OFFICE OF THE ATTORNEY GENERAL FOR THE DISTRICT OF COLUMBIA

NOTICE OF FINAL RULEMAKING

Pursuant to the authority set forth in section 861 of the District of Columbia Government Comprehensive Merit Personnel Act of 1978, effective March 3, 1979, D.C. Law 2-139, as added by the Legal Service Establishment Amendment Act of 1998 ("Legal Service Act"), effective April 20, 1999, D.C. Law 12-260, and as amended by the Legal Service Amendment Act of 2005 ("Legal Service Amendment Act"), effective October 20, 2005, Title III(B) of D.C. Law 16-33, D.C. Official Code § 1-608.61 (2001), the Attorney General hereby gives notice that final rulemaking action was taken to adopt the following rules.

These rules amend Chapter 36 of the District of Columbia Personnel Regulations pertaining to the Legal Service. The most important of these rules will adopt new rating categories and criteria. In particular, these rules abolish the existing four rating categories and related criteria for line attorneys of "substantially exceeds expectations," "meets expectations," "needs improvement," and "fails expectations." These rules replace them with the following five rating categories: "outstanding," "excellent," "satisfactory," "marginal," and "unsatisfactory." In addition, these rules will abolish the evaluation panels that have reviewed managers' draft evaluations of line attorneys before the draft evaluations are reviewed and approved by the Attorney General. The evaluation panels served the purpose of assuring that managers applied the new performance standards under the Legal Service Act accurately and consistently across the Office, and experience shows that most managers have learned to do so, mooting the continued need for the panels. Also, the new rating system will be accompanied by a revised evaluation form that better ensures manager accuracy and consistency.

Finally these rules eliminate obsolete provisions (*e.g.,* the section governing the former Attorney Retention Allowance; and all references that distinguish between attorneys employed by the Office of the Attorney General and attorneys employed by the other subordinate agencies, since all Series 905 attorneys who provide legal services to the subordinate agencies must now be employed by the Office of the Attorney General), update nomenclature (*e.g.,* substituting "Attorney General" for "Corporation Counsel"), and amend the section governing reductions in force to conform with the December 2003 amendments to Chapter 24 of the District of Columbia Personnel Regulations.

No comments were received and no changes made to the rules under the notice of emergency and proposed rulemaking adopted on August 31, 2007 and published at 54 DCR 9182 (September 21, 2007). Final rulemaking action was taken on December 11, 2007.

Chapter 36 of the D.C. Personnel Regulations is amended to read as follows:

CHAPTER 36 LEGAL SERVICE

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3601 APPOINTMENT

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3603 INDIVIDUAL ACCOUNTABILITY PLANS (LINE ATTORNEYS) AND PERFORMANCE PLANS (ALL OTHER ATTORNEYS)
3604 EVALUATION OF PERFORMANCE – RATING PERIODS, ELIGIBILITY FOR EVALUATION, CRITERIA FOR EVALUATION, AND RATING LEVELS
3605 EVALUATION OF PERFORMANCE – OFFICE OF THE ATTORNEY GENERAL FOR THE DISTRICT OF COLUMBIA LINE ATTORNEYS
3606 EVALUATION OF PERFORMANCE – OFFICE OF THE ATTORNEY GENERAL FOR THE DISTRICT OF COLUMBIA SUPERVISORS
3607 EVALUATION OF PERFORMANCE – OFFICE OF THE ATTORNEY GENERAL FOR THE DISTRICT OF COLUMBIA CHIEF DEPUTY, SPECIAL DEPUTY, SPECIAL COUNSEL, AND SENIOR COUNSEL
3608 EVALUATION OF PERFORMANCE – NON-DELEGATED AGENCIES
3609 PERFORMANCE IMPROVEMENT PLANS
3610 ANNUAL MANDATORY TRAINING – GENERALLY
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3613 [RESERVED]
3614 DISCIPLINE
3615 SEPARATION PAY
3616 REDUCTIONS IN FORCE
3618 ATTORNEY GOOD STANDING IN THE D.C. BAR REQUIREMENT – OFFICE OF THE ATTORNEY GENERAL FOR THE DISTRICT OF COLUMBIA
3699 DEFINITIONS

3600 APPLICABILITY

3600.1 This Chapter applies to all attorneys appointed to the Legal Service who are employed by the Office of the Attorney General for the District of Columbia or another subordinate agency.

3600.2 The time limitations contained in this Chapter requiring action within a specific number of days are to be complied with to the extent feasible, except that time limitations for compliance with training requirements under sections 3610, 3611 and 3612 shall be complied with strictly.

3601 APPOINTMENT

3601.1 Attorneys employed by the Office of the Attorney General for the District of Columbia, wherever located in the District government, shall be hired by the Attorney General in accordance with hiring procedures established by Office Order of the Attorney General.

3601.2 The Attorney General for the District of Columbia shall establish hiring procedures by Office Order.

3601.3 Hiring decisions for attorneys shall take into account:

(a) Requirements of the position to be filled;

(b) Professional characteristics of the applicant, including:

(1) Analytical skill;

(2) Litigation, transactional, and/or counseling experience, if relevant;

(3) Oral skills;

(4) Writing skills; and

(5) Substantive legal knowledge; and

(c) Personal characteristics of the applicant.

3601.4 The Attorney General for the District of Columbia, or his or her designee, shall interview every candidate for an attorney position in the Office of the Attorney General for the District of Columbia.

3601.5 Any attorney in a position above LX-1, or in an equivalent position, who is appointed to the Senior Executive Attorney Service shall be notified in writing by the Attorney General for the District of Columbia that he or she is being appointed to a Senior Executive Attorney Service position.

3601.6 Attorneys shall be appointed to the Legal Service non-competitively, so long as each attorney appointed meets the qualification standards established for the position.

3601.7 Each attorney shall swear or affirm an oath as follows: "I (attorney's name), do solemnly swear (or affirm) that I will faithfully execute the laws of the United States of America and of the District of Columbia, and will to the best of my ability, preserve, protect and defend the Constitution of the United States, and will faithfully discharge the duties of the office which I am about to enter."

3601.8 An appointment to a position in the Legal Service may be for full-time employment, intermittent employment, part-time employment, or time-limited employment.

3602 TRANSFERS, STEP INCREASES, AND PROMOTIONS

3602.1 Attorneys employed by the Office of the Attorney General for the District of Columbia, wherever located in the District government, may request voluntary rotation to another unit within the Office of the Attorney General in accordance with rotation procedures established by Office Order of the Attorney General.

3602.2 After consulting with the affected subordinate agency head, the Attorney General may assign an attorney employed by the Office of the Attorney General who previously performed work primarily for the Office of the Attorney General to perform work primarily for the affected subordinate agency, whether located at the agency or not, in the Attorney General's discretion. In addition, after consulting with the affected sending and receiving subordinate agency heads, the Attorney General may assign an attorney employed by the Office of the Attorney General who previously performed work primarily for the sending agency, including the Office of the Attorney General, to perform work primarily for the receiving agency, whether located at the receiving agency or not in the Attorney General's discretion.

3602.3 Changes in assignment may be made by the Attorney General for the District of Columbia at any time to meet the needs of the Office of the Attorney General or the subordinate agencies.

3602.4 An attorney may receive a within-grade step increase only if he or she received a rating of "satisfactory," "excellent," or "outstanding" for the rating period immediately prior to the due date for a within-grade step increase. Failure to achieve the required rating shall result in the due date for the step increase being delayed for an additional year.

3602.5 All recommendations for promotion to grades LA 14 and above shall be submitted to the Attorney General for the District of Columbia once annually at a time and in a manner to be determined by the Attorney General in an Office Order. If the employee has not been supervised by his or her current supervisor for at least ninety (90) days, the input of the employee's prior supervisor shall be sought. An attorney may receive a promotion to a higher grade if the following criteria are met:

(a) The attorney has been at the prior grade level for at least twelve (12) months preceding the recommendation for promotion;

(b) The attorney has demonstrated consistent superior performance, as demonstrated by the two most recent performance evaluations, if available;

(c) The attorney demonstrates specialized expertise or professional distinction; and

(d) The attorney demonstrates satisfactory handling of an increasingly more complex workload.

3603 INDIVIDUAL ACCOUNTABILITY PLANS (LINE ATTORNEYS) AND PERFORMANCE PLANS (ALL OTHER ATTORNEYS)

3603.1 Each supervisor shall prepare annually, at least thirty (30) days prior to the end of the rating period, a draft Individual Accountability Plan for every line attorney under his or her supervision for the following rating period. This requirement may be satisfied

by requiring the line attorney supervised to prepare a draft Individual Accountability Plan for the supervisor's approval.

3603.2 Each supervisor shall review the Job Description for every line attorney under his or her supervision annually, at least thirty (30) days prior to the end of the rating period. The supervisor may recommend changes to Job Descriptions to the Attorney General for the District of Columbia as appropriate. This requirement may be satisfied by requiring the line attorney supervised to review his or her Job Description and prepare recommended changes for the supervisor's approval.

3603.3 A supervisor is not required to prepare an Individual Accountability Plan or review a Job Description for any line attorney who the supervisor knows is scheduled within six (6) months after the beginning of the following rating period to leave, rotate or transfer from the legal office, or unit within the legal office, to which he or she is assigned.

3603.4 A supervisor shall provide each line attorney with a copy of his or her draft Individual Accountability Plan, along with a copy of his or her Job Description, upon completion by the supervisor.

3603.5 Each line attorney may provide written comments on the content of his or her draft Individual Accountability Plan and Job Description to the supervisor within fifteen (15) days of receiving them from his or her supervisor.

3603.6 A supervisor shall consider, but need not adopt, the comments made by a line attorney regarding a draft Individual Accountability Plan or Job Description.

3603.7 Each supervisor shall prepare a final Individual Accountability Plan and make final recommendations for changes to the Job Description for each line attorney under his or her supervision by the first day of the rating period. A copy of each shall be transmitted to the Attorney General.

3603.8 An Individual Accountability Plan shall include, but need not be limited to:

(a) Measurable goals and professional development expectations for the line attorney that parallel specific job duties and responsibilities, work behaviors, or projects within each of the categories listed in (b);

(b) Appropriate performance standards, including but not limited to those from the following list, and the weight to be accorded to each:

(1) Conduct of legal research and writing;

(2) Oral preparation and presentation;

(3) Efficiency, productivity, and work habits;

(4) Professional conduct and effectiveness in working with others;

(5) Office procedures;

(6) Job Knowledge; and

(7) Litigation, transaction and/or counseling skills (as appropriate); and

(c) Training requirements to be provided in-house and non-in-house.

3603.9 Beginning with the rating period 2001-2002, a supervisor shall provide each line attorney with a copy of his or her final Individual Accountability Plan during the first week of the rating period.

3603.10 The supervisor of a line attorney who is newly-hired, rotated, or transferred into the unit between thirty (30) days prior to the end of a rating period and one hundred-twenty (120) days prior to the end of the following rating period, shall provide the line attorney with a final Individual Accountability Plan and Job Description within thirty (30) days after appointment, rotation or transfer. The supervisor of the line attorney may, at his or her option, provide the line attorney with an opportunity to comment on a draft Individual Accountability Plan and a draft Job Description.

3603.11 During the first week of a new rating period, each supervisor shall prepare and submit to the Training Director, in a format specified by the Training Director, a report summarizing any training requirements included in Individual Accountability Plans for line attorneys under his or her supervision. The report shall identify subject-matter areas where training is needed and include suggestions as to the types of programs and courses that could be used to meet those identified training needs.

3603.12 Performance Plans for supervisors and non-supervisory attorneys as described in sections 3606 and 3607 shall be prepared in accordance with sections 1406, 1407, 1408, and 1409 of Chapter 14 of the District of Columbia Personnel Regulations

3604 EVALUATION OF PERFORMANCE – RATING PERIODS, ELIGIBILITY FOR EVALUATION, CRITERIA FOR EVALUATION, AND RATING LEVELS

3604.1 Beginning with the 2001-2002 rating period, and for each rating period thereafter, the rating period for line attorneys shall run from September 1st to August 31st. For the 2001-2002 rating period, the rating period for all other attorneys covered by these rules (supervisors and the non-supervisory attorneys described in sections 3606 and 3607), shall run from September 1, 2001 to September 30, 2002. Thereafter, the rating period for all attorneys covered by these rules except line attorneys shall run from October 1st to September 30th.

3604.2 Written evaluations shall be based on at least one hundred-twenty (120) days of experience supervising the line attorney evaluated.

(a) Line attorneys who have been employed by the Office of the Attorney General for the District of Columbia for fewer than one hundred-twenty (120) days prior to the end of the rating period, shall not be evaluated.

(b) If a line attorney has been employed by the Office of the Attorney General for the District of Columbia for at least one hundred-twenty (120) days prior to the end of the rating period, but the supervisor of the line attorney at the time of the evaluation lacks at least one hundred-twenty (120) days of direct experience supervising the line attorney, the supervisor shall evaluate the line attorney based on an advisory evaluation prepared by a former supervisor or any other person, who had at least one hundred-twenty (120) days of direct experience supervising the line attorney during the rating period within the agency. If no such advisory evaluation is available, the line attorney shall not be evaluated.

3604.3 Each evaluation shall assess the line attorney's achievement of the performance standards and specific goals set out in his or her Individual Accountability Plan during the rating period.

3604.4 Evaluations may, at the discretion of the supervisor, include input from citizens, customers, peers, and others with whom the line attorney had regular professional contact during the rating period.

3604.5 Beginning with the 2002-2003 rating period, the evaluation of performance of supervisors and the non-supervisory attorneys described in sections 3606 and 3607 shall be under the District government's Performance Management Program ("PMP"), in accordance with Chapter 14 of the District of Columbia Personnel Regulations.

3604.6 Written evaluations of supervisors and non-supervisory attorneys as described in sections 3606 and 3607 who have been reassigned to a position with different duties and responsibilities within ninety (90) days of the end of the rating period shall be rated not later than thirty (30) days from the effective date of the reassignment. If such an attorney is promoted or demoted during the ninety (90) days prior to the end of the rating period, he or she shall be rated not later than thirty (30) days from the effective date of the promotion or demotion. If such an attorney is reinstated or restored to duty during the ninety (90) days prior to the end of the rating period, he or she shall be rated at the end of the next rating period. If such an attorney transfers to an agency under the Mayor's personnel authority from another personnel authority or is newly appointed during the ninety (90) days prior to the end of the rating period, he or she shall be rated at the end of the next rating period.

