

DISTRICT OF COLUMBIA COMMISSION  
ON JUDICIAL DISABILITIES AND TENURE

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December 13, 2006

BY HAND

The Honorable Rufus G. King, III  
Chief Judge, Superior Court of the  
District of Columbia  
500 Indiana Avenue, N.W.  
Washington, D.C. 20001

Re: The Honorable Tim Murphy Request for Reappointment As Senior Judge

Dear Chief Judge King:

Please be advised that, by a unanimous vote, the District of Columbia Commission on Judicial Disabilities and Tenure ("Commission") has concluded that Senior Judge Tim Murphy suffers from a cognitive mental disability that renders him unable to perform judicial duties satisfactorily and is therefore unfit for further judicial service. Thus, the Commission must render an unfavorable recommendation with respect to his request for reappointment as a senior judge.

As you know, the District of Columbia Retired Judge Service Act provides in pertinent part:

(a)(1) A judge, retired for reasons other than disability, who has been favorably recommended and appointed as a senior judge, in accordance with subsection (b) may perform such judicial duties as such senior judge is assigned and willing and able to undertake.

(b)(2) The Commission shall submit a written report of its recommendations and findings to the appropriate chief judge and the judge requesting appointment within 180 days of the date of the request for recommendation. The Commission, under such criteria

as it considers appropriate, shall make a favorable or unfavorable recommendation to the appropriate chief judge regarding an appointment as senior judge. The recommendation of the Commission shall be final.

Rule 2039 of the Commission's Rules, entitled "Recommendation Standards," sets forth the applicable criteria:

- 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.

Senior Judge Tim Murphy submitted his request<sup>1</sup> for a favorable recommendation for reappointment as a senior judge to the Commission on August 15, 2005, and, on September 26, 2005, Judge Murphy's attending physician, Christopher McManus, M.D., submitted a report describing Judge Murphy's medical condition, as required by §2038.1 of the Commission's Rules. That rule requires that the physician attest to the Judge's physical and mental fitness to perform judicial duties.

In his report, Dr. McManus described Judge Murphy's overall health as characterized by neurological deterioration likely to be secondary to supranuclear palsy or multiple system atrophy with attendant severely impaired ambulation and, at times, unintelligible speech. He observed that such a disorder is often associated with cognitive defects and that impairment of judgment and insight may be issues. Recommending that further neuropsychological testing be performed in order to delineate and quantify any such disorder, Dr. McManus declined to attest to Judge Murphy's physical and mental fitness to perform judicial duties.

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<sup>1</sup>The Commission construes the "request" contemplated by the statute to be incomplete until the Commission is in receipt of all supporting information which it might require.

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By letter dated November 16, 2005, the Commission advised Judge Murphy to pursue with Dr. McManus the further neuropsychological testing which Dr. McManus had recommended.

On January 31, 2006, counsel to Judge Murphy forwarded to the Commission a December 20, 2005, letter from Dr. McManus reporting on his reevaluation of Judge Murphy's neurologic status, a December 12, 2005, letter from Jonathan H. Pincus, M.D., of the Georgetown University Hospital Department of Neurology and an April 6, 2005, letter from Kevin M. Biglan, M.D., MPH, of the Johns Hopkins University Hospital Department of Neurology. Dr. McManus observed that "although he is impaired physically with his neurologic process, it appears that fortunately he has not suffered from cognitive impairment," citing the opinions of Drs. Pincus and Biglan. For his part, Dr. Pincus simply stated that "there is no evidence that [Judge Murphy] has any deficit of his cognitive capacity." While Dr. Pincus advised that Judge Murphy is his patient, he did not indicate that he had conducted any neuropsychological examination. Dr. Biglan advised that he had evaluated Judge Murphy on March 31, 2005, and simply opined that Judge Murphy "may resume his duties as Judge part time."

Counsel to Judge Murphy also forwarded to the Commission the affidavits of Judge Murphy's financial advisor and his physical therapist, each of whom attested to his and her lay opinion that Judge Murphy exhibited no recent decline in mental capacity. Additionally, counsel to Judge Murphy forwarded to the Commission a letter from James A. Ryan, M.D., J.D., a psychiatrist and personal friend of Judge Murphy for over forty years who offered the opinion that Judge Murphy's neurological illness has not impaired his mental function. Dr. Ryan did not report that he had conducted or that he relied upon any current neuropsychologic examination in support of his opinion.

In order to secure a current appraisal of Judge Murphy's condition based upon an independent comprehensive neuropsychological examination, on March 8, 2006, in consultation with Judge Murphy, and pursuant to §2038.2 of the Commission's Rules, the Commission designated Michael E. Batipps, M.D., of Neurodiagnostic Associates, P.C. at the Washington Hospital Center to conduct a neurological examination at the Commission's expense. On July 7, 2006, Dr. Batipps submitted his report to the Commission and the Commission shared the report with Judge Murphy.

Based upon a detailed mental status examination with neuro-cognitive testing, Dr. Batipps found that Judge Murphy suffers from a central nervous system degenerative disorder with atypical Parkinsonism, either multisystems atrophy (MSA) or progressive supranuclear palsy (PSP); a severe gait disorder due to his central nervous system disorder; severe agraphia with micrographia (an inability to write at all legibly due to the central nervous system disorder); a speech disorder with hypophonia (speech which is intelligible only when Judge Murphy speaks slowly and loudly) due to the central nervous system disorder; and, also due to the central nervous system disorder,

suspected mild cognitive dysfunction which renders Judge Murphy's attention span significantly reduced.

Dr. Batipps observed that, while Judge Murphy's memory and his ability to read and understand are "fairly good," reduced attention span can, in his judgment, lead to significant errors in judgment in a complex work environment. In Dr. Batipps' opinion, Judge Murphy suffers from a progressive neurological condition which will only worsen in the future as his ability to communicate effectively further deteriorates.

