethics; it therefore rejects the position of ABA Advisory Opinion No. 35 (May 8, 1974), interpreting Section 5B of the ABA's 1972 Code of Judicial Conduct, and the position of the Commentary to Section 4C(3)(b) of the ABA's 1990 Model Code of Judicial Conduct, both of which permits a judge's name on an organization letterhead for fund-raising (with limitations). In addition, a judge must also make reasonable efforts to ensure that the judge's staff, court officials and others subject to the judge's direction and control do not solicit funds on the judge's behalf for any purpose, charitable or otherwise.

A judge must not be a speaker or guest of honor at an organization's fund-raising event, but mere attendance at such an event is permissible if otherwise consistent with this Code.

Section 4C(3)(b)(i) of the ABA's 1990 Model Code of Judicial Conduct has been amended here to incorporate a provision from the 1972 ABA Code of Judicial Conduct permitting judges to solicit funds for organizations or governmental agencies devoted to the improvement of the law, the legal system, or the administration of justice, provided judges do not solicit from the general public, including lawyers. The intention here is to authorize judges to help such organizations seek funding from private and governmental fund-granting agencies that would ordinarily be receptive to such requests and would not feel overreached or importuned improperly by an approach from a judicial officer.

D. Financial Activities.

(1) A judge shall not engage in financial and business dealings that:

(a) may reasonably be perceived to exploit the judge’s judicial position, or

(b) involve the judge in frequent transactions or continuing business relationships with those lawyers or other persons likely to come before the court on which the judge serves.

Commentary:

The Time for Compliance provision of this Code (Application, Section F) postpones the time for compliance with certain provisions of this Section in some cases.

When a judge acquires in a judicial capacity information, such as material contained in filings with the court, that is not yet generally known, the judge must not use the information for private gain. See Section 2B; see also Section 3B(11).

A judge must avoid financial and business dealings that involve the judge in frequent transactions or continuing business relationships with persons likely to come either before the judge personally or before other judges on the judge’s court. In addition, a judge should discourage members of the judge’s family from engaging in dealings that would reasonably appear to exploit the judge’s judicial position. This rule is necessary to avoid creating an appearance of exploitation of office or favoritism and to minimize the potential for disqualification. With respect to affiliation of relatives of a judge with law firms appearing before the judge, see Commentary to Section 3E(1) relating to disqualification.

Participation by a judge in financial and business dealings is subject to the general prohibitions in Section 4A against activities that tend to reflect adversely on impartiality, demean the judicial office, or interfere with the proper performance of judicial duties. Such participation is also subject to the general prohibition in Canon 2 against activities involving impropriety or the appearance of impropriety and the prohibition in Section 2B against the misuse of the prestige of judicial office. In addition, a judge must maintain high standards of conduct in all of the judge’s activities, as set forth in Canon 1. See Commentary for Section 4B regarding use of the phrase “subject to the requirements of this Code.”

(2) A judge may, subject to the requirements of this Code, hold and manage investments of the judge and members of the judge’s family,* including real estate, and engage in other remunerative activity.

Commentary:

This Section provides that, subject to the requirements of this Code, a judge may hold and manage investments owned solely by the judge, investments owned solely by a member or members of the judge’s family, and investments owned jointly by the judge and members of the judge’s family.

*See Terminology, “member(s) of the judge’s family.”

(3) A judge shall not serve as an officer, director, manager, general partner, advisor or employee of any business entity except that a judge may, subject to the requirements of this Code, serve in any such capacity or otherwise participate in:

(a) a business closely held by the judge or members of the judge's family,* or

(b) a business entity primarily engaged in investment of the financial resources of the judge or members of the judge's family.

Commentary:

Subject to the requirements of this Code, a judge may participate in a business that is closely held either by the judge alone, by members of the judge's family, or by the judge and members of the judge's family.

Although participation by a judge in a closely-held family business might otherwise be permitted by Section 4D(3), a judge may be prohibited from participation by other provisions of this Code when, for example, the business entity frequently appears before the judge's court or the participation requires significant time away from judicial duties. Similarly, a judge must avoid participating in a closely-held family business if the judge's participation would involve misuse of the prestige of judicial office.

