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## Government of the District of Columbia

OFFICE OF THE CORPORATION COUNSEL

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IN REPLY REFER TO:  
OLC:LNG:lng  
(AL-97-538)

November 6, 1997

Ulysses B. Hammond  
Executive Officer  
District of Columbia Courts  
500 Indiana Avenue, N.W.  
Washington, D.C. 20001

Re: Effect, if any, of the National Capital Revitalization and Self-Government Improvement Act of 1997 on: (1) the legal representation of the D.C. Courts and its judges, officers, and employees by the Office of Corporation Counsel, and (2) the payment of settlements and judgments involving judges, officers, and employees of the D.C. Courts from the District's Settlement and Judgment Fund.

Dear Mr. Hammond:

This responds to your October 22, 1997 letter in which you request my views concerning the impact, if any, of the National Capital Revitalization and Self-Government Improvement Act of 1997 ("Revitalization Act"), approved August 5, 1997, Pub. Law 105-33, 111 Stat. 251, on two aspects of the relationship between the Executive Branch of the District government and the Judicial Branch of the District government. First, you ask whether the "D.C. Courts (and its judges, officials and employees) remain the judicial branch of the District of Columbia Government for the purpose of receiving legal representation by the Office of Corporation Counsel." Second, you ask whether the "D.C. Courts (and its judges, officials and employees) remain the judicial branch of the District of Columbia Government for the purpose of the payment of settlements and judgments from the Settlement and Judgment Fund that is appropriated annually to pay civil litigation liabilities agreed to or imposed upon the District of Columbia." For the reasons stated below, I conclude that the answer to both of these questions is "yes."

At the outset, it is relevant to state that I concur in the conclusion stated in your letter that "[t]he Revitalization Act did not change the status of the D.C. Courts as the judicial branch of the District of Columbia Government." Your questions are prompted

by the language of subsection (a) of section 11723 of the Revitalization Act, which provides as follows:

(a) District of Columbia. -- The District of Columbia shall defend any civil action or proceeding pending on the effective date of this title in any court or other official municipal, state, or federal forum against the District of Columbia or its officers, employees, or agents, and shall assume any liability resulting from such an action or proceeding. [Underscoring added.]

The underscored language suggests that, with respect to any civil action or proceeding filed after the effective date of the Revitalization Act, there may be a change with respect to the District's usual practice of defending such civil action or proceeding and with respect to the District's practice of assuming, when appropriate or required, any liability resulting therefrom. In order to determine whether Congress intended by this language to alter the status quo ante in these two regards, it is useful to examine other provisions of the Revitalization Act.

One of those provisions is subsection (c) of section 11723. Paragraphs (1) and (2) of subsection (c) provide that the United States shall not "be responsible for the payment of any judgments, liabilities or costs resulting from any action or proceeding against the District of Columbia or its agencies, officers, employees, or agents" and shall not "be subject to liability in any case on the basis of the activities of the District of Columbia or its agencies, officers, employees, or agents...." In subsection (c) of section 11723, there is no reference to whether a civil action or other proceeding is pending on the effective date of the Revitalization Act. Rather, the sole criterion for determining which government entity shall assume liability, as between the United States and the District of Columbia, is whether the civil action or proceeding is against the District government, or its agencies, officers, employees, or agents. Thus, the language of subsection (c) of section 11723 suggests that the language of subsection (a) of section 11723 was not intended to relieve the District of Columbia, subsequent to the effective date of the Revitalization Act, of any liability it would otherwise have for its own acts or omissions or, under the tort liability principle of respondeat superior, for the acts or omissions of its own agencies, officers, employees, or agents.<sup>1</sup>

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<sup>1</sup> Subsection (d) of section 11723 of the Revitalization Act provides: "Nothing in this section shall be construed as a waiver of sovereign immunity, or as limiting any other defense or immunity that would otherwise be available to the United States, the District of Columbia, their agencies, officers, employees, or agents." Compare D.C. Code § 1-1202 (1992). I interpret this language to mean simply that in enacting the language set forth in subsection

It reasonably follows that the phrase "pending on the effective date of this title" in subsection (a) of section 11723 of the Revitalization Act was intended by Congress only to make clear that the Revitalization Act does not relieve the District government of any duty of defense or liability with respect to any civil action or proceeding against the District, its officers, employees, or agents that was pending on the date the Revitalization Act became effective. In other words, Congress intended the District at least to continue its usual practice of defending such a case and, to continue assuming any resulting liability when appropriate or required.

