PART I
D.C. PERSONNEL REGULATIONS

CHAPTER 37
APPOINTMENT, REAPPOINTMENT, DISCIPLINE AND REMOVAL OF ADMINISTRATIVE LAW JUDGES BY THE COMMISSION ON SELECTION AND TENURE OF ADMINISTRATIVE LAW JUDGES

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DISTRICT OF COLUMBIA
OFFICE OF THE DEPUTY MAYOR FOR PUBLIC SAFETY AND JUSTICE

NOTICE OF FINAL RULEMAKING

The Acting Deputy Mayor for Public Safety and Justice, pursuant to the authority set forth in section 14(a) of the Office of Administrative Hearings Establishment Act of 2001 (the "Act"), effective March 6, 2002 (D.C. Law 14-76; D.C. Official Code § 2-1831.11(a) (2002 Supp.)), Mayor's Order 2003-53 (50 DCR 4290 (May 2, 2003)), Mayor's Order 2004-98 (June 9, 2004), and § 6(c) of the District of Columbia Administrative Procedure Act, approved October 21, 1968 (82 Stat. 1206; D.C. Official Code § 2-505(c) (2001 ed.)), hereby gives notice of the adoption of a new Chapter 37 to Title 6 of the District of Columbia Municipal Regulations (DCMR). These rules prescribe standards and procedures for the operations of the Commission on the Selection and Tenure of Administrative Law Judges pertaining to the appointment, reappointment, discipline, removal and qualifications of Administrative Law Judges in the Office of Administrative Hearings established by the Act.

A notice of proposed rulemaking was published in the *D.C. Register* (50 DCR 8619) on October 10, 2003. The rules were revised in response to comments received, and the revised rules were proposed by a subsequent notice published in the *D.C. Register* (50 DCR 10829) on December 19, 2003.

On January 26, 2004, the revised proposed rules were transmitted to the Council, pursuant to D.C. Official Code § 2-1831.11(a), for a 45-day Council review period, after which the rules were to be deemed approved, if not disapproved by resolution within the 45-day review period. The review period has expired, and the Council did not disapprove the rules within the review period. Therefore, the revised proposed rules are now deemed approved pursuant to D.C. Official Code § 2-1831.11(a). Comments to the revised proposed rules were received, but based on those comments, no changes were made to the revised proposed rules as published in the *D.C. Register* (50 DCR 10829) on December 19, 2003 and as deemed approved by the Council.

The final rules were adopted on July 2, 2004 and will become effective upon publication of this notice in the *D.C. Register*.

Title 6 DCMR is amended by adding a new Chapter 37 to read as follows:

CHAPTER 37

APPOINTMENT, REAPPOINTMENT, DISCIPLINE AND REMOVAL OF ADMINISTRATIVE LAW JUDGES BY THE COMMISSION ON SELECTION AND TENURE OF ADMINISTRATIVE LAW JUDGES

3700 SCOPE OF THIS CHAPTER

3700.1 This Chapter establishes standards and procedures for the appointment, reappointment, discipline, removal and qualifications of Administrative Law

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Judges in the Office of Administrative Hearings who hold office pursuant to section 11 of the Act, D.C. Official Code § 2-1831.09.

3700.2 This Chapter does not apply to the appointment, reappointment, discipline or removal of a Chief Administrative Law Judge or to a Chief Administrative Law Judge's assumption of a position as a Senior Administrative Law Judge pursuant to sections 7(d) and 7(e) of the Act (D.C. Official Code § 2-1831.05(d) and (e)). In accordance with section 7(e) of the Act, this Chapter does apply to the reappointment of any Senior Administrative Law Judge to any subsequent ten-year term and to the discipline or removal of any Senior Administrative Law Judge at any time.

3700.3 This Chapter does not apply to the appointment, reappointment, discipline or removal of any employee of the Office other than those set forth in sections 3700.1 and 3700.2.

3701 APPOINTMENT OF PERSONS OTHER THAN HEARING OFFICERS TO AN INITIAL TWO-YEAR TERM AS ADMINISTRATIVE LAW JUDGES

3701.1 Administrative Law Judges, other than hearing officers seeking an appointment authorized by section 11(e) of the Act (D.C. Official Code § 2-1831.08(e)), shall be appointed to an initial two-year term in the manner prescribed in this section.

3701.2 The Commission shall have final authority to appoint Administrative Law Judges to an initial two-year term, pursuant to sections 9(b) and 11(c) of the Act (D.C. Official Code §§ 2-1831.06(b) and 2-1831.08 (c)).

3701.3 The Commission shall not appoint any person as an Administrative Law Judge who does not satisfy the qualifications prescribed in section 3703 or other applicable law.

3701.4 All vacant Administrative Law Judge positions shall be advertised in a portion of a daily or weekly periodical that is likely to be seen by highly qualified public and private sector attorneys in the District of Columbia who are seeking or considering positions as attorneys or Administrative Law Judges in the District of Columbia Government, except for:

(a) Positions to be filled by persons covered by section 11(e) of the Act, (D.C. Official Code § 2-1831.08(e)); and

(b) Positions open only to Administrative Law Judges already appointed pursuant to this Chapter.

3701.5 In considering appointments subject to this section, the Commission may be assisted by an initial review panel appointed in conformity with sections 3701.7 to 3701.16. Any initial review panel shall follow the procedures set forth in sections 3701.17 to 3701.24, and, if it uses an initial review panel, the Commission shall follow the procedures set forth in sections 3701.25 to 3701.26.

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Alternatively, the Commission may proceed in any other manner consistent with the Due Process Clause of the Fifth Amendment to the United States Constitution, but all appointments must be approved by a majority of the voting members of the Commission.

3701.6 Neither the Commission nor any initial review panel shall discriminate in any manner prohibited by the Constitution or by federal or District of Columbia law.

3701.7 An initial review panel shall consist of at least five and no more than seven members.

3701.8 The Chief Administrative Law Judge shall be a member of every initial review panel, or may designate an Administrative Law Judge to act for him or her on any initial review panel.

3701.9 Upon request, any member of the Commission may be a member of an initial review panel.

3701.10 Other members of an initial review panel may be Administrative Law Judges, members of the District of Columbia Bar who are familiar with trial-level litigation (including members in private practice, in government service or in teaching positions), non-lawyer members of the public experienced in issues likely to come before the Office, and non-lawyer senior management officials of agencies whose cases are adjudicated by the Office.

3701.11 No person may serve as a member of an initial review panel if he or she is personally representing a party in any matter pending before the Office. In addition, any person who serves on an initial review panel may not appear as an attorney or otherwise participate in any professional or representative capacity in any matter pending before the Office until one year after the completion of his or her service on the initial review panel. This subsection does not prohibit any Administrative Law Judge or any other employee of the Office from performing his or her assigned duties.

3701.12 **[RESERVED]**

3701.13 If one or more vacancies exist, and an initial review panel is to be used, the Chief Administrative Law Judge shall file with the Commission a list of proposed members of an initial review panel for a specific vacancy or vacancies. The Chief Administrative Law Judge shall specify the number of vacancies for which each individual review panel is to be formed.

3701.14 Each person named in the list submitted by the Chief Administrative Law Judge may become a member of an initial review panel if a majority of the voting members of the Commission approves such person.

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3701.15 Any voting member of the Commission who disapproves of any proposed member of an initial review panel shall file a written statement to that effect with the Commission within ten days of the filing of the list with the Commission.

3701.16 Any person who has not been disapproved by a majority of the voting members of the Commission within fifteen (15) days of the filing of his or her name with the Commission shall be deemed to be approved by the Commission as a member of an initial review panel.

3701.17 An initial review panel shall review the applications of all persons for the vacancy or vacancies for which the panel has been formed.

3701.18 Based upon the applicants' written submissions, the initial review panel shall select the most highly qualified applicants from the group for interviews.