(4) A judge shall manage the judge's investments and other financial interests to minimize the number of cases in which the judge is disqualified. As soon as the judge can do so without serious financial detriment, the judge shall divest himself or herself of investments and other financial interests that might require frequent disqualification.

(5) A judge shall not accept, and shall urge members of the judge's family residing in the judge's household,* not to accept, a gift, bequest, favor or loan from anyone except for:

Commentary:

Because a gift, bequest, favor or loan to a member of the judge's family residing in the judge's household might be viewed as intended to influence the judge, a judge must inform those family members of the relevant ethical constraints upon the judge in this regard and discourage those family members from violating them. A judge cannot, however, reasonably be expected to know or control all of the financial or business activities of all family members residing in the judge's household.

(a) a gift incident to a public testimonial, books, tapes and other resource materials supplied by publishers on a complimentary basis for official use, or an invitation to the judge and the judge's spouse or guest to attend a bar-related

*See Terminology, "members of the judge's family."

*See Terminology, "members of the judge's family residing in the judge's household."

function or an activity devoted to the improvement of the law,* the legal system or the administration of justice;

Commentary:

Acceptance of an invitation to a law-related function is governed by Section 4D(5)(a); acceptance of an invitation paid for by an individual lawyer or group of lawyers is governed by Section 4D(5)(h).

A judge may accept a public testimonial or a gift incident thereto only if the donor organization is not an organization whose members comprise or frequently represent the same side in litigation, and the testimonial and gift are otherwise in compliance with other provisions of this Code. See Sections 4A(1) and 2B.

(b) a gift, award or benefit incident to the business, profession or other separate activity of a spouse or other family member of a judge residing in the judge's household, including gifts, awards and benefits for the use of both the spouse or other family member and the judge (as spouse or family member), provided the gift, award or benefit could not reasonably be perceived as intended to influence the judge in the performance of judicial duties;

(c) ordinary social hospitality;

(d) a gift from a relative or friend, for a special occasion, such as a wedding, anniversary or birthday, if the gift is fairly commensurate with the occasion and the relationship;

Commentary:

A gift to a judge, or to a member of the judge's family living in the judge's household, that is excessive in value raises questions about the judge's impartiality and the integrity of the judicial office and might require disqualification of the judge where disqualification would not otherwise be required. See, however, Section 4(D)(e).

(e) a gift, bequest, favor or loan from a relative or close personal friend whose appearance or interest in a case would in any event require disqualification under Section 3E;

(f) a loan from a lending institution in its regular course of business on the same terms generally available to persons who are not judges;

(g) a scholarship or fellowship awarded on the same terms and based on the same criteria applied to other applicants; or

*See Terminology, "law."

(h) any other gift, bequest, favor or loan, only if: the donor is not a party or other person who has come or is likely to come or whose interests have come or are likely to come before the judge; and, if it is reported as required by D.C. Code §11-1530(4) (1989 Repl.).

Commentary:

Section 4D(5)(h) prohibits judges from accepting gifts, favors, bequests or loans from lawyers or their firms if they have come or are likely to come before the judge; it also prohibits gifts, favors, bequests or loans from clients of lawyers or their firms when the clients' interests have come or are likely to come before the judge.

E. Fiduciary Activities.

(1) A judge shall not serve as executor, administrator or other personal representative, trustee, guardian, attorney in fact or other fiduciary,* except for the estate, trust or person of a member of the judge's family,* and then only if such service will not interfere with the proper performance of judicial duties.

(2) A judge shall not serve as a fiduciary* if it is likely that the judge as a fiduciary will be engaged in proceedings that would ordinarily come before the judge, or if the estate, trust or ward becomes involved in adversary proceedings in the court on which the judge serves or one under its appellate jurisdiction.

(3) The same restrictions on financial activities that apply to a judge personally also apply to the judge while acting in a fiduciary* capacity.

Commentary:

The Time for Compliance provision of this Code (Application, Section F) postpones the time for compliance with certain provisions of this Section in some cases.