This conclusion is supported by the language of subsection (a) of section 11205 and by subsection (g) of section 11232 of the Revitalization Act which deal with liability and litigation authority relating, respectively, to the activities of the "Corrections Trustee" and the "Pretrial Services, Defense Services, Parole, Adult Probation and Offender Supervision Trustee" (hereinafter the "Court Services Trustee"). These subsections provide that the District of Columbia shall defend civil actions or proceedings involving such activities and shall assume any liability resulting from such activities if they are carried out by "officers, employees, or agents" of the District of Columbia or by the Corrections Trustee or the Court Services Trustee. In this regard, it is pertinent to note that the Corrections Trustee and the Court Services Trustee are not federal officers, but rather are "independent officer[s] of the government of the District of Columbia." See §§ 11202(a) and 11232(a) of the Revitalization Act; underscoring added. As is the case with the liability language set forth in section 11723 of the Revitalization Act, the sole criterion in sections 11205 and 11232 for determining whether the District government may be liable is whether the civil action or proceeding is against the District government, or its agencies, officers, employees, or agents. In neither subsection (a) of section 11205 nor subsection (g) of section 11232, is there any reference to whether a civil action or proceeding is "pending" on the effective date of the Revitalization Act. Thus, these provisions support the proposition that Congress intended the District to continue its existing litigative practices as described above.

In regard to the effect, if any, of the Revitalization Act on the role of this Office in providing legal representation to the judges, officials, and employees of the D.C. Courts in connection with civil tort actions filed against them relating to acts or omissions within the scope of their official duties, subsection (b) of section 11205 and subsection (g) of section 11233 of the Revi-

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(a) of section 11723, quoted above, Congress was stating its intent that the Revitalization Act does not alter in any way the current substantive law of liability applicable to the District government and its agencies, officers, employees, and agents.

talization Act are revealing. Subsection (b) of Section 11205 and subsection (g) of section 11233 authorize the Corrections Trustee and the Court Services Trustee respectively: to avail himself or herself of the litigation services of this Office; or, alternatively, at their option and expense, either generally or in particular cases or classes of cases, to hire their own legal staffs or contract for the provision of outside litigation services. This language demonstrates that when Congress wishes to provide for the possibility of legal representation at government expense for a District government officer by an attorney other than the Corporation Counsel, it can expressly so provide. And since there is nothing in the Revitalization Act that expressly alters the general role this Office has traditionally played vis-a-vis the D.C. Courts in providing litigation services to judges, officials, and employees of the Courts, it is reasonable to conclude that Congress did not intend, by enacting the Revitalization Act, to effect a general change in the status quo in this regard, which is that legal representation may, upon request, be provided by this Office to the judges, officials, and employees of the D.C. Courts when they are sued for alleged tortious conduct in connection with the performance of their official court duties.

Accordingly, in my view, it continues to be the intent of Congress that this Office may, upon request, provide legal representation to the judges, officials, and employees of the D.C. Courts who are sued in tort in connection with the performance of their official court duties, and that any tort liability resulting from such suits -- whether by way of a settlement or a judgment -- may, if appropriate, be paid out of the District's Settlement and Judgment Fund. See generally, D.C. Code §§ 1-361 (1992) (Duties of the Corporation Counsel) and 1-1202 (1992) (Settlement of claims and suits against District), neither of which was amended by the Revitalization Act.

If you have any questions concerning this response, please feel free to call me at 727-6248.

Sincerely,



John M. Ferren  
Corporation Counsel

cc: Daniel A. Rezneck, Esquire  
General Counsel  
District of Columbia Financial Responsibility  
and Management Assistance Authority