

D.C. OFFICE OF PERSONNEL**NOTICE OF FINAL RULEMAKING**

The Acting Director, D.C. Office of Personnel, with the concurrence of the City Administrator, pursuant to Mayor's Order 2000-83, dated May 30, 2000, and in accordance with Subtitle B of Title VIII-B of the District of Columbia Government Comprehensive Merit Personnel Act of 1978, effective March 3, 1979 (D.C. Law 2-139), as added by § 2 of the Government Attorney Certificate of Good Standing Filing Requirement Amendment Act of 2002 (Act), effective July 24, 2002 (D.C. Law 14-182; D.C. Official Code § 1-608.81) (2003 Supp.) and Council Resolution No. 15-842, deemed approved on July 23, 2004, hereby gives notice that final rulemaking action was taken to adopt the rules. The Act provides that each attorney employed at the level of DS-13 or above who is required to be a member of the D.C. Bar as a prerequisite of employment and who is employed by the Mayor, the Office of the Corporation Counsel (now the Office of the Attorney General for the District of Columbia), the Office of the Chief Financial Officer, the Board of Education, and by any independent agency, shall obtain, on an annual basis, a certificate of good standing and file the certificate with the D.C. Office of Personnel. The Act also requires that the Director of Personnel promulgate rules and that the rules be submitted to the Council for a 45-day period of review. These rules amend Chapter 8 of the *D.C. Personnel Regulations*, Career Service, by adding a new § 849 establishing the provisions for the filing of the certificate by Career Service attorneys, and related procedures, including the standards for the granting of temporary waivers of the filing requirement and notification procedures. No comments were received and no changes were made to the notice of proposed rulemaking published at 51 DCR 8853 (September 10, 2004). Final rulemaking action was taken on October 14, 2004.

CHAPTER 8**CAREER SERVICE**

A new § 849 is added to Chapter 8 of the D.C. Personnel Regulations:

849 ATTORNEY CERTIFICATE OF GOOD STANDING FILING REQUIREMENT

849.1 The provisions of this section shall be applicable to each attorney appointed in the Career Service at the level of DS-13 or equivalent and above who is required to be a member of the D.C. Bar as a prerequisite of employment, and who is employed by:

- (a) Any agency, subordinate or independent, and whose duties, in whole or substantial part, consist of hearing cases as an administrative law judge or as an administrative hearing officer;

- (b) The Office of the Chief Financial Officer; and
- (c) Any independent agency excluded from the Legal Service, including the Housing Finance Agency, Pretrial Services Agency, Water and Sewer Authority, and Housing Authority.
- 849.2 Not later than December 15 of each year, or as specified in §§ 849.18 and 849.19, each attorney as described in § 849.1 shall file with the D.C. Office of Personnel a certificate of good standing from the Committee on Admissions, D.C. Court of Appeals.
- 849.3 Except as specified in §§ 849.18 and 849.19, the certificate of good standing submitted every year pursuant to this section shall be dated not earlier than October 1 and not later than December 15 of the year of submission.
- 849.4 Each subordinate agency or independent personnel authority that employs Career Service attorneys subject to the filing requirement shall be responsible for:
- (a) Notifying each agency attorney of the filing requirement every year; and
- (b) Submitting a list of agency attorneys subject to the filing requirement to the Director of Personnel every year, not later than the December 15 deadline.
- 849.5 Notwithstanding the procedures in § 849.2, each subordinate agency or independent personnel authority may elect to submit every year to the Committee on Admissions, D.C. Court of Appeals, a consolidated listing requesting certificates of good standing (certificates) for each agency attorney subject to the filing requirement, and file the original individual certificates with the D.C. Office of Personnel on behalf of each attorney.
- 849.6 A subordinate agency or independent personnel authority that elects to submit a consolidated listing as specified in § 849.5 shall establish internal procedures for the compilation of the consolidated listing and every year inform each attorney subject to the filing requirement of the internal procedures. Any consolidated listing submitted to the Committee on Admissions, D.C. Court of Appeals (Court) shall include, at a minimum, the following:
- (a) The attorney's name and bar number and, if necessary, some other identifier such as the attorney's date of admission to the D.C. Bar;
- (b) A request that an individual certificate of good standing be prepared for each attorney in good standing from the names submitted in the consolidated listing; and

- (c) A request that the Court specify which attorneys, from the names submitted in the consolidated listing, are not in good standing.
- 849.7 Any consolidated listing prepared pursuant to § 849.5 shall be submitted to the Committee on Admissions, D.C. Court of Appeals, as soon after October 1 of each year as practicable, but not later than November 15 of each year.
- 849.8 Nothing in this section shall prevent an attorney subject to the filing requirement from individually applying for the certificate of good standing (certificate) from the Committee on Admissions, D.C. Court of Appeals, and filing the certificate directly with the D.C. Office of Personnel by December 15 of each year.
- 849.9 Each subordinate agency head or independent personnel authority that elects to submit a consolidated listing to the Committee on Admissions, D.C. Court of Appeals (Court) pursuant to § 849.5 shall provide every year to the Director of Personnel:
- (a) Each original individual certificate of good standing received;
 - (b) The name of each attorney who is not in good standing and any documentation from the Court to that effect; and
 - (c) A copy of the consolidated listing submitted to the Court.
- 849.10 Upon receipt of the original individual certificate of good standing (certificate) from each attorney, or subordinate agency or independent personnel authority on his or her behalf, the Director of Personnel (or his or her designee) shall:
- (a) File the original individual certificates in a place designated for that purpose; and
 - (b) In the case of an attorney who is not in compliance with the filing requirement, forward the name to the appropriate agency head.
- 849.11 Notwithstanding any other provision in this section, the Director of Personnel may establish internal procedures to identify every year each attorney as described in § 849.1 who is subject to the filing requirement and subsequently identify any attorney who did not comply with the filing requirement.
- 849.12 Failure of any attorney as described in § 849.1, either individually, or through his or her employing subordinate agency or independent personnel authority, to file the certificate of good standing with the D.C. Office of Personnel by December 15 of each year, or as specified in §§ 849.18 or 849.19, shall result in forfeiture of employment.