The restrictions imposed by this Canon may conflict with the judge's obligation as a fiduciary. For example, a judge should resign as trustee if detriment to the trust would result from divestiture of holdings the retention of which would place the judge in violation of Section 4D(4).

F. Service as Arbitrator or Mediator. A judge shall not act as an arbitrator or mediator or otherwise perform judicial functions in a private capacity unless expressly authorized by law.*

Commentary:

Section 4F does not prohibit a judge from participating in arbitration, mediation or settlement conferences performed as part of judicial duties.

*See Terminology, "fiduciary."

*See Terminology, "member of the judge's family."

*See Terminology, "law."

G. Practice of Law. A judge shall not practice law. Notwithstanding this prohibition, a judge may act pro se and may, without compensation, give legal advice to and draft or review documents for a member of the judge's family.*

Commentary:

This prohibition refers to the practice of law in a representative capacity and not in a pro se capacity. A judge may act for himself or herself in all legal matters, including matters involving litigation and matters involving appearances before or other dealings with legislative and other governmental bodies. However, in so doing, a judge must not abuse the prestige of office to advance the interests of the judge or the judge's family. See Section 2(B).

The Code allows a judge to give legal advice to and draft legal documents for members of the judge's family, so long as the judge receives no compensation. A judge must not, however, act as an advocate or negotiator for a member of the judge's family in a legal matter.

H. Compensation, Reimbursement and Financial Reporting.

(1) Compensation and Reimbursement. A judge may receive compensation and reimbursement of expenses for the extra-judicial activities permitted by this Code, if the source of such payments does not give the appearance of influencing the judge's performance of judicial duties or otherwise give the appearance of impropriety.

(a) Compensation shall not exceed a reasonable amount nor shall it exceed what a person who is not a judge would receive for the same activity.

(b) Expense reimbursement shall be limited to the actual cost of travel, food and lodging reasonably incurred by the judge and, where appropriate to the occasion, by the judge's spouse or guest. Any payment in excess of such an amount is compensation.

(2) Annual Financial Statement. A judge shall file an annual financial statement with the Commission on Judicial Disabilities and Tenure as required by D.C. Code §11-1530 (1989 Repl.) and the Regulations of the Commission.

Commentary:

See Section 4D(5) regarding reporting of gifts, bequests and loans.

The Code does not prohibit a judge from accepting honoraria or speaking fees provided that the compensation is reasonable and commensurate with the task performed. A judge should ensure, however, that no conflicts are created by the arrangement. A judge must not appear to trade on the judicial position for personal advantage. Nor should a judge spend significant time away from court duties to meet speaking or writing commitments for compensation. In addition, the source of the payment must not raise any question of undue influence or the judge's ability or willingness to be impartial.

*See Terminology, "member of the judge's family."

I. Disclosure of a judge’s income, debts, investments or other assets is required only to the extent provided in this Canon and in Sections 3E and 3F, or as otherwise required by law.*

Commentary:

Section 3E requires a judge to disqualify himself or herself in any proceeding in which the judge has an economic interest. See “economic interest” as explained in the Terminology Section. Section 4D requires a judge to refrain from engaging in business and from financial activities that might interfere with the impartial performance of judicial duties; Section 4H requires a judge to make annual disclosure of financial information as required by D.C. Code §11-1530 (1989 Repl.). A judge has the rights of any other citizen, including the right to privacy of the judge’s financial affairs, except to the extent that limitations established by law are required to safeguard the proper performance of the judge’s duties.

CANON 5

A JUDGE OR JUDICIAL CANDIDATE SHALL REFRAIN FROM INAPPROPRIATE POLITICAL ACTIVITY

A. All Judges and Candidates.

(1) Except as authorized in Section 5B(2), a judge or a candidate* for election or appointment to judicial office shall not:

- (a) act as a leader or hold an office in a political organization*;**
- (b) publicly endorse or publicly oppose another candidate for public office;**
- (c) make speeches on behalf of a political organization;**
- (d) attend political gatherings; or**
- (e) solicit funds for, pay an assessment to or make a contribution to a political organization or candidate, or purchase tickets for political party dinners or other functions.**

Commentary:

A judge or candidate for judicial office retains the right to participate in the political process as a voter.

