No. 24-CV-0922

DISTRICT OF COLUMBIA
COURT OF APPEALS

District of Columbia Retirement Board,

Appellant,

v.

Office of Employee Appeals, et al.,

Appellees.

BRIEF FOR APPELLEE ERIE SAMPSON

ON APPEAL FROM THE SUPERIOR COURT
OF THE DISTRICT OF COLUMBIA
CIVIL DIVISION

Re: No. 2023-CAB-005159 – The Honorable Jonathan H. Pittman

Dated: May 21, 2025

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STATEMENT OF JURISDICTION

Appellee, Erie Sampson ("Ms. Sampson"), submits Appellee's Brief in response to Appellant's, the District of Columbia Retirement Board's ("DCRB") appeal of the Superior Court's Order remanding this case ("Remand Order") to the Office of Employee Appeals ("OEA"). DCRB's appellate brief fails to establish that the appeal was proper based on an exception to the finality requirement. DCRB cannot establish that the Remand Order was improper based on a "clear error of law." Therefore, this appeal should be dismissed. *See Warner v. D.C. Dep't of Emp. Servs.*, 587 A.2d 1091, 1093 (D.C. 1991).

STATEMENT OF ISSUES PRESENTED FOR REVIEW

DCRB portrays this appeal as a pure matter of statutory interpretation, but the main question is: Did the Superior Court clearly err when it remanded the case to OEA for adjudication? Having removed Ms. Sampson from her position and directing her to challenge that removal via the due process provisions of the Comprehensive Merit Personnel Act ("CMPA") for Career Service employees and subsequently litigating her appeal of that removal to the D.C. Office of Employee Appeals ("OEA"), DCRB's eleventh-hour jurisdictional challenge after it lost at OEA based on an overtly narrow view of the D.C. Code must be denied.

The Superior Court correctly remanded the jurisdictional controversy to the OEA, the agency charged by the CMPA with resolving classification disputes in the

first instance. Unless the Superior Court's Remand Order rests on a clear error of law, it is not immediately appealable. *See Warner*, 587 A.2d at 1094. Here, the Remand Order was not based on a clear error of law and was appropriately remanded.

Accordingly, only two issues are before the Court:

1. **Remand / Finality Issue**: Whether the Superior Court committed a clear error of law by remanding the issue of whether OEA properly had jurisdiction over Ms. Sampson's appeal to that agency for initial consideration; and
2. **Underlying Factual Issue**: Whether DCRB's own appointment papers, personnel records, and litigation admissions show that it exercised its exclusive classification authority to place Ms. Sampson in the Career Service, thus bringing her removal within OEA's jurisdiction.

If this Court finds the answer to Question 1 is "No," this Court lacks appellate jurisdiction and the order of remand must stand.

STATEMENT OF THE CASE

DCRB's appeal is premised on the assumption that Ms. Sampson, as its General Counsel, must automatically be classified in the Senior Executive Attorney Service ("SEAS"), citing D.C. Code § 1-608.51(3)(C). However, DCRB critically overlooks that this statute explicitly limits its application "for the purposes of this subchapter," which is specifically related to the creation and management of the

Legal Service. By ignoring this critical wording, DCRB misapplies the statute. *See TRW Inc. v. Andrews*, 534 U.S. 19, 31 (2001) ("[N]o clause, sentence, or word shall be superfluous, void, or insignificant."). The SEAS classification thus applies only if a General Counsel is first classified within the Legal Service.

Here, DCRB possesses independent statutory classification authority under D.C. Code § 1–711(k) – authority it exercised repeatedly by explicitly classifying Ms. Sampson as Career Service. Indeed, pursuant to D.C. Code § 1-711(g)(2)(A), DCRB also has broad and independent personnel authority "to appoint such staff as it considers necessary." This inherent authority was granted when DCRB was created by Congress in 1979, as an independent agency of the District of Columbia.[1] DCRB now improperly attempts to apply a narrowly defined statute to override this independent authority to appoint and classify DCRB personnel, like Ms. Sampson. As documented by extensive evidence, DCRB has exercised this legal authority to appoint and classify Ms. Sampson within the Career Service throughout her tenure.

STATEMENT OF FACTS

The critical facts, clearly established by the record, are:

[1] *See* "Our History," District of Columbia Retirement Board, https://dcrb.dc.gov/page/dcrb-legal (last accessed May 21, 2025).

1. **District law explicitly grants DCRB independent personnel and classification authority** over its employees. *See* D.C. Code § 1-711(g)(2)(A), (k).
2. **DCRB exercised this authority by classifying Ms. Sampson as a Career Service employee during her tenure**, a fact documented and repeatedly admitted in writing and verbally by DCRB and its counsel.
3. **OEA has jurisdiction over appeals by Career Service employees**, a fact explicitly acknowledged and conceded by DCRB throughout OEA and Superior Court proceedings.

For fourteen (14) years, Ms. Sampson's entire tenure, DCRB classified Ms. Sampson as Career Service, actively litigating and affirmatively representing this status to both OEA and the Superior Court.[2] Then, three (3) years into legal proceedings, and only after receiving an adverse decision from OEA, DCRB attempted for the first time to retroactively alter these foundational facts.

Having repeatedly affirmed Ms. Sampson's Career Service status, DCRB is now barred by statute, judicial estoppel, fundamental fairness, and the anti-sandbagging principle from reversing its longstanding position. The Superior Court correctly determined Ms. Sampson's classification was a factual matter suitable for

[2] *See Sampson v. Dist. of Columbia Retirement Bd.*, No. 2021-CA-4942 (D.C. Super. Ct. Apr. 13, 2022), *on appeal as Sampson v. Dist. of Columbia Retirement Bd.*, No. 22-cv-385 (Argued Mar. 1, 2023) (pending decision).

determination by OEA and committed no clear legal error. Thus, this Court should affirm the Superior Court's Remand Order.

4. DCRB's Allegations of Ms. Sampson's Misconduct Rely Exclusively on a Discredited Report by a Now-Disbarred Investigator.

Although the circumstances resulting in Ms. Sampson's termination are not directly relevant to this jurisdictional issue, she is compelled to address false assertions in DCRB's Brief.

DCRB's sole evidence against Ms. Sampson is the "Loots Report," now vaguely referred to as the "investigator's report." *See, e.g.*, Jt. Appendix at 17-19, 41. Ms. Sampson documented over 50 instances of false or misrepresented information within this report, fundamentally undermining its credibility. *See, e.g.*, Jt. Appendix at 180, 181. Despite Ms. Sampson's efforts to correct these errors, DCRB continues to rely exclusively on this thoroughly discredited report and repeatedly sought to prevent Ms. Sampson from exposing its inaccuracies.[3]

DCRB claims that a report by Mr. Loots as an "independent investigator" was necessary, yet disregards the existence of the Board of Ethics and Government Accountability, the District agency explicitly tasked with investigating such

[3] *See* Appellant's Br. 6 ("The investigation thus revealed that, as the investigator's report stated, Sampson had failed to disclose 'several important legal and ethical matters facing DCRB.' JA222. After receiving the report, Balestrieri concluded that he did not have confidence in Sampson's ability to serve as General Counsel. He sent her a notice of proposed removal from her position in April 2023. JA161–64.").

allegations, which notably found no wrongdoing occurred on the key point for which DCRB terminated Ms. Sampson. Furthermore, Ms. Sampson has consistently highlighted significant conflicts of interest involving the investigator, James M. Loots, stemming from his pre-existing relationships with DCRB's Board and its Executive Director Gianpiero Balestrieri. These conflicts suggest a motivation for Mr. Loots to assist DCRB in fabricating a narrative to justify Ms. Sampson's termination, thereby enabling the ongoing retaliation and public disparagement of Ms. Sampson.