3701.19 An initial review panel may conduct one or more rounds of interviews. A majority of the members of each initial review panel shall be present for an interview of any applicant. If an initial review panel member is not present for a final round interview of any applicant, he or she may not vote or otherwise participate in the initial review panel's decision to forward applications to the Commission pursuant to sections 3701.20 through 3701.24, but he or she may participate in the deliberations of the individual review panel leading to that decision.

3701.20 For each vacancy for which it was formed, an initial review panel may forward to the Commission the applications of one or more applicants whom it determines to be highly qualified to serve as an Administrative Law Judge.

3701.21 **[RESERVED]**

3701.22 In deciding which applications, if any, should be forwarded to the Commission, an initial review panel shall consider the candidates' legal knowledge, judgment, analytical skills, the amount and the quality of their experience in the practice of law, their judicial temperament and character, their case management skills, and their ability to contribute to the mission of OAH.

3701.23 An initial review panel shall not forward to the Commission the application of any candidate who does not satisfy the qualifications prescribed in the Act and in section 3703.

3701.24 An initial review panel shall not forward to the Commission the application of any applicant who fails to submit:

(a) A certificate of good standing, issued no earlier than thirty (30) days before such submission, from the appropriate court of every jurisdiction in the United States to whose Bar the applicant has been admitted, demonstrating that the applicant is a member in good standing of such

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Bar, except that no such certificate from any federal court is necessary; and

(b) A certification, issued no earlier than thirty (30) days before such submission, from the Bar Counsel, Grievance Committee or similar office in each jurisdiction described in subsection (a) stating whether there are or have been any disciplinary complaints against the applicant and whether any discipline has been imposed upon the applicant.

3701.25 The Commission shall consider all applications forwarded to it by an initial review panel. The Commission shall interview all candidates whose names are forwarded by an initial review panel and may interview any other qualified candidate upon the vote of a majority of the voting members. At least two voting members of the Commission shall attend any interview of an applicant.

3701.26 For any vacancy, the Commission may appoint a candidate from among the candidates it has interviewed for that vacancy. In making its decision, the Commission shall evaluate the candidates' legal knowledge, judgment, analytical skills, the amount and the quality of their experience in the practice of law, their judicial temperament and character, their case management skills, and their ability to contribute to the mission of OAH. The Commission may decide not to appoint any of the candidates forwarded to it by an initial review panel.

3701.27 For a candidate to be appointed, a majority of the voting members of the Commission must vote in favor of the appointment.

3701.28 Any person appointed by the Commission to an initial two-year term pursuant to this section shall enter onto duty no later than 60 days after his or her receipt of written notice of the appointment, and his or her term shall commence on the date of his or her entry onto duty.

3701.29 For good cause, and upon request of the appointee, the Commission may extend the 60-day deadline established in section 3701.28 for a single period of 30 days.

3701.30 If a person appointed by the Commission does not enter onto duty within the deadline provided in sections 3701.28 and 3701.29, the appointment shall expire and the appointee's position shall be deemed to be vacant.

3702 APPOINTMENT OF HEARING OFFICERS TO AN INITIAL TWO-YEAR TERM AS ADMINISTRATIVE LAW JUDGES

3702.1 A hearing officer serving in an agency to which the Act becomes applicable and who is eligible for an appointment as an Administrative Law Judge pursuant to section 11(e) of the Act (D.C. Official Code § 2-1831.08(e)) may be appointed by the Commission to an initial two-year term as an Administrative Law Judge only in compliance with this section.

3702.2 No person who has been serving as a hearing officer for less than one year before the Act becomes applicable to his or her agency shall be eligible for appointment

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as an Administrative Law Judge pursuant to section 11(e) of the Act (D.C. Official Code § 2-1831.08(e)) unless his or her employment as a hearing officer has been authorized in writing by the Chief Administrative Law Judge or his or her designee.

3702.3 Any hearing officer who does not satisfy the requirements of section 3702.2 is eligible to be considered for appointment as an Administrative Law Judge pursuant to section 11(b) of the Act (D.C. Official Code § 1831.08 (b) and section 3701 of these rules.

3702.4 At least sixty days before the Act becomes applicable to his or her agency, a hearing officer who wishes to be appointed to an initial two-year term as an Administrative Law Judge pursuant to section 11(e) of the Act, D.C. Official Code § 2-1831.08(e), shall file with the Chief Administrative Law Judge a request for such appointment.

3702.5 The Chief Administrative Law Judge may prescribe a form for the submission of such a request. The form may require information reasonably necessary to show that the hearing officer meets the qualifications set forth in the Act or in this Chapter.

3702.6 Each request shall demonstrate that the hearing officer is qualified for appointment as an Administrative Law Judge pursuant to section 11(e) of the Act, D.C. Official Code § 2-1831.08(e). The request shall contain:

(a) A description of the hearing officer's current position in a covered agency and the amount of time he or she has been so serving;

(b) A certificate of good standing, issued no earlier than thirty (30) days before submission of the request, from the appropriate court in every jurisdiction in the United States to whose Bar the hearing officer has been admitted, demonstrating that the hearing officer is a member in good standing of such Bar, except that no such certificate from any federal court is necessary;

(c) A certification, issued no earlier than thirty (30) days before submission of the request, from the Bar Counsel, Grievance Committee or similar authority in each jurisdiction described in subsection (b) stating whether there are or have been any disciplinary complaints against the hearing officer and whether any discipline has been imposed upon the hearing officer.

(d) A description of the hearing officer's experience in the practice of law, showing that the hearing officer has at least five years experience in the practice of law, including experience with court, administrative or arbitration litigation.

3702.7 The Chief Administrative Law Judge shall forward all timely requests for appointment to the Commission.

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3702.8 The Commission shall examine each hearing officer's request and shall conduct, or direct the Chief Administrative Law Judge or any person designated by the Chief Administrative Law Judge to conduct, inquiries that it deems sufficient to verify the information submitted by a hearing officer and to verify that the hearing officer satisfies the standards prescribed in section 3703.

3702.9 If the Commission finds that the hearing officer satisfies the qualifications set forth in this section 3702 and in section 3703, it shall appoint the hearing officer to an initial two-year term as an Administrative Law Judge. A majority of the voting members of the Commission must approve all such appointments.

3702.10 The term of a hearing officer appointed as an Administrative Law Judge pursuant to this section shall commence on the day that the Act becomes applicable to cases heard by the agency by which he or she is employed when the request is submitted to the Chief Administrative Law Judge.

3702.11 For a former hearing officer to remain qualified for his or her appointment as an Administrative Law Judge, he or she must pass a qualifying examination approved by the Commission pursuant to section 3704 of this Chapter, either before the appointment takes effect, or within 18 months of the appointment's effective date.

3702.12 If a qualifying examination approved by the Commission has not been offered and graded at least three times between the date of submission of a hearing officer's request for appointment and 18 months after the effective date of his or her appointment, the deadline for a hearing officer to remain qualified by passing the qualifying examination shall be extended until such an examination has been offered and graded three times after the date of submission of the hearing officer's request for appointment.

3703 QUALIFICATIONS OF ADMINISTRATIVE LAW JUDGES

3703.1 An Administrative Law Judge must be a member of the District of Columbia Bar at the time of his or her appointment, and must remain a member of the District of Columbia Bar throughout his or her tenure as an Administrative Law Judge.

3703.2 At the time of appointment, an Administrative Law Judge must have at least five years' experience in the practice of law, including substantial litigation experience in court, in an administrative agency or in arbitration.

3703.3 An Administrative Law Judge appointed to a position at Grade 15 or below is subject to the residency requirements applicable to attorneys pursuant to section 906(c) of the District of Columbia Government Comprehensive Merit Personnel Act of 1978, effective March 3, 1979, D.C. Law 2-139, as amended (D.C. Official Code § 1-609.06(c)).

3703.4 An Administrative Law Judge appointed to a position at a level higher than Grade 15 shall be subject to the residency requirements placed on members of the Senior

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Executive Attorney Service pursuant to section 859 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 § 1-608.59).

