

OFFICE OF ADMINISTRATIVE HEARINGS

CHAPTER 28 OFFICE OF ADMINISTRATIVE HEARINGS RULES OF PRACTICE AND PROCEDURE

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2800 SCOPE OF CHAPTER

- 2800.1 This Chapter contains general rules of procedure for the Office of Administrative Hearings (OAH). Chapter 29 of these Rules contains rules for rental housing, public benefits, and unemployment insurance cases.
- 2800.2 These Rules do not extend or limit the jurisdiction of OAH.
- 2800.3 These Rules shall be used to secure the fair, speedy, and inexpensive determination of every case.
- 2800.4 No Administrative Law Judge shall maintain standing, chamber, or other individual rules. However, an Administrative Law Judge may issue procedural orders in individual cases.
- 2800.5 These Rules (Chapters 28 and 29) may be cited as “OAH Rule _____,” without reference to the District of Columbia Municipal Regulations (DCMR).
- 2800.6 These Rules control all procedures at OAH. No procedural rules adopted by any other District of Columbia government agency apply in cases at OAH.
- 2800.7 These Rules apply to all cases filed on or after January 1, 2011. If it is just and practical, these Rules also apply in any case pending on that date.

2801 APPLICABILITY OF DISTRICT OF COLUMBIA SUPERIOR COURT RULES OF CIVIL PROCEDURE

- 2801.1 Where these Rules do not address a procedural issue, an Administrative Law Judge may be guided by the District of Columbia Superior Court Rules of Civil Procedure to decide the issue.

2802 BEGINNING A CASE AT OAH

- 2802.1 The Government may begin a case at OAH by filing a Notice of Infraction or Notice of Violation as described in Section 2803.
- 2802.2 Any party also may begin a case at OAH by filing a request for a hearing as described in Section 2808.
- 2802.3 Rules for how to begin rental housing, public benefits and unemployment insurance cases are in Chapter 29.

2803 BEGINNING A CIVIL FINE CASE

- 2803.1 Sections 2803 through 2807 establish procedures for cases in which the Government seeks payment of a civil fine.

- 2803.2 When the Government is seeking a civil fine, it must file a Notice of Infraction or a Notice of Violation, as authorized by law, at OAH. The Government may not file a Notice of Infraction, under the Civil Infractions Act, without complying with Subsection 2803.5, and may not file a Notice of Violation, under the Litter Control Administration Act, without complying with Subsection 2803.8.
- 2803.3 The Government must provide a copy of the Notice of Infraction or Notice of Violation to the Respondent (the person or entity that the Government wants to pay the fine) in the manner specified in the Civil Infractions Act, the Litter Control Administration Act, or other applicable law.
- 2803.4 If a Respondent files an answer before the Government files a Notice of Infraction or a Notice of Violation, OAH will open a case. The Administrative Law Judge may require the Government to file the original Notice of Infraction or Notice of Violation.
- 2803.5 In a Civil Infractions Act case filed on or after October 1, 2010, if the Government sends a Notice of Infraction to the Respondent by first-class mail, the Government may not file the Notice of Infraction until at least fifteen (15) calendar days after the date that it mailed the Notice of Infraction. When it files the Notice of Infraction, the Government also must file an affidavit, on a form approved by the Chief Administrative Law Judge, verifying that the United States Postal Service (USPS) did not return the Notice of Infraction to the Government.
- 2803.6 If the USPS returns a Notice of Infraction to the Government after it has filed the affidavit required by Subsection 2803.5, the Government must notify OAH by filing a new affidavit, on a form approved by the Chief Administrative Law Judge.
- 2803.7 If the USPS returns the Notice of Infraction to the Government, the Government may file proof of any alternative service of the Notice of Infraction.
- 2803.8 In a Litter Control Administration Act case, if the Government sends a Notice of Violation to a Respondent by certified mail, the Government must file a copy of a signed certified mail receipt or other proof that the USPS delivered the Notice of Violation to the Respondent's address. If the USPS returns the certified mail to the Government, the Government may file proof of any alternative service of the Notice of Violation.
- 2803.9 When it files a Notice of Infraction or a Notice of Violation, the Government must file a copy of all exhibits it expects to offer at any hearing in the case and must provide a copy of each exhibit to the Respondent. An Administrative Law Judge may allow the Government to use exhibits that it did not file or provide in accordance with this Subsection if there is no prejudice to the Respondent.

2803.10 OAH may dismiss or may refuse to accept for filing any Notice of Infraction or Notice of Violation that does not comply with the applicable law or these Rules.

2803.11 In civil fine cases, the Government may transfer data by electronic means as authorized by Subsection 2841.14.

2804 ANSWERS IN CIVIL FINE CASES

2804.1 To answer a Notice of Infraction or a Notice of Violation (both “Notice”), a Respondent should file the Respondent’s copy of the Notice at OAH. The Respondent shall indicate on the Notice whether the Respondent’s answer is Admit, Admit with Explanation, or Deny.

2804.2 If a Respondent does not file the Respondent’s copy of the Notice, a written answer will be sufficient if it contains both the number of the Notice and a statement whether the Respondent’s answer is Admit, Deny, or Admit with Explanation.

2804.3 A Respondent is not required to send a copy of the answer to the Government. OAH will send the Government a copy of every answer of Deny or Admit with Explanation.

2804.4 A Respondent whose answer is Admit shall pay the fine specified on the Notice when filing the answer.

2804.5 If a Respondent’s answer is Deny, OAH ordinarily will schedule a hearing and will notify the Respondent and Government, in writing, of the hearing date and time. The hearing order will contain additional information about procedures for the hearing.

2804.6 If a Respondent’s answer is Deny, after notice and opportunity to respond, an Administrative Law Judge may decide a case based on the papers submitted, without an in-person hearing, if a hearing is unnecessary.

2804.7 At least five (5) calendar days before any hearing date, the Respondent shall file at OAH copies of all exhibits that the Respondent intends to ask the Administrative Law Judge to consider at the hearing. At the same time, the Respondent shall send copies of those exhibits to the Government. An Administrative Law Judge may allow a Respondent to use exhibits at a hearing that the Respondent did not file or provide to the Government before the hearing if there is no prejudice to the Government.

2804.8 If a Respondent’s answer is Admit with Explanation, a Respondent shall submit a written explanation stating why the Respondent believes the Administrative Law Judge should reduce or suspend the fine or any penalty. The Respondent also

shall submit any papers, photographs, or other materials supporting the Respondent's explanation.

2804.9 OAH will send a copy of an answer of Admit with Explanation and supporting materials to the Government, and will allow the Government twenty-one (21) calendar days to reply. The Government must send the Respondent a copy of everything the Government files in reply.

2804.10 The Administrative Law Judge shall decide Admit with Explanation cases by considering all the materials filed by the parties, including the exhibits filed with the Notice, Respondent's explanation and supporting materials, and the Government's reply and supporting materials. The Administrative Law Judge will not hold a hearing, unless the parties' materials are not sufficient to allow him or her to decide the case.

2804.11 In an Admit with Explanation case, the Administrative Law Judge shall dismiss the Notice if he or she determines that the Respondent did not commit or is not responsible for the violation charged.

2804.12 In all civil fine cases, an Administrative Law Judge shall not impose a fine that exceeds the fine amount the Government requests.

2805 DEFAULTS IN CIVIL FINE CASES

2805.1 This Section contains rules for deciding civil fine cases in which the Respondent does not file an answer. There are separate procedures for Civil Infractions Act cases, Litter Control Administration Act cases, and other cases, because the law establishes different requirements for each of those cases.

2805.2 In a Civil Infractions Act case filed on or before September 30, 2010, if a Respondent fails to answer a Notice of Infraction within the time allowed by law, the Government must issue a second Notice of Infraction, as required by the Civil Infractions Act. OAH also may issue a notice of default. The notice of default shall inform the Respondent of any penalty provided by law, and shall direct the Government to issue a second Notice of Infraction.

2805.3 In a Civil Infractions Act case filed on or before September 30, 2010, if the Government fails to file a second Notice of Infraction within thirty (30) calendar days after a notice of default is served, an Administrative Law Judge may dismiss the charge against the Respondent.

2805.4 In a Civil Infractions Act case filed on or before September 30, 2010, if a Respondent fails to answer a second Notice of Infraction within the time allowed by law, an Administrative Law Judge shall determine whether:

(a) The Government has submitted evidence of proper service; and

- (b) Each Notice of Infraction meets all legal requirements on its face.

If so, the Administrative Law Judge shall find the Respondent in default and shall impose the legally authorized fine and penalty. If not, the Administrative Law Judge shall dismiss both Notices of Infraction without prejudice.

2805.5 In a Civil Infractions Act case filed on or after October 1, 2010, and in a Litter Control Administration Act case, if a Respondent fails to answer within the time allowed by law, an Administrative Law Judge shall determine whether:

- (a) The Government has submitted evidence of proper service; and
- (b) The Notice of Infraction or Notice of Violation meets all legal requirements on its face.

If so, the Administrative Law Judge shall find the Respondent in default and shall impose the legally authorized fine and penalty. If not, the Administrative Law Judge shall dismiss the Notice of Infraction or Notice of Violation without prejudice.

2805.6 In a Civil Infractions Act case filed on or after October 1, 2010, if the USPS returns an order finding the Respondent in default to the Clerk's Office, for reasons that call into question the accuracy of any affidavit filed under Subsection 2803.5 (for example, "no such address," "addressee unknown"), an Administrative Law Judge shall issue an order requiring the Government to show why the default order should not be vacated. If the Government does not respond with sufficient evidence showing that it mailed the Notice of Infraction to a valid address for the Respondent, the default order shall be vacated and the Notice of Infraction shall be dismissed.

2805.7 In default cases not brought under the Civil Infractions Act or the Litter Control Administration Act, the procedure shall be consistent with the applicable law and shall ensure that:

- (a) There is sufficient evidence of proper service on the Respondent;
- (b) The charging document meets all legal requirements on its face; and
- (c) A Respondent who fails to answer shall be held in default and must pay the legally authorized fine and penalty.

2806 PAYMENT PLANS IN CIVIL INFRACTIONS ACT CASES

2806.1 If an Administrative Law Judge has imposed monetary sanctions under the Civil Infractions Act, a Respondent may request to pay the monetary sanctions in

installments. An Administrative Law Judge may permit installment payments for no more than six (6) months beyond the date of the final order and may charge a fee of one percent (1%) per month of the outstanding amount.

2806.2 In requesting a payment plan under this Section, a Respondent shall state, in writing, the reasons for seeking a payment plan, the length of time requested, and why Respondent cannot afford to pay the entire monetary sanction in a lump sum.

2806.3 A Respondent must file with OAH and serve on the Government a request for a payment plan within thirty (30) calendar days of the service of the final order.

2806.4 The Government may file with OAH a response to a request for a payment plan within five (5) calendar days of the service of the request.

2807 ABATEMENT COST REQUESTS

2807.1 Before or after an Administrative Law Judge has issued a final order finding a Respondent liable for a violation of the Litter Control Administration Act, the Government may file a motion to require the Respondent to pay abatement costs. The Government must file the motion, with an itemization, not later than one hundred twenty (120) calendar days after service of a final order.

2807.2 A Respondent may request a hearing on the Government's motion. The request must be in writing and must be filed within thirty (30) calendar days after the Government serves its motion.

2807.3 If a Respondent timely requests a hearing on the Government's motion, the presiding Administrative Law Judge shall hold a hearing on the issue of abatement costs, which may be consolidated with any hearing on the violation. If an Administrative Law Judge has held a separate hearing on the violation and found the Respondent liable for the violation, or if the Respondent has admitted liability, or if an Administrative Law Judge has found the Respondent in default, the Respondent may not have another hearing on liability for the violation.

2807.4 If a Respondent does not file a timely request for a hearing on the Government's motion, the Administrative Law Judge may:

- (a) Decide, based on the papers filed, whether the Government is entitled to recover abatement costs and their amount; or
- (b) Before deciding the issue, order the Government and the Respondent to appear for a hearing on the issue.

2808 BEGINNING A CASE BY REQUESTING A HEARING

2808.1 Unless a statute or these Rules describe a different way to begin a case, a party seeking a hearing at OAH must file a request for hearing in writing.

2808.2 The request for hearing need not follow any specific format, although blank forms are available from the Clerk’s office. A request for hearing should contain the following information:

- (a) A short description of your dispute;
- (b) A description of what you want the judge to do;
- (c) Any key dates that are involved;
- (d) A copy of any ruling or decision that you are disputing or appealing;
- (e) Your full name, address, and telephone and fax numbers; and
- (f) If known, the full name, address, and telephone and fax numbers of every other party involved in the dispute.