Notably, but unsurprisingly, Mr. Loots has since been disbarred in both D.C. and Maryland for serious ethical misconduct, including violations involving dishonesty, fraud, deceit, misrepresentation, and conduct interfering with the administration of justice.[4] Mr. Loots' misconduct occurred contemporaneously with his preparation of the discredited report on which DCRB solely relies in terminating Ms. Sampson. Beyond this thoroughly discredited report, DCRB has provided no evidence to substantiate its allegations for her termination.

Ms. Sampson unequivocally maintains that she engaged in no wrongdoing, and that her termination was unlawful retaliation directly resulting from: (1) her discretionary and appropriate reports to the US Securities & Exchange Commission;

[4] *See* "Specification of Charges against James M. Loots, Esq.", DC BAR, https://www.dcbar.org/ServeFile/GetDisciplinaryActionFile?fileName=2024-04-23SpecificationLoots.pdf (last accessed May 15, 2025).

(2) her protected disclosures regarding DCRB's weak internal controls and lack of transparency, particularly on financial matters; and (3) her full and lawful compliance with multiple FBI subpoenas requesting DCRB information, despite explicit pressure from several Board members urging her to delay or stall these disclosures.

ARGUMENT

This Court has asked the Parties to specifically brief the following issues:

1) What does it mean for a legal error to be "clear"?
2) Based on that definition, should this Court dismiss this Appeal on the basis that DCRB cannot demonstrate the Superior Court's Remand Order was based on a "clear error of law"?

The remaining part of this section unfolds in four parts. Section A demonstrates that DCRB has independent authority to appoint and classify its employees, and that DCRB has misrepresented its own governing statues to ignore this fact. Section B presents categorical documentary evidence and direct admissions confirming that DCRB appointed and classified Ms. Sampson as a Career Service employee. Section C demonstrates that, as a direct consequence of her Career Service status, OEA unquestionably has jurisdiction – a fact repeatedly conceded by DCRB itself. Section D highlights DCRB's prior contradictory arguments before the

Superior Court, demonstrating that judicial estoppel and due process principles prevent DCRB from now reversing positions to challenge OEA's jurisdiction.

A. A Legal Error is Clear When it is Obvious Based on the Facts of Each Case

In determining the meaning of the word "clear" within the context of "clear error," a review of this Court's precedents and other D.C. Courts is instructive.

This Court first considered a clear error case involving a remand in *Warner v. v. District of Columbia Dept. of Employment Services* ("*Warner*"). *See* 587 A.2d 1091 (1991). There, it determined whether it was clear error for the Director of Department of Employment Services to remand a case back to the Hearing Examiner to issue findings of fact regarding part of a claimant's worker's compensation claims that the Examiner conducted no analysis and made no findings on, i.e., a retaliatory discharge claim. *See id.* at 1092-94. Because the Hearing Examiner failed to hear evidence and/or make findings on that claim, this Court found that the claimant could not prove that it was clear error for the Director to issue the remand order on that basis, and thus, he could not petition this Court to review the Director's decision. *See id.* (citations omitted). In coming to this decision, this Court needed to examine what it meant for an error to be clear and to do so, it cited multiple cases in other jurisdictions, including an appeal of a worker's compensation claim heard by the Pennsylvania Supreme Court ("PASC"). *See id.*

In that case, the PASC considered whether the Workmen's Compensation Appeal Board ("Board") clearly erred when it remanded the case back to the referee, i.e., hearing examiner. *See Bethlehem Mines Corp. v. Workmen's Comp. Appeal Bd.*, 404 A.2d 1360, 1361–62 (P.A. 1978). The PASC found that the remand order was clear error because the referee had found that the claimant was not injured as a result of his employment based on "manifestly clear" and "substantial, indeed overwhelming, competent evidence", and thus, the Board clearly erred in ordering a remand back to the referee to hear from another medical practitioner to testify about the claimant's injuries. *See id.* In coming to this decision, the PASC cited several other similar cases involving worker's compensation claim appeals of remands by the Board, and found: "So weighty is the evidence in support of the referee's findings and meager the evidence tending to the contrary we might also have permitted this appeal on the basis that "no other conclusion could be supported but that of the Referee . . . " *See id.* at 1361, n. 4 (citing *United Metal Fabricators, Inc. v. Zindash*, 301 A.2d 708, 710 (1973). In another similar case, the PASC found that a remand was warranted and was not issued based on clear error where additional evidence of the claimant's disability became available after the hearing on his request for worker's compensation was considered. *See Workmen's Comp. Appeal Bd. V. Calder Mfg. Co.*, 346 A.2d 834, 835 (1975).

Just prior to this Court's decision in *Warner*, the U.S. Court of Appeals for the D.C. Circuit ("D.C. Circuit") reviewed the Securities and Exchange Commission's ("SEC") request to reverse the U.S. District Court for D.C.'s ("DCD") remand to the SEC based on an inadequate record involving the agency's processing of a company's reverse-Freedom of Information Act ("FOIA") request. *See Occidental Petroleum Corp. v. Sec. and Exch. Comm'n*, 873 F.2d 325 (D.C. Cir. 1989) ("Occidental"). The Court explored the standard of review under the interlocutory circumstances of that case and found that because the case involved "an initial review of the district court's findings," the clearly erroneous standard applied therein "to the particularized factual findings that underlay the district court's determination that the administrative record as a whole was inadequate for review. . . ." *See id.* at 340 (citations omitted). The Court proceeded under that standard of review on the basis that the SEC's decision to classify the documents at issue as being able to be produced because they had already been made public did not reference any sources of information for that conclusion in the administrative record beyond essentially one news report. Under that clear error standard, the Court upheld the DCD's remand order on the basis that, *inter alia*:

> [T]he SEC's suggestion that publication of an allegation renders public, and thus subject to release on that ground alone, all information obtained in the course of the ensuing investigation is illogical, incorrect as a matter of fact, and insensitive to the Congress's purpose to protect confidential business information from disclosure.

See id. at 341. Thus, the Court systematically dismantled the SEC's arguments that focused on the company's alleged motive to prevent the information subject to the FOIA request from coming to light, and found the SEC ignored the "competitive significance" of the company's trade secrets that could be contained in the documents. *See id.*

A decade or so later, the D.C. Circuit had occasion to consider whether a remand was proper by the DCD in a case involving foreign governmental entities suing U.S. tobacco companies. *See Republic of Venez. v. Philip Morris Inc.*, 287 F.3d 192, 195 (D.C. Cir. 2002). Specifically, the appeal involved the DCD's decision to remand the case back to a Florida court, whereby the tobacco companies sought a writ of mandamus to preclude the DCD from being able to remand and/or transfer the cases back to that court. *See id.* The D.C. Circuit examined the requirements to issue a preemptive writ of mandamus, one of which was that the DCD "clearly erred or abused its discretion." *See id.* at 198. That Court found that the tobacco companies failed to provide any significant rationale as to how the DCD committed clear error or abused its discretion in remanding the case, as it could not identify precedent where that court could assert jurisdiction in a similar manner, and denied their petition for a writ, accordingly. *See id.* 198, 199.

