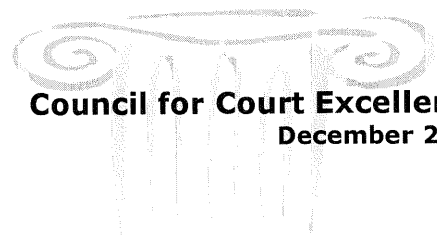


# **How the District of Columbia Gets its Judges**

**A Council for Court Excellence Community Education Guide**



**Council for Court Excellence**  
December 2005

# Council for Court Excellence

The Council for Court Excellence is a nonprofit, nonpartisan, civic organization that was formed in Washington, D.C. in January 1982. The Council works to improve the administration of justice in the local and federal courts and related agencies in the Washington metropolitan area and in the nation. The Council accomplishes this goal by:

- identifying and promoting court reforms,
- improving public access to justice, and
- increasing public understanding and support of our justice system.

The Council is governed by a volunteer Board of Directors composed of members of the legal, business, civic, and judicial communities. The Council is unique in bringing together all of those communities in common purpose to address court reform and access to justice needs. The Board accomplishes the work of the Council through direct participation in Council committees. The Council employs a small staff to assist the Board in meeting the objectives of the organization. Financial support comes from members of the Board, businesses, law firms, individuals, foundations, and occasionally government.

The Council for Court Excellence has built a substantial record of success in the major court reform initiatives it has undertaken. The Council has been the moving force behind adoption of the one day/one trial jury system in the D.C. Superior Court, modernization of trial jury and grand jury systems, reform of the District of Columbia probate laws and procedures, improvement in court handling of child neglect and abuse cases, reform of the D.C. administrative adjudication system, expansion of crime victims' rights, proposing methods to speed resolution of criminal cases, and proposing methods to speed resolution of civil cases by the D.C. trial and appellate courts. To improve the public's access to justice and increase their understanding of our justice system, the Council over the years has published and distributed over 300,000 copies of plain-language booklets and other materials explaining a wide variety of court proceedings.

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## How the District of Columbia Gets its Judges

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## How the District of Columbia Gets its Judges

Since its founding in 1982, the Council for Court Excellence has been committed to informing the community about the administration of justice in the District of Columbia. One method the Council has used is publication of plain-language guides on a variety of justice system topics and procedures. The Council for Court Excellence believes that understanding more about the third branch of the District of Columbia government – the District of Columbia Courts – and knowing how the judges of those courts are selected could enhance the community’s faith and confidence in the judiciary. Thus, we are pleased to present this publication, *How the District of Columbia Gets its Judges*.

### A. Summary

#### 1. Creation of the District of Columbia Court System

The District of Columbia’s unified “state” court system was established in 1970 by the District of Columbia Court Reform and Criminal Procedure Act (Pub. L. 91-358, 84 Stat. 473), a law passed by the United States Congress, which has sole authority to legislate that portion of the D.C. Code which establishes the governmental structure of the District of Columbia. The Superior Court of the District of Columbia is the District’s trial court, and appeals of Superior Court judgments are heard by the District of Columbia Court of Appeals. D.C. Code §1-204.31 (2001).

Prior to 1970, the District of Columbia had a Court of General Sessions with jurisdiction over minor civil and criminal matters, and a separate Juvenile Court with jurisdiction over juvenile delinquency, child neglect, paternity, and child non-support matters. The 1970 Act combined the D.C. Court of General Sessions and the D.C. Juvenile Court into the newly formed D.C. Superior Court and transferred to that court all the major local criminal and civil jurisdiction which had previously been handled by the federal trial court, the United States District Court for the District of Columbia. The 1970 Act also established the D.C. Court of Appeals.

#### 2. Qualifications of District of Columbia Judges

All applicants to become a D.C. judge must meet all of the following minimum statutory qualification standards, prescribed by the District of Columbia Self-Government and Governmental Reorganization Act of 1973, Pub. L. 93-198, 87 Stat. 774, known and referred to hereafter as the D.C. Home Rule Act, also passed by Congress:

- they must be a United States citizen;
  - they must have been a D.C. resident for more than 90 days prior to their appointment (and must continue to reside in D.C. for as long as they serve as a judge);
  - they must be an active member of the D.C. Bar; and
  - for the five years immediately preceding their appointment, they must have actively practiced law in the District of Columbia, or been on the faculty of a law school in the District of Columbia, or been employed as a lawyer by either the United States government or the District of Columbia government.
- D.C. Code §1-204.33(b) (2005 Supp.)

#### 3. The Judicial Selection Process

Judges of the District of Columbia Superior Court and Court of Appeals are appointed and reappointed through a merit-selection process, not chosen or retained by election. All applicants for a vacancy on either the Superior Court or the Court of Appeals are screened by the

District of Columbia Judicial Nomination Commission. For each vacancy on either court, the Commission selects three applicants for recommendation. The President of the United States then chooses one of those three persons for nomination, and the United States Senate must confirm the nominee. D.C. Code §1-204.34(d)(1) (2005 Supp.)

#### **4. Judicial Term of Service**

Confirmed judges to either court have a fifteen-year term, D.C. Code §11-1502 (2001), and may apply and be reappointed to successive terms. All applicants for reappointment are evaluated by a different D.C. commission, the D.C. Commission on Judicial Disabilities and Tenure, D.C. Code §11-1521 (2001). Judges of either court are eligible for retirement at any age after ten years of judicial service, but they must meet a combination of age and service conditions to draw retirement benefits, D.C. Code §11-1562 (2001). Retirement from active service is mandatory at age 74, D.C. Code §11-1502 (2001). Retired judges, including those beyond age 74, may apply not later than one year after retirement for appointment as senior judges, D.C. Code §11-1504 (2001).

#### **5. The Number of Judges**

Congress sets the number of judges on each of the District of Columbia courts. Including the chief judges, the statutory maximum is 59 judges for the Superior Court, D.C. Code §11-903 (2001), and 9 judges for the Court of Appeals, D.C. Code §11-701 (2001). However, beyond those statutory caps on the number of judges, each court also has a corps of senior judges, who are available to serve on a part-time basis, D.C. Code §11-1504 (2001). There are currently 23 senior judges in Superior Court; 9 in the Court of Appeals. Finally, the Superior Court also has a corps of 24 magistrate judges with more limited judicial authority than that of associate or senior judges. Magistrate judges are appointed by the Chief Judge of the Superior Court, with the approval of a majority of the associate judges of the Superior Court, for a renewable four-year term, D.C. Code §11-1732 (2005 Supp.).

#### **6. Judicial Salaries**

The salaries for District of Columbia judges are identical to those for federal judges. Superior Court judges are currently paid \$162,100 per year, and will be paid \$165,200 in 2006. Court of Appeals judges are currently paid \$171,800 per year, and will be paid \$175,100 in 2006. The chief judge of each court is paid \$500 per year more than the other judges of their respective courts. Superior Court magistrate judges are currently paid \$135,136 per year.

### **B. The District of Columbia Judicial Nomination Commission**

D.C. Code §1-204.34 (2005 Supp.)

The D.C. Judicial Nomination Commission was established by Congress in section 434(a) of the D.C. Home Rule Act. The Commission has seven members, all of whom must be citizens of the United States and, for at least 90 days prior to their appointment, residents of the District of Columbia. The seven members of the Commission are appointed by five different entities:

- One member is appointed by the President of the United States. That member's term on the Commission is five years.
- Two members are appointed by the Board of Governors of the D.C. Bar. Those members must have practiced law in the District for at least the five years immediately preceding their appointment. Their terms on the Commission are six years.

- Two members are appointed by the Mayor of the District of Columbia. At least one of the Mayor's appointees may not be a lawyer. Those members' terms are six years.
- One member is appointed by the D.C. Council. That member may not be a lawyer. That member's term is six years.
- One member is appointed by the chief judge of the United States District Court for D.C. That member must be an active or retired federal judge serving in the District. That member's term is six years.

