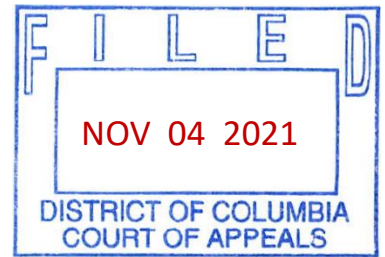


District of Columbia  
Court of Appeals



No. 21-BS-765

IN RE: THE HONORABLE STEVEN BERK

**ORDER:**

**Affirming Uncontested Order of Involuntary Retirement and Granting Unopposed Motion for Leave to File an Exhibit Under Seal**

On consideration of the November 1, 2021, Uncontested Order of Involuntary Retirement filed by the District of Columbia Commission on Judicial Disabilities and Tenure (“the Commission”), wherein it ordered that Judge Steven Berk be involuntarily retired as an Associate Judge of the Superior Court of the District of Columbia, effective November 1, 2021, *see* D.C. Code § 11-1526(b) and the Commission’s Unopposed Motion for Leave to File an Exhibit to the Uncontested Order of Involuntary Retirement Under Seal; it is

ORDERED that the Commission’s Motion for Leave to File an Exhibit to the Uncontested Order of Involuntary Retirement Under Seal is granted and the Clerk shall file the lodged exhibit as a sealed exhibit to the Commission’s November 1, 2021, order. *See* 28 DCMR § 2044.2 (providing that subject to certain exceptions not relevant here that, *inter alia*, financial and medical information provided to the Commission shall be confidential). It is

FURTHER ORDERED that as a review of the Commission’s Uncontested Order of Involuntary Retirement, signed by Judge Berk, establishes he waived his procedural and appellate rights under D.C. Code §§11-1526, -1527, -1528 and he does not contest the Commission’s decision to file its order with this court, *see* 28 DCMR § 2022.3, the Uncontested Order of Involuntary Retirement is **hereby affirmed and the effective date of Judge Berk’s retirement is November 1, 2021**, pursuant to the Commissions’ order, which was uncontested and duly signed by Judge Berk. *See* D.C. Code § 11-1526(b); *see also* District of Columbia Court of Appeals Internal Operating Procedures Part No. 1.

ANNA BLACKBURNE-RIGSBY  
Chief Judge

**No. 21-BS-765**

Copies sent via email to:

Honorable Chief Judge Anita Josey-Herring  
Superior Court of the District of Columbia

Honorable Colleen Kollar-Kotelly  
Chair, District of Columbia  
Commission on Judicial Disabilities and Tenure

Honorable Emmett G. Sullivan  
Chair, District of Columbia Judicial Nomination Commission

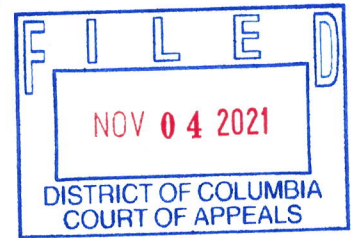
Cathae Hudgins  
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**DISTRICT OF COLUMBIA COMMISSION  
ON JUDICIAL DISABILITIES AND TENURE**

