

A RESOLUTION

21-665

IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

November 15, 2016

To declare the existence of an emergency with respect to the need to amend the District of Columbia Government Comprehensive Merit Personnel Act of 1978 to clarify that the Council is an independent entity for personnel purposes and to create a new process by which certain Council attorneys shall file a certificate of good standing with the Council.

RESOLVED, BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, That this resolution may be cited as the “Council Independent Authority Clarification Emergency Declaration Resolution of 2016”.

Sec. 2. (a) On December 17, 2014, the Council passed the District Government Certificate of Good Standing Filing Requirement Amendment Act of 2014, effective March 13, 2015 (D.C. Law 20-241; 62 DCR 1335) (the “Act”), which clarified that hearing officers and administrative law judges are required to file certificates of good standing if their employment requires that they be members of the District of Columbia Bar. Previously, the law required only attorneys to file such certificates, but it was discovered in 2014 that certain administrative law judges and hearing officers were allegedly presiding over their cases without being in good standing with the District of Columbia Bar. In order to close this loophole, the Council passed the Act.

(b) Additionally, the Act transferred responsibility for collecting certificates of good standing from the District’s Department of Human Resources (DCHR) to the Board of Ethics and Government Accountability (BEGA). However, enforcement and regulatory authority remained with the DCHR. Thus, the Act creates a bifurcated regime in which one agency, BEGA, acts solely as a repository for the certificates of good standing, but another agency, DCHR, has both responsibility for ensuring that attorneys, hearing officers, and administrative law judges comply with the law and rulemaking authority. In order to streamline this process and to prevent duplication of effort, it is necessary to transfer collection authority back to DCHR.

(c) Further, section 881 of the District of Columbia Government Comprehensive Merit Personnel Act of 1978, effective July 25, 2002 (D.C. Law 14-182; D.C. Official Code § 1-608.81) (the “Comprehensive Merit Personnel Act”), requires an attorney employed by an independent agency to file a certificate of good standing with DCHR if he or she meets the applicable requirements. Section 301(13) of the Comprehensive Merit Personnel Act (D.C. Official Code § 1-603.01(13), confusingly and incorrectly, defines the Council of the District of

Columbia as an “independent agency.” This emergency legislation clarifies throughout the Comprehensive Merit Personnel Act that the Council is not an agency or an independent agency of District government.

(d) Current law requires an attorney employed by the Council to file his or her certificate of good standing and to report to DCHR, which is a part of the executive branch of the government. This arrangement violates the spirit of separation of powers as it requires legislative branch employees to report to an agency overseen by the executive branch. Thus, this emergency legislation clarifies that an attorney employed by the Council of the District of Columbia who is required to file a certificate of good standing shall file his or her certificate with the Council and not DCHR.

(e) In order to further aid DCHR and the Council in streamlining the process of ensuring that certain attorneys are in good standing and to reduce the burden on the District of Columbia Court of Appeals, DCHR, and the Council, this emergency legislation allows DCHR and the Council to verify the good standing of attorneys, hearing officers, and administrative law judges through electronic means.

(f) The permanent version of this emergency legislation passed the Council on first reading on November 15, 2016 and is scheduled for a final reading on December 6, 2016.

(g) Given that section 881 of the Comprehensive Merit Personnel Act (D.C. Official Code § 1-608.81) mandates that all individuals who are required to file a certificate of good standing must do so by December 15th of each year, emergency circumstances exist with respect to the need to clarify the process so that an individual can file his or her certificate of good standing with the appropriate District government entity. Moreover, this emergency legislation is necessary so that attorneys employed by the Council of the District of Columbia can file their certificates of good standing with the Council without being in tension with section 881 of the Comprehensive Merit Personnel Act (D.C. Official Code § 1-608.81).

Sec. 3. The Council of the District of Columbia determines that the circumstances enumerated in section 2 constitute emergency circumstances making it necessary that the Council Independent Authority Clarification Emergency Amendment Act of 2016 be adopted after a single reading.

Sec. 4. This resolution shall take effect immediately.