When the Commission was established, the various members' terms were staggered to permit both continuity and turnover within the Commission membership. Commission members may be reappointed to successive terms.

The Commission members choose their chair annually. The current chair, since May 2005, is Judge Emmet Sullivan of the U.S. District Court. He was appointed to the Commission by the Chief Judge of the U.S. District Court in 2001 to complete the term of Judge Norma Holloway Johnson and was reappointed in 2005. His term ends in 2011. Other current members of the Commission are:

- Brooksley Born, an attorney with Arnold & Porter. She was appointed by the D.C. Bar in 2005. Her term ends in 2011.
- Wilma Lewis, an attorney with Crowell & Moring. She was appointed by the D.C. Bar in 2002. Her term ends in 2008.
- William Lucy, of the American Federation of State, County, and Municipal Employees. He was appointed by the Mayor in 2004. His term ends in 2010.
- Rev. Knighton Stanley of People's Congregational Church. He was appointed by the D.C. Council in 1999. His term ended in 2005. His replacement has not been named.
- Thomas Williamson, an attorney with Covington & Burling. He was appointed by the President of the United States in 1998. His term ended in 2004. His replacement has not been named.
- Professor Patricia Worthy of Howard University School of Law. She was appointed by the Mayor in 1998. Her term ended in 2004. Her replacement has not been named.

The Judicial Nomination Commission was established by Part C, or "The Judiciary" section, of the D.C. Home Rule Act. However, unlike the court system established in Part C, which since the National Capital Revitalization and Self-Government Improvement Act of 1997, Pub. L.105-33, 111 Stat. 712, has been funded and overseen by the federal government, the Commission is funded and its budget overseen by the D.C. government. It has one staff member, Executive Director Peggy Williams Smith, offices at 616 H Street, NW, Suite 623, Washington, D.C. 20001, and a fiscal year 2006 annual budget of \$126,265.

The Judicial Nomination Commission has two responsibilities prescribed in the D.C. Home Rule Act. The Commission recommends to the President of the United States three qualified persons to fill any judicial vacancy on either the Superior Court or the Court of Appeals, D.C. Code §1-204.34(d)(1) (2005 Supp.). The Commission also selects the Chief Judges of the Superior Court and the Court of Appeals from among the active judges of each respective court, D.C. Code §1-204.31(b) (2001).

### C. The Judicial Appointment Process

There are nine steps to the judicial appointment process for either the D.C. Superior Court or the D.C. Court of Appeals.

- 1. Notice of retirement.** Whenever a judge provides written notification of his or her retirement, the D.C. Judicial Nomination Commission initiates the process to select a replacement. Any judge whose 15-year term is expiring and who wishes to be reappointed to a new term must notify the D.C. Commission on Judicial Disabilities and Tenure at least six months before the end of his or her term. If any judge does not deliver such a notification, a vacancy shall result from the expiration of that judge's term of office, and this triggers the judicial appointment process. D.C. Code §1-204.33(c) (2001).
- 2. Notice of judicial vacancy.** The Judicial Nomination Commission publishes a *Notice of Judicial Vacancy*. The Notice cites the name of the judge who is retiring, the date of the vacancy, an invitation to apply for the vacant judicial position, the legal qualifications for applicants, information on how to obtain the judicial questionnaire which all applicants must complete and file, the deadline for submitting the completed questionnaire, and contact information for the Commission's Executive Director and for all Commissioners. A copy of a recent *Notice of Judicial Vacancy*, as published in the *Daily Washington Law Reporter*, a local legal trade publication, is included as Appendix 4 to this report.

Passage by Congress of the District of Columbia Family Court Act of 2001, Pub. L. 107-114, 115 Stat. 2100, referred to hereafter as the Family Court Act, has complicated the determination of whether there is a true judicial vacancy on the Superior Court. The Family Court Act prescribes four additional special qualifications for judges who serve in the Family Court of the Superior Court, beyond the four prescribed for all judicial applicants: the judges must have prior training or expertise in family law, they must volunteer to the Chief Judge for assignment to Family Court, they must agree to serve for a minimum of three or five years in the Family Court (depending on when they were first appointed to Superior Court), and they must agree to engage in ongoing training in family law while serving in Family Court. D.C. Code §11-908A(b) (2005 Supp.). As discussed above in section A.5., D.C. Code §11-903 (2001) prescribes a 59-judge size for Superior Court. The Family Court Act prescribes that up to 15 of those judges may serve in the Family Court, or one-fourth of all judges. In order to ensure that there are a sufficient number of qualified Superior Court judges to fill the fifteen associate judge positions in Family Court, the Family Court Act permits lifting the 59-judge cap on judicial positions in Superior Court. This cap-lifting is permitted only to fill vacancies on the Family Court, whenever the Chief Judge, with approval of the Joint Committee on Judicial Administration, determines that he or she cannot find qualified candidates from among the Superior Court's existing complement of judges. D.C. Code §11-908A(a)(3) (2005 Supp.).

The Chief Judge invoked this cap-lifting provision in mid-2002 to fill three associate judge positions on the Family Court. The presumption of the Family Court Act is that, after any cap-lifting incident to fill a Family Court vacancy, the Superior Court is to revert to 59 judges through attrition. Since the initial 2002 temporary increase in the cap to 62 judges, the Superior Court has frequently exceeded the 59-judge cap. Thus a notice from the Judicial Nomination Commission that a Superior Court judge is retiring

does not necessarily mean that there is in fact a vacancy on the court. Notwithstanding this absence of vacancy, the judicial nomination process has proceeded in each case of judicial retirement since 2002, though the absence of a vacant position within the 59-judge cap has meant that the Senate must delay the confirmation of a Presidential nominee until the Superior Court has only 58 judges.

Because of the consideration and then passage of the Family Court Act in 2001 with its additional qualifications for service in the Family Court of the Superior Court, the Judicial Nomination Commission included a special invitation to family lawyers in its Notices of Judicial Vacancy issued between October 2001 and July 2002. For the three vacancies between October 2001 and January 2002, the Notices included this sentence: "Those with a Family Law background are particularly encouraged to apply at this time." For the three Family Court vacancies created when the Chief Judge invoked the cap-lifting provision of the Family Court Act in July 2002, the Commission's Notice was titled *Notice of Three Family Court Judicial Vacancies*. That Notice included the special additional qualifications for Family Court service and the following sentence: "Only those with a Family Law background are encouraged to apply at this time." Vacancy notices issued by the Commission since July 2002 have not included any special invitation to family lawyers.

- 3. Application via judicial questionnaire.** In order to gather the background information it needs to evaluate candidates for judicial vacancies, the Judicial Nomination Commission has devised an extensive questionnaire that all judicial applicants must complete. A copy of the current questionnaire is included as Appendix 5 to this report.

Because the questionnaire is so extensive and so important to the screening process, and because the application time is so compressed, potential applicants should consider completing the questionnaire in advance of a Notice of Vacancy, though the Judicial Nomination Commission accepts completed questionnaires only when a vacancy notice has been published. The questionnaire seeks detailed information about the applicant's educational, financial, civic, and legal background, including areas of expertise and experience, litigation experience, and jury and non-jury trial experience. The questionnaire also asks applicants to select and provide full details of the five most significant legal cases the applicant has handled, and to provide letters of recommendation in support of the application. Because of the nature of the job, applicants for the Court of Appeals must also submit samples of their legal writing with their questionnaire. Applicants must sign forms authorizing the Commission to investigate private information about their background.

Previous applicants do not need to resubmit their questionnaire. They simply notify the Commission by letter not later than the application deadline that they wish to be considered for the current vacancy. Such applicants can submit any updated information about themselves in this reactivation letter.

