

**OFFICE OF THE ATTORNEY GENERAL FOR THE DISTRICT OF COLUMBIA**

**MAYOR'S OFFICE OF LEGAL COUNSEL**

**NOTICE OF EMERGENCY AND PROPOSED RULEMAKING**

Pursuant to the authority set forth in section 861 of the District of Columbia Government Comprehensive Merit Personnel Act of 1978, effective April 20, 1999, D.C. Law 12-260, D.C. Official Code § 1-608.61 (2012 Repl.), as amended by the Elected Attorney General Implementation and Legal Service Establishment Technical Emergency Amendment Act of 2014 (“Implementation Act”), effective July 14, 2014, D.C. Act 20-377, 61 DCR 7598, and any substantially identical successor legislation, the Attorney General and the Interim Director of the Mayor’s Office of Legal Counsel jointly give notice of their adoption, on an emergency basis, of amendments to Chapter 36 (Legal Service) of Title 6B (Government Personnel) of the *District of Columbia Municipal Regulations*. The amendments bring the rules into conformity with the Implementation Act’s creation of the Mayor’s Office of Legal Counsel and the transfer of attorneys who work at subordinate agencies but are employed by the Office of the Attorney General (OAG) from OAG to those subordinate agencies.

This emergency action is based on the need to have the rules governing the District’s Legal Service reflect the actual organization of the Legal Service as established by current law. The existing rules apply only to OAG attorneys and there are currently no rules governing personnel matters for the other attorneys in the Legal Service. Emergency action was required to protect the public welfare by ensuring that appropriate standards are applied to personnel matters relating to employees conducting the District’s legal affairs. This emergency rulemaking was adopted on October 1, 2014 and became effective immediately on that date.

The Attorney General and the Interim Director of the Mayor’s Office of Legal Counsel also give notice of their intent to take final rulemaking action to adopt these amendments in not less than thirty (30) days from the date of publication of this notice in the *D.C. Register*.

These emergency rules will expire on January 28, 2015, or upon publication of a Notice of Final Rulemaking in the *D.C. Register*, whichever occurs first.

**Chapter 36 (Legal Service) of Title 6B DCMR (Government Personnel) is amended to read as follows:**

**3600            APPLICABILITY**

3600.1            This Chapter applies to all attorneys appointed to the Legal Service who are employed by the Office of the Attorney General for the District of Columbia, the Mayor’s Office of Legal Counsel, or a subordinate agency.

3600.2 The time limitations contained in this Chapter requiring action within a specific number of days are to be complied with to the extent feasible, except that time limitations for compliance with training requirements under sections 3610, 3611 and 3612 shall be complied with strictly.

**3601 APPOINTMENT**

3601.1 Attorneys employed by the Office of the Attorney General, the Mayor's Office of Legal Counsel, and subordinate agencies wherever located in the District government, shall be hired by the Attorney General, the Director of the Mayor's Office of Legal Counsel, or the relevant agency head, as applicable, in accordance with hiring procedures jointly established by Office Order of the Attorney General and the Director.

3601.2 The Attorney General and the Director shall establish hiring procedures by Office Orders of their respective offices. .

3601.3 Hiring decisions for attorneys shall take into account:

- (a) Requirements of the position to be filled;
- (b) Professional characteristics of the applicant, including:
  - (1) Analytical skill;
  - (2) Litigation, transactional, and/or counseling experience, if relevant;
  - (3) Oral skills;
  - (4) Writing skills; and
  - (5) Substantive legal knowledge; and
- (c) Personal characteristics of the applicant.

3601.4 The Attorney General, or his or her designee, shall interview every candidate for an attorney position in the Office of the Attorney General.

3601.5 The relevant agency head and the Director, or their designees, shall interview every candidate for an attorney position at a subordinate agency, and the Director shall interview every candidate for an attorney position in the Mayor's Office of Legal Counsel.

- 3601.6 Any attorney in a position above LX-1, or in an equivalent position, who is appointed to the Senior Executive Attorney Service by the Attorney General, the Director, or an agency head shall be notified in writing by the Attorney General, the Director, or the agency head, as applicable, that he or she is being appointed to a Senior Executive Attorney Service position.
- 3601.7 Attorneys shall be appointed to the Legal Service non-competitively, so long as each attorney appointed meets the qualification standards established for the position.
- 3601.8 Each attorney shall swear or affirm an oath as follows: "I (attorney's name), do solemnly swear (or affirm) that I will faithfully execute the laws of the United States of America and of the District of Columbia, and will to the best of my ability, preserve, protect and defend the Constitution of the United States, and will faithfully discharge the duties of the office which I am about to enter."
- 3601.9 An appointment to a position in the Legal Service may be for full-time employment, intermittent employment, part-time employment, or time-limited employment.

## **3602 TRANSFERS, STEP INCREASES, AND PROMOTIONS**

- 3602.1 Attorneys employed by the Office of the Attorney General may request voluntary rotation to another unit within the Office of the Attorney General in accordance with rotation procedures established by Office Order of the Attorney General.
- 3602.2 Attorneys employed by subordinate agencies, including the Mayor's Office of Legal Counsel, may request voluntary rotation to a position in another agency in accordance with rotation procedures established by the Director of the Mayor's Office of Legal Counsel. The rotation of an attorney shall be subject to the approval of the agency heads involved and the Director.
- 3602.3 Changes in assignment of attorneys employed by the Office of the Attorney General may be made by the Attorney General at any time to meet the needs of the Office of the Attorney General.
- 3602.4 With the consent of the agency head involved, the Director may assign an attorney employed by the Mayor's Office of Legal Counsel to perform work as or for the General Counsel of a subordinate agency
- 3602.5 An attorney may receive a within-grade step increase only if he or she received a rating of "successful," "excellent," or "outstanding" for the rating period immediately prior to the due date for a within-grade step increase. Failure to

achieve the required rating shall result in the due date for the step increase being delayed for an additional year.

3602.6 All recommendations for promotion to grades LA 14 and above shall be submitted to the Attorney General or the Director, as applicable, once annually at a time and in a manner to be determined respectively by these officials. If the employee has not been supervised by his or her current supervisor for at least ninety (90) days, the input of the employee's prior supervisor shall be sought. An attorney may receive a promotion to a higher grade if the following criteria are met:

- (a) The attorney has been at the prior grade level for at least twelve (12) months preceding the recommendation for promotion;
- (b) The attorney has demonstrated consistent superior performance, as demonstrated by the two most recent performance evaluations, if available;
- (c) The attorney demonstrates specialized expertise or professional distinction; and
- (d) The attorney demonstrates satisfactory handling of an increasingly more complex workload.

**3603 INDIVIDUAL ACCOUNTABILITY PLANS (LINE ATTORNEYS) AND PERFORMANCE PLANS (ALL OTHER ATTORNEYS)**

3603.1 Each supervisor shall prepare annually, at least thirty (30) days prior to the end of the rating period, a draft Individual Accountability Plan for every line attorney under his or her supervision for the following rating period. This requirement may be satisfied by requiring the line attorney supervised to prepare a draft Individual Accountability Plan for the supervisor's approval.