2808.3 Parties must pay close attention to any deadlines for filing hearing requests. The deadlines are set by statute, regulations, or agency rules other than these Rules, and not by OAH.

2808.4 A party requesting a hearing in a Child Support Services Division (CSSD) enforcement action must file a copy of the Order of Condemnation or other proof that CSSD has issued an Order of Condemnation.

2808.5 Any hearing request to appeal a proposed tax assessment, other than a proposed real property tax assessment, must be filed with OAH and sent to the District of Columbia Office of Tax and Revenue. The hearing request should state the type of tax (for example, personal, business, or franchise), tax year(s), and amount of tax appealed. The hearing request should include a copy of the proposed tax assessment.

2808.6 Any hearing request to appeal a decision concerning a Certificate of Need must be filed with OAH and sent to the Director of the State Health Planning and Development Agency (SHPDA) in the Department of Health. SHPDA must transfer the agency record of the proceedings to OAH within thirty (30) calendar days of service of the request for hearing.

2809 FILING OF PAPERS

2809.1 A “paper” means any pleading, motion, exhibit or witness list, or any other written submission filed with OAH.

2809.2 Any paper filed at OAH must be legible and signed by a party or a party’s representative.

- 2809.3 To file any paper at OAH, a person must bring, mail, fax, or have the paper delivered to the Clerk's office during regular business hours from 9:00 a.m. to 5:00 p.m. on a business day. A paper is filed on the day the Clerk's office receives it during business hours, except as provided in Subsection 2809.5 below.
- 2809.4 Repealed
- 2809.5 The filing date of a fax transmission will be determined as follows:
- (a) The filing date is the date on which the fax is received in the Clerk's office between the hours of 9:00 a.m. and 5:00 p.m. If a paper is received on a date or at a time when the Clerk's office is not open, the paper shall be deemed to have been filed when the Clerk's office is next open.
 - (b) A party filing a paper by fax is responsible for delay, disruption, interruption of electronic signals, and legibility of the paper, and accepts the risk that the paper may not be filed.
 - (c) Any incomplete or illegible fax will not be considered received unless a hard copy of the fax is filed or a complete and legible fax is received within three (3) calendar days of the first transmission. In a response to a motion, the Administrative Law Judge may extend this time.
- 2809.6 A party also may file any paper by e-mail, as authorized by Section 2841.

2810 IDENTIFICATION OF PARTIES

- 2810.1 Any paper filed at OAH should contain the name, address, telephone number, and fax number, if any, of the person who files it.
- 2810.2 Any paper filed at OAH by an attorney or other representative must identify the represented party and must contain the District of Columbia Bar number, if any, of the attorney.
- 2810.3 A party, attorney, or representative must notify the Clerk and all other parties in writing of any change in address, telephone number, or fax number within three (3) calendar days of the change.
- 2810.4 The most recent contact information provided by a party, attorney, or other representative under this Section shall be considered correct. A party or representative who does not keep an address current may fail to receive orders and may lose the case as a result.

2810.5 The Clerk may reject, or an Administrative Law Judge may strike, any paper that does not comply with this Section.

2811 HOW TO SERVE A PAPER

2811.1 “Service” of a paper or to “serve” a paper means to send or deliver it as set forth in this Section.

2811.2 Every paper filed at OAH shall be served on the other parties or their attorneys or representatives no later than the day it is filed with OAH. Exceptions may be identified in these Rules, by statute, or by OAH order.

2811.3 Unless otherwise ordered by an Administrative Law Judge or agreed by the parties, service shall be by delivering a copy, mailing a copy, faxing a copy, or sending a copy by commercial carrier.

2811.4 Service by delivery means:

- (a) Handing a copy to the party or a representative;
- (b) Leaving it at the party’s or representative’s place of business with an employee; or
- (c) Leaving it at the party’s residence with an adult who lives there.

2811.5 Service by mail means mailing a properly addressed copy with first-class postage by depositing it with the United States Postal Service.

2811.6 Service by fax means faxing a legible copy to the correct fax number and receiving confirmation of transmission.

2811.7 Service by commercial carrier means giving a copy properly addressed to the commercial carrier with the cost of delivery pre-paid for delivery within three (3) calendar days.

2811.8 Parties may agree, in writing, to other means of service and may withdraw their agreement in writing.

2811.9 Any paper filed must include a signed statement that the paper was served on the parties. Such a statement is known as a “certificate of service.” The certificate of service shall identify the individual serving the paper, the parties served and their addresses, the way it was served, and the date served.

2811.10 The Clerk may reject, or an Administrative Law Judge may strike, a paper if a party fails to file a certificate of service with the paper.

2811.11 Actual receipt of a paper shall bar any claim of defective service except for a claim of late service.

2812 CALCULATING DEADLINES

2812.1 This Section applies to all time periods established by these Rules, by an order, or by any applicable law.

2812.2 In computing any time period measured in days, the day of the act, event, or default from which the period begins to run shall not be included.

2812.3 For any time period measured in days, the last day of the period shall be included unless OAH is closed on that day. In that case, the period runs until the end of the next day on which OAH is open.

2812.4 In computing any time period measured in hours, no hours shall be excluded from the computation, except as provided in this Subsection:

- (a) If any period expires before 10:00 a.m. on any day OAH is open, the period shall be extended to 10:00 a.m. on that day.
- (b) If any period expires after 4:00 p.m. on any day, the period shall be extended to 10:00 a.m. on the next day OAH is open.
- (c) If any period expires on a day OAH is closed, the period shall be extended to 10:00 a.m. on the next day OAH is open.

2812.5 When a party may or must act within a specified time period after service, and service is made by United States mail, commercial carrier, or District of Columbia Government inter-agency mail, five (5) calendar days are added after the period would otherwise expire, unless a statute or regulation provides otherwise.

2812.6 When a party may or must act within a specified time period, an Administrative Law Judge for good cause shown may reduce the time or extend it, even after the period has expired, except for any period prescribed by law, or any period provided under Sections 2806 and 2828.

2812.7 Any reference to “days” in an OAH order means calendar days unless specifically designated as business days in the order.

2813 MOTIONS PROCEDURE

2813.1 A “motion” is a request for an Administrative Law Judge to take some action.

- 2813.2 Unless made during a hearing, all motions shall be in writing. Without permission from an Administrative Law Judge, no motion or brief shall exceed twenty (20) double-spaced typed pages in length, excluding exhibits. The font size shall be a minimum of twelve (12) points, with no less than one-inch (1”) margins. The first page of every motion should contain: the parties’ names, the case number, and the name of the presiding Administrative Law Judge, if known. Every motion shall state the legal and factual reasons for the motion and shall say what the party wants the Administrative Law Judge to do.
- 2813.3 When a motion is based on information not on the record, a party may support or oppose the motion with affidavits, declarations, or other papers. An Administrative Law Judge may order a party to file supporting affidavits, declarations, or other papers.
- 2813.4 Except as otherwise ordered by an Administrative Law Judge, a separate memorandum of points and authorities need not be filed with a motion.
- 2813.5 Before filing any motion (except a motion for summary adjudication, to dismiss, for reconsideration, relief from final order, or for sanctions), a party must make a good faith effort to ask all other parties if they agree to the motion.
- (a) A “good faith effort” means a reasonable attempt, considering all the circumstances, to contact a party or representative in person, by telephone, by fax, by email, or by other means.
 - (b) Contact by mail is a good faith effort only if no other means is reasonably available (for example, not having another party’s telephone number or email address).
 - (c) By itself, serving a party with the motion is not a good faith effort.
 - (d) When this Subsection requires a good faith effort, the motion must describe that effort and say whether all other parties agreed to the motion.
 - (e) If a party fails to comply with this Subsection, an Administrative Law Judge may deny the motion without prejudice.
- 2813.6 Unless otherwise provided by these rules or ordered by an Administrative Law Judge, all parties opposing a motion shall have eleven (11) calendar days from the service of the motion to file and serve a response. No further filings related to the motion are permitted unless ordered by an Administrative Law Judge.
- 2813.7 The Administrative Law Judge may decide any motion without holding a hearing.

2814 REPRESENTATIONS TO OAH

- 2814.1 A party or representative who files a paper with OAH certifies in good faith that:
- (a) The party or representative has read the paper;
 - (b) The party or representative is not presenting it for any improper purpose, such as to harass, to cause unnecessary delay, or to increase the cost of litigation needlessly;
 - (c) Any legal claims are consistent with existing law or a good faith argument to change existing law; and
 - (d) Any factual claims have or are likely to have evidentiary support.

2814.2 If, after notice and an opportunity to respond, an Administrative Law Judge determines that an attorney or representative has violated this Section, the Administrative Law Judge may impose sanctions, including those authorized by Subsections 2833.7 and 2835.12.

2815 MEDIATION

2815.1 Mediation is a process of assisted, informal negotiation which uses a neutral third party, the mediator, to aid the parties in exploring the possibility of settlement. No party may be compelled to accept a settlement or other resolution of the dispute in mediation.

2815.2 At any time during case proceedings, an Administrative Law Judge may refer a case for mediation to a qualified mediator with or without the consent of the parties. Any party may request an Administrative Law Judge to refer a case for mediation.

2815.3 Mediations are confidential and closed to the public. Mediations may not be recorded electronically or in any other manner, with or without the consent of the parties. Evidence of anything that occurs during mediation sessions and documents prepared exclusively for or during mediation, may not be introduced into evidence or otherwise disclosed to the presiding Administrative Law Judge. Nothing in this Subsection prohibits the introduction or disclosure of information or evidence that any party obtained outside of mediation.

2815.4 The mediator may speak privately with any party or any representative during the mediation process.

2815.5 The mediator shall not disclose anything that occurs at mediation to the presiding Administrative Law Judge except to report without elaboration:

- (a) Whether the parties reached an agreement; and, if not

(b) Whether he or she believes further mediation would be productive.

2815.6 The mediator may not be called to testify, participate in discovery, or otherwise provide information in any subsequent proceeding related to the mediation.

2815.7 An Administrative Law Judge who conducts mediation may not be the Administrative Law Judge in any subsequent proceedings for the case, but, with the consent of the parties, may issue an order on procedural matters concerning the mediation or reflecting any agreement reached during the mediation.

2815.8 All parties or their representatives must appear for any mediation session. Any representative who appears must have authority to resolve the case.

2815.9 If a party or representative fails to appear at a scheduled mediation session without good cause, the mediator shall notify the presiding Administrative Law Judge who may impose sanctions.

2816 SUBSTITUTION, ADDITION, AND INTERVENTION OF PARTIES

2816.1 After proper notice and an opportunity to be heard, an Administrative Law Judge may substitute a person or entity for a named party, or may add parties to a case.

2816.2 Anyone who has an interest in the subject matter of a pending case and contends that the representation of his or her interest is inadequate may file a motion to intervene. After proper notice and an opportunity to be heard, an Administrative Law Judge may allow an interested person or entity to intervene.

2816.3 If an Administrative Law Judge grants a motion for leave to intervene, the intervenor may participate to the extent allowed by the Administrative Law Judge.

2816.4 No person or entity may intervene as a co-Petitioner with the Government in any enforcement action where the Government seeks a fine unless a statute allows it.

2816.5 A person or entity to which the Government has properly delegated a governmental function may request to intervene, but may not be substituted for the Government.

2817 VOLUNTARY DISMISSALS OF CASES

2817.1 The party initiating the case may move to dismiss the case at any time, and the Administrative Law Judge may grant the motion without waiting for a response from the opposing side.

2817.2 An opposing party who objects to the voluntary dismissal of a case may file a motion for reconsideration as provided in Subsection 2828.

2817.3 The parties may file a joint motion for dismissal of a case with or without prejudice.

2817.4 Dismissal under this Section shall be without prejudice, unless an Administrative Law Judge orders otherwise. A dismissal with prejudice may occur:

- (a) If the party requesting dismissal has previously dismissed the claim;
- (b) If the motion for dismissal is made pursuant to a settlement that does not specifically require dismissal without prejudice; or
- (c) In order to prevent harm to the other side.

2818 INVOLUNTARY DISMISSALS AND DEFAULTS

2818.1 Except as provided in Subsection 2818.2, if the party initiating a case fails to comply with an Administrative Law Judge's order or these Rules or otherwise fails to prosecute the case, the Administrative Law Judge may, on his or her own motion or on the motion of the opposing party, dismiss all or part of the case. Dismissal will ordinarily be with prejudice unless the Administrative Law Judge finds good cause to dismiss without prejudice.