3703.5 An Administrative Law Judge shall possess judicial temperament, judgment, expertise, experience and analytical and other skills necessary and desirable for an Administrative Law Judge.

3703.6 An Administrative Law Judge shall be a person of good moral character. Without limiting the foregoing, no person may be appointed or serve as an Administrative Law Judge who:

(a) Has been convicted (on any plea) of a felony at any time;

(b) Has been convicted (on any plea) of a misdemeanor involving moral turpitude within the ten (10) years preceding the date of his or her appointment; or

(c) Has been convicted (on any plea) of a misdemeanor involving moral turpitude while serving as a hearing officer, without regard to the date of conviction.

This section shall not preclude the appointment or service as an Administrative Law Judge of any person who has been pardoned for any offense described in subsections (a) through (c). For purposes of subsections (b) and (c), a misdemeanor is one involving moral turpitude if it would be considered an offense involving moral turpitude within the meaning of D.C. Official Code § 11-2503(a).

3703.7 The Commission may seek any information concerning an applicant that will assist it in determining whether the applicant satisfies any of the standards of this Chapter.

3703.8 No person may be appointed or re-appointed to any term as an Administrative Law Judge who fails to provide any necessary release or fails to cooperate in any other way with the efforts of the Commission or any of its designees to obtain any of the information described in section 3703.7.

3703.9 Except as provided in sections 3702.11 and 3702.12, no person may be appointed as an Administrative Law Judge unless that person has obtained a passing grade on a qualifying examination devised and administered in accordance with section 3704.

3704 QUALIFYING EXAMINATION

3704.1 No qualifying examination may be administered unless it has been approved by the Commission as provided in this section.

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3704.2 Except as provided in section 3702.11, only applicants whom an initial review panel decides to interview in a final round interview may take the qualifying examination. If the Commission decides, pursuant to section 3701.5 of this Chapter, not to use an initial review panel, it shall decide, in its sole discretion, which applicants for a particular position shall be permitted to take the qualifying examination.

3704.3 The Chief Administrative Law Judge shall propose questions, model answers and grading standards for each qualifying examination.

3704.4 The Chief Administrative Law Judge shall submit each proposed version of the qualifying examination, including the questions, the model answers and the grading standards to the Commission for its approval. No examination may be used unless a majority of the voting members approves the questions, the model answers and the grading standards.

3704.5 In preparing any version of a qualifying examination, the Chief Administrative Law Judge may seek assistance from law school faculty members, Administrative Law Judges or others with suitable knowledge and experience who will not be taking that version of the examination.

3704.6 No version of the qualifying examination may be administered more than once.

3704.7 No person who has assisted the Chief Administrative Law Judge in preparing a specific qualifying examination may sit for the examination for which he or she has provided such assistance.

3704.8 Except as authorized by this Section 3704, no person shall reveal the contents of an examination to any other person before administration of that examination is completed.

3704.9 The examination shall test analytical writing skills, case management skills, and legal reasoning skills.

3704.10 The examination shall be graded on a pass/fail basis by members of an initial review panel appointed pursuant to sections 3701.7 - 3701.16 or by attorney graders approved by the Commission in the manner described in sections 3701.7 - 3701.16.

3704.11 The examination shall be graded anonymously, and graders shall not seek or receive any information about the identity of a person who submits a particular examination before the grading process is complete. If any person provides or attempts to provide such information to a grader, the grader shall report it in writing to the Chairperson of the Commission and the Chief Administrative Law Judge.

3704.12 Each grader shall grade each examination independently. For an examination to receive a passing grade, at least fifty percent (50%) of the assigned graders must award it a passing grade.

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3704.13 The examination shall be graded non-competitively, and neither the initial review panel nor the Commission shall use the examination to rank applicants in any way, other than to distinguish those who pass from those who fail.

3704.14 The decision of the graders shall be final, and neither the Commission nor an initial review panel may review the graders' decision.

3704.15 In forwarding applications to the Commission, the initial review panel shall inform the Commission only that an applicant has passed the examination, and shall give no other information about the applicant's performance on the examination.

3704.16 Applicants will be informed whether or not they passed the examination, but neither the initial review panel nor the Commission shall disclose any other information about an applicant's performance on an examination.

3704.17 All examination papers shall be destroyed one year after they are graded.

3704.18 If an applicant receives a passing grade on any qualifying examination but is not appointed as an Administrative Law Judge, such applicant shall be deemed to have satisfied the requirement of section 3703.9 for any vacancy arising within three years of the date that he or she sat for the examination.

3704.19 Whenever hearing officers will be eligible to be appointed as Administrative Law Judges pursuant to section 11(e) of the Act (D.C. Official Code § 2-1831.08(e)), the Chief Administrative Law Judge shall use his or her best efforts to arrange for the administration of at least three qualifying examinations during the period between four (4) months before and eighteen (18) months after the date when the Office begins hearing cases from such officers' agency.

3705 REAPPOINTMENT OF ADMINISTRATIVE LAW JUDGES

3705.1 No earlier than nine (9) months before the expiration of an Administrative Law Judge's term of office, any Administrative Law Judge seeking reappointment to a new term (including a Senior Administrative Law Judge) shall file a statement with the Commission and with the Chief Administrative Law Judge requesting reappointment.

3705.2 If such a statement is not filed by any Administrative Law Judge at least six (6) months before the expiration of his or her term, a vacancy shall result from the expiration of the term of office and shall be filled by appointment as provided in section 3702.

3705.3 The statement may review significant aspects of the Administrative Law Judge's activities that the Administrative Law Judge believes will be helpful to the Commission in the evaluation of his or her candidacy for reappointment.

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3705.4 For every Administrative Law Judge who files a statement in accordance with section 3705.1, the Chief Administrative Law Judge shall prepare a record for the Commission's review. That record shall contain:

(a) Copies of performance evaluations of the Administrative Law Judge, as set forth below:

(1) For Administrative Law Judges completing a ten-year term, the record shall contain performance evaluations for at least the previous five years;

(2) For Administrative Law Judges completing a two-year term, the record shall contain all performance evaluations during his or her term;

(b) At least one year of decisions authored by the Administrative Law Judge;

(c) Copies of any other decisions that the Chief Administrative Law Judge deems relevant to the determination of the Administrative Law Judge's fitness for reappointment;

(d) Data on how the Administrative Law Judge has met applicable objective performance standards during his or her term;

(e) The Chief Administrative Law Judge's recommendation, with a statement of reasons, as to whether the Administrative Law Judge should be reappointed; and

(f) Any other information requested by one or more members of the Commission.

3705.5 The Chief Administrative Law Judge shall file the record required by section 3705.4 with the Clerk within 120 days of the filing of a statement by the Administrative Law Judge in accordance with section 3705.1.

3705.6 The Chief Administrative Law Judge shall serve a copy of the record upon the Administrative Law Judge no later than the same day that the record is filed with the Commission.

3705.7 As soon as practicable after receiving a statement of intent to seek reappointment from an Administrative Law Judge, the Commission shall publish a notice in the District of Columbia Register that the Administrative Law Judge is seeking reappointment and that the Commission is soliciting the views of litigants, attorneys and members of the public on whether the Administrative Law Judge should be reappointed.

3705.8 The notice required by section 3705.7 shall call for comments to be submitted to the Commission within thirty (30) calendar days of its publication.

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3705.9 The Commission shall provide copies of any comments it receives to the Administrative Law Judge, and shall redact the names and other information that identifies the person submitting the comments.

3705.10 Within ten (10) calendar days of service of the record or of the Commission's sending of public comments to the Administrative Law Judge, whichever is later, an Administrative Law Judge who wishes to respond to the Chief Administrative Law Judge's recommendation or to any public comments or to add information to the record that he or she believes should be considered with respect to his or her reappointment shall file with the Clerk a notice of intent to supplement the record. The Administrative Law Judge may file such a notice regardless of whether he or she files a request to appear before the Commission. The notice shall describe generally the additional information that the Administrative Law Judge intends to add to the record and shall be promptly transmitted to the members of the Commission by the Clerk.