- 849.13 Upon written request from an attorney subject to the filing requirement, the Director of Personnel or independent personnel authority may grant a temporary waiver of the filing requirement to the attorney if compliance with the filing requirement by December 15 is inordinately difficult due to circumstances beyond his or her control or other good cause.
- 849.14 Any request for a temporary waiver of the filing requirement shall be submitted by the attorney to the Director of Personnel or independent personnel authority not later than December 1.
- 849.15 The Director of Personnel or independent personnel authority shall grant a temporary waiver of the filing requirement to an attorney who has exercised due diligence in applying to be waived in to the D.C. Bar from another jurisdiction but does not anticipate being waived in by December 15.
- 849.16 A request for temporary waiver of the filing requirement shall include all of the following:
- (a) The reason or reasons for the request;
 - (b) The date of appointment to the attorney position subject to the filing requirement;
 - (c) In the case of an attorney as described in § 849.15, the date he or she submitted application to be waived in to the D.C. Bar; and
 - (d) Any appropriate or required supporting material or documentation to substantiate the request.
- 849.17 The Director of Personnel or independent personnel authority shall promptly determine whether to grant the request for a temporary waiver of the filing requirement and notify the attorney in writing. A notification granting the request shall inform the attorney of the deadline to file prescribed in § 849.18. A notification denying the request shall inform the attorney of the following:
- (a) The reason or reasons for the denial of the request;
 - (b) That he or she has thirty (30) days from the receipt of the notification denying the request to attempt to file the certificate of good standing (certificate) with the D.C. Office of Personnel;
 - (c) That he or she shall be terminated at the end of the prescribed thirty-day (30-day) period if unable to file the certificate with the D.C. Office of Personnel within the prescribed period; and

- (d) The effective date of termination in the event that he or she is unable to file the certificate with the D.C. Office of Personnel within the prescribed period.
- 849.18 An attorney granted a temporary waiver of the filing requirement (waiver) shall file a certificate of good standing (certificate) with the Director of Personnel within thirty (30) days of being admitted to the D.C. Bar. A certificate filed pursuant to this subsection shall not be dated earlier than the date of the written request for the waiver submitted by the employee.
- 849.19 When a personnel action placing an employee in an attorney position subject to the filing requirement, such as in the case of a promotion to a grade DS-13 or equivalent, becomes effective on or after the December 15 deadline, the attorney shall file a certificate of good standing (certificate) with the D.C. Office of Personnel within thirty (30) days of the effective date of such personnel action. A certificate filed pursuant to this subsection shall not be dated earlier than the effective date of the personnel action that placed the employee in the attorney position subject to the filing requirement.
- 849.20 Upon establishing the effective date of a personnel action as described in § 849.19 and processing the action, the Director of Personnel or independent personnel authority shall promptly inform the affected employee, in writing, of the deadline to file prescribed in § 849.19.
- 849.21 Each subordinate agency or independent personnel authority shall provide a written notice of the intent to terminate employment to any covered attorney who is not in compliance with the filing requirement. The notice shall inform the attorney:
- (a) That he or she has thirty (30) days from the receipt of the notice to attempt to file the certificate of good standing (certificate) with the D.C. Office of Personnel;
 - (b) That he or she shall be terminated at the end of the prescribed thirty-day (30-day) period if unable to file the certificate with the D.C. Office of Personnel within the prescribed period; and
 - (c) The effective date of termination in the event that he or she is unable to file the certificate with the D.C. Office of Personnel within the prescribed period.
- 849.22 Each appointee to an attorney position subject to the filing requirement (requirement) shall be notified by the appropriate personnel authority at the time of hire, in writing, of the requirement and that failure to comply by December 15 of each year or as specified in §§ 849.18 and 849.19, as applicable, shall result in forfeiture of employment.

849.23 Not later than March 1 of each year after the December 15 filing deadline for the preceding year, the Director of Personnel shall publish in the *D.C. Register* the list of attorneys who have not met the filing requirement.

Section 899 is amended to add the following definitions:

Administrative hearing officer – A person whose duties, in whole or substantial part, consist of conducting or presiding over hearings in contested matters pursuant to law or regulation, or who is engaged in adjudicatory 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 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, prosecutory 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.

Subordinate agency – any agency under the direct administrative control of the Mayor, including, but not limited to, the agencies listed in § 301(q) of the CMPA (D.C. Official Code § 1-603.01(17)) (2001).

D.C. OFFICE OF PERSONNEL**NOTICE OF FINAL RULEMAKING**

The Acting Director, D.C. Office of Personnel, with the concurrence of the City Administrator, pursuant to Mayor's Order 2000-83, dated May 30, 2000, and in accordance with Subtitle B of Title VIII-B of the District of Columbia Government Comprehensive Merit Personnel Act of 1978, effective March 3, 1979 (D.C. Law 2-139), as added by § 2 of the Government Attorney Certificate of Good Standing Filing Requirement Amendment Act of 2002, effective July 24, 2002 (D.C. Law 14-182; D.C. Official Code § 1-608.81) (2003 Supp.), and Council Resolution No. 15-840, deemed approved on July 23, 2004, hereby gives notice that final rulemaking action was taken to adopt the rules. These rules amend § 915 of Chapter 9 of the *D.C. Personnel Regulations*, Excepted Service, to: change the heading of the section; modify existing subsections concerning the standards for the granting of temporary waivers of the filing requirement so that it is clear that waivers are granted by the appropriate personnel authority; expand on some of the other provisions concerning the granting of temporary waivers by adding new subsections on the subject, including a new subsection on the timing of the filing for employees granted temporary waivers; add language on the timing of the filing for employees placed in attorney positions subject to the filing requirement as a result of personnel actions effected on or after the December 15 deadline; make minor technical modifications to other subsections; and add the definition of the term "subordinate agency" to § 999. No comments were received and no changes were made to the notice of proposed rulemaking published at 51 DCR 8859 (September 10, 2004). Final rulemaking action was taken on October 14, 2004.