2818.2 Dismissals for defective service will ordinarily be without prejudice, unless the Administrative Law Judge decides otherwise.

2818.3 If an attorney, representative, or unrepresented party fails, without good cause, to appear at a hearing, the Administrative Law Judge may dismiss the case, enter an order of default, decide the case on the merits, or impose other sanctions.

2818.4 If an attorney, representative, or unrepresented party fails, without good cause, to appear at a pretrial, settlement, or status conference, the Administrative Law Judge may determine the appropriate sanction, which may include dismissal or entry of default.

2819 SUMMARY ADJUDICATION

2819.1 A party may request that an Administrative Law Judge decide a case summarily, without an evidentiary hearing. Such a motion must include sufficient evidence of undisputed facts and citation of controlling legal authority.

2820 CONSOLIDATION AND SEPARATE HEARINGS

2820.1 When cases involve a common question of law or fact, or when multiple Notices of Violation or Notices of Infraction have been issued to the same Respondent, an Administrative Law Judge may, in his or her discretion:

- (a) Consolidate the cases for all or any purposes; or

- (b) Order a joint hearing on all or any issues.

An Administrative Law Judge may do so on motion of a party or on his or her own motion.

2820.2 An Administrative Law Judge may order a separate hearing on any issue in a case where appropriate.

2821 HEARINGS AND EVIDENCE

2821.1 The presiding Administrative Law Judge shall determine whether a hearing is required by law in any case.

2821.2 At least five (5) calendar days before any evidentiary hearing (except in unemployment compensation cases governed by Subsection 2983.1), a party shall serve on all other parties and file with the Clerk the following:

- (a) A list of the witnesses, other than a party or a charging inspector, whom the party intends to call to testify; and
- (b) A copy of each exhibit that the party intends to offer into evidence, other than exhibits that were served with the Notice of Violation, Notice of Infraction, or Answer or are to be used solely for impeachment or rebuttal.

2821.3 The Administrative Law Judge may exclude any witnesses or exhibits not disclosed under Subsection 2821.2 if he or she finds that the opposing party has been prejudiced by the failure to disclose or if there has been a knowing failure to disclose.

2821.4 Hearings ordinarily will be held only in an OAH courtroom. Hearings may be held in any other location only as required by law or in exceptional circumstances with approval of the Chief Administrative Law Judge.

2821.5 Parties shall have the following rights at a hearing:

- (a) To testify and to have other witnesses testify for them;
- (b) To cross-examine witnesses called by another party;
- (c) To request that any prospective witness be excluded from the courtroom;
- (d) To examine all exhibits offered into evidence by another party;
- (e) To object to the admission of any testimony or other evidence;
- (f) To subpoena witnesses, as provided in Section 2824; and

(g) To appear with a representative, as provided in Sections 2833 and 2835.

- 2821.6 At a hearing, all parties may present evidence. “Evidence” includes testimony by the parties and by any witnesses that a party may present. Evidence also includes papers, photographs, or any other items that a party believes may help the Administrative Law Judge decide the case. The Administrative Law Judge shall decide what evidence shall become part of the record.
- 2821.7 Testimony in any hearing ordinarily will be given in open court. An Administrative Law Judge may exclude testimony given by any other means, unless otherwise permitted by statute or these Rules.
- 2821.8 For good cause shown, and subject to appropriate safeguards, an Administrative Law Judge may permit witness testimony from a remote location by telephone, videoconferencing, or similar means. Requests for such testimony will ordinarily be granted where the witness does not reside or work in the greater District of Columbia Metropolitan area.
- 2821.9 For good cause shown, an Administrative Law Judge may permit a witness to submit written testimony in advance of the hearing, subject to cross-examination and redirect examination at the hearing.
- 2821.10 For good cause shown, an Administrative Law Judge may allow parties to submit pre-recorded testimony subject to appropriate safeguards including cross-examination.
- 2821.11 All witnesses must testify under oath or under penalty of perjury. Nothing in this Subsection forbids the admission of an affidavit or other sworn written statement.
- 2821.12 Hearsay evidence (generally, a statement by a person not present in the courtroom) is admissible. When hearsay evidence is admitted, the Administrative Law Judge shall assess the reliability of the evidence to determine the weight it should be assigned. An Administrative Law Judge shall consider the speaker’s absence in evaluating the evidence.
- 2821.13 In determining the admissibility and weight of evidence, an Administrative Law Judge may use the Federal Rules of Evidence for guidance, but they shall not be binding.
- 2821.14 An Administrative Law Judge may limit or exclude testimonial or documentary evidence to avoid surprise or prejudice to other parties, repetition, or delay.
- 2821.15 Whenever any applicable law or order requires or permits the filing of an affidavit or other writing signed under oath, the signer may submit a written declaration in substantially the following form:

“I declare under penalty of perjury, that the foregoing is true and correct. Signed on (date).”

“Signature”

2821.16 All Administrative Law Judges and the Clerk are authorized to administer oaths.

2822 BURDEN OF PROOF

2822.1 Unless otherwise established by law, the proponent of an order shall have the burden of proof, that is, the requirement to persuade the Administrative Law Judge on every contested factual issue.

2822.2 Unless otherwise established by law, the burden of production, that is, the requirement to introduce evidence first, shall be as follows:

- (a) Whenever a party challenges the Government’s denial of an application for a license, permit, or public benefit, the Government shall have the burden of producing sufficient evidence to establish the reasons for the denial;
- (b) Whenever the Government suspends, revokes, or terminates a license, permit, or public benefit, or proposes to do so, the Government shall have the burden of producing sufficient evidence to establish the reasons for its action;
- (c) The party asserting an affirmative defense identified in District of Columbia Superior Court Civil Rule 8(c) shall have the burden of producing sufficient evidence to establish that defense; and
- (d) The party asserting an exception to the requirements or prohibitions of any statute or rule shall have the burden of producing sufficient evidence to establish that exception.

2822.3 Otherwise, an Administrative Law Judge shall allocate the burden of producing evidence to promote fairness, equity, substantial justice, and sound judicial administration.

2822.4 If the party with the burden of production fails to appear, the party with the burden of proof still must meet its burden, unless otherwise provided by law.

2822.5 If a party has presented all of its evidence on an issue on which it has the burden of proof, and the presiding Administrative Law Judge concludes that the party has failed to meet its burden, the Administrative Law Judge may find against that party on that issue without awaiting the close of all the evidence in that case.

2823 LANGUAGE INTERPRETATION

- 2823.1 OAH will provide oral or sign language interpretation services upon request for persons seeking information or participating in a hearing. An Administrative Law Judge may order the use of such services at a hearing.
- 2823.2 A person who needs those services for a hearing shall request them as early as possible to avoid delay.
- 2823.3 Upon request by a party with impaired vision, OAH will provide official documents in Braille or large print within seven (7) business days.
- 2823.4 An interpreter at a hearing shall swear or affirm under penalty of perjury to interpret accurately, completely, and impartially.

2824 SUBPOENAS FOR WITNESSES AND FOR DOCUMENTS AT HEARINGS

- 2824.1 Except as provided in Subsection 2824.5 below (unemployment compensation and rental housing cases), a subpoena for the appearance of witnesses and production of documents at a hearing shall only be issued by an Administrative Law Judge.
- 2824.2 A party may request a subpoena in writing or an Administrative Law Judge may issue a subpoena without a party's request.
- 2824.3 Any request that an Administrative Law Judge issue a subpoena should include a copy of the proposed subpoena and shall state the relevance of the requested testimony or documents. Subpoenas and forms to request a subpoena are available from the Clerk.
- 2824.4 Unless otherwise provided by law or order of an Administrative Law Judge, any request for a subpoena shall be filed no later than five (5) calendar days prior to the hearing.
- 2824.5 In unemployment compensation and rental housing cases, the Clerk shall, without an order of the Administrative Law Judge, issue certain subpoenas at the request of a party as follows:
 - (a) For subpoenas in unemployment compensation cases, refer to Section 2984.
 - (b) For subpoenas in rental housing cases, refer to Section 2934.
 - (c) When the Clerk issues a subpoena authorized by this Subsection, the Clerk shall sign it, but otherwise leave it blank. The party requesting the subpoena shall fill in the remaining information on the subpoena form.

- (d) If a party in an unemployment insurance or rental housing case wants to obtain any subpoena not authorized by this Subsection, the party shall request an Administrative Law Judge to issue that subpoena in accordance with Subsections 2824.1 through 2824.4.
- 2824.6 It is the responsibility of the requesting party to serve a subpoena in a timely fashion. Any person, including a party, who is at least eighteen (18) years of age, may serve a subpoena.
- 2824.7 Service of a subpoena for a witness to appear at a hearing shall be made by personally delivering the subpoena to the witness. Unless otherwise ordered by an Administrative Law Judge, service shall be made at least four (4) calendar days before the hearing.
- 2824.8 A subpoena for the production of documents at a hearing shall be directed to either an individual, a corporation, the Government, or another entity.
- 2824.9 A subpoena for the production of documents at a hearing shall be served by any of the following means:
- (a) Handing it to the person or to a representative of the person or entity;
 - (b) Leaving it at a person's office with a responsible adult, or if no one is available, leaving it in a conspicuous place in the office;
 - (c) Leaving it with a responsible adult at an entity's office that is connected to the case;
 - (d) Mailing it to the last known address of the person;
 - (e) Mailing it to the last known address of an entity's office connected to the case; or
 - (f) Delivering it by any other means, including electronic means, if consented to in writing by the person or entity served, or as ordered by an Administrative Law Judge.
- 2824.10 A person or entity ordered to produce documents at a hearing:
- (a) Need not appear in person at the hearing unless ordered by an Administrative Law Judge to do so;
 - (b) Shall produce the documents as they are kept in the usual course of business or shall organize and label them to correspond with the categories in the subpoena; and

- (c) Shall expressly make any claims of privilege or protection with a description of the documents not produced that is sufficient to enable the requesting party to contest the claim.

2824.11 A subpoena may be served at any place within the District of Columbia, or at any place outside the District of Columbia that is within twenty-five (25) miles of the place of the hearing.

2824.12 To prove service of a subpoena, a party shall file a written statement or shall provide in-court testimony describing the date and manner of service, and names of the persons served.

2824.13 An Administrative Law Judge may quash or modify a subpoena if it:

- (a) Was issued under Subsections 2824.5, 2934.1 or 2984.1, but does not meet the requirements of those subsections;
- (b) Was improperly served;
- (c) Fails to allow reasonable time for compliance;
- (d) Requires a person who is not a party or an officer of a party to travel to a hearing more than twenty-five (25) miles from where that person resides, is employed, or regularly transacts business, except that such a person may be ordered to appear by telephone;
- (e) Requires disclosure of a privileged or other protected information; or
- (f) Subjects a person or entity to undue burden or expense.

2824.14 If a person or entity disobeys a subpoena, an Administrative Law Judge may order compliance with the subpoena. If a person subject to the order fails to comply, the Administrative Law Judge may impose monetary sanctions. In addition, a party may apply to the Superior Court of the District of Columbia for an order to show cause why that person should not be held in civil contempt.

2825 DISCOVERY

2825.1 Discovery is generally not permitted. An Administrative Law Judge may authorize discovery for good cause shown, but interrogatories and depositions are disfavored.

2825.2 A party may move for an Administrative Law Judge to issue a subpoena to require any non-party to provide documents prior to the hearing.

- 2825.3 Any motion for discovery shall explain the relevance of the information that is sought and shall describe all attempts to obtain consent from the opposing party, including a description of all discovery to which the opposing party has agreed.
- 2825.4 Unless otherwise ordered by an Administrative Law Judge, any motion for discovery must be filed at least twenty (20) calendar days before the date of any scheduled evidentiary hearing.
- 2825.5 An Administrative Law Judge may impose appropriate sanctions if a party fails to comply with a discovery request, including prohibiting the party from offering evidence and ordering that specific facts are established.

2826 SANCTIONS

- 2826.1 Before issuing an order imposing any sanctions under the Act, the presiding Administrative Law Judge shall allow the party subject to the sanction an opportunity to be heard. Any order imposing a sanction shall be in writing.

