

**DISTRICT OF COLUMBIA
OFFICE OF ADMINISTRATIVE HEARINGS**

NOTICE OF EMERGENCY AND PROPOSED RULEMAKING

The Chief Administrative Law Judge of the Office of Administrative Hearings (OAH), pursuant to the authority set forth in Section 8 of the Office of Administrative Hearings Establishment Act of 2001 (the "Act") (D.C. Law 14-76; D.C. Official Code § 2-1831.05(a)(7)), gives notice of his intent to adopt, on an emergency basis, the following amendment to add Chapter 28 to Title 1 of the District of Columbia Municipal Regulations (DCMR). These emergency rules prescribe the rules of practice and procedure in matters before OAH. Adoption of these rules on an emergency basis will ensure that there will be published rules of practice and procedure in effect for the new OAH at the time it is scheduled to begin operations on March 22, 2004. Therefore, adoption of these rules on an emergency basis is necessary to protect public health, safety and welfare. These emergency rules were adopted on February 25, 2004, and became effective on that date.

The Chief Administrative Law Judge also gives notice of his intent to take final rulemaking action to adopt the amendment adding a new Chapter 28 to Title 1 DCMR in not less than thirty (30) days from the date of publication of this notice in the *D.C. Register* in accordance with § 6(a) of the District of Columbia Administrative Procedures Act, D.C. Official Code § 2-505(a).

These emergency rules will expire on June 23, 2004, 120 days after their adoption, or upon publication of a notice of final rulemaking in the *D.C. Register*, whichever occurs first.

Title 1 DCMR is amended by adding a new Chapter 28 to read as follows:

CHAPTER 28

OFFICE OF ADMINISTRATIVE HEARINGS RULES OF PRACTICE AND PROCEDURE

Rules	
2800	Scope of Chapter
2801	Applicability of District of Columbia Superior Court Rules of Civil Procedure
2802	Commencement of Action in OAH
2803	Commencement by Notice of Infraction
2804	Commencement by Notice of Violation
2805	Commencement by Request for Hearing
2806	Case Tracking
2807	Identification of Pleadings and Other Papers Filed; Unrepresented and Represented Parties
2808	Service: Papers to be Served
2809	Service: How Made
2810	Filing of Papers: Certificate of Service Required
2811	Time Computation
2812	Motions
2813	Responsive Pleadings
2814	Signing of Papers; Legibility of Papers; Representation to OAH; Sanctions
2815	Alternative Dispute Resolution
2816	Substitution of Parties; Intervention
2817	Voluntary Dismissal of Actions
2818	Involuntary Dismissal of Actions
2819	Consolidation; Separate Trials
2820	Evidence Before OAH
2821	Testimony; Oaths
2822	Subpoenas
2823	Discovery
2824	Judgment as a Matter of Law
2825	Relief Granted in Final Orders
2826	Transcripts; Citation and Costs
2827	Defaults
2828	Summary Adjudication
2829	Payment Plans
2830	Reopening a Matter to Recover Abatement Costs; Request for Hearing
2831	New Trials
2832	Reconsideration
2833	Relief From Final Orders
2834	Harmless Error
2835	Stay of Final Orders
2836	Inability of Judge to Proceed
2837	Recusal; Ethics Compliance
2838	Appearance of Attorneys
2839	Appearance of Non-Attorneys
2840	Administrative Court and Clerk General Provisions
2841	Repeal of Board of Appeals and Review Rules of Procedure
2842	Review of Rules
2843-2898	Reserved
2899	General Definitions

2800 SCOPE OF CHAPTER

- 2800.1 These Rules (Chapters 28 and 29 of Title 1) shall govern the procedure in all cases brought before this administrative court.
- 2800.2 These Rules shall not be construed to extend or limit the jurisdiction of this administrative court.
- 2800.3 These Rules shall be construed and administered to secure the just, speedy and inexpensive determination of every case.
- 2800.4 No Administrative Law Judge shall maintain standing, chamber or other individual rules. Nothing in this Section, however, shall be construed to limit the authority of the Chief Administrative Law Judge to approve the use of forms, documents and practices not inconsistent with these Rules that shall assist in managing cases coming before this administrative court, nor the authority of an Administrative Law Judge to issue any lawful order for purposes of case management or other matters in a particular case.

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

- 2801.1 Where indicated, these Rules may incorporate by reference specified District of Columbia Superior Court Rules of Civil Procedure. When used in a Superior Court rule incorporated by reference, the following terms shall have the following meanings:
- (a) "Court" shall mean the District of Columbia Office of Administrative Hearings;
 - (b) "Judgment" shall mean "Order."

- 2801.2 Where a procedural issue coming before this administrative court is not specifically addressed in these Rules, this administrative court may rely upon the District of Columbia Superior Court Rules of Civil Procedure as persuasive authority.

2802 COMMENCEMENT OF ACTION IN OAH

- 2802.1 Unless otherwise provided by statute or these Rules, cases, other than those commenced by a Notice of Appeal as set forth in Chapter 29 of Title 1, are commenced by either the filing of a Notice of Infraction, Notice of Violation or a request for a hearing as authorized by applicable law.

2803 COMMENCEMENT BY NOTICE OF INFRACTION

- 2803.1 When the Government commences a case by filing a Notice of Infraction, the Government shall also file and serve upon all other parties, in the

manner consistent with applicable law and with the requirements of due process, a copy of all exhibits it intends to offer in prosecuting the case, unless, with leave of this administrative court and for good cause shown, such exhibits could not have been so filed and served.

2803.2 In lieu of submitting exhibits as specified in this Rule, the Government may submit a statement that no exhibits shall be offered in prosecuting the case.

2803.3 A Notice of Infraction that fails to comply with the requirements of applicable law and these Rules may be rejected for filing and/or dismissed.

2804 COMMENCEMENT BY NOTICE OF VIOLATION

2804.1 When the Government commences a case by filing a Notice of Violation, the Government shall also file and serve upon all other parties, in the manner consistent with applicable law and with the requirements of due process, a copy of all exhibits it intends to offer in prosecuting the case, unless, with leave of this administrative court and for good cause shown, such exhibits could not have been so filed and served.

2804.2 In lieu of submitting exhibits as specified in this Rule, the Government may submit a statement that no exhibits shall be offered in prosecuting the case.

2804.3 A Notice of Violation that fails to comply with the requirements of applicable law and these Rules may be rejected for filing and/or dismissed.

2805 COMMENCEMENT BY REQUEST FOR HEARING

2805.1 Unless otherwise required by statute or these Rules, to commence a case by a request for a hearing, a written request filed in this administrative court is required.

2805.2 While a request for a hearing need not follow a specific format, it shall contain a short, plain and reasonably comprehensible statement that the party requests a hearing, and a summary description of the nature of the dispute, and the relief sought, including, where applicable, the benefit amount or sum certain being sought.

2805.3 Where authorized by law, oral requests to another government agency for a hearing must be reduced to writing and filed with this administrative court by the government agency receiving such a lawfully authorized oral request within three (3) business days of the request. A failure to comply with this Rule shall place the government agency in default, whereupon the agency shall be required to show good cause within five (5) business days after service of the default notice why a final order shall not be entered in favor of the party making the oral hearing request.

2805.4 The Clerk's office shall make reasonably available a form approved by the Chief Administrative Law Judge for use in requesting a hearing.

2806 CASE TRACKING

2806.1 At the time any matter before this administrative court is commenced, the Clerk shall assign the case to a Standard or Complex case track for management and disposition. These tracks are defined as follows:

- (a) Standard Cases include all matters arising from the Civil Infractions Act of 1985, as amended (D.C. Official Code Title 2, Chapter 18) and lawfully committed to the jurisdiction of this administrative court. Standard Cases shall also include, but not be limited to, the following cases:
 - (1) D.C. Department of Employment Services matters;
 - (2) D.C. Department of Human Services matters;
 - (3) D.C. Taxicab Commission matters;
 - (4) Board of Appeal and Review Cases, excluding Certificate of Need and Notice of Program Reimbursement determinations; and
 - (5) Matters arising under D.C. Official Code Title 8, Chapter 8.
- (b) Complex Cases include those matters not designated as Standard Cases under this Section.

2806.2 A party in a Standard Case track may, within thirty (30) days of the commencement of a case and prior to trial, file a motion in accordance with Rule 2812 to change to a Complex Case track. The presiding Administrative Law Judge also may change a Standard Case to a Complex Case upon his or her own motion. In deciding whether to designate a case as a Complex Case under this Section, the presiding Administrative Law Judge shall consider the number of parties, the relief requested, the number and difficulty of the legal and factual issues, the anticipated number of witnesses and exhibits, the anticipated length of the trial, and any other factor that, in his or her discretion, indicates that the fair, just and prompt disposition of the case will or will not be enhanced by use of the procedures available in Complex Cases.

2806.3 This Rule does not apply to an Appellate Proceeding.

2807 IDENTIFICATION OF PLEADINGS AND OTHER PAPERS FILED; UNREPRESENTED AND REPRESENTED PARTIES

2807.1 Unless otherwise provided by these Rules, the first pleading or paper filed by or on behalf of a party shall set forth the party's name, full business or residence address, telephone number(s), and fax number(s), if any. All subsequent pleadings or other papers filed by or on behalf of a party shall set forth the same information, unless the party is represented by counsel or other authorized representative. Except when denying a charge in a Notice of Infraction or Notice of Violation and challenging personal jurisdiction, or unless otherwise specified, the filing of a pleading or paper in conformity with this Section constitutes the entry of an appearance by the party.

