# Judge Judith Bartnoff Statement of Interest in Serving as Chief Judge of the Superior Court of the District of Columbia

It has been my great privilege to serve as an Associate Judge of the Superior Court of the District of Columbia for nearly 22 years. I have had increasing leadership positions in the Court over the course of my service as a judge, and I now am requesting to be considered as a candidate for Chief Judge.

My vision for the Court in the next four years involves a focus on both the external and the internal. I believe that my experience and achievements on the Court have made me well qualified to take on the difficult role of the Chief Judge: externally, to strike the proper balance that maintains the neutrality of the Court and also responds to the needs of the community; and internally, to support the judges and managers in their respective roles and also foster collaboration, as the Court's systems become increasingly complex and technologically advanced.

The Superior Court is a unique institution. It must be independent, neutral, and open to everyone who comes to the court seeking justice and the resolution of a dispute. It also must be responsive to the needs of the District of Columbia community and cognizant of the context in which our cases arise. The Court has a long tradition of working with other public and private institutions to address the underlying issues that bring parties to the Court, and I strongly believe that those efforts—such as drug court, family treatment court, mental health court, and a community-based approach to certain criminal prosecutions-- should continue. The Court also should continue to be a leader in assuring access to justice for those members of the community who lack financial resources or who face other obstacles that make it difficult for them to pursue or defend their cases. Our approach to the mortgage foreclosure cases, which I discuss in some detail below, is one example of such an effort. But while the Court should be responsive to the issues and challenges facing the community, it also must treat parties equally and fairly, without favoritism, and in accordance with the law. In addition, the Chief Judge plays an important role in helping the public understand what the Court does and why. Maintaining the appropriate balance is a difficult challenge that I will confront head on if chosen as the Chief Judge.

The Court's operations also involve a large management staff, which is essential for the Court to function. Under Chief Judge Satterfield's leadership, communication and collaboration between the judges and the managers has improved substantially. It is critically important for the judges and the managers to continue to increase their understanding of each other's roles and perspectives and for the Court to have the best and most effective systems to support its work, in order that we will continue to be a national leader and innovator in Court management and administration.

The specific areas the Commission has asked about in the Application Instructions for the Office of Chief Judge are addressed below.

## Interest in Court Administration

I have been interested in court administration since the beginning of my time on the bench. I have served in all the Divisions of the Court, with the exception of the Probate and Tax Division. My assignments have included mental health, abuse and neglect, domestic relations (including three years on the Domestic Relations I calendar, which handles the most complex custody and divorce cases), misdemeanors, felonies, and civil, including two years on the Civil I calendar (which handles the most complicated civil cases). I also have served as the Presiding Judge of the Domestic Violence unit and have handled both civil and criminal domestic violence cases. In 2011, I became Deputy Presiding Judge of the Civil Division, and I now am in my second year as the Presiding Judge. I believe that my experience throughout the Court has given me a broad perspective on the administrative needs of the Court as a whole and the challenges it faces.

Most recently, I have had the opportunity to focus on court administration in my role as Deputy Presiding Judge and now Presiding Judge of the Civil Division. I believe my most significant efforts in that regard relate to mortgage foreclosure cases, which virtually exploded in number after the recent recession. Prior to 2012, virtually all mortgage foreclosures in the District of Columbia were conducted non-judicially. As the result of the mortgage crisis in the preceding several years, there were substantial changes made to the statute governing non-judicial foreclosures. The changes included many important protections for borrowers, such as early mediation and judicial review, but also created substantial uncertainties regarding the finality of any foreclosure. The title insurers therefore were reluctant or even unwilling to insure properties sold at foreclosure sale, and as a result, there effectively were no mortgage foreclosures at all in the District of Columbia for a period of about four years. Beginning in late 2012, the lenders began to file a few mortgage foreclosure cases in court. The caseload was small at first, but by mid-2014, it became clear that we could expect thousands of cases to be filed in the following few years. At present, about 3000 cases are pending, most of which were filed in the past year.

Lawyers from Legal Counsel for the Elderly (a program of AARP), the Legal Aid Society, and the lenders approached the Civil Division leadership about providing early mediation in these cases. Judge Melvin Wright, who then was the Presiding Judge, and I met with a group that included Civil Division Clerk's Office staff, lawyers for the lenders, lawyers from the legal services providers, lawyers from the D.C. Attorney General's office, representatives from the Department of Securities, Banking and Insurance (which administered the non-judicial foreclosure process), and housing counselors, to discuss how best to manage these cases. I took the lead for the Court, and initially all the cases were assigned to me. We developed a system for handling the cases, including a special notice to be served with all the complaints to advise borrowers of services for which they might be eligible. Lawyers from the Legal Aid Society and Legal Counsel for the Elderly also agreed to be present in the courtroom for the initial scheduling conferences, in order to be available to assist borrowers and to represent them in appropriate cases. Trained counselors from Housing Counseling Services also agreed to be present in the courtroom.