Outside of the worker's compensation and remand context, other courts have reviewed whether other decisions by lower courts and/or other administrative bodies

were based on clear and/or plain error. For example, the Supreme Court considered in a criminal case whether an alleged error made by a lower court was plain error under Fed. R. Crim. P. 52, and described plain error as follows: "Plain is synonymous with clear, or equivalently, obvious. . . . At a minimum, court of appeals cannot correct an error pursuant to Rule 52(b) unless the error is clear under current law." *United States v. Olano*, 507 U.S. 725, 734 (1993) (citations omitted) (cleaned up). It also found that the error had to "affect substantial rights" and "seriously affect the fairness, integrity or public reputation of judicial proceedings." *See id.* at 732 (citations omitted).

DC's federal courts have also considered clear error in the context of various other types of cases. For example, clear error has arisen in the motion for reconsideration context, where that relief is only warranted where "the moving party shows new facts or clear errors of law which compel the court to change its prior position." *See Carter v. Wash. Metro. Area Transit Auth.*, 503 F.3d 143, 145, n.2 (D.C. Cir. 2007) (quoting *Nat'l Ctr. For Mfg. Sci. v. Dep't of Defense*, 199 F.3d 507, 511 (D.C. Cir. 2000)). The DCD granted reconsideration of its prior decision in a case based on clear error after it concluded that it was clear error to not remand the case back to the agency, after it erroneously misread the pertinent regulations at issue regarding coverage of certain therapy for the plaintiff's child. *See Berge v. United States*, 949 F. Supp. 2d 36, 42, 43 (D.D.C. 2013) ("Because the Court's decision was

expressly predicated solely on the perceived "inconsistency" of covering ABA therapy under the ECHO Program and not under the Basic Program, its conclusion that remand was not appropriate is fatally undermined.")

The issue of clear error has also come up in the context of reviewing the findings of a Special Master. In *Berger v. Iron Workers Reinforced Rodmen, Loc. 201*, the D.C. Circuit explained that the Special Master's findings at DCD in relation to remedies due for employees who had successfully proven racial discrimination are reviewed under the "clearly erroneous standard." *See* 170 F.3d 1111, 1119 (D.C. Cir. 1999) (citations omitted). While that Court upheld most of the findings of the Special Master, it found a couple of his findings were clear error for obvious mistakes he made in his analysis. *See id.* at 1119. For these findings, the Court went in explicit detail to explain why based on the evidence provided, the Special Master made erroneous conclusions based on his analysis regarding those points. For example, it found that "The Special Master failed to include "zero-hour" workers (workers who for a number of years worked zero hours as union rodmen) in the determination of the average number of hours worked by a union rodman in the relevant time period, and he failed entirely to address the "fixed-pie" issue raised by the unions' expert, Dr. Farrell Bloch." *See id.* at 1119, 1122, 1123.

The D.C. Circuit also reviewed the DCD's factual findings of a Guantanamo detainee habeas petition case in *Latif v. Obama* under the clear error standard. 677

F.3d 1175, 1178 (D.C. Cir. 2011). In concurrence, Justice Karen Henderson examined what clear error requires in that context given the dissenting opinion's concerns, reasoning that the "clear error standard requires us to reverse a factual finding if on the entire evidence[,] we are left with the definite and firm conviction that a mistake has been committed." *See id.* at 1200 (citations omitted). She cited to Supreme Court precedents discussing clear error for that proposition, which are instructive herein. The Supreme Court explored the definition of "clear error" in *Anderson v. City of Bessemer City, N.C.*, reciting the above sentiment from Judge Henderson's concurrence, and also stating that clear error is not present where the reviewing court "is convinced that it would have decided the case differently. . . . [Because i]f the district court's account of the evidence is plausible," it still cannot reverse the lower court. 70 U.S. 564, 573–74 (1985) (citation omitted) (cleaned up).

What is clear from the research laid out herein is that courts in this jurisdiction look at: 1) the factual record and determinations made by a court or administrative body; 2) the party arguing clear error has the burden of proving the remand or other issue before it was obvious or clear; 3) whether other, prior cases found the remand or other ruling at issue to be clear error; and 4) in the cases where these courts have found clear error existed, the decisions under which they came to that conclusion were based on obvious mistakes in analyzing the facts and/or law of the case at hand. What is missing from this appeal by DCRB, then, is any factual (or legal)

determination of any kind from which it appeals, as well as any case that stands for the proposition that the Superior Court clearly erred in issuing its Remand Order. *See Republic of Venez.*, 287 F.3d at 198, 199. These omissions are fatal to its appeal.

The Superior Court remanded the case to OEA to specifically make a determination about its own jurisdiction, and thus, made no determinations about anything, much less jurisdiction. This is important to keep in mind, as cases where courts are deciding matters of jurisdiction, they have inherent authority to use whatever methods and/or have the case heard in whichever venue they determine is warranted to help them decide that issue, and it would not be plain and/or clear error for them do so, especially where no case has found the ruling to be clear error. *See Walker v. United States*, 201 A.3d 586, 594 (D.C. 2019) (citations omitted); *D.C. Pub. Emp. Rels. Bd. v. Fraternal Ord. of Police, et al.*, 987 A.2d 1205, 1206, n.1 (D.C. 2010) (citation omitted).

Moreover, beyond focusing on conclusory arguments pertaining to CMPA provisions, DCRB fails to provide legitimate reasons as to how the Superior Court erred in remanding the case, as it completely ignores its own enabling statute and the legislative history of the CMPA and that statute as discussed, *infra*, since it presents the standard of review as being *de novo* instead of clearly erroneous. *See* Appellant's Br. at 13. The deferential clearly erroneous standard applies over the non-deferential *de novo* standard herein as administrative agencies and courts should

be given substantial deference in reviewing the facts before them and making determinations based on that unless they *clearly* came to the wrong conclusion. In that way, clear errors of law are synonymous or at least similar to errors that are plain, as these errors must truly be errors, must be plain, or obvious, must have "affected appellant's substantial rights," and must have "seriously affect[ed] the fairness, integrity, or public reputation of judicial proceedings." *Walker,* 201 A.3d at 594 (citations omitted) (cleaned up). And in determining whether the Superior Court erred in ordering a remand, for example, the appealing party must demonstrate that the court clearly erred in order to be foreclosed by the finality exception to remand orders by providing an example of a prior case where remanding the case for the reason provided by the court was found to be clear and/or plain error. *See id.*

B. The Remand Order was not Based on Clear Error

While DCRB argues that based on D.C. Code § 1-608.51, for example, that it was clear error for the Superior Court to remand this matter to OEA to determine its jurisdiction, this could not be further from the case. As described herein, DCRB ignores its own enabling statute about its classification authority for its employees, and the legislative history of this statute and the CMPA. Together, these two things help demonstrate that DCRB appropriately classified Ms. Sampson as Career Service during her tenure, and that the CMPA provisions DCRB points to for its *de facto* clear error of law argument are non-dispositive on Ms. Sampson's

classification since the facts control here—not the law. Those things, in addition to the lack of precedential case stating otherwise, results in the conclusion that the Superior Court's Remand Order was not based on clear error and, in fact, was entirely proper. That being said, based on the arguments and facts Ms. Sampson highlights in the subsections, *infra*, this Court could make the determination of OEA's jurisdiction in the first instance and specifically find that OEA properly had jurisdiction over Ms. Sampson's appeal of her removal from DCRB.