- 4. Commission review of applicants.** The review happens quickly. The Commission must complete the screening process and forward its list of three persons recommended for appointment not later than sixty days after the judicial vacancy occurs. Though applicant records are confidential and the Commission does not publish any statistics, Commission members have said that there are approximately 45 to 75 new and reactivated applicants for each vacancy. They have also stated that it is the norm for



applicants to apply more than once; few people are recommended, appointed, and confirmed on their first try.

For each new applicant, the Commission does background checks with the Internal Revenue Service, the D.C. Department of Tax and Revenue, credit bureaus, police departments, the D.C. Bar and Bar Counsel. Using a contracted investigator, the Commission solicits comments from every D.C. judge and from federal judges about each applicant. The investigator also seeks comments from attorneys who have been on the opposing side of applicants' cases.

After reviewing each applicant's questionnaire and the background information developed during the review process, the Commission interviews all new applicants and those reactivated applicants who have not been interviewed within the past two years. All interviews are conducted by the full Commission in a single day. Following the interviews, on the same day, the Commission discusses the candidates and votes until they have identified their top three picks.

- 5. Commission notice of persons recommended for the vacancy.** Not later than sixty days after the vacancy has occurred, the Commission transmits to the President of the United States the names, and presumably extensive background information, of the three persons it recommends for the vacancy. To inform the public, the Commission also publishes a *Notice of Three Persons Recommended for Superior Court (or Court of Appeals) Vacancy*. The notice gives summary biographical information about each of the three persons.
- 6. Presidential review of persons recommended.** This review also happens promptly. The President is required to make his or her nomination for the vacancy not later than sixty days after receiving the three names from the Judicial Nomination Commission. The White House requires each of the persons on the list of three to complete additional, different paperwork for their review. The White House also has background checks done on each of the candidates. Each of the three candidates is also interviewed by staff from the White House Counsel's office.
- 7. Presidential nomination.** Not later than sixty days after receiving the names of the three candidates, the President nominates one of the candidates to fill the vacancy. If for some reason the President does not make the nomination within sixty days, the Judicial Nomination Commission is empowered to make the nomination to the Senate.
- 8. Senate confirmation.** Nominations for District of Columbia court vacancies are referred for action to the Senate Committee on Homeland Security and Governmental Affairs, and its Subcommittee on Oversight of Government Management, the Federal Workforce, and the District of Columbia. After approval by the Subcommittee and the full Committee, the nomination must be confirmed by the full Senate.

There is no deadline for Senate confirmation action. As discussed above in section C.2., confirmation cannot occur unless there is a vacancy within the cap on the total number of judges in the court. The only exception to this rule is if the Chief Judge of the Superior Court has invoked the cap-lifting provision of the Family Court Act of 2001 in order to assign the nominee to fill a vacancy in the Family Court of the Superior Court.

- 9. Swearing-in and investiture.** Once the judicial nominee has been confirmed by the Senate, he or she is qualified to be sworn in and begin judicial service immediately. Frequently, a public Investiture ceremony for the new judge is held at the court, though generally after the actual swearing-in and commencement of service.

**D. The District of Columbia Commission on Judicial Disabilities and Tenure**

D.C. Code §1-204.31 (d)-(e) (2001)

The District of Columbia Commission on Judicial Disabilities and Tenure was established in its current form by section 431(d) of the District of Columbia Self-Government and Governmental Reorganization Act of 1973, Pub. L. 93-198, 87 Stat. 774, known as the D.C. Home Rule Act, passed by Congress. The appointment and qualification provisions for members of this Commission are identical to those for the D.C. Judicial Nomination Commission. The Commission has seven members, all of whom must be citizens of the United States and, for at least 90 days prior to their appointment, residents of the District of Columbia. The seven members of the Commission are appointed by five different entities:

- One member is appointed by the President of the United States. That member's term on the Commission is five years.
- Two members are appointed by the Board of Governors of the D.C. Bar. Those members must have practiced law in the District for at least the five years immediately preceding their appointment. Their terms on the Commission are six years.
- Two members are appointed by the Mayor of the District of Columbia. At least one of the Mayor's appointees may not be a lawyer. Those members' terms are six years.
- One member is appointed by the D.C. Council. That member may not be a lawyer. That member's term is six years.
- One member is appointed by the chief judge of the United States District Court for D.C. That member must be an active or retired federal judge serving in the District. That member's term is six years.

When the Commission was established, the various members' terms were staggered to permit both continuity and turnover within the Commission membership. Commission members may be reappointed to successive terms.

The Commission members choose their chair annually. The current chair is William Lightfoot, an attorney with Koonz, McKenney, Johnson, DePaolis & Lightfoot. He was appointed to the Commission by the Mayor in 2000 to fill the unexpired term of a member who resigned, and he was reappointed by the Mayor in 2002. His term ends in 2008. Other current members of the Commission are:

- Gary Dennis, M.D., of Howard University School of Medicine. He was appointed by the D.C. Council in 2000, and he was reappointed in 2005. His term ends in 2011.
- Eric Holder, an attorney with Covington & Burling. He was appointed by the D.C. Bar in 2002. His term ends in 2008.
- Judge Gladys Kessler of the United States District Court for D.C. She was appointed by the Chief Judge of the U.S. District Court in 2001 and was reappointed in 2004. Her term ends in 2010.
- Ronald Richardson, of the Hotel and Restaurant Employees International Union. He was appointed by the Mayor in 1992, reappointed in 1997, and again in 2004. His term ends in 2010.

- Claudia Withers, an attorney with Winston Withers & Associates, L.L.C. She was appointed by the D.C. Bar to a term beginning on January 2, 2006. Her term ends in 2012.
- The position appointed by the President of the United States is currently vacant.

As noted above, the D.C. Commission on Judicial Disabilities and Tenure was established in its current form by Part C, or “The Judiciary” section, of the D.C. Home Rule Act. However, unlike the court system established in Part C, which since the National Capital Revitalization and Self-Government Improvement Act of 1997, Pub. L. 105-33, 111 Stat. 712, has been funded and overseen by the federal government, the Commission is funded and its budget overseen by the D.C. government. It has two staff members, including Executive Director Cathae Hudgins, and it retains Henry F. Schuelke, III, Esquire, an attorney in private practice, to serve as Commission Special Counsel. The Commission’s office is at 515 5th Street, NW, Room 312, Washington, D.C. 20001, and it has a fiscal year 2006 annual budget of \$219,000.

The D.C. Commission on Judicial Disabilities and Tenure has three responsibilities prescribed in the D.C. Home Rule Act, the District of Columbia Retired Judge Service Act, Pub. L. 98-598, 98 Stat. 3142, and the District of Columbia Judicial Efficiency and Improvement Act, Pub. L. 99-573, 100 Stat. 3228. The Commission evaluates and makes recommendations regarding reappointment of D.C. judges to second and subsequent terms, D.C. Code §1-204.33(c) (2005 Supp.); it operates the judicial discipline system and has the power to suspend, retire, or remove a judge from office, D.C. Code §1-204.31(g) (2001); and it makes recommendations to the respective Chief Judges regarding judges who request appointment as senior judges, D.C. Code §11-1504(b) (2001). Only the first of those responsibilities is discussed in this report.

## **E. The Judicial Reappointment Process**

D.C. Code §1-204.33(c) (2005 Supp.)

A judge of either the Superior Court or the Court of Appeals whose 15-year term is expiring and who wishes to be reappointed to a new term must file a declaration of candidacy for reappointment with the D.C. Commission on Judicial Disabilities and Tenure at least six months before the end of his or her term. The Judicial Disabilities and Tenure Commission evaluates each candidate for reappointment, and seeks comments from other judges, lawyers, the candidate’s doctor, and the public. The Commission is required to submit to the President of the United States a written evaluation of the candidate not less than sixty days prior to the expiration of the candidate’s 15-year term. The evaluation must address the candidate’s performance during the present term of office and must present the Commission’s judgment about the candidate’s fitness for reappointment.