With the working group and with the cooperation of the Court's Multi-Door Dispute Resolution Division, I spearheaded development of a special early mediation process for these cases. Multi-Door then assigned mediators and provided them special training, in which I participated.

Legal services lawyers and the plaintiffs shared the concern that many of the defendants—who already had defaulted on their mortgages— did not respond to the complaints and therefore were in default in the lawsuits. Although the Civil Rules require that defaults be entered if a defendant is served and does not respond to the complaint, nothing in the Rules requires that the initial scheduling conference be cancelled, although that has been the usual practice in civil cases. I proposed that we not cancel those conferences and that we send notices to the defendants advising them that a default had been entered but also giving them additional notice of the initial scheduling conference, with very positive results: nearly half the defendants who had been in default are attending the initial conference, the defaults are being vacated by consent, and the parties are participating in early mediation. As the result of the new procedures we have initiated, a significant number of defendants who had been in default either have been able to keep their homes or have been able to make other arrangements to avoid foreclosure.

Based on the experience in the foreclosure cases, and with the agreement of all the judges now assigned to the Civil Division, we no longer cancel the initial scheduling conference when a defendant is in default in any Civil II case, and we are sending notices encouraging the defendants to appear.

Given the very large number of foreclosure cases that are pending and that continue to be filed, a Magistrate Judge now is handling the cases in the first instance through the early mediation process. Cases where defaulted defendants do not appear have been assigned to a few other judges, and I still am handling many of them. Cases where the defendants do not want to participate in early mediation before they litigate defenses or counterclaims are assigned in rotation to the civil calendars. The new approach to managing the mortgage foreclosure cases now is established within the Court. Legal Aid and Legal Counsel for the Elderly also are committed to the program and have made it a priority for their lawyers to be present in the courtroom to provide legal assistance to homeowners facing foreclosure.

The foreclosure cases also have alerted us to additional problems regarding service of process. A number of defendants have come to court as the result of our notices and have reported that the affidavits of service that have been filed are not accurate and that they were not served with the complaint. Although in some cases the defendants may be mistaken about what constitutes proper service, we are looking at how we might best approach this issue throughout the Civil Division, and particularly in Landlord and Tenant Court. Although I been able to pursue my interest in court administration most significantly in the past few years, because of my leadership position in the Civil Division, my interest in improving the administration of justice in the Court has been present throughout my tenure. In my first several years on the Court, my primary focus was on developing my skills as a judge. But from the very beginning, I have been interested in ways that cases could be managed more efficiently and effectively. Innovations that I initiated have become standard practice throughout the Court. For example, in my early assignment on the Mental Health calendar, I began to require pretrial statements and to set pretrial conferences in all cases that were set for jury trials, which now is standard practice in mental health cases.

During my first rotation in the Civil Division, when I had a Civil II calendar for two years, I began a regular practice of setting a status conference at the close of discovery in medical malpractice cases, in order to resolve discovery problems without extensive motions or other delays. At that time, trial dates typically were not set until the pretrial, even in medical malpractice cases. Because many of the lawyers who handle those cases have heavy trial schedules, trial dates often were set several months or more after the case was ready to be tried. I began to use the status conference at the close of discovery to set a trial date, so that trials could be scheduled more promptly, and that practice began to be followed by other judges. The scheduling tracks that now are in place for medical malpractice cases include a status conference at the close of discovery as a standard element of the schedule. Most judges also now set the trial date at that conference, if not earlier.

When I served for the second time in the Family Court, the Presiding Judge appointed me to be the "team leader" of the judges assigned to the Domestic Relations calendars. I became increasingly interested in ways in which alternative dispute resolution could be used more effectively in domestic relations cases, where traditional mediation often was not successful. In conjunction with the Family Law Section of the District of Columbia Bar, and in consultation with the Presiding Judge and the other calendar judges, we developed a program for alternative dispute resolution that engaged experienced domestic relations practitioners to serve as ADR facilitators, at reduced rates or sometimes pro bono. That program achieved a much higher settlement rate that had been accomplished through traditional mediation, and it remains ongoing in the Family Court and has resulted in the positive resolution of hundreds of cases.

