

OFFICE OF THE CORPORATION COUNSEL

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, D.C. Official Code § 1-608.61 (2001), the Corporation Counsel hereby gives notice of his 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 to allow the Corporation Counsel the option of appointing two or more Evaluation Panels to review draft performance evaluations for approximately 300 Legal Service line attorneys for FY 2003. Legal Service supervisors are required to complete these evaluations by October 8, 2003. Currently, Chapter 36 provides for the appointment of only one Evaluation Panel of three senior attorneys to perform this important function. The function must be completed by early November, in order to assure enough time for other required reviews and processes -- including Corporation Counsel review, comment, and approval of evaluations; discussion of the approved evaluations between the raters and the attorneys evaluated; appeals by such attorneys; and disposition of the appeals by the Corporation Counsel -- before the first full pay period in January 2004. Annual performance ratings are used to adjust, up or down, the Attorney Retention Allowance ("ARA"), which is a substantial component of the pay of Legal Service attorneys. The law requires these annual adjustments to be made effective the first full pay period in January of each year. Experience during the three years since Chapter 36 was adopted shows that one Evaluation Panel is unlikely to be able to complete its work, including the return of many draft evaluations for revision, followed by additional review, in time to permit any required ARA adjustments to be completed by the first full pay period in January. To ensure timely adjustment of ARAs by the first full pay period in January 2004, it is imperative that the Corporation Counsel be able to appoint at least two Evaluation Panels on or before October 8, 2003. Thus, changes to Chapter 36, authorizing the Corporation Counsel to make such appointments, need to be adopted immediately.

These emergency rules were adopted on October 1, 2003 and will remain effective for 120 days, or until publication of the final rules in the D.C. Register, whichever occurs first. The Corporation Counsel hereby gives notice of his 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 as follows:

Subsections 3605.5, 3605.6, and 3605.7 of section 3605 (Evaluation of Performance -- Office of the Corporation Counsel Line Attorneys) are amended to read as follows:

3605.5 Beginning with the rating period 2000-2001, the Corporation Counsel shall select a three (3) member Evaluation Panel of attorneys at the DS-15 level or above.

Beginning with the rating period 2002-2003, the Corporation Counsel shall select at least one, and may select two or more, three (3) member Evaluation Panels of attorneys at the DS-15 grade or above.

- 3605.6 The Evaluation Panel or Panels shall collectively review the evaluations of all line attorneys to assure that the evaluations comply with this Chapter and that performance standards are being applied consistently throughout the Office. When two (2) or more Panels have been appointed, each Panel may review only a proportionate share of all the evaluations submitted. The Evaluation Panel or Panels shall complete their review and make any recommendations for changes to the Corporation Counsel within twenty (20) days of receipt of the evaluations.
- 3605.7 As soon as practicable after the receipt of the recommendations of the Panel or Panels, the Corporation Counsel shall complete his or her review. In reviewing evaluations of line attorneys, the Corporation Counsel 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.

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 409, Washington, D.C. 20004. Copies of these rules may be obtained at the address stated above.