If the Commission determines the candidate to be “well qualified” for reappointment, the candidate is automatically reappointed to a new 15-year term, subject to the mandatory retirement age. If the Commission determines the candidate to be “qualified” for reappointment, the President may renominate the candidate, subject to Senate confirmation. However, the President may choose not to renominate a “qualified” candidate, in which case the D.C. Judicial Nomination Commission must forward three new names for the position. If the Disabilities and Tenure Commission determines the candidate to be “unqualified” for reappointment, the President may not nominate the candidate. Such judge shall not be eligible for reappointment or appointment as a judge of a District of Columbia Court, and the Judicial Nomination Commission must forward three new names to the President for the vacancy.

## **F. Description of the Professional Pathways to the D.C. Superior Court**

### **1. The D.C. Superior Court and Judicial Assignments**

The D.C. Superior Court is a general-jurisdiction trial court. This means that it has responsibility for adjudicating cases covering the full range of legal topics. The Court is divided by subject matter into the Criminal Division, the Civil Division, the Family Court, the Probate and Tax Division, and the Domestic Violence Unit. Superior Court judges generally serve rotations in several of the divisions during their fifteen-year terms. Thus, an ideal judicial candidate should have experience in several areas of law, and the Court benefits from having judges from a variety of professional specialties among the 59-judge corps.

The Chief Judge has the authority to assign judges to serve in the Superior Court divisions for varying periods of time, and he or she adjusts the number of judges assigned to the various divisions periodically to accommodate fluctuations in caseload among the divisions. The only statutory constraints on the Chief Judge's discretion in making assignments are those imposed by the D.C. Family Court Act of 2001. As discussed previously in this report, the Family Court Act mandates that the Chief Judge may assign to the Family Court no more than fifteen judges and only those judges who meet four special qualifications: the judges must have prior training or expertise in family law, they must volunteer to the Chief Judge for assignment to Family Court, they must agree to serve for a minimum of three or five years in the Family Court (depending on when they were first appointed to Superior Court), and they must agree to engage in ongoing training in family law while serving in Family Court.

The judicial assignment list shows that for 2006 the Chief Judge has deployed the 58 associate judges as follows:

- 21 (36%) to the Criminal Division,
- 16 (28%) to the Civil Division,
- 15 (26%) to the Family Court,
- 2 (3%) to the Probate and Tax Division, and
- 4 (7%) to the Domestic Violence Unit.

### **2. The Scope and Limitations of the Professional Pathways Data**

To be able to illuminate clearly the varied professional pathways followed by a significant sample of candidates for the D.C. Superior Court bench, the Council for Court Excellence (CCE) research focused on an eleven-year period, 1994 to 2005. Within that period, there were 33 vacancies among the 59 associate judge positions in the Court caused by retirement or resignation of a judge. As discussed above in section C.2., three additional vacancies were created as a result of the Family Court Act of 2001, for a total of 36 vacancies within the focus period. CCE's research focused on both the professional backgrounds of candidates and the time required for the full judicial nomination process.

When notified of a coming judicial vacancy, the D.C. Judicial Nomination Commission issues a *Notice of Superior Court Vacancy*. Such notices are most frequently published in the *Daily Washington Law Reporter* (DWLR), a legal trade publication, so CCE relied on the DWLR archives for our research. After reviewing all DWLR issues from June 1994 through November 2005, we found that in ten of the 36 cases of judicial vacancy the DWLR did not publish the Notice of Vacancy.

The Judicial Nomination Commission must forward the names of its three nominees to the President within 60 days after the date of the judicial vacancy. When it does so, the Commission issues a *Notice of Three Persons Recommended for Superior Court Vacancy*. Of the

36 panels recommended by the Commission between September 1994 and November 2005, CCE found that the DWLR did not publish ten such notices.

CCE requested the ten missing public *Notices of Vacancy* and ten missing *Notices of Three Persons Recommended* from the D.C. Judicial Nomination Commission in July 2005, and the Commission has provided us with nine of the ten unpublished *Notices of Three Persons Recommended*. As a result of the unpublished notices, there are some gaps in CCE’s data.

When an appointed and confirmed judge is to be publicly installed, the D.C. Superior Court issues a press release with complete biographical information of the new judge. The DWLR published the Notice of Investiture for 32 of the 33 judges installed during CCE’s focus period.

With a total of 36 vacancies and a three-person panel recommended to the President for each, there were 108 total nominations during CCE’s 11-year focus period. Subtracting the one missing *Notice of Three Persons Recommended*, we have analyzed data on 105 of the 108 nominations. This report examines data on the 33 judges who have been installed to fill the 36 vacancies created between June 1994 and September 2005, the two persons who have been appointed by the President but not yet confirmed or installed as judges, and the other 43 known nominees. Because candidates may be nominated over time for more than one judicial vacancy, the 43 known nominees have been nominated a total of 68 times. The most recent three judicial vacancies have not been filled with confirmed judges as of the date of this report.

**3. Professional Experience Data for D.C. Superior Court Judges**

To illuminate the professional pathways followed by Superior Court judges and judicial nominees, this Council for Court Excellence report analyzes judicial candidates’ professional legal experience and categorizes it by sector and subject matter. There are three sector categories – government (both local and federal), private, and academic – and three subject matter categories – criminal (both prosecution and defense), civil, and family. We give each judicial candidate credit for all sector and subject matter experience mentioned in their biographical information. In addition, we designate one sector and one subject matter as the primary professional experience for each candidate, based on the duration of that experience or, where the experiences seemed equal in duration, the most recent work. All data from this section of the report are shown more fully in Appendices 1, 2, and 3.

Table 1 displays the primary legal background of all 33 judges installed in the D.C. Superior Court between June 1995 and October 2005. Of the 33 judges, 26 (79%) had primary experience working within the government sector, while the other 7 (21%) worked primarily in the private sector. Of the 33 judges, 20 (61%) had primary experience in criminal law, 7 (21%) in civil law, and 6 (18%) in family law. Thus, over the past eleven years, the primary professional pathway to the D.C. Superior Court has been working for the District of Columbia or federal government in criminal law prosecution or defense.

**Table 1**  
**Primary Experience for All D.C. Superior Court Judges Installed 1995-2005**

TOTAL JUDGES 33	Sector		Subject Matter	
	Government	26 (79%)	Criminal	20 (61%)
Private	7 (21%)	Civil	7 (21%)	
Academic	0 (0%)	Family	6 (18%)	
Total	33 (100%)		33 (100%)	

Table 2 tallies all the professional legal experiences of the 33 D.C. Superior Court judges installed between June 1995 and September 2005. The prevailing sector of experience is even more decidedly government, with 31 (94%) of the 33 seated judges having had some experience in that sector. However, many of the judges had followed a varied professional pathway. Nineteen (58%) had some experience in the private sector, and 12 (36%) in academia. Subject matter expertise was again most highly represented by criminal law, with 28 (85%) of the 33 seated judges having some criminal law background. However, also highly represented was civil law, where 23 (70%) had some experience. Only nine (27%) of the 33 seated judges had some family law experience before joining the Court. Even when all their professional experiences are accounted for, working for the government and doing criminal law remains the most common professional pathway to the D.C. Superior Court over the past eleven years.

**Table 2**  
**All Experience for All D.C. Superior Court Judges Installed 1995-2005**

TOTAL JUDGES 33	Sector		Subject Matter	
	Government	31 (94%)	Criminal	28 (85%)
Private	19 (58%)	Civil	23 (70%)	
Academic	12 (36%)	Family	9 (27%)	

The data was sorted differently to show whether the D.C. Family Court Act’s addition of special qualifications for judges who will serve in the Family Court during any segment of their 15-year term has had any impact on the backgrounds of judges and nominees. Table 3 displays the primary legal background of the 22 installed judges who were recommended by the Judicial Nomination Commission prior to October 2001, when the Commission first specifically urged family lawyers to apply. Of the 22 judges, 16 (73%) had primary experience working within the government sector, while the other 6 (27%) worked primarily in the private sector. Of the 22 judges, 15 (68%) had primary experience in criminal law, 6 (27%) in civil law, and only one (5%) in family law.