3603.2 Each supervisor shall review the Job Description for every line attorney under his or her supervision annually, at least thirty (30) days prior to the end of the rating period. The supervisor may recommend changes to Job Descriptions to the Attorney General, the Director, or the agency head, as applicable. This requirement may be satisfied by requiring the line attorney supervised to review his or her Job Description and prepare recommended changes for the supervisor's approval.

3603.3 A supervisor is not required to prepare an Individual Accountability Plan or review a Job Description for any line attorney who the supervisor knows is

scheduled within six (6) months after the beginning of the following rating period to leave, rotate or transfer from the legal office, or unit within the legal office, to which he or she is assigned.

- 3603.4 A supervisor shall provide each line attorney with a copy of his or her draft Individual Accountability Plan, along with a copy of his or her draft revised Job Description, upon completion by the supervisor.
- 3603.5 Each line attorney may provide written comments on the content of his or her draft Individual Accountability Plan and Job Description to the supervisor within fifteen (15) days of receiving them from his or her supervisor.
- 3603.6 A supervisor shall consider, but need not adopt, the comments made by a line attorney regarding a draft Individual Accountability Plan or Job Description.
- 3603.7 Each supervisor shall prepare a final Individual Accountability Plan and make final recommendations for changes to the Job Description for each line attorney under his or her supervision by the first day of the rating period. A copy of each shall be transmitted to the Attorney General, the Director, or the agency head, as applicable, for approval.
- 3603.8 An Individual Accountability Plan shall include, but need not be limited to:
- (a) Measurable goals and professional development expectations for the line attorney that parallel specific job duties and responsibilities, work behaviors, or projects within each of the categories listed in (b);
  - (b) Appropriate performance standards, including but not limited to those from the following list, and the weight to be accorded to each:
    - (1) Conduct of legal research and writing;
    - (2) Oral preparation and presentation;
    - (3) Efficiency, productivity, and work habits;
    - (4) Professional conduct and effectiveness in working with others;
    - (5) Office procedures;
    - (6) Job Knowledge; and
    - (7) Litigation, transaction and/or counseling skills (as appropriate); and
  - (c) Training requirements to be provided in-house and non-in-house.

- 3603.9 Upon approval of the Individual Accountability Plan and revised Job Description by the Attorney General, the Director, or the agency head, the applicable official shall forward the revised Job Description to the relevant personnel authority for final approval.
- 3603.10 Each supervisor shall provide each line attorney with a copy of his or her final Individual Accountability Plan during the first week of the rating period, and shall provide each line attorney with a copy of his or her revised Job Description as soon as practicable after the personnel authority approves it. The line attorney's previous job description shall continue to apply until the personnel authority approves any proposed revisions.
- 3603.11 The supervisor of a line attorney who is newly-hired, rotated, or transferred into the unit between thirty (30) days prior to the end of a rating period and one hundred- twenty (120) days prior to the end of the following rating period, shall provide the line attorney with a final Individual Accountability Plan and Job Description within thirty (30) days after appointment, rotation or transfer. The supervisor of the line attorney may, at his or her option, provide the line attorney with an opportunity to comment on a draft Individual Accountability Plan and a draft Job Description
- 3603.12 During the first week of a new rating period, each supervisor shall prepare and submit to the Training Director of the Office of the Attorney General, the Director, or the agency head, as applicable, in a format specified by the Training Director, the Director, or the agency head, a report summarizing any training requirements included in Individual Accountability Plans for line attorneys under his or her supervision. The report shall identify subject-matter areas where training is needed and include suggestions as to the types of programs and courses that could be used to meet those identified training needs. Agency head shall provide the Director with copies of these reports for attorneys employed by their agency.
- 3603.13 Performance Plans for supervisors and non-supervisory attorneys as described in sections 3606 and 3607 shall be prepared in accordance with sections 1406, 1407, 1408, and 1409 of Chapter 14 of the District of Columbia Personnel Regulations

**3604 EVALUATION OF PERFORMANCE - RATING PERIODS, ELIGIBILITY FOR EVALUATION, CRITERIA FOR EVALUATION, AND RATING LEVELS**

- 3604.1 The rating period for line attorneys shall run from September 1st to August 31st. The rating period for all other attorneys covered by these rules (supervisors and

the non-supervisory attorneys described in sections 3606 and 3607 shall run from October 1st to September 30th.

- 3604.2 Written evaluations shall be based on at least one hundred-twenty (120) days of experience supervising the line attorney evaluated.
- (a) Line attorneys who have been employed for fewer than one hundred-twenty (120) days prior to the end of the rating period, shall not be evaluated.
  - (b) If a line attorney has been employed for at least one hundred-twenty (120) days prior to the end of the rating period, but the supervisor of the line attorney at the time of the evaluation lacks at least one hundred-twenty (120) days of direct experience supervising the line attorney, the supervisor shall evaluate the line attorney based on an advisory evaluation prepared by a former supervisor or any other person, who had at least one hundred-twenty (120) days of direct experience supervising the line attorney during the rating period within the agency. If no such advisory evaluation is available, the line attorney shall not be evaluated.
- 3604.3 Each evaluation shall assess the line attorney's achievement of the performance standards and specific goals set out in his or her Individual Accountability Plan during the rating period.
- 3604.4 Evaluations may, at the discretion of the supervisor, include input from citizens, customers, peers, and others with whom the line attorney had regular professional contact during the rating period.
- 3604.5 Beginning with the 2008-2009 rating period, the evaluation of the performance of supervisors and the non-supervisory attorneys described in sections 3606 and 3607 shall no longer be under the District government's Performance Management Program (PMP), but instead shall be under the in-house performance evaluation system described in these rules.
- 3604.6 Written evaluations of supervisors and non-supervisory attorneys as described in sections 3606 and 3607 who have been reassigned to a position with different duties and responsibilities within ninety (90) days of the end of the rating period shall be rated not later than thirty (30) days from the effective date of the reassignment. If such an attorney is promoted or demoted during the ninety (90) days prior to the end of the rating period, he or she shall be rated not later than thirty (30) days from the effective date of the promotion or demotion. If such an attorney is reinstated or restored to duty during the ninety (90) days prior to the end of the rating period, he or she shall be rated at the end of the next rating

period. If such an attorney transfers to an agency under the Mayor's or the Attorney General's personnel authority from another personnel authority or is newly appointed during the ninety (90) days prior to the end of the rating period, he or she shall be rated at the end of the next rating period.

3604.7 Any supervisor or non-supervisory attorney as described in sections 3606 and 3607 who is reinstated, restored, newly appointed, or transferred shall automatically be considered as having been assigned a rating of "successful," which shall remain the official rating of record until such time as replaced by another official rating.