CHAPTER 9**EXCEPTED SERVICE**

Section 915 is amended to read as follows:

915 ATTORNEY CERTIFICATE OF GOOD STANDING FILING REQUIREMENT

915.1 The provisions of this section shall be applicable to each attorney appointed in the Excepted Service at the level of DS-13 or equivalent and above who is required to be a member of the D.C. Bar as a prerequisite of employment, and who is employed by:

(a) The Office of the Chief Financial Officer;

- (b) Any agency, independent or subordinate, and whose duties, in whole or substantial part, consist of hearing cases as an administrative law judge or as an administrative hearing officer; and
 - (c) Any independent agency excluded from the Legal Service, including the Housing Finance Agency, Pretrial Services Agency, Water and Sewer Authority, and Housing Authority.
- 915.2 Not later than December 15 of each year, or as specified in §§ 915.18 and 915.19, each attorney as described in § 915.1 shall file with the D.C. Office of Personnel a certificate of good standing from the Committee on Admissions, D.C. Court of Appeals.
- 915.3 Except as specified in §§ 915.18 and 915.19, the certificate of good standing submitted every year pursuant to this section shall be dated not earlier than October 1 and not later than December 15 of the year of submission.
- 915.4 Each subordinate agency or independent personnel authority that employs Excepted Service attorneys subject to the filing requirement shall be responsible for:
 - (a) Notifying each agency attorney of the filing requirement every year; and
 - (b) Submitting a list of agency attorneys subject to the filing requirement to the Director of Personnel every year, not later than the December 15 deadline.
- 915.5 Notwithstanding the procedures in § 915.2, each subordinate agency or independent personnel authority may elect to submit every year to the Committee on Admissions, D.C. Court of Appeals, a consolidated listing requesting certificates of good standing (certificates) for each agency attorney subject to the filing requirement, and file the original individual certificates with the D.C. Office of Personnel on behalf of each attorney.
- 915.6 A subordinate agency or independent personnel authority that elects to submit a consolidated listing as specified in § 915.5 shall establish internal procedures for the compilation of the consolidated listing and every year inform each attorney subject to the filing requirement of the internal procedures. Any consolidated listing submitted to the Committee on Admissions, D.C. Court of Appeals (Court) shall include, at a minimum, the following:
 - (a) The attorney's name and bar number and, if necessary, some other identifier such as the attorney's date of admission to the D.C. Bar;

- (b) A request that an individual certificate be prepared for each attorney in good standing from the names submitted in the consolidated listing; and
 - (c) A request that the Court specify which attorneys, from the names submitted in the consolidated listing, are not in good standing.
- 915.7 Any consolidated listing prepared pursuant to § 915.5 shall be submitted to the Committee on Admissions, D.C. Court of Appeals, as soon after October 1 of each year as practicable, but not later than November 15 of each year.
- 915.8 Nothing in this section shall prevent an attorney subject to the filing requirement from individually applying for the certificate of good standing (certificate) from the Committee on Admissions, D.C. Court of Appeals, and filing the certificate directly with the D.C. Office of Personnel by December 15 of each year.
- 915.9 Each subordinate agency head or independent personnel authority that elects to submit a consolidated listing to the Committee on Admissions, D.C. Court of Appeals (Court) pursuant to § 915.5 shall provide every year to the Director of Personnel:
 - (a) Each original individual certificate of good standing received;
 - (b) The name of each attorney who is not in good standing and any documentation from the Court to that effect; and
 - (c) A copy of the consolidated listing submitted to the Court.
- 915.10 Upon receipt of the original individual certificate of good standing (certificate) from each attorney, or subordinate agency or independent personnel authority on his or her behalf, the Director of Personnel (or his or her designee) shall:
 - (a) File the original individual certificates in a place designated for that purpose; and
 - (b) In the case of an attorney who is not in compliance with the filing requirement, forward the name to the appropriate agency head.
- 915.11 Notwithstanding any other provision in this section, the Director of Personnel may establish internal procedures to identify every year each attorney as described in § 915.1 who is subject to the filing requirement and subsequently identify any attorney who did not comply with the filing requirement.
- 915.11 Failure of any attorney as described in § 915.1, either individually, or through his or her employing subordinate agency or independent personnel authority,

to file the certificate of good standing with the D.C. Office of Personnel by December 15 of each year, or as specified in §§ 915.18 or 915.19, shall result in forfeiture of employment.

- 915.13 Upon written request from an attorney subject to the filing requirement, the Director of Personnel or independent personnel authority may grant a temporary waiver of the filing requirement to the attorney if compliance with the filing requirement by December 15 is inordinately difficult due to circumstances beyond his or her control or other good cause.
- 915.14 Any request for a temporary waiver of the filing requirement shall be submitted by the attorney to the Director of Personnel or independent personnel authority not later than December 1.
- 915.15 The Director of Personnel or independent personnel authority shall grant a temporary waiver of the filing requirement to an attorney who has exercised due diligence in applying to be waived in to the D.C. Bar from another jurisdiction but does not anticipate being waived in by December 15.
- 915.16 A request for temporary waiver of the filing requirement shall include all of the following:
- (a) The reason or reasons for the request;
 - (b) The date of appointment to the attorney position subject to the filing requirement;
 - (c) In the case of an attorney as described in § 915.15, the date he or she submitted application to be waived in to the D.C. Bar; and
 - (d) Any appropriate or required supporting material or documentation to substantiate the request.
- 915.17 The Director of Personnel or independent personnel authority shall promptly determine whether to grant the request for a temporary waiver of the filing requirement and notify the attorney in writing. A notification granting the request shall inform the attorney of the deadline to file prescribed in § 915.18. A notification denying the request shall inform the attorney of the following:
- (a) The reason or reasons for the denial of the request;
 - (b) That he or she has thirty (30) days from the receipt of the notification denying the request to attempt to file the certificate of good standing (certificate) with the D.C. Office of Personnel;

- (c) That he or she shall be terminated at the end of the prescribed thirty-day (30-day) period if unable to file the certificate with the D.C. Office of Personnel within the prescribed period; and
- (d) The effective date of termination in the event that he or she is unable to file the certificate with the D.C. Office of Personnel within the prescribed period.

