Public Law 99-573
99th Congress

An Act

Oct. 28, 1986
[H.R. 3578]

To provide permanent authority for hearing commissioners in the District of Columbia courts, to modify certain procedures of the District of Columbia Judicial Nomination Commission and the District of Columbia Commission on Judicial Disabilities and Tenure, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

District of Columbia Judicial Efficiency and Improvement Act of 1986.

SECTION 1. SHORT TITLE.

This Act may be cited as the "District of Columbia Judicial Efficiency and Improvement Act of 1986".

SEC. 2. HEARING COMMISSIONERS.

(a) Section 1732 of title 11 of the District of Columbia Code is amended to read as follows:

"§ 11-1732. Hearing commissioners.

"(a) With the approval of a majority of the judges of the Superior Court of the District of Columbia in active service and subject to standards and procedures established by the rules of the Superior Court, the chief judge of the Superior Court may appoint Hearing Commissioners, who shall serve in the Superior Court and perform the duties enumerated in subsection (j) of this section and such other functions incidental to these duties as are consistent with the rules of the Superior Court and the Constitution and laws of the United States and of the District of Columbia.

"(b) Hearing commissioners shall be selected pursuant to standards and procedures adopted by the Board of Judges. Such procedures shall contain provisions for public notice of all vacancies in hearing commissioner positions and for the establishment by the Court of an advisory merit selection panel, composed of lawyer and nonlawyer residents of the District of Columbia who are not employees of the District of Columbia Courts, to assist the Board of Judges in identifying and recommending persons who are best qualified to fill such positions.

"(c) No individual shall be appointed as a hearing commissioner unless that individual—

"(1) is a citizen of the United States;

"(2) is an active member of the unified District of Columbia Bar and has been engaged in the active practice of law in the District for the five years immediately preceding the appointment or for such five years has been on the faculty of a law school in the District, or has been employed as a lawyer by the United States or District government; and

"(3) is a bona fide resident of the District of Columbia and has maintained an actual place of abode in the District for at least ninety days immediately prior to appointment, and retains such residency during service as a hearing commissioner, except that Hearing Commissioners appointed prior to the effective date of

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this section shall not be required to be residents of the District to be eligible to be appointed to one of the initial terms under this section or to be reappointed.

"(d) Hearing commissioners shall be appointed for terms of four years and may be reappointed for terms of four years. Those individuals serving as hearing commissioners on the effective date of this Act shall be automatically appointed for a four year term.

"(e) Upon the expiration of a hearing commissioner's term, the hearing commissioner may continue to perform the duties of office until a successor is appointed, or for 90 days after the date of the expiration of the hearing commissioner's term, whichever is earlier.

"(f) No individual may serve as a hearing commissioner under this section after having attained the age of seventy-four.

"(g) The Board of Judges may suspend, involuntarily retire, or remove a hearing commissioner, during the term for which the hearing commissioner is appointed, only for incompetence, misconduct, neglect of duty, or physical or mental disability. Suspension, involuntary retirement, or removal requires the concurrence of a majority of the judges in active service. Before any order of suspension, involuntary retirement, or removal shall be entered, a full specification of the charges and the opportunity to be heard shall be furnished to the hearing commissioner pursuant to procedures established by rules of the Superior Court.

"(h) If the Board of Judges determines that a hearing commissioner position is not needed, the Board of Judges may terminate the position.

"(i)(1) Hearing commissioners may not engage in the practice of law, or in any other business, occupation, or employment inconsistent with the expeditious, proper, and impartial performance of their duties as officers of the court.

"(2) Hearing commissioners shall abide by the Canons of Judicial Ethics.

"(j) A hearing commissioner, when specifically designated by the chief judge of the Superior Court, and subject to the rules of the Superior Court and the right of review under subsection (k), may perform the following functions:

"(1) Administer oaths and affirmations and take acknowledgements;

"(2) Determine conditions of release pursuant to the provisions of title 23 of the District of Columbia Code (relating to criminal procedure);

"(3) Conduct preliminary examinations and initial probation revocation hearings in all criminal cases to determine if there is probable cause to believe that an offense has been committed and that the accused committed it;

"(4)(A) In any case brought under sections 11-1101(1), (3), (10), or (11) of the District of Columbia Code involving the establishment or enforcement of child support, or in any case seeking to modify an existing child support order, where a hearing commissioner in the Family Division of the Superior Court finds that there is an existing duty of support, the hearing commissioner shall conduct a hearing on support, make findings, and enter judgment as provided by law, and in accordance with guidelines established by rule of the Superior Court, which judgment shall constitute a final order of the Superior Court. Children and youth.