I. Legislative History of the CMPA and DCRB's Enabling Statute

The D.C. Government enacted the CMPA, D.C. Law 2-139, in 1978, and it became effective on March 3, 1979. At that time, as relevant herein, this law did not contain a Legal Service or Senior Executive Attorney Service position, and was created in conjunction with the Home Rule Act, Pub. L. 93-198, "to enact a merit system for District government employees." *See Newman v. District of Columbia*, 518 A.2d 698, 702 (D.C. 1986), overruled in part on other grounds (citation omitted) (citing D.C. Code 1-201 (1981); § 1-242). Under that statute, a public employee has "comprehensive rights to notice, hearing, appeal, and judicial review . . ." and can appeal certain adverse actions to OEA. *See District of Columbia v. Thompson*, 593 A.2d 621, 626, 628 (1991). The CMPA also has provisions that govern items such as classifications of service, compensation, and employee rights and responsibilities. *See id.* at 631, n.19.

A few months after the CMPA's enactment, Congress vis-à-vis the District created DCRB, an independent agency, to transfer the management of retirement funds of various D.C. Government employees and financing their retirement benefits from the federal government to the District. "DCRB's Legal History," DC.GOV, https://dcrb.dc.gov/page/dcrb-legal (last accessed May 12, 2025); Pub. L. 96-122 (Nov. 17, 1979). Since that time, DCRB was given independent classification authority over its employees by its enabling law: "The Board may appoint such staff as it considers necessary to enable it to carry out its responsibilities under this title." *See* Pub. L. 96-122, § 121(g)(2) (Nov. 17, 1979). That initial version of the law also indicated DCRB staff "shall be appointed subject to the provisions of title 5, United States Code, governing appointments in the competitive service. . . ." *See id.*

By 1999, the District enacted the Legal Service Establishment Amendment Act of 1998, which created a new classification as part of the CMPA called the Legal Service, and also created a sub-classification to the Legal Service known as the Senior Executive Attorney Service ("SEAS"). *See* D.C. Law 12-260, codified at D.C. Code § 1-608, *et seq*. Notably, the SEAS was defined as requiring an "appointment" for an employee to that service, who would be subject to "at-will employment" and "serve at the pleasure of the agency head." *See* § 1-608.53(b), (f). Within that same year, it also codified § 1-711(k) of DCRB's enabling statute, which provided that DCRB would not be subject to the CMPA's classification and

compensation policy as it had "exclusive authority" to control both of these aspects, among others, for its employees. *See* D.C. Law 13-38 ("Fiscal year 2000 Budget Support Act") (Oct. 20, 1999).

Thus, from that point on, even after subsequent amendments, the relevant provisions of the CMPA and DCRB's statute remained consistent, with the CMPA defining general counsels of independent agencies appointed to the Legal Service as being members of the SEAS, and DCRB keeping its *exclusive* classification authority to classify its general counsels and other staff however it wished. *Compare* D.C. Law 15-300 (Apr. 8, 2005) ("Retirement Reform Amendment Act") *with* D.C. Law 16-33 (Nov. 11, 2005) ("Fiscal Year 2006 Budget Support Act of 2005"). With that, the D.C. Council could have made it clear over the last twenty (20) years that DCRB did not have this exclusive classification authority or that its general counsels were automatically members of the Legal Service and SEAS, but it chose to not do so as it is clear that the two provisions are mutually exclusive. *See Jackson v. Bd. of Elections and Ethics,* 999 A. 2d 89, 107 (D.C. 2010) (finding D.C. Council's "legislative construction" of provisions at issue "entitled to substantial weight" and statutes created at around the same time and left that way "for a long term of years" resulted in the conclusion that they were meant to exist separately) (citations omitted).

II. DCRB Erroneously Applies a Narrow Statutory Definition Beyond Its Explicit Limits

DCRB's argument regarding the Remand Order being clear error relies entirely on D.C. Code § 1-608.51(3)(C), while ignoring the exclusion of DCRB's independent classification authority for all staff as referenced in D.C. Code §§ 1-711(g)(2)(A) and (k). D.C. Code § 1-608.51(3)(C), codified in a subchapter within the Legal Services classification, states:

> **§ 1-608.51. Definitions.** ***For the purposes of this subchapter***, the term:
> . . . .
> (3) "Senior Executive Attorney Service position" means:
> (C) Any attorney who is a General Counsel employed by an independent agency, except attorneys employed by the Chief Financial Officer.

(Emphasis added).

First, the phrase "for the purposes of this subchapter" explicitly confines the SEAS classification to attorneys already appointed to the Legal Service. By ignoring this statutory limitation, DCRB violates the fundamental interpretive principle of *expressio unius est exclusio alterius* – the explicit mention of one thing excludes all others. This statutory language clearly excludes any broader application, specifically prohibiting extension to employees appointed to and classified under distinct and separate authority, such as DCRB's independent statutory personnel and classification power. *See TRW Inc. v. Andrews*, 534 U.S. 19, 31 (2001) ("[N]o clause, sentence, or word shall be superfluous, void, or insignificant.")).

Second, the District's implementing rules do not extend the Legal Service to independent agencies. 6-B DCMR § 3600.1, the very first section of the Legal Service Chapter, states that:

> **§ 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.

Independent agencies like DCRB do not fall within those entities, and the regulation pointedly omits them.[5] Accordingly, Legal Service (and, by extension, SEAS) requirements extend only to bodies expressly listed in § 3600.1, or to an independent agency that affirmatively and explicitly *appoints* its attorneys into the Legal Service.[6] Because DCRB never made such an appointment of Ms. Sampson, its classification decision in this matter remain governed solely by its own statutory authority in § 1-711(g)(2)(A) and (k).

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[5] D.C. Code § 1–608.52 states that "There is established within the District government a Legal Service for the Council, independent agencies, and subordinate agencies to ensure that the law business of the District government is responsive to the needs, policies, and goals of the District and is of the highest quality." Contrary to DCRB's assertion, this law does not require independent agencies, like DCRB, to hire its attorneys into the Legal Service. This is because it is a *sine qua non* for an attorney first to be hired within the Legal Service before she can be appointed under the law's subchapter within the Senior Executive Attorney Service. *See, e.g.*, D.C. Code § 1-608.53(b), (g) (noting appointment of SEAS attorneys).

[6] Underscoring the point on the role of an employee's appointment within this section on classification in the Legal Service/SEAS versus Career Service is that the District specifically references the appointment of attorney's to the Legal Service in Chapter 11 of the District Personnel Manual ("DPM"). *See* DPM § 1126.28 (discussing appointment into Legal Service).

Furthermore, § 3601.6 provides a clear and unambiguous requirement for written notification of appointment to SEAS. It mandates that:

> **§ 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.