- 915.18 An attorney granted a temporary waiver of the filing requirement (waiver) shall file a certificate of good standing (certificate) with the D.C. Office of Personnel within thirty (30) days of being admitted to the D.C. Bar. A certificate filed pursuant to this subsection shall not be dated earlier than the date of the written request for the waiver submitted by the employee.
- 915.19 When a personnel action placing an employee in an attorney position subject to the filing requirement, such as in the case of a promotion to a grade DS-13 or equivalent, becomes effective on or after the December 15 deadline, the attorney shall file a certificate of good standing (certificate) with the D.C. Office of Personnel within thirty (30) days of the effective date of such personnel action. A certificate filed pursuant to this subsection shall not be dated earlier than the effective date of the personnel action that placed the employee in the attorney position subject to the filing requirement.
- 915.20 Upon establishing the effective date of a personnel action as described in § 915.19 and processing the action, the Director of Personnel or independent personnel authority shall promptly inform the affected employee, in writing, of the deadline to file prescribed in § 915.19.
- 915.21 Each subordinate agency or independent personnel authority shall provide a written notice of the intent to terminate employment to any agency attorney who is not in compliance with the filing requirement (requirement), except that in the case of a denial of a request for a temporary waiver of the requirement, notification shall be accomplished as specified in § 915.17. The notice shall inform the attorney:
- (a) That he or she has thirty (30) days from the receipt of the notice to attempt to file the certificate of good standing (certificate) with the D.C. Office of Personnel;
 - (b) That he or she shall be terminated at the end of the prescribed thirty-day (30-day) period if unable to file the certificate with the D.C. Office of Personnel within the prescribed period; and
 - (c) The effective date of termination in the event that he or she is unable to file the certificate with the D.C. Office of Personnel within the prescribed period.

- 915.22 Each appointee to an attorney position subject to the filing requirement (requirement) shall be notified by the appropriate personnel authority at the time of hire, in writing, of the requirement, and that failure to comply by December 15 of each year or as specified in §§ 915.18 and 915.19, as applicable, shall result in forfeiture of employment.
- 915.23 Not later than March 1 of each year after the December 15 filing deadline for the preceding year, the Director of Personnel shall publish in the *D.C. Register* the list of attorneys who have not met the filing requirement.

Section 999 is amended to add the following definition:

Subordinate agency – any agency under the direct administrative control of the Mayor, including, but not limited to, the agencies listed in § 301(q) of the District of Columbia Government Comprehensive Merit Personnel Act of 1978, effective March 3, 1979 (D.C. Law 2-139; D.C. Official Code § 1-603.01(17)) (2001).

D.C. OFFICE OF PERSONNEL**NOTICE OF FINAL RULEMAKING**

The Acting Director, D.C. Office of Personnel, with the concurrence of the City Administrator, pursuant to Mayor's Order 2000-83, dated May 30, 2000, and in accordance with section 2007 (2) and (3) of the District of Columbia Government Comprehensive Merit Personnel Act of 1978 (CMPA), effective March 3, 1979 (D.C. Law 2-139; D.C. Official Code § 1-620.07 (2) and (3)) (2001), hereby gives notice that final rulemaking action was taken to adopt the following rules. Section 2007 (2) of the CMPA provides that the Mayor shall establish an employee health services program that shall provide for pre-employment and other physical examinations, including fitness-for-duty examinations. Accordingly, these rules amend Chapter 20 of the *D.C. Personnel Regulations*, Health, to add a new section 2049 containing the requirements for pre-employment and other physical examinations, and general medical qualifications requirements. Additionally, these rules update the provisions of section 2050, Employee Assistance Program, established pursuant to section 2007 (3) of the CMPA; and add a definitions section to the chapter. No comments were received and no changes were made to the notice of proposed rulemaking published at 51 DCR 9313 (October 1, 2004). Final rulemaking action was taken on November 3, 2004.

CHAPTER 20**HEALTH**

A new § 2049 is added to read as follows:

- 2049 PRE-EMPLOYMENT AND OTHER PHYSICAL EXAMINATIONS AND GENERAL MEDICAL QUALIFICATIONS REQUIREMENTS**
- 2049.1 The provisions of this section establish the requirements for pre-employment and other physical examinations, including fitness-for-duty examinations; and general medical qualifications requirements, pursuant to § 2007 (2) of the District of Columbia Government Comprehensive Merit Personnel Act of 1978 (CMPA), effective March 3, 1979 (D.C. Law 2-139; D.C. Official Code § 1-620.07 (2)) (2001), with adherence to the provisions of the Americans with Disabilities Act of 1990, approved July 26, 1990 (P.L. 101-336; 42 U.S.C. § 12101 *et seq.*), as amended; other federal or District laws or regulations; and equal employment opportunity considerations.
- 2049.2 Each person selected for appointment shall be physically and mentally capable of safe and satisfactory performance of the essential functions of the position for which he or she was selected.

- 2049.3 Medical determinations shall be made by physicians or practitioners, and determinations regarding job requirements and performance shall be made by supervisors and managers.
- 2049.4 To the extent inconsistent with any applicable law or regulation, the provisions of this section shall not apply to:
- (a) Police officers in the Metropolitan Police Department;
 - (b) Firefighters in the Fire and Emergency Medical Services Department; and
 - (c) Employees on disability compensation system pursuant to §§ 2301 through 2347 of the CMPA (D.C. Official Code § 1-623.01 *et seq.* (2001 & 2003 Supp.)).
- 2049.5 Personnel authorities may establish physical and mental qualifications requirements that are necessary to perform a specific job or classes of jobs, such as certain jobs in transportation, public works, or security jobs. Any physical and mental qualifications requirements established by the personnel authority pursuant to this subsection shall:
- (a) Be related to the duties and responsibilities of the specific job or classes of jobs, and consistent with business necessity.
 - (b) Be designed to ensure consideration of persons having the minimum physical ability necessary to perform the duties of the job efficiently without posing a significant risk of substantial harm to his or her health or safety, or that of others.
 - (c) List disqualifying medical conditions only in cases in which job duties require special physical capacities to safely and satisfactorily perform the duties assigned to the job.
 - (d) Be waived by the personnel authority when a determination is made that the appointee or employee is a "qualified individual with a disability," as that term is defined in § 2099.
- 2049.6 The personnel authority may require an individual who has applied for or occupies a position with established physical or mental standards or requirements for selection or retention, or established occupational or environmental standards that require medical surveillance, to report for a medical examination or evaluation as follows:
- (a) Prior to appointment or selection (including reemployment on the basis of full or partial recovery from a medical condition);
 - (b) On a regularly recurring, periodic basis; or