"(B) If in a case under paragraphs (A), the hearing commissioner finds that a duty of support exists and makes a finding

that the case involves complex issues requiring judicial resolution, the hearing commissioner shall establish a temporary support obligation and refer unresolved issues to a judge of the Superior Court.

"(C) In cases under subparagraphs (A) and (B) in which the hearing commissioner finds that there is a duty of support and the individual owing that duty has been served or given notice of the proceeding under any applicable statute or court rule, if that individual fails to appear or otherwise respond, the hearing commissioner shall enter a default order, which shall constitute a final order of the Superior Court;

"(5) Subject to the rules of the Superior Court and with the consent of the parties involved, make findings and enter final orders or judgments in other uncontested or contested proceedings, in the Civil, Criminal, and Family Divisions of the Superior Court, excluding jury trials and trials of felony cases.

"(k) With respect to proceedings and hearings under paragraphs (2), (3), (4), and (5) of subsection (j), a review of the hearing commissioner's order or judgment, in whole or in part, may be made by a judge of the appropriate division sua sponte and must be made upon a motion of one of the parties made pursuant to procedures established by rules of the Superior Court. The reviewing judge shall conduct such proceedings as required by the rules of the Superior Court. An appeal to the District of Columbia Court of Appeals may be made only after a judge of the Superior Court has reviewed the order or judgment.

"(l) The Superior Court shall ensure that all hearing commissioners receive training to enable them to fulfill their responsibilities.

"(m)(1) The chief judge of the Superior Court, in consultation with the District of Columbia Bar, the City Council of the District of Columbia, and other interested parties, shall within one year of the effective date of this section, make a careful study of conditions in the Superior Court to determine—

"(A) the number of appointments required to provide for the effective administration of justice;

"(B) the divisions in which hearing commissioners shall serve;

"(C) the appropriate functions of hearing commissioners; and

"(D) the compensation of, and other personnel matters pertaining to, hearing commissioners.

Reports.

Upon completion of the study, the chief judge shall report the findings of such study to the appropriate committees of the Congress.

"(2) After the study required by paragraph (1), the chief judge shall, from time to time, make such studies as the Board of Judges shall deem expedient, giving consideration to suggestions of the District of Columbia Bar and other interested parties.

"(n) With the concurrence of the District of Columbia Court of Appeals, the Board of Judges of the Superior Court may, promulgate rules, not inconsistent with the terms of this section, which are necessary for the fair and effective utilization of hearing commissioners in the Superior Court.

"(o) For purposes of this section, the term 'Board of Judges' means the judges of the Superior Court of the District of Columbia. Any action of the Board of Judges shall require a majority vote of the sitting judges.".

SEC. 3. APPOINTMENT OF EXECUTIVE OFFICER OF THE DISTRICT OF COLUMBIA COURTS.

Section 1703 of title 11 of the District of Columbia Code is amended—

(1) by striking out subsection (b);

(2) by redesignating subsection (c) as subsection (d); and

(3) by inserting after subsection (a) the following new subsections:

"(b) The Executive Officer shall be appointed, and subject to removal, by the Joint Committee on Judicial Administration with the approval of the chief judges of the District of Columbia Courts. In making such appointment the Joint Committee shall consider experience and special training in administrative and executive positions and familiarity with court procedures.

"(c) The Executive Officer shall be a bona fide resident of the District of Columbia or become a resident not more than 180 days after the date of appointment except that the Executive Officer in office at the effective date of this Act shall not be required to be or to become a resident of the District of Columbia.".

SEC. 4. MANDATORY RETIREMENT AGE OF JUDGES.

Section 431(c) of the District of Columbia Self-Government and Governmental Reorganization Act is amended by striking out "seventy" and inserting in lieu thereof "seventy-four". 87 Stat. 792.

SEC. 5. REORGANIZATION OF AUDIT RESPONSIBILITY.

(a) AUDITOR-MASTER.—Section 11-1724 of title 11 of the District of Columbia Code is amended—

(1) by striking out "(1) audit and state fiduciary accounts,"; and

(2) by respectively designating clauses (2) and (3) as clauses "(1)" and "(2)".

(b) REGISTER OF WILLS.—Section 11-2104(a) of title 11 of the District of Columbia Code is amended—

(1) in paragraph (2) by striking out "and" after the semicolon;

(2) in paragraph (3) by striking out the period and inserting in lieu thereof "; and"; and

(3) by inserting at the end thereof the following new paragraph:

"(4) audit and state fiduciary accounts.".

SEC. 6. ELIMINATION OF DUPLICATE JUDICIAL FINANCIAL REPORTING REQUIREMENT.