Also in the course of my extended assignments to domestic relations cases in the Family Court, I began to explore ways for the Court to assist parents involved in custody battles to work together in the interests of their children, consistent with the District of Columbia's legal presumption of joint custody, rather than allowing the litigation to exacerbate their conflict. One of the most effective approaches was to appoint a parent coordinator to the case—usually an experienced psychologist or social worker—who would assist the parents in identifying their children's needs and developing mechanisms for joint decision-making regarding the children, as well as help the parents avoid involving the children in any ongoing parental conflict. In most instances, the parent

coordinator was appointed as a special master. I began using parent coordinators in many of my cases, and that practice is continuing in the Family Court.

I also worked with the American Psychological Association and the Family Law Section of the D.C. Bar on a Psychology and Law Project, which was a pilot program to provide parent coordinators to low income litigants in custody cases. Judges referred cases to the program, and graduate students in psychology at Argosy University served as parent coordinators, under the supervision of experienced psychologists. How to provide this type of resource to parties who cannot otherwise afford it is an ongoing challenge.

When I returned to the Civil Division several years ago, new standard scheduling orders were being developed, including specific orders for motor vehicle cases. Prior to that time, the scheduling tracks all included a period for motions to be filed, even though motor vehicle cases typically involve disputed facts and are not resolved through motions. I successfully advocated for a "fast" track that would not include any time for motions, so that earlier trial dates could be set in cases where the parties did not anticipate that motions would be filed.

When I was assigned to the Civil I calendar, I realized that a very large number of asbestos cases had been stayed because the defendants had declared bankruptcy, but there was no system in place to review the status of the cases and determine if they could proceed or if they could be closed. Together with the judge assigned to the other Civil I calendar, and in coordination with the Clerk's Office and representatives of the plaintiff's and defendant's Bars, we developed a new system for regular review and management of those cases that has remained in effect for the past several years.

In addition to the above, I have been able to pursue my interest in court administration through the Rules Committee, on which I have served for over ten years. For the past several years, I have chaired the Civil Rules Advisory Committee and the Landlord and Tenant Advisory Rules Subcommittee. I also have served on the Mental Health/Mental Retardation Rules Advisory Committee for virtually my entire tenure on the Court.

## Administrative Ability and Experience

I have had substantial administrative experience in various capacities. Early in my legal career, I had the honor of serving as an Associate Deputy Attorney General under Benjamin Civiletti, who was Deputy Attorney General and later became Attorney General of the United States. My responsibilities included coordination of a review of the United States Marshals Service Witness Security Program and implementation of changes to the program resulting from that review. I also was responsible for chairing a working group to develop Federal Standards for Prisons and Jails, which were promulgated by the Attorney General. The group included representatives of the various entities within the Department of Justice that were involved in making or implementing corrections policy—including the Bureau of Prisons, the Civil Rights Division, the Law Enforcement Assistance Administration, and the National Institute of Corrections—many of whom had not been in any sort of dialogue and had taken public positions that were at odds with one another. The working group nonetheless found common ground and developed a set of standards to serve as guidelines for the Bureau of Prisons operation of its facilities, the Civil Rights Division's determinations regarding the cases that would be pursued against state correctional systems, and LEAA funding of corrections projects.

At the Court, I also have had significant administrative experience and responsibilities as Presiding Judge of the Domestic Violence Unit and now as Presiding Judge of the Civil Division. I have had to make sure that calendars are covered when judges are on leave and in emergencies. In the Civil Division, I regularly monitor trial status and arrange for cases to be certified so that all trials are reached on the scheduled trial date. We now have two Landlord and Tenant courtrooms in operation every day, but a judge has been assigned regularly to the second courtroom only three days per week, and I have been responsible for arranging for coverage by senior judges or by other Civil Division judges on the other two days.

When I served as Deputy Presiding Judge, I took on primary responsibility for arranging and organizing the annual December training for the Civil Division, including both training for new judges coming to the Division and for the judges remaining in the Division. I continue to work on the December training, as well as to arrange training for the judges on various subjects during the year.

I also have a variety of other administrative responsibilities relating to the operation of the Civil Division, with the support of the other judges, as well as Division management and staff.

# <u>Ability to Lead the Court and to Promote a Sense of Collegiality Among the Judges, the</u> <u>Court Staff, and Other Entities</u>

My management style is inclusive, open, and collaborative. I have had the opportunity to work with other judges, as well as court staff and other entities, throughout my service on the Court. For example, as Presiding Judge of the Domestic Violence Unit, I chaired monthly meetings of the Domestic Violence Implementation Committee, which brought together representatives from the various constituencies within the community who work on domestic violence cases, including the D.C. Attorney General's Office, the United States Attorney's Office, the Court Services and Offender Supervision Agency, the Metropolitan Police Department, the Victim Witness Assistance Office, and other agencies that provide services to domestic violence victims. A representative of the Public Defender Service also attended those meetings, and for the first time I also included a representative of the Superior Court Trial Lawyers Association, so that all participants in the process could contribute their perspectives to the discussion.