(c) Whenever there is a direct question about an employee's continued capacity to meet the established physical or mental standards or requirements of the position, or conditions of employment.

- 2049.7 As appropriate in the case of positions with physical or mental qualifications requirements pursuant to § 2049.5, a personnel authority may deny an applicant examination, deny an eligible appointment, or, instruct or allow the employing agency to remove an appointee, by reason of physical or mental unfitness for the position for which he or she has applied, or to which he or she has been appointed.
- 2049.8 In addition to a medical examination required pursuant to § 2049.5, an employing agency may require a medical examination because of an employee's conduct or performance on the job. Such an examination shall be ordered only upon approval by the personnel authority of a written request from the agency.
- 2049.9 A personnel authority or employing agency may offer a medical examination when an employee has made a request for medical reasons for a change in duty status, assignments, or working conditions, or any other benefit or special treatment (including reemployment on the basis of full or partial recovery from a medical condition), and the employing agency, after it has received and reviewed the employee's medical documentation, determines that it cannot grant, support, or act further on the request without verification of the clinical findings and current clinical status.
- 2049.10 If an employee wishes his or her employing agency to consider any medical condition that may contribute to his or her unacceptable performance on the job, he or she shall furnish medical documentation, as that term is defined in § 2099, of the condition. After its review of the medical documentation supplied by the employee, the employing agency may, at its discretion, offer a medical examination in accordance with this section.
- 2049.11 The medical examination process shall consist of the following:
- (a) When a personnel authority or agency orders or offers a medical examination under this section, it shall inform the applicant or employee in writing of its reasons for ordering or offering the examination, and the consequences of failure to cooperate.
 - (b) The personnel authority or agency shall designate the examining physician, but shall offer an employee or former employee an opportunity to submit medical documentation from his or her personal physician or practitioner which the agency shall review and consider, or to propose a physician or practitioner of his or her choice.
 - (c) The personnel authority or agency shall provide the examining physician or practitioner with a copy of any approved medical evaluation protocol, any

applicable medical qualifications and requirements for the position, or a detailed description of the duties of the position, including physical demands and environmental factors.

- (d) The personnel authority or agency may order a psychiatric examination (including a psychological assessment) only when the result of a current general medical examination which the agency or personnel authority has the authority to order under this section indicates no physical explanation for behavior or actions which may affect the safe and efficient performance of the individual or others.
- (e) All medical specialty examinations ordered or offered under this section shall be conducted by a medical specialist.
- (f) The employee shall pay for any medical examination conducted by a physician or practitioner he or she selected, regardless of whether the medical qualifications examination is ordered or offered by the agency or scheduled on the employee's own initiative.
- (g) An agency may authorize, under conditions prescribed by the agency, an agency-required pre-employment medical qualifications examination of an applicant to be conducted by a physician or practitioner designated by the applicant, in which case the applicant shall pay for the examination.
- (h) Each agency shall receive and maintain all medical documentation and records of examinations obtained under this section in accordance with the provisions of Chapter 31 of these regulations.
- (i) The report of an examination conducted under this section shall be made available to the applicant or employee under the provisions of Chapter 31 of these regulations.

2049.12 If, based on the review of the medical documentation, in consultation with a physician or practitioner, the personnel authority determines that an employee is temporarily disabled from performing his or her duties, the personnel authority may authorize one (1) or more of the following actions, as appropriate:

- (a) Detail;
- (b) Sick leave;
- (c) Advanced sick leave;
- (d) Leave without pay; or
- (e) Any other feasible assistance in returning the employee to full performance capacity.

- 2049.13 If, based on the review of the medical documentation, in consultation with a physician or practitioner, the personnel authority determines that the disability is permanent, the personnel authority shall do the following:
- (a) Determine whether reasonable accommodation can be made that would enable the employee to perform the essential functions of the position;
 - (b) In the event of a negative determination under § 2049.13 (a), determine if there is another position available for which the employee qualifies and in which he or she can perform satisfactorily and safely, with or without reasonable accommodation;
 - (c) In the event of a negative determination under § 2049.13 (b), explore with the employee, or his or her representative, the eligibility requirements and the advisability of filing for disability retirement or social security disability, as appropriate, and apply or assist in applying therefore; or
 - (d) In the event that the individual does not qualify for or does not apply for disability retirement or social security disability, or, if his or her application has been disapproved, the personnel authority may initiate action to terminate the employee.
- 2049.14 If, based on the review of the medical documentation, the personnel authority determines that the employee is fit, and the employee continues to be deficient in either conduct or performance, the personnel authority may take administrative action against the employee. Any action taken against a Career Service employee covered under Chapter 16 of these regulations shall be taken under the provisions therein.
- 2049.15 This section shall not apply to any situation where an employee, due to a problem or condition that adversely affects his or her overall work performance, and with his or her supervisor's approval, is engaged in a voluntary program of medical assistance through a personal physician or practitioner, the Employee Assistance Program under § 2050, or any other recognized and qualified party. In these situations, a medical examination may be offered at the employee's request, and shall be ordered only if the employee continues to perform unsatisfactorily, or poses a significant risk of substantial harm to his or her health or safety, or that of others.