2807.2 If a party is represented by counsel, all pleadings and other papers shall set forth the name, full business or street address, telephone number(s), fax number(s), if any, and bar number of the attorney. Except when denying a charge in a Notice of Infraction or Notice of Violation and challenging personal jurisdiction, or unless otherwise specified, the filing of a pleading or paper in conformity with this Section constitutes the entry of an appearance by counsel.

2807.3 If a party is represented by an authorized representative, all pleadings and other papers shall set forth the name, full business or street address, telephone number(s), fax number(s), if any, of the authorized representative. Except when denying a charge in a Notice of Infraction or Notice of Violation and challenging personal jurisdiction, or unless otherwise specified, the filing of a pleading or paper in conformity with this Section constitutes the entry of an appearance by the authorized representative.

2807.4 The information provided to this administrative court pursuant to this Rule shall be conclusively deemed to be correct and current. It is solely the obligation of a party, an authorized representative, or an attorney whose address, telephone number(s), or fax number(s) has been changed to promptly notify the Clerk and all other parties. Any change of address shall be filed with this administrative court and upon all parties within three (3) business days of its occurrence.

2807.5 A pleading or other paper not conforming to the requirements of this Rule may be rejected for filing by the Clerk of this administrative court or ordered stricken by the presiding Administrative Law Judge.

2808 SERVICE: PAPERS TO BE SERVED

2808.1 Except as otherwise provided in these Rules or by statute, every order required by its terms to be served, every pleading, except an answer to a

Notice of Infraction or Notice of Violation, and every other paper filed in this administrative court shall be served upon the parties, or, if represented, their attorneys or authorized representatives. Proof of service must be filed in accordance with Rule 2810.

2809 SERVICE: HOW MADE

2809.1 Unless otherwise ordered by this administrative court or consented to by the parties and their counsel or their authorized representatives, service of the orders of this administrative court shall be made on the parties.

2809.2 A Notice of Infraction or a Notice of Violation shall be served in the manner and as provided by statute.

2809.3 Unless otherwise ordered by this administrative court or agreed upon by the parties, their counsel or their authorized representatives, service shall be made by delivering a copy to the last known address of the party, attorney or authorized representative, by mailing a copy to the last known address of the party, attorney or authorized representative, or by third-party commercial carrier if delivered within three (3) days.

2809.4 Delivery of a copy within this Rule means:

- (1) handing it to the attorney, party or authorized representative; or leaving it at the party's, attorney's or authorized representative's office or place of business with an individual of suitable age and discretion then employed therein;
- (2) leaving it at the party's dwelling house or usual place of abode with some individual of suitable age and discretion then located therein.

2809.5 Service by mail is complete upon depositing the copy with the United States Postal Service (including a mailbox regularly serviced by the United States Postal Service), with no less than first-class postage prepaid, and addressed to the attorney, party or authorized representative at the proper address.

2809.6 Service by a third party commercial carrier is complete upon deposit of the copy, addressed to the attorney, party or authorized representative at the proper address, into the custody of the carrier for delivery within no more than three (3) days of the carrier's receipt, with the cost of delivery prepaid.

2809.7 If agreed upon in writing by the parties, their counsel or their authorized representatives, service of a paper may be made upon the opposing party by email or other means.

2809.8 Except as provided in Section 2809.1, this Rule does not apply to the transmittal of papers by this administrative court.

2810 FILING OF PAPERS; CERTIFICATE OF SERVICE REQUIRED

2810.1 The filing of papers with the administrative court as required by these Rules shall be made by delivering them to the Clerk in accordance with Rules 2809 and 2840.

2810.2 Unless otherwise provided by statute or these Rules, documents may be faxed to this administrative court in a manner prescribed by the Clerk, and any such document shall be considered filed as of the date the fax is received, provided that a hard copy is filed with the Clerk within three (3) business days of the transmission.

2810.3 Except as provided in these Rules, or unless otherwise ordered by the administrative court, no paper may be filed with this administrative court by email or other means.

2810.4 Except for an answer and plea to a Notice of Infraction or Notice of Violation, or as otherwise provided by statute or these Rules, all papers filed with this administrative court must contain a certificate of service identifying the individual serving the document as well as the parties served, the manner of service and date of service. A failure to provide a certificate of service may result in a paper being rejected for filing by the Clerk or ordered stricken by the presiding Administrative Law Judge.

2811 TIME COMPUTATION

2811.1 This Rule applies to all periods of time prescribed or allowed by these Rules, by order of this administrative court, or by any applicable law.

2811.2 In computing any period of time measured in days or calendar days, the day of the act, event or default from which the designated period of time begins to run shall not be included. If a period is measured in hours, then this Section does not apply.

2811.3 For any period that is measured in days or calendar days, the last day of the period shall be included, unless it is a Saturday, Sunday or a legal holiday, or when the act to be done is the filing of any paper with this administrative court, an inaccessible day, in which event the period runs until the end of the next day which is not one of the aforementioned days. When the period of time prescribed or allowed is less than eleven (11)

days, intermediate Saturdays, Sundays and legal holidays shall be excluded from the computation, unless the period is measured in calendar days.

2811.4 In computing any period of time measured in hours, no hours shall be excluded from the computation, except as provided in this Section, and this Section shall not apply to any period measured in days or calendar days:

- (a) If any period expires before 10:00 AM on any day, it shall be extended to 10:00 AM that day.
- (b) If any period expires after 4:00 PM on any day, it shall be extended to 10:00 AM on the next business day.
- (c) If any period expires on a Saturday, Sunday, legal holiday or inaccessible day, it shall be extended to 10:00 AM on the next business day.

2811.5 Whenever a party has the right or the obligation to do some act within a prescribed period after service of an order or other paper upon the party, and the order or other paper is served by United States mail or third party commercial carrier, five (5) days shall be added to the prescribed period, unless a statute provides otherwise.

2811.6 Whenever these Rules or an order of this administrative court require or allow an act to be done at or within a specified time, this administrative court, for good cause shown, may order the period enlarged or reduced if a request is made before expiration of the period, or, if the period has expired, may enlarge it if the failure to act was the result of excusable neglect; however this Section does not authorize the reduction or enlargement of any period prescribed by law, or any period provided under Rules 2829, 2832, 2833 or 2835 of this Chapter.

2812 MOTIONS

2812.1 An application to this administrative court for any interlocutory order shall be by motion. Unless made on the record in open court, all motions shall be in writing; shall list the case caption, docket number and presiding Administrative Law Judge prominently on the first page; and shall state with particularity the grounds for the motion, any supporting points and authorities, and the relief sought.

2812.2 When a motion is based on facts not appearing in the record, the parties may file affidavits or declarations pursuant to Section 2821.7.

- 2812.3 Except as otherwise ordered by this administrative court, a separate memorandum of points and authorities and proposed order need not be filed with a motion.
- 2812.4 Except as otherwise ordered by this administrative court, no dispositive motion may be filed fewer than fourteen (14) days prior to a trial before this administrative court absent a showing of good cause.
- 2812.5 Prior to filing any non-dispositive motion, the moving party shall first seek to obtain the consent of all other parties to the requested relief, and shall state on the first page of the motion the date, the approximate time and means used to communicate with each party, as well as whether all other parties consent to, oppose, or do not oppose the requested relief. Failure to comply with the requirements of this Section may result in the summary denial of the motion, or the motion being rejected for filing by the Clerk.
- 2812.6 When a request for consent is made by leaving an oral or written message because the party whose consent is being sought is unavailable at the time of the request, the party requesting consent shall wait at least twenty-four (24) hours, or until the next business day, whichever is later, before filing or serving the motion.
- 2812.7 Unless otherwise ordered by this administrative court, all opposing parties shall have eleven (11) days from service of the motion to file and serve a response. Replies shall be permitted only upon order of this administrative court.
- 2812.8 All motions shall be decided on the papers unless otherwise ordered.

2813 RESPONSIVE PLEADINGS

- 2813.1 Unless otherwise specified by applicable law, a party may answer a Notice of Infraction by pleading Admit, Admit with Explanation, or Deny as follows:
- (a) A party who pleads Admit shall submit payment of the fine specified on the Notice of Infraction with the plea.
 - (b) A party who pleads Admit with Explanation shall file with the plea a written explanation and any other papers that the party wishes to have considered that explain the circumstances surrounding the infraction, and/or that the party believes justify a reduction or a suspension of the fine.
 - (1) The Government may file a response to a plea of Admit with Explanation within fourteen (14) days of the service of the plea by this administrative court.

(2) An Admit with Explanation case shall ordinarily be heard solely on the papers filed with this administrative court. In its discretion, this administrative court may require further submissions from the parties and/or may require a trial on any issue raised in the parties' papers, either on its own motion, or upon the motion of a party, where written submissions alone can not adequately explain the circumstances of the infraction.

(c) If a party pleads Deny, this administrative court shall hold a trial and shall issue a scheduling order setting the trial date and time and addressing other procedural issues. The trial date ordinarily shall be the pre-scheduled date stated on the Notice of Infraction, but this administrative court may change that date on motion for good cause, or on its own motion to promote sound judicial administration. In case of conflict between the trial date and time on the Notice of Infraction, and the trial date and time on the scheduling order, the scheduling order shall control.

2813.2 Unless otherwise ordered, a party that pleads Deny to a Notice of Infraction shall file and serve upon all parties, in a manner consistent with applicable law, these Rules and the requirements of due process, a copy of all exhibits the party intends to offer in defending the case. Such exhibits shall be filed and served within ten (10) days of trial, unless, for good cause shown, such exhibits can not be so filed and served. In lieu of submitting exhibits as specified in this Section, the party may submit a statement that no exhibits shall be offered in defending the case. Failure to comply with this Section may result in the preclusion of the party's exhibits at trial.