**Table 3**  
**Primary Experience for Installed D.C. Superior Court Judges Who Were Recommended From 1995 Until September 2001 (Pre-Family Court)**

TOTAL JUDGES 22	Sector		Subject Matter	
	Government	16 (73%)	Criminal	15 (68%)
Private	6 (27%)	Civil	6 (27%)	
Academic	0 (0%)	Family	1 (5%)	
Total	22 (100%)		22 (100%)	

Table 4 tallies all the professional legal experiences of the 22 installed Superior Court judges who were recommended by the Judicial Nomination Commission prior to October 2001, when the Commission first specifically urged family lawyers to apply. Four of the 22 judges had had some experience in family law before being appointed.

**Table 4**  
**All Experience for Installed D.C. Superior Court Judges Who Were Recommended From 1995 Until September 2001 (Pre-Family Court)**

TOTAL JUDGES 22	Sector		Subject Matter	
	Government	21 (95%)	Criminal	20 (91%)
Private	13 (59%)	Civil	14 (64%)	
Academic	8 (36%)	Family	4 (18%)	

Eleven installed judges have been recommended by the Judicial Nomination Commission since October 2001, when the Commission first specifically urged family lawyers to apply. Table 5 displays their primary professional experience. All but one (91%) had their primary experience in the government sector, only one (9%) in the private sector. Five of the 11 judges (45.5%) had their primary experience in criminal law, another 5 (45.5%) in family law, and only 1 (9%) in civil law. These proportions represent significant changes from the prior record, with an even higher representation of primary government experience over private experience, and, as would be expected, greater representation of primary family law experience.

**Table 5**  
**Primary Experience for Installed D.C. Superior Court Judges Who Were Recommended After September 2001 (Post-Notice of Coming Family Court)**

TOTAL JUDGES 11	Sector		Subject Matter	
	Government	10 (91%)	Criminal	5 (45.5%)
Private	1 (9%)	Civil	1 (9%)	
Academic	0 (0%)	Family	5 (45.5%)	
Total	11 (100%)		11 (100%)	

Table 6 tallies all the professional legal experiences of the 11 installed D.C. Superior Court judges who have been recommended by the Judicial Nomination Commission since October 2001, when the Commission first specifically urged family lawyers to apply. There is no additional representation of family law experience at any time within their careers.

**Table 6**  
**All Experience for Installed D.C. Superior Court Judges Who Were Recommended After September 2001 (Post-Notice of Coming Family Court)**

TOTAL JUDGES 11	Sector		Subject Matter	
	Government	10 (91%)	Criminal	8 (73%)
Private	6 (55%)	Civil	9 (82%)	
Academic	4 (36%)	Family	5 (45.5%)	

**4. Professional Experience Data for Superior Court Nominees Not Appointed**

The Council for Court Excellence also analyzed the professional backgrounds of the 43 nominees recommended by the Judicial Nomination Commission who were not selected by the President to become D.C. Superior Court judges. Those 43 candidates were recommended a total of 68 times during the focus period.

Of the 68 total unselected nominations, there were 50 (73%) whose primary experience was in the government sector. Only 17 (25%) of the unselected nominations had their primary experience in the private sector, and one (2%) came from academia. As to primary subject matter experience, 34 of the 68 nominations (50%) had a criminal law background, 19 (28%) had a civil law background, and 15 (22%) had primary family law experience. All data from this section of the report are shown more fully in Appendix 3.

**Table 7**  
**Primary Experience for D.C. Superior Court Nominees Not Appointed 1995-2005**

	Sector		Subject Matter	
	TOTAL NOMINATIONS 68	Government	50 (73%)	Criminal
	Private	17 (25%)	Civil	19 (28%)
	Academic	1 (2%)	Family	15 (22%)
	Total	68 (100%)		68 (100%)
NOMINEES 43	Government	28 (65%)	Criminal	20 (46%)
	Private	14 (33%)	Civil	15 (35%)
	Academic	1 (2%)	Family	8 (19%)
	Total	43 (100%)		43 (100%)

**5. Age Data for D.C. Superior Court Judges and Nominees**

Because it is one measure of the duration of their professional experience, the Council for Court Excellence also compiled data on the age of D.C. Superior Court judges and judicial nominees. The average age at appointment for the 33 judges installed during the focus period was 44.8 years, with a range from 66 years to 33 years. The age at appointment data are shown in Appendix 2. The average age at nomination for the 68 unselected nominations was 45.9 years, with a range from 58 years to 32 years. The age at nomination data are shown in Appendix 3.

**6. The Duration of the District of Columbia Judicial Appointment Process**

Keeping judicial positions filled, or knowing how long a vacancy is likely to remain unfilled, is important to the smooth operation of a court. The Council for Court Excellence also tracked the duration of the entire D.C. Superior Court judicial appointment process, from public notice of a vacancy to public judicial investiture. Because of the absence of published Notices of Judicial Vacancy, we were able to track only 23 of the 33 judicial appointments for that entire duration. For those 23 judge positions, the average time to complete the entire appointment process was 14 months. The shortest time, representing two of the 23, was 9 ½ months. The longest time, again representing two of the 23, was 22 months.

Because the D.C. Courts’ published annual reports note the retirement dates of judges, CCE was able to track 34 of the 36 judicial nominations from the date of the actual judicial vacancy to the forwarding of names by the Judicial Nomination Commission. For the 34 vacancies, the Judicial Nomination Commission took an average of 1.6 months after the vacancy date to forward names. In six cases, they were able to forward names prior to the date of the



vacancy, presumably because the retiring judge had given the Commission ample notice in advance of his or her retirement date. The longest time to forward names, which occurred in four cases, was four months after the vacancy date. The data on duration from vacancy to Judicial Nomination Commission action are shown in Appendix 1.

CCE was also able to track the time from Judicial Nomination Commission recommendation to public investiture of the judge in 29 of the 33 completed appointments. After the Commission has forwarded names to the President, the remaining steps of the process – Presidential appointment, Senate confirmation, and public investiture – have taken an average of 11 months for those 29 judicial appointments, with the shortest taking 5 months and the longest taking 29 months. The data on duration from nomination to investiture are shown in Appendix 1.

For the 29 completed judicial appointments the Council for Court Excellence was able to track in the focus period, the average time from the actual vacancy (which may be before or after the published Notice of Judicial Vacancy) until the public investiture of the new judge was 12.8 months, with the shortest taking 7 months and the longest taking 30 months.

There have been 36 D.C. Superior Court judicial vacancies in the 11-year focus period, for an average of more than 3 per year. Thus, the D.C. Superior Court judicial appointment process results in fairly frequent judicial vacancies that are of unpredictable duration but are likely to exceed one full year.