3604.7 Any supervisor or non-supervisory attorney as described in sections 3606 and 3607 who is reinstated, restored, newly appointed, or transferred shall automatically be

considered as having been assigned a rating of "meets expectations," which shall remain the official rating of record until such time as replaced by another official rating.

3604.8 For line attorneys through the 2006-2007 rating period, each written evaluation shall assign an overall rating to the attorney of "substantially exceeds expectations", "meets expectations", "needs improvement", or "fails expectations". For line attorneys starting with the 2007-2008 rating period, each written evaluation shall assign an overall rating to the attorney of "outstanding," "excellent," "satisfactory," "marginal," or "unsatisfactory." For all attorneys covered by these rules other than line attorneys, starting with the 2002-2003 rating period each written evaluation shall assign an overall rating to the attorney of "significantly exceeds expectations," "exceeds expectations," "meets expectations," "needs improvement," or "does not meet expectations."

3605 EVALUATION OF PERFORMANCE – OFFICE OF THE ATTORNEY GENERAL FOR THE DISTRICT OF COLUMBIA LINE ATTORNEYS

3605.1 Each supervisor shall prepare a written evaluation for every line attorney under his or her supervision annually, within twenty (20) days after the end of the rating period. Written evaluations shall be prepared using a form that is approved by the Attorney General for the District of Columbia.

3605.2 Each supervisor shall submit evaluations of line attorneys to his or her supervisor for review, comment, or revision. Each supervisor who reviews an evaluation shall complete his or her review within five (5) days of receipt of the evaluation and shall immediately return the draft evaluation to the supervisor who prepared it.

3605.3 The supervisor who prepared the evaluation shall complete any revision requested by his or her supervisor within seven (7) days of receipt of the evaluation.

3605.4 After completion of any revisions under section 3605.3, the evaluation shall be reviewed by every supervisor in the chain of command from the line attorney up to the Attorney General. Each supervisor within the chain of command shall complete his or her review within five (5) days of receipt of the evaluation and forward the evaluation, along with his or her comments for revision, up the chain of command. The final supervisor in the chain of command below the Attorney General shall, upon completion of his or her review, return the evaluation to the supervisor who prepared it for revision prior to transmittal to the Attorney General.

3605.5 As soon as practicable after the receipt of the evaluations, the Attorney General shall complete his or her review. In reviewing evaluations of line attorneys, the Attorney General may consult with the supervisor who prepared the evaluation, any person who prepared an advisory evaluation, and the supervisors in the chain of command for the relevant unit.

3605.6 If the Attorney General decides that an evaluation should be changed, the supervisor who prepared the evaluation shall make all changes that are directed by the Attorney General within five (5) days of receipt of the Attorney General's directive.

3605.7 Each supervisor shall review the evaluation with the line attorney evaluated within twenty (20) days of receipt of the approved evaluation from the Attorney General or within twenty (20) days after completion of any revisions directed by the Attorney General. Both the line attorney evaluated and his or her supervisor shall sign the written evaluation to confirm that it has been reviewed.

3605.8 If a line attorney disagrees with the written evaluation, he or she may appeal it within thirty (30) days of receipt to a committee established by the Attorney General, the Performance Evaluation Review Committee ("Committee"). The Attorney General shall appoint nine managing attorneys to the Committee, which shall sit in three-member panels as designated by the Attorney General. The Committee shall be empowered to review the basis for the direct supervisor's rating, conduct a hearing, receive written briefs, and issue a written decision which may approve, modify, or reject the performance rating. The line attorney shall initially provide the Attorney General (or his or her designee) with a notice of appeal, including any request for a hearing, within thirty (30) days of receipt of the evaluation. The Committee shall circulate the notice to the line attorney's direct supervisor and to every supervisor in the chain of command between the line attorney and the Attorney General.

3605.9 The Committee has the discretion to decide whether to grant any request for a hearing. If a request for a hearing is granted, the committee shall circulate a hearing notice to the line attorney and to every supervisor in the chain of command between the line attorney and the Attorney General, which provides:

(a) The place of the hearing and a hearing date and time no more than fifteen (15) days from the date of the hearing notice;

(b) That the line attorney may review, upon request to his or her direct supervisor, all materials upon which the evaluation is based;

(c) That the line attorney may be represented by an approved attorney, or other representative at the hearing; and

(d) That the line attorney has the right to testify and present evidence at the hearing.

3605.10 The hearing shall be closed except for the line attorney, his or her representative, the line attorney's direct supervisor, and every supervisor in the chain of command between the direct supervisor and the Attorney General. There shall be no discovery procedures except as provided in this section. An official record shall be kept of the hearing. The Committee may hold a pre-hearing conference in order to:

(a) Formulate and simplify the issues, including the elimination of frivolous claims or defenses;

(b) Obtain admissions of fact and of documents that will avoid unnecessary proof, stipulations regarding the authenticity of documents, and advance rulings on the admissibility of evidence;

(c) Obtain identification of all witnesses and documents, which identification shall be binding at the hearing, except as, in the discretion of the committee, the interests of justice warrant the addition of witnesses and documents at the hearing;

(d) Achieve settlement of the dispute;

(e) Dispose of any pending motions;

(f) Set reasonable limits on the time allowed for presenting evidence;

(g) Establish a post-hearing briefing schedule, which may permit written briefs or other documents to be filed by the line attorney, the line attorney's direct supervisor, and each supervisor in the chain of command between the line attorney and the Attorney General; and

(h) Address such other matters as may facilitate the just and efficient disposition of the matter.

3605.11 If the Committee decides, in its discretion, to reject any request for a hearing, in whole or in part, it shall so advise the line attorney, the attorney's direct supervisor, and each supervisor in the chain of command between the line attorney and the Attorney General. The Committee shall circulate a notice that schedules the filing of written briefs or other documents to the line attorney, the line attorney's direct supervisor, and each supervisor in the chain of command between the line attorney and the Attorney General. The Committee may schedule a meeting with the line attorney, the line attorney's direct supervisor, and each supervisor in the chain of command between the line attorney and the Attorney General in order to address the matters raised in the appeal.

3605.12 The Committee shall provide the line attorney, the line attorney's direct supervisor, and every supervisor in the chain of command between the line attorney and the Attorney General with a final written administrative decision within thirty (30) days of the conclusion of the appeal proceeding. The final written administrative decision shall be accompanied by notice of the right to appeal the decision to the Attorney General within thirty (30) days of receipt of the decision by the line attorney.

3605.13 The Attorney General shall circulate the line attorney's notice of appeal to the line attorney's direct supervisor and to every supervisor in the chain of command between the direct supervisor and the Attorney General.

3605.14 The Attorney General shall review the basis for the three-person committee's decision de novo, without taking any additional evidence. As part of this review, the Attorney General may permit written appellate briefs to be filed in accordance with a schedule established by the Attorney General. No oral arguments shall be permitted. The Attorney General may, in the exercise of his or her discretion, hold a pre-briefing conference for the purposes, among others, of formulating and simplifying the issues, disposing of any pending motions, attempting to settle the dispute, establishing a schedule for the filing of written briefs or other documents, and addressing such other matters as may facilitate the just and efficient disposition of the appeal.

3605.15 The Attorney General shall provide the line attorney, the line attorney's direct supervisor, and every supervisor in the chain of command between the direct supervisor and the Attorney General with a final written administrative decision within a reasonable time after the final brief is filed. The Attorney General's decision shall be final and no further appeal shall be allowed.

3605.16 Each supervisor shall perform at least one interim evaluation of every attorney under his or her supervision annually, in the ninth month of the rating period. An interim evaluation shall consist of an informal meeting to discuss the line attorney's performance under his or her Individual Accountability Plan. At his or her discretion, a supervisor may provide a written interim evaluation. Any written interim evaluation shall be provided to the attorney evaluated, but shall not be included in the attorney's official personnel file unless the supervisor rates the attorney as "marginal" or lower. At his or her discretion, or at the request of the Attorney General, a supervisor may perform interim evaluations no more frequently than once every three (3) months during the rating period. Interim evaluations rating a line attorney as "marginal" or lower may be changed by mutual agreement or by the filing of an appeal as provided in this section.

3606 EVALUATION OF PERFORMANCE – OFFICE OF THE ATTORNEY GENERAL FOR THE DISTRICT OF COLUMBIA SUPERVISORS

3606.1 Beginning with the 2002-2003 rating period, each supervisor below the level of Chief Deputy shall prepare a written evaluation for every supervisor reporting directly to him or her annually, within ten (10) days after the end of the rating period. Written evaluations shall be prepared using a form that is approved by the Attorney General for the District of Columbia.

3606.2 Each Special Counsel to the Chief Deputy, and each Senior Counsel to the Chief Deputy shall be evaluated in accordance with the procedures of this section.

3606.3 The supervisor shall review evaluations with supervisors evaluated within five (5) days of completion. As a result of this meeting, the evaluation may be changed by mutual agreement. Both the supervisor evaluated and his or her immediate supervisor shall sign the evaluation to confirm that it has been reviewed.

3606.4 If no mutual agreement to change the evaluation of a supervisor is reached, the supervisor evaluated may prepare a statement of written objections within five (5) days of the meeting and forward the evaluation and written objections to the Chief Deputy with a copy to every supervisor in the chain of command up to the Chief Deputy.

3606.5 If the attorney evaluated is a Deputy, Special Counsel to the Chief Deputy, or Senior Counsel to the Chief Deputy, the Chief Deputy shall immediately forward the evaluation and the written objections to the Attorney General for appeal.

3606.6 In reviewing written objections of a supervisor the Chief Deputy may consult with the supervisor evaluated and the supervisor who prepared the evaluation. The Chief Deputy shall complete his or her review within five (5) days of the receipt of the objections, and shall direct the supervisor who prepared the evaluation to make any changes based on that review.

3606.7 The supervisor evaluated or the supervisor who prepared the evaluation may submit a written appeal from the decision of the Chief Deputy to the Attorney General within five (5) days of receipt of the Chief Deputy's decision.

3606.8 The Attorney General may consult with the supervisor evaluated, the supervisor who prepared the evaluation, the Deputy, and the Chief Deputy before making a decision regarding the evaluation of a supervisor. The decision of the Attorney General shall be in writing and circulated among the supervisors in the chain of command for the supervisor evaluated within five (5) days of receipt of the appeal.

3606.9 The supervisor who prepared the evaluation shall revise the evaluation as necessary in accordance with the Attorney General's decision.

3606.10 The decision of the Attorney General shall be final, and shall not be subject to further appeal.

3606.11 Each supervisor shall perform at least one interim evaluation of every supervisor under his or her supervision annually, in the ninth month of the rating period. An interim evaluation shall consist of an informal meeting to discuss the attorney's performance under his or her Performance Plan. At his or her discretion, a supervisor may provide a written interim evaluation. Any written interim evaluation shall be provided to the attorney evaluated, but shall not be included in the attorney's official personnel file.

3606.12 Any supervisor who fails to meet any deadline as described in this section shall be subject to disciplinary action in accordance with section 3614.

3607 EVALUATION OF PERFORMANCE – OFFICE OF THE ATTORNEY GENERAL FOR THE DISTRICT OF COLUMBIA CHIEF DEPUTY, SPECIAL DEPUTY, SPECIAL COUNSEL, AND SENIOR COUNSEL

3607.1 Beginning with the 2002-2003 rating period, the Attorney General for the District of Columbia shall prepare a written evaluation of the Chief Deputy Attorney General, each Special Deputy Attorney General, each Special Counsel to the Attorney General, each Senior Counsel to the Attorney General, and any other attorney who reports directly to the Attorney General annually, within twenty (20) days after the end of the rating period. Written evaluations shall be prepared using a form that is approved by the Attorney General.

3607.2 The Attorney General shall review evaluations with attorneys evaluated within five (5) days of completion. As a result of this meeting, the evaluation may be changed by mutual agreement and made final within five (5) days. Both the attorney evaluated and the Attorney General shall sign the evaluation to confirm that it has been reviewed.

3607.3 The Attorney General shall perform at least one interim evaluation of every attorney who reports directly to the Attorney General annually, in the ninth month of the rating period. An interim evaluation shall consist of an informal meeting to discuss the attorney's performance under his or her Performance Plan. At his or her discretion, the Attorney General may provide a written interim evaluation. Any written interim evaluation shall be provided to the attorney evaluated, but shall not be included in the attorney's official personnel file.

3608 EVALUATION OF PERFORMANCE – NON-DELEGATED SUBORDINATE AGENCIES

3608.1 A Deputy responsible for supervising an Agency General Counsel, or the equivalent, shall consult with the Agency Head in preparation of an evaluation of the Agency General Counsel, or equivalent.

3608.2 The Attorney General may consult with an Agency Head in consideration of an appeal regarding the evaluation of an Agency General Counsel, or equivalent.

3609 PERFORMANCE IMPROVEMENT PLANS

3609.1 Beginning with the 2000-2001 rating period, each attorney, other than attorneys in Senior Executive Attorney Service positions, assigned an overall rating of "needs improvement" in an annual or interim evaluation shall be provided with a Performance Improvement Plan, on a form approved by the Attorney General for the District of Columbia, that identifies specific areas where improvement is needed in performing his or her work in a manner that meets the expectations of an attorney in that grade. Beginning with the 2007-2008 rating period, each line attorney who

receives either a "marginal" rating in any performance element or overall or an "unsatisfactory" rating in any performance element shall be provided with such a Performance Improvement Plan. Beginning with the 2007-2008 rating period, each line attorney who receives an "unsatisfactory" rating overall shall be provided with an advance written notice of proposed removal under section 3614 of this Chapter.

3609.2 The Performance Improvement Plan shall be prepared by the supervisor and shall be provided to the attorney within thirty (30) days of his or her receipt of the evaluation. A copy of all Performance Improvement Plans shall be provided to the Attorney General.