*See Terminology, “law.”

*See Terminology, “candidate.”

*See Terminology, “political organization.”

Where false information concerning a judicial candidate is made public, a judge or another judicial candidate having knowledge of the facts is not prohibited by Section 5A(1) from making the facts public.

Section 5A(1)(b) does not prohibit a judge or judicial candidate from privately expressing his or her views on judicial candidates or other candidates for public office.

(2) A judge shall resign from judicial office upon becoming a candidate* for a non-judicial office either in a primary or in a general election, except that the judge may continue to hold judicial office while being a candidate for election to or serving as a delegate in a state constitutional convention if the judge is otherwise permitted by law* to do so.

(3) A candidate* for a judicial office:

(a) shall maintain the dignity appropriate to judicial office and act in a manner consistent with the integrity and independence of the judiciary, and shall encourage members of the candidate's family* to adhere to the same standards of political conduct in support of the candidate as apply to the candidate;

2. Introductory Note to Canon 5: There is wide variation in the methods of judicial selection used, both among jurisdictions and within the jurisdictions themselves. In a given state judges may be selected, by one method initially, retained by a different method, and selected by still another method to fill interim vacancies.

According to figures compiled in 1987 by the National Center for State Courts, 32 states and the District of Columbia use a merit selection method (in which an executive such as a governor appoints a judge from a group of nominees selected by a judicial nominating commission) to select judges in the state either initially or to fill an interim vacancy. Of those 33 jurisdictions, a merit selection method is used in 18 jurisdictions to choose judges of courts of last resort, in 13 jurisdictions to choose judges of intermediate appellate courts, in 12 jurisdictions to choose judges of general jurisdiction courts and in 5 jurisdictions to choose judges of limited jurisdiction courts.

Methods of judicial selection other than merit selection include nonpartisan election (10 states use it for initial selection at all court levels, another 10 states use it for initial selection for at least one court level) and partisan election (8 states use it for initial selection at all court levels, another 7 states use it for initial selection for at least one level). In a small minority of the states, judicial selection methods include executive or legislative appointment (without nomination of a group of potential appointees by a judicial nominating commission) and court selection. In addition, the federal judicial system utilizes an executive appointment method. See State Court Organization 1987 (National Center for State Courts, 1988).

*See Terminology, "candidate."

*See Terminology, "law."

*See Terminology, "members of the candidate's family."

Commentary:

Although a judicial candidate must encourage members of his or her family to adhere to the same standards of political conduct in support of the candidate that apply to the candidate, family members are free to participate in other political activity.

(b) shall prohibit employees and officials who serve at the pleasure of the candidate,* and shall discourage other employees and officials subject to the candidate's direction and control from doing on the candidate's behalf what the candidate is prohibited from doing under the Sections of this Canon;

(c) shall not authorize or knowingly* permit any other person to do for the candidate* what the candidate is prohibited from doing under the Sections of this Canon;

(d) shall not:

(i) make pledges or promises of conduct in office other than the faithful and impartial performance of the duties of the office;

(ii) make statements that commit or appear to commit the candidate with respect to cases, controversies or issues that are likely to come before the court; or

(iii) knowingly* misrepresent the identity, qualifications, present position or other fact concerning any candidate;

Commentary:

Section 5A(3)(d) prohibits a candidate for judicial office from making statements that appear to commit the candidate regarding cases, controversies or issues likely to come before the court. As a corollary, a candidate should emphasize in any public statement the candidate's duty to uphold the law regardless of his or her personal views. See also Section 3B(9), the general rule on public comment by judges. Section 5A(3)(d) does not prohibit a candidate from making pledges or promises respecting improvements in court administration. Nor does this Section prohibit an incumbent judge from making private statements to other judges or court personnel in the performance of judicial duties. This Section applies to any statement made in the process of securing judicial office, such as statements to commissions charged with judicial selection and tenure and legislative bodies confirming appointment.

(e) may respond to personal attacks or attacks on the candidate's record as long as the response does not violate Section 5A(3)(d).

B. Candidates Seeking Appointment to Judicial or Other Governmental Office.

*See Terminology, "candidate."

