



GOVERNMENT OF THE DISTRICT OF COLUMBIA
OFFICE OF THE TENANT ADVOCATE



VIA ELECTRONIC MAIL TO JOHN.DEAN@DC.GOV

November 1, 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:

The purpose of this letter is to submit comments on the OAH Proposed Rule-making for rental housing cases published in the D.C. Register on September 10, 2010. First, thank you once again for the opportunity over the summer to comment on the draft revisions. Please see attached a copy of my letter of August 9, 2010, setting forth those recommendations. The purposes of those recommendations included furthering our shared goal of making the rules more user-friendly. This is particularly important for the relatively large portion of this agency's clientele not represented by counsel at administrative hearings. I note that a number of these suggestions were not incorporated in the Proposed Rule-making, but I hope that the Rules Committee will continue to consider each of them during its review of the public comments.

In particular, however, I hope that the Committee will reconsider **Proposed Rule 2920, "Rental Housing Cases: Scope."** This proposed rule would eliminate the current rule of applicability (at Rule 2920.1) of the procedural aspects of 14 D.C.M.R. Chapters 39 to 43. Thus, wherever the OAH procedural rules are silent, the D.C. Superior Court Rules of Civil Procedure Rule would apply under Rule 2801. As previously noted, these rules are more stringent than those to which parties to administrative proceedings generally and parties to rental housing cases specifically are accustomed, particularly unrepresented parties. I understand that the Committee's goal may be to reduce the confusion created by having too many overlapping sets of procedural rules. Thus, as an alternative to maintaining the applicability of 14 D.C.M.R. Chapters 39 to 43, ***I recommend that the Committee consider incorporating language indicating that where a party is unrepresented, the ALJ will consider relaxing the procedural rules as he or she deems appropriate to the circumstances.*** This would serve as a reminder to the ALJ that it is appropriate to do so, and also provide an explicit basis for doing so.

1250 U Street, NW
Fourth Floor
Washington, DC 20009

(202) 719-6560

As you know, I believe that the **expansion of scope provision (Rule 2928)** is a mechanism that, if used more regularly, would enhance not only the enforcement of the Rental Housing Act, but also the administrative efficiency of multiple government agencies including OAH. That is why I have previously recommended that expansion of scope be made mandatory under certain circumstances rather than discretionary. I continue to believe this would make the best sense. ***As an alternative, I recommend that the Committee incorporate language setting forth specific circumstances that would warrant the exercise of an ALJ's discretion to expand the scope of a case. Relevant circumstances, I believe, might include where an alleged violation of law necessarily impacts all units in that accommodation, where the participation of other tenants would not be required to adjudicate the claim, and where expansion of scope would serve a compelling public interest or address a heightened regulatory compliance or administrative efficiency concern. Such guidance could lead to greater use of this important mechanism, which I believe would have many positive ramifications.***

Regarding **clerk-issued subpoenas at Rule 2934**, I recommend that the grounds upon which a party would be entitled to up to three (3) such subpoenas be enlarged to ***include any relevant business license, certificate of occupancy, or rent control registration/exemption documents at the Rental Accommodations Division of DHCD.*** These documents are often as fundamental to a rental housing case as are documents related to rent increases and housing code violations.

Finally, regarding the rules for the **intervention of a person at Rule 2816 and Rule 2928**, I recommend that the Committee incorporate language ***indicating the grounds that would justify an intervention.*** The permissive intervention provision in Rule 24 of the D.C. Superior Court Rules of Civil Procedure could serve as model language. Not only would this provide an ALJ with more specific guidelines for considering a motion to intervene, it would also tend to produce better and more consistent rationales either for the grant or denial of such a motion, which has been a concern of some of our stakeholders.

Thank you once again for considering these as well as our August 9th recommendations, and for the Committee's receptivity to recommendations to date. Please convey my thanks to the Chief Judge for extending the deadline to allow for more comments. I would welcome any discussion that might be helpful to your Final Rule-making deliberations.

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