515 FIFTH STREET, N.W., BUILDING A, ROOM 246  
WASHINGTON, D.C. 20001  
(202) 727-1363



**BEFORE THE DISTRICT OF COLUMBIA  
COMMISSION ON JUDICIAL DISABILITIES AND TENURE**

**Inquiry Concerning a Judge, No. 1-2021**

Judge Steven N. Berk

A Judge of the Superior Court of the  
District of Columbia

**UNCONTESTED ORDER OF INVOLUNTARY RETIREMENT**

1. This matter comes before the Commission due to concerns brought to its attention during May 2021 regarding the conduct of Judge Steven Berk in his capacity as an Associate Judge assigned to the Domestic Relations calendar in the Family Court of the Superior Court of the District of Columbia (hereafter “Superior Court”).
2. The concerns, including both informal concerns and formal complaints filed with the Commission, involved substantial delays and/or failures by the Judge to: (i) dispose of pending motions by written order; (ii) issue written orders following hearings; and (iii) address delays or respond to inquiries by litigants or counsel who sought information about the status of pending matters (collectively “the Concerns”). In addition to potential violations of the Code of Judicial Conduct for the District of Columbia resulting from significant delays and failures to issue orders, the Concerns further raised questions of a medical or other issue that could be impacting the ability of the Judge to perform his judicial duties.
3. Judge Berk has been serving as an Associate Judge of the Superior Court since his appointment in 2015. He has not been the subject of any private or public disciplinary actions by the Commission.
4. During May 2021, the Commission initiated preliminary inquiries and gathered additional information that appeared to corroborate the Concerns.
5. Because of the serious nature of the Concerns, the nature of the Domestic Relations calendar, and the Commission’s duty to protect the public, at the end of May 2021, the Commission made additional inquiries and discussed its concerns with the Chief Judge of the Superior Court and the Presiding and Deputy Presiding Judges of the

Family Division.<sup>1</sup> Thereafter, the Commission directed Judge Berk to appear before the full Commission on June 9, 2021.<sup>2</sup>

6. On June 8, the day before the Commission's scheduled June 9 meeting:
  - a. The Chief Judge and Judge Berk agreed that Judge Berk would take administrative leave pending a review of ongoing matters by the Commission.
  - b. The Chief Judge provided the Commission with data, including statistical information, regarding dispositions and pending matters before Judge Berk. The information confirmed wide-spread, extensive, and extraordinary delays, as well as an unusually large number of pending cases on Judge Berk's calendar, as compared to other judges.
  - c. Judge Berk submitted to the Commission a one-paragraph letter from his physicians indicating their opinion that his medical condition was well-managed and stating: "we strongly feel he is able to perform all functions of his job serving as a Judge."
7. On June 9, after the Commission shared with Judge Berk a general summary of the Concerns, the Commission took the following steps, all of which were agreed to by Judge Berk:
  - a. The Commission required Judge Berk to undergo an independent medical evaluation by a health care professional designated by the Commission, as a condition of continued judicial service, pursuant to District of Columbia Municipal Regulations (DCMR), Title 28 §§ 2002.1-2002.5. The medical evaluation would be completed on an expedited basis.
  - b. After completion of the independent medical evaluation, the Commission would require Judge Berk to reappear to discuss the Concerns, related information that it was gathering as part of its investigation, and any relevant

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<sup>1</sup> By the end of March and into early April 2021, Family Court leadership and the Chief Judge separately were made aware of concerns regarding delays on Judge Berk's calendar, as well as the potential existence of medical issues, by members of the public and attorneys appearing before the judge. From the later part of March through May 2021, Family Court leadership worked with Judge Berk and his staff to understand and address the backlog. By approximately May 2021, Family Court leadership and the Chief Judge became aware of Judge Berk's pre-existing medical condition. No disclosures were made to the Commission by Superior Court leadership or Judge Berk regarding the judge's pre-existing medical condition, calendar delays or the Concerns until after the Commission began its preliminary investigation and made specific inquiries to the Court.

<sup>2</sup> Judge Berk was unavailable before that date due to a pre-arranged out-of-town vacation the week of May 30 to June 8.

medical information.

8. Following the June 9 Commission meeting, the Commission continued its comprehensive and thorough investigation of the Concerns.<sup>3</sup> The investigation involved the collection of information from lawyers and litigants, judges, court staff, and the former Chief Judge and the current Chief Judge of the Superior Court. The Commission also reviewed and analyzed court reports, dockets, selected court filings and tapes of certain Court proceedings. Through its investigation, the Commission confirmed the following:
  - a. That extensive and extraordinary delays of cases throughout Judge Berk's calendar, well-beyond initial cases brought to its attention, including certain cases in which no written rulings were issued for periods as long as six (6) to nine (9) months.<sup>4</sup> In some cases, hearings were not set at all, or they were simply continued without resolution for months at a time.
  - b. The delays appear to have: (i) noticeably increased in the late spring and summer of 2020, the year Judge Berk assumed responsibility for his then-assigned Domestic Relations calendar, especially as the Court resumed hearings in a virtual environment due to the unprecedented COVID-19 pandemic; and (ii) significantly worsened in or around late fall 2020 and into 2021 through the date Judge Berk agreed to administrative leave.
  - c. The delays involved child custody, childcare, and child support, contested divorce cases, as well as other family-related matters.
9. Judge Berk did not disclose his medical condition to Court leadership until approximately May 2021, despite having reason to believe that he was experiencing increased health issues as early as the Fall of 2020, and that certain issues may have occurred or been evident during court hearings. Further, Judge Berk did not request assistance nor notify Family Court leadership or the Chief Judge of the extent of the