(a) TERMINATION OF FEDERAL DISCLOSURE REQUIREMENTS.—Section 303 of the Ethics in Government Act of 1978 (28 U.S.C. App. 301) is amended by inserting at the end thereof the following new subsection:

"(h) The provisions of this Act shall not apply to any judicial officer or employee of the Superior Court of the District of Columbia or the District of Columbia Court of Appeals or any other employee of the District of Columbia court system.".

(b) TECHNICAL AND CONFORMING AMENDMENT.—Section 308(9) of such Act (28 U.S.C. App. 308(9)) is amended by striking out "courts of the District of Columbia".

SEC. 7. CERTIFICATION OF QUESTIONS OF LAW.

Subchapter II of Chapter 7, title 11, District of Columbia Code, is amended by inserting after section 11-722 the following new section:

"§ 11-723. Certification of Questions of Law.

"(a) The District of Columbia Court of Appeals may answer questions of law certified to it by the Supreme Court of the United States, a Court of Appeals of the United States, or the highest appellate court of any State, if there are involved in any proceeding before any such certifying court questions of law of the District of Columbia which may be determinative of the cause pending in such certifying court and as to which it appears to the certifying court there is no controlling precedent in the decisions of the District of Columbia Court of Appeals.

"(b) This section may be invoked by an order of any of the courts referred to in subsection (a) upon the court's motion or upon motion of any party to the cause.

"(c) A certification order shall set forth (1) the question of law to be answered; and (2) a statement of all facts relevant to the questions certified and the nature of the controversy in which the questions arose.

"(d) A certification order shall be prepared by the certifying court and forwarded to the District of Columbia Court of Appeals. The District of Columbia Court of Appeals may require the original or copies of all or such portion of the record before the certifying court as are considered necessary to a determination of the questions certified to it.

"(e) Fees and costs shall be the same as in appeals docketed before the District of Columbia Court of Appeals and shall be equally divided between the parties unless precluded by statute or by order of the certifying court.

"(f) The District of Columbia Court of Appeals may prescribe the rules of procedure concerning the answering and certification of questions of law, under this section.

"(g) The written opinion of the District of Columbia Court of Appeals stating the law governing any questions certified under subsection (a) shall be sent by the clerk to the certifying court and to the parties.

State and local governments.

"(h)(1) The District of Columbia Court of Appeals, on its own motion or the motion of any party, may order certification of questions of law to the highest court of any State under the conditions described in subsection (a).

"(2) The procedures for certification from the District of Columbia to a State shall be those provided in the laws of that State.".

SEC. 8. PUBLIC ACCESS TO MATERIALS OF JUDICIAL NOMINATION COMMISSION.

Records. Classified information. 87 Stat. 796.

Section 434(c)(3) of the District of Columbia Self-Government and Governmental Reorganization Act is amended by striking out the last sentence and inserting in lieu thereof: "Information, records, and other materials furnished to or developed by the Commission in the performance of its duties under this section shall be privileged and confidential. Section 552 of title 5, United States Code (known as the Freedom of Information Act), shall not apply to any such materials.".

SEC. 9. MEETINGS OF THE JUDICIAL NOMINATION COMMISSION.

Section 434(c)(1) of the District of Columbia Self-Government and Governmental Reorganization Act is amended by inserting at the end thereof "Meetings of the Commission may be closed to the public. Section 742 of this Act shall not apply to meetings of the Commission.". 87 Stat. 796. 87 Stat. 831.

SEC. 10. PUBLIC ANNOUNCEMENT OF JUDICIAL RECOMMENDATIONS.

Section 434(d) of the District of Columbia Self-Government and Governmental Reorganization Act is amended by inserting at the end thereof the following new paragraph:

"(4) Upon submission to the President, the name of any individual recommended under this subsection shall be made public by the Judicial Nomination Commission.". Public information.

SEC. 11. DISCLOSURE OF CERTAIN INFORMATION TO THE JUDICIAL NOMINATION COMMISSION.

Section 11-1528 of title 11, District of Columbia Code, is amended by striking out all of subsection (a) and inserting in lieu thereof the following:

"(a)(1) Subject to paragraph (2), the filing of papers with, and the giving of testimony before, the Commission shall be privileged. Subject to paragraph (2), hearings before the Commission, the record thereof, and materials and papers filed in connection with such hearings shall be confidential. Records. Classified information.

"(2)(A) The judge whose conduct or health is the subject of any proceedings under this chapter may disclose or authorize the disclosure of any information under paragraph (1).

"(B) With respect to a prosecution of a witness for perjury or on review of a decision of the Commission, the record of hearings before the Commission and all papers filed in connection with such hearing shall be disclosed to the extent required for such prosecution or review.