2813.3 Unless otherwise specified by applicable law, a party may answer a Notice of Violation by pleading Admit, Admit with Explanation, or Deny as follows:

- (a) A party who pleads Admit shall submit payment of the fine specified on the Notice of Violation with the plea and shall certify on the Notice of Violation form whether the violation has been abated.
- (b) A party who pleads Admit with Explanation shall file with the plea a written explanation and any other papers that the party wishes to have considered that explain the circumstances surrounding the violation, and/or that the party believes justify a reduction or a suspension of the fine.

- (1) The Government may file a response to a plea of Admit with Explanation within fourteen (14) days of the service of the plea by this administrative court.
 - (2) An Admit with Explanation case shall ordinarily be heard solely on the papers filed with this administrative court. In its discretion, this administrative court may require further submissions from the parties and/or may require a trial on any issue raised in the parties' papers, either on its own motion, or upon the motion of a party, where written submissions alone can not adequately explain the circumstances of the violation.
- (c) If a party pleads Deny, this administrative court shall hold a trial and shall issue a scheduling order setting the trial date and time and addressing other procedural deadlines. The trial date ordinarily shall be the pre-scheduled date stated on the Notice of Violation but this administrative court may change that date on motion for good cause, or on its own motion to promote sound judicial administration. In case of conflict between the trial date and time on the Notice of Violation, and the trial date and time on the scheduling order, the scheduling order shall control.

2813.4 Unless otherwise ordered, a party that pleads Deny to a Notice of Violation shall file and serve upon all parties, consistent with applicable law, these Rules and the requirements of due process, a copy of all exhibits the party intends to offer in defending the case. Such exhibits shall be filed and served within ten (10) days of trial, unless, for good cause shown, such exhibits can not be so filed and served. In lieu of submitting exhibits as specified in this Section, the party may submit a statement that no exhibits shall be offered in defending the case. Failure to comply with this Section may result in the preclusion of the party's exhibits at trial.

2813.5 Unless otherwise ordered, no responsive pleading is required in cases commenced by a request for a hearing.

2814 SIGNING OF PAPERS; LEGIBILITY OF PAPERS; REPRESENTATION TO OAH; SANCTIONS

2814.1 Unless otherwise provided by statute or these Rules, every paper filed with this administrative court shall be signed by at least one attorney of record in the attorney's individual name, or, if the party is not represented by an attorney, shall be signed by the party or party's authorized representative

in accordance with the requirements of Rule 2807. A name affixed by an autopen or rubber stamp shall not be deemed a signature.

- 2814.2 An unsigned paper shall be rejected for filing by the Clerk or stricken by order of the presiding Administrative Law Judge unless omission of the signature is corrected prior to such action.
- 2814.3 Every paper filed with this administrative court shall be legible. An illegible paper shall be rejected for filing by the Clerk or ordered stricken by the presiding Administrative Law Judge unless a legible replacement is filed prior to such action. If permitted, a legible replacement shall supercede an illegible submission in its entirety.
- 2814.4 By presenting any paper to this administrative court (whether by signing, filing, or submitting), an attorney, unrepresented party or other authorized representative is certifying that to the best of that individual's knowledge, information, and belief, formed after an inquiry reasonable under the circumstances:
- (a) it is not being presented for any improper purpose, such as to harass or to cause unnecessary delay or to needlessly increase the cost of litigation;
 - (b) the claims, defenses, and other legal contentions therein are warranted by existing law or by a good faith and nonfrivolous argument for the extension, modification, or reversal of existing law or the establishment of new law;
 - (c) the allegations and other factual contentions have evidentiary support or, if specifically so identified, are likely to have evidentiary support after a reasonable opportunity for further investigation or discovery; and
 - (d) the denials of factual contentions are warranted on the evidence or, if specifically so identified, are reasonably based on a lack of information or belief.
- 2814.5 If, after notice and an opportunity to respond, this administrative court determines that the provisions of Section 2814.4 have been violated, this administrative court may, pursuant to Section 12 of the Act and these Rules, impose an appropriate sanction upon any attorney, law firm or representative that is determined to be in violation.
- 2815 ALTERNATIVE DISPUTE RESOLUTION**
- 2815.1 Pursuant to Section 8 of the Act, the Chief Administrative Law Judge may establish practices and procedures for any Alternative Dispute Resolution (ADR) program for the Office of Administrative Hearings.

2815.2 Subject to any procedural requirements designated by the Chief Administrative Law Judge, a presiding Administrative Law Judge may refer any case for mediation or early neutral case evaluation unless otherwise prohibited by law.

2816 SUBSTITUTION OF PARTIES; INTERVENTION

2816.1 Upon oral or written motion, and with the consent of the party to be substituted or as otherwise authorized by law, this administrative court may permit such substitution of parties as justice requires.

2816.2 Anyone who has an interest in the subject matter of a case pending before this administrative court, and who contends that the representation of his or her interest may be inadequate, may file a motion to intervene in accordance with Rule 2812 stating the specific ground upon which intervention is sought, and attaching a pleading setting forth the claim or defense for which intervention is sought. Motions to intervene shall be decided in accordance with the provisions of D.C. Superior Court Civil Rule 24.

2816.3 In order to avoid undue delay or prejudice to the adjudication of the rights of the original parties, this administrative court may limit the terms and conditions of intervention.

2816.4 Notwithstanding any other provision of this Rule, no person may intervene as a co-petitioner with the Government in any action commenced by a Notice of Infraction or Notice of Violation or any Government enforcement action where the only remedy sought is a fine or monetary penalty.

2817 VOLUNTARY DISMISSAL OF ACTIONS

2817.1 A petitioner may file a summary motion for voluntary dismissal of any action, or of any claim asserted in an action, at any time, either before or after a respondent has answered a Notice of Infraction or Notice of Violation, or has otherwise appeared in an action, and the presiding Administrative Law Judge may grant a summary motion for voluntary dismissal without awaiting a response from the respondent.

2817.2 A respondent who objects to any aspect of an order granting a motion for voluntary dismissal may file a motion for reconsideration as provided in Rule 2832.

2817.3 The parties, or their authorized agents or representatives, also may file a stipulation of voluntary dismissal with prejudice, signed by all parties, their authorized agents or representatives, who have appeared in the action to dismiss an action.

2817.4 Unless otherwise provided by statute, these Rules or an order of this administrative court, a dismissal under this Rule is without prejudice unless otherwise stipulated by the parties; except that the dismissal of an action under this Rule that follows a prior dismissal without prejudice, shall be with prejudice unless otherwise ordered by the presiding Administrative Law Judge.

2817.5 Unless otherwise provided by statute, these Rules or order of this administrative court, the voluntary withdrawal of a request for a hearing shall be construed as a voluntary dismissal of an action.

2817.6 Nothing in this Rule shall preclude the presiding Administrative Law Judge from ordering that a dismissal shall be with prejudice in order to prevent unfair prejudice, inequity, or undue delay.

2818 INVOLUNTARY DISMISSAL OF ACTIONS

2818.1 For failure of the petitioner to prosecute or to comply with these Rules or any order of this administrative court, a respondent may move for dismissal of an action or of any claim against the respondent or the presiding Administrative Law Judge may order such dismissal on his or her own motion.

2818.2 Any order of involuntary dismissal entered on the presiding Administrative Law Judge's own motion shall not become final until fourteen (14) days after the date on which it is served, and shall be vacated upon the granting of a motion filed by petitioner within such fourteen (14) day period showing good cause why the case should not be dismissed, and why the failure to comply resulted from excusable neglect.

2818.3 Unless otherwise provided by statute, these Rules or order of this administrative court, a dismissal under this Rule is with prejudice.

2819 CONSOLIDATION; SEPARATE TRIALS

2819.1 When actions involving a common question of law or fact are pending before this administrative court, or when multiple Notices of Infraction or Notices of Violation involving the same respondent are pending before this administrative court, this administrative court may, upon motion by any party or on its own motion, order a joint trial of any or all the matters in issue in the actions; may order all actions consolidated for any or all purposes; and may make such orders concerning proceedings therein as may tend to avoid unnecessary costs or delay.

2819.2 Whenever a case is commenced by the filing of a second Notice of Infraction against a respondent pursuant to applicable law, it shall be consolidated with the case arising out of the first Notice of Infraction, without further order.

- 2819.3 This administrative court, in furtherance of convenience or to avoid unfair prejudice, or when separate trials would be conducive to expedition and economy, may order a separate trial of any claim or claims or of any separate issue or issues.
- 2820 EVIDENCE BEFORE OAH**
- 2820.1 Evidence shall not be excluded on the ground that it is hearsay.
- 2820.2 Subject to the limitation stated in Section 2820.1, in determining the weight as well as the admissibility of evidence, the Federal Rules of Evidence shall be deemed persuasive authority.
- 2820.3 Unless otherwise required by applicable law, a party asserting an avoidance or other exception to the requirements or prohibitions of a statute or administrative rule shall bear the burden of production and persuasion in proving the exception.
- 2821 TESTIMONY; OATHS**
- 2821.1 Unless otherwise provided by statute, protective order or these Rules, the testimony of witnesses at trial shall be taken in open court.
- 2821.2 The presiding Administrative Law Judge may, for good cause shown and with appropriate safeguards, permit presentation of testimony in any proceeding by contemporaneous transmission from a different location, consistent with the requirements of due process. The presiding Administrative Law Judge also may permit the direct testimony of any witness to be submitted in written form in advance of the trial, with the witness appearing in the proceeding for cross-examination, redirect examination and any further testimony permitted.
- 2821.3 No hearing or trial shall be held outside a courtroom of this administrative court, except where required by law upon a lawful request not made for any improper purpose, and upon a determination by the presiding Administrative Law Judge in consultation with the Chief Administrative Law Judge or his or her designee that a hearing or trial may be conducted in an alternative location consistent with safety, decorum, the creation of a reliable record, and fundamental fairness.
- 2821.4 All witnesses must testify under oath, except that this administrative court shall accept a solemn affirmation in lieu of an oath. Nothing in this Rule precludes the admission of an affidavit or other sworn written statement in a proceeding before this administrative court.
- 2821.5 Unless otherwise provided by law, whenever an oral oath is required by these Rules or applicable law, the individual making the oath shall solemnly swear or affirm under the penalties of perjury that the responses

given and statements made will be the truth, the whole truth and nothing but the truth.