In my capacity as Presiding Judge of the Civil Division, I have been working closely with Zabrina Dempson, Branch Director of the Civil Division, and I believe we have developed a good working relationship that enables us to communicate frankly and openly. We have continued to have monthly meetings of the Civil Working Group, which I chair, and which includes the Deputy Presiding Judge, the Director and Deputy Director, the Branch Chiefs, and the attorney advisors. Representatives from IT, Multi-Door, and the Special Operations Division also attend, including the senior staff of Judge-in-Chambers. We use those meetings to discuss ongoing issues and initiatives, as well as to share concerns and ideas and to maintain accountability within the Division.

Since I became Presiding Judge, we also have instituted monthly Civil Division leadership meetings that include me, the Deputy Presiding Judge, and the Division Director and Deputy Director. Although we are in frequent contact, it has been very useful to have a regular meeting in advance of the Civil Working Group meeting to discuss issues that may not need or may not be ready to be brought to the larger group. By setting aside the time to consider our priorities and our progress in ongoing projects, we can keep a focus on systemic improvements, even as we are responding to more immediate issues that arise on a day-to-day basis.

I also have worked with the Division leadership to insure that the judicial perspective is included when various initiatives are implemented. For example, I worked closely with the Division Director, the attorney advisor, and IT on the recent implementation of electronic case initiation in the Civil Division. We made changes in the proposed process to make sure that complaints would not be rejected except in very limited circumstances, as required by the Civil Rules. We also made sure that the Bar was advised of the new process well in advance and was able to provide feedback to us about the operation of the new system.

I have been privileged to serve for the past several years on Chief Judge Satterfield's Leadership Team and to help define and implement his vision for the Court. Judge Ramsey Johnson, the Deputy Presiding Judge of the Civil Division, and I are in regular communication with the other Presiding and Deputy Presiding Judges, and we have been able to resolve a number of issues without escalating them to the Chief Judge and have worked together to make recommendations to the Chief Judge. For example, there is a recognized special need for jurors in criminal cases in November and early December, because no jurors are summoned in the second half of December and trials for criminal defendants who are held pending trial must be scheduled within tight time limits. The Civil Division and Criminal Division have worked together to give priority to those criminal trials at the end of the year, while also accommodating the need for jurors for civil trials.

I believe that within the Civil Division, we have developed a strong sense of collegiality and cooperation. We recognize that each judge is responsible for his or her calendar, but judges also assist one another when a trial needs to be certified. The judges also have been very willing to take Landlord and Tenant and Small Claims trials, when those courtrooms are very busy and the trials are ready. In addition, the judges have cooperated with one another when cases should be consolidated or related cases should be managed together. We have weekly Civil Division lunch meetings, often without any formal agenda, in order for judges to share questions and ideas. Those meetings have

served to build esprit, and the judges attend them regularly, despite their heavy calendars and other obligations.

In addition, I have worked with the Civil Division judges in a collaborative way to address challenges that we have faced as a Division. For example, the judge assigned to the second Landlord and Tenant courtroom retired at the end of April, and we are committed to covering that courtroom every day. I therefore gave notice to all the judges that we would be discussing what to do at our next weekly meeting, and we then had an open discussion of how that calendar could be covered. After consultation with the staff, I determined to follow one of the proposals, which was for each judge to be assigned to the second Landlord and Tenant courtroom for Tuesday- Thursday in a weekly rotation, in addition to the regular rotation in the main courtroom. I then asked each of the judges to advise me of the weeks during the next several months that would be best and worst for them to be assigned to the second calendar, and we were able to devise a schedule that honored their preferences and caused as little disruption as possible to their trial calendars.

I also have worked with the judges, the staff, and outside entities to develop and implement better ways of managing our cases or particular types of cases. Our system for managing the mortgage foreclosure cases, described above, is one example of such an effort. In addition, we now are about to implement major changes to the way that the Landlord and Tenant calendar is managed, so that certain matters are scheduled directly in the second courtroom. We anticipate that the result will be more certainty for litigants regarding when their cases will be heard and a much more efficient system that will reduce waiting time substantially. I have been working on the proposed changes with the staff, in consultation with counsel for both the landlords and the tenants, as well as the other Civil judges and the Landlord and Tenant Advisory Rules Subcommittee. We also received a number of suggestions from the Legal Aid Society and other litigants, which we were able to incorporate into the plan. We had a public meeting to which the Landlord and Tenant Bar was invited, where we described our proposed changes and were able to obtain additional suggestions and comments, which also have been taken into account. We plan to have further consultations after the new system has been in place for about 60 days, to obtain additional feedback and reactions, and we are prepared to make whatever additional changes are warranted.