3609.3 A Performance Improvement Plan shall:

(a) Identify performance standards where the attorney fails to meet job requirements;

(b) Outline specific action steps that are necessary for the attorney to improve in the deficient area(s), including training if applicable and available;

(c) Identify measures that the supervisor will use to determine whether action steps have been successfully completed, and whether performance has improved;

(d) Provide for monitoring of attorney progress as needed; and

(e) Include a time by which each action item shall be completed.

3609.4 After the Performance Improvement Plan is developed and forwarded to an attorney, he or she shall be given at least three (3) months to demonstrate improvement.

3609.5 Attorney performance under the Performance Improvement Plan shall be an additional basis for evaluation at any interim evaluation and the annual written evaluation.

3609.6 Each supervisor shall prepare and submit to the Training Director, in the manner prescribed by the Training Director, a report summarizing any training requirements included in Performance Improvement Plans for attorneys under his or her supervision. This report shall be submitted at the same time that the Performance Improvement Plan is provided to the affected attorney. The report shall identify subject-matter areas where training is needed and include suggestions as to the types of programs and courses that could be used to meet those identified training needs.

3610 ANNUAL MANDATORY TRAINING – GENERALLY

3610.1 The Attorney General for the District of Columbia shall establish and administer an annual mandatory program of continuing legal education for attorneys in the Legal Service who are employed by the Office of the Attorney General for the District of Columbia.

3610.2 The Attorney General shall establish and administer an annual mandatory program of training to maintain and enhance the management supervisory skills of Legal Service supervisory attorneys employed in the Office of the Attorney General for the District of Columbia.

3610.3 The Attorney General shall designate a Training Director to oversee, arrange, and approve all mandatory training programs and requirements.

3610.4 Any decision of the Training Director is subject to direction and review by the Attorney General or the Attorney General's designee.

3610.5 Beginning with the 2000-2001 rating period, annual mandatory training requirements shall be completed during each rating period.

3610.6 Any attorney for whom compliance with any of the training requirements of this Chapter is inordinately difficult due to a severe, prolonged illness, a disability, or other good cause, may seek a waiver from mandatory training requirements by submitting a request to the Training Director. The request for a waiver shall include any appropriate or required supporting material or documentation (for example, doctors' letters, medical records, etc.).

3610.7 A waiver request shall be promptly submitted when the grounds for the waiver request become known to the attorney. Failure to request a waiver in a timely manner may be considered by the Training Director in determining whether to grant a waiver.

3610.8 A waiver shall be valid for a specific time period granted by the Training Director not to exceed one year, unless renewed or extended.

3610.9 Failure to comply with the training requirements of this Chapter during a rating period, without receiving a waiver, shall be considered by a supervisor in evaluating an attorney and setting the overall rating.

3610.10 All training requests for credit to satisfy mandatory requirements shall be submitted to the Training Director for authorization and approval before participation in any in-house or other training.

3610.11 A credit hour shall be equivalent to sixty (60) minutes of instruction.

3610.12 The Training Director shall issue written procedures with respect to making requests for training, obtaining prior approval of training, and other requirements.

3610.13 When an attorney fails to complete training for which the District has incurred an expense, the expenses incurred shall be repaid to the District by the attorney if the Training Director determines that the attorney unjustifiably failed to complete the training.

3610.14 Attorneys in the Legal Service who are newly-appointed to the Office of the Attorney General for the District of Columbia within one hundred-twenty (120) days of the end of a rating period shall not be required to complete any training during that rating period. Any attorney in the Legal Service who is newly-appointed to the Office of the Attorney General for the District of Columbia or a subordinate agency more than one hundred-twenty (120) days prior to the end of the rating period, shall be required to complete a *pro rata* portion of the training requirements for the rating year in which he or she is appointed.

3610.15 Attorneys shall evaluate training programs attended on forms provided for such purpose.

3610.16 The Training Director shall maintain records of payments made for travel, tuition, and fees, and other necessary expenses of training; but the official record of such expenses shall be the record kept by the Financial Officer for the Office of the Attorney General for the District of Columbia.

3610.17 The Training Director may use the training forms designed for use by District employees under Chapter 13 of the Personnel Regulations until forms applicable only to the Legal Service are created.

3610.18 An attorney assigned to full-time training shall be counted as being in full pay status, up to a maximum of eight (8) hours a day or forty (40) hours a week.

3610.19 An attorney assigned to training on less than a full-time basis shall be counted as being in pay status the same number of hours spent in instruction plus necessary travel time.

3610.20 An attorney selected for non-mandatory training in a non-District facility shall agree in writing to continue in the service of the subordinate agency after the end of the training for a period of time at least equal to the length of the training period.

3611 MANDATORY CONTINUING LEGAL EDUCATION

3611.1 Subject to the availability of in-house or other training approved and paid for by the employing agency, each attorney shall complete at least twelve (12) credit hours of legal education during each rating period.

3611.2 At least three (3) hours of the twelve (12) required credit hours of legal education shall be instruction in ethics, to the extent training is available.

3611.3 Attorneys with less than three (3) years in the Legal Service shall fulfill the ethics requirement solely by attendance at courses devoted to instruction in ethics.

3611.4 Subject to the approval of the Training Director, attorneys with more than three (3) years in the Legal Service may fulfill the ethics requirement by attending courses addressing other subjects of the law if a specific ethical component is included that is related to the substance of the instruction involved.

3611.5 Other substantive course requirements, including the subject matter of courses and the hours of required instruction, shall be determined, arranged, and approved by the Training Director.

3611.6 In addition to in-house training programs and training programs offered by outside providers, the following activities within the rating period may, pursuant to guidelines adopted by the Training Director, be pre-approved to qualify for credit for continuing legal education:

(a) Providing instruction in a legal education program;

(b) Publication of an original work on a legal topic in a recognized legal periodical or by a legal publishing house;

(c) Self study (for example, formal showings of audio and video tapes produced by an accredited sponsor of legal programs);

(d) Attendance at or audit of a law school class(es);

(e) Courses for self-improvement in civility, human relations, stress and time management; or

(f) Participation in meetings and conferences with a legal training component.

3612 MANDATORY MANAGEMENT TRAINING

3612.1 Subject to the availability of in-house or other training that is provided by and paid for by the employing agency, supervisors in the Legal Service who are employed in the Office of the Attorney General for the District of Columbia shall complete at least twelve (12) hours of management training during each rating period. In addition to this requirement, the Attorney General for the District of Columbia may, in his or her discretion, make any additional training mandatory for a supervisor, if it is provided by and paid for by the employing agency.

3612.2 Subject to the availability of in-house or other training that is provided by and paid for by the employing agency, attorneys appointed as supervisors in the Office of the Attorney General for the District of Columbia on or after the effective date of this Chapter shall attend a program of forty (40) hours of basic District government supervisory skills training within one hundred-sixty (160) days of appointment to a supervisory position, and at least once every seven years thereafter.

3612.3 In addition to in-house management training programs or management training programs offered by outside providers, the following activities within the rating period may, pursuant to guidelines adopted by the Training Director, be pre-approved to qualify for credit toward annual management training requirements for attorneys in the Office of the Attorney General for the District of Columbia and non-delegated subordinate agencies:

(a) Providing instruction in a management program;

(b) Publication of an original work related to management issues, in a recognized business periodical or by a known publishing house; or

(c) Participation in meetings and conferences with a management training component.

3613 [RESERVED]

3614 DISCIPLINE

3614.1 An attorney appointed to the Legal Service and employed by the Office of the Attorney General for the District of Columbia, other than an attorney in a Senior Executive Attorney Service position, shall be disciplined in accordance with this section.

3614.2 An attorney appointed to a Senior Executive Attorney Service position shall be subject to discipline or termination at-will. If a termination is not for delinquency or misconduct, the Attorney General may approve appointment to another available position in the Legal Service.

3614.3 An attorney, other than an attorney in a Senior Executive Attorney Service position, shall be subject to discipline or termination for unacceptable performance or for any other reason that is not arbitrary or capricious.

3614.4 Discipline may include reprimand, suspension (with or without pay), reduction of grade or step, and removal.

3614.5 An attorney, other than an attorney in a Senior Executive Attorney Service position, shall be provided at least a ten (10) day written notice prior to the imposition of discipline against him or her. The notice shall contain all of the following:

(a) The reasons for the disciplinary action;

(b) The discipline to be imposed; and

(c) A statement that the stated discipline shall be imposed in ten (10) days from the date of the notice unless the attorney responds in writing to the Attorney General

within ten (10) business days of receiving the notice, and that the response may include a request for a hearing.

3614.6 If the attorney submits a response as provided in 3614.5(c), the Attorney General may, at his or her discretion, within ten (10) days of receipt of the attorney's response, grant a hearing on the matter. The hearing notice shall provide:

(a) The place of the hearing and a hearing date and time not less than fifteen (15) nor more than thirty (30) days from the date of the hearing notice;

(b) That the attorney may review, upon request to his or her supervisor, all materials upon which the disciplinary action is based, including, but not limited to statements of witnesses, documents, and reports of investigations or extracts therefrom;

(c) That the attorney may be represented by an approved attorney, or other representative, at the hearing; and

(d) That the attorney has the right to present evidence at the hearing, including written statements of witnesses, affidavits, or both.

3614.7 A hearing pursuant to section 3614.6 may be held before the Attorney General or his or her designee and shall be closed except for the attorney, his or her representative, and the supervisor who issued the disciplinary action notice. There shall be no discovery procedures except as provided in this section. An official record shall be kept of the hearing.

3614.8 The Attorney General shall provide the attorney with a final written administrative decision within fifteen (15) days of the hearing date, or within fifteen (15) days of receipt of the attorney's response under section 3614.5(c) if no hearing is held. The final written administrative decision shall be accompanied by notice of the right to appeal the decision to the Mayor within five (5) days of receipt of the decision.

3614.9 Any disciplinary action taken against an attorney, other than an attorney in a Senior Executive Attorney Service position, may be appealed to the Mayor, whose decision shall be final.

3615 SEPARATION PAY

3615.1 An attorney in a Senior Executive Attorney Service position who is involuntarily discharged shall be paid separation pay upon separation for non-disciplinary reasons based on length of service as a series 905 attorney in the District government as follows:

(a) 4 weeks of separation pay for persons with 1-5 years of service;

(b) 8 weeks of separation pay for persons with 6-14 years of service; or

(c) 12 weeks of separation pay for persons with more than 15 years of service.

3615.2 The number of weeks of separation pay authorized pursuant to this section shall not exceed the number of weeks between the individual's separation and the individual's appointment to another position in the District government. An individual who receives separation pay pursuant to this section, and who is subsequently appointed to any position in the District government during the period of weeks represented by that payment, shall be required to repay the amount of separation pay attributable to the period covered by such appointment. The pro-rated amount to be repaid shall be based on the entire amount of the separation pay, including all required deductions for taxes, and shall be paid to the agency that made the separation pay.

3615.3 Separation pay shall be provided at the time of separation as a lump sum, one-time payment, subject only to the withholdings of federal, District of Columbia, and State income taxes, and social security taxes, if applicable.

3615.4 When a determination is made that a Senior Executive Attorney in the Office of the Attorney General for the District of Columbia is not entitled to receive separation pay because the employee's separation is for disciplinary reasons, the Attorney General shall provide the employee with a written notice within thirty (30) days of termination containing all of the following:

(a) Notification that the employee is not entitled to separation pay;

(b) The reasons for the determination that the employee is not entitled to separation pay; and

(c) A statement that the decision shall be final in five (5) days from the date of the notice unless the employee responds to it, in writing, within five (5) days of receiving the notice.

3615.5 If the employee submits a response as provided in section 3615.4(c), the Attorney General shall issue a final administrative decision to the employee. If the final administrative decision grants severance pay, this decision shall not reverse the employee's termination.

3616 REDUCTIONS IN FORCE

3616.1 In the case of line attorneys and of supervisors and the non-supervisory attorneys described in sections 3606 and 3607 who do not occupy a Senior Executive Attorney service position, reductions in force shall be governed by the provisions of Chapter 24 of the Personnel Regulations, except that references to Chapter 16 in Chapter 24 shall be read as a reference to section 3614 of these rules.

3618 ATTORNEY GOOD STANDING IN THE D.C. BAR REQUIREMENT – OFFICE OF THE ATTORNEY GENERAL FOR THE DISTRICT OF COLUMBIA

3618.1 The provisions of this section shall be applicable to each attorney appointed to the Legal Service who is employed by the Office of the Attorney General for the District of Columbia and who is required to be a member of the District of Columbia Bar as a prerequisite of employment. This section is also applicable to an individual who is a member in good standing of the bar of another jurisdiction and who has filed a timely application for admission to the District of Columbia Bar.

3618.2 An appointee to a Legal Service position shall remain a member in good standing of the District of Columbia Bar during his or her employment in the Legal Service. An appointee who is a member in good standing of the bar of another state or territory and who has filed an application with the D.C. Court of Appeals for admission to the District of Columbia Bar shall present a certificate of good standing to the Office of the Attorney General upon notification of his or her admission to the District of Columbia Bar, within five (5) business days of such notification, and such admission shall occur within 360 days of the appointee's initial employment as a attorney by the District government. The appointee shall thereafter remain a member in good standing of the District of Columbia Bar.

3618.3 An appointee to a Legal Service position shall notify the Attorney General immediately of any sanction proposed by the D.C. Office of Bar Counsel, any hearing regarding any proposed disciplinary action, or any disciplinary action taken by the D.C. Court of Appeals against that attorney.

3618.4 An appointee to a Legal Service position who is suspended from practice by the D.C. Court of Appeals shall not remain in an attorney position in the Office of the Attorney General during the suspension period. The Attorney General may, at his or her discretion, request the re-assignment of such an appointee to a non-attorney position in the Office of the Attorney General.

3618.5 An appointee to a Legal Service position shall not be compensated for services provided pursuant to the appointee's employment as an attorney in the Office of the Attorney General unless such an individual is duly licensed and authorized to practice as an attorney under the law of the District of Columbia. This prohibition shall not apply to an appointee who is a member in good standing of the bar of another state or territory who has filed an application with the D.C. Court of Appeals for admission to the District of Columbia Bar and such admission has occurred within 360 days of the appointee's initial employment as a attorney by the District government.