2821.6 An interpreter appearing in a matter before this administrative court shall solemnly swear or affirm under penalty of perjury to interpret accurately, completely, and impartially.

2821.7 Whenever any applicable law or regulation requires or permits the filing in this administrative court of an affidavit or other writing subscribed to under oath, the subscriber, in lieu of a sworn or notarized statement, may submit a written declaration subscribed as true under penalty of perjury in substantially the following form:

"I declare (or certify, verify, or state) under penalty of perjury, that the foregoing is true and correct. Executed on (date).

"Signature"

2821.8 Pursuant to the Sections 12 and 15 of the Act, all Administrative Law Judges, and the Clerk and his or her designees, are authorized to administer oaths.

2822 SUBPOENAS

2822.1 Subpoenas shall only be issued by the presiding Administrative Law Judge and shall be served in accordance with the provisions of D.C. Superior Court Rule 45.

2822.2 Unless otherwise provided by law or order of this administrative court, any request for a subpoena shall be filed no later than eleven (11) days prior to the proposed return date, and must state the relevance of the requested information or testimony to the pending case. Failure to comply with the requirements of this Section may result in the summary denial of the subpoena request.

2823 DISCOVERY

2823.1 Except as permitted in Rule 2822, no discovery shall be permitted unless authorized by order of the presiding Administrative Law Judge. Discovery shall be limited to Complex Track cases, and all requests for discovery shall be made upon motion.

- 2823.2 Unless otherwise provided for by law or these Rules, the presiding Administrative Law Judge may permit any means of discovery available pursuant to the D.C. Superior Court Rules of Civil Procedure in accordance with the provisions of these Rules.
- 2823.3 If a motion to permit discovery is granted, based on the discovery requested, the presiding Administrative Law Judge may order the submission of a joint discovery plan, the use of a specific method of discovery, or the service of a specific discovery request. The responding party shall have fourteen (14) days to respond to a specific discovery request in a manner otherwise consistent with the provisions of the D.C. Superior Court Rules of Civil Procedure.
- 2823.4 The use of interrogatories is disfavored, and shall not be permitted unless otherwise ordered by this administrative court upon a showing by the proposing party that the information sought cannot reasonably and efficiently be obtained by an alternative method. When authorized, the number of interrogatories ordinarily should not exceed ten (10) including subparts.
- 2823.5 Notwithstanding any other provision of these Rules, each deposition must be specifically authorized in advance by order of this administrative court.
- 2823.6 Unless otherwise ordered by this administrative court, all discovery shall be completed no later than thirty (30) days prior to the trial date. All discovery requests must be timely served sufficiently in advance so as to permit responses consistent with this Rule to be served on or before this deadline.
- 2823.7 Sanctions for failure of a party to comply with an order of this administrative court made pursuant to this Rule shall be as permitted by applicable law.
- 2824 JUDGMENT AS A MATTER OF LAW**
- 2824.1 If during a trial a party has been fully heard on an issue and this administrative court finds against the party on that issue, this administrative court may enter judgment as a matter of law against that party with respect to any claim or defense that, under the controlling law, cannot be maintained or defeated without a favorable finding on that issue. Alternatively, this administrative court may decline to render any judgment until the close of all evidence.
- 2824.2 Motions under this Rule may be made at any time before the record is closed, or as otherwise scheduled by this administrative court, and shall specify the judgment sought and the law and the facts on which the moving party is entitled to the judgment.

2825 RELIEF GRANTED IN FINAL ORDERS

2825.1 The relief granted in any final order issued under the Civil Infractions Act of 1985, as amended (D.C. Official Code Title 2, Chapter 18) or D.C. Official Code Title 8, Chapter 8, shall not be different in kind from, or exceed in amount, the relief that was requested.

2826 TRANSCRIPTS; CITATION AND COSTS

2826.1 All trials and other proceedings shall be recorded in a manner consistent with the creation of a reliable and comprehensible record. The product of such recordation is the only official record of a proceeding before this administrative court.

2826.2 Unless otherwise provided by law or these Rules, recordings of this administrative court's proceedings may be obtained at the requesting party's expense or, if authorized by law, at the expense of the litigating agency.

2826.3 Transcripts of the recording of the proceedings shall be prepared by a qualified reporter or transcriber who shall personally certify under oath that he or she is not a party or counsel to a party or otherwise related to or employed by the 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. The Chief Administrative Law Judge may set standards regarding the qualification of reporters or transcribers.

2826.4 A party may only cite to a transcript as provided under this Rule.

2826.5 Unless otherwise stipulated by the parties or ordered by this administrative court, if a party cites to a portion of a transcript, the entire transcript of the case shall be filed with this administrative court, and a copy served upon all parties.

2827 DEFAULTS

2827.1 If a respondent fails to answer a Notice of Infraction within the time allowed by law, an Administrative Law Judge or the Clerk shall enter a notice finding the respondent in default and notifying the respondent of any penalties provided by applicable statute.

2827.2 If a respondent fails to answer a second Notice of Infraction, an Administrative Law Judge shall enter a final notice of default finding the respondent in default and notifying the respondent of any penalties provided by applicable statute.

- 2827.3 If a respondent fails to answer a Notice of Violation, an Administrative Law Judge shall enter a final notice of default finding the respondent in default and notifying the respondent of any penalties provided by applicable statute.
- 2827.4 A final notice of default shall set a date for an *ex parte* proof hearing, and shall notify the respondent of an opportunity to appear at the hearing to contest liability, fines, or penalties. It shall also require the respondent to notify this administrative court and the Government, at least ten (10) days before the scheduled hearing, of the intention to appear.
- 2827.5 In all cases in which a final notice of default has been issued, this administrative court shall conduct an *ex parte* proof hearing to receive evidence offered by the Government, and by any respondent who has filed a timely notice of intention to appear. If a respondent appears at an *ex parte* proof hearing without having filed a timely statement of intention to do so under this Rule, this administrative court may, in its discretion, hear testimony and/or receive exhibits from the respondent, or may set a new trial date.
- 2827.6 The appearance by a respondent at an *ex parte* proof hearing under this Rule shall not by itself be a basis for suspending or reducing any authorized penalties for failure to timely answer the Notice(s) of Infraction or Notice of Violation.
- 2828 SUMMARY ADJUDICATION**
- 2828.1 Motions for summary adjudication or comparable relief may be filed in accordance with Rule 2812.
- 2829 PAYMENT PLANS**
- 2829.1 For cases arising under the Civil Infractions Act of 1985, as amended (D.C. Official Code Title 2, Chapter 18), upon application of a respondent adjudged liable for monetary sanctions, this administrative court may, in its discretion, permit installment payments, not to extend six (6) months beyond the date the order imposing the sanction becomes final, and allowing a fee of one percent (1%) per month of the outstanding amount owed by a respondent for the installment service.
- 2829.2 In requesting a payment plan under this Rule, the respondent shall state in writing the reasons for seeking a payment plan, and the length of payment plan time requested. The request must also include information sufficient to demonstrate why respondent cannot afford to pay the outstanding monetary sanction in a lump sum, such as copies of respondent's most recent tax returns, bank statements, balance sheets, and/or cash flow statements.

- 2829.3 Unless otherwise ordered by the presiding Administrative Law Judge for good cause shown and upon a demonstration of excusable neglect, requests for payment plans under this Rule must be filed and served upon the Government within sixty (60) days of the service of the final order under the Civil Infractions Act of 1985, as amended (D.C. Official Code Title 2, Chapter 18).
- 2829.4 The Government is permitted to file and serve a response to a request for a payment plan within five (5) days of the service of the request.
- 2830 REOPENING A MATTER TO RECOVER ABATEMENT COSTS; REQUEST FOR HEARING**
- 2830.1 For cases arising D.C. Official Code Title 8, Chapter 8 in which a final order has been issued, the Government may elect to move to reopen a case, as of right, to seek a collateral order providing for abatement costs. The Government may do so by filing and serving upon respondent a bill of abatement costs not later than one hundred twenty (120) days after service of the final order. Failure, without good cause, to file and serve a bill of abatement costs in the time prescribed in this Section shall preclude recovery.
- 2830.2 Except as provided in Section 2830.4, a request by a respondent for hearings on the Government's motion for abatement cost recovery shall be in writing, and shall be filed within thirty (30) days of service of the bill of abatement costs by the Government upon the respondent.
- 2830.3 If a respondent files a timely request for a hearing to contest a claim for abatement costs made pursuant to Section 2830.1, the presiding Administrative Law Judge shall hold a hearing limited to the issue of the amount of the abatement costs. Such a hearing, and any *ex parte* proof hearing held pursuant to Sections 2830.4 and 2830.5, shall not re-litigate the liability of a respondent previously held liable for the violation for which the Government is claiming abatement costs.
- 2830.4 If a respondent does not file a request for a hearing within the deadline established in Section 2830.2, this administrative court, prior to awarding an order of abatement costs to the Government pursuant to Section 2830.1, shall provide for an *ex parte* proof hearing at which the Government shall bear the burden of demonstrating it is entitled to an order granting abatement costs. Notwithstanding Section 2830.2, the respondent may elect to appear at the hearing to contest only the amount of the abatement costs being sought by the Government.
- 2830.5 Pursuant to Section 2830.4, a case management order shall be issued and shall set a date for the *ex parte* proof hearing, and shall notify the respondent of an opportunity to appear at the hearing to contest liability. It

shall also require the respondent to notify this administrative court and the Government, at least ten (10) days before the scheduled hearing, of the intention to appear. If a respondent appears at an *ex parte* proof hearing without having filed a timely statement of intention to do so under this Section, this administrative court in its discretion may hear testimony and/or receive exhibits from the respondent, or may set a new trial date.