3705.11 Within ten (10) calendar days of service of the record, or of the Commission's sending of public comments to the Administrative Law Judge, whichever is later, an Administrative Law Judge who wishes to appear before the Commission to be heard in person concerning his or her reappointment shall file with the Clerk a request to appear. The Administrative Law Judge may file such a request regardless of whether he or she has filed a notice of intent to supplement the record. The request shall be promptly transmitted to the members of the Commission by the Clerk.

3705.12 If the Administrative Law Judge does not timely file a notice of intent to supplement the record or a request to appear, the Commission may proceed to consider the application for reappointment based solely on the Administrative Law Judge's written statement, the record filed by the Chief Administrative Law Judge and any public comments.

3705.13 If an Administrative Law Judge files a notice of intent to supplement the record, he or she must file with the Commission and the Chief Administrative Law Judge any response to the Chief Administrative Law Judge's recommendation and any additional information that he or she wishes the Commission to consider within twenty (20) calendar days of filing the notice of intent to supplement.

3705.14 If an Administrative Law Judge fails to supplement the record within the deadline established in section 3705.13, the Commission may proceed to consider the reappointment without waiting for the filing of any supplement to the record by the Administrative Law Judge.

3705.15 If an Administrative Law Judge has filed a request to appear before the Commission, the Commission may not vote on his or her reappointment or issue a notice of grounds for possible denial of reappointment unless it affords the Administrative Law Judge an opportunity to appear before it.

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3705.16 The Commission may request that an Administrative Law Judge appear personally or respond in writing to any questions or concerns it may have.

3705.17 No Administrative Law Judge may be denied reappointment unless the Commission first serves upon him or her a notice of grounds for possible denial of reappointment. Any such notice shall specify the reasons why the Commission is considering the possible denial of his or her application for reappointment and shall set a date, at least twenty (20) days after service of the notice, on which the Commission will meet to consider final action on the request for reappointment. The Commission may not take final action on the request for reappointment until the conclusion of such meeting.

3705.18 Within fifteen (15) days of service of a notice of grounds for possible denial of reappointment, an Administrative Law Judge may file a written response to the notice, and may request an opportunity to appear at the Commission's meeting.

3705.19 An Administrative Law Judge who timely files a request to appear at the Commission's meeting shall have the right to appear and be heard at the meeting. In its discretion, the Commission may permit other persons to testify at the meeting, either in support of, or in opposition to, the request for reappointment.

3705.20 The voting members of the Commission shall vote on the request for reappointment prior to the expiration of the Administrative Law Judge's term, but no earlier than 60 days prior to such expiration. In case of conflict between this section and section 3705.17, section 3705.17 shall control.

3705.21 In deciding whether to reappoint an Administrative Law Judge, the Commission shall consider all information it has received concerning the reappointment, and the voting members shall give significant weight to the recommendation of the Chief Administrative Law Judge, unless they determine that the recommendation is not founded on substantial evidence. The Commission shall reappoint the Administrative Law Judge if it finds that the Administrative Law Judge has satisfactorily performed the responsibilities of his or her office and is likely to continue to do so.

3705.22 The Commission shall issue a written statement of reasons for every decision to reappoint or not to reappoint an Administrative Law Judge.

3705.23 The Commission's decision on whether to reappoint the Administrative Law Judge shall be final, and a decision not to reappoint an Administrative Law Judge shall not be deemed to be disciplinary action.

3705.24 Any decision by the Commission not to reappoint an Administrative Law Judge shall be reviewable only to the same extent as a decision of the District of Columbia Commission on Judicial Disabilities and Tenure giving an evaluation of "Unqualified."

3705.25 An Administrative Law Judge who is reappointed pursuant to this section shall serve a term of ten years, beginning on the expiration date of his or her current

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term, or on the date he or she is notified in writing of the Commission's vote, whichever is later.

3705.26 If the Commission does not vote on the reappointment of an Administrative Law Judge before the expiration of his or her current term, the Administrative Law Judge may, in the discretion of the Chief Administrative Law Judge, be retained as a non-judicial employee of the Office, without reduction in grade or step, until the Commission votes on his or her reappointment.

3706 MISCELLANEOUS PROVISIONS

3706.1 To file any document with the Commission pursuant to this Chapter, a person must deliver six copies of that document to the Clerk. The Clerk shall note the date of receipt on each filed document and shall arrange for prompt delivery of one of the copies to each member of the Commission. The Clerk shall retain the sixth copy in a suitably indexed file.

3706.2 Any document may be served upon an Administrative Law Judge by personal delivery to the Administrative Law Judge or by mail addressed to his or her home address. When service is by mail, three days shall be added to any period in this Chapter that is measured from the date of service.

3706.3 If the deadline for filing or serving any document falls on a Saturday, Sunday or legal holiday, that deadline is extended to the next day that is not a Saturday, Sunday or legal holiday.

3706.4 The Chief Administrative Law Judge shall take all necessary actions, including signing any required personnel forms, to effectuate the appointment or reappointment of any Administrative Law Judge appointed or reappointed by the Commission, but shall not violate the Act or the Anti-Deficiency Act, 31 U.S.C. § 1341 *et seq.*, in doing so.

3707-3720 [RESERVED]

3721 TRANSACTION OF COMMISSION BUSINESS

3721.1 The Commission shall operate in accordance with the provisions of the Office of Administrative Hearings Establishment Act of 2001, D.C. Law 14-76 (D.C. Official Code, §§ 2-1831.01, *et seq.*).

3721.2 The Chairperson, or his or her designee, shall preside at each meeting of the Commission.

3721.3 The Commission, in consultation with the Chief Administrative Law Judge, may make reasonable part-time use of the Clerk and other non-judicial employees of

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the Office of Administrative Hearings in connection with the Commission's official duties.

3721.4 **[RESERVED]**

3721.5 Meetings of the Commission shall be held at times agreed upon by the members of the Commission, or upon call by the Chairperson, or by two or more members of the Commission. Any meeting called shall be scheduled upon reasonable written notice to all members of the Commission, unless the requirement of written notice is waived by unanimous consent of all members of the Commission.

3721.6 The Chairperson, or his or her designee, may carry out routine Commission business (such as the granting of postponements pursuant to this chapter, authorization of preliminary inquiry into complaints regarding an Administrative Law Judge, and authorization of informal and non-determinative communications with an Administrative Law Judge or the Administrative Law Judge's counsel). Any of the foregoing shall be disclosed and reported to the Commission at its next meeting. Any act carried out by one of the above members may be reconsidered at the next meeting of the Commission upon motion.

3721.7 All records pertaining to the potential appointment, re-appointment, discipline, or removal of an Administrative Law Judge shall, without limitation as to other applicable privileges and protections, be deemed to be personnel records subject to D.C. Official Code § 1-631.01 and to rules issued thereunder.

3721.8 Nothing in this chapter limits the authority of the Commission to issue a protective order as otherwise permitted by law.

3722 PHYSICAL EXAMINATIONS AND MEDICAL INFORMATION

3722.1 At the Commission's written request for the purpose of evaluating an issue relating to the appointment, reappointment, discipline, or removal of an Administrative Law Judge, the Administrative Law Judge shall submit to one or more physical or mental examinations by a licensed physician, licensed psychologist, or other licensed health professional designated by the Commission after consultation with the Administrative Law Judge. The examination and report shall be made at the expense of the District of Columbia.

3722.2 The health professional shall report his or her findings in writing to the Commission.

3722.3 At the Commission's request and for the purposes stated in section 3722.1, an Administrative Law Judge shall provide the Commission with all waivers and releases necessary to authorize the Commission to receive all medical records, reports, and information from any health professional, health care facility, or other facility regarding the Administrative Law Judge's physical or mental condition.