3699 DEFINITIONS

3699.1 In this Chapter, the following terms shall have the following meanings:

Act – The District of Columbia Government Comprehensive Merit Personnel Act of 1978, effective March 3, 1979, D.C. Law 2-139, as amended by the Legal Service Establishment Amendment Act of 1998, effective April 20, 1999, D.C. Law 12-260, D.C. Official Code § 1-601.01 *et seq.* (2001), and as amended by both the Technical Amendments Act of 1999, effective April 12, 2000, D.C. Law13-91, and the Legal Service Amendment Act of 2005, effective October 20, 2005, D.C. Law 16-33, and as amended by any subsequent laws.

Administrative hearing officer – A person whose duties, in whole or in substantial part, consist of conducting or presiding over hearings in contested matters pursuant to law or regulation, or who is engaged primarily in adjudicatory functions on behalf of an agency, rather than investigative, prosecutorial or advisory functions, including, but not limited to any person who bears the title Hearing Officer, Hearing Examiner, Attorney Examiner, Administrative Law Judge, Administrative Judge, or Adjudication Specialist.

Administrative law judge – A person whose duties, in whole or in substantial part, consist of conducting or presiding over hearings in contested matters pursuant to law or regulation, or who is engaged primarily in adjudicatory functions on behalf of an agency, rather than investigative, prosecutorial or advisory functions, including, but not limited to any person who bears the title Hearing Officer, Hearing Examiner, Attorney Examiner, Administrative Law Judge, Administrative Judge, or Adjudication Specialist.

Attorney – Any position that is classified as part of Series 905, except for any position that is occupied by a person whose duties, in whole or in substantial part, consist of hearing cases as an administrative law judge or an administrative hearing officer.

Calendar year – The period of time beginning with the first full pay period in January through the beginning of the first full pay period in January of the following year as determined by the Office of Personnel.

Chain of command – The order of authority of positions within the Office of the Attorney General for the District of Columbia and the offices of the General Counsels for non-delegated subordinate agencies, as set forth by Office Order of the Attorney General for the District of Columbia.

Competencies – Behaviors demonstrated on the job as follows: Customer Service; Flexibility/Adaptability; Initiative; Teamwork; Job Knowledge; Professionalism; Resource Usage; Dependability; Communications; Integrity and Trust; Managing People (supervisors only); Leadership (supervisors only); Strategic Planning (supervisors only); Operations Planning and Evaluating (supervisors only); and Conflict Management (supervisors only). These behaviors shall have the meaning established by the Attorney General for the District of Columbia and the Director, District of Columbia Department of Human Resources.

Attorney General for the District of Columbia – The chief legal officer of the District Government, appointed by the Mayor to head the Office of the Attorney General for the District of Columbia and to conduct all law business of the District Government.

Days – Calendar days.

Delegated subordinate agency – A subordinate agency for which the Attorney General for the District of Columbia has delegated the direction, supervision, and control of attorneys to the Agency Head.

Does not meet expectations (Level 1) – Performance consistently does not meet expectations. One (1) point is awarded to each competency and S.M.A.R.T. goal rated as "does not meet expectations." The overall rating of "does not meet expectations" results from application of the formula, Overall Performance Rating = (Sum of all Competency Ratings/Number of Competencies x .4) + (Sum of all S.M.A.R.T. Goal Ratings/Number of S.M.A.R.T. Goals x .6), where the total figure derived on the right side of this formula equals "1", either exactly or after being rounded down to the nearest whole number.

Equivalent position – Any attorney position at any grade in which the attorney performs work or has responsibilities that the Attorney General for the District of Columbia determines are substantially similar to the work or responsibilities of any Legal Service position that is classified at LX-2 or above.

Exceeds expectations (Level 4) – Performance consistently exceeds expectations in some areas and meets expectations in all others. Four (4) points are awarded to each competency and S.M.A.R.T. goal rated as "exceeds expectations." The overall rating of "exceeds expectations" results from application of the formula, Overall Performance Rating = (Sum of all Competency Ratings/Number of Competencies x .4) + (Sum of all S.M.A.R.T. Goal Ratings/Number of S.M.A.R.T. Goals x .6), where the total figure derived on the right side of this formula equals "4", either exactly or after being rounded up or down to the nearest whole number.

Excellent (line attorney only starting with the 2007-2008 rating period) – Performance exceeds job requirements. Attorney is highly dependable and produces work of high quantity and quality within established guidelines without the need for ongoing supervision. (Key words: exceeds/dependable.) Four (4) points are awarded to each standard rated as "excellent."

The overall rating of "excellent" for an attorney engaged in litigation results when the total figure derived on the right side of the following formula equals "4", either exactly or after being rounded up or down to the nearest whole number: Overall Performance Rating = (Sum of all Ratings under Standards for Element #1 (Conduct of Legal Research and Writing)/Number of Ratings for Element #1 x .2) + (Sum of all Ratings under Standards for Element #2 (Oral Preparation and Presentation)/Number of Ratings for Element #2 x .2) + (Sum of all Ratings under Standards for Element #3 (Efficiency, Productivity and Work Habits)/Number of Ratings for Element #3 x .2) + (Sum of all Ratings under Standards for Element #4 (Professional Conduct and Effectiveness in Working With Others)/Number of Ratings for Element #4 x .1) + (Sum of all Ratings under Standards for Element #5 (Office Procedures)/Number of Ratings for

Element #5 x .05) + (Sum of all Ratings under Standards for Element #6 (Job Knowledge and Expertise)/Number of Ratings for Element #6 x .1) + (Sum of all Ratings under Standards for Element #7 (Additional Standards for Litigating Attorneys)/Number of Ratings for Element #7 x .15).

The overall rating of "excellent" for all other attorneys results when the total figure derived on the right side of the following formula equals "4", either exactly or after being rounded up or down to the nearest whole number: Overall Performance Rating = (Sum of all Ratings under Standards for Element #1 (Conduct of Legal Research and Writing)/Number of Ratings for Element #1 x .25) + (Sum of all Ratings under Standards for Element #2 (Oral Preparation and Presentation)/Number of Ratings for Element #2 x .2) + (Sum of all Ratings under Standards for Element #3 (Efficiency, Productivity and Work Habits)/Number of Ratings for Element #3 x .2) + (Sum of all Ratings under Standards for Element #4 (Professional Conduct and Effectiveness in Working With Others)/Number of Ratings for Element #4 x .1) + (Sum of all Ratings under Standards for Element #5 (Office Procedures)/Number of Ratings for Element #5 x .05) + (Sum of all Ratings under Standards for Element #6 (Job Knowledge and Expertise)/Number of Ratings for Element #6 x .2).

Fails expectations (line attorney only through the 2006-2007 rating period)– The attorney, as measured against expectations of attorneys in the same grade, does not show basic working knowledge of skills/concepts, and seldom produces work of satisfactory quality despite supervision and instruction. An attorney who fails expectations in at least 30% of the weighted performance categories shall be rated as "fails expectations".

Legal Service – The service established pursuant to Title VIII-B of the Act, to include every attorney employed by the Office of the Attorney General for the District of Columbia or a subordinate agency in a Series 905 position.

Line attorney – Any attorney who is not a supervisor, excluding attorneys who report directly to the Attorney General for the District of Columbia or the Chief Deputy Attorney General.

Marginal (line attorney only starting with the 2007-2008 rating period) – Performance does not consistently meet job requirements. Periodic retraining or instruction may be required. Attorney shows some potential for improvement with guidance but requires more supervision and follow-up than is expected of an attorney of that grade. Employee does not consistently apply skills to work assignments. (Key words: inconsistent performance.) Two (2) points are awarded to each standard rated as "marginal."

The overall rating of "marginal" for an attorney engaged in litigation results when the total figure derived on the right side of the following formula equals "2", either exactly or after being rounded up or down to the nearest whole number: Overall Performance Rating = (Sum of all Ratings under Standards for Element #1 (Conduct of Legal Research and Writing)/Number of Ratings for Element #1 x .2) + (Sum of all Ratings under Standards for Element #2 (Oral Preparation and Presentation)/Number of Ratings for Element #2 x .2) + (Sum of all Ratings under Standards for Element #3 (Efficiency, Productivity and Work Habits)/Number of Ratings for Element #3 x .2) + (Sum of all Ratings under Standards for Element #4 (Professional

Conduct and Effectiveness in Working With Others)/Number of Ratings for Element #4 x .1) + (Sum of all Ratings under Standards for Element #5 (Office Procedures)/Number of Ratings for Element #5 x .05) + (Sum of all Ratings under Standards for Element #6 (Job Knowledge and Expertise)/Number of Ratings for Element #6 x .1) + (Sum of all Ratings under Standards for Element #7 (Additional Standards for Litigating Attorneys)/Number of Ratings for Element #7 x .15).

The overall rating of "marginal" for all other attorneys results when the total figure derived on the right side of the following formula equals "2", either exactly or after being rounded up or down to the nearest whole number: Overall Performance Rating = (Sum of all Ratings under Standards for Element #1 (Conduct of Legal Research and Writing)/Number of Ratings for Element #1 x .25) + (Sum of all Ratings under Standards for Element #2 (Oral Preparation and Presentation)/Number of Ratings for Element #2 x .2) + (Sum of all Ratings under Standards for Element #3 (Efficiency, Productivity and Work Habits)/Number of Ratings for Element #3 x .2) + (Sum of all Ratings under Standards for Element #4 (Professional Conduct and Effectiveness in Working With Others)/Number of Ratings for Element #4 x .1) + (Sum of all Ratings under Standards for Element #5 (Office Procedures)/Number of Ratings for Element #5 x .05) + (Sum of all Ratings under Standards for Element #6 (Job Knowledge and Expertise)/Number of Ratings for Element #6 x .2).

Meets expectations (line attorney only through the 2006-2007 rating period) – The attorney, as measured against expectations of attorneys in the same grade, produces work that meets the standards in a performance category without the need for on-going supervision. The attorney frequently produces very good work of high quality; and applies skills/concepts correctly. An attorney may receive an overall rating of "meets expectations" only when he/she has been rated as meeting expectations in 80% of the weighted performance categories.

Meets expectations (non-line attorney only) (Level 3) – Performance consistently meets key expectations and may occasionally exceed expectations. Three (3) points are awarded to each competency and S.M.A.R.T. goal rated as "meets expectations." The overall rating of "meets expectations" results from application of the formula, Overall Performance Rating = (Sum of all Competency Ratings/Number of Competencies x .4) + (Sum of all S.M.A.R.T. Goal Ratings/Number of S.M.A.R.T Goals x .6), where the total figure derived on the right side of this formula equals "3", either exactly or after being rounded up or down to the nearest whole number.

Needs improvement (line attorney only through the 2006-2007 rating period) – The attorney, as measured against expectations of attorneys in the same grade, shows a basic working knowledge of skills/concepts in a majority of performance categories, but requires more supervision and follow-up than is expected of an attorney of that grade, produces satisfactory work, and usually applies skills/concepts correctly.

Needs improvement (non-line attorney only) (Level 2) – Performance meets some expectations but requires further development in one or more areas. Two (2) points are awarded to each competency and S.M.A.R.T. goal rated as "needs improvement." The overall rating of "needs improvement" results from application of the formula, Overall Performance Rating =

(Sum of all Competency Ratings/Number of Competencies x .4) + (Sum of all S.M.A.R.T. Goal Ratings/Number of S.M.A.R.T. Goals x .6), where the total figure derived on the right side of this formula equals "2", either exactly or after being rounded up or down to the nearest whole number.

Non-delegated subordinate agency – A subordinate agency over which the Attorney General for the District of Columbia retains control under section 855 of the Act.

Outstanding (line attorney only starting with the 2007-2008 rating period) – Performance consistently exceeds job requirements in a unique and exceptional manner. Attorney consistently demonstrates a high level of initiative, completing tasks/projects on or ahead of schedule, in an organized, thorough, and efficient manner. Attorney consistently makes constructive suggestions for improvement in overall work quality and quantity and shows creativity and insight in solving problems or accomplishing tasks. (Key words: consistently exceeds/dependable.) Five (5) points are awarded to each standard rated as "outstanding."

The overall rating of "outstanding" for an attorney engaged in litigation results when the total figure derived on the right side of the following formula equals "5", either exactly or after being rounded up to the nearest whole number: Overall Performance Rating = (Sum of all Ratings under Standards for Element #1 (Conduct of Legal Research and Writing)/Number of Ratings for Element #1 x .2) + (Sum of all Ratings under Standards for Element #2 (Oral Preparation and Presentation)/Number of Ratings for Element #2 x .2) + (Sum of all Ratings under Standards for Element #3 (Efficiency, Productivity and Work Habits)/Number of Ratings for Element #3 x .2) + (Sum of all Ratings under Standards for Element #4 (Professional Conduct and Effectiveness in Working With Others)/Number of Ratings for Element #4 x .1) + (Sum of all Ratings under Standards for Element #5 (Office Procedures)/Number of Ratings for Element #5 x .05) + (Sum of all Ratings under Standards for Element #6 (Job Knowledge and Expertise)/Number of Ratings for Element #6 x .1) + (Sum of all Ratings under Standards for Element #7 (Additional Standards for Litigating Attorneys)/Number of Ratings for Element #7 x .15).

The overall rating of "outstanding" for all other attorneys results when the total figure derived on the right side of the following formula equals "5", either exactly or after being rounded up to the nearest whole number: Overall Performance Rating = (Sum of all Ratings under Standards for Element #1 (Conduct of Legal Research and Writing)/Number of Ratings for Element #1 x .25) + (Sum of all Ratings under Standards for Element #2 (Oral Preparation and Presentation)/Number of Ratings for Element #2 x .2) + (Sum of all Ratings under Standards for Element #3 (Efficiency, Productivity and Work Habits)/Number of Ratings for Element #3 x .2) + (Sum of all Ratings under Standards for Element #4 (Professional Conduct and Effectiveness in Working With Others)/Number of Ratings for Element #4 x .1) + (Sum of all Ratings under Standards for Element #5 (Office Procedures)/Number of Ratings for Element #5 x .05) + (Sum of all Ratings under Standards for Element #6 (Job Knowledge and Expertise)/Number of Ratings for Element #6 x .2).