2827 TRANSCRIPTS; CITATION AND COSTS

- 2827.1 All proceedings, except for mediations, shall be recorded. The recording is the official record of what occurred at the proceeding.
- 2827.2 Any party may obtain a copy of the recording of a hearing at the party's expense.
- 2827.3 Transcripts of the recording of the proceedings shall be prepared by a qualified reporter or transcriber who shall personally certify that he or she is not a party or counsel to a party or otherwise related to or employed by a party or counsel in the case; that he or she has no material interest in the outcome of the case; and that the transcript represents the testimony and proceedings of the case as recorded.
- 2827.4 In filings, a party may only rely upon a transcript prepared according to this Section.
- 2827.5 Unless otherwise stipulated by the parties or ordered by an Administrative Law Judge, if a party cites to a portion of a transcript, the entire transcript of the case must be filed at OAH, and a copy must be served on all parties.
- 2827.6 In any case in which a party files a petition for review in the District of Columbia Court of Appeals, OAH will arrange for the preparation and filing of a transcript without charge only if the Court of Appeals has permitted the Petitioner to proceed *in forma pauperis*. In all other cases, OAH will arrange for preparation and filing of a transcript only after OAH receives payment for the cost of preparing the transcript.

2828 REQUESTING RECONSIDERATION, A NEW HEARING, OR RELIEF FROM A FINAL ORDER

- 2828.1 This Section contains Rules about how to ask an Administrative Law Judge to change a final order after it has been issued. Errors or omissions are not a sufficient basis for a new hearing or to change an order if the errors are harmless.
- 2828.2 No motion filed under this Section stays the final order or otherwise affects a party's obligations to comply with the final order, unless an Administrative Law Judge orders otherwise.
- 2828.3 Within ten (10) calendar days after a final order has been served, any party may file a motion asking the Administrative Law Judge to change the final order. Such a motion is a "motion for reconsideration or for a new hearing."
- 2828.4 If any party files a motion for reconsideration or for a new hearing within the ten (10) calendar day deadline, the time for seeking judicial review of a final order does not start to run until the Administrative Law Judge rules on the motion, or the motion is denied as a matter of law under Subsection 2828.15.
- 2828.5 If any party files a motion for reconsideration or for a new hearing within the ten (10) calendar day deadline, and where substantial justice requires, the Administrative Law Judge may change the final order for any reason including, but not limited to, the following:
- (a) The party filing the motion did not attend the hearing, has a good reason for not doing so, and states an adequate claim or defense;
 - (b) The party filing the motion did not file a required answer to a Notice of Infraction or Notice of Violation or did not file some other required document, has a good reason for not doing so, and states an adequate claim or defense;
 - (c) The final order contains an error of law;
 - (d) The final order's findings of fact are not supported by the evidence; or
 - (e) New evidence has been discovered that previously was not reasonably available to the party filing the motion.
- 2828.6 An Administrative Law Judge shall treat any motion asking for a change in a final order as a motion for reconsideration or for a new hearing if it is filed within the ten (10) calendar day deadline specified in Subsection 2828.3, regardless of the title that a party gives to that motion.
- 2828.7 After the ten (10) calendar day deadline, a party may file a motion asking the Administrative Law Judge to change the final order. A motion filed under this Subsection is a "motion for relief from the final order."

- 2828.8 Any motion for relief from the final order has no effect on the deadline for seeking judicial review of the final order.
- 2828.9 Any motion for relief from the final order must be filed within one hundred twenty (120) calendar days after service of the final order.
- 2828.10 On a motion for relief from the final order, an Administrative Law Judge may change the final order only for one or more of the following reasons:
- (a) Mistake, inadvertence, surprise, or excusable neglect;
 - (b) Newly discovered evidence that by due diligence could not have been discovered in time to file a motion for reconsideration or for a new hearing within the ten (10) calendar day deadline;
 - (c) Fraud, misrepresentation, or other misconduct of an adverse party;
 - (d) The final order is void;
 - (e) A prior judgment on which the final order is based has been reversed or otherwise vacated, or it is no longer equitable that the judgment should have prospective application;
 - (f) The party filing the motion did not attend the hearing, has a good reason for not doing so, and states an adequate claim or defense;
 - (g) The party filing the motion did not file a required answer to a Notice of Infraction, or Notice of Violation or did not file some other required document, has a good reason for not doing so, and states an adequate claim or defense; or
 - (h) For good cause shown, the Government may ask that a final order issued in its favor be set aside.
- 2828.11 An Administrative Law Judge shall treat any motion asking for a change in a final order as a motion for relief from the final order, if the motion is not filed within the ten (10) calendar day deadline specified in Subsection 2828.3, regardless of the title that a party gives to that motion.
- 2828.12 Any party filing any motion under this Section must include a short and plain statement of all the reasons why the Administrative Law Judge should change the final order.
- 2828.13 An opposing party is not required to file a response to any motion under this Section, unless an Administrative Law Judge orders a response. Before granting

any motion under the Section, an Administrative Law Judge must issue an order allowing the opposing party an opportunity to respond to the motion.

2828.14 If an Administrative Law Judge grants a motion filed under this Section, he or she may:

- (a) Order further submissions from the parties;
- (b) Order the parties to appear for a hearing; or
- (c) Issue a new final order that may or may not change the result in the case.

2828.15 An Administrative Law Judge should rule on any motion filed under this Section within forty-five (45) calendar days of its filing. If an Administrative Law Judge has not done so, the motion is denied as a matter of law. An Administrative Law Judge may extend the period once for an additional thirty (30) calendar days by issuing an order before the first forty-five (45) day period expires. After expiration of any applicable deadline, the Administrative Law Judge, in his or her discretion, may issue a statement of reasons for denying the motion, but any such statement has no effect on the time for seeking judicial review or filing any other appeal.

2828.16 If the motion has been denied as a matter of law under Subsection 2828.15, OAH shall send written notice to the parties.

2829 CLERICAL MISTAKES

2829.1 At any time, an Administrative Law Judge or the Clerk, in consultation with an Administrative Law Judge, may correct clerical, typographical, numerical, or technical mistakes in the record and errors from oversight or omission.

2829.2 An Administrative Law Judge may order that notice of such corrections be given to the parties.

2829.3 If a party has filed a request for appellate review, such mistakes may be corrected before the record is transmitted to the reviewing court, and thereafter may be corrected with leave of the reviewing court.

2830 APPEALS

2830.1 Every appealable order shall include a statement of appeal rights.

2830.2 The filing of an appeal or a petition for review does not stay (or delay) the date a final order goes into effect.

2830.3 Any party may file a motion to stay a final order pending appeal. A motion for a stay must include the reasons for granting the stay. Any party may file a motion to stay the effective date of a final order.

2830.4 In determining whether to grant a stay, the Administrative Law Judge may consider the following factors: whether the party filing the motion is likely to succeed on the merits, whether denial of the stay will cause irreparable injury, whether and to what degree granting the stay will harm other parties, and whether the public interest favors granting a stay.

2831 INABILITY OF AN ADMINISTRATIVE LAW JUDGE TO PROCEED

2831.1 If a hearing has commenced or is completed and the assigned Administrative Law Judge is unable to proceed, another Administrative Law Judge may proceed in the case. The successor Administrative Law Judge must certify that he or she is familiar with the record.

2831.2 If a recording of the hearing is unavailable, the successor Administrative Law Judge shall, if requested by any party, recall a witness whose testimony is material and disputed.

2831.3 The successor Administrative Law Judge shall serve the parties with a proposed final order and allow the parties to file exceptions and present argument before issuing a final order.

2832 RECUSAL; ETHICS COMPLIANCE

2832.1 An Administrative Law Judge shall recuse himself or herself in accordance with the standards applicable to judges of the Superior Court of the District of Columbia.

2832.2 Administrative Law Judges shall at all times be in compliance with the OAH Code of Judicial Ethics, which shall be available to the public.

2833 REPRESENTATION BY ATTORNEYS AND LAW STUDENTS

2833.1 An attorney may represent any party before OAH. Unless otherwise provided by statute or these Rules, only attorneys who are active members in good standing of the District of Columbia Bar, or who are authorized to practice law in the District of Columbia pursuant to Rules 49(c)(1), (4), (8), or (9) of the District of Columbia Court of Appeals, may appear before OAH as a representative of a party.

2833.2 An attorney who is not a member of the District of Columbia Bar, and who is not authorized to practice law in the District of Columbia pursuant to Rules 49(c)(1), (4), (8), or (9) of the District of Columbia Court of Appeals, may appear before OAH after the filing and granting of a motion to appear *pro hac vice*, in which the attorney shall declare under penalty of perjury that:

- (a) I have not applied for admission *pro hac vice* in more than five cases in OAH or in the courts of the District of Columbia during this calendar year. I have applied for admission *pro hac vice* in OAH and in the courts of the District of Columbia _____ (list number) times previously in this calendar year;
- (b) I am a member in good standing of the bar of the highest court(s) of the State(s) of _____ (list all states);
- (c) There are no disciplinary complaints pending against me for violation of the rules of the courts of those states;
- (d) I am not currently suspended or disbarred from practice in any court;
- (e) I do not practice or hold out to practice law in the District of Columbia;
- (f) I am familiar with OAH's Rules found at 1 DCMR 28 and 29;
- (g) I am applying for admission *pro hac vice* for the following reason(s): _____ (list all reasons);
- (h) I acknowledge the jurisdiction of OAH and the courts of the District of Columbia over my professional conduct, and agree to be bound by the District of Columbia Court of Appeals Rules of Professional Conduct, in this matter, if I am admitted *pro hac vice*; and
- (i) I have informed my client that I am not a member of the District of Columbia Bar, and my client has consented to my representation in this case.

2833.3 For good cause shown, the presiding Administrative Law Judge may revoke the *pro hac vice* admission of any attorney.

2833.4 Current law students who have successfully completed forty-two (42) credit hours of law school may appear before OAH, except that a law student who has been denied admission to practice before the District of Columbia Court of Appeals pursuant to its Rule 48 may not appear before OAH. An Administrative Law Judge may terminate a law student's representation under this Subsection at any time, for any reason, without notice or hearing. A law student practicing under this Subsection shall:

- (a) Be enrolled in a law school approved by the American Bar Association;
- (b) Have the consent and oversight of a supervising attorney assigned to the law student;

- (c) Sign and file a Notice of Appearance in the case with the supervising attorney;
- (d) Have the written permission of the client, which must be filed in the record;
- (e) Not file any paper unless the law student and supervising attorney sign it;
- (f) Not appear at any proceeding without the supervising attorney;
- (g) Neither ask for nor receive a fee of any kind for any services provided under this rule, except for the payment of any regular salary made to the law student; and
- (h) Comply with any limitations ordered by the presiding Administrative Law Judge.

2833.5 An attorney supervising a law student who appears pursuant to Subsection 2833.4 shall:

- (a) Be an active member in good standing of the District of Columbia Bar;
- (b) Assume full responsibility for supervising the law student;
- (c) Sign and file a Notice of Appearance in the case with the law student;
- (d) Assist the law student in preparation of the case, to the extent necessary in the supervising lawyer's professional judgment to insure that the law student's participation is effective on behalf of the person represented;
- (e) Appear at all proceedings with the law student; and
- (f) Review and sign any paper filed by the law student.

2833.6 In addition to these Rules, the District of Columbia Rules of Professional Conduct shall govern the conduct of all attorneys and law students appearing before OAH.

2833.7 The Chief Administrative Law Judge or presiding Administrative Law Judge may enter an order restricting the practice of any attorney appearing before OAH for good cause. Such restrictions may include, without limitation:

- (a) Disqualification from a particular case;
- (b) Suspension or disqualification from practice before OAH;

- (c) A requirement that an attorney obtain ethics or other professional training or counseling; or
- (d) A requirement that an attorney appear only when accompanied by another attorney with particular skills or a particular level of experience.

2833.8 The attorney shall be given notice and opportunity to be heard either before the imposition of a restriction, or as soon thereafter as is practicable.

2833.9 An Administrative Law Judge's authority under Subsection 2833.7 is limited to restricting the practice of an attorney in a pending case based on the conduct of the attorney in that case. Nothing in this Section limits the authority of the Chief Administrative Law Judge to enter a separate order restricting an attorney's practice before OAH.

2833.10 Any attorney appearing before OAH in a representative capacity under this Section shall provide under his or her signature, the attorney's District of Columbia bar number, office address, and telephone and fax numbers. Persons appearing (or applying to appear) under Subsections 2833.2 or 2833.4 shall state, immediately under their signature, the Subsection under which they are appearing (or applying to appear), their office address, and telephone and fax numbers. Persons appearing under Subsection 2833.2 shall state the jurisdiction of their admission and shall provide the bar number, if any, from that jurisdiction, and their office address, and telephone and fax numbers.

2833.11 A member of any bar may not qualify as a non-attorney representative under Section 2835. An attorney representing a party may testify only as permitted by Rule 3.7 of the District of Columbia Rules of Professional Conduct.