There is nothing in the record demonstrating that Ms. Sampson ever received such written notification of appointment to a SEAS position. This absence of evidence is not merely an oversight; it is a direct consequence of the fact that no such appointment ever occurred. The explicit requirement for written notification underscores the formal and intentional nature of an SEAS appointment, a formality that was entirely absent in Ms. Sampson's case.

Third, DCRB's enabling law authorizes it to appoint and classify employees within the Career Service, Legal Service, or other categories at its discretion pursuant to D.C. Code § 1-711(g)(2)(A) and § 1-711(k). This fact is supported by the legislative history cited herein. Moreover, nothing under District law mandates automatic Legal Service or SEAS classification for attorneys employed by DCRB. Instead, D.C. Code § 1-711(g)(2)(A) and § 1-711(k) explicitly grant DCRB broad authority:

> "Staff **appointed by the Board** pursuant to subsection (g)(2) of this section shall not be subject to the provisions of subchapter XI of Chapter 6 of this title. **The Board shall have exclusive authority to establish classification and compensation policy for staff appointed by the Board**, provided that

> staff shall not be paid at a rate greater than the highest level authorized for nonunion workers in the District Service schedule."

(Emphasis added).

Here, DCRB consistently exercised its statutory authority by classifying Ms. Sampson as a Career Service appointee during her entire tenure, a fact extensively documented and acknowledged by DCRB itself. DCRB, on appeal to the Superior Court and now this Court, attempts to ignore its own authority and the way in which it classified Ms. Sampson throughout her tenure at DCRB, by erroneously asserting that the SEAS definition, strictly confined to the Legal Service subchapter, controls DCRB appointment and classification decisions beyond its own explicit legal authority. By misapplying a statute explicitly limited to the Legal Service context, DCRB unlawfully expands a limited statutory mandate and disregards the broad and independent personnel authority explicitly vested in it by statute.

III. DCRB Misrepresents its Inherent Legal Authority

DCRB further misrepresents its inherent authority codified in D.C. Code § 1-711(g)(2)(A) and § 1-711(k), improperly attempting to limit this authority solely to employee benefits and compensation. *See* Appellant's Br. at 25. This argument ignores its clear and deliberate legal authority from its own statute, which explicitly grants DCRB exclusive authority over both "classification and compensation," and the specific appointment of its staff. *See United States v. Menasche*, 348 U.S. 528,

538-539 (1955) ("[A] statute should not be interpreted so as to render one part inoperative, superfluous, or insignificant.").

DC Code § 1-711(g)(2)(A) and § 1-711(k) clearly support granting DCRB substantial autonomy in appointing and classifying its employees, allowing the agency flexibility to attract, retain, and manage highly qualified personnel suited to its specialized roles. DCRB's current statutory interpretation directly contradicts both the explicit statutory language and clear purpose, making DCRB's new interpretation legally untenable.

IV. DCRB's Cases on this Point are Distinguishable

DCRB's reliance on *Clayton v. District of Columbia* is fundamentally misplaced. *Clayton* involved a mandatory statutory classification scheme explicitly tied to specific job duties, leaving the agency no discretion to classify its employees except through the CMPA. *See* Appellant's Br. at 27, 28 (citing 117 F. Supp. 3d 68 (D.D.C. 2015). In contrast, DCRB possesses explicit statutory discretion to independently classify employees, including Ms. Sampson, without being constrained by any mandatory statutory criteria. Thus, *Clayton* provides no assistance to DCRB's arguments herein.

Similarly, in *Hoage v. Board of Trustees of the University of the District of Columbia*, the Court upheld the Superior Court's determination that the employee should not have been in the Career Service, as it was based on substantial, consistent

evidence from official personnel records to determine the employee's correct classification, overriding a single, isolated clerical error. *See* Appellant's Br. at 26, 27 (citing 714 A.2d 776 (D.C. 1998)). In contrast, Ms. Sampson's classification does not rely on isolated clerical errors. Instead, extensive, consistent, and undisputed evidence – including official documents, explicit acknowledgments from DCRB, and long-established agency practices – unequivocally confirms her deliberate classification as Career Service. Unlike in *Hoage*, there is no conflicting documentary evidence or credible challenge to her established employment status. Moreover, unlike UDC, the agency in that case, DCRB has exclusive classification authority for its employees based on its enabling statute. And lastly, that case is distinguishable based on its procedural posture, as it was not presented for appeal based on a remand order, and thus was not subject to clear error review. Unlike in this matter, the Superior Court, who was hearing the case in the first instance, did a factual inquiry as to whether the plaintiff was a Career Service employee or not. That has not been done in this matter as of yet.

V. The Clear Error Standard of Review Requires this Court to Review the Facts Surrounding Ms. Sampson's Employment with DCRB

Beyond DCRB's ignoring of the Congressional intent in making it an independent Agency with exclusive classification authority and the language of its enabling statute, as made clear from the cases cited by Ms. Sampson herein, in weighing whether a court committed clear order in ordering a remand, this Court

must perform a factual inquiry in determining what evidence the Superior Court based its decision off of from the record. *See Warner,* 587 A.2d 1091, 1092-94 (1991); *Occidental*, 873 F.2d 325, 340 (D.C. Cir. 1989). DCRB disregards substantial evidence and government documentation, that DCRB itself created, clearly establishing Ms. Sampson's Career Service status that was presented to the Superior Court and which likely persuaded it to issue the Remand Order. This documentation includes official personnel records prepared by DCRB, agency pleadings submitted to the OEA and Superior Court, DC government public website listings, and explicit admissions by DCRB itself – none of which DCRB has refuted.

Key evidence includes:

Evidence #1 – Official Personnel Records: Ms. Sampson's SF-50 official government personnel form, issued by DCRB on September 8, 2008, explicitly documents that she was appointed as a Career Service employee under DC Code § 1-608.01(a)(5). Throughout her 13-year tenure, her SF-50 consistently reflected her Career Service status. DCRB reaffirmed her Career Service classification when it noted it on her Standard Form ("SF")-50 from around the time of her proposed removal of April 28, 2022, an excerpt of which is below:

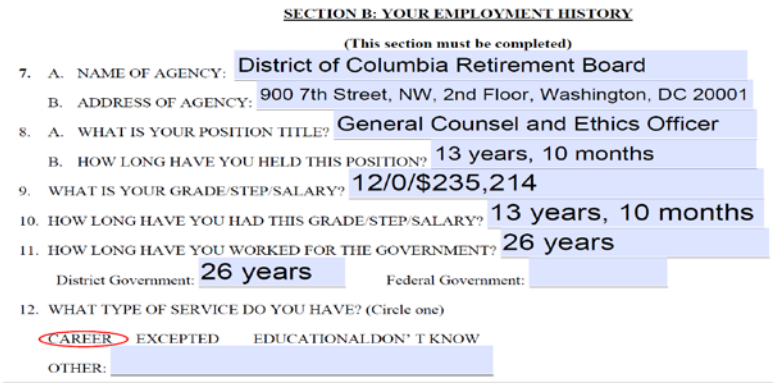
Standard Form 50
Rev 7/91
District of Columbia Government

NOTIFICATION OF PERSONNEL ACTION April 28, 2022

1. Name (Last, First, Middle)		Number	3. Da[redacted]	4. Effective Date
Sampson,Erie F.		[redacted]		09-08-2008
FIRST ACTION		**S CTION**		
5-A. Code	5-B. Nature of Action	6-A. Code	6-B. Nature of Action	
100	Career Appt	100	Career Appt	
5-C. Code	5-D. Legal Authority NTE:	6-C. Code	6-D. Legal Authority	
001	Sec 1-608.01(a)(5)DC Code Probational or Perm Appt			

Contrary to DCRB's mischaracterization, the SF-50 is the government's definitive record of every hire, promotion, and separation – including the employee's service classification. Ms. Sampson's SF-50 shows that DCRB, exercising the exclusive authority granted to it by § 1-711(g)(2)(a), (k), unequivocally appointed her to the Career Service.