Performance Management Program (PMP) – The systematic process by which an agency involves its employees, as individuals and members of a group, in improving performance in the

accomplishment of agency mission and goals, as set out in Chapter 14 of the District of Columbia Personnel Regulations.

Chief Deputy – An official, designated by the Attorney General for the District of Columbia, who is the highest-ranking official in the chain of command in the Office of the Attorney General for the District of Columbia other than the Attorney General.

Rating period – September 1st to August 31st for line attorneys and October 1st to September 30th for all other attorneys covered by these rules.

Satisfactory (line attorney only starting with the 2007-2008 rating period) – Performance meets job requirements. Attorney understands the job completely, makes few errors, has sound judgment, and seldom misses deadlines. Routine work does not have to be reviewed. (Key words: meets requirements.) Three (3) points are awarded to each standard rated as "satisfactory."

The overall rating of "satisfactory" for an attorney engaged in litigation results when the total figure derived on the right side of the following formula equals "3", either exactly or after being rounded up or down to the nearest whole number: Overall Performance Rating = (Sum of all Ratings under Standards for Element #1 (Conduct of Legal Research and Writing)/Number of Ratings for Element #1 x .2) + (Sum of all Ratings under Standards for Element #2 (Oral Preparation and Presentation)/Number of Ratings for Element #2 x .2) + (Sum of all Ratings under Standards for Element #3 (Efficiency, Productivity and Work Habits)/Number of Ratings for Element #3 x .2) + (Sum of all Ratings under Standards for Element #4 (Professional Conduct and Effectiveness in Working With Others)/Number of Ratings for Element #4 x .1) + (Sum of all Ratings under Standards for Element #5 (Office Procedures)/Number of Ratings for Element #5 x .05) + (Sum of all Ratings under Standards for Element #6 (Job Knowledge and Expertise)/Number of Ratings for Element #6 x .1) + (Sum of all Ratings under Standards for Element #7 (Additional Standards for Litigating Attorneys)/Number of Ratings for Element #7 x .15).

The overall rating of "satisfactory" for all other attorneys results when the total figure derived on the right side of the following formula equals "3", either exactly or after being rounded up or down to the nearest whole number: Overall Performance Rating = (Sum of all Ratings under Standards for Element #1 (Conduct of Legal Research and Writing)/Number of Ratings for Element #1 x .25) + (Sum of all Ratings under Standards for Element #2 (Oral Preparation and Presentation)/Number of Ratings for Element #2 x .2) + (Sum of all Ratings under Standards for Element #3 (Efficiency, Productivity and Work Habits)/Number of Ratings for Element #3 x .2) + (Sum of all Ratings under Standards for Element #4 (Professional Conduct and Effectiveness in Working With Others)/Number of Ratings for Element #4 x .1) + (Sum of all Ratings under Standards for Element #5 (Office Procedures)/Number of Ratings for Element #5 x .05) + (Sum of all Ratings under Standards for Element #6 (Job Knowledge and Expertise)/Number of Ratings for Element #6 x .2).

Senior Executive Attorney Service position – (A) Any attorney position that is classified above LA-15 or LX-1, or an equivalent position, and in which the employee: (i) directs the work

of an organizational unit; (ii) is held accountable for the success of one or more specific programs or projects; (iii) monitors progress toward organizational goals and periodically evaluates and makes appropriate adjustments to these goals; (iv) supervises the work of employees other than personal assistants; (v) performs important legal policy-making or policy-determining functions; or (vi) provides significant leadership in legal counseling or in the trial of cases; or (B) Any attorney who is a Chief Deputy Attorney General, Deputy Attorney General, Special Deputy Attorney General, Senior Counsel to the Attorney General, Special Counsel to the Attorney General, any other attorney in the Office of the Attorney General for the District of Columbia who routinely reports directly to the Attorney General; or (C) Any attorney who is a General Counsel employed by a subordinate agency.

Significantly exceeds expectations (Level 5) – Performance consistently and significantly exceeds expectations. Five (5) points are awarded to each competency and S.M.A.R.T. goal rated as "significantly exceeds expectations." The overall rating of "significantly exceeds expectations" results from application of the formula, Overall Performance Rating = (Sum of all Competency Ratings/Number of Competencies x .4) + (Sum of all S.M.A.R.T. Goal Ratings/Number of S.M.A.R.T. Goals x .6), where the total figure derived on the right side of this formula equals "5", either exactly or after being rounded up to the nearest whole number.

S.M.A.R.T. goals – Specific, measurable, attainable, realistic, and time-related goals that are established annually for a supervisory or other non-line attorney either by the Attorney General for the District of Columbia or by another high-level supervisor.

Subordinate agency – An agency under the direct administrative control of the Mayor. All Series 905 attorneys who provide legal services to a subordinate agency, whether or not located at the agency, are hired, employed, and supervised by the Office of the Attorney General for the District of Columbia, unless the Attorney General has delegated their supervision and control to the agency head.

Substantially exceeds expectations (line attorney only through the 2006-2007 rating period) – The attorney, as measured against expectations of attorneys in the same grade, takes the initiative to exceed the standards in the performance categories. The attorney consistently produces outstanding work within established timeframes and with an appropriate amount of supervision or instruction for an attorney of that grade, applies skills/concepts correctly, and shows creativity and insight in solving problems or accomplishing tasks. An attorney may receive an overall rating of "substantially exceeds expectations" only when he/she has been rated as "substantially exceeds expectations" in at least 60% of the weighted performance categories. An attorney cannot be rated as "substantially exceeds expectations" if he/she is rated as "fails expectations" in a single performance category, if he/she is rated as "needs improvement" in more than 10% of the weighted performance categories, or if he/she receives a "needs improvement" rating in the same performance category for two successive rating periods.

Supervisor – A person who 1) possesses the authority to recommend the hiring, promotion, transfer, discipline, or discharge of a subordinate attorney; 2) has the authority to direct, as well as assign work to a subordinate attorney; and 3) is responsible for the review of work, approval of leave, and evaluation of job performance of subordinate attorneys.

Training Director – The person designated by the Attorney General for the District of Columbia to oversee, arrange, and approve training, or an equivalent officer assigned by the Attorney General to supervise training.

Unit – The portion of an organization composed of all the attorneys under the direct supervision of a single supervisor.

Unsatisfactory (line attorney only starting with the 2007-2008 rating period) – Performance does not meet job requirements, resulting in frequent duplication of effort to correct errors. Attorney received retraining and instruction but shows little improvement when the job requirements are subsequently performed. Attorney does not apply skills to work assignments and seldom produces satisfactory quality work despite supervision and instruction. (Key words: frequent duplication/correction.) One (1) point is awarded to each standard rated as "unsatisfactory."

The overall rating of "unsatisfactory" for an attorney engaged in litigation results when the total figure derived on the right side of the following formula equals "1", either exactly or after being rounded down to the nearest whole number: Overall Performance Rating = (Sum of all Ratings under Standards for Element #1 (Conduct of Legal Research and Writing)/Number of Ratings for Element #1 x .2) + (Sum of all Ratings under Standards for Element #2 (Oral Preparation and Presentation)/Number of Ratings for Element #2 x .2) + (Sum of all Ratings under Standards for Element #3 (Efficiency, Productivity and Work Habits)/Number of Ratings for Element #3 x .2) + (Sum of all Ratings under Standards for Element #4 (Professional Conduct and Effectiveness in Working With Others)/Number of Ratings for Element #4 x .1) + (Sum of all Ratings under Standards for Element #5 (Office Procedures)/Number of Ratings for Element #5 x .05) + (Sum of all Ratings under Standards for Element #6 (Job Knowledge and Expertise)/Number of Ratings for Element #6 x .1) + (Sum of all Ratings under Standards for Element #7 (Additional Standards for Litigating Attorneys)/Number of Ratings for Element #7 x .15).

The overall rating of "unsatisfactory" for all other attorneys results when the total figure derived on the right side of the following formula equals "1", either exactly or after being rounded down to the nearest whole number: Overall Performance Rating = (Sum of all Ratings under Standards for Element #1 (Conduct of Legal Research and Writing)/Number of Ratings for Element #1 x .25) + (Sum of all Ratings under Standards for Element #2 (Oral Preparation and Presentation)/Number of Ratings for Element #2 x .2) + (Sum of all Ratings under Standards for Element #3 (Efficiency, Productivity and Work Habits)/Number of Ratings for Element #3 x .2) + (Sum of all Ratings under Standards for Element #4 (Professional Conduct and Effectiveness in Working With Others)/Number of Ratings for Element #4 x .1) + (Sum of all Ratings under Standards for Element #5 (Office Procedures)/Number of Ratings for Element #5 x .05) + (Sum of all Ratings under Standards for Element #6 (Job Knowledge and Expertise)/Number of Ratings for Element #6 x .2).

DEPARTMENT OF HEALTH

NOTICE OF FINAL RULEMAKING

The Interim Director of the Department of Health, pursuant to the authority set forth under § 302(14) of the District of Columbia Health Occupations Revision Act of 1985 ("Act"), effective March 25, 1986 (D.C. Law 6-99; D.C. Official Code § 3-1203.02 (14)), and Mayor's Order 98-140, dated August 20, 1998, hereby gives notice of the adoption of the following amendments to Chapter 10 of Title 22 of the District of Columbia Municipal Regulations (DCMR).

The purpose of these amendments is to change the term of a District of Columbia Controlled Substance Registration to two (2) years.

A notice of Proposed Rulemaking was published in the *D.C. Register* on October 12, 2007 at 54 DCR 009708. Comments were received informally from the Nurse Practitioner Association of DC, but no changes were made. These final rules will be effective upon publication of this notice in the *D.C. Register*

Title 22 (Public Health and Medicine) Chapter 10 is amended as follows:

Chapter 10 CONTROLLED SUBSTANCE REGISTRATION FOR MANUFACTURERS, DISTRIBUTORS, AND DISPENSERS

Sections 1000.1 and 1000.2 are amended to read as follows:

1000.1 The rules in this chapter contain the procedures governing the registration and regulation of manufacturers, distributors, and dispensers of controlled substances pursuant to Title III of the District of Columbia Uniform Controlled Substances Act of 1981 (D.C. Law 4-29, effective August 5, 1981, §§ 48-901.02 et seq.)(2001), hereinafter referred to as the "Act."

1000.2 To the extent consistent with the Act, regulations promulgated by the Federal Government pursuant to Title 21, Chapter II, of the Code of Federal Regulations (21 CFR Part 1300 to End), and in effect as of the effective date of this chapter, shall be used as a guide in administering the Act.

Section 1002.1 through 1002.3 are amended to read as follows:

1002.1 Every person who manufactures, distributes, dispenses, or conducts research with any controlled substance, or who proposes to engage in the manufacture, distribution, dispensing, or conducting of research with any controlled substance within the District of Columbia shall obtain biennially and maintain current a registration issued by the Director in accordance with this chapter, unless

exempted by federal law, or District of Columbia law or pursuant to §§ 1002.4 and 1002.5 of this chapter.

1002.2 Persons conducting manufacturing activities of controlled substances outside of the District of Columbia and doing business within the District of Columbia shall obtain biennially a registration in accordance with the rules of this subtitle, unless exempted by federal or District of Columbia law or pursuant to §§ 1002.4 and 1002.5 of this chapter.

1002.3 Out-of-state persons conducting distributing activities of controlled substances to persons within the District of Columbia shall obtain biennially a registration in accordance with the rules of this subtitle, unless exempted by federal or District of Columbia law or pursuant to §§ 1002.4 and 1002.5 of this chapter.

Section 1003 is amended to read as follows:

1003 REGISTRATION

1003.1 Unless otherwise exempted by federal law or this chapter, a person shall register with the Department and obtain and maintain a registration certificate before the person:

(a) Manufactures, distributes, or dispenses controlled substances in the District;

(b) Conducts research or instructional activities with controlled substances listed in Schedules II through V in the District;

(c) Conducts research or instructional activities with a controlled substance listed in Schedule I in the District;

(d) Conducts a chemical analysis with controlled substances listed in any schedule in the District; or

(e) Engages in any other activity for which registration is required.

1003.2 For practitioners, a District of Columbia controlled substances registration issued pursuant to this chapter shall expire simultaneously with the expiration of the practitioner's District of Columbia health professional license, certification, or occupation registration.

1003.3 For non-practitioners, a District of Columbia controlled substance registration issued pursuant to this chapter shall expire at 12:00 midnight of December 31 of each even-numbered year.

1003.4 Applications to renew a registration must be filed in a timely manner, not less

than sixty (60) days prior to the expiration of the registration.

1003.5 A registration certificate expires on the date shown on the certificate.

1003.6 The Director shall mail a renewal application or a notice to renew to a registrant not less than thirty (30) days before the expiration date shown on the certificate.

1003.7 If a person fails to apply for renewal of a registration before the expiration date of his or her registration, he or she shall thereafter apply for a new registration and the prior registration shall be deemed to have expired on the date specified on the registration.

1003.8 Any person who is required to be registered and who is not so registered may apply for registration at any time and may obtain an application form by writing to the Department of Health's Pharmaceutical Control Division, 717 14th Street, NW., 6th Floor, Washington, D.C. 20005.

1003.9 To apply for a controlled substances registration, an applicant shall:

(a) Submit a completed application to the Department on the required forms which shall be signed by the:

(1) Applicant, if an individual;

(2) General partner, if the applicant is a partnership; or

(3) Officer responsible for the applicant, if the applicant is a corporation or other entity; and

(b) Pay all applicable fees.

1003.10 Applications submitted for filing shall be dated upon receipt. Applications which are complete shall be accepted for filing. Applications failing to comply with the requirements set forth in this chapter and the Act shall not be accepted for filing.

1003.11 In the case of minor defects as to completeness, the Director may accept the application for filing with a request to the applicant for additional information.

1003.12 A defective application shall be returned to the applicant within ten (10) days following its receipt with a statement of the reason for not accepting the application for filing.

1003.13 A defective application may be corrected and resubmitted for filing at any

time; the Director shall accept for review any application upon resubmission by the applicant.

1003.14 Accepting an application for filing does not preclude any subsequent request for additional information pursuant to this chapter and has no bearing on whether the application will be granted.

1003.15 If the information requested on the application is not applicable to the applicant, the applicant shall indicate such on the form.