2831 NEW TRIALS

- 2831.1 A new trial may be granted to all or any of the parties and on all or part of the issues for any of the reasons for which rehearings have heretofore been granted in the courts of the United States or of the District of Columbia.
- 2831.2 Upon such motion, this administrative court may reopen the record in the matter, take additional testimony, amend findings of fact and conclusions of law or make new findings and conclusions and issue a new final order.
- 2831.3 Unless otherwise ordered by an Administrative Law Judge, the filing of a motion for a new trial shall not stay the effectiveness of the final order. If such a motion is timely filed, the final order shall not be deemed final for purposes of judicial review until the motion is ruled upon by the Administrative Law Judge or is denied by operation of law.
- 2831.4 Any motion for a new trial shall be filed within ten (10) days of service of the final order. The failure to comply with the requirements of this Section may result in the summary denial of the requested relief.
- 2831.5 No response to a motion for a new trial is required unless ordered by this administrative court, which order shall specify procedures and deadlines for future filings on the issue. This administrative court shall not grant such a motion unless it affords the opposing party an opportunity to respond.
- 2831.6 No later than ten (10) days after service of the final order, this administrative court, on its own, may order a new trial for any reason that would justify granting one on a party's motion. After giving the parties notice and an opportunity to be heard, this administrative court may grant a timely motion for a new trial for a reason not stated in the motion.
- 2831.7 When granting a new trial, this administrative court shall specify the grounds in its order.
- 2831.8 A motion filed pursuant to this Rule shall be deemed to be denied if the Administrative Law Judge has not ruled upon it within thirty (30) days of its filing. After the running of that 30-day period, the Administrative Law Judge in his or her discretion may choose to file a statement of reasons for denying the motion. The filing of any such statement shall not affect the running of any deadline for filing an appeal or petition for judicial review.

2832 RECONSIDERATION

- 2832.1 Reconsideration of a final or interlocutory order may be granted to all or any of the parties and on all or part of the issues for any of the reasons for which reconsideration has heretofore been granted in the courts of the United States or of the District of Columbia.
- 2832.2 If a motion for reconsideration is granted, this administrative court may reopen the record in the matter, amend findings of fact and conclusions of law or make new findings and conclusions and issue a new order.
- 2832.3 Unless otherwise ordered by an Administrative Law Judge, the filing of a motion for reconsideration shall not stay the effectiveness of the order. With respect to a final order, if such a motion is timely filed, the order shall not be deemed final for purposes of judicial review until the motion is ruled upon by the Administrative Law Judge or is denied by operation of law.
- 2832.4 Any motion for reconsideration shall be filed within ten (10) days of service of a final order, and may be entertained within the presiding Administrative Law Judge's discretion after service of an interlocutory order. The failure to comply with the requirements of this Section may result in the summary denial of the requested relief.
- 2832.5 No response to a motion for reconsideration is required unless ordered by this administrative court, which order shall specify procedures and deadlines for future filings on the issue. This administrative court shall not grant such a motion unless it affords the opposing party an opportunity to respond.
- 2832.6 A motion filed pursuant to this Rule shall be deemed to be denied if the Administrative Law Judge has not ruled upon it within thirty (30) days of its filing. After the running of that 30-day period, the Administrative Law Judge in his or her discretion may choose to file a statement of reasons for denying the motion. The filing of any such statement shall not affect the running of any deadline for filing an appeal or petition for judicial review.

2833 RELIEF FROM FINAL ORDERS

- 2833.1 Clerical mistakes in orders or other parts of the record and errors arising therein from oversight or omission may be corrected by this administrative court at any time of its own initiative or on the motion of any party and after such notice, if any, as this administrative court orders. During the pendency of any proceeding for judicial review, such mistakes may be so corrected before the appeal is docketed in the reviewing court, and thereafter may be so corrected with leave of the reviewing court.

2833.2 On motion and upon such terms as are just, this administrative court may relieve a party or a party's legal representative from a final order for the following reasons: (1) mistake, inadvertence, surprise, or excusable neglect; (2) newly discovered evidence which by due diligence could not have been discovered in time to move for a new trial under Rule 2831; (3) fraud, misrepresentation, or other misconduct of an adverse party; (4) the final order is void; (5) a prior judgment upon which it is based has been reversed or otherwise vacated, or it is no longer equitable that the judgment should have prospective application; or (6) any other reason justifying relief from the operation of the final order.

2833.3 A motion for relief under Section 2833.2 shall be made within a reasonable time, and in no event more than ninety (90) days after service of the final order, or in the case of a final order issued by an agency other than OAH for a subject matter now under the jurisdiction of OAH, not later than March 22, 2005. The filing of such a motion does not affect the finality of an order or suspend its operation.

2833.4 This Rule does not limit the power of a court of competent jurisdiction to entertain an independent action to relieve a party from a final order, or to set aside a judgment for fraud upon this administrative court.

2834 HARMLESS ERROR

2834.1 No error in either the admission or the exclusion of evidence and no error or defect in any ruling or order or in anything done or omitted by this administrative court or by any of the parties is grounds for granting a new trial or for vacating, modifying or otherwise disturbing an order, unless refusal to take such action appears to this administrative court to be inconsistent with substantial justice.

2834.2 This administrative court at every stage of the proceeding must disregard any error or defect in the proceeding which does not affect the substantial rights of the parties.

2835 STAY OF FINAL ORDERS

- 2835.1 Unless otherwise provided by statute or by this administrative court, neither the filing of an appeal, a petition for review nor of any post-trial motion shall stay the effectiveness of a final order. A stay shall be granted only upon order of this administrative court.
- 2835.2 In determining whether to grant a stay, this administrative court shall assess whether the movant is likely to succeed on the merits, whether denial of the stay will cause irreparable injury, whether granting the stay will harm other parties, and whether the public interest favors granting a stay as set forth in *Kufлом v. District of Columbia Bureau of Motor Vehicle Services*, 543 A.2d 340, 344 (D.C. 1988).
- 2835.3 This Rule does not limit any power of an appellate court or of a judge or justice thereof to stay proceedings during the pendency of a petition for review, or to suspend, modify, restore, or grant an injunction during the pendency of an application for judicial review or a petition for review, or to make any order appropriate to preserve the status quo or the effectiveness of the judgment subsequently to be entered.

2836 INABILITY OF JUDGE TO PROCEED

- 2836.1 If a trial has commenced and the assigned Administrative Law Judge is unable to proceed, any other Administrative Law Judge may proceed with it upon certifying on the record familiarity with the record and determining that the proceedings in the case may be completed without prejudice to the parties.
- 2836.2 The successor Administrative Law Judge shall at the request of a party listen to the recorded testimony of any witness whose testimony is material and disputed, and may also listen to the recorded testimony of any other witness. If a recording of the trial or any part of the trial is unavailable, the successor Administrative Law Judge shall recall witnesses in accordance with the standards in D.C. Superior Court Rule 63.

2837 RECUSAL; ETHICS COMPLIANCE

- 2837.1 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, unless a different standard is required under the authority of the Act.
- 2837.2 Administrative Law Judges shall at all times be in compliance with the requirements of the OAH Ethics Manual, a copy of which shall be maintained by the Chief Administrative Law Judge or his or her designee.

2838 APPEARANCE OF ATTORNEYS

2838.1 An individual or other party may be represented before this administrative court by an attorney. Unless otherwise provided by statute or these Rules, only attorneys who are active members in good standing of the District of Columbia Bar may appear before this administrative court as a representative of a party.

2838.2 An attorney who is not a member of the District of Columbia Bar may appear before this administrative court consistent with District of Columbia Court of Appeals Rule 49 and other applicable law, upon the filing and granting of a motion to appear *pro hac vice*, in which the attorney shall declare under penalty of perjury:

- (a) That I have not applied for admission *pro hac vice* in more than five cases in this administrative court or in the courts of the District of Columbia during this calendar year;
- (b) That I am a member in good standing of the highest court(s) of the State(s) of _____ (list state all states);
- (c) That there are no disciplinary complaints pending against me for violation of the rules of the courts of those states;
- (d) That I have not been suspended or disbarred for disciplinary reasons from practice in any court;
- (e) That I do not practice or hold out to practice law in the District of Columbia;
- (f) That I have read all of the rules of this administrative court and the District of Columbia Court of Appeals, and have complied fully with District of Columbia Court of Appeals Rule 49. The reason(s) I am applying for admission *pro hac vice* are as follows: _____ (list all reasons); and
- (g) I acknowledge the jurisdiction of this administrative court and the courts of the District of Columbia over my professional conduct, and I 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*. I have applied for admission *pro hac vice* in this administrative court and in the courts of the District of Columbia _____ (list number) times previously in this calendar year.