3604.8 For line attorneys and non-supervisory attorneys described in sections 3605 and 3607, each written evaluation shall assign an overall rating to the attorney of "outstanding," "excellent," "successful," "needs improvement," or "fails expectations." For all attorneys covered by these rules other than line attorneys and non-supervisory attorneys described in sections 3605 and 3607, each written evaluation shall assign an overall rating to the attorney of "outstanding," "successful," "needs improvement," or "fails expectations."

### **3605 EVALUATION OF PERFORMANCE – LINE ATTORNEYS**

3605.1 Each supervisor shall prepare a written evaluation for every line attorney under his or her supervision annually, within twenty (20) days after the end of the rating period. Written evaluations shall be prepared using a form that is jointly approved by the Attorney General and the Director of the Mayor's Office of Legal Counsel.

3605.2 Each supervisor shall submit evaluations of line attorneys to his or her supervisor for review, comment, or revision. Each supervisor who reviews an evaluation shall complete his or her review within five (5) days of receipt of the evaluation and shall immediately return the draft evaluation to the supervisor who prepared it.

3605.3 The supervisor who prepared the evaluation shall complete any revision requested by his or her supervisor within seven (7) days of receipt of the evaluation.

3605.4 After completion of any revisions under section 3605.3, the evaluation shall be reviewed by every supervisor in the chain of command from the line attorney up to the Attorney General, the Director, or the agency head, as applicable. Each supervisor within the chain of command shall complete his or her review within five (5) days of receipt of the evaluation and forward the evaluation, along with his or her comments for revision, up the chain of command. The final supervisor in the chain of command below the Attorney General, the Director, or the agency head shall, upon completion of his or her review, return the evaluation to the



supervisor who prepared it for revision prior to transmittal to the Attorney General, the Director, or the agency head.

- 3605.5 As soon as practicable after the receipt of the evaluations, the Attorney General, the Director, or the agency head shall complete his or her review. In reviewing evaluations of line attorneys, the Attorney General, the Director, or the agency head may consult with the supervisor who prepared the evaluation, any person who prepared an advisory evaluation, and the supervisors in the chain of command for the relevant unit.
- 3605.6 If the Attorney General, the Director, or the agency head decides that an evaluation should be changed, the supervisor who prepared the evaluation shall make all changes that are directed by the Attorney General, the Director, or the agency head within five (5) days of receipt of the Attorney General's, the Director's or the agency head's directive.
- 3605.7 Each supervisor shall review the evaluation with the line attorney evaluated within twenty (20) days of receipt of the approved evaluation from the Attorney General, the Director, or the agency head or within twenty (20) days after completion of any revisions directed by the Attorney General, the Director, or the agency head. Both the line attorney evaluated and his or her supervisor shall sign the written evaluation to confirm that it has been reviewed.
- 3605.8 If a line attorney disagrees with the written evaluation, he or she may appeal it within thirty (30) days of receipt to the appropriate review committee established by the Attorney General or the Director.
- 3605.9 The Attorney General and the Director shall each establish a Performance Evaluation Review Committee ("Committee") for line attorneys within their jurisdiction. Line attorneys employed by subordinate agencies and the Mayor's Office of Legal Counsel are within the Director's jurisdiction. The Attorney General and the Director shall each appoint nine managing attorneys to their respective Committees, which shall sit in three-member panels as designated by the Attorney General and the Director.
- 3605.10 The Committees shall be empowered to review the basis for the direct supervisor's rating, conduct a hearing, receive written briefs, and issue a written decision which may approve, modify, or reject the performance rating. The line attorney shall initially provide the Attorney General or the Director (or their designees) with a notice of appeal, including any request for a hearing, within thirty (30) days of receipt of the evaluation. The Committee shall circulate the notice to the line attorney's direct supervisor and to every supervisor in the chain of command

between the line attorney and the Attorney General, the Director, or the agency head.

3605.11 The Committees have the discretion to decide whether to grant any request for a hearing. If a request for a hearing is granted, the committee shall circulate a hearing notice to the line attorney and to every supervisor in the chain of command between the line attorney and the Attorney General, the Director, or the agency head, which provides:

- (a) The place of the hearing and a hearing date and time no more than fifteen (15) days from the date of the hearing notice;
- (b) That the line attorney may review, upon request to his or her direct supervisor, all materials upon which the evaluation is based;
- (c) That the line attorney may be represented by an approved attorney, or other representative at the hearing; and
- (d) That the line attorney has the right to testify and present evidence at the hearing.

3605.12 The hearing shall be closed except for the line attorney, his or her representative, the line attorney's direct supervisor, and every supervisor in the chain of command between the direct supervisor and the Attorney General, the Director, or the agency head. There shall be no discovery procedures except as provided in this section. An official record shall be kept of the hearing. The Committee may hold a pre-hearing conference in order to:

- (a) Formulate and simplify the issues, including the elimination of frivolous claims or defenses;
- (b) Obtain admissions of fact and of documents that will avoid unnecessary proof, stipulations regarding the authenticity of documents, and advance rulings on the admissibility of evidence;
- (c) Obtain identification of all witnesses and documents, which identification shall be binding at the hearing, except as, in the discretion of the committee, the interests of justice warrant the addition of witnesses and documents at the hearing;
- (d) Achieve settlement of the dispute;
- (e) Dispose of any pending motions;
- (f) Set reasonable limits on the time allowed for presenting evidence;

- (g) Establish a post-hearing briefing schedule, which may permit written briefs or other documents to be filed by the line attorney, the line attorney's direct supervisor, and each supervisor in the chain of command between the line attorney and the Attorney General, the Director, or the agency head; and
- (h) Address such other matters as may facilitate the just and efficient disposition of the matter.

3605.13 If the Committee decides, in its discretion, to reject any request for a hearing, in whole or in part, it shall so advise the line attorney, the attorney's direct supervisor, and each supervisor in the chain of command between the line attorney and the Attorney General, the Director, or the agency head. The Committee shall circulate a notice that schedules the filing of written briefs or other documents to the line attorney, the line attorney's direct supervisor, and each supervisor in the chain of command between the line attorney and the Attorney General, the Director, or the agency head. The Committee may schedule a meeting with the line attorney, the line attorney's direct supervisor, and each supervisor in the chain of command between the line attorney and the Attorney General, the Director, or the agency head in order to address the matters raised in the appeal.

3605.14 The Committee shall provide the line attorney, the line attorney's direct supervisor, and every supervisor in the chain of command between the line attorney and the Attorney General, the Director, or the agency head with a final written administrative decision within thirty (30) days of the conclusion of the appeal proceeding. The final written administrative decision shall be accompanied by notice of the right to appeal the decision to the Attorney General, the Director, or the agency head within thirty (30) days of receipt of the decision by the line attorney.

3605.15 The Attorney General, the Director, or the agency head shall circulate the line attorney's notice of appeal to the line attorney's direct supervisor and to every supervisor in the chain of command between the direct supervisor and the Attorney General, the Director, or the agency head.