1003.16 The Director may require an applicant to submit additional documentation pertinent to the registration or written statements in support of an application to:

(a) Clarify application information; or

(b) Determine if the applicant meets the requirements of this chapter.

1003.17 The Director may deny an application if the applicant fails to provide information within fifteen (15) days of receipt of the Director's request.

1003.18 An application shall be considered withdrawn if the following occurs:

(a) The applicant requests its return; or

(b) The applicant fails to respond to a registered or certified letter regarding the application within fifteen (15) days of its delivery to the applicant.

Section 1004 is repealed.

Section 1015.1 is amended to read as follows:

1015.1 Unless the Act or this chapter otherwise provide, all notice required under this chapter to be sent to the Department or Director shall be sent to the Department of Health, Pharmaceutical Control Division, 717 14th Street, NW, 6th Floor, Washington, DC 20005, or to its successor agency by certified mail, return receipt requested.

Section 1030.1 is amended to read as follows:

1030.1 The fees for a controlled substances registration shall be as follows:

(a) Initial registration-- $130.00

(b) Biennial renewal -- $130.00

(c) Late filing-- $35.00

(d) Duplicate certificate-- $25.00

(e) Reinspection-- $130.00

Section 1099.1 is amended by repealing the following terms:

Act- District of Columbia Uniform Controlled Substances Act of 1981, D. C. Law 4-29, effective August 5, 1981.

Department- the Department of Consumer and Regulatory Affairs or its successor agency.

Director- the Director of the Department of Consumer and Regulatory Affairs of the Director's designee.

and substituted by the terms with the ascribed meanings as added:

Act- District of Columbia Uniform Controlled Substances Act of 1981, effective August 5, 1981, (D. C. Law 4-29; D.C. Official Code § 48-901)(2001).

Department- Department of Health

Director- Director of the Department

Federal Act- means the Controlled Substance Act (84 Stat. 1242; 21 U.S.C. 801) or the Controlled Substance Import and Export Act (84 Stat. 1285; 21 U.S.C. 951).

Practitioner—an individual licensed, registered, certified, or otherwise permitted by law to prescribe, dispense, and to administer drugs or medical devices, or to conduct research with respect thereto, within the course of such persons' professional practice or research.

DISTRICT OF COLUMBIA HOUSING AUTHORITY

NOTICE OF FINAL RULEMAKING

The Board of Commissioners of the District of Columbia Housing Authority (pursuant to D.C. Official Code § 6-203(3), D.C. Law 13-105, The District of Columbia Housing Authority Act of 1999) hereby gives notice of the adoption of following amendments and restatements of selected provisions of Chapters 60, 61, 62, 64, and 65 of Title 14 of the District of Columbia Municipal Regulations. The DCHA's rulemaking authority is found in the District of Columbia Housing Authority Act of 1999 at D.C. Official Code, § 6-202. The amendments stem from the public housing lease and contain the rules governing definitions, recertification, repayment of security deposits, minimum rent, transfer policy, voluntary and involuntary termination of tenancy, Lessee responsibilities, charges to the Lessee for repairs, and DCHA's right to enter the dwelling unit. Final action to adopt these rules was taken at the Board of Commissioners regular meeting on December 12, 2007.

Notice of Proposed Rulemaking was published on May 18, 2007 (54 DCR 5006). A second Notice of Proposed Rulemaking, incorporating the comments received from the public, was published on August 24, 2007, with Chapter 61 published separately on August 31, 2007 (54 DCR 8256 and 54 DCR 8521). A third Notice of Proposed Rulemaking, again incorporating comments from the public, was published on November 16, 2007 (54 DCR 11066). No comments were received in response to the November 16, 2007 Notice of Proposed Rulemaking. No changes were made to the text of the rules as published under the November 16, 2007 Notice of Proposed Rulemaking. These Final Rules will be effective upon publication of this Notice in the D.C. Register.

Chapter 60, "Low Rent Housing: General Provisions" is amended to read as follows:

CHAPTER 60 LOW RENT HOUSING: GENERAL PROVISIONS

6099 DEFINITIONS

Development - A DCHA property, including but not limited to buildings, the common areas of the buildings and grounds associated with all the buildings on either a mixed population, senior or general population public housing property owned by DCHA.

Disability Assistance Expenses - reasonable expenses that are anticipated, during the period for which annual income is computed, for attendant care and auxiliary apparatus for a disabled family member and that are necessary to enable a family member (including the handicapped or disabled member) to be employed; Provided, that the expenses are neither paid to a member of the family nor reimbursed by an outside source.

Lessee - The "Lessee" is the individual(s) that sign(s) the Lease with the Authority. Each Lessee is individually, jointly and severally responsible for

performance of all obligations under the lease including, but not limited to, the payment of rent and other charges, as defined herein. No individual, other than the signatory to the lease, is deemed to be a Lessee or have any rights of a Lessee.

Leased Premises - Leased Premises includes the Lessee's dwelling unit as specified in the lease and any other buildings or areas that are provided for the exclusive use of the Lessee. The Leased Premises are located in a federally assisted public housing development owned or assisted by the Authority.

Chapter 61, "Admission and Recertification" is amended to read as follows:

CHAPTER 61 ADMISSION AND RECERTIFICATION

6117 ADDING INDIVIDUALS TO THE LEASE

6117.1 Any person using or occupying the Leased Premises not in compliance with this Section is an unauthorized occupant without tenancy or other rights under the Dwelling Lease, including any person using or occupying the Leased Premises without approval from DCHA. Exceptions to the provisions of this chapter may be made in order to provide reasonable accommodations as required by law.

6117.2 A family shall notify in writing to DCHA of any additions to their household composition in cases of (1) Persons born to an existing household member; (2) Persons legally adopted by an existing household member; (3) Persons subject to a custodial power of attorney; and (4) Persons who have been added to the household of an existing household member by order of a court of competent jurisdiction including orders of guardianship, conservatorship, and legal custody. A family shall submit a copy of the appropriate court order, a birth certificate, custodial power of attorney, or other supporting documentation deemed necessary by DCHA within thirty (30) days of the addition to the household composition; additionally:

(a) DCHA may require the family to transfer to an appropriately sized unit that will not result in overcrowding or occupancy in excess of the standards specified in Chapter 61 of this Title; and

(b) Any addition of an adult is a proposed addition until DCHA has notified the Lessee that the adult has been added as a household member. The Authority will screen the proposed adult addition in accordance with federal law and regulations as well as DCHA's admissions and occupancy policies and regulations. With in thirty (30) days of notification of the proposed addition, Lessee will be notified of the disposition of the proposed addition.

6117.3 Other than those persons listed in Subsection 6117.2, no additional persons, adults or minors, may be added to the household composition as household members unless:

(a) The Lessee submitted a written request to add additional persons to the household and the request was approved by DCHA;

(b) The proposed additional household member shall be subject to DCHA approval criteria and must meet all applicable eligibility and screening requirements, and

(c) The requested addition to the household shall not cause the Leased Premises to exceed the maximum occupancy in accordance with the Authority's policies and regulations.

6117.4 DCHA may permit Lessees to add minor children, other than those listed in Subsection 6117.2, with a care giving relationship, provided:

(a) The adding of an additional household member is in accordance with Subsection 6117.3;

(b) Appropriate documentation acceptable to DCHA of a care giving relationship is provided prior to the minor children moving into the unit. Documentation shall be sufficient to establish the care giving relationship and may include: notarized authorization from the child's legal guardian, school or medical records, public benefit records, and sworn statements from medical, legal, social service professionals, teachers or clergy; and

(c) Notwithstanding the provisions of Subsection 6117.2, if additional occupants would result in occupancy in excess of the standards specified in Section 6110 of this Title, DCHA may review a reasonable request to approve the addition of minor children to the Dwelling Lease taking into account certain factors including but not limited to:

(1) The number of additional occupants;

(2) The size of the unit;

(3) The age of the household members;

(4) The expected duration of the care giving relationship;

(5) The needs of the housing development; and

(6) The capacity of DCHA.

6118 RECERTIFICATION

6118.1 The Lessee shall be responsible for providing to DCHA a completed application for continued occupancy, including the appropriate verification forms. The forms are those provided by or otherwise authorized by DCHA. The Lessee's responsibility to provide a completed application for continued occupancy, including the appropriate verification forms shall include but is not limited to the following:

(a) Lessees shall be required to return the recertification package including any required substantiating documentation or verification forms to DCHA within thirty (30) days of receipt of the recertification package;

(b) Lessee shall obtain from other household members any information, documentation and signatures, as DCHA may require, when submitting a completed application for continued occupancy, including the appropriate verification forms as DCHA may require;

(c) The Lessee shall provide DCHA, for each household member, to DCHA a listing of the exact amount of income or benefits, from whatever source and the exact source of the income or benefit;

(d) The Lessee shall provide certification from all adult household members that their income has been accurately reported;

(e) Lessee shall provide the full name, gender, Social Security Number and date of birth for each household member;

(f) Lessee shall provide to DCHA proof of the Lessee's and/or any household member's enrollment in an educational facility and shall provide this information for any household member that Lessee is seeking to add;

(g) Lessee's who wish to remove a household member from the household shall have the burden of proof that such person has permanently vacated the Leased Premises and must submit documents satisfactory to DCHA, in accordance with Subsection 6119.1, that the household member is residing elsewhere; and

(h) If the Lessee has misrepresented or failed to submit timely to DCHA any facts used in the determination of rent, whether intentionally or by mistake, DCHA may charge and collect as rent the difference between the rent actually paid and the rent which would have been due had the proper information been submitted timely by the Lessee. This amount, the basis for the charge, and notice of the Lessee's grievance rights will be made available to lessee in writing by DCHA. This amount shall be posted to the Lessee's account and rent statement. Lessee shall receive written notice of

the new amount which shall be due as stated in the notice, but not less than thirty (30) days from the date of the notice A failure to accurately report income, deductions, family composition, or any other information may result in legal action being taken by DCHA or law enforcement agencies.

6119 REPORTING CHANGE OF INCOME AND INTERIM RECERTIFICATION

6119.1 It shall be the Lessee's responsibility to report to DCHA complete and accurate information of all members of the family, including any change in family circumstances, within thirty (30) days of the change. Changes in family circumstances include but are not limited to changes in: family size, such as additions or removals of household members, and income. The Lessee's responsibility to report any change in family circumstances, includes but is not limited to the following:

(a) Lessee shall provide to DCHA proof of educational enrollment in an educational facility of any household member that Lessee is seeking to add pursuant to Chapter 61 of this Title;

(b) Lessee shall obtain all supplemental information and required signatures as DCHA may reasonably require, from other household members;

(c) Lessees who wish to remove a household member from the household shall have the burden of proof that such person has permanently vacated the Leased Premises and must submit documentation satisfactory to DCHA that the household member is residing elsewhere including but not limited to any one or a combination of the following:

(1) A lease for another unit;

(2) A utility bill for another unit;

(3) Government issued ID issued after the date the household member vacated the leased premises;

(4) U.S. Postal Service change of address form;

(5) School records;

(6) Government benefit records; and

(7) Other documentary proof satisfactory to the DCHA;

(d) If the lessee is unable to produce documentation satisfactory to the DCHA, the DCHA shall remove the individual from the Household Composition upon Lessee's submission of a form: (1) attesting under the penalty of

perjury that the individual has permanently vacated he Leased Premises; (2) stating that the Lessee has been unable to provide the written documentation of the member's absence and requiring the Lessee to explain why he or she was unable to do so; and (3) stating that the DCHA reserves the right to inspect the unit for the next 90 days if necessary to verify the household member's absence from the unit;

(e) Any household member who begins employment or begins to receive any benefits or other source of income;

(f) DCHA shall have the right to require the Lessee to attend a rent review meeting upon written request. Lessee may request a rent review through the manager of his property at any time upon written request. Lessee shall attend any meetings held to conduct the rent review at the time and place specified by DCHA or, if requested by the Lessee, at an alternative time during normal DCHA hours. Lessee shall provide to DCHA complete and accurate information, including documentation, as specified by DCHA; and

(g) If the Lessee has failed to comply with this subsection, including but not limited to misrepresentation or failure to submit timely to DCHA any facts used in the determination of rent, whether intentionally or by mistake, DCHA may charge and collect as rent the difference between the rent actually paid and the rent which would have been due had the proper information been submitted timely by the Lessee. This amount shall be posted to the Lessee's account. Lessee shall receive written notice of the new amount which shall be due as stated in the notice, but not less than thirty (30) days from the date of the notice. A failure to accurately report income, deductions, family composition, or any other information may result in legal action being taken by DCHA or law enforcement agencies.

6121 LIVE-IN AIDES

6121.1 It is the policy of DCHA to grant reasonable accommodations, such as a live-in aide, subject to compliance with the provisions set forth in Chapter 74 of this Title.

6121.2 Live-in aide means a person who resides with one or more elderly persons, or near-elderly persons, or persons with disabilities, and who:

(a) Is determined to be essential to the care and well-being of the person(s);

(b) Is not otherwise legally or financially obligated for the support of the person(s); and

(c) Would not be living in the unit except to provide the necessary supportive services.

6121.3 A live-in aide is subject to approval of DCHA prior to occupancy. At any time, DCHA may refuse to approve a particular person as a live-in aide. DCHA may withdraw such approval for reasonable cause. A live-in aide resides in a unit identified on a lease, but is not a lessee with rights of tenancy, and does not possess the right to participate in the resident council.

6121.4 A live-in aide must abide by all the rules and regulations of DCHA as well as those of the particular property where they reside. DCHA will provide a thirty (30) day written warning notice to a resident of a determination to withdraw approval of a live-in aide prior to issuing any notice required to commence a legal action to terminate the lessee's tenancy. This decision by DCHA is subject to the Grievance Process available to Lessees.

6121.5 The income of an approved live-in aide shall not be included in the calculation of rent, and the name of an approved live-in aide shall not be added as a Lessee to the Dwelling Lease, but shall be added as a live-in aide prior to taking up occupancy of a unit, otherwise such person is deemed to be an unauthorized occupant. While an application is pending for a live-in aide the live-in-aide may occupy the unit to provide the necessary supportive services as a guest of the Lessee in accordance with Subsection 6500.1(h).

