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Nancy A. Lopez

September 30, 2019

Ms. Bianca Garcia  
Executive Director  
Judicial Nomination Commission  
515 5th Street N.W., Suite 235  
Washington, D.C. 20001

Re: Public Comments: Judicial Nomination Commission Regulations

Dear Ms. Garcia:

Washington Council of Lawyers appreciates the opportunity to comment on the Judicial Nomination Commission's proposed rulemaking to promulgate a new chapter 21 to title 28 of the District of Columbia Municipal Regulations to clarify ambiguities in the procedures relating to the status of applicants on judicial nomination lists. We strongly support efforts to address widespread judicial vacancies that hamper our local courts and adversely impact the fair and effective administration of justice.

Founded in 1971, Washington Council of Lawyers is a non-partisan public-interest bar association that works to encourage pro bono work, train lawyers, and meet legal accessibility needs in the community. Part of our mission is to encourage the appointment of local judges who are committed to equal access to justice and high-quality representation for all who appear before the courts.

Unfortunately, there are numerous judicial vacancies on the D.C. Court of Appeals and the Superior Court for the District of Columbia. Despite our efforts to increase access to the legal system for those who cannot afford to pay, access is impeded when there are not enough judges to hear the cases.

We therefore wrote a letter to the Senate Majority Leader in October 2018 to urge the Senate to vote on the pending nominations of the District of Columbia's judicial nominees as soon as possible. Although we are pleased that several local judges have recently been confirmed, we continue to be concerned about the number of remaining vacancies.

We applaud the Judicial Nomination Commission for exercising its statutory authority and proposing rulemaking to clarify ambiguities relating to the process for nominating individual to the D.C. Court of Appeals and the Superior Court for the District of Columbia.

The proposed rulemaking specifies that when the Senate rejects, returns, or fails to take action on a nomination by the end of a Senate session, the nomination will be deemed rejected. If the president does not make another nomination within 60 days, the list of candidates for the vacancy is deemed expired and the Judicial Nomination Commission will restart the application process. In our view the proposed rulemaking is consistent with the statutory authority granted to the Judicial Nomination Commission under the District of Columbia Home Rule Act, and promotes the public interest in effective and equitable administration of justice by clarifying ambiguities that can arise through delays in the Senate confirmation process of the District of Columbia's judicial nominees.

Therefore, we support the proposed rulemaking and urge the Judicial Nomination Commission to finalize it promptly.

We also offer a few technical comments below for consideration by the Judicial Nomination Commission.

- Section 2101.1: Consider specifying whether vote of a quorum would be a majority vote.
- Section 2102: While the use of the term "applicants" implies that an individual has to apply first to be considered for nomination, there is no explicit requirement in this section unlike the conditional language in sections 2103.7 and 2103.8(c).
- Section 2103.1: Consider defining the term "judicial vacancy" to include both existing vacancy under section 2103.4 and prospective vacancy under section 2103.3.
- Sections 2103.6 and 2103.8(b): The word "timely" may be redundant since the language already states nomination must occur within 60 days.
- Section 2103.8(a)(2): Consider rephrasing as a clarification of the 60-day time period (e.g., "60-day period will begin from the date of assuming office...") as opposed to something that sounds like an affirmative obligation being imposed (e.g., "the President shall...").
- Sections 2103.10(b) and (c): It is the vacancies resulting from rejected nominations, not the nominations themselves, that would be deemed to have occurred on the date of the triggering event.

Thank you for the opportunity to comment on the proposed rulemaking. We would be happy to discuss further if you have any questions.

Respectfully submitted,



Nancy A. Lopez  
Executive Director  
Washington Council of Lawyers