3605.16 The Attorney General, the Director, or the agency head shall review the basis for the three-person committee's decision de novo, without taking any additional evidence. As part of this review, the Attorney General, the Director, or the agency head may permit written appellate briefs to be filed in accordance with a schedule established by the Attorney General, the Director, or the agency head. No oral arguments shall be permitted. The Attorney General, the Director or the agency

head may, in the exercise of his or her discretion, hold a pre-briefing conference for the purposes, among others, of formulating and simplifying the issues, disposing of any pending motions, attempting to settle the dispute, establishing a schedule for the filing of written briefs or other documents, and addressing such other matters as may facilitate the just and efficient disposition of the appeal.

3605.17 The Attorney General, the Director, or the agency head shall provide the line attorney, the line attorney's direct supervisor, and every supervisor in the chain of command between the direct supervisor and the Attorney General, the Director, or the agency head with a final written administrative decision within a reasonable time after the final brief is filed. The Attorney General's, the Director's, or the agency head's decision shall be final and no further appeal shall be allowed.

3605.18 Each supervisor shall perform at least one (1) interim evaluation of every attorney under his or her supervision annually, in the ninth month of the rating period. An interim evaluation shall consist of an informal meeting to discuss the line attorney's performance under his or her Individual Accountability Plan. At his or her discretion, a supervisor may provide a written interim evaluation. Any written interim evaluation shall be provided to the attorney evaluated, but shall not be included in the attorney's official personnel file unless the supervisor rates the attorney as "needs improvement" or lower. At his or her discretion, or at the request of the Attorney General, Director, or agency head, a supervisor may perform interim evaluations no more frequently than once every three (3) months during the rating period. Interim evaluations rating a line attorney as "needs improvement" or lower may be changed by mutual agreement or by the filing of an appeal as provided in this section.

3605.19 Appeals from evaluations of line attorneys prepared for the rating period ending on August 31, 2014 shall be reviewed by the Attorney General and the Committee established by the Attorney General notwithstanding the attorney's transfer to a different agency prior to the conclusion of the review and appeal process.

### **3606 EVALUATION OF PERFORMANCE – SUPERVISORS**

3606.1 Each supervisor in the Legal Service below the level of Chief Deputy Attorney General, Director of the Mayor's Office of Legal Counsel, or agency head shall prepare a written evaluation for every supervisor reporting directly to him or her annually, within ten (30) days after the end of the rating period. Written evaluations shall be prepared using a form that is jointly approved by the Attorney General and the Director of the Mayor's Office of Legal Counsel.

3606.2 The Chief Deputy shall evaluate any Special or Senior Counsel that reports to him or her in accordance with this section

- 3606.3 The supervisor shall review evaluations with supervisors evaluated within five (14) days of completion. As a result of this meeting, the evaluation may be changed by mutual agreement. Both the supervisor evaluated and his or her immediate supervisor shall sign the evaluation to confirm that it has been reviewed.
- 3606.4 If no mutual agreement to change the evaluation of a supervisor is reached, the supervisor evaluated may prepare a statement of written objections within five (5) days of the meeting and forward the evaluation and written objections to the Chief Deputy, the Director, or the agency head, as applicable, with a copy to every supervisor in the chain of command up to the Chief Deputy, the Director, or the agency head.
- 3606.5 If the attorney evaluated is a Deputy or a Special or Senior Counsel to the Chief Deputy, the Chief Deputy shall immediately forward the evaluation and the written objections to the Attorney General.
- 3606.6 In reviewing written objections of a supervisor, the Chief Deputy, the Director, or the agency head may consult with the supervisor evaluated and the supervisor who prepared the evaluation. The Chief Deputy, the Director, or the agency head shall complete his or her review within five (5) days of the receipt of the objections, and shall direct the supervisor who prepared the evaluation to make any changes based on that review.
- 3606.7 The supervisor evaluated or the supervisor who prepared the evaluation may submit a written appeal from the decision of the Chief Deputy, the Director, or the agency head to the Attorney General, or the Director, within five (5) days of receipt of the Chief Deputy's, the Director's, or the agency head's decision. Review by the Director of an evaluation the Director completed for a supervisor in the Mayor's Office of Legal Counsel shall take the form of a reconsideration.
- 3606.8 The Attorney General or the Director may consult with the supervisor evaluated, the supervisor who prepared the evaluation, and any supervisor in the chain of command between the supervisor evaluated and the Attorney General or Director before making a decision. The decision of the Attorney General or Director shall be in writing and circulated among the supervisors in the chain of command for the supervisor evaluated within five (5) days of receipt of the appeal.
- 3606.9 The supervisor who prepared the evaluation shall revise the evaluation as necessary in accordance with the Attorney General's or Director's decision.

- 3606.10 The decision of the Attorney General or Director shall be final, and shall not be subject to further appeal.
- 3606.11 Each supervisor shall perform at least one interim evaluation of every supervisor under his or her supervision annually, in the ninth month of the rating period. An interim evaluation shall consist of an informal meeting to discuss the attorney's performance under his or her Performance Plan. At his or her discretion, a supervisor may provide a written interim evaluation. Any written interim evaluation shall be provided to the attorney evaluated, but shall not be included in the attorney's official personnel file.
- 3606.12 Any supervisor who fails to meet any deadline as described in this section may be subject to disciplinary action in accordance with section 3614.

**3607 EVALUATION OF PERFORMANCE - CHIEF DEPUTY, GENERAL COUNSEL, SPECIAL DEPUTY, SPECIAL COUNSEL, AND SENIOR COUNSEL**

- 3607.1 The Attorney General shall prepare a written evaluation of the Chief Deputy Attorney General, each Special Deputy Attorney General, each Special Counsel to the Attorney General, each Senior Counsel to the Attorney General, and any other attorney who reports directly to the Attorney General annually, within twenty (30) days after the end of the rating period.
- 3607.2 The head of each subordinate agency shall, in consultation with the Director of the Mayor's Office of Legal Counsel, prepare a written evaluation of the General Counsel and any attorney who reports directly to the agency head annually, within twenty (30) days after the end of the rating period.
- 3607.3 The Director shall prepare a written evaluation of each supervisor or other attorney who reports directly to the Director annually, within twenty (30) days after the end of the rating period.
- 3607.4 Written evaluations shall be prepared using a form that is jointly approved by the Attorney General and the Director.
- 3607.5 The Attorney General, the Director, and the agency heads shall review evaluations with attorneys evaluated within five (14) days of completion. As a result of this meeting, the evaluation may be changed by mutual agreement and made final within five (5) days. Both the attorney evaluated and the Attorney General, the Director, or the agency head shall sign the evaluation to confirm that it has been reviewed.

3607.6 The Attorney General, the Director, or the agency head shall perform at least one interim evaluation of every attorney who reports directly to the Attorney General, the Director, or the agency head annually, in the ninth month of the rating period. An interim evaluation shall consist of an informal meeting to discuss the attorney's performance under his or her Performance Plan. At his or her discretion, the Attorney General, the Director, or the agency head may provide a written interim evaluation. Any written interim evaluation shall be provided to the attorney evaluated, but shall not be included in the attorney's official personnel file.