6121.6 Definitions of "elderly," "near-elderly," and "persons with a disability" are as required by federal regulations in 24 CFR § 5.403 as may be amended.

Chapter 62, "Low Rent Housing: Rent and Lease" is amended to read as follows:

CHAPTER 62 LOW RENT HOUSING: RENT AND LEASE

6204 REPAYMENT OF SECURITY DEPOSITS AND MOVE-OUT INSPECTIONS

6204.10 The Lessee shall return all keys and other entry devices whenever the unit is vacated, failure to return keys or other entry devices will result in a charge in accordance with a schedule of charges as posted in the property management office.

6205 DWELLING LEASE

6205.1 Each family admitted for occupancy in low rent housing, operated by DCHA, shall enter into a Dwelling Lease with DCHA, the Dwelling Lease shall have a twelve (12) month term which states the Lessee rent to be charged, and the conditions governing occupancy.

(a) The conditions governing occupancy shall be in accordance with HUD requirements, and;

(b) The Lease shall be automatically renewed for successive terms of one month with each term commencing to run on the 1st day of each month, unless terminated by either DCHA or the Lessee.

6205.2 The Lessee shall have the right to the exclusive use of the Leased Premises, including the dwelling unit identified in the lease and in the case of a townhouse, row house or single family home, all buildings or additional areas provided for the exclusive use of the Lessee, including the yard and any outbuildings, subject to the restrictions and obligations contained in the Dwelling Lease.

6205.3 Each Dwelling Lease shall be executed prior to occupancy. DCHA shall conduct a move-in inspection in accordance with Section 6505 of this Title prior to execution of the lease.

6205.4 Each Dwelling Lease shall be administered in accordance with the provisions stipulated, and kept current at all times.

6205.5 The DCHA shall add names to the Dwelling Lease, after initial occupancy only in accordance with Section 6117 of this Title. Any person using or occupying the Leased Premises not in compliance with Section 6117 of this Title is an unauthorized occupant without tenancy or other rights under the Dwelling Lease, including any person using or occupying the Leased Premises without approval from DCHA.

6205.6 Changes to the Dwelling Lease shall be made only in writing and shall be signed by the Lessee, and an authorized representative of DCHA, except the following changes, which may be executed unilaterally by DCHA:

(a) Any change in rent, either an increase or decrease, shall be stated in a special supplement which shall, upon issuance, become part of the lease;

(b) Changes to implement excess utility charges;

(c) Any revision to reflect change in family composition other than head of household, consistent with Subsection 6205.5;

(d) Changes to implement Subsection 6205.9;

(e) Late charges assessed pursuant to Subsection 6206.5;

(f) Special supplements to a lease executed pursuant to Subsection 6205.10;

(g) Changes in the amount of security deposit provided in Section 6203;

(h) Changes in DCHA's policies, rules and regulations; and

(i) Charges assessed pursuant to the Schedule of Charges posted in the Property Manager's Office.

6205.7 The DCHA shall provide the Lessee with a copy of any changes to the Dwelling Lease made in accordance with Subsection 6205.6.

6205.8 Unless a shorter time period is provided, a new Dwelling Lease shall be executed, within thirty (30) days whenever the following conditions occur:

(a) The status of the head of household is altered pursuant to Chapter 64 of this Title; or

(b) When a family is transferred from one dwelling unit to another.

6205.9 Any Lessee wishing to vacate his or her unit shall do so in accordance with Section 6404 of this Title. Lessees wishing to vacate prior to the end of the month shall be liable for the entire month's rent.

6205.10 The DCHA may unilaterally execute a special supplement to the new lease which assesses the amount due under the prior lease.

6205.11 Lessees who execute a new Dwelling Lease as a result of a transfer from one unit to another, or as a result of any other requirement for a new Dwelling Lease, shall remain liable for any delinquent rent or other charges relating to the prior lease.

6210 MINIMUM RENT

6210.1 Based on information provided pursuant to Sections 6118, 6119, and 6200 the rent charged shall be the lesser of:

(a) A fixed amount determined by DCHA for the Development ("market-based rent") pursuant to Subsection 6200.1(b);

(b) An amount based on a percentage of household income pursuant to Subsection 6200.1(a); or

(c) $0, for families which DCHA has determined do not have any adjusted income, as defined in Subsection 6099.1, as determined by DCHA at certification or recertification.

Chapter 64," Public Housing Transfer Policy" is amended to read as follows:

CHAPTER 64 PUBLIC HOUSING TRANSFER POLICY

6400 TRANSFER POLICY

6400.6 Upon acceptance of the new dwelling unit, the Lessee must execute a new Dwelling Lease. All causes of action of any nature whatsoever available to DCHA at the previous Leased Premises governed by the Dwelling Lease, shall be automatically transferred to, and actionable by, DCHA at the new unit after transfer, whether such transfer is mandatory or voluntary. This regulation does not waive any statute of limitations otherwise applicable to such claims.

6401 MANDATORY TRANSFER INITIATED BY DCHA

6401.11 The decision to initiate a mandatory transfer pursuant to this chapter may be made only after review and approval by a supervisor in the Operations Division of DCHA.

6403 VOLUNTARY TERMINATION OF TENANCY

6403.1 Termination of Tenancy by Lessee requires that the Lessee, all household members, guests as well as all others defined as any person under the Lessee's control or on the Leased Premises with Lessee's consent; including but not limited to, any individuals occupying or using the Leased Premises for any purpose with actual or implied consent of the Lessee (hereinafter referred to collectively as "others"), vacate the Leased Premises on or before the date specified in Lessee's written notice.

6403.2 Lessee may terminate tenancy by giving:

(a) At least thirty (30) days notice;

(b) The notice must be in writing;

(c) On forms required by the DCHA completed with the assistance of DCHA if necessary; and

(d) Submitted to the property manager.

6403.3 The DCHA shall follow the requirements of Chapters 62 and 65 of this Title relating to termination of tenancy.

6403.4 Lessee shall leave the Leased Premises in as clean and good condition as Lessee received at the start of Lessee's occupancy; wear and tear excepted; and return all keys and all other entry devices to the DCHA.

6403.5 If the Lessee is no longer in occupancy of the unit or is deceased, a remaining household member, or another adult identified in 6403.8(c) below, must notify the Authority of the Lessee's death or departure within 14 days of the date the Lessee vacates the Leased Premises or dies. Within 30 days thereafter, or within 14 days of the Authority's issuance of a Notice to Vacate the premises, whichever is later, in order to sustain continued occupancy for the remaining household members at the Leased Premises, the remaining household member or other adult must submit a written application to become head of household. Details on the application process and exclusions from this rule are as follows:

(a) This subsection does not apply if the head of household vacates the unit pursuant to the issuance of a notice to correct or vacate or a notice to vacate. In such circumstances, the remaining family members must vacate the unit. If the remaining family members do not vacate the unit, they shall be deemed unauthorized occupants;

(b) The applicant to be made Lessee, and if applicable, the other remaining Household Members must be eligible for continued occupancy and not be in serious violation of the material terms of the Dwelling Lease. The Authority will screen the application in accordance with federal law and regulations as well as DCHA's admissions and occupancy policies and regulations. Applicant(s) will be notified in writing of the disposition of the application:

(1) If the application is approved, the new Lessee shall enter into a new lease agreement with the Authority within seven (7) working days of the date of approval of the application;

(2) Any balance on the rental account existing prior to a remaining household member becoming the Lessee is the responsibility of the newly designated Lessee as head of household. Any obligations for rent, causes of action arising under the original Lease, stipulations of settlement, consent judgments, judgments, or repayment agreements of the prior Lessee shall be deemed part of the new Dwelling Lease and tenancy and shall be the responsibility of the new Lessee designated as head of household and actionable against such new Lessee; or

(3) If the applicant and other remaining Household Members are not approved to continue to occupy the Leased Premises, and such remaining members do not vacate, they will be deemed unauthorized occupants and thus occupying premises without the consent of DCHA and shall be subject to eviction by the DCHA. The applicant may file a grievance regarding the denial of his or her application in accordance with the Authority's grievance procedures; and

(c) If there are no remaining adult household members, or none who are able to serve as head of household, but the unit continues to be occupied by household members who are minor children and/or adults unable to serve as head of household, then an adult who is not listed on the lease may apply to become Lessee and Head of Household. The following shall apply under these circumstances:

(1) The applicant to be Lessee must produce evidence of a caregiving relationship with the remaining minor children or disabled adults. Such documentation may include, but is not limited to, court order; notarized authorization from the children's legal guardian; school or medical records; public benefit records; and sworn statements from medical, legal, or social service professionals;

(2) Where the remaining family members are minors, the applicant to be Lessee must either (i) obtain Custodial Power of Attorney; or (ii) commence legal proceedings to obtain legal guardianship or custody of the minor children. So long as such proceeding is pending, and the applicant has produced evidence of a caregiving relationship, and meets DCHA's other screening criteria, DCHA shall consider the applicant to be eligible to be Lessee and Head of Household;

(3) In the case of (c)(2), above, the applicant's eligibility to be Lessee and Head of Household is contingent on legal proceedings pending or being resolved in favor of the applicant. If a court of competent jurisdiction denies the applicant's petition for custody or guardianship, no appeal is pending, and the appeal period has expired, DCHA will determine the applicant ineligible to be Head of Household and may issue a Notice to Vacate. In that event, another remaining adult household member may submit an application to be Lessee and Head of Household within 30 days of the issuance of the Notice, and the Authority will process such application in accordance with the requirements of this section; and

(4) Where more than one adult have competing claims to become Lessee and Head of Household as caregivers of the remaining minor children, DCHA shall follow the ruling of a court of competent jurisdiction regarding the custody or guardianship of the children.

6403.6 The Lessee shall be liable for rent until the earlier of the time the DCHA has taken possession of the Unit, or such time as all of the following are completed:

(a) The proper written notice has been given;

(b) The required vacate forms are completed with the assistance of DCHA if necessary;

(c) The keys are turned in; and any other entry devices; and

(d) Lessee and all household members, guests as well as all others defined as any person under the Lessee's control or on the Leased Premises with Lessee's consent; including but not limited to, any individuals occupying or using the Leased Premises for any purpose with actual or implied consent of the Lessee (hereinafter referred to collectively as "others"), have vacated the Leased Premises.

6404 TERMINATION OF TENANCY BY DCHA

6404.1 DCHA shall not terminate the lease other than for serious or repeated violation of material terms of the lease. Violations of an obligation of tenancy refer only to those obligations which are contained in a valid, written lease or in the federal or local regulations pertaining to public housing tenants or in the D.C. Housing Code. There is no time limitation on bringing an action based on a breach of the lease.

6404.2 If DCHA determines that a Lessee is in violation of the Dwelling Lease, except for lease violations predicated on the performance of an illegal act or non-payment of rent, the Lessee shall be issued a thirty (30) day notice to correct or vacate, stating in writing the violation(s) which provides the basis for the termination the lessee's right to cure the violations and instructions on how to cure the violations.

(a) The notice shall inform the Lessee the applicability of his or her right to file an administrative complaint in accordance with Chapter 63 of this Title; and

(b) If a Lessee has filed a complaint requesting an administrative determination of his or her rights, in accordance with Chapter 63 of this Title, in response to service of a notice to correct or vacate or a notice of lease termination in the case of failure to pay rent and has not prevailed, the Lessee shall be issued a notice to vacate, as the time to cure has past and the Lessee shall be subject to legal action to gain possession of the unit (eviction).

6404.3 The DCHA shall issue a thirty day (30) written notice to cure or vacate in the case of failure to pay rent.

6404.4 DCHA shall issue a thirty (30) day notice to vacate to Lessees, for lease

violations, predicated on criminal activity that threatens the residents' health, safety or right to peaceful enjoyment of the Development or drug related criminal activity on or off the Leased Premises or the Development.

6404.5 Pursuant to Section 6403, DCHA will not issue a thirty (30) day notice to correct or vacate, or notice to vacate, where DCHA has determined that the head of household responsible for the dwelling unit under the Dwelling lease is deceased and there are no remaining household members.

6404.6 Lessees who refuse to vacate their unit after appropriate notice shall be subject to legal action to gain possession of the dwelling unit (eviction).

6404.7 The Lessee shall be solely responsible for the protection, care and disposition of the Lessee's possessions during, and after an eviction.

6404.8 Where DCHA has excluded from its procedure any grievance concerning an eviction or termination of tenancy based on a Lessee's creation or maintenance of a threat to the health or safety of other Lessees or DCHA employees, the Lessee against whom an eviction action has been filed in court shall be afforded the opportunity to examine all relevant documents, records, and regulations of DCHA prior to trial for the purpose of preparing a defense.