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3722.4 The failure of an Administrative Law Judge to submit to a physical or mental examination or to provide waivers and releases required under this section by the Commission may be used as the basis for drawing an adverse inference against the Administrative Law Judge.

3722.5 Copies of all medical records, reports, and information received by the Commission shall be provided to the Administrative Law Judge at his or her request, and shall be maintained as confidential, personal and private by the Commission.

3723 FINANCIAL REPORTS

3723.1 To the extent required under any code of professional responsibility for Administrative Law Judges adopted pursuant to section 8(a)(9) of the Act, D.C. Official Code § 2-1831.05(a)(9), each Administrative Law Judge shall file a copy of the disclosure form required by D.C. Official Code § 1-1106.02 with the Commission within five (5) days of filing it with the Board of Elections and Ethics.

3723.2 The intentional failure by an Administrative Law Judge to file a report required by this section, or the intentional or reckless filing of a materially inaccurate report, shall constitute willful misconduct in office and shall be grounds for removal from office, or other disciplinary action, by the Commission.

3724 [RESERVED]

3725 PRECEDENTS

3725.1 Provided that copies have been filed by the Commission with the Chief Administrative Law Judge in the Office of Administrative Hearings and maintained and made reasonably available for review, each Administrative Law Judge shall be deemed to be on notice of the following:

(a) The Commission's decisions in proceedings;

(b) The Commission's evaluations of Administrative Law Judges who have been candidates for reappointment; and

(c) Any written communication by the Commission to the Chief Administrative Law Judge specifying that Administrative Law Judges are to take notice of the communication.

3725.2 Each Administrative Law Judge shall be deemed to be on notice of any code of professional responsibility for Administrative Law Judges promulgated by the Chief Administrative Law Judge under section 8(a)(9) of the Act, D.C. Official

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Code § 2-1831.05(a)(9), and any interpretative authorities cited therein as persuasive or authoritative.

3725.3 Each Administrative Law Judge shall be deemed to be on notice of Administrative Orders and other issuances of the Chief Administrative Law Judge so long as such documents are maintained by the Office of Administrative Hearings and made reasonably available for review.

3725.4 To the extent a document covered by this section has been redacted, an Administrative Law Judge shall not be deemed to be on notice of the redacted material unless he or she has received it separately.

3726-3728 [RESERVED]

3729 CAUSE FOR DISCIPLINE OR REMOVAL

3729.1 Cause to discipline or remove an Administrative Law Judge under the Act includes any of the following:

(a) Willful misconduct in office, violation of applicable law or rules, including without limitation, any violation of a code of professional responsibility applicable to the Administrative Law Judge pursuant to section 8(a)(9) of the Act, D.C. Official Code § 2-1831.05(a)(9), or an Administrative Law Judge's willful and persistent failure to perform his or her judicial and other duties, including without limitation, the unexcused failure to meet annual performance standards in any two (2) years within a three (3) year period; or

(b) Other conduct prejudicial to the administration of justice or which brings the judicial office into disrepute; or

(c) Reckless or intentional material misrepresentation in securing or retaining his or her appointment or reappointment or intentional or reckless falsification of official records.

3729.2 Cause to remove an Administrative Law Judge includes:

(a) Inability to discharge the duties of his or her office by reason of mental or physical condition or disability (including habitual intemperance) that has persisted for a period of at least one (1) year; or

(b) Inability to discharge the duties of his or her office by reason of mental or physical condition or disability (including habitual intemperance) that is reasonably expected to persist for a period of at least one (1) year; or

(c) An Administrative Law Judge's failure to satisfy all qualifications required by the Act or this Chapter at anytime during his or her term;

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3729.3 A removal under section 3729.2 shall be designated as an involuntary retirement.

3730 INVESTIGATIONS

3730.1 The Commission may investigate and deliberate to determine whether a formal proceeding to discipline or remove an Administrative Law Judge should be instituted. It may do so upon proposal of the Chief Administrative Law Judge, or upon receiving information giving it reason to believe that there may be cause to discipline or remove an Administrative Law Judge.

3730.2 The investigation may be carried out in any lawful manner that the Commission deems appropriate, including without limitation, interviews, document reviews, the taking of evidence at Commission meetings or by deposition, and the issuance of subpoenas when authorized by law.

3730.3 The Commission may elect to notify the Administrative Law Judge in writing of the pendency of the investigation if it would not be prejudicial to the interests of justice.

3730.4 If, after investigation, the Commission has reason to believe that there is cause to discipline or remove an Administrative Law Judge, it may commence a formal proceeding against the Administrative Law Judge.

3730.5 If the Commission determines not to institute a formal proceeding, it shall so inform the Administrative Law Judge upon his or her inquiry, or if the Commission or its designee previously informed the Administrative Law Judge of the investigation. The Commission also shall give written notice to any complainant either that there is insufficient cause to proceed, or that the complaint poses a legal issue over which the Commission has no jurisdiction, as appropriate.

3730.6 Before instituting a formal proceeding against an Administrative Law Judge, the Commission shall serve the Administrative Law Judge with notice of the investigation and offer the Administrative Law Judge an opportunity to meet with the Commission.

3730.7 If the Administrative Law Judge files a request to meet with the Commission within seven (7) days of service of notice of the investigation, the Commission shall meet with the Administrative Law Judge and his or her counsel, if any, for the purpose of considering whether the matter should be disposed of without a proceeding.

3730.8 An Administrative Law Judge may voluntarily terminate any investigation or formal proceeding before the Commission by filing with the Clerk a binding notarized statement that the Administrative Law Judge voluntarily resigns or retires from his or her position as an Administrative Law Judge; that he or she wishes to terminate the investigation or formal proceeding without a decision on

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the merits; and that he or she agrees never again to seek or accept an appointment as an Administrative Law Judge.

3730.9 Any person submitting a statement to the Commission pursuant to section 3730.8 shall not be qualified to be appointed as an Administrative Law Judge at any time thereafter.

3730.10 If an investigation is concluded without commencement of a formal proceeding, the Commission shall give written notice to the complainant explaining that the matter has been resolved and the nature of that resolution.

3730.11 Individuals interviewed by any member of the Commission or persons acting on its behalf during an investigation shall be asked to keep the matter confidential.

3730.12 All records and meetings relating to an investigation that does not result in a formal proceeding shall be non-public records of the Commission. All records and meetings relating to an inquiry that results in a formal proceeding, unless otherwise privileged or confidential under law, shall be public records of the Commission.

3730.13 If an Administrative Law Judge requests that a record documenting a non-public decision disposing of an inquiry involving that Administrative Law Judge be made public, the Commission shall make that record public within ten (10) days of the request. If an Administrative Law Judge requests that a document other than one documenting the decision from an investigation or complaint be made public, the Commission shall do so if it would serve the interests of justice.

3731 OATHS OR AFFIRMATIONS

3731.1 Each witness who appears before the Commission in an investigation or proceeding shall swear or affirm to tell the truth and not to disclose the nature of the investigation or of the proceeding or the identity of the Administrative Law Judge involved unless or until the matter is no longer confidential under the provisions of this chapter or other provisions of law.

3731.2 Each member of the Commission shall be authorized to administer oaths or affirmations to all witnesses appearing before the Commission.

3731.3 Each person appointed by the Commission to assist it shall be required to sign a confidentiality agreement as a condition of that person's participation in any non-public meeting, proceeding, investigation, or other activity.

3732-3733 [RESERVED]

3734 FORMAL PROCEEDINGS

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3734.1 If the Commission institutes a formal proceeding against an Administrative Law Judge, it shall issue a written notice to the Administrative Law Judge advising him or her that the investigation has led to the institution of a formal proceeding against him or her.