Section 2050 is amended to read as follows:

2050 EMPLOYEE ASSISTANCE PROGRAM

- 2050.1 In accordance with § 2007 (3) of the CMPA (D.C. Official Code § 1-620.07 (3)) (2001), it shall be the policy of the District government to provide an Employee Assistance Program (EAP) designed to address personal problems that employees may encounter which may adversely affect their overall work performance or conduct on the job.

- 2050.2 The Director of Personnel shall administer an EAP pursuant to Mayor's Order 91-62, dated May 1, 1991.
- 2050.3 The provisions of a collective bargaining agreement shall take precedence over the provisions of this section, to the extent that there is a difference or conflict.
- 2050.4 The EAP shall provide counseling and related services to employees who are experiencing problems, including, but not limited to, the following problems or issues which may adversely affect work performance or conduct on the job:
- (a) Family and marital problems;
 - (b) Financial difficulties;
 - (c) Emotional or mental illness; and
 - (d) Substance abuse problems.
- 2050.5 Records and information on referral to, or participation in, the EAP, shall be maintained in confidence as provided in Chapter 31 of these regulations and any other applicable federal and District of Columbia laws and regulations.
- 2050.6 An employee who is experiencing problems that adversely affect his or her work performance or conduct on the job shall be encouraged to voluntarily seek assistance to resolve the problems.
- 2050.7 Supervisors and managers should, in appropriate cases, consider referring to the EAP employees who are experiencing problems which adversely affect their overall work performance or conduct on the job before taking administrative action against employees.
- 2050.8 Participation in the EAP shall not preclude the taking of a disciplinary action under Chapter 16 of these regulations, if applicable, or any other appropriate administrative action, in situations where such action is deemed appropriate. The EAP shall not be used in lieu of disciplinary actions, or any other appropriate administrative action.
- 2050.9 Any employee, other than a temporary employee or a Career Service employee serving a probationary period under Chapter 8 of these regulations shall be eligible to receive services through the EAP.
- 2050.10 The EAP shall consist of assessment, counseling, and referral services.
- 2050.11 Involvement in the EAP shall be on the basis of self-referral or agency referral.
- 2050.12 Up to two (2) hours of administrative leave may be granted to an employee to attend his or her initial EAP appointment.

- 2050.13 The services of the EAP shall be provided through contracted health care service provider(s).
- 2050.14 The cost of the initial assessment, counseling, and referral session with the EAP contractor shall be paid in full by the District government, to the extent that the session is not covered by the employee's health insurance carrier.
- 2050.15 Unless a separate program is established pursuant to the provisions of § 2050.19, participation in the EAP rather than another employee assistance program in the District government by agencies under the personnel authority of the Mayor shall be mandatory.
- 2050.16 The Director, D.C. Office of Personnel, shall establish the rates for participation in the EAP.
- 2050.17 The Director, D.C. Office of Personnel, may enter into a written agreement with other personnel authorities to provide EAP services.
- 2050.18 Each subordinate agency and independent personnel authority that participates in the EAP administered by the D.C. Office of Personnel shall designate an EAP coordinator.
- 2050.19 The Director, D.C. Office of Personnel, may authorize the establishment of other employee assistance programs in the District government, and each such program shall be consistent with the provisions of this section.

A new § 2099 is added to read as follows:

2099 DEFINITIONS

- 2099.1 For the purposes of this chapter, the following terms shall have the meaning ascribed:

Essential functions of the position – the fundamental job duties of the position that an individual with a disability holds or desires. A job function may be considered essential for any of several reasons, including but not limited to the following: the function may be essential because the reason the position exists is to perform that function; because of the limited number of employees available among whom the performance of that job function can be distributed; or the function may be highly specialized so that the incumbent in the position is hired for his or her expertise or ability to perform the particular function.

Medical condition – a health impairment that results from injury or disease or any other physical or mental impairment that may affect an individual's capacity to safely and satisfactorily perform his or her assigned duties. A "physical or mental impairment" is: (1) a physiological disorder, or condition, cosmetic disfigurement, or anatomical loss affecting one (1) or more of the following body systems: neurological, musculoskeletal, special sense organs, respiratory (including speech organs), cardiovascular, reproductive, digestive, genito-urinary, hemic and lymphatic, skin, and endocrine; or (2) Any mental or psychological disorder, such as

mental retardation, organic brain syndrome, emotional or mental illness, and specific learning disabilities.

Medical documentation or documentation of a medical condition – a statement from a licensed physician or other appropriate practitioner which provides one (1) or more of the following kinds of information:

- (a) The history of the specific medical condition(s), including references to findings from previous examinations, treatment, and responses to treatment;
- (b) Clinical findings from the most recent medical evaluation, including any of the following that have been obtained:
 - (1) Findings of physical examination;
 - (2) Results of laboratory tests including drug and alcohol screening, X-rays, echocardiograms, and other special evaluations or diagnostic procedures; and
 - (3) In the case of psychiatric disease evaluation of psychological assessment, the findings of a mental status examination and the results of psychological tests, if appropriate;
- (c) Assessment of the current clinical status and plans for future treatment;
- (d) Diagnosis;
- (e) An estimate of the expected date of full or partial recovery;
- (f) An explanation of the impact of the medical condition on the individual's capacity to carry out his or her assigned duties;
- (g) Narrative explanation of the medical basis for any conclusion that the medical condition has or has not become static or well stabilized;
- (h) Narrative explanation of the medical basis for any conclusion that duty restrictions or accommodations are or are not warranted and, if they are, an explanation of their therapeutic or risk-avoiding value; or
- (i) Narrative explanation of the medical basis for any conclusion that indicates the likelihood that the individual is, or is not, expected to suffer injury or harm with or without accommodation, by carrying out the tasks or duties of a position for which he or she is assigned or qualified.

Medical specialist – a physician who is board-certified in a medical specialty.

Physician – A licensed Doctor of Medicine or Doctor of Osteopathy, or a physician who is serving on active duty in the uniformed services and is designated by the uniformed service to conduct examinations under this chapter.

Practitioner – A person providing health services who is not a medical doctor, but who is certified by a national organization and licensed by a State to provide the service in question.