**3608 EVALUATION OF PERFORMANCE - NON-DELEGATED  
SUBORDINATE – REPEALED**

**3609 PERFORMANCE IMPROVEMENT PLANS**

3609.1 Each attorney, other than attorneys in Senior Executive Attorney Service positions, assigned an overall rating of “needs improvement” in an annual or interim evaluation shall be provided with a Performance Improvement Plan, on a form jointly approved by the Attorney General and the Director of the Mayor’s Office of Legal Counsel.

3609.2 The Performance Improvement Plan shall identify specific areas where improvement is needed in performing the attorney’s work in a manner that meets the expectations of an attorney in that grade. Each line attorney who receives either a “needs improvement” rating in any performance element or overall or a “fails expectations” rating in any performance element shall be provided with such a Performance Improvement Plan. Each line attorney who receives a “fails expectations” rating overall shall be provided with an advance written notice of proposed removal under section 3614 of this Chapter.

3609.3 The Performance Improvement Plan shall be prepared by the supervisor and shall be provided to the attorney within thirty (30) days of his or her receipt of the evaluation. A copy of all Performance Improvement Plans shall be provided to the Attorney General, the Director, or the agency head and the Director, as applicable.

3609.4 A Performance Improvement Plan shall:

- (a) Identify performance standards where the attorney fails to meet job requirements;
- (b) Outline specific action steps that are necessary for the attorney to improve in the deficient area(s), including training if applicable and available;

- (c) Identify measures that the supervisor will use to determine whether action steps have been successfully completed, and whether performance has improved;
- (d) Provide for monitoring of attorney progress as needed; and
- (e) Include a time by which each action item shall be completed.

3609.5 After the Performance Improvement Plan is developed and forwarded to an attorney, he or she shall be given at least three (3) months to demonstrate improvement.

3609.6 Attorney performance under the Performance Improvement Plan shall be an additional basis for evaluation at any interim evaluation and the annual written evaluation.

3609.7 Each supervisor shall prepare and submit to the Training Director of the Office of the Attorney General, the Director, or the agency head and the Director, as applicable, a report summarizing any training requirements included in Performance Improvement Plans for attorneys under his or her supervision. This report shall be submitted at the same time that the Performance Improvement Plan is provided to the affected attorney. The report shall identify subject-matter areas where training is needed and include suggestions as to the types of programs and courses that could be used to meet those identified training needs.

## **3610 ANNUAL MANDATORY TRAINING - GENERALLY**

3610.1 The Attorney General shall establish and administer an annual mandatory program of continuing legal education for attorneys in the Legal Service who are employed by the Office of the Attorney General.

3610.2 The Attorney General shall establish and administer an annual mandatory program of training to maintain and enhance the management supervisory skills of Legal Service supervisory attorneys employed in the Office of the Attorney General.

3610.3 The Director of the Mayor's Office of Legal Counsel shall establish and administer annual mandatory training programs comparable to those required under §§ 3610.1 and 3610.2, for Legal Service attorneys and supervisors in the Mayor's Office of Legal Counsel and the subordinate agencies.

3610.4 Training programs offered by the Office of the Attorney General shall, to the extent practicable, be made available with no charge to Legal Service attorneys employed by the Mayor's Office of Legal Counsel and the subordinate agencies.



Likewise, training programs offered by the Mayor's Office of Legal Counsel for attorneys employed by that office and the subordinate agencies shall, to the extent practicable, be made available with no charge to attorneys in the Office of the Attorney General.

- 3610.5 The Attorney General shall designate a Training Director to oversee, arrange, and approve mandatory training programs and requirements for attorneys in the Office of the Attorney General.
- 3610.6 Any decision of the Training Director is subject to direction and review by the Attorney General or the Attorney General's designee.
- 3610.7 Annual mandatory training requirements shall be completed during each rating period.
- 3610.8 Any attorney for whom compliance with any of the training requirements of this Chapter is inordinately difficult due to a severe, prolonged illness, a disability, or other good cause, may seek a waiver from mandatory training requirements. An attorney may do so by submitting a request to the Training Director for attorneys employed by the Office of the Attorney General or to the Director for attorneys employed by the Mayor's Office of Legal Counsel or the subordinate agencies, as applicable. The request for a waiver shall include any appropriate or required supporting material or documentation.
- 3610.9 A waiver request shall be promptly submitted when the grounds for the waiver request become known to the attorney. Failure to request a waiver in a timely manner may be considered by the Training Director or the Director in determining whether to grant a waiver.
- 3610.10 A waiver shall be valid for a specific time period granted by the Training Director or the Director not to exceed one year, unless renewed or extended.
- 3610.11 Failure to comply with the training requirements of this Chapter during a rating period, without receiving a waiver, shall be considered by a supervisor in evaluating an attorney and setting the overall rating.
- 3610.12 All training requests for credit to satisfy mandatory requirements shall be submitted to the Training Director or the Director, as applicable, for authorization and approval before participation in any in-house or other training.
- 3610.13 A credit hour shall be equivalent to sixty (60) minutes of instruction.

- 3610.14 The Training Director and Director, as applicable, shall issue written procedures with respect to making requests for training, obtaining prior approval of training, and other requirements.
- 3610.15 When an attorney fails to complete training for which the District has incurred an expense, the expenses incurred shall be repaid to the District by the attorney if the Training Director or Director determines that the attorney unjustifiably failed to complete the training.
- 3610.16 Attorneys in the Legal Service who are newly-appointed within one hundred-twenty (120) days of the end of a rating period shall not be required to complete any training during that rating period. Any attorney in the Legal Service who is newly-appointed more than one hundred-twenty (120) days prior to the end of the rating period, shall be required to complete a pro rata portion of the training requirements for the rating year in which he or she is appointed.
- 3610.17 Attorneys shall evaluate training programs attended on forms provided for such purpose.
- 3610.18 The Training Director and the Director shall maintain records of payments made for travel, tuition, and fees, and other necessary expenses of training. The official record of such expenses for the Office of the Attorney General shall be the record kept by the Financial Officer for the Office of the Attorney General.
- 3610.19 An attorney assigned to full-time training shall be counted as being in full pay status, up to a maximum of eight (8) hours a day or forty (40) hours a week.
- 3610.20 An attorney assigned to training on less than a full-time basis shall be counted as being in pay status the same number of hours spent in instruction plus necessary travel time.
- 3610.21 An attorney selected for non-mandatory training in a non-District facility shall agree in writing to continue in the service of the subordinate agency after the end of the training for a period of time at least equal to the length of the training period.

**3611 MANDATORY CONTINUING LEGAL EDUCATION**

- 3611.1 Subject to the availability of in-house or other training approved and paid for by the District, each attorney shall complete at least twelve (12) credit hours of legal education during each rating period.
- 3611.2 At least three (3) hours of the twelve (12) required credit hours of legal education shall be instruction in ethics, to the extent training is available.