3734.2 Unless otherwise ordered by the Commission, each formal proceeding shall be titled as follows:

BEFORE THE
DISTRICT OF COLUMBIA COMMISSION ON SELECTION AND TENURE OF ADMINISTRATIVE LAW JUDGES

In re [name of Administrative Law Judge], Formal Proceeding Against an Administrative Law Judge No. ___

3734.3 The notice shall be served by personal service upon the Administrative Law Judge.

3734.4 If it appears to the Chairperson of the Commission upon affidavit that, after reasonable effort for a period of ten (10) days, personal service could not be made, service may be made upon the Administrative Law Judge by mailing the notice by registered, certified, or express mail, addressed to the Administrative Law Judge at his or her Office of Administrative Hearings address and at his or her last known home address.

3734.5 The notice of formal proceeding shall specify concisely the charges and the alleged basis for the charges, and shall advise the Administrative Law Judge of the following:

(a) The right to counsel;

(b) The most severe action that the Commission proposes to take against the Administrative Law Judge if it concludes that there is cause for discipline or removal;

(c) The obligation to file a written answer within twenty (20) days of service of the notice;

(d) The person with whom the answer must be filed;

(e) The right to an evidentiary hearing; and

(f) The right to review any material that will be presented to the Commission during the formal proceeding.

3734.6 Pursuant to section 8 of the Act, D.C. Official Code § 2-1831.05, an Administrative Law Judge against whom a formal proceeding has been instituted

may be placed on administrative leave at the discretion of the Chief Administrative Law Judge pending the outcome of the formal proceeding.

3734.7 An Administrative Law Judge shall file a written answer to a notice of formal proceeding within twenty (20) days of service of the notice.

3734.8 In his or her answer, an Administrative Law Judge shall raise every procedural and substantive defense or challenge and every fact or matter in extenuation, exculpation, or mitigation of which the Administrative Law Judge has knowledge or reasonably should have knowledge. Failure to include any such matter in the answer shall preclude the Administrative Law Judge from relying upon it at any point in the formal proceeding or subsequent judicial review.

3734.9 The Chairperson or the Commission may extend the time for filing an answer.

3734.10 In the interests of justice, the Commission at any time prior to its final decision in a proceeding may amend the notice of formal proceeding or may permit the answer to be amended to conform to proof or otherwise.

3734.11 The Administrative Law Judge shall be given a reasonable time to answer an amendment and to present his or her defense against any matter charged in an amendment.

3734.12 The notice of proceeding and the answer shall constitute the pleadings. No further pleadings or motions shall be filed, unless expressly authorized by the Commission.

3735 HEARINGS IN FORMAL PROCEEDINGS

3735.1 Upon the timely filing of an answer, unless good cause to the contrary appears in the answer, or if no timely answer is filed, the Commission shall order an evidentiary hearing to be held before it concerning the matters specified in the notice of formal proceeding.

3735.2 The Commission shall set a time and place for the hearing and, at least thirty (30) days prior to the date set, shall mail a notice of the hearing time and place by registered, certified, or express mail to the Administrative Law Judge addressed to the Administrative Law Judge at his or her Office of Administrative Hearings address and his or her last known home address and to the Administrative Law Judge's counsel, if any.

3735.3 The Chairperson or the Commission may extend the time for the commencement of a hearing.

3735.4 The Commission may rule on the defenses and challenges asserted in the answer at the outset of the hearing or may take them under advisement and rule on them during, at the close of, or after the hearing.

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3735.5 At least fifteen (15) days before the hearing, the Administrative Law Judge and the Commission shall disclose to each other a list of witnesses that each may call (except rebuttal witnesses) and the documents that each may offer at the hearing (except documents that will be used solely for impeachment). Such documents may be redacted to protect privacy and confidential information, and to remove irrelevant and privileged information, but only to the extent consistent with due process.

3735.6 At the time and place set for hearing, the Commission shall proceed with the hearing whether or not the Administrative Law Judge has filed an answer or appears at the hearing.

3735.7 The hearing shall be held before the Commission, and evidence shall be received only when a quorum of the Commission is present.

3735.8 The Chairperson, or his or her designee, shall control the conduct of the proceeding, which shall be conducted in accordance with the procedures for contested hearings under D.C. Official Code § 2-509 and any other applicable law. In evaluating the weight of any evidence, the Commission shall use the codified rules of evidence applicable in the Superior Court of the District of Columbia once a comprehensive codification occurs, or if no such code exists, the Federal Rules of Evidence.

3735.9 The failure of the Administrative Law Judge to answer or to appear at the hearing shall not, standing alone, be taken as evidence of the truth of facts alleged to constitute cause for discipline or removal, but it may be a basis for an adverse inference.

3735.10 Special counsel designated by the Commission may present evidence against the Administrative Law Judge at the hearing.

3735.11 The Commission shall keep a complete record of each formal proceeding, including a verbatim record of each hearing. Upon request, a copy of the record of a formal proceeding shall be provided to the Administrative Law Judge at the expense of the District of Columbia.

3735.12 The Administrative Law Judge has the right to be represented by counsel in an investigation or formal proceeding. Any such counsel must be an active member of the District of Columbia Bar, or may be admitted to represent the Administrative Law Judge *pro hac vice* by the Commission to the extent such admission would serve the interests of justice.

3735.13 The Administrative Law Judge shall be admitted to the hearing unless he or she is incompetent or so disruptive as to make it unduly burdensome for the Commission to conduct the hearing. If the Administrative Law Judge is not admitted, he or she shall be offered audio and visual access to the hearing.

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3735.14 An Administrative Law Judge shall be given every reasonable opportunity to defend himself or herself against the charges at the hearing, including the introduction of evidence and examination and cross-examination of witnesses.

3735.15 **[RESERVED]**

3735.16 If it appears to the Commission at any time during a proceeding that the Administrative Law Judge is not competent to act for himself or herself, the Commission shall seek the appointment of a guardian *ad litem* unless the Administrative Law Judge has a legal representative who will act for him or her.

3735.17 The guardian *ad litem* or legal representative may exercise any right and privilege and make any defense for the Administrative Law Judge with the same force and effect as if exercised or made by the Administrative Law Judge if he or she were competent. Whenever the provisions of this chapter provide for notice to the Administrative Law Judge, that notice shall be given to the guardian *ad litem* or legal representative.

3735.18 Hearings in formal proceedings shall be open to the public, unless otherwise ordered by the Commission in order to avoid unfair prejudice to the persons other than the Administrative Law Judge who is the subject of the formal proceeding.

3736 FINDINGS OF FACT AND CONCLUSIONS OF LAW

3736.1 Within ninety (90) days after the close of the record in any formal proceeding, the Commission shall issue written findings of fact and conclusions of law.

3736.2 A copy of the findings and conclusions shall be served on the Administrative Law Judge and his or her counsel, if any.

3736.3 A copy of the findings and conclusions also shall be filed with the Clerk, together with the entire record.

3737 SANCTIONS

3737.1 If the Commission determines that there is cause for discipline or removal of an Administrative Law Judge, it may sanction the Administrative Law Judge by oral reprimand, written reprimand, suspension without pay, reduction in grade, or removal.

3737.2 The Commission may require that the Administrative Law Judge undergo counseling, training, or rehabilitation as a condition for terminating a suspension or avoiding any disciplinary sanction.

3737.3 Any decision by the Commission imposing any sanction upon a Administrative Law Judge pursuant to this section, suspending an Administrative Law Judge

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pursuant to sections 3738 and 3739, affirming the imposition of disciplinary action upon an Administrative Law Judge pursuant to section 3740.17, or affirming the summary suspension of an Administrative Law Judge pursuant to section 3741, shall be reviewable only to the same extent as a decision of the District of Columbia Commission on Judicial Disabilities and Tenure giving an evaluation of "Unqualified."

3737.4 During any period of suspension pursuant to this Chapter, an Administrative Law Judge shall remain absent from the Office, unless authorized in writing to enter the premises by the Chief Administrative Law Judge.