Qualified individual with a disability – an individual with a disability who satisfies the requisite skill, experience, education and other job related requirements of the employment position such individual holds or desires, and who, with or without reasonable accommodation, can perform the essential functions of such position.

Reasonable accommodation – modifications or adjustments to a job application process that enable a qualified applicant with a disability to be considered for the position such qualified applicant desires; modifications or adjustments to the work environment, or to the manner or circumstances under which the position held or desired is customarily performed, that enable a qualified individual with a disability to perform the essential functions of that position; or modifications or adjustments that enable a covered entity's employee with a disability to enjoy equal benefits and privileges of employment as are enjoyed by its other similarly situated employees without disabilities. Reasonable accommodation may include but is not limited to: making existing facilities used by employees readily accessible to and usable by individuals with disabilities; job restructuring; part-time or modified work schedules; reassignment to a vacant position; acquisition or modifications of equipment or devices; appropriate adjustment or modifications of examinations, training materials, or policies; the provision of qualified readers or interpreters; and other similar accommodations for individuals with disabilities. All of the above is contingent upon the needs of the agency. A "covered entity" is an employer, employment agency, labor organization, or joint labor management committee.

Review of medical documentation – assessment of medical documentation by, or in coordination with, a physician to ensure that the following criteria are met:

- (a) The diagnosis or clinical impression is justified in accordance with established diagnostic criteria; and
- (b) The conclusions and recommendations are consistent with generally accepted medical principles and practice.

D.C. OFFICE OF PERSONNEL**NOTICE OF FINAL RULEMAKING**

The Acting Director, D.C. Office of Personnel, with the concurrence of the City Administrator, pursuant to Mayor's Order 2000-83, dated May 30, 2000, and in accordance with Subtitle B of Title VIII-B of the District of Columbia Government Comprehensive Merit Personnel Act of 1978, effective March 3, 1979 (D.C. Law 2-139), as added by § 2 of the Government Attorney Certificate of Good Standing Filing Requirement Amendment Act of 2002, effective July 24, 2002 (D.C. Law 14-182; D.C. Official Code § 1-608.81) (2003 Supp.), and Council Resolution No. 15-841, deemed approved on July 23, 2004, hereby gives notice that final rulemaking action was taken to adopt the rules. These rules amend § 3617 of Chapter 36 of the *D.C. Personnel Regulations*, Legal Service, to: change the heading of the section; modify existing subsections concerning the standards for the granting of temporary waivers of the filing requirement so that it is clear that waivers are granted by the appropriate personnel authority; expand on some of the other provisions concerning the granting of temporary waivers by adding new subsections on the subject, including a new subsection on the timing of the filing for employees granted temporary waivers; add language on the filing provisions for employees placed in attorney positions subject to the filing requirement as a result of personnel actions effected on or after the December 15 deadline; and make minor technical modifications to other subsections. No comments were received and no changes were made to the notice of proposed rulemaking published at 51 DCR 8865 (September 10, 2004). Final rulemaking action was taken on October 14, 2004.

CHAPTER 36**LEGAL SERVICE**

Section 3617 is amended to read as follows:

3617 ATTORNEY CERTIFICATE OF GOOD STANDING FILING REQUIREMENT

- 3617.1 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, another subordinate agency or any independent agency (other than the Housing Finance Agency, Pretrial Services Agency, Water and Sewer Authority, Washington Convention Center Authority, or Housing Authority), at the level of DS-13 or equivalent and above who is required to be a member of the D.C. Bar as a prerequisite of employment.

- 3617.2 Not later than December 15 of each year, or as specified in §§ 3617.18 and 3617.19, each attorney as described in § 3617.1 shall file with the D.C. Office of Personnel a certificate of good standing from the Committee on Admissions, D.C. Court of Appeals.
- 3617.3 Except as specified in §§ 3617.18 and 3617.19, the certificate of good standing submitted every year pursuant to this section shall be dated not earlier than October 1 and not later than December 15 of the year of submission.
- 3617.4 The Attorney General for the District of Columbia (Attorney General) (or his or her designee), another subordinate agency head (in the case of an attorney not under the Attorney General's direction and control), and any independent personnel authority shall be responsible for:
- (a) Notifying each attorney as described in § 3617.1 of the filing requirement every year; and
 - (b) Submitting a list of attorneys in the Office of the Attorney General, other subordinate agencies, or independent agencies who are subject to the filing requirement to the Director of Personnel every year, not later than the December 15 deadline.
- 3617.5 Notwithstanding the procedures in § 3617.2, the Attorney General (or his or her designee), another subordinate agency head (in the case of an attorney not under the Attorney General's direction and control), and any independent personnel authority, may elect to submit every year to the Committee on Admissions, D.C. Court of Appeals, a consolidated listing requesting certificates of good standing (certificates) for each attorney subject to the filing requirement who is employed in the Office of the Attorney General for the District of Columbia, another subordinate agency, or an independent agency, and file the original individual certificates with the D.C. Office of Personnel on behalf of each attorney.
- 3617.6 The Attorney General (or his or her designee), another subordinate agency head (in the case of an attorney not under the Attorney General's direction and control), and any independent personnel authority, shall establish internal procedures for the compilation of the consolidated listing pursuant to § 3617.5, and every year inform each attorney subject to the filing requirement of the internal procedures. Any consolidated listing submitted to the Committee on Admissions, D.C. Court of Appeals (Court), shall include, at a minimum, the following:
- (a) The attorney's name and bar number and, if necessary, some other identifier such as the attorney's date of admission to the D.C. Bar;