- 3611.3 Attorneys with less than three (3) years in the Legal Service shall fulfill the ethics requirement solely by attendance at courses devoted to instruction in ethics.
- 3611.4 Subject to the approval of the Training Director or the Director of the Mayor's Office of Legal Counsel, attorneys with more than three (3) years in the Legal Service may fulfill the ethics requirement by attending courses addressing other subjects of the law if a specific ethical component is included that is related to the substance of the instruction involved.
- 3611.5 Other substantive course requirements, including the subject matter of courses and the hours of required instruction, shall be determined, arranged, and approved by the Training Director and the Director .
- 3611.6 In addition to in-house training programs and training programs offered by outside providers, the following activities within the rating period may, pursuant to guidelines adopted by the Training Director and the Director, be pre-approved to qualify for credit for continuing legal education:
- (a) Providing instruction in a legal education program;
  - (b) Publication of an original work on a legal topic in a recognized legal periodical or by a legal publishing house;
  - (c) Self study (for example, formal showings of audio and video tapes produced by an accredited sponsor of legal programs);
  - (d) Attendance at or audit of a law school class(es);
  - (e) Courses for self-improvement in civility, human relations, stress and time management; or
  - (f) Participation in meetings and conferences with a legal training component.

## **3612 MANDATORY MANAGEMENT TRAINING**

- 3612.1 Subject to the availability of in-house or other training that is provided by and paid for by the District, supervisors in the Legal Service shall complete at least twelve (12) hours of management training during each rating period. In addition to this requirement, the Attorney General and the Director of the Mayor's Office of Legal Counsel may make any additional training mandatory for a supervisor, if it is provided by and paid for by the District.
- 3612.2 Subject to the availability of in-house or other training that is provided by and paid for by the District , attorneys appointed as supervisors on or after the effective date of this Chapter shall attend a program of forty (40) hours of basic

District government supervisory skills training within one hundred-sixty (160) days of appointment to a supervisory position.

3612.3 In addition to in-house management training programs or management training programs offered by outside providers, the following activities within the rating period may, pursuant to guidelines adopted by the Training Director and the Director, be pre-approved to qualify for credit toward annual management training requirements for attorneys:

- (a) Providing instruction in a management program;
- (b) Publication of an original work related to management issues, in a recognized business periodical or by a known publishing house; or
- (c) Participation in meetings and conferences with a management training component.

**3614 DISCIPLINE**

3614.1 An attorney appointed to the Legal Service, other than an attorney in a Senior Executive Attorney Service position, shall be disciplined in accordance with this section.

3614.2 An attorney appointed to a Senior Executive Attorney Service position shall be subject to discipline or termination at-will. If a termination is not for delinquency or misconduct, the Attorney General or the Director of the Mayor's Office of Legal Counsel may recommend appointment to another available position in the Legal Service.

3614.3 An attorney, other than an attorney in a Senior Executive Attorney Service position, shall be subject to discipline or termination for unacceptable performance or for any other reason that is not arbitrary or capricious.

3614.4 Discipline may include reprimand, suspension (with or without pay), reduction of grade or step, and removal.

3614.5 An attorney, other than an attorney in a Senior Executive Attorney Service position, shall be provided at least a ten (10) day written notice prior to the imposition of discipline against him or her. The notice shall contain all of the following:

- (a) The reasons for the disciplinary action;
- (b) The discipline to be imposed; and

- (c) A statement that the stated discipline shall be imposed in ten (10) days from the date of the notice unless the attorney responds in writing to the Attorney General, the Director, or the agency head, as applicable, within ten (10) days of receiving the notice, and that the response may include a request for a hearing.

3614.6 If the attorney submits a response as provided in 3614.5(c), the Attorney General, the Director, or the agency head, as applicable, may, within ten (10) days of receipt of the attorney's response, grant a hearing on the matter. The hearing notice shall provide:

- (a) The place of the hearing and a hearing date and time not less than fifteen (15) nor more than thirty (30) days from the date of the hearing notice;
- (b) That the attorney may review, upon request to his or her supervisor, all materials upon which the disciplinary action is based, including, but not limited to statements of witnesses, documents, and reports of investigations or extracts therefrom;
- (c) That the attorney may be represented by an approved attorney, or other representative, at the hearing; and
- (d) That the attorney has the right to present evidence at the hearing, including written statements of witnesses, affidavits, or both.

3614.7 A hearing pursuant to section 3614.6 may be held before the Attorney General, the Director, or the agency head, as applicable, or their designees and shall be closed except for the attorney, his or her representative, and the supervisor who issued the disciplinary action notice. There shall be no discovery procedures except as provided in this section. An official record shall be kept of the hearing.

3614.8 The Attorney General, the Director, or the agency head, as applicable shall provide the attorney with a final written administrative decision within fifteen (15) days of the hearing date, or within fifteen (15) days of receipt of the attorney's response under section 3614.5(c) if no hearing is held. The agency head shall consult with the Director in reaching a final decision.

3614.9 The decision of the Attorney General shall be final with respect to attorneys employed by the Office of the Attorney General. The final decision of the Mayor's Office of Legal Counsel or subordinate agency head shall be accompanied by notice of the right to appeal the decision to the Mayor within five (5) days of receipt of the decision. The decision of the Mayor issued in response to such an appeal shall be final.

**3615 SEPARATION PAY**

3615.1 An attorney in a Senior Executive Attorney Service position who is involuntarily discharged shall be paid separation pay upon separation for non-disciplinary reasons based on length of service as a series 905 attorney in the District government as follows:

- (a) 4 weeks of separation pay for persons with 1-5 years of service;
- (b) 8 weeks of separation pay for persons with 6-14 years of service; or
- (c) 12 weeks of separation pay for persons with more than 15 years of service.

3615.2 The number of weeks of separation pay authorized pursuant to this section shall not exceed the number of weeks between the individual's separation and the individual's appointment to another position in the District government. An individual who receives separation pay pursuant to this section, and who is subsequently appointed to any position in the District government during the period of weeks represented by that payment, shall be required to repay the amount of separation pay attributable to the period covered by such appointment. The pro-rated amount to be repaid shall be based on the entire amount of the separation pay, including all required deductions for taxes, and shall be paid to the agency that made the separation pay.

3615.3 Separation pay shall be provided at the time of separation as a lump sum, one-time payment, subject only to the withholdings of federal, District of Columbia, and State income taxes, and social security taxes, if applicable.

3615.4 When a determination is made that a Senior Executive Attorney is not entitled to receive separation pay because the employee's separation is for disciplinary reasons, the Attorney General or the Director of the Mayor's Office of Legal Counsel, as applicable, shall provide the employee with a written notice within thirty (30) days of termination containing all of the following:

- (a) Notification that the employee is not entitled to separation pay;
- (b) The reasons for the determination that the employee is not entitled to separation pay; and
- (c) A statement that the decision shall be final in five (5) days from the date of the notice unless the employee responds to it, in writing, within five (5) days of receiving the notice.