*See Terminology, "knowingly."

(1) A candidate* for appointment to judicial office or a judge seeking other governmental office shall not solicit or accept funds, personally or through a committee or otherwise, to support his or her candidacy.

(2) A candidate* for appointment to judicial office or a judge seeking other governmental office shall not engage in any political activity to secure the appointment except that:

(a) such a person may:

(i) communicate with the appointing authority, including any selection or nominating commission or other agency designated to screen candidates;

(ii) seek support or endorsement for the appointment from organizations and from individuals to the extent requested or required or customarily received by those specified in Section 5B(2)(a)(i); and

(iii) provide to those specified in Sections 5B(2)(a)(i) and 5B(2)(a)(ii) information as to his or her qualifications for the office;

(b) a non-judge candidate* for appointment to judicial office may, in addition, unless otherwise prohibited by law*:

(i) retain an office in a political organization,*

(ii) attend political gatherings, and

(iii) continue to pay ordinary assessments and ordinary contributions to a political organization* or candidate and purchase tickets for political party dinners or other functions.

Commentary:

Section 5B(2) provides a limited exception to the restrictions imposed by Sections 5A(1) and 5D. Under Section 5B(2), candidates seeking reappointment to the same judicial office or appointment to another judicial office or other governmental office may apply for the appointment and seek appropriate support.

Although under Section 5B(2) non-judge candidates seeking appointment to judicial office are permitted during candidacy to retain office in a political organization, attend political gatherings and pay ordinary dues and assessments, they remain subject to other provisions of this Code during candidacy. See Sections 5B(1), 5B(2)(a), 5E and Application Section.

*See Terminology, "candidate."

*See Terminology, "law."

*See Terminology, "political organization."

C. [vacant]

D. Incumbent Judges. A judge shall not engage in any political activity except (i) as authorized under any other Section of this Code, (ii) on behalf of measures to improve the law,* the legal system or the administration of justice, or (iii) as expressly authorized by law.

Commentary:

Neither Section 5D nor any other section of the Code prohibits a judge in the exercise of administrative functions from engaging in planning and other official activities with members of the executive and legislative branches of government. With respect to a judge's activity on behalf of measures to improve the law, the legal system and the administration of justice, see Commentary to Section 4B and Section 4C(1) and its Commentary.

E. Applicability. Canon 5 generally applies to all incumbent judges and judicial candidates.* A successful candidate, whether or not an incumbent, is subject to judicial discipline for his or her campaign conduct; an unsuccessful candidate who is a lawyer is subject to lawyer discipline for his or her campaign conduct.

APPLICATION OF THE CODE OF JUDICIAL CONDUCT

A. All active and senior judges, all hearing commissioners (including the Mental Health Commissioner), and the Auditor-Master shall comply with this Code except as provided below.

B. Retired Judge. A retired judge* under D.C. Code §11-1504 (1989 Repl.), who is not a senior judge, is not required to comply, except while continuing to serve as a judge pursuant to D.C. Code §11-1504(c).

Commentary:

While a retired judge continues to serve as such pursuant to D.C. Code §11-1504(c), until the retired judge's successor assumes office, the judge shall fully comply with the Code. Thereafter, the retired judge, who by definition is not permitted to perform further judicial service, shall no longer be required to comply with this Code unless he or she is appointed a senior judge, in which case the rules applicable to senior judges shall apply for as long as the appointment is in effect.

C. Senior Judge. A senior judge*

(1) is not required to comply:

*See Terminology, "law."

*See Terminology, "candidate."

*See Terminology, "retired judge."

(a) except while serving as a judge, with Section 3(B)(9); and

(b) at any time with Sections 4C(2), 4D(3), 4E(1), 4F, 4G and 5B(2).

(2) shall not practice law in the court on which the judge serves or in any court or administrative agency subject to the appellate jurisdiction of the court on which the judge serves, and shall not act as a lawyer in a proceeding in which the judge has served as a judge or in any other proceeding related thereto.

