



GOVERNMENT OF THE DISTRICT OF COLUMBIA
OFFICE OF THE TENANT ADVOCATE



VIA E-MAIL TO JOHN.DEAN@DC.GOV

August 9, 2010

The Honorable John P. Dean
Principal Administrative Law Judge
District of Columbia Office of Administrative Hearings
441 4th Street, N.W., Suite 540
Washington, DC 20001-2714

Dear Judge Dean:

Thank you for the opportunity to submit comments on the draft revisions to OAH's procedural rules prior to the publication of proposed rule-making. I wish to commend OAH's Rules Committee for a process that has been impressively inclusive, thorough, and receptive to stakeholder comments.

I note numerous improvements of great significance to this agency's clientele, including: the elimination of dual case tracking and the adoption of a general "good cause" discovery rule; consistent "calendar day" time computation rules; the filing of documents by fax dealing with legibility problems; up to three (3) "automatic" clerk-issued rather than ALJ-issued subpoenas to compel the appearance of witnesses or production of documents regarding housing conditions, or the production of documents regarding rent increases or rent increase demands; the possibility of appearances in court from a remote location -- a potentially critical accommodation for persons who are elderly or who have a disability; the incorporation of recently enacted legislation regarding tenant associational standing and the time prevailing parties have to request attorneys fees; more time for an interlocutory appeal where a party has been adversely affected by a non-final ruling; and generally simplified language making the rules more comprehensible to attorneys and unrepresented parties alike.

I also wish to make several comments and recommendations on the draft rules, some of which the OTA has previously submitted and thus which the Committee may have already considered, but which I believe merit further consideration and/or discussion:

1. Rule 2920.1: Scope

The draft rules incorporate a few specific provisions of the Rental Accommodations Division (RAD) rules and the Rental Housing Commission (RHC) rules at 14 DCMR

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Chapters 39 through 43. However, the rule of general applicability of RAD and RHC rules has been eliminated. Since Rule 2801 retains the rule of general applicability of the D.C. Superior Court Rules of Civil Procedure, I am concerned that wherever the OAH rules are silent, more stringent rules will apply than those to which parties to rental housing cases specifically and parties to administrative proceedings generally are accustomed. I am particularly concerned that unrepresented parties continue to enjoy to the maximum extent possible the benefit of the “relaxed rules” that generally apply to administrative hearings.

2. Rule 2809.5(b): Filing of Papers

It makes abundant good sense that a party filing a paper by fax is held responsible for delay, disruption, interruption of electronic signals, and readability problems. However, it would be helpful to specify what other action the party should take. Thus I would recommend the addition of language such as: “The party shall be responsible for contacting the clerk’s office to ascertain whether the fax is considered received.”

3. Rule 2823: Subpoenas

I heartily endorse requiring subpoena requests to be made a certain number of days prior to the hearing, rather than the current reference to a certain number of days prior to the proposed return date. I am concerned, however, that the deadline of two (2) days prior to the hearing (Rule 2823.7) for the service of a subpoena to appear at the hearing generally would not provide sufficient notice, particularly for anyone who must make special arrangements such as taking leave from work. I believe a five (5) day-rule – as is the case regarding the production of documents (Rule 2823.4) – would be more reasonable.

4. Rule 2928: Expansion of Scope

I appreciate the fact that the Committee listened to stakeholder feedback and rejected the idea of eliminating the expansion of scope provision at proposed Rule 2928.2 through Rule 2928.5. I continue to believe, however, that strengthening the under-utilized expansion of scope provision in some fashion would serve numerous compelling interests – including OAH’s own interest in enhancing administrative efficiency by reducing the likelihood that the exact same issues in the exact same rental accommodation will require multiple proceedings.

5. Rule 2937.5/Rule 2827.13: Reconsideration

I recommend that language be added to Rule 2827.13 explicitly stating that the non-moving party has eleven (11) days – assuming Rule 2813.6 applies – to respond to a motion for reconsideration, new hearing, or relief from a final order. This will increase the “user-friendliness” of the rules by reducing the need for a responding party to “hunt” for the applicable time-frame.

6. Rule 2941.3: Interest on Security Deposits

Where the housing provider has failed to prove the amount of interest that the bank has paid, or has failed to hold the security deposit in an interest-bearing account, this rule requires the Judge to calculate interest on a security deposit owed to the tenant based on the federal funds rate in effect at the beginning of the calendar year. I understand the Committee's interest in finding an objective benchmark as a default measure, and I also appreciate the fact that the Committee researched average federal fund rates and average checking account rates. Nevertheless, I do believe that the federal funds rate in a given year generally will fall considerably short of the average interest rate on checking accounts. If so, this rule would reward a housing provider who has violated the relevant "interest on security deposit" regulations at 14 D.C.M.R. 311. It also might well invite "creative mischief" by creating an incentive for less scrupulous housing providers to weigh the relative cost-savings of the federal funds rate against any potential penalty for the violation. I would like to work with the Committee to consider all sides of this matter further and to find a fairer alternative that is also equally "objective."

Thank you again for the Committee's exemplary rule-making process, and thank you for considering these recommendations and comments. I would be happy to discuss them with you and the rest of the Rules Committee. I also understand that the OTA and stakeholders will have further opportunity to provide input during the public comment period.

Sincerely,

Johanna Shreve
Chief Tenant Advocate
Office of the Tenant Advocate

JS/jc

cc: The Honorable Jennifer Long, Principal Administrative Law Judge, via e-mail to jennifer.long@dc.gov