## Ability to Promote Confidence in the Court and the Judicial System

I believe that the approach I have taken to developing and implementing our system for managing the mortgage foreclosure cases and the new changes in the operations of the Landlord and Tenant courtrooms exemplify my ability to promote confidence in the Court and the judicial system. The Court is an extraordinary institution with very able judges and an excellent staff, but it regularly must evaluate its operations and consider what it might do more effectively, as new types of cases are presented or as economic and social forces in the community result in new challenges. We therefore must continue to look to our staff and to outside partners and work together to improve access to justice and to make justice a reality in the District of Columbia. We also must be open to the ideas and involvement of the Bar and other institutions in the community that are interested in improving the administration of justice in our Court.

Several years ago, I presided over a case involving a plaintiff who sued his drycleaner for \$67 million under the District of Columbia Consumer Protection Procedures Act. The case eventually became the subject of worldwide media interest, and I came to understand that the trial itself would contribute to the public perception of our legal system. It was an unusual experience to try such a case, in a courtroom packed with observers and press, but I was determined to conduct a fair and dignified trial. I believe that I succeeded in maintaining control of the courtroom, allowing the parties to present their cases fully, making a careful record, but also communicating to all involved and the public that this was a serious legal proceeding. I also decided before the trial began that I would issue a written decision rather than ruling from the bench, to avoid any misunderstandings about my ruling and the reasons for it.

It was very gratifying not only to be affirmed by the Court of Appeals, but also to receive several approving letters about how I handled the case, as well as editorial praise from <u>The Washington Post</u>, <u>The Washington Times</u>, and <u>The Wall Street Journal</u>, among others. That experience is a constant reminder to me that in all our cases, whether they are the subject of press attention or not, we as judges always must treat all parties with respect and understanding and conduct ourselves with dignity—whether the only people who are watching are the parties before us or whether it appears that the whole world is watching. That approach to judging also applies to our interactions with our fellow judges, with court managers and staff, and with outside entities and the public.

## Ability to Provide Intellectual Leadership

My record as a judge, and particularly my service on the Domestic Relations I and Civil I calendars, should establish my intellectual ability to serve as the Chief Judge. One of the great pleasures of serving as Deputy Presiding Judge and Presiding Judge of the Civil Division has been that I regularly am asked for advice by other judges regarding both practical and legal issues that arise in their cases. Discussion of those matters is a highlight of my current position. As discussed above, I also have been involved in arranging training within the Division and in providing training, both the new judges to the Division and ongoing training on a variety of subjects of interest.

I also have served for more than 13 years as one of the Court's representatives on the District of Columbia Child Support Guideline Commission. After an exhaustive review of the then-existing statute, and after soliciting and receiving comments and suggestions from the public, the Commission made final recommendations in June 2004 that proposed a substantial revision to the District of Columbia child support law. I wrote and revised substantial portions of the Commission's report, and the Commission's recommendations eventually were introduced as legislation in the District of Columbia Council. The Commission then asked me and our economic consultant to testify before the Council Committee on the Judiciary. The Council passed the legislation in substantially similar form to the Commission's recommendations. This past year, the Commission completed a further review of the operation of the new Guideline and proposed additional changes, which now also have been enacted into law. Again, I was involved in preparing the Commission's report, and I appeared at the Council Committee hearing to answer questions.

I have spoken regularly at meetings and conferences on a variety of subjects throughout my tenure on the Court, including presentations on the Child Support Guideline and to social workers and psychologists regarding the use of parent coordinators in high conflict custody cases. I regularly am asked to speak about the Court to college and graduate students, and I often have served as a moot court judge for law students, as well as for high school and even middle school mock trial programs. I welcome the opportunity to represent the Court to the public.

# Conclusion

I recognize that the Chief Judge must balance a number of competing interests: the autonomy and independence of the judges and the needs of the Court as a whole, within the larger District of Columbia community; the separate roles of the judges and the managers and the importance of communication and collaboration; the need to delegate responsibilities to other leaders in the Court, but also to be involved both in making and implementing policies and programs. I believe that I have the experience, temperament, and judgment, in consultation with others both within and outside the Court, to set the proper tone and maintain the appropriate balance. I look forward to the opportunity to serve the Court and the community in this new capacity, if the Commission selects me to be the Chief Judge.

Judge Judith Bartnoff

May \_\_\_\_, 2016