2838.3 As part of any motion to appear *pro hac vice* under this Rule, the attorney must also provide satisfactory evidence that his or her client consents to

being represented by an attorney who is not a member of the District of Columbia Bar.

- 2838.4 Current law students active in *pro bono* legal clinics may appear before this administrative court with the consent and oversight of the supervising attorney assigned to them and in a manner consistent with District of Columbia Court of Appeals Rule 48, and under any limitations ordered by the presiding Administrative Law Judge.
- 2838.5 In addition to these Rules, the District of Columbia Rules of Professional Conduct shall govern the conduct of all attorneys appearing before this administrative court.
- 2838.6 Pursuant to Section 17 of the Act, and in the exercise of this administrative court's inherent authority to regulate and manage practice before it, *Ramos v. District of Columbia Department of Consumer and Regulatory Affairs*, 601 A.2d 1069, 1073-74 (D.C. 1992), the Chief Administrative Law Judge or presiding Administrative Law Judge may restrict the practice of any attorney appearing before this administrative court. Such restrictions may include, without limitation:
- (a) disqualification from a particular case;
 - (b) suspension of the privilege of practicing before this administrative court;
 - (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.
- 2838.7 The Chief Administrative Law Judge or presiding Administrative Law Judge may enter an order restricting practice in the event of a violation of these Rules or for other good cause. If imposing a disqualification or suspension, the attorney shall be given notice and opportunity to be heard either before the imposition of the suspension or disqualification, or as soon thereafter as is practicable.
- 2838.8 An Administrative Law Judge may exercise the authority under this Rule only against an attorney who has appeared before that judge in a case that continues to be pending. If an Administrative Law Judge exercises such authority, the affect of an order restricting practice shall be limited to the subject attorney's practice before the issuing judge. Nothing in this Rule limits the authority of the Chief Administrative Law Judge to enter a separate order restricting an attorney's privilege of practicing before this administrative court.

- 2839 APPEARANCE OF NON-ATTORNEYS**
- 2839.1 An individual may represent himself or herself in proceedings before this administrative court.
- 2839.2 An Administrative Law Judge may permit a party to be represented by a family member without charge or fee. An Administrative Law Judge may permit a party to be represented by an individual, or by a representative of any entity listed in Section 2839.4, if the party had a contractual relationship substantially related to the subject matter of the case that existed prior to the case arising (such as a landlord/tenant or owner/property manager relationship).
- 2839.3 An agency may be represented before this administrative court by the Corporation Counsel, an attorney assigned to the agency, or by a duly authorized agency employee when consistent with applicable law.
- 2839.4 A corporation, partnership, limited partnership, or other private legal entity may be represented in proceedings before this administrative court by a duly authorized officer, director, general partner, or employee.
- 2839.5 Pursuant to Section 17 of the Act, and in the exercise of this administrative court's inherent authority to regulate the practice of individuals who appear before it, *Ramos v. District of Columbia Department of Consumer and Regulatory Affairs*, 601 A.2d 1069, 1073-74 (D.C. 1992), the Chief Administrative Law Judge or an Administrative Law Judge may restrict the right of any individual to appear before this administrative court.
- 2839.6 The Chief Administrative Law Judge may enter an order restricting the right of an individual to appear before this administrative court in the event of a violation of these Rules or for other good cause. If imposing a disqualification or suspension, the individual shall be given notice and opportunity to be heard either before the imposition of the suspension or disqualification, or as soon thereafter as is practicable.
- 2839.7 An Administrative Law Judge may exercise the authority under this Rule only against an individual who has appeared before that judge in a case that continues to be pending. If an Administrative Law Judge exercises such authority, the affect of an order restricting the right of an individual to appear before this administrative court shall be limited to the subject individual's appearance before the issuing judge. Nothing in this Rule limits the authority of the Chief Administrative Law Judge to enter a separate order restricting an individual's right to appear before this administrative court.

2840 ADMINISTRATIVE COURT AND CLERK GENERAL PROVISIONS

- 2840.1 Unless a federal law or regulation or District of Columbia statute requires that a particular federal or District of Columbia procedure be observed, these Rules and any final or interlocutory order of this administrative court shall take precedence in the event of a conflict with other authority on any issue involving or relating to procedures of this administrative court. In determining whether an issue involves or relates to procedures of this administrative court, the presiding Administrative Law Judge shall follow the doctrine set forth in *Erie R.R. Co. v. Tompkins*, 304 U.S. 64 (1938), and related case law.
- 2840.2 Where a decision of an Administrative Law Judge is in conflict with a decision of a least one other Administrative Law Judge on the same issue, the Chief Administrative Law Judge may, upon motion by a party in a pending adjudicative case, or upon his or her own motion, assign three Administrative Law Judges who have not participated in either the pending adjudicative case or the conflicting decisions, to sit on a panel and decide all or part of the pending adjudicative case. In determining whether to convene a panel under this Section, the Chief Administrative Law Judge may consider, among other things, whether the panel is likely to provide clarity and guidance in an important legal issue before this administrative court. The denial of a request for a panel under this Section shall be deemed an interlocutory order.
- 2840.3 All papers to be filed in proceedings before this administrative court shall be filed in the Clerk's office. Unless otherwise provided by these Rules or ordered by the Chief Administrative Law Judge, no papers may be filed in the Clerk's office when this administrative court is closed, or before 9:00 AM or after 5:00 P.M. on days when this administrative court is open.
- 2840.4 Papers to be filed in an appellate proceeding or other proceeding before this administrative court may be subject to a filing fee in accordance with a fee schedule issued in accordance with Section 2840.5.
- 2840.5 By authority of the Chief Administrative Law Judge, the Clerk may create and, as necessary modify, a schedule of filing, copying and related fees consistent with applicable law, except that fees shall only apply in enforcement cases in which the amount in controversy exceeds \$500 when there is an amount in controversy. Fees shall be limited or waived in accordance with an order of this administrative court pursuant to Section 8 of the Act or other applicable law. Where a fee applies, any submission filed without tender of the required fee may be rejected for filing by the Clerk or stricken by order of the presiding Administrative Law Judge. The schedule of filing, copying and related fees may be published in the D.C. Register when created and if modified.

- 2840.6 This administrative court shall be a weapons and illegal drug free area. Weapons, including, but not limited to, guns, knives, box cutters, chemical spray and pepper spray, are strictly prohibited and subject to confiscation. This Section does not apply to law enforcement officers employed by the District of Columbia or an agency of the United States either in uniform or with a prominently displayed badge and identification.
- 2840.7 No items that are potentially toxic, dangerous or otherwise present a threat to health or safety, such as sharp objects or refuse, shall be brought into the courtrooms of OAH, its common areas or offices, or offered as evidence in any proceeding before this administrative court unless identified to the Clerk's office at least ten (10) or more days prior to the proceeding so that sufficient safeguards may be put in place. A partial list of prohibited items shall be made available in the Clerk's office.
- 2840.8 An Administrative Law Judge, security personnel or administrative court staff may order the temporary removal of any individual who presents a threat to safety or is causing or contributing to a disruption of the administrative court's operations or proceedings.
- 2840.9 A monetary sanction pursuant to Section 12 of the Act shall not be imposed by an Administrative Law Judge unless it is in writing, and either issued as part of a final order, or subsequent to the issuance of a final order, in an adjudicated case.
- 2840.10 The use of cellular phones, pagers or other devices that emit noise and/or are capable of wireless transmission or reception shall not be permitted in courtrooms during a proceeding, except that such devices are permitted if they are set in a non-audible mode and are not used for transmission during a proceeding.
- 2840.11 Any organization, group, or individual may possess or use drawing or sketching equipment in a hearing room so long as the possession or use of such equipment does not interfere with the rights of the parties to a fair hearing, does not interfere with the fairness or conduct of a proceeding, and where such use is not precluded by statute, regulation, or order.
- 2840.12 Broadcasting, videotaping, photographing, or audio recording by any organization, group, or individual is not permitted in hearing rooms, witness rooms, waiting rooms, reception areas, or any other rooms or areas regularly utilized by OAH for administrative court operations.
- 2840.13 For purposes of this Rule, a hearing or proceeding is any matter in which an Administrative Law Judge or the Chief Administrative Law Judge presides.
- 2840.14 Nothing in this Rule shall be construed to limit the authority of the Chief Administrative Law Judge to authorize the recordation of a proceeding for

training or evaluative purposes, to the extent that the Chief Administrative Law judge has determined that the use of such equipment does not interfere with the fairness or conduct of a proceeding, and where such use is not precluded by statute, regulation, or order.

2840.15 Unless otherwise prohibited by applicable law or by order of this administrative court, proceedings before this administrative court shall be open to the public.

2840.16 Unless otherwise provided in these Rules or prohibited by applicable law, the Chief Administrative Law Judge may, in his or her discretion, delegate the authority of his or her office to an Administrative Law Judge, and an Administrative Law Judge may delegate any ministerial or administrative authority of his or her office to the Clerk or his or her designees.

2841 REPEAL OF BOARD OF APPEALS AND REVIEW RULES OF PROCEDURE

2841.1 Title 1, Chapter 5 of the District of Columbia Municipal Regulations is hereby repealed effective March 22, 2004.

2842 REVIEW OF RULES

2842.1 The Chief Administrative Law Judge shall review these Rules within thirty-six (36) months of their final promulgation, and, in his or her discretion, shall issue revised rules for public comment and promulgation after the review.