- (b) A request that an individual certificate of good standing be prepared for each attorney in good standing from the names submitted in the consolidated listing; and
 - (c) A request that the Court specify which attorneys, from the names submitted in the consolidated listing, are not in good standing.
- 3617.7 Any consolidated listing prepared pursuant to § 3617.5 shall be submitted to the Committee on Admissions, D.C. Court of Appeals, as soon after October 1 of each year as practicable, but not later than November 15 of each year.
- 3617.8 Nothing in this section shall prevent an attorney subject to the filing requirement from individually applying for the certificate of good standing (certificate) from the Committee on Admissions, D.C. Court of Appeals, and filing the certificate directly with the D.C. Office of Personnel by December 15 of each year.
- 3617.9 If the Attorney General (or his or her designee), another subordinate agency head (in the case of an attorney not under the Attorney General's direction and control), or any independent personnel authority, elects to submit a consolidated listing to the Committee on Admissions, D.C. Court of Appeals (Court) pursuant to § 3617.5, the Attorney General (or his or her designee), other subordinate agency head, or independent personnel authority, shall provide every year to the Director of Personnel:
- (a) Each original individual certificate of good standing received;
 - (b) The name of each attorney who is not in good standing and any documentation from the Court to that effect; and
 - (c) A copy of the consolidated listing submitted to the Court.
- 3617.10 Upon receipt of the original individual certificate of good standing (certificate) from each attorney, or the Attorney General, other subordinate agency head, or independent personnel authority on his or her behalf, the Director of Personnel (or his or her designee) shall:
- (a) File the original individual certificates in a place designated for that purpose; and
 - (b) In the case of an attorney who is not in compliance with the filing requirement, forward the name to the appropriate agency head.
- 3617.11 Notwithstanding any other provision in this section, the Director of Personnel may establish internal procedures to identify every year each attorney as

described in § 3617.1 who is subject to the filing requirement and subsequently identify any attorney who did not comply with the filing requirement.

- 3617.12 Failure of any attorney as described in § 3617.1, either individually or through the Office of the Attorney General for the District of Columbia, other subordinate agency head, or independent personnel authority, to file the certificate of good standing with the D.C. Office of Personnel by December 15 of each year, or as specified in §§ 3617.18 or 3617.19, shall result in forfeiture of employment.
- 3617.13 Upon written request from an attorney subject to the filing requirement, the Director of Personnel or independent personnel authority may grant a temporary waiver of the filing requirement to the attorney if compliance with the filing requirement by December 15 is inordinately difficult due to circumstances beyond his or her control or other good cause.
- 3617.14 Any request for a temporary waiver of the filing requirement shall be submitted by the attorney to the Director of Personnel or independent personnel authority not later than December 1.
- 3617.15 The Director of Personnel or independent personnel authority shall grant a temporary waiver of the filing requirement to an attorney who has exercised due diligence in applying to be waived in to the D.C. Bar from another jurisdiction but does not anticipate being waived in by December 15.
- 3617.16 A request for temporary waiver of the filing requirement shall include all of the following:
- (a) The reason or reasons for the request;
 - (b) The date of the appointment to the attorney position subject to the filing requirement;
 - (c) In the case of an attorney as described in § 3617.15, the date in which he or she submitted application to be waived in to the D.C. Bar; and
 - (d) Any appropriate or required supporting material or documentation to substantiate the request.
- 3617.17 The Director of Personnel or independent personnel authority shall promptly determine whether to grant the request for a temporary waiver of the filing requirement and notify the attorney in writing. A notification granting the request shall inform the attorney of the deadline to file prescribed in

§ 3617.18. A notification denying the request shall inform the attorney of the following:

- (a) The reason or reasons for the denial of the request;
- (b) That he or she has thirty (30) days from the receipt of the notification denying the request to attempt to file the certificate of good standing (certificate) with the D.C. Office of Personnel;
- (c) That he or she shall be terminated at the end of the prescribed thirty-day (30-day) period if unable to file the certificate with the D.C. Office of Personnel within the prescribed period; and
- (d) The effective date of termination in the event that he or she is unable to file the certificate with the D.C. Office of Personnel within the prescribed period.

- 3617.18 An attorney granted a temporary waiver of the filing requirement (waiver) shall file a certificate of good standing (certificate) with the D.C. Office of Personnel within thirty (30) days of being admitted to the D.C. Bar. A certificate filed pursuant to this subsection shall not be dated earlier than the date of the written request for the waiver submitted by the employee.
- 3617.19 When the effective date of a personnel action to place an attorney in a position subject to the filing requirement, such as in the case of a promotion to a grade DS-13 or equivalent, becomes effective on or after the December 15 deadline, the attorney shall file a certificate of good standing (certificate) with the D.C. Office of Personnel within thirty (30) days of the effective date of such personnel action. A certificate filed pursuant to this subsection shall not be dated earlier than the effective date of the personnel action that placed the employee in the attorney position subject to the filing requirement.
- 3617.20 Upon establishing the effective date of a personnel action as described in § 3617.19 and processing the action, the Director of Personnel or independent personnel authority shall promptly inform the affected employee, in writing, of the deadline to file prescribed in § 3617.19, and of the subsequent annual deadline prescribed in § 3617.2.
- 3617.21 The Attorney General, every other subordinate agency head, and every independent personnel authority shall provide a written notice of the intent to terminate employment to any agency attorney who is not in compliance with the filing requirement (requirement), except that in the case of a denial of a request for a temporary waiver of the requirement, notification shall be accomplished as specified in § 3617.17. The notice shall inform the attorney:

- (a) That he or she has thirty (30) days from the receipt of the notice to attempt to file the certificate of good standing (certificate) with the D.C. Office of Personnel;
- (b) That he or she shall be terminated at the end of the prescribed thirty-day (30-day) period if unable to file the certificate with the D.C. Office of Personnel within the prescribed period; and
- (c) The effective date of termination in the event that he or she is unable to file the certificate with the D.C. Office of Personnel within the prescribed period.

3617.22 Each appointee to an attorney position subject to the filing requirement (requirement) shall be notified by the appropriate personnel authority at the time of hire, in writing, of the requirement, and that failure to comply by December 15 of each year or as specified in §§ 3617.18 and 3617.19, as applicable, shall result in forfeiture of employment.

3617.23 Not later than March 1 of each year after the December 15 filing deadline for the preceding year, the Director of Personnel shall publish in the *D.C. Register* the list of attorneys who have not met the filing requirement.