2833.12 Notwithstanding anything to the contrary in these Rules, no person who has been punished for unauthorized practice of law or who is subject to an injunction pursuant to Rule 49(e)(2) of the Rules of the District of Columbia Court of Appeals may represent a party.

2834 WITHDRAWAL OF APPEARANCE BY AN ATTORNEY

2834.1 An attorney may withdraw an appearance before a hearing date has been set if:

- (a) Another attorney simultaneously enters or has already entered an appearance on behalf of the client; and
- (b) The attorney files a consent to the withdrawal that the client has signed.

2834.2 If a hearing date has been set, or if the client's written consent is not obtained, or if the client is not represented by another attorney, an attorney must move to withdraw an appearance and receive permission from the presiding

Administrative Law Judge to withdraw from the case. Unless the client is represented by another attorney or the motion is made orally in front of the client and the Administrative Law Judge, the attorney shall certify that:

- (a) The attorney has served the client a notice advising the client to obtain other counsel, or if the client intends to represent himself or herself, or intends to object to the withdrawal, to notify the Administrative Law Judge in writing within fifteen (15) days of service of the notice or before the next hearing date, whichever is earlier; and
- (b) The attorney has served the client with a copy of the motion with a certificate of service listing the client's last known address.

2834.3 Except when an Administrative Law Judge has granted an oral motion to withdraw in the presence of the client, the order granting permission for the attorney to withdraw shall be served on the client. If no new counsel has entered an appearance or the client has not notified the Administrative Law Judge of an intention to represent himself or herself, the order shall instruct the client to arrange promptly for new counsel or be prepared to represent himself or herself.

2834.4 The presiding Administrative Law Judge may deny an attorney's motion to withdraw if the withdrawal would unduly delay the case, be unduly prejudicial to any party, or otherwise not be in the interests of justice.

2835 REPRESENTATION BY NON-ATTORNEYS

2835.1 An individual may represent himself or herself in proceedings before OAH.

2835.2 Any person representing a party as permitted by this Section shall obtain the consent of the party.

2835.3 A family member or domestic partner may represent a party provided that person does not accept compensation in any form.

2835.4 In addition to an attorney authorized by Section 2833, an authorized agency employee may represent an agency before OAH.

2835.5 If required by law, an Administrative Law Judge shall permit a party to be represented by another person who is not an attorney.

2835.6 An authorized officer, director, partner, or employee may represent a corporation, partnership, limited partnership, or other private legal entity before OAH.

2835.7 An individual or any representative of any entity listed in Subsection 2835.6 may represent a party if the party has or had a contractual relationship with that individual or entity that is substantially related to the subject matter of the case

(such as a landlord/tenant relationship in a civil fine case or owner/property manager relationship) and that relationship existed before the case arose.

- 2835.8 In unemployment compensation cases, additional Rules for representation can be found in Section 2982.
- 2835.9 In public benefits cases, additional Rules for representation can be found in Section 2972.
- 2835.10 In rental housing cases, additional Rules for representation can be found in Section 2935.
- 2835.11 Any person authorized by the United States Tax Court to represent a party before that court may represent a party before OAH in any case arising under D.C. Official Code § 2-1831.03(b)(4), and on the same basis as would be permitted by the United States Tax Court.
- 2835.12 The Chief Administrative Law Judge or presiding Administrative Law Judge may enter an order restricting the practice of any non-attorney representative appearing at OAH.
- 2835.13 The non-attorney representative shall be given notice and opportunity to be heard either before the imposition of a restriction, or as soon thereafter as is practicable.
- 2835.14 An Administrative Law Judge's authority under Subsection 2835.12 is limited to restricting the practice of a non-attorney representative in a pending case based on the conduct of the non-attorney representative in that case. Nothing in this Section limits the authority of the Chief Administrative Law Judge to enter a separate order restricting a non-attorney representative's practice before OAH.

2836 A PANEL OF THREE ADMINISTRATIVE LAW JUDGES

- 2836.1 When the holdings of Administrative Law Judges on an issue of law are in conflict, the Chief Administrative Law Judge may independently or on motion of a party appoint a panel of three Administrative Law Judges to resolve the issues in conflict in a pending case. An Administrative Law Judge shall promptly bring any motion under this Section to the attention of the Chief Administrative Law Judge.
- 2836.2 Appointment of a panel under this Section shall be reserved for resolving conflicts that, in the opinion of the Chief Administrative Law Judge, involve important legal issues whose consistent interpretation is necessary to the fair enforcement of the law. The panel's order shall be binding precedent in any pending case and all later matters coming before OAH, unless reversed or modified.

2836.3 Any party's motion under this Section is automatically denied if not granted within fifteen (15) calendar days of its filing.

2837 AMICUS CURIAE OR “FRIEND OF THE COURT” SUBMISSIONS

2837.1 Any non-party having an interest in the issues in a case pending before OAH may move for leave to file an *amicus curiae* submission, or an Administrative Law Judge may invite such a submission. The motion shall explain why the *amicus curiae* submission would be helpful to OAH.

2838 COURTROOM PROCEDURE

2838.1 Unless otherwise prohibited by law or duly ordered by an Administrative Law Judge, proceedings at OAH shall be open to the public.

2838.2 Administrative Law Judges and OAH non-judicial staff may observe any proceedings at OAH. They must preserve any confidential information that may arise in those proceedings.

2838.3 Electronic devices that make noise, including cell phones, are prohibited unless set for silent operation.

2838.4 Audio and video recording, broadcasting, and photography are prohibited anywhere at OAH unless authorized by the Chief Administrative Law Judge. The presiding Administrative Law Judge may allow anyone to draw during proceedings in a hearing room so long as it does not disrupt those proceedings.

2838.5 Weapons, dangerous implements, and illegal drugs are prohibited at OAH and are subject to confiscation. The prohibition against weapons does not apply to authorized service weapons carried by law enforcement officers unless they are parties to a case.

2838.6 Dangerous or toxic items, including but not limited to chemicals and sharp objects, that pose a threat to health or safety are prohibited at OAH. Any party who wants to use such an item as evidence must file a motion and obtain the approval of the presiding Administrative Law Judge prior to the hearing before bringing the item to OAH.

2838.7 Except for those animals assisting persons with disabilities, animals are prohibited at OAH.

2838.8 Any person who presents a threat to safety or who is disrupting OAH operations or proceedings may be removed.

2839 AGENCY CASELOAD PROJECTIONS

2839.1 To measure changes in an agency’s caseload as required by Section 16(e) of the Act, the agency shall compare the number of cases reported in the Chief

Administrative Law Judge's annual summary to the number of cases it anticipates filing at OAH in the current or following fiscal year.

2840 CHIEF ADMINISTRATIVE LAW JUDGE RESPONSIBILITIES

2840.1 The Chief Administrative Law Judge or his or her designee may administer an oath of office to an Administrative Law Judge or other OAH employee.

2840.2 The Chief Administrative Law Judge shall review these Rules within thirty-six (36) months of their final promulgation, and, in his or her discretion, may issue revised rules for public comment and promulgation after the review.

2841 FILING AND SERVICE BY E-MAIL; OTHER ELECTRONIC SUBMISSIONS

2841.1 This Section permits any party to file papers by e-mail with OAH and the Government to file data electronically. It also permits OAH to serve orders and notices by e-mail.

2841.2 The filing of any paper by e-mail following the procedures set forth in this Section constitutes filing for all purposes under these Rules.

2841.3 All papers to be filed by e-mail should be in portable document format (PDF). The papers should be attached to an e-mail, and not contained in the body of the e-mail itself.

2841.4 A party filing any paper by e-mail is responsible for any delay, disruption, interruption of electronic signals, legibility and completeness of the paper, and accepts the risk that the paper may not be filed.

2841.5 Pursuant to Section 2810, every paper filed by e-mail must contain:

- (a) The name, mailing address, telephone number, and e-mail address of the person filing it;
- (b) The case number assigned by OAH, or a statement that a case number has not yet been assigned;
- (c) A brief description of the paper (for example, "request for hearing in a Medicaid matter," "motion for new hearing date for an unemployment hearing," "exhibits/documents for hearing in rental housing case"); and
- (d) A filing that does not contain this information is subject to rejection. A cover page that can be used to satisfy this requirement is available from the Clerk's Office. The brief description of the paper also should be placed in the "subject" line of the e-mail.

- 2841.6 Filings must be e-mailed to oah.filing@dc.gov.
- 2841.7 The filing date for an e-mail filing received between 9:00 a.m. and 5:00 p.m. on any OAH business day will be the date it is received in the correct OAH electronic mailbox. The filing date for an e-mail filing received at other times will be the next day that the Clerk's Office is open for business. The date and time recorded in the correct OAH electronic mailbox shall be conclusive proof of when it was received.
- 2841.8 The certification requirement of Section 2814 applies to all papers filed by e-mail.
- 2841.9 A party must send a copy of anything filed by e-mail (except a request for a hearing that begins a case) to all other parties, and must include a certificate of service as required by Subsection 2811.9. A party may not send the copy by e-mail unless the other party consents, pursuant to Section 2811.
- 2841.10 The five (5) additional days added to the response times by Subsection 2812.5 does not apply to orders, notices, or papers served by e-mail, even if they are also served by other means.
- 2841.11 Unless otherwise ordered, a party who files or serves any paper by e-mail shall keep the original until after the case is concluded and the time for any appeals has expired. The party shall make the originals available for inspection upon request of another party after prior reasonable notice filed with OAH. This Section does not limit the authority of an Administrative Law Judge to order production of the original.
- 2841.12 Parties agreeing to service by e-mail are responsible for monitoring their e-mail accounts and for opening the e-mails.
- 2841.13 The Clerk may serve orders and notices by e-mail to any party who provides an email address and consents, in writing or on the record, to receiving papers by e-mail. The party is responsible for ensuring that the Clerk has an accurate, up-to-date e-mail address. In an emergency, without a party's advance consent, the Clerk may serve orders and notices by e-mail in addition to any other authorized method of service.
- 2841.14 If the Government seeks to begin a case at OAH by filing a Notice of Infraction or a Notice of Violation pursuant to Section 2803, the Government may transfer to OAH data from the Notice of Infraction or the Notice of Violation by electronic means, pursuant to prior technical arrangements with OAH. Such electronic transfer by itself neither begins a case nor satisfies the Government's obligations under Section 2803. The Government shall file the Notice of Infraction or Notice of Violation and its attachments, substantially in the form provided to the Respondent, as well as the proof of service.

GENERAL DEFINITIONS

For the purposes of this Chapter the term:

Act means the Office of Administrative Hearings Establishment Act of 2001, D.C. Official Code §§ 2-1831.01, *et seq.*

Agency shall have the meaning provided that term in D.C. Official Code § 2-502(3).

Civil Infractions Act means the Department of Consumer and Regulatory Affairs Civil Infractions Act of 1985, D.C. Official Code §§ 2-1801.01, *et seq.*

Clerk means the OAH Clerk of Court or authorized designee.

Commercial carrier means a business that accepts and delivers parcels, such as Federal Express or the United Parcel Service.

Government means the District of Columbia, or any government agency authorized by law to prosecute cases before OAH and whose administrative litigation falls under the jurisdiction of OAH, but does not include OAH.

Litter Control Administration Act means the Litter Control Administration Act of 1985, D.C. Official Code §§ 8-801, *et seq.*

Paper means pleadings, motions, exhibit and witness lists, or any other written submission filed with OAH.

Party means persons or entities who begin a case at OAH or the persons or entities on the other side.

Presiding Administrative Law Judge means an Administrative Law Judge assigned to a particular case.

**CHAPTER 29 OFFICE OF ADMINISTRATIVE HEARINGS: RULES
FOR DCPS, RENTAL HOUSING, PUBLIC BENEFITS,
AND UNEMPLOYMENT INSURANCE CASES**

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Definitions

2900 DCPS Hearings – Scope

- 2900.1 Sections 2900 through 2909 govern procedures in cases referred to OAH by the District of Columbia Public Schools (DCPS).
- 2900.2 For procedural issues not covered in Sections 2900 through 2909, the rules in Chapter 28 apply.
- 2900.3 OAH is not required to follow any other procedural rules adopted by DCPS in cases referred to OAH by DCPS.