3738 SUMMARY SUSPENSION UPON COMMENCEMENT OF CRIMINAL PROCEEDINGS

3738.1 Notwithstanding any other provision of this chapter, the Commission shall suspend an Administrative Law Judge with pay if it has probable cause to believe any of the following:

(a) The Administrative Law Judge has been indicted for any crime that is or would be a felony under federal or District of Columbia law;

(b) A criminal proceeding has been commenced in any court alleging that the Administrative Law Judge has committed any crime that bears a relationship to his or her position as an Administrative Law Judge; or

(c) A criminal proceeding has been commenced in any court alleging that the Administrative Law Judge has committed any crime of dishonesty within the meaning of D.C. Official Code § 14-305.

3738.2 To suspend an Administrative Law Judge with pay pursuant to section 3738.1, the Commission shall serve a written notice of suspension upon the Administrative Law Judge. The notice shall inform the Administrative Law Judge of the following:

(a) The reason for the suspension;

(b) The beginning date of the suspension;

(c) The Administrative Law Judge's right to file a written response within ten (10) days of service; and

(d) The right to counsel.

3738.3 Within ten (10) days of service of the notice of summary suspension, the Administrative Law Judge may file a written response. The response shall address only whether the Administrative Law Judge has been indicted for a felony, or whether a criminal proceeding described in section 3738.1 (b) or (c) has been commenced against him or her. The response shall not address the merits of the underlying charges.

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3738.4 The Commission promptly shall review any response filed by the Administrative Law Judge. After such review, if the Commission finds that the preponderance of the evidence does not establish that the Administrative Law Judge has been indicted for a felony or that a criminal proceeding described in section 3738.1(b) or (c) has been commenced against him or her, it shall vacate the summary suspension forthwith. Otherwise, the summary suspension shall remain in effect pending the final outcome of the criminal proceedings. The Commission shall not address the merits of the underlying charge.

3739 SUMMARY SUSPENSION UPON CONVICTION

3739.1 Notwithstanding any other provision of this Chapter, the Commission shall suspend an Administrative Law Judge without pay if it has probable cause to believe any of the following:

(a) The Administrative Law Judge has been convicted (on any plea) of any crime that is or would be a felony under federal or District of Columbia law;

(b) The Administrative Law Judge has been convicted (on any plea) of any crime that bears a relationship to his or her position as an Administrative Law Judge; and

(c) The Administrative Law Judge has been convicted (on any plea) of any crime of dishonesty within the meaning of D.C. Official Code § 14-305.

3739.2 To suspend an Administrative Law Judge without pay pursuant to section 3739.1, the Commission shall serve a written notice of suspension upon the Administrative Law Judge. The notice shall inform the Administrative Law Judge of the following:

(a) The reason for the suspension;

(b) The beginning date of the suspension;

(c) The Administrative Law Judge's right to file a written response within ten (10) days of service; and

(d) The right to counsel.

3739.3 Within ten (10) days of service of the notice of summary suspension pursuant to section 3739.2, the Administrative Law Judge may file a written response. The response shall address only whether the Administrative Law Judge has been convicted of a crime specified in section 3739.1, and shall not address the merits of the underlying charges.

3739.4 The Commission promptly shall review any response filed by the Administrative Law Judge. After such review, if the Commission finds that the preponderance of

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the evidence does not establish that the Administrative Law Judge has been convicted of a crime specified in section 3739.1, it shall vacate the summary suspension forthwith. Otherwise, the summary suspension shall remain in effect pending the outcome of any appeal or any proceeding to remove the Administrative Law Judge. The Commission shall not address the merits of the underlying charge.

3739.5 Upon issuance of a final order affirming the conviction, or the running of the time for filing an appeal without any appeal being filed, the Commission shall issue an order summarily removing the Administrative Law Judge from office.

3739.6 If criminal proceedings against an Administrative Law Judge who has been suspended pursuant to section 3738.1 or section 3739.1 are terminated in the Administrative Law Judge's favor, the Commission shall vacate the summary suspension, effective on the date of termination.

3739.7 If an appellate court vacates or reverses a criminal conviction, and remands the case for further proceedings, the Administrative Law Judge shall be suspended with pay pending the judgment in the remanded proceedings. If the remanded proceedings result in a conviction specified in section 3739.1, the Administrative Law Judge shall be suspended without pay in accordance with this section.

3740 CORRECTIVE DISCIPLINE BY THE CHIEF ADMINISTRATIVE LAW JUDGE

3740.1 Pursuant to sections 8 and 13(e) of the Act, D.C. Official Code §§ 2-1831.05 and 2-1831.10(e), the Chief Administrative Law Judge may discipline an Administrative Law Judge by issuing an official reprimand to the Administrative Law Judge or by suspending the Administrative Law Judge without pay for a period of nine (9) days or less.

3740.2 The Chief Administrative Law Judge may take corrective disciplinary action against an Administrative Law Judge pursuant to section 3740.1 only for cause, as described in section 3729.1.

3740.3 The Chief Administrative Law Judge may take corrective disciplinary action against an Administrative Law Judge pursuant to section 3740.1 only in accordance with the procedures set forth in this section 3740.

3740.4 Except as provided in section 3741, before taking corrective disciplinary action against an Administrative Law Judge, the Chief Administrative Law Judge must serve a notice of proposed corrective disciplinary action upon the Administrative Law Judge and must provide the Administrative Law Judge an opportunity to respond.

3740.5 A notice of proposed corrective disciplinary action issued pursuant to section 3740.4 must contain at least the following information:

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(a) A statement of the factual basis for the proposed corrective disciplinary action;

(b) A statement describing the proposed corrective disciplinary action;

(c) A statement that the Administrative Law Judge has the right to review any material upon which the proposed corrective disciplinary action is based;

(d) A statement of the Administrative Law Judge's right to file a written response; and

(e) Any other information required by the Due Process Clause of the Fifth Amendment to the United States Constitution.

3740.6 Within five (5) days of service of a notice of proposed corrective disciplinary action, the Administrative Law Judge may file a written response with the Chief Administrative Law Judge.

3740.7 For good cause shown, the Chief Administrative Law Judge may extend the five (5) day deadline prescribed in section 3740.6 for one additional period of up to five (5) days.

3740.8 After reviewing any response filed under section 3740.6, or after expiration of the time for filing a response (if no response is filed), the Chief Administrative Law Judge shall serve the Administrative Law Judge with a decision on the proposed corrective disciplinary action.

3740.9 A decision issued pursuant to section 3740.8 shall state that corrective disciplinary action either shall be taken or shall not be taken and shall contain a statement of the reasons for the Chief Administrative Law Judge's decision. If corrective disciplinary action will be taken, the decision shall state the nature and applicable dates, if any, of the corrective disciplinary action and shall state with specificity the cause upon which the corrective disciplinary action is based.

3740.10 If the Chief Administrative Law Judge decides, in the exercise of his or her discretion, to take corrective disciplinary action, he or she may impose the corrective disciplinary action proposed in the notice issued pursuant to section 3740.5, or any less severe corrective disciplinary action, but may not impose a corrective disciplinary action more severe than proposed in the notice.

3740.11 Any decision of the Chief Administrative Law Judge imposing corrective disciplinary action shall contain a statement of the Administrative Law Judge's right to appeal to the Commission.

3740.12 An Administrative Law Judge may appeal any decision of the Chief Administrative Law Judge to take corrective disciplinary action by filing a notice of appeal with the Commission within fifteen (15) days of service of the decision and serving a copy upon the Chief Administrative Law Judge. The notice of

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appeal shall state fully every argument of the Administrative Law Judge in support of his or her appeal.

3740.13 The corrective disciplinary action imposed by the Chief Administrative Law Judge shall not be stayed pending appeal.

3740.14 Within ten (10) days of service of the notice of appeal, the Chief Administrative Law Judge, or his or her designee, may file a response to the notice of appeal with the Commission.

3740.15 After receipt of the Chief Administrative Law Judge's response, or the expiration of the deadline for filing a response (if no response is filed), the Commission shall decide the appeal.