3615.5 If the employee submits a response as provided in section 3615.4(c), the Attorney General or the Director shall issue a final administrative decision to the employee. If the final administrative decision grants severance pay, this decision shall not reverse the employee's termination.

**3616 REDUCTIONS IN FORCE**

3616.1 In the case of line attorneys and of supervisors and the non-supervisory attorneys described in sections 3606 and 3607 who do not occupy a Senior Executive Attorney service position, reductions in force shall be governed by the provisions of Chapter 24 of the Personnel Regulations, except that references to Chapter 16 in Chapter 24 shall be read as a reference to section 3614 of these rules.

**3618 ATTORNEY GOOD STANDING IN THE D.C. BAR REQUIREMENT**

3618.1 The provisions of this section shall be applicable to each attorney appointed to the Legal Service who is employed by the Office of the Attorney General, the Mayor's Office of Legal Counsel, or a subordinate agency and who is required to be a member of the District of Columbia Bar as a prerequisite of employment. This section is also applicable to an individual who is a member in good standing of the bar of another jurisdiction and who has filed a timely application for admission to the District of Columbia Bar.

3618.2 An appointee to a Legal Service position shall remain a member in good standing of the District of Columbia Bar during his or her employment in the Legal Service. An appointee who is a member in good standing of the bar of another state or territory and who has filed an application with the D.C. Court of Appeals for admission to the District of Columbia Bar shall present a certificate of good standing to the Office of the Attorney General, the Director of the Mayor's Office of Legal Counsel, or the agency head, as applicable, upon notification of his or her admission to the District of Columbia Bar, within five (5) business days of such notification, and such admission shall occur within 360 days of the appointee's initial employment as a attorney by the District government. The appointee shall thereafter remain a member in good standing of the District of Columbia Bar.

3618.3 An appointee to a Legal Service position shall notify the Attorney General, the Director, or the agency head, as applicable immediately of any sanction proposed by the D.C. Office of Bar Counsel, any hearing regarding any proposed disciplinary action, or any disciplinary action taken by the D.C. Court of Appeals against that attorney.

3618.4 An appointee to a Legal Service position who is suspended from practice by the D.C. Court of Appeals shall not remain in an attorney position during the suspension period. The Attorney General, the Director, or the agency head may, at his or her discretion, request the re-assignment of such an appointee to a non-attorney position in the Office of the Attorney General or another agency.

3618.5 An appointee to a Legal Service position shall not be compensated for services provided pursuant to the appointee's employment as an attorney unless such an individual is duly licensed and authorized to practice as an attorney under the law of the District of Columbia. This prohibition shall not apply to an appointee who is a member in good standing of the bar of another state or territory who has filed an application with the D.C. Court of Appeals for admission to the District of Columbia Bar and such admission has occurred within 360 days of the appointee's initial employment as a attorney by the District government.

### **3699 DEFINITIONS**

3699.1 In this Chapter, the following terms shall have the following meanings:

**Act** – The District of Columbia Government Comprehensive Merit Personnel Act of 1978, effective March 3, 1979 ( D.C. Law 2-139), as amended by the Legal Service Establishment Amendment Act of 1998, effective April 20, 1999 (D.C. Law 12-260; D.C. Official Code §§ 1-601.01, *et seq.* (2006 Repl.; 2011 Supp.)), and as amended by both the Technical Amendments Act of 1999, effective April 12, 2000 (D.C. Law13-91), and the Legal Service Amendment Act of 2005, effective October 20, 2005 (D.C. Law 16-33), and as amended by the Elected Attorney General Implementation and Legal Service Establishment Amendment Act of 2013, effective December 13, 2013 (D.C. Law 20-60), and as amended by any subsequent laws.

**Administrative hearing officer** – A person whose duties, in whole or in substantial part, consist of conducting or presiding over hearings in contested matters pursuant to law or regulation, or who is engaged primarily in adjudicatory functions on behalf of an agency, rather than investigative, prosecutorial or advisory functions, including, but not limited to any person who bears the title Hearing Officer, Hearing Examiner, Attorney Examiner, Administrative Law Judge, Administrative Judge, or Adjudication Specialist.

**Administrative law judge** – A person whose duties, in whole or in substantial part, consist of conducting or presiding over hearings in contested matters pursuant to law or regulation, or who is engaged primarily in adjudicatory functions on behalf of an agency, rather than investigative, prosecutorial or advisory functions, including, but not limited to any person who bears the title



Hearing Officer, Hearing Examiner, Attorney Examiner, Administrative Law Judge, Administrative Judge, or Adjudication Specialist.

**Attorney** – Any position that is classified as part of Series 905, except for any position that is occupied by a person whose duties, in whole or in substantial part, consist of hearing cases as an administrative law judge or an administrative hearing officer.

**Attorney General for the District of Columbia** – The chief legal officer of the District Government, elected by the voters to head the Office of the Attorney General for the District of Columbia and to conduct all law business of the District Government.

**Calendar year** – The period of time beginning with the first full pay period in January through the beginning of the first full pay period in January of the following year as determined by the Office of Personnel.

**Chain of command** – The order of authority of positions within the Office of the Attorney General for the District of Columbia, the Mayor’s Office of Legal Counsel, and the offices of the General Counsels for subordinate agencies employing attorneys in the Legal Service.

**Chief Deputy** – An official, designated by the Attorney General for the District of Columbia, who is the highest-ranking official in the chain of command in the Office of the Attorney General for the District of Columbia other than the Attorney General.

**Competencies** – Behaviors demonstrated on the job by supervisors described in sections 3606 and 3607 of these rules as follows: Program Management; Staff Supervision; Performance Management; Work Productivity; Communication; Customer Service; and Regulations Adherence. These behaviors shall have the meaning established by the Attorney General for the District of Columbia and the Director of the Mayor’s Office of Legal Counsel.

**Days** – Calendar days.

**Director** – The Director of the Mayor’s Office of Legal Counsel.

**Equivalent position** – Any attorney position at any grade in which the attorney performs work or has responsibilities that are substantially similar to the work or responsibilities of any Legal Service position that is classified at LX-2 or above.

**Excellent (line attorneys and non-supervisory attorneys under sections 3605 and 3607 of these rules)** – Performance is clearly above the generally expected

performance level for attorneys of comparable experience. Quality of work is consistently very good. The attorney's development is progressing rapidly and continued growth is anticipated. An attorney will receive an overall rating of "excellent" when seventy-five percent (75%) or more of weighted categories fall within the "excellent" level without a "fails expectations" or "needs improvement" rating in any element.

**Fails expectations (line attorneys and non-supervisory attorneys under sections 3605 and 3607 of these rules)** – Performance is significantly below the generally expected performance level for attorneys of comparable experience. Considerable weaknesses exist in substantive or other areas. An attorney will receive an overall rating of "fails expectations" when fifteen percent (15%) or more of weighted categories fall within the "fails expectations" level.