2901 DCPS Student Discipline Cases – Referrals

- 2901.1 DCPS may refer a student discipline case to OAH, for an Administrative Law Judge to hold a hearing and to decide:
- (a) The material facts;
 - (b) Whether required due process procedures, including notice and the opportunity to respond to the charges, have been followed or have been waived, including whether there was prejudicial failure to follow procedures identified in 5 DCMR B § 2505; and
 - (c) Whether the facts show that the student committed any of the violations upon which a proposed disciplinary action is based and the proper Tier for any violation, as specified in 5 DCMR B § 2502.
- 2901.2 DCPS shall refer a student discipline case by filing with OAH a copy of the notice of recommended action provided to the adult student, or a minor student’s parent or guardian. The hearing notice shall contain the hearing date and state the consequences of failing to attend the hearing.

2902 DCPS Student Discipline Cases – Hearings

- 2902.1 An adult student, or a minor student’s parent or guardian, may request DCPS to postpone the hearing for not more than five (5) school days if necessary to prepare for the hearing or provide for the attendance of necessary parties or witnesses.
- 2902.2 The parties may, but are not required, to file exhibits and witness lists in advance of the hearing.
- 2902.3 DCPS shall allow an adult student, or a minor student’s parent or guardian, to inspect and copy the student’s disciplinary file before the hearing.
- 2902.4 DCPS shall make the student’s disciplinary file electronically available to OAH. OAH shall make copies of the disciplinary file available at the hearing to DCPS

and the adult student or the minor student's parent or guardian. Either party may move to introduce all or part of the disciplinary file into evidence at the hearing.

- 2902.5 The parties shall have all rights set forth in Subsection 2821.5 at a hearing.
- 2902.6 In addition to the representatives listed in Sections 2833 and 2835, an adult student or a minor student's parent or guardian may select another person to represent a student at a hearing. Such a representative is subject to Subsections 2835.12 through 2835.14.
- 2902.7 The hearing shall be closed to the public unless the adult student or the minor student's parent or guardian requests the hearing be open to the public.
- 2902.8 A party who fails to appear for a scheduled hearing may ask OAH, in writing, for a new hearing date. The request must be filed within one (1) school day after the scheduled hearing date. The Administrative Law Judge may grant a new hearing date for good cause shown.

2903 DCPS Student Discipline Cases – Decisions

- 2903.1 After the close of the record in a student discipline case, the Administrative Law Judge shall issue Findings of Fact and Conclusions of Law on the issues identified in Subsection 2901.1.
- 2903.2 The Administrative Law Judge shall issue the findings of fact and conclusions of law within one (1) school day after the close of the record. OAH shall provide a copy to DCPS, which shall include it with the final decision sent to the adult student, the minor student's parent or guardian and any authorized representative.
- 2903.3 In all student discipline cases, DCPS shall be bound by the Administrative Law Judge's Findings of Fact and Conclusions of Law and shall have no authority to reverse or modify the findings of fact and conclusions of law.
- 2903.4 If the Administrative Law Judge concludes that the student committed any of the violations upon which the disciplinary action is based, the Administrative Law Judge shall make a recommendation for the appropriate discipline within the Tier found to be proper considering the factors in 14 DCMR B2500.9. OAH will return the case to DCPS for it to decide the appropriate discipline.
- 2903.5 If the Administrative Law Judge concludes that due process was denied or that the student did not commit any of the violations upon which the disciplinary action is based, OAH will return the case to DCPS for appropriate action.
- 2903.6 Because OAH must return these cases to DCPS for further action, the Administrative Law Judge's decision is not a final disposition of the matter, and a statement of appeal rights is not required by Subsection 2830.1.

2904 DCPS Student Discipline Cases – Reconsideration

2904.1 No party in a student discipline case shall have the right provided by Section 2828 to file a motion for reconsideration or for a new hearing or a motion for relief from a final order.

2904.2 If the adult student or minor student’s parent or guardian did not receive actual notice of the hearing and DCPS has issued a final notice of disciplinary action, the adult student or minor student’s parent or guardian may file a request for reconsideration with DCPS and request that DCPS vacate the final notice and refer the case back to OAH for a hearing and to vacate the Findings of Fact and Conclusions of Law. When it decides such a request, DCPS may order a new hearing or DCPS may ask for OAH to decide whether to grant a new hearing.

2905 DCPS Contested Residency Cases – Referrals

2905.1 DCPS may refer a contested residency case to OAH for a final decision.

2906 DCPS Contested Residency Cases – Beginning a Case

2906.1 DCPS shall refer a contested residency case to OAH by filing a copy of the request for review that it received, along with a statement that DCPS requests OAH to hear and to decide the case.

2907 DCPS Contested Residency Cases – Hearings

2907.1 In all contested residency cases, OAH shall set the hearing date and issue the hearing notice.

2907.2 The rules in Chapter 28 apply to all hearings in contested residency cases, except that parties should file and serve the witness lists and exhibit lists required by Subsection 2821.2 no later than three (3) days before the hearing date.

2908 DCPS Contested Residency Cases – Final Orders

2908.1 The presiding Administrative Law Judge shall issue a final order in all contested residency cases, which shall include the statement of appeal rights required by Subsection 2830.1.

2909 DCPS Cases – Confidentiality of the Record

2909.1 The OAH record in any case referred by DCPS is confidential. Only the following persons may have access to that record:

- (a) The adult student;

- (b) The minor student's parent, guardian, or representative;
- (c) Any person who has the written consent of the adult student or the minor student's parent or guardian; and
- (d) School officials with a legitimate interest.

2920 RENTAL HOUSING CASES – SCOPE

2920.1 Sections 2920 through 2941 govern procedures in rental housing cases at OAH.

2920.2 For procedural issues not covered in Sections 2920 through 2941, the Rules in Chapter 28 apply.

2921 RENTAL HOUSING CASES – BEGINNING A CASE

2921.1 A party may begin a rental housing case by filing a petition with the Rent Administrator in accordance with 14 DCMR § 3901.

2921.2 The timeliness of the filing of any petition shall be measured from the date the Rent Administrator accepts it for filing.

2921.3 The Rent Administrator may refuse to accept a petition for filing as provided in 14 DCMR § 3901.

2921.4 After filing, the Rent Administrator shall forward the petition and all accompanying papers to OAH, together with a copy of the registration statement for the housing accommodation.

2921.5 When OAH receives a petition from the Rent Administrator, OAH shall open the case. The parties then shall file all papers and attachments at OAH in accordance with Section 2809.

2922 RENTAL HOUSING CASES – PARTIES

2922.1 Any petition that is filed on behalf of more than one person or entity shall individually name each person or entity.

2922.2 Any tenant association may file and shall be granted party status to prosecute or defend a petition on behalf of any one or more of its members who have provided the association with written authorization to represent them in the action, or to seek on behalf of all members any injunctive relief available under the Rental Housing Act. No further inquiry into the membership of the association shall be permitted.

2922.3 Any tenant association that is a party to the action pursuant to Subsection 2922.2 shall be listed in the caption.

2922.4 The housing provider as listed on the registration statement, if any, shall be a party, and shall be named in the caption. If a managing agent represents the housing provider in the proceeding, the managing agent also shall be a party, and shall be identified as the managing agent and named in the caption.

2923 RENTAL HOUSING CASES – SENDING NOTICE

2923.1 OAH shall notify the parties by first-class mail of proceedings.

2923.2 OAH shall mail a copy of any tenant petition, by first-class mail, to any adverse party named in the tenant petition and to the housing provider listed on the registration statement for the housing accommodation.

2923.3 A housing provider who files a petition shall provide for each tenant in the housing accommodation one (1) copy of the petition and one (1) envelope addressed to each tenant by name, address, and rental unit, with first class mail postage prepaid. The envelope shall bear OAH's return address unless the housing provider files a hardship petition or voluntary agreement. The envelopes for those petitions shall bear the return address of the Rent Administrator.

2923.4 If a housing provider files a petition for a building with ten (10) or more rental units, the housing provider shall provide a hard copy and computer file of a service list containing the name, address, and rental unit for each tenant. The computer file shall be in Microsoft Word format, arranged so that the list may be printed onto labels measuring one (1) inch by two and five-eighth inches (2 5/8").

2924 RENTAL HOUSING CASES – SERVICE

2924.1 Every paper filed at OAH in a rental housing case must be served in accordance with § 904 of the Rental Housing Act, D.C. Official Code § 42-3509.04, which allows papers to be served by one of the following methods:

- (a) By handing the paper to the person, by leaving it at the person's place of business with some responsible person in charge, or by leaving it at the person's usual place of residence with a person of suitable age and discretion;
- (b) By telegram, when the content of the information or document is given to a telegraph company properly addressed and prepaid;
- (c) By mail or deposit with the United States Postal Service properly stamped and addressed; or

- (d) By any other means that is in conformity with an order of the Rental Housing Commission or OAH in any proceeding.

2925 RENTAL HOUSING CASES – CALCULATING DEADLINES

- 2925.1 The Rules governing calculating deadlines are found in Section 2812. The timeliness of any appeal to the Commission shall be governed by the Rental Housing Commission Rules in 14 DCMR § 3802.

2926 RENTAL HOUSING CASES – CONCILIATION, ARBITRATION, AND MEDIATION

- 2926.1 The parties may request conciliation or arbitration of any dispute by the RAD in accordance with its regulations.

- 2926.2 The parties may request, or an Administrative Law Judge may order, mediation of any dispute pursuant to Section 2815.

2927 RENTAL HOUSING CASES – SUBSTITUTION OR ADDITION OF PARTIES

- 2927.1 An Administrative Law Judge may substitute or add a party under Subsection 2816.1 if: a party dies; a party entity is dissolved or reorganized; a party entity's ownership or interest changes; or an amended registration statement for the housing accommodation is filed under 14 DCMR § 4103.

- 2927.2 If a party has been incorrectly named, the Administrative Law Judge may substitute or add the correct party under Subsection 2816.1.

2928 RENTAL HOUSING CASES – INTERVENORS

- 2928.1 Motions for intervention are governed by Subsections 2816.2 and 2816.3.

2929 RENTAL HOUSING CASES – CONSOLIDATION OF PETITIONS AND EXPANDING THE SCOPE OF A PROCEEDING

- 2929.1 An Administrative Law Judge may consolidate (join) two (2) or more petitions if they present identical or similar issues, involve the same rental unit or housing accommodation, or involve other circumstances in which consolidation would be expedient and would not prejudice the parties. A party may file a motion to consolidate or an Administrative Law Judge may consolidate cases on his or her own motion.

- 2929.2 If the Administrative Law Judge determines that the issues raised in a tenant petition may affect other tenants or all tenants in the housing accommodation, the Administrative Law Judge may expand the scope of the proceeding to include all affected tenants.

- 2929.3 Before expanding the scope of the proceeding, the Administrative Law Judge shall provide notice to the affected tenants and the housing provider.
- 2929.4 That notice shall state the issues to be decided and shall advise the tenants that they have a right to participate in the proceedings and that any decision shall be binding on them.
- 2929.5 Tenants and the housing provider may present any arguments in support of or opposition to expanding the scope of the proceeding.

2930 RENTAL HOUSING CASES – HEARINGS

- 2930.1 A petition received by OAH will be treated as a request for a hearing. OAH will schedule a status conference, a hearing, or mediation. OAH shall notify the parties of the hearing date and of their right to obtain a lawyer at least fifteen (15) calendar days before a hearing.
- 2930.2 An Administrative Law Judge may dismiss any petition or any claim in a petition without holding a hearing if the Rental Housing Act does not provide relief for the claim(s). The Administrative Law Judge shall first give the parties notice and an opportunity to respond.

2931 RENTAL HOUSING CASES – RENT ADMINISTRATOR’S SHOW CAUSE ORDERS

- 2931.1 If the Rent Administrator concludes after investigation that a housing provider has violated the Rental Housing Act, the Rent Administrator may file an order to show cause with OAH and shall serve the housing provider with a copy of the order to show cause.
- 2931.2 The order to show cause shall specify the Sections of the Rental Housing Act or rules that the housing provider has allegedly violated, and shall describe the evidence that supports the Rent Administrator’s assertions and the proposed corrective action or sanction.
- 2931.3 Once the Rent Administrator files the order to show cause, the case shall proceed under this Chapter.

2932 RENTAL HOUSING CASES – BURDEN OF PROOF

- 2932.1 The proponent of an order shall have the burden of proof. The tenant has the burden to prove the claims alleged in the tenant petition except that the housing provider has the burden to prove any exemption under the Rental Housing Act. When the housing provider files a petition, the housing provider has the burden to prove the claims.

2932.2 Unless otherwise provided by law, a party must prove each fact essential to his or her claim by a preponderance of the evidence so that the Administrative Law Judge finds that it is more likely than not that each fact is proven.

2932.3 In show cause hearings, the burden of proof shall rest on the Rent Administrator.

2932.4 In retaliation cases, the tenant has the burden of proving that retaliation occurred or that a presumption applies. If a presumption applies, then the housing provider has the burden to rebut the presumption by clear and convincing evidence.