Commentary:

When a person is a retired judge who no longer serves under D.C. Code §11-1504(c), or who has been a continuing part-time senior judge but is no longer under appointment as a continuing part-time senior judge, including a retired judge no longer subject to recall, that person may act as a lawyer in the District of Columbia in a proceeding in which he or she has served as a judge or in any other proceeding related thereto only with the express consent of all parties pursuant to Rule 1.12(a) of the District of Columbia Rules of Professional Conduct. However, a person who is under appointment as a senior judge but has elected inactive senior judge status shall fully comply with Application C.(2), as more fully set forth in Application D.

The exception under Application C.(1)(b) making Section 4F inapplicable and thereby permitting a senior judge to act as an arbitrator is subject to Advisory Opinion No. 3 (June 25, 1992), “When Senior Judges May Act As Arbitrators,” issued by the Advisory Committee on Judicial Conduct of the District of Columbia Courts.

In accordance with the reporting requirements of Section 4H(2), senior judges shall file financial statements with the Commission on Judicial Disabilities and Tenure as are required by D.C. Code §11-1530 (1989 Repl.) and the regulations of such Commission.

D. Senior Judge, Inactive. For purposes of application of this Code, a senior judge*:

(1) May declare himself or herself “inactive” from the date of initial appointment or reappointment as a senior judge, or at any time thereafter, by notifying the appointing Chief Judge and the Commission on Judicial Disabilities and Tenure, in writing, of that decision before the inactive status is to take effect.

(2) While a senior judge is inactive pursuant to subsection D.(1), he or she shall comply with Application C.(2) but shall not otherwise be required to comply with this Code.

(3) An inactive senior judge may resume active senior judge status by furnishing evidence satisfactory to the Commission on Disabilities and Tenure, as well as to the

*See Terminology, “senior judge.”

Chief Judge of the court on which the judge serves, that the judge has discontinued all activities that would be ethically proscribed for an active senior judge.

Commentary:

The creation of “Senior Judge, Inactive” status is intended to help meet a very important need: to encourage retiring judges to take senior status. Senior judges perform invaluable service to the Superior Court and the Court of Appeals, often handling regular calendars for substantial periods of time, as well as filling in for active judges who are temporarily absent. And yet some judges who retire may be unsure whether they want to remain available to serve from time to time as senior judges - with the attendant ethical restrictions on their other activities - or instead desire to embark on another career or on other activities that are incompatible with the ethical restrictions on senior judges. The “Senior Judge, Inactive” category, therefore is intended to provide an almost ethically unfettered opportunity for a retired judge, sooner or later, to embark on alternative career or activity explorations, without becoming forever barred thereafter from sitting as a senior judge. The inactive senior judge, however, like all senior judges must comply with Application C.(2) precluding, among other things, the practice of law in any court on which the judge has served.

A practical reason for creating this inactive senior judge status is the fact that, according to D.C. Code §11-1504 (1989), a retiring judge must apply for senior judge status within one year from retirement. The Commission on Disabilities and Tenure must act on the application within 180 days thereafter, and the appropriate chief judge must make a decision on the Commission’s recommendation within 30 days after its receipt. Accordingly, a retiring judge must elect to pursue-and as a result must receive-senior judge status relatively soon after retirement or forever lose that opportunity. If inactive senior status is not available, therefore, a retiring judge will not be able to pursue a full range of options for a temporary alternative career or other activity, unless the judge elects not to seek senior status, with its ethical limitations. If, on the other hand, inactive senior status is available, a retiring judge will not have to choose between limiting temporary alternative career choices and electing senior status; the opportunity for beginning or resuming active senior judge status at an appropriate time will remain.

The judicial system of the District of Columbia will significantly benefit from the availability of as many active senior judges as possible. This goal is likely to be achieved, therefore, only if the inactive senior status - call it a sabbatical option - is permitted without significant limitation, as an incentive to retiring judges to seek senior status upon retirement.

E. [vacant]

F. Time for Compliance. A person to whom this Code becomes applicable shall comply immediately with all provisions of this Code except Sections 4D(2), 4D(3) and 4E and shall comply with these Sections as soon as reasonably possible and shall do so in any event within the period of one year.