2843-2898. RESERVED

2899 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.*

“Adjudicated case or matter” means a contested case or other administrative adjudicative proceeding before the Mayor or any agency that results in a final disposition by order and in which the legal rights, duties, or privileges of specific parties are required by any law or constitutional provision to be determined after an adjudicative hearing of any type. The term “adjudicated case” includes, without limitation, any required administrative adjudicative proceeding arising from a charge by an agency that a person committed an offense or infraction that is civil in nature.

“Administrative court” or “OAH” means the Office of Administrative Hearings as established pursuant to the Act.

"Administrative Law Judge," unless otherwise specified, means an administrative law judge of the Office of Administrative Hearings acting under authority of the Act and other applicable law.

"Administrative Procedure Act" means D.C. Official Code §§ 2-501 et seq.

"Administrative rule" shall have the meaning provided in D.C. Official Code § 2-502(6).

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

"Appellate Proceeding" means any case in which any applicable law grants jurisdiction to this administrative court to review a decision made by another tribunal after an opportunity for an evidentiary hearing in that tribunal.

"Authorized representative" means an attorney who is an active member in good standing of the District of Columbia bar, or, when permitted by applicable law, an individual designated by a party to represent the party.

"Business day" means any day on which this administrative court is open for usual operations, and that is not a Saturday, Sunday, legal holiday or inaccessible day.

"Chief Administrative Law Judge" means the Chief Administrative Law Judge of OAH as authorized by Section 7 of the Act, or any person serving as Acting Chief Administrative Law Judge or interim Chief Administrative Law Judge of OAH.

"Clerk" or "Clerk of Court" means the Clerk of the Office of Administrative Hearings or authorized designee.

"Contested case" shall have the meaning provided that term in D.C. Official Code § 2-502(8).

"Day" means calendar day, unless otherwise specified.

"District of Columbia" means any agency, department, commission, and instrumentality of the District of Columbia government, but does not include the Superior Court of the District of Columbia or the District of Columbia Court of Appeals.

"Filed" means, unless otherwise specified, when the document is actually received by the Clerk of Court.

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

"Inaccessible day" means any day on which inclement weather or other conditions have resulted in the closing of this administrative court, or when the Mayor has closed the District of Columbia government or has publicly announced an unscheduled leave policy for the District of Columbia government due to inclement weather or other conditions.

"Individual" means a natural person.

"Interlocutory order" means any decision of an Administrative Law Judge in a matter other than an order as defined in the Act.

"Legal holiday" means New Year's Day, Birthday of Dr. Martin Luther King, Jr., President's Day, Memorial Day, Independence Day, Labor Day, Columbus Day, Veterans Day, Thanksgiving Day, Christmas Day, and any other day designated as a legal holiday by the President of the United States, Congress, the Mayor or the Council of the District of Columbia.

"Notice of Infraction" means the charging document issued by the Government pursuant to the Civil Infractions Act of 1985, D.C. Official Code §§ 2-1801.01 et seq.

"Notice of Violation" means the charging document issued by the Government pursuant to the Litter Control Administration Act of 1985, D.C. Official Code §§ 8-801 et seq.

"Official record" means the record of proceedings created and maintained by this administrative court.

"Order" shall have the meaning provided that term in D.C. Official Code § 2-502(11).

"Paper" means orders, pleadings, motions, exhibits or any other non-electronic document in any adjudicated case.

"Party" shall have the meaning provided that term in D.C. Official Code § 2-502(10).

"Petitioner" means the party presenting a request for relief or other action from this administrative court.

"Pleading" means a paper in which a party to a proceeding before this administrative court sets forth or responds to allegations, claims, denials or defenses.

"Presiding Administrative Law Judge" or "Presiding Judge" means an Administrative Law Judge who presides in a particular matter. It is not used in these Rules to refer to any category of Administrative Law Judges with specified management or administrative responsibilities

“Proceeding” means a trial, hearing or other matter related to an adjudicated case before this administrative court.

“Request for hearing” means, unless otherwise specified, an oral or written request for a formal examination by this administrative court of issues of law and fact between parties and includes, but is not limited to, appeals from initial determinations of unemployment compensation claims as well as Rental Accommodation and Conversion Division petitions for hearings.

“Respondent” means the party answering the petitioner’s request for relief or other action from this administrative court.

“Rule” or “Rules” means the rules of practice and procedure set forth in Chapters 28 and 29 of this Title.

“Third party commercial carrier” means a carrier that is in the business of regularly accepting and delivering papers, such as Federal Express or the United Parcel Service.

“Trial” or “hearing” means a formal examination by this administrative court of issues of law and fact between parties, which may involve the offering of sworn testimony or documentary or photographic evidence.

Comments on these proposed regulations should be submitted, in writing, to Mr. Tracy J. BeMent, Acting Chief Administrative Officer, Office of Administrative Hearings, 825 North Capitol Street, N.E., Suite 4150, Washington, D.C. 20002, within thirty (30) days of the date of publication of this notice in the D.C. Register. Copies of these proposed regulations are available without charge from the above address.

**DISTRICT OF COLUMBIA
OFFICE OF ADMINISTRATIVE HEARINGS**

NOTICE OF EMERGENCY AND PROPOSED RULEMAKING

The Chief Administrative Law Judge of the Office of Administrative Hearings (OAH), pursuant to the authority set forth in section 8 of the Office of Administrative Hearings Establishment Act of 2001 (the "Act") (D.C. Law 14-76; D.C. Official Code § 2-1831.05(a)(7)), gives notice of his intent to adopt, on an emergency basis, the following amendment to add Chapter 29 to Title 1 of the District of Columbia Municipal Regulations (DCMR). These emergency rules prescribe the rules of appellate practice and procedure in matters before OAH. Adoption of these rules on an emergency basis will ensure that there will be published appellate rules of practice and procedure in effect for the new OAH at the time it is scheduled to begin operations on March 22, 2004. Therefore, adoption of these rules on an emergency basis is necessary to protect public health, safety and welfare. These emergency rules were adopted on February 25, 2004, and became effective on that date.

The Chief Administrative Law Judge also gives notice of his intent to take final rulemaking action to adopt the amendment adding a new Chapter 29 to Title 1 DCMR in not less than thirty (30) days from the date of publication of this notice in the *D.C. Register* in accordance with § 6(a) of the District of Columbia Administrative Procedures Act, D.C. Official Code § 2-505(a).

These emergency rules will expire on June 23, 2004, 120 days after their adoption, or upon publication of a notice of final rulemaking in the *D.C. Register*, whichever occurs first.

Title 1 DCMR is amended by adding a new Chapter 29 to read as follows:

CHAPTER 29

OFFICE OF ADMINISTRATIVE HEARINGS APPELLATE RULES OF PRACTICE AND PROCEDURE

Rules

2900	Appellate Proceedings – In General
2901	Appellate Proceedings – Notice of Appeal
2902	Appellate Proceedings – Initial Procedures
2903	Appellate Proceedings – Stays
2904	Appellate Proceedings – Filing the Record
2905	Appellate Proceedings – Transcripts
2906	Appellate Proceedings – Briefs
2907	Appellate Proceedings – Oral Argument
2908	Appellate Proceedings – Final Order
2909	Appellate Proceedings – Reconsideration
2910	Appellate Proceedings – Costs and Mandate
2911	Appellate Proceedings – Pending Cases
2912-2998	Appellate Proceedings – Reserved
2999	Appellate Proceedings – Definitions

2900 Appellate Proceedings – In General

- 2900.1 This Rule, and Rules 2901 through 2912, establish additional procedures for all appellate proceedings in this administrative court.
- 2900.2 Unless otherwise provided in this Chapter, Rules 2800, 2807-2812, 2814-2816, 2835-2842, and 2899 of Title 1 DCMR Chapter 28 apply to all appellate proceedings.
- 2900.3 When any procedural matter in an appellate proceeding has not been specifically addressed in these Rules, this administrative court may rely upon the rules of the District of Columbia Court of Appeals as persuasive authority.

2901 Appellate Proceedings – Notice of Appeal

- 2901.1 A party may commence an appellate proceeding in this administrative court only by filing a notice of appeal with the Clerk. The notice shall include:
- a. a statement, in either the caption or the body of the notice, naming the party or parties filing the appeal;
 - b. A copy of the order from which the appeal is taken;

- c. A concise statement indicating why the appellant believes the order is wrong;
- d. The signature, printed full name, address, telephone number, and fax number, if any, of the party or parties taking the appeal or of the attorney filing the notice of appeal; and
- e. A certificate of service showing that the notice has been served upon all other parties who appeared in the proceeding and upon the tribunal that issued the order being appealed.

2901.2 A notice of appeal filed on behalf of more than one party may name those parties generally with terms such as "all respondents," "the respondents except A," "the respondents A, B, et al." or similar terms. An appeal shall not be dismissed for informality of form or title of the notice of appeal, or for failure to name a party whose intent to appeal is otherwise clear from the notice.

2901.3 A notice of appeal filed on behalf of a party who is not represented by counsel is considered filed on behalf of that party and his or her spouse if a party, unless the notice clearly indicates otherwise.

2901.4 A notice of appeal filed on behalf of a party who is not represented by counsel who is a co-owner or co-lessee of property is considered filed on behalf of that party and his or her co-owners or co-lessees, unless the notice clearly indicates otherwise.

2901.5 Unless otherwise required by statute, any notice of appeal must be filed within fifteen (15) days after service of the final order from which the party is appealing. The filing date of any notice of appeal shall be the date it is received by the Clerk.