2933 RENTAL HOUSING CASES – PAPERS FILED WITH THE RAD OR OTHER AGENCIES

2933.1 Any party who wishes the Administrative Law Judge to consider a document that is on file with the RAD or any other District of Columbia agency must introduce a copy of that document into evidence. The Administrative Law Judge shall admit the document into evidence if he or she finds that it is relevant and is an accurate copy of a document on file with the RAD or other agency.

2933.2 A party can establish that a document is an accurate copy of a document on file with RAD or other agency by one of the following methods:

- (a) Providing a copy with a legible original file stamp;
- (b) Providing a copy with a legible copy of the original file stamp;
- (c) Providing a copy certified by the Rent Administrator or an authorized employee of RAD;
- (d) Providing testimony or other evidence that the Administrative Law Judge finds satisfactory; or
- (e) If all parties consent to the admission of the document into evidence.

2934 RENTAL HOUSING CASES – SUBPOENAS

2934.1 In rental housing cases, the Clerk shall issue no more than three (3) subpoenas to the tenant side and no more than three (3) subpoenas to the housing provider side under Subsection 2824.5 to compel:

- (a) The appearance at a hearing of any witnesses, including housing inspectors, with knowledge of conditions, repairs, or maintenance in a party's rental unit or any common areas for the three (3) year period immediately before the filing of the petition with the Rent Administrator;

- (b) The production at or before a hearing of all records not created by a government agency, relating to conditions, repairs, or maintenance to a party's rental unit or any common areas for the three (3) year period immediately before the filing of the petition with the Rent Administrator;
- (c) The production at or before a hearing of housing violation notices in the possession of the Department of Consumer and Regulatory Affairs relating to a party's rental unit or any common areas for the three (3) year period immediately before the filing of the petition with the Rent Administrator.
- (d) The production at or before a hearing of all records in a housing provider's possession relating to any rent increases demanded or implemented for a party's rental unit for the three (3) year period immediately before the filing of the petition with the Rent Administrator.

2934.2 Section 2824 applies to all other subpoenas for witnesses and documents at hearings in rental housing cases. Section 2825 applies to discovery.

2935 RENTAL HOUSING CASES – REPRESENTATION

2935.1 Persons authorized to appear before OAH by Sections 2833 and 2835 may represent parties in rental housing cases.

2935.2 A tenant association may represent one or more tenants in any proceeding as follows:

- (a) A statement must be filed with OAH stating that the tenant consents to representation by the tenant association and the tenant association consents to represent the tenant;
- (b) A tenant or a tenant association may revoke the consent by filing a statement to that effect;
- (c) A tenant association shall designate one (1) or more members or attorneys to represent the association and any of the tenants it represents;
- (d) A tenant association may elect to proceed only in a representative capacity without being listed as a party or listed in the caption.

2935.3 The provisions of Sections 2833 and 2835 concerning discipline of persons appearing before OAH apply to all representatives in rental housing cases.

2935.4 If an Administrative Law Judge decides that a proceeding is so complex, or the potential liability so great that a party should be represented by a lawyer, the Administrative Law Judge shall explain to the party the advantages of obtaining a

lawyer and offer to continue the case to give the party an opportunity to obtain a lawyer.

2936 RENTAL HOUSING CASES – APPEALS BEFORE A FINAL ORDER

2936.1 An Administrative Law Judge’s rulings in a proceeding ordinarily may not be appealed to the Commission until a final order is issued. Before a final order is issued, a party may appeal an order of the Administrative Law Judge only if the Administrative Law Judge certifies the ruling for appeal to the Commission.

2936.2 A party may move the Administrative Law Judge to certify to the Commission an appeal of any ruling other than a final order. Such an appeal is an “interlocutory appeal.”

2936.3 The Administrative Law Judge shall certify a ruling for interlocutory appeal only if he or she determines that the issue presented is of such importance to the proceeding that it requires the immediate attention of the Commission, and only if the following are shown:

- (a) The ruling involves an important question of law or policy requiring interpretation of the Rental Housing Act, and about which there is substantial basis for difference of opinion; and
- (b) Either of the following applies:
 - (1) An immediate ruling will materially advance the completion of the proceeding; or
 - (2) Denial of an immediate ruling will cause undue harm to the parties or the public.

2936.4 A party seeking review by interlocutory appeal shall file a motion for certification within five (5) calendar days of service of a ruling by the Administrative Law Judge. The opposing party shall have five (5) calendar days in which to respond. Unless extended by a written order, the Administrative Law Judge shall rule on the motion within ten (10) calendar days following the filing of any response.

2936.5 If the Administrative Law Judge declines to certify a ruling, the Commission may review that ruling on appeal from a final order.

2936.6 The Administrative Law Judge may stay the proceeding while an interlocutory appeal is pending.

2937 RENTAL HOUSING CASES – FINAL ORDERS

2937.1 OAH shall serve all final orders on the parties by first-class mail. OAH also shall serve all final orders on the Rent Administrator and the Commission.

2938 RENTAL HOUSING CASES – REQUESTING RECONSIDERATION, A NEW HEARING, OR RELIEF FROM A FINAL ORDER

2938.1 Motions for reconsideration, a new hearing, or relief from a final order shall be decided according to the Rules found in Section 2828.

2938.2 If any party files a motion for reconsideration or for a new hearing within the ten (10) calendar day deadline specified in Subsection 2828.3, an Order will not be final for purposes of appeal to the Commission until the Administrative Law Judge rules on the motion or the motion is denied as a matter of law under Subsection 2828.15.

2938.3 Any motion for relief from final order has no effect on the deadline for appealing to the Commission.

2939 RENTAL HOUSING CASES – OFFICIAL RECORD OF A PROCEEDING

2939.1 The official record of a proceeding shall consist of the following:

- (a) The final order and any other orders or notices of the Administrative Law Judge;
- (b) The recordings or any transcripts of the proceedings before the Administrative Law Judge;
- (c) All papers and exhibits offered into evidence at the hearing; and
- (d) All papers filed by the parties or the Rent Administrator at OAH.

2939.2 Documents attached to a petition or other filings must be offered and received in evidence at a hearing before the Administrative Law Judge can use them to establish facts.

2940 RENTAL HOUSING CASES – ATTORNEY’S FEES

2940.1 All motions for an award of attorney’s fees shall be filed within thirty (30) calendar days of service of the final order.

2940.2 Standards for the award of attorney fees are found in 14 DCMR § 3825.

2941 RENTAL HOUSING CASES – INTEREST ON SECURITY DEPOSITS

2941.1 In any case in which a tenant claims entitlement to interest on a security deposit under D.C. Official Code § 42-3502.17(b), the tenant must produce evidence of

the amount of the security deposit that was given to the housing provider, the date on which it was given, and amount of interest, if any, paid to the tenant.

2941.2 If the tenant does so, then the housing provider must produce evidence of the amount of interest that was earned on the security deposit.

2941.3 If the housing provider fails to produce evidence of the amount of interest that was earned, or the security deposit was not held in an interest bearing account, the Administrative Law Judge shall compute interest by applying the Superior Court of the District of Columbia judgment rate prevailing on January 1st and on July 1st for each 6-month period (or part thereof) of the tenancy.

2970 PUBLIC BENEFITS CASES – SCOPE

2970.1 Sections 2970 through 2978 contain the Rules for OAH hearings requested by individuals, other than service providers, concerning the following kinds of benefits:

- (a) Medicaid, Healthcare Alliance, or other healthcare programs administered by the District of Columbia;
- (b) Temporary Assistance for Needy Families (TANF);
- (c) Supplemental Nutrition Assistance Program (SNAP) (formerly Food Stamps);
- (d) Interim Disability Assistance;
- (e) Shelter and services for homeless persons;
- (f) Rental Assistance programs;
- (g) General Assistance for Children;
- (h) Child Care Subsidy;
- (i) Program on Work, Employment, and Responsibility (POWER);
- (j) Burial Assistance;
- (k) Any other benefits provided by the Department of Human Services; and
- (l) Low Income Home Energy Assistance Program benefits provided by the District of Columbia Energy Office.

- 2970.2 Sections 2970 through 2978 also apply to hearings requested by the Department of Human Services when it seeks to disqualify someone from receiving SNAP (formerly Food Stamps) benefits due to an intentional program violation.
- 2970.3 If Sections 2970 through 2978 do not address a procedural issue, the Rules in Chapter 28 apply.
- 2970.4 If there is a conflict between any federal law or regulation and anything in these Rules, the federal law or regulation shall control.
- 2970.5 If there is a conflict between any District of Columbia statute and anything in these Rules, the District of Columbia statute shall control.
- 2970.6 If there is a conflict between any other agency's procedural rules or regulations and these Rules, these Rules shall control.

2971 PUBLIC BENEFITS CASES – BEGINNING A CASE

- 2971.1 A person can request a hearing in writing, in person, or by telephone.
- 2971.2 Hearing request forms shall be available at OAH, at all service centers of the Department of Human Services, at the Department of Health Care Finance, at the District Department of the Environment, and at the Division of Early Childhood Education at the Office of the State Superintendent of Education.
- 2971.3 A hearing request must describe the type of benefits and the action or inaction to which the person objects. The request also must contain the name, address, and telephone number of the person requesting a hearing;
- 2971.4 A person may bring, mail, or fax a written hearing request to:
- (a) The Department of Human Services;
 - (b) The Department of Health Care Finance for a hearing concerning Medicaid, Healthcare Alliance, or other healthcare programs administered by the District of Columbia;
 - (c) The District Department of the Environment for a hearing concerning Low Income Home Energy Assistance Program benefits (LIHEAP);
 - (d) A shelter or other service provider for a hearing under the Homeless Services Reform Act;
 - (e) The Division of Early Childhood Education at the Office of the State Superintendent of Education for a hearing concerning child care benefits;
or

(f) OAH.

2971.4 To request a hearing in person, a person may come to:

- (a) A Department of Human Services service center;
- (b) The Department of Health Care Finance, for a hearing concerning Medicaid, Healthcare Alliance, or other healthcare programs administered by the District of Columbia;
- (c) The District Department of the Environment, for a hearing concerning Low Income Home Energy Assistance Program benefits (LIHEAP);
- (d) The Division of Early Childhood Education at the Office of the State Superintendent of Education, for a hearing concerning child care benefits; or
- (e) OAH.

2971.5 To request a hearing by telephone, a person may call:

- (a) The Department of Human Services;
- (b) The Department of Health Care Finance, for a hearing concerning Medicaid, Healthcare Alliance, or other healthcare programs administered by the District of Columbia;
- (c) The Division of Early Childhood Education at the Office of the State Superintendent of Education; or
- (d) OAH.

2971.6 If the Government receives a written hearing request, it must file the request with OAH within three (3) calendar days of receiving it.

2971.7 If the Government receives an oral or telephone hearing request, it must prepare and file a hearing request form with OAH within three (3) calendar days of receiving the request.

2971.8 If OAH receives a written hearing request from an individual, it will send the request to any agency or service provider whose decision is being challenged.

2971.9 If OAH receives an oral or telephone hearing request from an individual, it will complete a written summary of the request and send it to any agency or service provider whose decision is being challenged.

2971.10 The Department of Human Services can request a hearing concerning a claim that a SNAP (formerly Food Stamps) recipient should be disqualified from receiving benefits due to an intentional program violation by filing a hearing request form approved by the Chief Administrative Law Judge.

2972 PUBLIC BENEFITS CASES – REPRESENTATIVES

2972.1 An applicant for, or recipient of, public benefits may be represented by an attorney, a relative, a friend, or any other representative who is not employed by the District of Columbia government.

2972.2 Any person who is not a lawyer who requests a hearing on behalf of someone else must file a statement, signed by the person, authorizing that non-lawyer to be a representative. A hearing request is subject to dismissal unless that statement is filed. Before dismissing a case under this Subsection, an Administrative Law Judge shall notify the representative of this requirement.

2972.3 As required by the District of Columbia Public Assistance Act, D.C. Official Code § 4-210.10, if the person who requested the hearing is not represented by a lawyer, a Government agency or service provider may not be represented by a lawyer at any hearing involving the following public benefit programs:

- (a) Medicaid, Healthcare Alliance or other healthcare programs administered by the District of Columbia;
- (b) Temporary Assistance for Needy Families (TANF);
- (c) SNAP (formerly Food Stamps);
- (d) Interim Disability Assistance;
- (e) General Assistance for Children; and
- (f) Program on Work Employment and Responsibility (POWER).