**Appendices:**

1. Summary of D.C. Superior Court Judicial Nomination Process 1994-2005
2. D.C. Superior Court Judges Installed Since 1995, by professional experience
3. Nominees Not Selected for D.C. Superior Court Judge Since 1995, by professional experience
4. Sample Notice of Judicial Vacancy, as published in *Daily Washington Law Reporter*
5. Judicial Questionnaire

		Summary of D.C. Superior Court Judicial Nomination Process 1994-2005		12/15/2005
Retiree/Vacancy	Date of Vacancy	Nominees by Primary Sector/Subject Experience (Judge selected in bold)	Duration, Vacancy to JNC Nom.	Duration, JNC Nom. to Investiture
Vacancy 1	6/19/1994	1) private/criminal; <b>2) private/civil</b> ; 3) government/criminal	3 months	10 months
Vacancy 2	7/29/1994	1) government/criminal; <b>2) government/criminal</b> ; 3) private/criminal	2 months	9 months
Vacancy 3	10/21/1994	Notice of Persons Recommended Not Published	Not Computable	Not Computable *
Vacancy 4	10/1/1995	1) government/criminal; <b>2) private/criminal</b> ; 3) government/civil	1 month	11 months
Vacancy 5	6/29/1996	1) government/civil; 2) government/civil; 3) government/criminal <b>(none appointed)</b>	minus 2 months	Not Computable *
Vacancy 6	7/1/1996	<b>1) government/criminal</b> ; 2) private/criminal; 3) private/civil	1 month	29 months
Vacancy 7	4/11/1997	<b>1) government/criminal</b> ; 2) government/criminal; 3) government/criminal	2 months	7 months
Vacancy 8	5/12/1997	<b>1) government/criminal</b> ; 2) government/family; 3) government/criminal	1 month	8 months
Vacancy 9	10/20/1997	1) government/criminal; 2) government/criminal; <b>3) private/civil</b>	2 months	5 months
Vacancy 10	1/16/1998	<b>1) government/civil</b> ; <b>2) government/criminal</b> ; <b>3) government/criminal</b>	2 months	10 months
Vacancy 11	8/28/1998	<b>1) government/criminal</b> ; 2) government/civil; 3) government/criminal	minus 5 months	9 months
Vacancy 12	9/30/1998	1) government/criminal; 2) government/criminal; <b>3) government/criminal</b>	2 months	10 months
Vacancy 13	7/2/1999	<b>1) government/family</b> ; 2) government/civil; 3) government/civil	2 months	12 months
Vacancy 14	10/2/1999	1) government/criminal; <b>2) government/criminal</b> ; 3) government/family	minus 1 month	14 months
Vacancy 15	12/30/1999	1) private/criminal; 2) government/criminal; <b>3) government/criminal</b>	1 month	9 months
Vacancy 16	3/1/2000	1) government/criminal; <b>2) government/civil</b> ; 3) government/criminal	2 months	15 months
Vacancy 17	3/24/2000	<b>1) private/criminal</b> ; 2) government/family; 3) government/civil	1 month	10 months
Vacancy 18	Not published	1) government/criminal; 2) government/criminal; 3) government/civil <b>(none appointed)</b>	Not Computable	Not Computable *
Vacancy 19	9/30/2000	<b>1) government/criminal</b> ; 2) government/criminal; 3) government/criminal	minus 3 months	12 months
Vacancy 20	1/15/2001	1) government/criminal; <b>2) government/criminal</b> ; 3) government/family	2 months	6 months
Vacancy 21	6/29/2001	1) private/family; <b>2) private/civil</b> ; 3) government/criminal	minus 2 months	11 months
Vacancy 22	7/31/2001	1) government/criminal; 2) government/civil; 3) government/family <b>(none appointed)</b>	3 months	Not Computable *
Vacancy 23	10/19/2001	1) government/criminal; 2) private/civil; <b>3) government/criminal</b>	2 months	8 months
Vacancy 24	1/15/2002	<b>1) government/criminal</b> ; 2) government/criminal; 3) private/civil	2 months	6 months
Vacancy 25	2/1/2002	1) government/criminal; <b>2) government/family</b> ; 3) government/criminal	2 months	6 months
Fam. Court Vacancy 1	7/25/2002	1) government/family; 2) government/criminal; 3) private/family <b>(none appointed)</b>	4 months	10 months
Fam. Court Vacancy 2	7/25/2002	<b>1) government/family</b> ; 2) private/family; <b>3) government/family (two appointed)</b>	4 months	14 months
Fam. Court Vacancy 3	7/25/2002	1) private/family; <b>2) government/family</b> ; 3) private/family	4 months	12 months
Vacancy 29	1/26/2003	<b>1) government/criminal</b> ; 2) government/criminal; 3) private/civil	4 months	8 months
Vacancy 30	4/3/2003	1) government/criminal; <b>2) private/civil</b> ; 3) government/criminal	minus .5 month	11 months
Vacancy 31	7/17/2003	1) academic/civil; 2) government/criminal; 3) government/civil	1 month	18 months
Vacancy 32	1/31/2004	1) private/family; 2) government/family; <b>3) government/family</b>	4 months	17 months
Vacancy 33	2/13/2004	<b>1) government/criminal</b> ; 2) private/civil; 3) private/civil	3 months	16 months
Vacancy 34	7/31/2004	<b>1) government/criminal</b> ; 2) government/criminal; 3) private/civil	1.5 months	No Investiture to Date
Vacancy 35	7/15/2005	<b>1) government/family</b> ; 2) private/criminal; 3) government/criminal	2 months	No Investiture to Date
Vacancy 36	10/1/2005	1) government/family; 2) government/family; 3) government/criminal	1.5 months	No Investiture to Date
* 4 Judges Sworn In But Not Linkable to a Particular Retirement Vacancy Because of Unpublished Notice or President Selecting from Outside the Current Panel:				
1) private/civil; 2) government/civil; 3) government/civil; 4) government/criminal				

<b>D.C. Superior Court Judges Installed Since 1995</b>							12/15/05
<b>Judge (Age)</b>	<b>Sector of Experience</b>			<b>Subject of Experience</b>			
Judge 1 (NA)	government	<b>private</b>		criminal	<b>civil</b>		
Judge 2 (50)	<b>government</b>			<b>criminal</b>		family	
Judge 3 (40)	government	<b>private</b>			<b>civil</b>		
Judge 4 (42)	government	<b>private</b>	academic	<b>criminal</b>	civil		
Judge 5 (51)	<b>government</b>			criminal	<b>civil</b>		
Judge 6 (36)	<b>government</b>		academic	<b>criminal</b>		family	
Judge 7 (43)	<b>government</b>	private		<b>criminal</b>	civil		
Judge 8 (47)	government	<b>private</b>		criminal	<b>civil</b>		
Judge 9 (43)	<b>government</b>	private	academic	<b>criminal</b>	civil		
Judge 10 (40)	<b>government</b>	private		<b>criminal</b>	civil		
Judge 11 (46)	<b>government</b>		academic	<b>criminal</b>			
Judge 12 (37)	<b>government</b>		academic	<b>criminal</b>		family	
Judge 13 (38)	<b>government</b>	private		criminal	civil	<b>family</b>	
Judge 14 (45)	<b>government</b>	private		<b>criminal</b>	civil		
Judge 15 (40)	<b>government</b>			<b>criminal</b>			
Judge 16 (49)		<b>private</b>	academic	<b>criminal</b>	civil		
Judge 17 (54)	<b>government</b>			<b>criminal</b>			
Judge 18 (39)	<b>government</b>	private	academic	<b>criminal</b>	civil		
Judge 19 (39)	<b>government</b>	private		criminal	<b>civil</b>		
Judge 20 (41)	<b>government</b>		academic	<b>criminal</b>			
Judge 21 (46)	<b>government</b>			<b>criminal</b>			
Judge 22 (53)	government	<b>private</b>			<b>civil</b>		
<b>Judges Appointed and Installed Since Notice of the Family Court Act of 2001</b>							
<b>Judges</b>	<b>Sector of Experience</b>			<b>Subject of Experience</b>			
Judge 23 (41)	<b>government</b>		academic	<b>criminal</b>	civil		
Judge 24 (39)	<b>government</b>	private		<b>criminal</b>	civil		
Judge 25 (46)	<b>government</b>	private		criminal	civil	<b>family</b>	
Fam. Judge 1 (66)	<b>government</b>	private	academic		civil	<b>family</b>	
Fam. Judge 2 (58)	<b>government</b>			criminal	civil	<b>family</b>	
Fam. Judge 3 (45)	<b>government</b>	private	academic	criminal		<b>family</b>	
Judge 29 (45)	<b>government</b>		academic	<b>criminal</b>	civil		
Judge 30 (50)		<b>private</b>			<b>civil</b>		
Judge 31 (45)	<b>government</b>			<b>criminal</b>	civil		
Judge 32 (39)	<b>government</b>			<b>criminal</b>	civil		
Judge 33 (33)	<b>government</b>	private				<b>family</b>	
<b>Bold = Primary Experience</b>							
<b>Primary Experience Totals Below:</b>							
	<b>26 of 33</b>	<b>7 of 33</b>	<b>0 of 33</b>	<b>20 of 33</b>	<b>7 of 33</b>	<b>6 of 33</b>	
<b>Average Age at Appointment 44.8 years</b>							