6404.9 Any document not made available after request by the Lessee shall not be relied on by DCHA at the trial.

Chapter 65, Low Rent Housing: "Maintenance and Inspection" is amended to read as follows:

CHAPTER 65 LOW RENT HOUSING: MAINTENANCE AND INSPECTION

6500 LESSEE RESPONSIBILITIES

6500.1 Lessees shall be responsible for their actions and the actions of household members, guests, and any person under the Lessee's control or on the Leased Premises with Lessee's consent, for maintaining their units in accordance with the provisions of the dwelling lease, including but not limited to, the following responsibilities:

(a) To comply with all obligations imposed upon Lessees by applicable provisions of building, and other District of Columbia housing codes materially affecting health and safety;

(b) To keep the premises (and such other areas as may be assigned for his or her exclusive use) in a clean and safe condition;

(c) To dispose of all ashes, garbage, rubbish, and other waste from the premises in a sanitary and safe manner;

(d) To use only in a reasonable manner all electrical, plumbing, sanitary, heating, ventilating, air conditioning and other facilities and appurtenances, including elevators;

(e) To refrain from, and to cause his or her household, guests and others, to refrain from, destroying, defacing, and/or damaging/removing any part of the premises or project; including but not limited to storing, hanging or leaving household or other personal property of any type, including clothes, on the exterior of the Leased Premises unless the area is specifically designated for that purpose by DCHA;

(f) Not to assign the lease or to sublease the premises;

(g) Lessee shall have no other primary residence;

(h) Not to provide accommodations for boarders or lodgers;

(1) Each guest shall not stay overnight for more than ten (10) consecutive days without the prior written permission of DCHA;

(2) Each guest shall not stay overnight for more than thirty (30) non-consecutive days within a twelve (12) month period without the prior written permission of DCHA; and

(3) DCHA may deny permission for longer stays for the following reasons;

(i) Persons who have been barred from the property;

(ii) Persons who are on a lifetime sex offender list;

(iii) Persons fleeing prosecution or custody or confinement after conviction for a crime or attempt to commit a crime that is a felony under the laws of the place from which the individual flees;

(iv) Persons whose past conduct has disturbed the peaceful enjoyment of DCHA residents;

(v) Persons who have damaged DCHA property; and

(vi) Persons with current restraining orders to stay away from the unit or the property;

(i) To use the premises solely as a private dwelling for the Lessee and the Lessee's household as identified in the lease, and not to use or permit its

use for any other purpose;

(j) To abide by necessary and reasonable rules, regulations and policies, issued by DCHA for the benefit and well-being of the housing project and the Lessees and which shall be posted in the Development office and incorporated by reference in the lease;

(k) To pay reasonable charges (other than normal wear and tear) for the repair of damages to the premises, project building, facilities or common areas caused by the Lessee, household members, guests and any others under the Lessee's control or on the Leased Premises with Lessee's consent; including but not limited to, any individuals occupying or using the Leased Premises for any purpose with actual or implied consent of the Lessee (hereinafter referred to collectively as "others");

(l) To conduct himself or herself, and cause other persons who are on the premises with his or her consent to conduct themselves, in a manner which will not disturb his or her neighbors' peaceful enjoyment of their accommodations and will be conducive to maintaining the project in a decent, safe and sanitary condition; including but not limited to:

(1) Take precautions to prevent fires and not use a portable heating device unless it has been provided by DCHA. Not disable any fire alarm device or cause a false fire alarm, or generally permit or do anything, including storing excess amounts of personal property; and

(2) Not remove or tamper with any smoke detector, including removing any working batteries, so as to render the smoke detector inoperative;

(m) To keep no dogs, cats or other animals in or on the premises, unless specifically permitted by DCHA in writing;

(n) Not to place fixtures, or fences in or about the premises without the prior written permission of DCHA. No repairs or alterations to the Leased Premises may be made, including, but not limited to, painting, wallpapering, doors, gates, window bars, carpets, storage sheds, and antenna or satellite dishes, without the prior written approval of DCHA. Upon completion, any such repairs or alterations, made with or without prior written consent, become part of the Leased Premises. If the Lessee changes locks, installs an alarm or security system, or adds locks to the dwelling unit, he or she shall notify DCHA and shall make duplicate keys available to and or provide DCHA with access codes in order for DCHA to gain emergency access; and

(o) Not to permit anyone who is currently barred from the Leased Premises or Development from occupying, staying overnight, visiting the Leased Premises, or inviting them to the Leased Premises or anywhere else on the Development at any time for any purpose, unless authorized in writing by DCHA in advance.

6500.2 At those properties where there is a defined front or rear yard assigned to the Lessee for his or her exclusive use, the Lessee shall be responsible for maintaining the individually defined lawn areas around his or her respective dwelling unit, cutting the grass, and keeping his or her lawn free of trash and garbage.

6500.3 Lessees who do not maintain these areas shall be given forty-eight (48) hours notice by DCHA to correct unsightly lawn areas. Lessees who fail to comply within forty-eight (48) hours of being notified by DCHA shall be in violation of the Dwelling Lease.

6500.4 Lessees shall report immediately to DCHA of any need for repairs to the Leased Premises or of any unsafe conditions in the common areas or the grounds surrounding the Leased Premises. Notification of repairs shall be in writing or by a telephone call to DCHA's Control Center and the Lessee shall obtain a control number for each repair. The number for the Control Center can be obtained from the Management office or the Central Office. Lessees in Developments managed by companies under contract with DCHA will provide notice as reasonably required by the management companies

6500.5 Lessees shall take reasonable steps to conserve energy and water and avoid unreasonable use of water, gas and/or electricity including but not limited to non-routine washing of vehicles or any other unreasonable use of utilities.

6500.6 Lessees shall not have waterbeds on the Leased Premises without prior written approval of DCHA, which approval may be withheld in DCHA's sole discretion.

6500.7 Lessee's shall not to permit anyone who is currently barred from the Leased Premises or Development from occupying, staying overnight, or visiting the Leased Premises or invite them to the Leased Premises or anywhere else on the Development at any time for any purpose, unless authorized in writing by DCHA in advance. Any person not identified in Subsection 9600.2 as an authorized person may be subject to the issuance of a Bar Notice for the period of time specified in the Bar Notice. DCHA will post a list of barred individuals in the property management office.

6500.8 Lessee is responsible for all actions or inactions of all guests, household members, and all others on the property with the consent of Lessee and/or the consent of household members; "others" defined as any person under the Lessee's control or on the Leased Premises with Lessee's consent; including but not limited to, any

individuals occupying or using the Leased Premises for any purpose with actual or implied consent of the Lessee (hereinafter referred to collectively as "others"); the aforementioned parties, including the Lessee, are obligated to the following:

(a) To not engage in the manufacture, sale, or distribution of any alcoholic beverages or openly consume alcoholic beverages in any common areas in the Development or otherwise consume alcoholic beverages in a manner that impairs the physical environment of the Development or may be a threat to the health, safety or right to peaceful enjoyment of the Development by other residents, service providers, or DCHA staff;

(b) To not engage in any criminal activity that threatens residents' health, safety or right to peaceful enjoyment of the Development;

(c) To not engage in:

(1) Any drug-related criminal activity on or off the Leased Premises or the Development; or

(2) Violent criminal activity or be in possession of any firearm or ammunition for a firearm;

(d) Lessee shall not flee to avoid prosecution or custody or confinement after conviction, for a crime or attempt to commit a crime that is a felony under the laws of the place from which the individual flees or violate a condition of probation or parole imposed under federal or state law; or

(e) To assure that others under the Lessee's control, as identified in the Dwelling Lease, not engage in any:

(1) Criminal activity that threatens the residents' health, safety or right to peaceful enjoyment of the Development; or

(2) Any Drug-related Criminal Activity on the Leased Premises or the Development.

6503 CHARGE TO THE TENANT FOR REPAIRS AND SERVICES

6503.6 In the event of a fire caused intentionally or by the neglect or negligence of the Lessee, household members, guests or others under the control of the Lessee, then Lessee is subject to the following:

(a) Lessee is responsible for the payment of the lesser of the:

(1) Costs for the repair of the fire damage; or

(2) The insurance deductible, if any, afforded by any insurance policy held by DCHA and applicable to the damages caused by the fire at the Leased Premises or Development;

(b) DCHA may terminate the Lease for any fire on the Leased Premises caused intentionally or negligently by the Lessee or others that has resulted in a risk to the health or safety of any person or in damage to property.

6504 RIGHT TO ENTER DWELLING

6504.1 The DCHA shall, upon written notice to the Lessee of at least two (2) days, be permitted to enter the dwelling unit during reasonable hours for the purpose of performing routine inspections or maintenance, make improvements or repairs, take photographs or otherwise record and document the condition of the unit or repairs, or to show the Leased Premises for releasing.

6504.2 The DCHA shall enter the Leased Premises at any time without advance notice when it has reasonable cause to believe that an emergency exists, or when the Lessee has agreed to such entry.

6504.3 In the event that the Lessee and all adult household members are absent from the premises at the time of entry, DCHA shall leave on the premises a written statement specifying the date, time and purpose of entry prior to leaving the premises.

6504.4 If the Lessee changes or adds the following to the dwelling unit, he or she shall notify DCHA and shall make duplicate keys, entry codes, or any applicable access to the dwelling available to DCHA, within twenty four (24) hours of the change:

(a) Any locks, and/or;

(b) Any entry devices, including but not limited to any and all security devices.

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 §43l(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. Official Code, §11-1521, et seq.).

2000.2 The Chairperson of the Commission shall be elected annually by the members of the Commission from among the members of the Commission.

2000.3 The Commission may select a Vice Chairperson and other officers as the Commission, from time to time, may deem appropriate.

2000.4 The Chairperson shall preside at each meeting of the Commission.

2000.5 Officers, special counsel, and other personnel who are selected by the Commission shall perform the duties assigned to them by the Commission.

2000.6 The Commission may retain medical or other experts to assist it.

2001 TRANSACTION OF COMMISSION BUSINESS

2001.1 The Commission shall act only at a meeting. The actions of the Commission may be implemented by any appropriate means directed by the Commission.

2001.2 Meetings of the Commission shall be held at times agreed upon by the members of the Commission, or upon call by the Chairperson, or by a majority of the members of the Commission and after notice to all members of the Commission.

2001.3 Minutes shall be kept of each meeting of the Commission. The minutes shall record the names of those present, the actions taken, and any other matters that the Commission may deem appropriate.

2001.4 A quorum for Commission action shall consist of four (4) members.

2001.5 Commission action shall be taken only upon concurrence of four (4) members; Provided, that the concurrence of five (5) members shall be required to suspend a judge from all or part of his or her judicial duties pursuant to §432(c)(3) of the Self-Government Act.

2001.6 The Chairperson, Vice Chairperson, Acting Chairperson, or a member designated by one of them may carry out the routine of Commission business (such as the granting of postponements pursuant to this chapter, authorization of preliminary inquiry into complaints or information regarding a judge's conduct or health, and authorization of informal and non-determinative communications with a judge or the judge's counsel).

2001.7 A member shall disqualify himself or herself from consideration of matters before the Commission in the following circumstances:

(a) when involved as a litigant or an attorney in a proceeding pending before a judge who is both the subject of and is aware of a complaint before the Commission;

(b) when involved as a litigant or attorney in a proceeding pending before an associate judge seeking reappointment, a retiring judge requesting a favorable recommendation for appointment as a senior judge, or a senior judge seeking favorable recommendation for reappointment to senior status.

2002 PHYSICAL EXAMINATIONS AND MEDICAL INFORMATION

2002.1 At the Commission's request, a judge shall submit to a physical 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 (lst) day of June of each year, on forms provided by the Commission, the reports of personal financial interest required by D.C. Official 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 re-nomination;

(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. Official Code, §11-1527(c)(3).

2019 DEPOSITIONS

2019.1 The Commission may order the deposition of any person in aid of any investigation or proceeding.

2019.2 The deposition shall be taken in the form prescribed by the Commission, and shall be subject to any limitations prescribed by the Commission.

2019.3 To compel a deposition, the Commission may petition the Superior Court of the District of Columbia requesting an order requiring a person to appear and testify and to produce papers, books, records, accounts, documents, transcriptions, or other physical things before a member of the Commission or a special counsel or other officer designated by the Commission.

2019.4 The petition to the Superior Court shall state, without identifying the judge, the general nature of the pending matter, the name and residence of the person whose testimony or other evidence is desired, and any special directions the Commission may prescribe.

2019.5 Depositions shall be taken and returned in the manner prescribed by law for civil actions.

2020 GRANTS OF IMMUNITY

2020.1 Whenever a witness refuses, on the basis of his or her privilege against self-incrimination, to testify or produce papers, books, records, accounts, documents, transcriptions, or other physical things and the Commission determines that his or her testimony, or production of evidence, is necessary, it may order the witness to testify or to produce the evidence under a grant of immunity against subsequent use of the testimony or evidence, as prescribed by D.C. Official Code, §11-1527(c)(2).

2021 COMPENSATION OF WITNESSES

2021.1 Each witness, other than an officer or employee of the United States or the District of Columbia, shall receive for his or her attendance the fees prescribed by D.C. Official Code, §15-714 for witnesses in civil cases.

2021.2 All witnesses shall receive the allowances prescribed by D.C. Official Code, §15-714 for witnesses in civil cases.

2022 FINDINGS OF FACT AND DECISIONS

2022.1 Within ninety (90) days after the conclusion of the hearing or the conclusion of any reopened hearing in a proceeding, the Commission shall make written findings of fact, conclusions of law, and a determination regarding the conduct or health of the judge.

2022.2 The findings, conclusions, and determination shall be set forth in an order, as the Commission deems appropriate. A copy of the order shall be sent to the judge and his or her counsel, if any.

2022.3 If the Commission determines that grounds for removal or involuntary retirement of the judge have been established and orders removal or retirement, the Commission shall file its decision, including a transcript of the entire record, with the District of Columbia Court of Appeals.

2022.4 If the Commission determines that grounds for removal or involuntary retirement of the judge have been established, but that removal or retirement should not be ordered, it shall include in its decision a statement of reasons for not so ordering, and, as it deems appropriate under the circumstances, shall order that the record of the proceeding either shall be made public or shall remain confidential.

2022.5 If the record of the proceedings remains confidential under §2022.4, and if the judge within ten (10) days after a copy of the decision is sent to him or her requests that the record be made public, the Commission shall so order.

2022.6 If the record is to be made public, the Commission shall file its decision, including a transcript of the entire record, with the District of Columbia Court of Appeals.

2022.7 When a decision and transcript of the record are filed with the District of Columbia Court of Appeals pursuant to §§2022.3 or 2022.6, the Commission shall provide the judge with a copy of the entire record at the expense of the Commission except for those portions that it previously may have provided to him or her, and it shall notify the Chief Judge of the judge's court of its decision.

2022.8 If the Commission determines that grounds for removal or involuntary retirement of a judge have not been established, it shall ask the judge whether he or she desires the Commission to make public disclosure of information pertaining to the nature of its investigation, its hearing, findings, determination, or other facts related to its proceedings.

2022.9 If the judge, in writing, requests disclosure under §2022.8, the Commission shall make the information available to the public except for the identity of an informant or complainant other than a witness at the hearing.

2023 CONVICTION OF A FELONY

2023.1 The Commission shall not file in the District of Columbia Court of Appeals an order of removal certifying the entry of a judgment of a criminal conviction, as provided in §432(a)(1) of the Self-Government Act, without giving to the judge concerned at least ten (10) days notice of its intention to do so.

2024 – 2029 RESERVED

2030 EVALUATION OF 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 PERSON

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. Official Code §§11-709 and 11-909; and

(b) Financial data reported pursuant to the provisions of D.C. Official 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. Official 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.