
Government of the District of Columbia



D.C. Office of the Tenant Advocate

Testimony of

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PUBLIC ROUNDTABLE

**PR19-0816, THE "RENTAL HOUSING COMMISSION RONALD A.
YOUNG CONFIRMATION RESOLUTION OF 2012"**

**PR19-0817, THE "RENTAL HOUSING COMMISSION MARTA W.
BERKLEY CONFIRMATION RESOLUTION OF 2012"**

**PR19-0818, THE "RENTAL HOUSING COMMISSION PETER
SZEGEDY-MASZAK CONFIRMATION RESOLUTION OF 2012"**

Committee on Economic Development and Housing
The Honorable Michael A. Brown, Chairperson
Council of the District of Columbia

Wednesday, October 10, 2012
1:00 p.m.

Room 120
John A. Wilson Building
1350 Pennsylvania Avenue, NW
Washington, DC 20004

INTRODUCTION

Thank you -- Councilmember Brown and members of the Committee on Economic Development and Housing -- for this opportunity to submit written testimony regarding Proposed Resolution 19-816, the “Rental Housing Commission Ronald A. Young Confirmation Resolution of 2012”; Proposed Resolution 19-817, the “Rental Housing Commission Marta W. Berkley Confirmation Resolution of 2012”; and Proposed Resolution 19-818, the “Rental Housing Commission Peter Szegedy-Maszak Confirmation Resolution of 2012.”

As the District’s Chief Tenant Advocate, I believe it is important that our office underscore the critical role of the Rental Housing Commission with respect to many of the District’s key tenant protection laws; help the Committee and the Council frame the criteria for evaluating new nominees to the Commission; and provide a rough assessment of the even-handedness of incumbent nominees regarding tenant and housing provider wins and losses -- keeping in mind that raw statistics alone cannot tell the whole story. As the Director of an independent agency within the executive branch, it is my general policy neither to endorse nor oppose any Mayoral nomination except in extreme circumstances.

THE COMMISSION'S ROLE

Under section 202 of the Rental Housing Act of 1985, the specific duties of the Rental Housing Commission are:

1. Issuing, amending, and rescinding rules and procedures for the administration of the Act;
2. Deciding appeals brought to it from the decisions of the Rent Administrator and the Office of Administrative Appeals; and
3. Certifying and publishing the annual adjustment of general applicability, based on the Consumer Price Index, which is the maximum standard annual increase in the rent charged for a rent-controlled apartment.

(D.C. Official Code § 42-3502.02)

To merely reiterate the Commission's statutory functions, however, is to vastly understate its vital importance to the well-being of the District's rental housing community and its affordable rental housing stock. Unlike the Office of Administrative Hearings, from which rental housing decisions are appealed to the Commission -- and unlike the D.C. Court of Appeals, to which Commission decisions may be appealed -- the Commission has jurisdiction over *no cases* other than rental housing cases.

Thus the Commission has developed the singular institutional knowledge and expertise necessary to ensure that case decisions are consistent with each other and with the remedial purposes of the Act. The value and importance of such a body, particularly given the complexities and nuances of D.C. rental housing law, cannot be overstated. Indeed, it is our understanding that, as a historical matter, the D.C. Court of Appeals has affirmed 92 to 95 percent of cases on appeal from the Commission. This statistic is a testament to the Commission's role and stature in rental housing adjudications.

QUALIFICATIONS TO BE A COMMISSIONER

The Act sets forth the minimal qualifications that any prospective Rental Housing Commissioner must have. The nominee must be a resident of the District, must be admitted to practice law before the District of Columbia Court of Appeals, and may be *neither* a housing provider nor a tenant. (D.C. Official Code § 42-3502.02))

In 2010, the OTA worked with the Committee on legislation -- the "Rental Housing Commission Reform Amendment Act of 2010" (Law 18-863; D.C. Code § 42-3502.01, effective March 11, 2011) -- to enhance the statutory criteria for Rental Housing Commissioners, and to stagger the terms of the three Commissioners. The purpose of staggering terms was to

help avoid a reoccurrence of what happened in 2010 -- multiple simultaneous vacancies resulting in a lack of quorum to do the Commission's business. This round of Commission nominations represents the first time that this provision is being implemented. Thus, if approved, Commissioner Berkley's term will expire in July 2013; Commissioner Young's term will expire in July 2014; and Chairperson Szegedy-Maszak's term will expire in July 2015.