Evidence #2 – DCRB's Own Legal Filings at OEA: In August 2022 and April 2023, DCRB stated repeatedly in OEA filings that Ms. Sampson was a Career Service employee. Notably, throughout both the removal process and the subsequent OEA proceedings, DCRB never objected to or questioned Ms. Sampson's classification status. Ms. Sampson's status is clearly documented in her OEA Petition for Appeal (August 12, 2022). An excerpt is below:



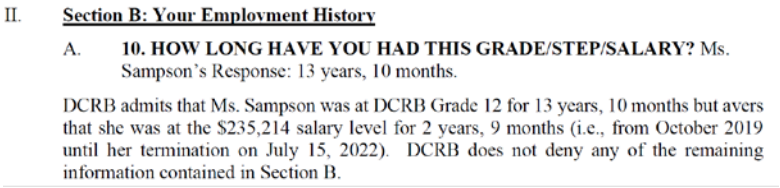
SECTION B: YOUR EMPLOYMENT HISTORY

(This section must be completed)

7. A. NAME OF AGENCY: District of Columbia Retirement Board
   B. ADDRESS OF AGENCY: 900 7th Street, NW, 2nd Floor, Washington, DC 20001
8. A. WHAT IS YOUR POSITION TITLE? General Counsel and Ethics Officer
   B. HOW LONG HAVE YOU HELD THIS POSITION? 13 years, 10 months
9. WHAT IS YOUR GRADE/STEP/SALARY? 12/0/$235,214
10. HOW LONG HAVE YOU HAD THIS GRADE/STEP/SALARY? 13 years, 10 months
11. HOW LONG HAVE YOU WORKED FOR THE GOVERNMENT? 26 years
    District Government: 26 years Federal Government:
12. WHAT TYPE OF SERVICE DO YOU HAVE? (Circle one)
    CAREER EXCEPTED EDUCATIONAL DON'T KNOW
    OTHER:

See Jt. Appendix at 109.

In DCRB's Answer, the Agency confirms that Ms. Sampson is a Career appointment by not raising any objections to her marking of Career Service above.



II. **Section B: Your Employment History**

A. **10. HOW LONG HAVE YOU HAD THIS GRADE/STEP/SALARY?** Ms. Sampson's Response: 13 years, 10 months.

DCRB admits that Ms. Sampson was at DCRB Grade 12 for 13 years, 10 months but avers that she was at the $235,214 salary level for 2 years, 9 months (i.e., from October 2019 until her termination on July 15, 2022). DCRB does not deny any of the remaining information contained in Section B.

See id. at 189.

The OEA record further shows that DCRB: (i) used the District's standard template letter for adverse action against a Career employee and its rationale worksheets; (ii) brought charges against her based on the disciplinary guidance found in Chapter 16 of the DPM, *e.g.*, at § 1605; (iii) selected and appointed a hearing officer to consider Ms. Sampson's proposed removal; (iv) sent Ms. Sampson a copy of the OEA rules for the final removal action. These actions are only required before an adverse action can be taken against a Career Service employee.[7]

Evidence #3: DC Government's Employee Public Website Listings for Ms. Sampson: Official DC government records from March 2021[8] and December 2021[9] explicitly document that Ms. Sampson was classified as "Career Service".

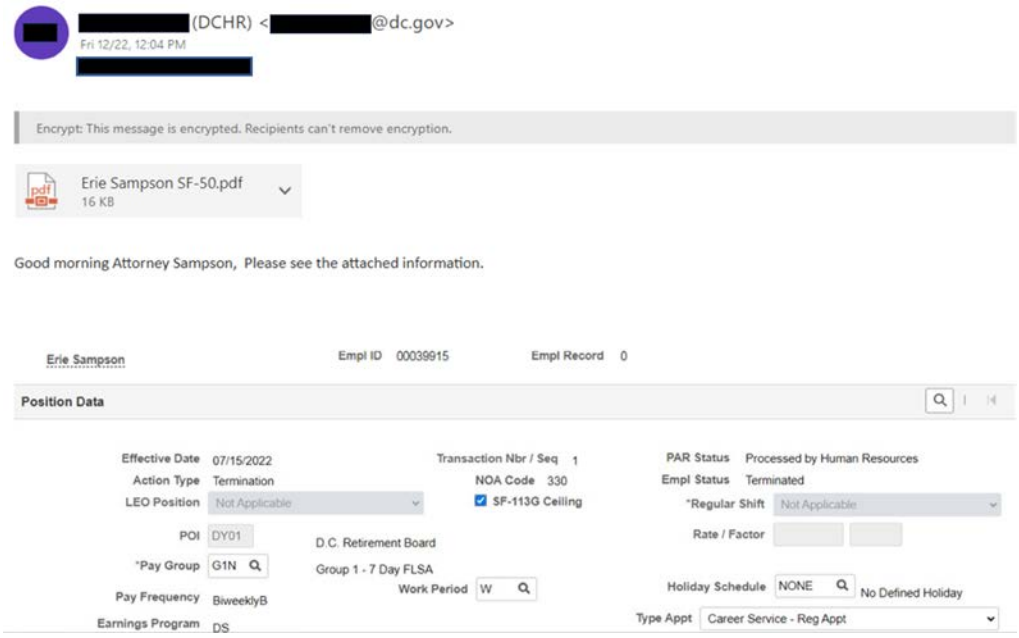
[7] *See* Discipline (2020 Update), D.C. DEP'T OF HUMAN RESOURCES, https://edpm.dc.gov/issuances/discipline-2020-update/ (last accessed Jan. 29, 2024) (attachments 5 through 8); *see also* DPM § 1602, *et seq*.

[8] *See* DC Government Employee Listing (Quarter 2), at 158 (Mar. 31, 2021), https://dchr.dc.gov/sites/default/files/dc/sites/dchr/publication/attachments/public_body_employee_information_210331.pdf [hereinafter "Mar. 2021 EL"].

[9] *See* DC Government Employee Listing (Quarter 1) at 146 (Dec. 31, 2021), available at: https://dchr.dc.gov/sites/default/files/dc/sites/dchr/publication/attachments/public_body_employee_information_201231.pdf

These dates reflect Ms. Sampson's employment status before and after Mr. Balestrieri was hired as the DCRB Executive Director.