"(C) Upon request, the Commission shall disclose, on a privileged and confidential basis, to the District of Columbia Judicial Nomination Commission any information under paragraph (1) concerning any judge being considered by such nomination commission for elevation to the District of Columbia Court of Appeals or for chief judge of a District of Columbia court.".

SEC. 12. REAPPOINTMENT TO JUDICIAL OFFICE.

Section 433(c) of the District of Columbia Self-Government and Governmental Reorganization Act is amended— 87 Stat. 795.

(1) in the first sentence by striking out "three months" and inserting in lieu thereof "six months"; and

(2) in the second sentence, by striking out "thirty" and inserting in lieu thereof "sixty".

SEC. 13. MODIFICATION OF JUDICIAL REAPPOINTMENT EVALUATION CATEGORIES.

Section 433(c) of the District of Columbia Self-Government and Governmental Reorganization Act is amended in the third sentence by striking out "exceptionally well-qualified or".

SEC. 14. SERVICES OF RETIRED JUDGES.

(a) SENIOR JUDGES.—The second sentence of section 1504(a)(1) of title 11, District of Columbia Code, is amended by striking "every

two years" and inserting "every four years, unless the Senior Judge has reached his or her seventy-fourth birthday, whereupon review shall be at least every two years,".

(b) REQUEST FOR SENIOR JUDGESHIP.—Section 1504(a) of title 11, District of Columbia Code, is further amended by striking out paragraphs (2) and (3) and inserting after paragraph (1) the following new paragraph:

"(2) At any time prior to or not later than one year after retirement, a judge may request recommendation from the District of Columbia Commission on Judicial Disabilities and Tenure (hereinafter in this section referred to as the 'Commission') to be appointed as a senior judge in accordance with this section; except that any retired judge shall have not less than 180 days from the effective date of this Act to file a request for an initial recommendation from the Commission."

(c) SERVICE BY RETIRED JUDGES.—Section 1565 of title 11, District of Columbia Code, is amended to read as follows:

"§ 11-1565. Service by Retired Judges.

Wages.

"Any retired judge performing judicial duties as a senior judge on the District of Columbia Court of Appeals or the Superior Court shall be entitled, during the period for which he or she serves, to receive the same daily rate of pay as a judge on the court in which he or she performs such duties. The cumulative daily earnings of a senior judge, in any single year, when added to the annual retirement salary, may not exceed the current annual salary of a judge of the court in which he or she performs such duties. No deduction shall be withheld for health benefits, Federal employee's life insurance, or retirement purposes from the salary paid to a judge during judicial service. The performance of such judicial service shall not create an additional retirement, change retirement, or create, or in any manner affect a survivor annuity.".

Health and medical care. Insurance.

SEC. 15. EXTENSION OF PERIOD FOR SUBMITTING JUDICIAL NOMINATIONS.

87 Stat. 796.

Section 434(d)(1) of the District of Columbia Self-Government and Governmental Reorganization Act is amended by striking out "thirty days" each place it appears and inserting in lieu thereof "sixty days".

SEC. 16. JUDICIAL COMPENSATION.

(a) COURT OF APPEALS.—Section 703(b) of title 11 of the District of Columbia Code is amended by striking out "90 per centum of".

(b) SUPERIOR COURT.—Section 904(b) of title 11 of the District of Columbia Code is amended by striking out "90 per centum of".

SEC. 17. CHIEF JUDGE OF THE DISTRICT OF COLUMBIA COURT OF APPEALS AS PRESIDING OFFICER OF THE PUBLIC DEFENDER SERVICE.

Section 330 of the District of Columbia Court Reform and Criminal Procedure Act of 1970 (Public Law 91-358; 1-2703, D.C. Code) is amended—

(1) by striking out clause (A) of subsection (b)(1) and redesignating clauses (B), (C), (D), and (E) as clauses (A), (B), (C), and (D), respectively; and

(2) in paragraph (2) of subsection (b) by striking out "Chief Judge of the United States Court of Appeals for the District of Columbia Circuit" and inserting in lieu thereof "Chief Judge of the District of Columbia Court of Appeals".

SEC. 18. EFFECTIVE DATE.

28 USC app. 301 note.

The amendments made by this Act shall take effect on the date of the enactment of this Act.

Approved October 28, 1986.

LEGISLATIVE HISTORY—H.R. 3578:

HOUSE REPORTS: No. 99-326 (Comm. on the District of Columbia).
SENATE REPORTS: No. 99-477 (Comm. on Governmental Affairs).
CONGRESSIONAL RECORD:
Vol. 131 (1985): Oct. 28, considered and passed House.
Vol. 132 (1986): Oct. 3, considered and passed Senate, amended.
Oct. 10, House concurred in Senate amendment.