Commentary:

If serving as a fiduciary when selected as judge, a new judge may, notwithstanding the prohibitions in Section 4E, continue to serve as fiduciary but only for that period of time necessary to avoid serious adverse consequences to the beneficiary of the fiduciary relationship and in no event longer than one year. Similarly, if engaged at the time of judicial selection in a business activity, a new judge may, notwithstanding the prohibitions in Section 4D(3), continue in that activity for a reasonable period but in no event longer than one year.

APPENDIX

ADVISORY COMMITTEE ON JUDICIAL CONDUCT

ORDER

Upon consideration of the proceedings before the Joint Committee on Judicial Administration on this 1st day of October, 1990, it is

ORDERED that:

An Advisory Committee on Judicial Conduct (hereinafter “the Committee”) is hereby created, which shall provide informal advice and formal advisory opinions to judges and judicial officers of the District of Columbia court system pursuant to the procedures contained in this order.

I. MEMBERS:

(A) The Committee shall consist of five members, appointed by the Joint Committee on Judicial Administration chosen from among the members of the judiciary of the District of Columbia courts. Three members will be chosen from the District of Columbia Court of Appeals and two members will be chosen from the Superior Court of the District of Columbia. The chair of the Committee shall be an appellate judge, to be designated by the chair of the Joint Committee on Judicial Administration. Each member shall serve a three year term, except for those members first appointed to the Committee. Initially, the Joint Committee on Judicial Administration shall appoint one member from the Court of Appeals to a four year term, two members, one from the Court of Appeals and one from the Superior Court, to three year terms, and two members, one from the Court of Appeals and one from the Superior Court, to two year terms so that subsequent appointments will be staggered.

(B) No member may serve more than two consecutive three-year terms. If a vacancy occurs during a member’s service, the Joint Committee on Judicial Administration shall appoint a new member who will complete the term of the member whose service was interrupted. A member shall serve until a successor is appointed.

II. DUTIES:

(A) A judge or judicial officer may direct a request to the Committee as to whether or not specified action, either contemplated or proposed to be taken, would constitute a violation of the Code of Judicial Conduct for the District of Columbia. The Code is the American Bar Association Code of Judicial Conduct, as adopted by the Joint Committee. See 1973 Resolution of the Joint Committee on Judicial Administration, reprinted in full in *Scott v. United States*, 559 A.2d 745 (D.C. 1989) (appendix) [,] and 1974 Amendments to Code of Judicial Conduct by the Joint Committee on Judicial

Administration (copy attached). [last clause added by order of March 18, 1991 amending order of October 1, 1990]

(1) A judge or judicial officer, seeking informal, unwritten advice, may direct such a request to any one or more members of the Committee as to whether or not specified action, either contemplated or proposed to be taken, would constitute a violation of the Code of Judicial Conduct for the District of Columbia.

(2) A judge or judicial officer seeking a formal, written advisory opinion, may direct such a request to the Committee as to whether or not specified action, either contemplated or proposed to be taken, would constitute a violation of the Code of Judicial Conduct for the District of Columbia.

(B) A request shall state in detail the facts involved, and specify the question sought to be answered. The request should, whenever possible, also include reference to any legal authority, such as canons of the American Bar Association Code of Judicial Conduct, or advisory opinions from this or any other jurisdiction, or decisions of the District of Columbia Commission on Judicial Disabilities and Tenure. If additional factual information is required in order to provide either informal, unwritten advice or a formal written opinion, it may be requested from the judge or judicial officer making the request.

(C) The Committee will not provide either informal, unwritten advice or a formal, written opinion concerning the conduct of others or conduct which has already occurred, unless the conduct is of an ongoing nature.

III. PROCEDURES: The actions of the Committee shall conform to the following procedures:

(A) When a judge or judicial officer has made a request for informal, unwritten advice to any one or more members of the Committee, that member or members may respond orally. In responding informally, the Committee member or members may call the attention of the judge or judicial officer making the request to particular provisions of the American Bar Association Code of Judicial Conduct, as adopted by the Joint Committee on Judicial Administration, or advisory opinions for this or any other jurisdiction, or decisions of the District of Columbia Commission on Judicial Disabilities and Tenure. Moreover, such Committee member or members may present the substantive issue to the full Committee for its consideration and issuance of a formal written opinion, if the issue is of continuing concern to the judiciary.