Nominees Not Selected for D.C. Superior Court Judge Since 1995								12/15/2005
Nominee	Times Not Selected	Age(s) at Nomination(s)	Sector of Experience			Subject of Experience		
1	1	41	government	private	academic	criminal	civil	
2	1	40	government	private		criminal	civil	
3	1	44	government		academic	criminal		
4	1	39	government	private	academic	criminal	civil	
5	3	51, 54, 55	government		academic	criminal	civil	
6	2	44, 46	government			criminal	civil	
7	2	45, 47	government				civil	
8	1	48	government	private		criminal	civil	
9	1	54	government	private	academic	criminal	civil	
10	1	51		private	academic		civil	
11	3	42, 42, 43	government	private		criminal		
12	3	37, 37, 38	government			criminal	civil	
13	2	42, 44	government	private		criminal	civil	family
14	1	36	government		academic	criminal	civil	
15	1	51	government	private			civil	
16	1	53	government			criminal	civil	
17	3	42, 43, 44	government	private	academic	criminal	civil	family
18	1	38	government			criminal		
19	1	51	government	private		criminal		
20	1	38	government	private	academic	criminal	civil	
21	3	37, 39, 42	government	private	academic	criminal	civil3	family
22	1	41	government	private		criminal	civil	
23	2	52, 54	government		academic	criminal		
24	4	47, 48, 49, 50	government			criminal		
25	2	41, 46	government	private		criminal	civil	
26	2	40, 42	government		academic	criminal	civil	family
27	3	54, 56, 57		private	academic		civil	family
28	2	57, 58	government	private		criminal	civil	family
29	1	57	government	private		criminal	civil	family
30	1	52	government	private	academic		civil	
31	1	44		private			civil	
32	2	52	government	private			civil	family
33	2	47, 49	government		academic	criminal		family
34	1	48		private			civil	family
35	1	32	government	private				family
36	1	36	government	private				family
37	1	38	government			criminal	civil	
38	2	50, 51		private	academic		civil	
39	1	47	government			criminal		
40	1	41	government		academic		civil	
41	1	51	government	private			civil	
42	1	55		private			civil	
43	1	50		private		criminal	civil	
<b>Bold = Primary Experience</b>			<b>Primary Experience Totals Below:</b>					
<b>43</b>	<b>68</b>	<b>Average Age</b>	<b>28 Nominees</b>	<b>14 Nom.</b>	<b>1 Nom.</b>	<b>20 Nom.</b>	<b>15 Nom.</b>	<b>8 Nom.</b>
<b>Nominees</b>	<b>Nominations</b>	<b>45.9</b>	<b>50 Times</b>	<b>17 Times</b>	<b>1 Time</b>	<b>34 Times</b>	<b>19 Times</b>	<b>15 Times</b>

**District of Columbia  
Court of Appeals  
No. M-225-05**

BEFORE: Washington, Chief Judge; Terry, Schwelb, Farrell, Wagner, Ruiz, Reid, Glickman and Kramer, Associate Judges.

**ORDER**

(FILED - September 27, 2005)

**WHEREAS** this court, in the interest of judicial economy, has in the past routinely granted requests to stay criminal appeals upon the filing of a D.C. Code Sec.23-110 motion in Superior Court, so that, if the D.C. Code Sec.23-110 motion is denied, the appeal from its denial could be consolidated with the pending appeal, see *Shepard v. United States*, 533 A.2d 1278, 1280 (DC 1987), and

**WHEREAS** this court has determined that the interests of judicial economy are no longer served due to the delays in the resolution of D.C. Code Sec. 23-110 motions or the filing of multiple D.C. Code Sec.23-110 motions pending resolution of the appeal, and this has led this court to encourage counsel to avoid deferring the resolution of the direct appeal, as appropriate, see *Williams v. United States*, 783 A.2d 598, 602 n.4 (2001)(en banc), and

**WHEREAS** the obligations imposed on appellate counsel by this court in *Shepard v. United States*, 533 A.2d 1278, 1280 (DC 1987) and *Doe v. United States*, 583 A.2d 670 (DC 1990), do not require that this court stay appeals to protect the rights of appellants, it is

**ORDERED** that this court will no longer routinely grant requests to stay criminal appeals pending the resolution of D.C. Code 23-110 motions. Counsel may, in an appropriate case, file a motion showing good cause for staying the appeal to await the outcome of the trial court motion. Further, if the appeal is consolidated with other appeals, counsel must specifically address the impact of any suggested stay on the other appellants. This court notes that the obligations imposed on appellate counsel by *Shepard*, *supra*, and *Doe*, *supra*, are not affected by this order. Counsel is still obligated to determine if there is a sufficient basis for filing a motion for relief pursuant to D.C. Code Sec. 23-110 and to either file such a motion or assist the appellant in filing a motion No. M-225-05 for appointment of counsel in Superior Court to file such a motion. Counsel is reminded that the failure to file a D.C. Code Sec. 23-110 motion during the pendency of the direct appeal may create a procedural bar to the consideration of such a claim in the trial court. See *Shepard*, *supra*. Counsel should review the document entitled *Obligations of Counsel* (para. 5, *Obligations to the Client*), which sets out the duties of appointed counsel in criminal appeals.

(A copy of this document may be found at <http://www.dccourts.gov/dccourts/appeals/cja.jsp>)  
ENTERED BY DIRECTION OF THE COURT:

GARLAND PINKSTON, JR., Clerk of the Court

**DISTRICT OF COLUMBIA  
JUDICIAL NOMINATION COMMISSION**

**NOTICE OF JUDICIAL VACANCY**

Members of the Bar, Bench and public are hereby notified by the District of Columbia Judicial Nomination Commission that a vacancy on the **Superior Court of the District of Columbia** has occurred as a result of the retirement of Associate Judge Susan R. Holmes Winfield, effective **October 1, 2005**.

The Commission is charged with the responsibility to submit to the President a list of three persons for possible nomination and appointment within 60 days of the vacancy. D.C. Code §§ 1-204.34 (West 2001). Accordingly, the Commission invites individuals to indicate their interest in being considered for this vacancy. Qualified applicants must be citizens of the United States, active members of the District of Columbia Bar (Unified) and residents of the District of Columbia and, for the five-year period immediately preceding the nomination, must have been in active practice of law in the District of Columbia, on the faculty of a law school in the District of Columbia, or employed as an attorney by the United States or the District of Columbia Government. For the precise eligibility requirements, please refer to D.C. Code § 1-204.33(b) (West 2001).

Persons who have never applied to the Commission regarding a judicial vacancy should phone or visit the office of the Commission to obtain a judicial questionnaire. Persons who already have judicial questionnaires on file with the Commission and wish to be considered for this vacancy should write to the Commission indicating their interest. All correspondence should be addressed to the Honorable Emmet G. Sullivan, Chairperson, Judicial Nomination Commission, 616 H Street, NW, Suite 623, Washington, D.C., 20001, and must be received by no later than **Friday, October 21, 2005**.

All questions concerning the nomination application process should be directed to the Commission's Executive Director, Peggy Williams Smith, at 202-879-0478.