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<sup>3</sup> At the direction of the Commission, the investigation was conducted by the Commission's Special Counsel and assisted by the Commission's Executive Director and designated Commissioners, as needed. During the Commission's investigation, the Commission also received an unrelated complaint filed by a former law clerk of the judge alleging certain misconduct. The Commission undertook a separate extensive and thorough investigation of that matter, including interviews of numerous current and former employees, alleged witnesses, court staff, judges and others. The Commission determined that there was substantial and corroborated evidence that was inconsistent with and contradicted the complaint's factual accounts and allegations. The Commission determined that the complaint lacked merit and, therefore, dismissed the complaint as lacking merit.

<sup>4</sup> Delays included cases in which trials and hearings were completed, as well as initial status hearings that were never scheduled. Judge Berk's clearance rate was 54.4%, almost 30% lower than some other judges with similar caseloads on the Domestic Relations calendar and more than 50% lower than other judges whose clearance rates were higher.

delays on his calendar.

10. Following the independent medical evaluation, the Commission reviewed the results of the evaluation, as well as additional information provided by the Commission's independent health professional, Judge Berk's personal physician, Judge Berk, and his legal counsel.
11. Based on all of the information presented, the Commission has determined that:
  - a. Judge Berk violated Rule 2.5 (Competence, Diligence, and Cooperation), Canon 2 of the Code of Judicial Conduct for the District of Columbia (2018), as a result of the extraordinary nature and extent of the delays on Judge Berk's calendar, as well as its related impact, harm, and cost to litigants.
  - b. Judge Berk also suffers from a mental or physical disability which is or is likely to become permanent and which prevents, or seriously interferes with, the proper performance of his judicial duties.
12. The Commission further acknowledges Judge Berk's full and complete cooperation with this matter, as well as his acknowledgement of:
  - a. The Concerns raised and the potential harm caused by the extraordinary delays in matters over which he presided.
  - b. Physical and cognitive complications that may have contributed to the delays.
13. According to D.C. Code § 11-1526(b):


A judge of a District of Columbia court shall be involuntarily retired from office when (1) the Commission determines that the judge suffers from a mental or physical disability (including habitual intemperance) which is or is likely to become permanent and which prevents, or seriously interferes with, the proper performance of the judge's judicial duties, and (2) the Commission files in the District of Columbia Court of Appeals an order of involuntary retirement and the order is affirmed on appeal or the time within which an appeal may be taken from the order has expired.
14. Based on the totality of the circumstances, the Commission has determined that Judge Berk should be involuntarily retired pursuant to D.C. Code § 11-1526(b).

15. The Commission has notified Judge Berk and his counsel of its findings. The Commission also has informed Judge Berk of his procedural rights to a formal hearing and appeal, under D.C. Code § 11-1526-28 *et seq.*, DCMR § 28-2022 *et seq.*
16. After having had the opportunity to consult with counsel and being informed of his rights to a formal hearing and appeal, Judge Berk:
- a. Does not contest that the Commission has grounds to Order his involuntary retirement under D.C. Code § 11-1526(b).
  - b. Agrees to waive his procedural and appellate rights under D.C. Code §§ 11-1526-28 and does not contest this public filing. *See* 28 DCMR § 2022.3.

WHEREFORE, it is this 1<sup>st</sup> day of November 2021, hereby

ORDERED, that Judge Berk is involuntarily retired as an Associate Judge of the Superior Court of the District of Columbia, effective immediately.

BY ORDER OF THE DISTRICT OF  
COLUMBIA COMMISSION ON JUDICIAL  
DISABILITIES AND TENURE

  
\_\_\_\_\_  
Hon. Colleen Kollar-Kotelly  
Chairperson

  
\_\_\_\_\_  
BY HON. STEVEN BERK

Date November 1, 2021