3740.16. The Commission shall affirm the decision of the Chief Administrative Law Judge unless it finds that there is not substantial evidence in the record to support the Chief Administrative Law Judge's finding of cause. The Commission may not overturn the Chief Administrative Law Judge's exercise of discretion to choose a sanction unless it concludes that the sanction was unlawful.

3740.17 If the Commission reverses a suspension without pay imposed by the Chief Administrative Law Judge, the Administrative Law Judge shall receive any pay and other benefits that were lost as the result of the suspension.

3740.18 A corrective disciplinary action taken against an Administrative Law Judge pursuant to this section shall not preclude the Commission from taking any action authorized by sections 3730 to 3739, including the imposition of any additional sanction upon the Administrative Law Judge.

3741 SUMMARY SUSPENSION OF AN ADMINISTRATIVE LAW JUDGE

3741.1 Pursuant to sections 8 and 13(e) of the Act, D.C. Official Code §§ 2-1831.05 and 2-1831.10(e), the Chief Administrative Law Judge may summarily suspend an Administrative Law Judge without pay if there is cause for discipline or removal pursuant to section 3729 and the Administrative Law Judge's conduct:

(a) Threatens the integrity of the Office's operations; or

(b) Constitutes an immediate hazard to the Office or its employees, to the Administrative Law Judge, or to the public.

3741.2 Any summary suspension imposed by the Chief Administrative Law Judge may last no longer than nine (9) days.

3741.3 An Administrative Law Judge who is notified by a written or oral directive of a summary suspension shall immediately leave his or her duty station and the premises of the Office.

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3741.4 With a reasonable time after the summary suspension, but no later than 48 hours thereafter, the Chief Administrative Law Judge shall serve upon the Administrative Law Judge a written notice that includes all of the following information:

(a) A statement of the reasons for the summary suspension;

(b) The effective date of the summary suspension and its duration;

(c) A statement that the Administrative Law Judge has the right to review any material upon which the summary suspension was based;

(d) A statement of the Administrative Law Judge's right to present a written response for review by the Commission; and

(e) Any other information required by the Due Process Clause of the Fifth Amendment.

3741.5 Within forty-eight (48) hours after receipt of the notice required by section 3741.4, the Administrative Law Judge may file with the Commission a written response to the notice. That response shall raise every defense, fact, or matter in extenuation, exculpation, or mitigation of which the Administrative Law Judge has knowledge or reasonably should have knowledge that is relevant to the determination of cause or the legality of the summary suspension. An Administrative Law Judge's failure to file a response within the deadline established by this subsection shall constitute a waiver of all rights to challenge the summary suspension.

3741.6 Upon review of the notice of summary suspension and the Administrative Law Judge's response, the Commission shall determine whether the summary suspension complies with the requirements of this section. In its discretion, the Commission may require the Administrative Law and the Chief Administrative Law Judge, or his or her designee, to appear before it, and it may receive relevant testimonial and documentary evidence.

3741.7 The summary suspension shall not be stayed during the pendency of the matter before the Commission. If the Commission determines that the summary suspension did not comply with the requirements of this section, it shall issue an order vacating the summary suspension and restoring any pay and benefits lost by the Administrative Law Judge during the suspension.

3741.8 Summary suspension of an Administrative Law Judge pursuant to this section shall not preclude the Commission from taking any action authorized by sections 3730 to 3739, including the imposition of an additional sanction upon the Administrative Law Judge.

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3742-3798 [RESERVED]

3799 DEFINITIONS

When used in this chapter, the following words shall have the following meanings:

Act – The Office of Administrative Hearings Establishment Act of 2001, effective March 6, 2002 (D.C. Law 14-76; D.C. Official Code § 2-1831.01 *et seq.*)

Administrative Law Judge – An Administrative Law Judge of the Office of Administrative Hearings.

Applicant – Any person seeking to be appointed or reappointed as an Administrative Law Judge.

Chief Administrative Law Judge – The Chief Administrative Law Judge of the Office or any person serving as Acting Chief Administrative Law Judge or interim Chief Administrative Law Judge of the Office.

Clerk – The Clerk of the Office.

Commission – The Commission on Selection and Tenure of Administrative Law Judges of the Office of Administrative Hearings.

Experience in the practice of law – Includes service as a hearing officer.

Hearing officer – An individual, other than an agency director or member of the governing board or body of an agency, whose permanent duties as an employee of the District of Columbia on the day prior to the Act's becoming applicable to his or her agency, consisted in whole or substantial part of regularly adjudicating administrative matters as required by law. "Hearing officer" includes, without limitation, any person with a position bearing the title "Hearing Officer," "Hearing Examiner," "Attorney Examiner," "Administrative Law Judge," "Administrative Judge," or "Adjudication Specialist." The term "hearing officer" does not include any employee holding an intermittent service appointment, a temporary appointment of less than one year, or a term appointment of less than one year.

Investigation – An inquiry to determine whether a proceeding should be instituted.

Legal holiday – Includes New Year's Day, Birthday of Martin Luther King, Jr., Washington's Birthday, Memorial Day, Independence Day, Labor Day, Columbus Day, Veterans Day, Thanksgiving Day, Christmas Day, and any other day appointed as a holiday by the President or the Congress of the United States, or by the District of Columbia, or any day on which the Office is closed.

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Member of the District of Columbia Bar – 1) An active member in good standing of the District of Columbia Bar; 2) a judicial member in good standing of the District of Columbia Bar; or 3) any person eligible to practice law in the District of Columbia pursuant to Rule 49 (c)(4) of the Rules of the District of Columbia Court of Appeals while employed by the Government of the District of Columbia.

Misrepresentation – An untrue statement, orally or in writing, or an omission that is materially misleading.

Office – The Office of Administrative Hearings.

Proceeding – A formal proceeding, initiated by a Notice of Proceeding, to hear and determine charges as to an Administrative Law Judge's conduct or health.

Special Counsel – Any member of the District of Columbia Bar retained by the Commission to assist it, including without limitation, by investigating, prosecuting, or advising on any matter.

Vacancy -- An unfilled available position as an Administrative Law Judge.

Voting member – One of the three voting members of the Commission appointed pursuant to section 10(a) of the Act, D.C. Official Code § 2-1831.07(a).

D.C. Register Updates for Chapter 37 of the D.C. Personnel Regulations, Appointment, Reappointment, Discipline and Removal of Administrative Law Judges by the Commission on Selection and Tenure of Administrative Law Judges

The following *D.C. Register* citations identify amendments to Chapter 37 of the D.C. Personnel Regulations, Appointment, Reappointment, Discipline and Removal of Administrative Law Judges by the Commission on Selection and Tenure of Administrative Law Judges. Following the publication in the *D.C. Register* of final rulemaking notices amending this chapter, this Addendum will be updated accordingly.

For the convenience of DPM subscribers, the Addendum identifies amendments by date and section; includes a summary of the amendments; the page(s) in a DPM Transmittal impacted by the amendment(s); and provides brief comments on the amendment(s) accomplished.

***D.C. Register* Date**	**Section(s)**	**Change(s) Reflected on Page(s)**	**Comments**
51 DCR 7033 (7/16/04)	Entire chapter (new)	Entire chapter (new)	Effective July 16, 2004 with the publication of final rules in the *D.C. Register*, Title 6 of the District of Columbia Municipal Regulations (DCMR) was amended to add a new Chapter 37. The rules prescribe standards and procedures for the operations of the Commission on the Selection and Tenure of Administrative Law Judges pertaining to the appointment, reappointment, discipline, removal, and qualifications of Administrative Law Judges in the Office of Administrative Hearing established by the Office of Administrative Hearing Establishment Act of 2001, effective March 6, 2002 (D.C. Law 14-76; D.C. Official Code § 2-1831.11(a) (2002 Supp.)); and section 6 (c) of the District of Columbia Administrative Procedures Act, approved October 21, 1968 (82 Stat. 1206; D.C. Official Code § 2-505 (c) (2001))