**Fails expectations (supervisors under section 3606 of these rules)** – Performance is significantly below the generally expected performance level of supervisors of comparable experience. There are considerable weaknesses in substantive or other areas. The overall rating of "fails expectations" results from application of the formula, Overall Performance Rating = Sum of all Competency Ratings (each competency weighed equally)/Number of Competencies, where the total figure derived on the right side of this formula is in the range "1.0-1.7".

**Legal Service** – The service established pursuant to Title VIII-B of the Act, to include every attorney employed by the Office of the Attorney General for the District of Columbia or a non-exempt subordinate agency or independent agency in a Series 905 position.

**Line attorney** – Any attorney who is not a supervisor, excluding attorneys who report directly to the Attorney General for the District of Columbia, the Chief Deputy Attorney General, or a subordinate agency head.

**Mayor's Office of Legal Counsel** – The Office established under section 101 of the Elected Attorney General Implementation and Legal Service Establishment Amendment Act of 2013, effective December 13, 2013 (D.C. Law 20-60; D.C. Official Code § 1-608.51a), to, among other things, coordinate administrative and other activities related to Legal Service attorneys in subordinate agencies.

**Needs improvement (line attorneys and non-supervisory attorneys under sections 3605 and 3607 of these rules)** – Performance is below the generally expected performance level for attorneys of comparable experience and requires more supervision and follow-up than is expected. Quality of work is inconsistent and/or improvement is necessary in substantive or other areas. An attorney will

receive an overall “needs improvement” rating when fifteen percent (15%) or more of weighted categories fall within the “needs improvement” level.

**Needs improvement (supervisors only under section 3606 of these rules)** – Performance is below the generally expected performance level for supervisors of comparable experience and requires more follow-up than is expected. Quality of work is inconsistent and/or improvement is necessary in substantive or other areas. Two (2) points are awarded to each both each competency and each S.M.A.R.T. goal rated as “needs improvement.” The overall rating of “needs improvement” results from application of the formula, Overall Performance Rating = (Sum of all Competency Ratings/Number of Competencies x .4) + (Sum of all S.M.A.R.T. Goal Ratings/Number of S.M.A.R.T. Goals x .6), where the total figure derived on the right side of this formula is in the range “1.8-2.8”.

**Outstanding (line attorneys and non-supervisory attorneys under sections 3605 and 3607 of these rules)** – Performance consistently exceeds highest expectations by a wide margin. This rating is reserved for truly exceptional individuals who are significantly above the generally expected performance level for attorneys of comparable experience. An attorney will receive an overall “outstanding” rating when eighty percent (80%) or more of the weighted categories fall within the “outstanding” level.

**Outstanding (supervisors under section 3606 of these rules)** – Performance consistently exceeds highest expectations by a wide margin. This rating is reserved for truly exceptional individuals who are significantly above the generally expected performance level for supervisors of comparable experience. Four (4) points are awarded to both each competency and each S.M.A.R.T. goal rated as “outstanding.” The overall rating of “outstanding” results from application of the formula, Overall Performance Rating = (Sum of all Competency Ratings/Number of Competencies x .4) + (Sum of all S.M.A.R.T. Goal Ratings/Number of S.M.A.R.T. Goals x .6), where the total figure derived on the right side of this formula is in the range “3.6-4.0”.

**Performance Management Program (PMP)** – The systematic process by which an agency involves its employees, as individuals and members of a group, in improving performance in the accomplishment of agency mission and goals, as set out in Chapter 14 of the District of Columbia Personnel Regulations, which was in effect for attorney-supervisors and non-supervisory attorneys under sections 3606 and 3607 of these rules for the 2002-2003 through the 2007-2008 rating periods.

**Rating period** – September 1<sup>st</sup> to August 31<sup>st</sup> for line attorneys under section 3605 of these rules and October 1<sup>st</sup> to September 30<sup>th</sup> for all other attorneys covered by these rules.

**Senior Executive Attorney Service position** – (A) Any attorney position that is classified above LA-15 or LX-1, or an equivalent position, and in which the employee: (i) directs the work of an organizational unit; (ii) is held accountable for the success of one or more specific programs or projects; (iii) monitors progress toward organizational goals and periodically evaluates and makes appropriate adjustments to these goals; (iv) supervises the work of employees other than personal assistants; (v) performs important legal policy-making or policy-determining functions; or (vi) provides significant leadership in legal counseling or in the trial of cases; or (B) Any attorney who is a Chief Deputy Attorney General, Deputy Attorney General, Special Deputy Attorney General, Senior Counsel to the Attorney General, Special Counsel to the Attorney General, any other attorney in the Office of the Attorney General for the District of Columbia who routinely reports directly to the Attorney General; or (C) Any attorney who is a General Counsel employed by a subordinate agency.

**S.M.A.R.T. goals** – Specific, measurable, attainable, realistic, and time-related goals that are established annually for a supervisory or other non-line attorney either by the Attorney General for the District of Columbia, the Director, an agency head, or another high-level supervisor.

**Subordinate agency** – An agency under the direct administrative control of the Mayor.

**Successful (line attorneys and non-supervisory attorneys under sections 3605 and 3607 of these rules)** – Performance generally meets and occasionally exceeds the level expected for attorneys of comparable experience without the need for ongoing supervision. The attorney produces quality work. An attorney will receive an overall “successful” rating when sixty percent (60%) or more of weighted categories fall within the “successful” level without a “fails expectations” rating in any element.

**Successful (supervisors only under section 3606 of these rules)** – Performance generally meets and occasionally exceeds the level expected for supervisors of comparable experience without the need for ongoing supervision. The supervisor produces quality work. Three (3) points are awarded to both each competency and each S.M.A.R.T. goal rated as “successful.” The overall rating of “successful” results from application of the formula, Overall Performance Rating = (Sum of all Competency Ratings/Number of Competencies x .4) + (Sum of all

S.M.A.R.T. Goal Ratings/Number of S.M.A.R.T Goals x .6), where the total figure derived on the right side of this formula is in the range “2.9-3.5”.

**Supervisor** – A person who 1) possesses the authority to recommend the hiring, promotion, transfer, discipline, or discharge of a subordinate attorney; 2) has the authority to direct, as well as assign work to a subordinate attorney; and 3) is responsible for the review of work, approval of leave, and evaluation of job performance of subordinate attorneys.

**Training Director** – The person designated by the Attorney General for the District of Columbia to oversee, arrange, and approve training, or an equivalent officer assigned by the Attorney General to supervise training.

**Unit** – The portion of an organization composed of all the attorneys under the direct supervision of a single supervisor.

Comments on these proposed rules should be sent in writing to Laurie Ensworth, Office of the Attorney General of the District of Columbia, 1350 Pennsylvania Avenue, N.W., Washington, D.C. 20004, or electronically to [laurie.ensworth@dc.gov](mailto:laurie.ensworth@dc.gov), not later than thirty (30) days after the date of publication of this notice in the *D.C. Register*. Copies of the proposed rules may also be obtained from OAG at the address stated above.