(B) When a judge or judicial officer has made a request for a formal, written, advisory opinion, the Committee shall respond issuing a formal written opinion. A formal opinion shall be prepared in cases where a prior opinion does not answer the question presented in the request. Where it appears that an already existing opinion answers the

question presented in the request, the Committee shall forward a copy of that opinion to the judge or judicial officer making the inquiry.

(C) The Committee shall not issue an opinion in a matter that is the subject of a pending disciplinary proceeding, unless the District of Columbia Commission on Judicial Disabilities and Tenure requests such an opinion.

(D) Opinions shall be limited to the facts stated in the request, and such supplemental facts provided at the Committee's request, if any, and shall include a statement indicating this limitation.

(E) Opinions shall be published and circulated to the members of the judiciary and judicial officers of the District of Columbia court system and the District of Columbia Commission on Judicial Disabilities and Tenure.

(F) In order to preserve confidentiality for the judges and judicial officers seeking advisory opinions, the opinions shall not name the judge or judicial officer or disclose the judge's or the judicial officer's identity in any other way.

(G) Written opinions will provide a body of guidance for the judges. Action in accordance with an advisory opinion may be considered by the District of Columbia Commission on Judicial Disabilities and Tenure as evidence of good faith in the course of any proceeding or investigation conducted by the Commission.

(H) The Committee shall develop appropriate procedures for the processing and consideration of both informal, unwritten advice and formal, written advisory opinions.

IV. CODE REVIEW:

(A) The Committee may receive suggestions or proposals from the Board of Judges of the District of Columbia Court of Appeals, the Board of Judges of the Superior Court of the District of Columbia, any individual judge, judicial officer, or employee, the organized or voluntary Bar, the District of Columbia Commission on Judicial Disabilities and Tenure, or the Committee may initiate its own proposals for necessary or advisable changes to the Code of Judicial Conduct. After reviewing these suggestions, the Committee may submit its recommendations to the Joint Committee on Judicial Administration for its consideration and action.

(B) The Committee and the Joint Committee on Judicial Administration shall confer at such times as either shall determine to be appropriate.

(C) The Committee shall confer from time to time with the District of Columbia Commission on Judicial Disabilities and Tenure when each shall determine such a meeting is appropriate.

V. STAFF SUPPORT:

(A) The Executive Officer of the District of Columbia Courts shall provide administrative support for the Committee.

(B) The Executive Officer shall provide a complete set of the Committee's written opinions to each newly appointed judge and judicial officer of the District of Columbia court system. The Executive Officer shall maintain official copies of all written opinions of the Committee and make them available to all judicial officers and the District of Columbia Commission on Judicial Disabilities and Tenure.

APPENDIX D

COMPLAINT FORM

DISTRICT OF COLUMBIA
COMMISSION ON JUDICIAL DISABILITIES AND TENURE
Building A, Room 246 515 Fifth Street, N.W.
Washington, D.C. 20001
(202) 727-1363

In response to your request, we are providing this form for your use in making a complaint about a judge of the District of Columbia Courts.

COMPLAINT ABOUT A JUDGE OF THE DISTRICT OF COLUMBIA COURTS

Confidential under D.C. Code §11-1528(a)

PLEASE TYPE OR PRINT ALL INFORMATION

Your Name: _____

Your Telephone: (Day) _____ (Home) _____

Your Address: _____

_____ Zip Code _____

Name And Telephone Of Your Attorney (if any): _____

Name Of Judge(s): _____

Court Of Appeals [☐] Superior Court [☐]

Case Name And Number: _____

Date Of Action Which Forms Basis Of This Complaint: _____

Please specify exactly, in your own words, what action or behavior of the judge is the reason(s) of your complaint. Please provide relevant dates, the name of others present, and copies of any papers or pleadings which may assist the Commission in its review of your complaint. Use the back of this form and additional sheets if necessary.

FOR OFFICE USE ONLY	
Complaint No. _____	_____
Reviewed _____	_____
Investigation _____	_____
Disposition _____	_____

