OFFICE OF THE ATTORNEY GENERAL FOR THE DISTRICT OF COLUMBIA

NOTICE OF EMERGENCY AND PROPOSED 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 of her adoption, on an emergency basis, of the following amendments to Chapter 36 of the District of Columbia Personnel Regulations, pertaining to the Legal Service.

Emergency action to adopt these rules is necessary because a new line attorney rating period begins on September 1, 2007 and the most important of these rules will adopt new rating categories and criteria that must be in place before the new rating period begins. 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. Emergency action is also needed because the Attorney General wants to abolish the panels for the rating period that ended on August 31, 2007, and unless this action is taken the panels will have to be selected immediately so they can meet and review the draft evaluations of line attorneys that managers are due to submit for that period by early October 2007.

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.

These emergency rules were adopted on August 31, 2007 and will remain effective for 120 days, or until publication of the final rules in the D.C. Register, whichever occurs first. The Attorney General hereby gives notice of her intent to take final rulemaking action to adopt these proposed rules (which are identical to the emergency rules) in not less than 30 days from the date of publication of this notice in the D.C. Register.

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

CHAPTER 36 LEGAL SERVICE

3600 APPLICABILITY
3601 APPOINTMENT
3602 TRANSFERS, STEP INCREASES, AND PROMOTIONS
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
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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).

All persons desiring to comment on the subject matter of this proposed rulemaking should file comments in writing not later than thirty (30) days after the date of publication of this notice in the D.C. Register. Comments should be filed with Wayne C. Witkowski, Esq., 1350 Pennsylvania Avenue, N.W. Room 417, Washington, D.C. 20004. Copies of these rules may be obtained at the address stated above.