Evidence #4: District Government's Peoplesoft HRIS: As recently as December 22, 2023, one week after DCRB filed its Petition for Review with the Superior Court in this matter, the District government's Peoplesoft Human Resources Information System documented Ms. Sampson's status as a "Career Service – Reg Appt" employee, reaffirming her longstanding and unchanged employment classification during her tenure. An excerpt is below:


[redacted] (DCHR) <[redacted]@dc.gov>
Fri 12/22, 12:04 PM
[redacted]

Encrypt: This message is encrypted. Recipients can't remove encryption.

Erie Sampson SF-50.pdf
16 KB

Good morning Attorney Sampson, Please see the attached information.

Erie Sampson Empl ID 00039915 Empl Record 0

Position Data

Effective Date 07/15/2022
Action Type Termination
LEO Position Not Applicable
POI DY01
*Pay Group G1N
Pay Frequency BiweeklyB
Earnings Program DS
D.C. Retirement Board
Group 1 - 7 Day FLSA
Work Period W
Transaction Nbr / Seq 1
NOA Code 330
SF-113G Ceiling
PAR Status Processed by Human Resources
Empl Status Terminated
*Regular Shift Not Applicable
Rate / Factor
Holiday Schedule NONE
No Defined Holiday
Type Appt Career Service - Reg Appt

Evidence #5: DCRB Informed Ms. Sampson of her Career Service Rights and Directed her Appeal to the OEA: DCRB's proposed and final removal letters explicitly stated that its decision was issued under the provisions of Chapter 16 of the District personnel rules that apply to Career Service employees and the OEA

appeal process. *See* Jt. Appendix at 117-20, 161-65. In fact, its charges were brought under Chapter 16 of the DPM, and due process protections for employees facing charges under this section do not apply to employees classified within the Legal Services or SEAS. Moreover, DCRB's Final Agency Decision – Removal letter dated July 11, 2022, explicitly informed Ms. Sampson she could file an appeal of her termination to OEA. *See id.* at 119, 120. DCRB's termination letter states:

> **Review Process.** You have the right to challenge this final action and may secure an attorney or other representative, at your own expense. You may seek review of this action by filing an appeal with the District of Columbia Office of Employee Appeals ("OEA"). To seek review with the OEA, you must file a Petition for Appeal with OEA within thirty (30) days of the Effective Date of this action. A copy of the appeals application and OEA rules are included with this decision for your convenience.

Evidence #6: Oral Statements from DCRB Executive Director and its Private Counsel: During the June 6, 2022, hearing before the Hearing Examiner upon Ms. Sampson's proposed removal, DCRB explicitly acknowledged Ms. Sampson's Career Service protections. Executive Director Gianpiero Balestrieri acknowledged it as well and indicated future DCRB legal positions would shift away from the Career Service to the Legal Service, something changed for the general counsels who have worked for DCRB since Ms. Sampson was removed. These explicit statements, shown below, confirm DCRB fully considered Ms. Sampson to be in the Career Service:[10]

[10] OEA and DCRB have already received a recording of this communication that Ms. Sampson was authorized to record by the Hearing Officer that DCRB selected.

> Miguel Eaton, Jones Day**:** The **Career Service protection** here**,** and **the fact that Ms. Sampson has it**, is just a case study for why lawyers generally and a general counsel in particular, should not have this kind of [Career Service] protection. The attorney-client relationship is built on trust and the Board can't trust her and she in her own words doesn't have trust in the board…
>
> JP Balestrieri, Executive Director of DCRB: I want to also reiterate that in the ordinary course, the DCRB Legal Counsel moving forward should be in the Legal Services, which is a contract at will… **So, moving forward, we will be putting it in the Legal Services,** precisely for the reasons that Miguel Eaton has explained.
>
> David Seide (Prior counsel for Ms. Sampson): Let's agree on what DCRB is saying today. They're basically conceding that Ms. Sampson is in the Career Service. And they may not like that, but… **the fact of the matter is that Ms. Sampson is a government employee and is the beneficiary of the procedural [Career Service] rules.**

Evidence #7: DCRB's Petition for Review Limits its Scope to Career Service and the Existing Record: DCRB's Petition for Review of OEA's Initial Decision to the Superior Court exclusively invoked Chapter 16 of the DPM rules, which are applicable to Career Service employees, not to the Legal Services or SEAS, to justify Ms. Sampson's termination. *See* Jt. Appendix at 6; DPM § 1600.2. DCRB's reliance on Career Service rules to serve as a basis for its decision to charge Ms. Sampson with alleged wrongdoing, while simultaneously claiming that she is not eligible for due process protections due to her being part of the SEAS, is inherently contradictory and undermines its argument here.

The transcription provided herein is unofficial and has emphasis added in bold. A copy of this recording can also be provided to this Court upon request.

Evidence #8: Varied Classifications of General Counsels Among Independent Agencies: DCRB asserts that general counsels of independent District agencies must be appointed under the SEAS classification given D.C. Code § 1-608, *et seq*. But this argument not only fails as a matter of law, but in practice as well. Independent agencies routinely classify general counsels in various ways, including Career Service ("CS-Reg"), reflecting independent agency discretion. Examples include the General Counsels from the Office of Campaign Finance, the University of the District of Columbia, DC Public Schools, and the Office of the Chief Financial Officer, who are classified within the Career Service and/or Educational Services:

First Name	Last Name	Position Title	Agency	Grade	Compensation	Start Date	App Type
William	Sanford	Supv General Counsel	OCF	01	$151,047.20	12/08/1985	CS - Reg
David	Tseng	GEN COUNSEL	OCFO	17	$237,000.69	08/22/2004	CS - Reg
Ridgely	Bennett	ASSOC GEN COUNSEL	OCFO	16	$208,457.58	02/06/2005	CS - Reg
Erin	Law	Associate General Counsel (Pub	OCFO	16	$208,458.00	11/08/2020	CS - Reg
Treva	Saunders	ASSOC GEN COUNSEL PERS PROC	OCFO	16	$208,458.00	01/19/2008	CS - Reg
Alan	Levine	ASSOC GEN COUNSEL	OCFO	16	$208,458.00	04/16/2006	CS - Reg

First Name	Last Name	Position Title	Agency	Grade	Compensation	Start Date	App Type
Erica	Wright	Assistant General Counsel	UDC	2B	$131,703.05	11/17/2019	Ed - Reg
Thomas	Redmond	Assistant General Counsel	UDC	2B	$131,703.05	06/25/2000	Ed - Reg
Avis	Russell	GENERAL COUNSEL	UDC	01	$234,269.72	09/30/2018	Ed - Reg
Lynette	Collins	Deputy General Counsel	DCPS	02	$178,177.00	08/10/2003	Ed - Reg

See Employee Salary Information, D.C. OFFICE OF HUMAN RESOURCES, https://dchr.dc.gov/publicbodyinfo (last accessed May 19, 2025) (name search required).

VI. OEA Clearly Has Jurisdiction over Ms. Sampson's Termination Appeal

Since DCRB explicitly classified Ms. Sampson as Career Service per its exclusive classification authority, her appeal to OEA fell squarely within OEA's jurisdiction. Notably, as evidenced in the prior section, this jurisdictional fact was repeatedly and explicitly conceded by DCRB throughout administrative and judicial proceedings, including DCRB's formal statements and official filings directing Ms. Sampson's appeal to OEA. DCRB's current attempt to dispute jurisdiction is not only unsupported by the record, but directly contradicted by its own repeated acknowledgments of OEA jurisdiction.