Judge Murphy made available to Dr. Batipps his medical records which charted the course of his central nervous system disorder since its onset in 2002. These records documented a neuropsychological test performed in March, 2004, by Dr. Ola A. Sernes, a neuropsychologist at Johns Hopkins University Hospital. Dr. Sernes found that Judge Murphy suffered from mild to moderate memory impairment and mild deficits in new learning and memory. Her overall impression was that "there is objective evidence of mild cognitive impairment."

Dr. Batipps found that the neuropsychological testing described by Dr. Sernes, demonstrating "significant cognitive difficulties on objective testing more than two years ago," is compatible with the abnormalities that he found in the course of his recent examination. He concluded that these deficits, coupled with the observed reduction in attention span and motor impairments, are quite severe.

Subsequent to his receipt of Dr. Batipps' report, Judge Murphy initiated a further neuropsychological consultation with Lynn M. Grattan, Ph.D., a psychologist who is the Director of the Neuropsychology Laboratory at the University of Maryland and, through counsel, made her report available to the Commission.

Dr. Grattan performed a neuropsychological evaluation on August 31, 2006, in order to assess Judge Murphy's cognitive functioning and mood within the context of Parkinsonism. Her objective testing revealed that, while Judge Murphy's general intellectual functioning remains intact, there is evidence of a slowing of information processing speed which is mild to moderate and which causes difficulty with verbal associative fluency, memory and judgment. In Dr. Grattan's opinion, this difficulty in processing information normally is exacerbated if Judge Murphy encounters distractions while he is taking in new information. While Dr. Grattan noted no decline in Judge Murphy's cognitive abilities since Dr. Sernes' examination in 2004, she nevertheless reached a diagnosis of Cognitive Disorder No. 294.9 as defined by the Diagnostic and Statistical Manual of Mental Disorders, Fourth Edition, Text Revision (DSM-IV-TR) published by the American Psychiatric Association. This category of cognitive disorders is "for disorders that are characterized

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by cognitive dysfunction presumed to be due to the direct physiological effect of a general medical condition.” This category includes “mild neurocognitive disorder: impairment in cognitive functioning as evidenced by neuropsychological testing or quantified clinical assessment, accompanied by objective evidence of a systemic general medical condition or central nervous system dysfunction.”

On September 6, 2006, pursuant to §§2042.1, *et seq.*, of the Commission’s Rules, the Commission met with Judge Murphy and his counsel and informed Judge Murphy that the medical information described above raised a substantial doubt concerning his fitness for further judicial service and afforded Judge Murphy the opportunity to submit to the Commission any material information not previously presented.

By memorandum dated September 12, 2006, in response to a series of questions posed to her by Judge Murphy and forwarded to the Commission by counsel to Judge Murphy, Dr. Grattan opined that, her earlier diagnosis of cognitive disorder notwithstanding, there is no reduction of Judge Murphy’s attention span as a result of his medical condition, that his performance on a test of attention and concentration was within the high average range and that, in her judgment, Judge Murphy is “qualified to do what [he was] approved to do in March, 2004.”

As described above, Judge Murphy did undergo neuropsychological testing in March, 2004, which testing supported the conclusion that he then exhibited objective evidence of mild cognitive impairment. The Commission had no occasion to consider, much less approve, Judge Murphy’s fitness to perform judicial duties at that time.

On November 14, 2006, at Judge Murphy’s request and with the participation of counsel to Judge Murphy, the Commission interviewed Dr. Grattan by telephone.

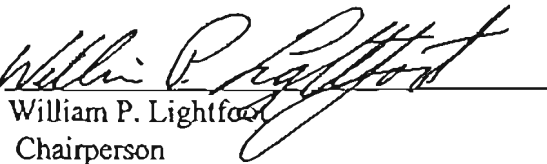
Dr. Grattan advised the Commission that, while Judge Murphy tested in the “high/average” range for intelligence and that while his cognitive abilities were largely intact, he does suffer from a cognitive disorder characterized by a significant reduction in information processing speed. Dr. Grattan explained that, on objective testing, Judge Murphy exhibited an ability to process information in the eighth percentile of the general population, that is, he processes information more slowly than 92% of the population. Dr. Grattan opined that such an impairment in information processing speed made it unlikely that Judge Murphy could process information presented to him in a courtroom setting, or in any assignment which posed time pressure, in a timely and therefore satisfactory manner. Dr. Grattan further opined that, since Judge Murphy’s cognitive disorder is a function of Parkinsonism and since Parkinsonism is a progressive disease, his cognitive impairment would likely worsen with the passage of time.

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An ability promptly to receive and evaluate complex information in the course of litigation is a core prerequisite of the judicial function. The Commission is satisfied that Judge Murphy suffers from a cognitive disorder which significantly impairs his ability to perform that function.

While the Commission acknowledges Judge Murphy's forty-year record of outstanding service to the Superior Court of the District of Columbia and to the citizens of the District and while it respects and admires his willingness to continue to serve despite his illness, the Commission is satisfied that, owing to his medical condition, Judge Murphy is unable to perform the judicial duties required by the Court in a satisfactory manner and is, therefore, unfit for further judicial service. Accordingly, the Commission hereby renders an unfavorable recommendation with respect to Judge Murphy's request for reappointment as a Senior Judge.

DISTRICT OF COLUMBIA COMMISSION ON  
JUDICIAL DISABILITIES AND TENURE

By:   
William P. Lightfoot  
Chairperson

cc: Hon. Tim Murphy (By Messenger)  
Dwight D. Murray, Esquire (By Messenger)