**Members of the Commission**

**Chairperson**

The Honorable Emmet G. Sullivan  
United States District Court for the  
District of Columbia  
United States Courthouse  
333 Constitution Avenue, NW  
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(202) 354-3260

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Mr. William Lucy  
American Federation of State, County &  
Municipal Employees, AFL-CIO  
1625 L Street, NW  
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Professor Patricia Worthy  
Howard University School of Law  
2900 Van Ness Street, NW  
Room 409 - Houston Hall  
Washington, DC 20008  
(202) 806-8061

June 1, 2005  
(Amended)

## D.C. JUDICIAL NOMINATION COMMISSION

### Instructions for Applicants Regarding Questionnaire

1. Read D.C. Code Ann. §§ 11App. 11 433 and 434, as amended, to determine your ability. If you have any questions, you should phone the **Chairperson, the Honorable Emmet G. Sullivan at 202/879-0478 or 202/354-3260**.
2. As to Question 13 (page 3), if you do not have five significant litigated matters that you have handled, you may as an alternative, provide a description of not more than five significant contributions that you have made in such areas as litigation, administrative rule-making, court administrations, law school teaching, or other appropriate alternatives.
3. Submit an **original** plus nine (9) copies, **total, 10 (ten) copies, each**, of your completed questionnaire and of your resume to the following address:  

**The Honorable Emmet G. Sullivan  
Chairperson  
DC Judicial Nomination Commission  
616 H St., NW, Ste 623, Sixth Floor  
(Gallery Place)  
Washington, DC 20001  
202/879-0478 or 202/354-3260**
4. If Question 13 applies to you, please submit two (2) Copies of the written work requested.
5. Execute the Releases at the end of the questionnaire on two (2) Copies and attach two (2) recent photographs (passport size) to those copies.
6. The commission does not require letters of recommendation but will accept them. If you send such letters, you should exercise discretion in the number of letters and they should be from persons who are in a position to know something about your qualification for judicial office, rather than mere character references. The letters need not accompany your questionnaire and may be submitted at a later date.
7. Please date your questionnaire at the top right of the first page and date and sign your questionnaire at the bottom of the final page.
8. Sign and date all forms.

**D.C. JUDICIAL NOMINATION COMMISSION**  
**Questionnaire**

1. Question: Full name and social security number.
2. Question: Office and home addresses, zip codes and telephone numbers.
3. Question: Date and place of birth.
4. Question: Are you a citizen of the United States?
5. Question: Are you married? If so, state the date of marriage and spouse's name before marriage.
6. Question: Have you had any military services? If so, give dates, branch of service, rank or rate, serial number and present status.
7. Question: List each college and law school you have attended, including dates of attendance, the degrees awarded and, if you left any institution without receiving a degree, the reason for leaving.
8. Question: List all courts in which you have been admitted to practice, with dates of admission. Give the same information for administrative bodies which require special admission to practice.
9. Question: Please describe chronologically your law practice and experience after graduation from law school, including:
  - (a) Whether you served as a clerk to a judge, and if so, the name of the judge, the court, and the dates of the period you were a clerk.
  - (b) Whether you practiced alone, and if so, the addresses and the dates.
  - (c) The dates, names and addresses of law firms or offices, companies or governmental agencies with which you have been connected, and the nature of your connection with each.

(d) Any other relevant particulars.

10. Question: (a) What has been the general character of your practice, dividing it into periods with dates, if its character has changed over the years?

(b) Describe your typical clients, and mention the areas, if any, in which you have specialized.

11. Question: With respect to the last five years:

(a) Did you appear in court regularly, occasionally, or not at all? If the frequency of your appearances in court has varied during this period, please describe each such variance, giving the dates thereof.

(b) What percentage of these appearances was in

- (i) Federal courts
- (ii) State courts of record
- (iii) Other courts

(c) What percentage of your litigation was

- (i) Civil
- (ii) Criminal

(d) State the number of cases in courts of record you tried to verdict or judgment (rather than settled), indicating whether you were sole counsel, chief counsel, or associate counsel.

(e) What percentage of these trial was

- (i) Jury



(ii) Non-jury

12. Question: Summarize your experience in court prior to the last five years, indicating as to that period:
- (a) Whether your appearances in court were more or less frequent:
  - (b) Any significant changes in the percentage stated in your answers to Question 11(b), (c), and (e).
  - (c) Any significant changes in the number of cases per year in courts of record you tried to verdict or judgment (rather than settled), as sole counsel, chief counsel or associate counsel.
13. Question: Describe not more than five of the more significant litigated matters which you handled and give the citations, if the cases were reported. Please give a capsuled summary of the substance of each case, and a succinct statement of what you believe to be the particular significance of the case. Please identify the party or parties whom you represented, describe in detail the nature of your participation in the litigation and the final disposition of the case. Please also state as to each case, (a) the dates of the trial period or periods; (b) the name of the court and the name of the judge before whom the case was tried; and (c) the names and addresses of counsel for the other parties.
14. Question: Have you ever held judicial office? If so, please give dates and details including the courts involved, whether elected or appointed, periods of service and a description of the jurisdiction of each court.
15. Question: Have you ever been an unsuccessful candidate for elective, judicial, or other public office? If so, give details, including dates.
16. Question: Have you ever been engaged in any occupation, business or profession other than the practice of law or holding judicial or other public office. If so, give details, including dates.

17. Question: Are you an officer or director or otherwise engaged in the management of any business enterprise?
- (a) If so, give details, including the name of the enterprise, the nature of the business, the title or other description of your position, the nature of your duties and the term of your service.
- (b) Is it your intention to resign such positions and withdraw from any participation in the management of any such enterprises if you are nominated and confirmed? If not, please give reasons.
18. Question: Have you ever been arrested, charged, or held by federal, state, or other law enforcement authorities for violation of any federal law, state law, county or municipal law, regulation or ordinance? If so, please give details. Do not include traffic violations for which a fine of \$50 or less was imposed.
19. Question: Have you, to your knowledge, ever been under federal, state or local investigation for possible violation of a criminal statute. If so, give particulars.
20. Question: Has a tax lien or other collection procedure ever been instituted against you by federal, state or local authorities? If so, give particulars.
21. Question: Have you ever been sued by a client? If so, please give particulars.
22. Question: Have you ever been a party or otherwise involved in any other legal proceedings? If so, give the particulars. Do not list proceedings in which you were merely a guardian ad litem or stockholder. Include all legal proceedings in which you were a party in interest, a material witness, were named as a co-conspirator or co-respondent and any grand jury investigation in which you figured as a subject, or in which you appeared as a witness.
23. Question: Have you ever been disciplined or cited for a breach of ethics or unprofessional conduct by, or been the subject of a complaint to, any court, administrative agency, or other professional group? If so, please

give the particulars.

24. Question: (a) What is the present state of your health?
- (b) Do you suffer from any impairment of eyesight or hearing or any other physical handicap which would interfere with your performance of the duties of judicial office? If so, please give details.
25. Question: Have you published any legal books or articles? If so, please list them, giving the citations and dates.
26. Question: List all bar association and professional societies of which you are a member and give the titles and dates of any offices which you have held in such groups. List also chairmanships of any committees, etc.
27. Question: List all organizations, other than bar associations or professional associations or professional societies, of which you are or have been a member, including civic, charitable, religious, educational, social and fraternal organizations, giving dates of membership and offices, if any, you have held.
28. Question: List any honors, awards, etc., which you have received.
29. Question: List any other pertinent information which you believe might be of assistance in assessing your qualifications for judicial office.

Respectfully submitted,

\_\_\_\_\_

Date: \_\_\_\_\_

## How the District of Columbia Gets its Judges

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### **Project Oversight**

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Rodney F. Page, Esq., President

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*Chair, D.C. Judicial Nomination Commission*

Hon. Eric T. Washington  
*Chief Judge, District of Columbia Court of Appeals*

Hon. Mary Ellen Abrecht  
Hon. James A. Belson  
*Council for Court Excellence Board of Directors*

*Daily Washington Law Reporter*

Sean Groom, "How to Become a Judge,"  
*Washington Lawyer*, November 2003

Lisa Bellamy, Esq.  
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