D.C. law is clear: OEA has jurisdiction over adverse actions involving Career Service employees. *See* D.C. Code § 1-606.03(a). Given Ms. Sampson's documented and acknowledged Career Service status, OEA unquestionably possesses jurisdiction.

VII. DCRB's Contradictory Arguments before the Superior Court on Jurisdiction are Subject to Judicial Estoppel

Under the doctrine of judicial estoppel, a party cannot successfully maintain one legal position and subsequently adopt a contradictory stance merely due to changing interests, especially when this reversal prejudices the opposing party who relied upon the original position. *See New Hampshire v. Maine*, 532 U.S. 742, 749

(2001) (citation omitted). Judicial estoppel exists primarily to protect the integrity of the judicial process by preventing opportunistic shifts in legal arguments. *See id.* at 743. Thus, a party is precluded from prevailing in one stage of litigation with a specific argument, and then using a contradictory argument in a later stage. *See id.*

DCRB's current argument directly conflicts with its previous stance before the Superior Court in Ms. Sampson's whistleblower retaliation case, where DCRB successfully moved to dismiss her complaint due to her failure to exhaust administrative remedies with OEA.[11] As DCRB stated in its March 7, 2022, Motion to Dismiss:

> The CMPA requires that "[a]n employee may appeal . . . an adverse action for cause that results in . . . placement on enforced leave" **to the Office of Employee Appeals ("OEA")**, D.C. Code § 1-606.03(a), and any appeal of the OEA's decision goes to the Superior Court. Id. at § 1-606.03(d). The **CMPA's appeal procedures apply to Plaintiff**.

See Mot. Dismiss, *Sampson v. Dist. of Columbia Retirement Bd.*, No. 2021-CA-4942, 19 (D.C. Super. Ct. Apr. 13, 2022) (emphasis added).

[11] On March 7, 2023, in its Motion to Dismiss, and April 13, 2022, in its reply in support of that motion, DCRB argued to dismiss Counts IV through VII of Ms. Sampson's whistleblower retaliation complaint for failure to exhaust administrative remedies with OEA; the Superior Court accepted that argument on April 27, 2022, dismissing those claims.. Ms. Sampson respectfully asks this Court to take judicial notice of those filings and the resulting order dismissing her complaint, now on appeal in *Sampson v. Dist. of Columbia Retirement Bd.*, No. 22-CV-385 (argued Mar. 1, 2023).

Then, on April 13, 2022, in its Reply in Support of Opposed Motion to Dismiss for Failure to State a Claim ("DCRB's Reply"), DCRB reiterated this position, asserting that Ms. Sampson was obligated to exhaust her administrative remedies at OEA:

- "The upshot is that DCRB has not 'deprived' Plaintiff of her ability **to take her case to the appropriate administrative forum, <u>the OEA</u>,** and the Court should thus dismiss Counts IV – VII. In any event, exhaustion of the CMPA's administrative remedies is a jurisdictional requirement to obtaining review in D.C. Superior Court. . . ."
- Regardless, the Court should not permit amendment to address Plaintiff's grievance because it would be futile. Any additional claims about Plaintiff's grievance are irrelevant to her ability to exhaust administrative remedies given that Plaintiff **has not exhausted the CMPA's grievance procedures and appeal process**.

DCRB's Reply at 10, 11 (emphasis added).

On April 27, 2022, the Superior Court explicitly relied on these assertions by DCRB when dismissing Ms. Sampson's claim in its Order on DCRB's Motion to Dismiss, concluding:

> If DCRB has not complied with any obligations to address her grievance or to resolve it more quickly, the consequence is that Ms. Sampson has another basis to challenge DCRB's final action – not that she is relieved from **her obligation to exhaust her administrative remedies with OEA**.

Thus, by adopting and successfully advancing that position, DCRB and the Superior Court explicitly acknowledged that Ms. Sampson was a Career Service employee subject to OEA jurisdiction.

DCRB now entirely reverses course, arguing for the first time – only after an adverse OEA decision – that Ms. Sampson was never properly classified as Career Service, and that the OEA thus lacks jurisdiction. This abrupt reversal of position is precisely what judicial estoppel prohibits, as it demonstrates bad faith and undermines the integrity of the judicial process. Consequently, DCRB should be judicially estopped from asserting this contradictory jurisdictional argument.

VIII. Due Process, Public Policy, and Equity Considerations Require Affirming OEA's Jurisdiction

At its core, this case asks whether DCRB may disown its own classification decisions – and the procedures that flow from them – simply because the outcome proved inconvenient. Allowing that after-the-fact reversal would violate basic due-process norms, invite procedural gamesmanship, and erode confidence in the District's personnel systems and law.

First, an agency that invokes Chapter 16 to discipline a Career-Service employee must live with the framework it chose. From the initial placement on administrative leave, and then the notice of proposed removal through the final decision, DCRB – in exercising its exclusive classification authority – told Ms. Sampson and the OEA that Chapter 16 applied. Ms. Sampson structured her defense around those rules, and even had her case in DC Superior Court dismissed due to not exhausting remedies available under those rules. Switching rulebooks three years

later would deny Ms. Sampson the fair, predictable process the Constitution guarantees.

Second, DCRB offers no coherent substitute procedure. Its charges exclusively quote Chapter 16 DPM offenses; its own hearing officer applied Chapter 16 standards. Yet, DCRB now hints, without details, that it *might* rewrite Ms. Sampson's SF-50 and restart under Chapter 36. Retroactive re-classification with no articulated safeguards is itself a due-process violation[12] – further proof that the SEAS theory is litigation-driven, not policy-driven.

Third, District law empowers DCRB to independently classify its employees, authority that DCRB exercised by appointing and classifying Ms. Sampson as Career Service throughout her tenure. Permitting DCRB to abandon this classification authority after receiving an unfavorable OEA decision undermines the legislative intent, introduces harmful uncertainty into public employment practices, and severely damages public trust. Public employees must be able to rely on consistent agency representations and documented employment classifications. Permitting governmental agencies to reverse such commitments after adverse decisions would encourage procedural manipulation and severely undermine public confidence and government accountability.

---

[12] *See Cleveland Bd. of Educ. v. Loudermill*, 470 U.S. 532 (1985).

Finally, Ms. Sampson relied in good faith on DCRB's written and oral confirmation of her status in Career Service. Penalizing Ms. Sampson, who reasonably relied on DCRB's representations and complied fully with established procedures, directives, and laws, would be fundamentally unjust.

For all these reasons, the Court should affirm the remand – as it protects due process, preserves the integrity of District personnel law, and holds DCRB accountable for their established decisions and representations – and leaves factual classification issues where the CMPA placed them: before the OEA.

CONCLUSION

Wherefore, for the reasons stated herein, the entire record herein, and good cause shown, this Court should dismiss DCRB's appeal of the Superior Court's Remand Order, and remand this matter for further proceedings.

Respectfully submitted,

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Managing Partner

*/s Michael Goldstein*____
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CERTIFICATE OF FILING AND SERVICE

I hereby certify that the foregoing Appellee Erie Sampson's Brief was served this 21st day of May, 2025, on the following recipients *via* the Court of Appeal's electronic filing system:

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