Law 18-863 also established further baseline criteria that a candidate must meet in order to serve on the Commission. Accordingly, a member of the Rental Housing Commission "shall possess skills and experience relevant to the following:

1. Litigation, preferably including both appellate practice demonstrated by written work product and exposure to the concerns of pro se litigants;
2. Administrative law, preferably in an area of complex regulation; or
3. Housing law, preferably in the area of rental housing and rent control or rent stabilization."

FURTHER CONSIDERATIONS

While each nominee is an incumbent Commissioner, I wish to remind the Committee and the Council of the questions we suggested should be posed, and was posed, to each candidate upon first being nominated to serve on the Commission:

1. What areas of legal experience and expertise would the candidate bring to the Commission?
2. Does the candidate's legal experience and expertise include public interest law generally and housing law in particular?
3. Does the candidate have experience with and knowledge of the Rental Housing Act?
4. Does the candidate have working knowledge of the District's rent control system, and does the candidate have a working knowledge of the recently abolished rent ceiling system (which remains applicable to cases initially filed as recently as August 2009)?
5. Does the candidate have a solid understanding of administrative law? For example, can the candidate site key differences between the rules of evidence in a judicial setting versus those that pertain under the Administrative Procedure Act?
6. Does the candidate have an understanding of and an appreciation for the purposes of the Rental Housing Act, including the fact that the Act is remedial legislation intended to alleviate chronic problems within the rental housing market?
7. Is the candidate aware of the Court's pronouncements that the tenant who has filed a tenant petition in effect acts as a "private

attorney general” with respect to enforcement of the Rental Housing Act, and what significance should that have for the Commission’s review of cases?

8. Is the candidate familiar with the standard set forth in the “Goodman” case (573 A2nd 1293 (1990)) regarding procedural or technical errors committed by a *pro se* litigant, and the relaxed application of the procedural or technical rules under relevant circumstances?
9. Is the candidate aware of the “plain error” standard for review of issues not specifically raised in a notice of appeal?
10. Would the candidate take a pro-active approach toward Commission-initiated reviews under 14 D.C.M.R. § 3808, which gives the Commission 20 days after the deadline for party-initiated appeals to initiate its own appellate review of a decision by the Rent Administrator or the Office of Administrative Hearings?

Given that each nominee is an incumbent, we reviewed a total of 67 case decisions written by the three nominees between 2009 and the present: 47 written by Chairperson Szegedy-Maszak¹; 14 written by Commissioner

¹ Chairperson Szegedy-Maszak was the sole member of the Commission for a considerable portion of this time period. Under emergency and temporary legislation, the Council had granted him single-member quorum status so

Young; and 6 written by Commissioner Berkley. Collectively, as we had previously found to be the case, the Commission's substantive decisions were roughly balanced in terms of wins and losses for tenants and housing providers.

We are concerned, however, by the significant imbalance in favor of housing providers in terms of decisions in non-substantive areas, including: (a) procedural rulings generally; and (b) denials of tenant appeals based upon the failure to provide a "clear and concise" statement of the alleged errors in the Administrative Law Judge's decision (as required under 14 D.C.M.R. §3802.5(b)). In our estimation, these statistics highlight how critical it is that every tenant has the opportunity to receive technical and legal help in pursuing a rental housing action, and that every tenant is made aware that such help is indeed available.

The OTA is working hard towards that end. Under our "Rapid Response" program, we pro-actively send letters to tenants affected by certain legal notices: Offers of Sale under the Tenant Opportunity to Purchase law; notices of foreclosure; notices of housing provider rent increase petitions; and notices of OAH hearing schedules in which a tenant

that Commission business could continue until the impasse regarding other nominations was resolved.

is a named party. The purpose of each of these letters is to apprise the tenant of his or her basic rights under the circumstances and of the OTA's availability to provide assistance. Our goal is to reach each and every affected tenant and to provide assistance to each and every tenant who needs it. The "pay-off" from these efforts will include a reduction in the number of denials of tenant appeals not based on the merits, and a more evenly balanced "win/loss" ratio between tenants and housing providers on procedural matters.

This concludes my testimony. Thank you, Chairperson Brown and the Committee, for your continued leadership in the area of tenants' rights in the District. I would be happy to provide the Committee or the Council with any further assistance.