2972.4 A Government agency or service provider may be represented by a lawyer at a hearing involving any other public benefit program regardless of whether the person who requested a hearing is represented by a lawyer.

2972.5 The practice of lawyers or other party representatives is governed by Sections 2833 and 2835.

2973 PUBLIC BENEFITS CASES – ADMINISTRATIVE REVIEWS

2973.1 An administrative review is an informal meeting between the person who has requested a hearing at OAH and a representative of the agency or service provider whose action or inaction is being challenged by that person. The purpose of an

administrative review is to determine whether the agency's or service provider's position is valid and, if possible, to achieve an informal solution.

2973.2 An agency or service provider shall offer each person who requests a hearing at OAH an opportunity for an administrative review, if required by law. At least five (5) calendar days before the hearing date, the agency or service provider shall file and send to all parties and their representatives a status report, which says whether an administrative review was held, and the results of any review.

2973.3 In cases involving shelter or other services for homeless persons, as required by the Homeless Services Reform Act of 2005, D.C. Official Code §§ 4-1601.01, *et seq.*, the Department of Human Services shall conduct the administrative review.

2973.4 As required by law, the agency or service provider shall make the case file available to the person who requested the hearing.

2974 PUBLIC BENEFITS CASES – SUBPOENAS

2974.1 Any party may file a request in writing for an Administrative Law Judge to issue a subpoena to require a witness to attend a hearing.

2974.2 The Administrative Law Judge shall issue a subpoena under this Section if it is likely that the witness will be able to provide testimony that will be helpful in deciding the case, and if requiring the witness to appear will not be unduly burdensome, or otherwise contrary to law.

2974.3 Any party also may request a subpoena to require a witness to bring documents, photographs, or other things to the hearing. The Administrative Law Judge will issue a subpoena if it is likely that the requested items will be helpful in deciding the case, and if requiring those items to be produced will not be unduly burdensome, or otherwise contrary to law.

2974.4 A form to be used to request a subpoena is available from OAH.

2974.5 If an Administrative Law Judge issues a subpoena, the party requesting the subpoena must deliver it pursuant to Subsections 2824.6 through 2824.9 and 2824.11. Unless otherwise ordered by an Administrative Law Judge, delivery shall be made at least two (2) days before the hearing.

2975 PUBLIC BENEFITS CASES – HEARING DATES

2975.1 After a hearing request is filed, an Administrative Law Judge ordinarily will schedule a hearing. If any applicable law requires that an administrative review be completed before a hearing takes place, a hearing will not be scheduled until the administrative review has been completed.

2975.2 An Administrative Law Judge may schedule a status conference or other preliminary hearing in order to simplify the issues in the case, identify the parties' legal and factual positions, rule on any preliminary legal issues, or for any other purpose.

2975.3 Any party may ask an Administrative Law Judge for a different hearing date. Copies of a request form will be sent with every hearing notice and are available from OAH.

2975.4 Only an Administrative Law Judge can change a hearing date.

2976 PUBLIC BENEFITS CASES – HEARINGS AND EVIDENCE

2976.1 At each hearing, the Administrative Law Judge shall decide the order in which the parties will present their cases.

2976.2 If a party who requests a hearing fails to attend the hearing without good cause, the Administrative Law Judge may dismiss the case without prejudice. "Good cause" includes, but is not limited to: serious illness, an accident, a childcare problem, severe weather conditions, or other emergency.

2976.3 If the agency or service provider whose action or inaction is being challenged fails to attend the hearing, the Administrative Law Judge may rule in favor of the person who requested the hearing.

2976.4 In a SNAP (formerly Food Stamps) Intentional Program Violation case, the Government must prove its case even if the other party fails to attend the hearing.

2976.5 Parties shall have the following rights at a hearing:

- (a) To testify and to have other witnesses testify for them;
- (b) To cross-examine witnesses called by another party;
- (c) To request that any prospective witness be excluded from the courtroom;
- (d) To examine all exhibits offered into evidence by another party;
- (e) To object to the admission of any testimony or other evidence;
- (f) To subpoena witnesses, as provided in Section 2974; and
- (g) To appear with a representative, as provided in Section 2972.

2976.6 At a hearing, all parties may present evidence. "Evidence" includes testimony by the parties and any witnesses that a party may present. Evidence also includes

documents, photographs, or any other items that a party believes may help the Administrative Law Judge decide the case. The Administrative Law Judge shall decide what evidence becomes part of the record.

2976.7 At least five (5) calendar days before the hearing date, each party shall file with OAH a list of witnesses and copies of any documents, photographs, or other items that the party wants the Administrative Law Judge to consider at the hearing. Copies must be sent to the other party in the following manner:

- (a) Any agency or service provider must send copies to all other parties;
- (b) If an individual is represented by a person other than a family member, the representative shall send copies to all other parties;
- (c) If a shelter makes free copying services available to a shelter resident, the shelter resident must make and deliver a copy to the shelter director;
- (d) For all other individuals, OAH will deliver copies by interagency mail to the appropriate agency.

2976.8 If anything is not filed according to the requirements of Subsection 2976.7, and the other party shows that it has been prejudiced, the Administrative Law Judge shall have the discretion to set a new hearing date to allow the other party to prepare.

2976.9 If any party demonstrates that it has been prejudiced by the unexpected appearance of a witness, the Administrative Law Judge shall have the discretion to set a new hearing date to allow the other party to prepare for the witness testimony. If a witness was named on the witness list in the manner provided in Subsection 2976.7, the Administrative Law Judge shall find that there has been no prejudice.

2977 PUBLIC BENEFITS CASES – DEADLINES

2977.1 As required by Federal law, 7 C.F.R. 273.15(c), decisions in cases involving SNAP (formerly Food Stamps) benefits shall be issued and served on the parties within sixty (60) calendar days of receipt of the hearing request, except that in Intentional Program Violation cases, as required by 7 C.F.R. 273.16(e)(2)(iv), the decisions shall be issued and served within ninety (90) calendar days after a hearing notice has been issued.

2977.2 As required by the District of Columbia Public Assistance Act, D.C. Official Code § 4-210.12(a), decisions shall be issued and served on the parties within sixty (60) calendar days of receipt of the hearing request in cases involving the following public benefit programs: Temporary Assistance for Needy Families

(TANF); Interim Disability Assistance; General Assistance for Children; Program on Work, Employment and Responsibility (POWER); and Medicaid.

2977.3 As required by the Homeless Services Reform Act of 2005, D.C. Official Code § 4-1601.25(f)(3)(C), decisions in cases involving shelter or other services provided for homeless persons shall be issued and served on the parties within fifteen (15) calendar days of the completion of the hearing.

2977.4 If a postponement of the hearing date is granted to the party requesting a hearing, the deadline for the issuance and service of the decision shall be extended for as many days as the hearing is postponed. In Intentional Program Violation cases, the deadline shall be extended only if the Respondent requested the postponement.

2978 PUBLIC BENEFITS CASES – REQUESTING RECONSIDERATION, A NEW HEARING, OR RELIEF FROM A FINAL ORDER

2978.1 Motions for reconsideration, a new hearing, or relief from a final order shall be decided according to the Rules found in Section 2828.

2980 UNEMPLOYMENT INSURANCE CASES – SCOPE

2980.1 Sections 2980 through 2986 contain the Rules for OAH hearings of appeals of decisions of the District of Columbia Department of Employment Services (DOES) concerning unemployment compensation insurance.

2980.2 If Sections 2980 through 2986 do not address a procedural issue, the Rules in Chapter 28 apply.

2980.3 If there is a conflict between any federal law or regulation and anything in these Rules, the federal law or regulation shall control.

2980.4 If there is a conflict between any District of Columbia statute and anything in these Rules, the District of Columbia statute shall control.

2980.5 If there is a conflict between any other agency’s procedural rules or regulations and these Rules, these Rules shall control.

2981 UNEMPLOYMENT INSURANCE CASES – BEGINNING A CASE

2981.1 A party requesting a hearing to appeal a DOES Claims Examiner’s Determination in an unemployment compensation case shall file a copy of the determination that the party is appealing with the hearing request. If the party does not file a copy of the determination, OAH will issue an order directing the party to file a copy of the determination in order to establish OAH’s jurisdiction. If the copy is not provided, OAH may dismiss the case.

2981.2 In unemployment compensation cases, OAH may extend the deadline for filing a hearing request upon a showing of excusable neglect or good cause.

2981.3 All other procedures for requesting a hearing are governed by Section 2808.

2982 UNEMPLOYMENT INSURANCE CASES – REPRESENTATIVES

2982.1 An authorized agent employed by a firm whose usual business includes providing representation in unemployment compensation cases may represent any party.

2982.2 The practice of lawyers or other party representatives is governed by Sections 2833 and 2835.

2983 UNEMPLOYMENT INSURANCE CASES – FILING OF PAPERS

2983.1 In cases concerning unemployment compensation:

(a) When a request for hearing is mailed to OAH, if the envelope containing the request bears a legible United States Postal Service postmark or if there is other proof of the mailing date, the request shall be considered filed on the mailing date. The filing date cannot be established by a private postage meter postmark alone.

(b) When a request for hearing is delivered to OAH by commercial carrier, the filing date is the date the commercial carrier received the request for delivery to the Clerk's office, so long as the cost of delivery is prepaid and delivery is to occur within three (3) calendar days of the commercial carrier's receipt. The date of commercial carrier's receipt shall be established by a document or other record prepared by the commercial carrier in the normal course of business.

2983.2 Repealed

2983.3 All other procedures for filing papers are governed by Section 2809.

2984 UNEMPLOYMENT INSURANCE CASES – SUBPOENAS

2984.1 In unemployment compensation cases, the Clerk shall issue no more than three (3) subpoenas to each party under Subsection 2824.5 to compel:

(a) The appearance at a hearing of persons who have direct knowledge of Claimant's separation from employment; or

(b) The production at a hearing of documents, not more than six (6) months old, in the other party's possession that directly relate to Claimant's separation from employment.

2984.2 Service of a subpoena for a witness to appear at a hearing shall be made by personally delivering the subpoena to the witness. Unless otherwise ordered by an Administrative Law Judge, service shall be made at least two (2) calendar days before the hearing.

2984.3 All other procedures for subpoenas are governed by Section 2824.

2985 UNEMPLOYMENT INSURANCE CASES – HEARINGS AND EVIDENCE

2985.1 At least three (3) business days before a hearing in an unemployment compensation case, a party shall serve on all other parties and file with the Clerk the following:

- (a) A list of the witnesses, other than a party, whom the party intends to call to testify; and
- (b) A copy of each exhibit that the party intends to offer into evidence, other than exhibits to be used solely for impeachment or rebuttal.

2985.2 All other procedures for hearings are governed by Section 2821.

2986 UNEMPLOYMENT INSURANCE CASES – REQUESTING RECONSIDERATION, A NEW HEARING, OR RELIEF FROM A FINAL ORDER

2986.1 Motions for reconsideration, a new hearing, or relief from a final order shall be decided according to the Rules found in Section 2828.

2999 DEFINITIONS

2999.1 Unless otherwise provided, the definitions in Chapter 28 apply to this Chapter.

2999.2 For purposes of this Chapter, the term:

Commission means the Rental Housing Commission.

Contested residency case means a case in which an adult student or a minor student's parent or guardian has filed, pursuant to 5 DCMR E§ 2009.3, a request for review of a decision by DCPS that a student is not entitled to tuition-free education because the student is not a resident of the District of Columbia.

DCPS means District of Columbia Public Schools.

Disciplinary file means any and all tangible evidence, in DCPS's possession, which forms the basis for the school's decision to propose the specific disciplinary action, including, but not limited to, student, staff and other witness statements, incident reports, photographs, police reports, and security camera footage. Nothing in these rules prohibits DCPS from redacting any information it deems confidential or protected.

RAD means the Rental Accommodations Division of the Department of Housing and Community Development.

Rent Administrator means the Rent Administrator of the RAD.

Rental Housing Act means the Rental Housing Act of 1985, D.C. Law 6-10, effective July 17, 1985, D.C. Official Code §§ 42-3501.01, *et seq.*

Rental housing cases means cases initiated pursuant to the Rental Housing Act, but does not include petitions for declaratory orders pursuant to the Rental Housing Conversion and Sale Act of 1980.

School day means a day that school is open, whether or not students are attending, but does not include any day that OAH is closed.

Service Provider means a person or entity that furnishes assistance to members of the public through a contract with or grant from the Government.

Student discipline case means a case in which DCPS seeks to expel a student or to suspend a student for at least eleven (11) days.