2901.6 If a party timely files a petition for rehearing or reconsideration in accordance with a statute or the rules of the agency that issued the order, the time to appeal as fixed by Section 2901.5 runs from the date of service of the order disposing of the petition.

2901.7 This administrative court has no jurisdiction to extend the deadlines established in Sections 2901.5 and 2901.6.

2902 Appellate Proceedings – Initial Procedures

2902.1 Upon the filing of a notice of appeal, the case shall be assigned to an Administrative Law Judge who shall preside in the case. If separate appeals from the same order are filed, they shall be assigned to the same Administrative Law Judge.

- 2902.2 When an appellate proceeding is assigned to an Administrative Law Judge, he or she shall review the notice of appeal and the underlying order and shall make a preliminary determination whether this administrative court has jurisdiction of the appeal.
- 2902.3 If the presiding Administrative Law Judge preliminarily determines that this administrative court has jurisdiction of the appeal, he or she shall issue an order in accordance with Section 2904.1 directing the filing of the record.
- 2902.4 If the presiding Administrative Law Judge preliminarily determines that this administrative court does not have jurisdiction or that there is a substantial question whether this administrative court has jurisdiction, the Administrative Law Judge shall issue an order directing the appellant to show cause why the appeal should not be dismissed for lack of jurisdiction. Any such order shall contain a statement of the reasons why this administrative court may not have jurisdiction of the appeal. The order shall require the appellant to file a response within fourteen (14) days of service, and shall permit any other party to file a reply within seven (7) days of service of the response. For good cause shown, the Administrative Law Judge may alter those deadlines.
- 2902.5 Upon considering the response to the order to show cause and any reply, the presiding Administrative Law Judge shall issue an interlocutory order deciding whether this administrative court has jurisdiction of the appeal. If the Administrative Law Judge decides that this administrative court does not have jurisdiction, he or she shall dismiss the appeal. If the Administrative Law Judge decides that this administrative court has jurisdiction, he or she shall issue an order in accordance with Section 2904.1 directing the filing of the record.
- 2902.6 Sections 2902.2 to 2902.5 of this Rule shall not preclude any party from filing a motion to dismiss the appeal for lack of jurisdiction.
- 2903 Appellate Proceedings – Stays**
- 2903.1 Filing a notice of appeal does not stay the order being appealed.
- 2903.2 A party seeking a stay of an order pending appeal ordinarily shall first seek a stay from the tribunal that issued the order. A party may be relieved from this requirement if it demonstrates a compelling reason why it is not possible to seek a stay from the tribunal that issued the order.
- 2903.3 If the tribunal that issued the order denies a stay, a party then may seek a stay from this administrative court by filing a motion for stay. The motion shall state the legal reasons for granting a stay and the facts relied upon. All factual assertions shall be supported by an affidavit or by a statement signed in accordance with Section 2821.7 of Title 1 DCMR Chapter 28.

2903.4 A party seeking a stay shall attach to its motion a copy of the order that it is seeking to stay and a copy of the order denying a stay issued by the tribunal below. The party also shall attach any relevant portions of the record in the tribunal below.

2903.5 In deciding whether to grant a stay, the presiding Administrative Law Judge shall consider whether the movant is likely to succeed on the merits of the appeal, whether denial of the stay will cause irreparable injury, whether granting the stay will harm other parties, and whether the public interest favors granting a stay. *See Kufлом v. District of Columbia Bureau of Motor Vehicle Services*, 543 A. 2d 340, 344 (D.C. 1988).

2904 Appellate Proceedings – Filing the Record

2904.1 If the presiding Administrative Law Judge preliminarily determines that this administrative court has jurisdiction of an appeal, or issues an interlocutory order determining that this administrative court has jurisdiction pursuant to Section 2902.5, he or she shall issue an order to the tribunal that issued the order on appeal requiring it to file the record in this administrative court. The record shall consist of the following original documents or copies:

- a. The order from which the appeal is taken;
- b. Any other orders issued by the tribunal in the case;
- c. The papers and exhibits filed with the agency;
- d. Any transcript of the proceedings on file with the agency; and
- e. A certified list adequately describing all documents, transcripts, exhibits and other materials constituting the record on appeal.

2904.2 The tribunal shall file the record within thirty (30) days of service of the order requiring filing, and shall send a copy of the certified list required by Section 2904.1(e) to all parties to the appeal. The presiding Administrative Law Judge may extend the thirty (30)-day deadline for good cause.

2904.3 Any party objecting to the transmission of, or to the failure to transmit, any portion of the record must file a motion stating the objection within fifteen (15) days of service of the copy of the certified list required by Section 2904.1(e). Absent good cause, failure to file such a motion shall preclude a party from later objecting to the sufficiency of the record.

- 2904.4 If the tribunal does not file the record within the deadline established by Section 2904.2, the presiding Administrative Law Judge may direct the parties to the appellate proceeding to appear for a prehearing conference to settle the record. Each party shall bring to the conference copies of any documents in its possession that should be included in the record, as required by Section 2904.1. A party's failure to bring a copy of a document to the conference shall be grounds for precluding that party from arguing that the document should be in the record, absent good cause for the failure.
- 2904.5 Prior to any prehearing conference ordered pursuant to Section 2904.4, the representative of any District of Columbia Government party to the appellate proceeding must confer with the docket clerk or other appropriate official of the tribunal whose order is being appealed and must attempt to obtain a copy of the documents required to be in the record pursuant to Section 2904.1. No later than three (3) days before the prehearing conference, the Government representative must file an affidavit demonstrating compliance with this Section.
- 2904.6 When the prehearing conference is convened, the parties initially shall confer with each other to attempt to agree upon the contents of the record. Pursuant to Rule 2815 of Title 1 DCMR Chapter 28, the presiding Administrative Law Judge may designate a staff attorney or mediator to assist the parties in their discussions. If the parties reach agreement upon the contents of the record, they shall file a copy of the documents constituting the record on the day of the prehearing conference or on such other day as the presiding Administrative Law Judge orders, for good cause shown.
- 2904.7 If the parties are unable to agree upon the contents of the record at the prehearing conference, the presiding Administrative Law Judge shall rule upon all disputes concerning the contents of the record at the conference. The parties shall then file copies of the documents constituting the record on the day of the prehearing conference or on such other day as the presiding Administrative Law Judge orders, for good cause shown.
- 2904.8 If the appellant has been served with an order convening a prehearing conference and fails to appear without good cause, the presiding Administrative Law Judge may dismiss the appeal.
- 2904.9 If the appellee has been served with an order convening a prehearing conference and fails to appear without good cause, the conference shall go forward in his or her absence.
- 2904.10 A Government representative who fails, without good cause, to obey an order requiring compliance with Section 2904.5 shall be subject to

sanctions in accordance with D.C. Official Code § 2-1831.09(8) and Title 1 DCMR Chapter 28.

- 2904.11 In place of the record on appeal as defined in Section 2904.1, the parties may prepare, sign, and submit to the tribunal that issued the decision on appeal a statement of the case showing how the issues presented by the appeal arose and were decided by the tribunal. The statement must set forth only those facts averred and proved or sought to be proved that were essential to the resolution of the issues. If the statement is accurate, it — together with any additions that the tribunal may consider necessary to a full presentation of the issues on appeal — must be approved by the tribunal and must then be certified to this administrative court as the record on appeal. Any such statement must be filed within the deadline specified in Section 2904.2.
- 2904.12 The Clerk shall return any record filed by the tribunal that issued the order under review upon the expiration of the deadline for seeking judicial review of this administrative court's order disposing of the appeal, or, if any party seeks judicial review of this administrative court's order, upon the conclusion of all judicial review proceedings. At that time, the Clerk shall also transmit copies of the final order deciding the appeal, any order deciding a motion for reconsideration, and any final order or mandate from a reviewing court.
- 2905 Appellate Proceedings – Transcripts**
- 2905.1 Transcripts are not necessary in every appellate proceeding. A full or partial transcript is necessary only as required by this Rule.
- 2905.2 If the appellant intends to argue on appeal that a finding or conclusion is unsupported by the evidence or is contrary to the evidence, or that a hearing examiner's ruling at trial was erroneous, the appellant must include in the record a transcript of all the proceedings relevant to the issue. *See Cobb v. Standard Drug Co.*, 453 A.2d 110 (D.C. 1982). Parties should note that, depending upon the issues on appeal, a full transcript of proceedings may not necessarily be required by this Section. A partial transcript may be sufficient if it fully and fairly discloses all proceedings pertinent to the issues on appeal.
- 2905.3 A recording of the hearing does not satisfy the requirement of a transcript.
- 2905.4 It is the appellant's duty to ascertain whether all required transcripts are on file with the tribunal that issued the order being appealed and to arrange for the preparation and filing of any transcript required by this Rule that is not on file with that tribunal.

- 2905.5 The appellant must order all required transcripts within ten (10) days of service of an order in accordance with Section 2904.1 requiring the filing of the record. Unless the entire transcript is ordered, within the ten (10) days provided in the preceding sentence, the appellant must serve on all other parties a statement of the issues the appellant intends to present on appeal and a copy of the transcript order. Within ten (10) days of service of the statement of issues and transcript order, any other party shall serve upon the appellant a designation of additional portions of the transcript to be ordered, which are reasonably necessary for full consideration of the issues raised by the appellant. The appellant shall thereafter order those additional portions, or shall seek an order from this administrative court requiring the appellee to order those portions. The presiding Administrative Law Judge shall issue such an order only if the appellant demonstrates that the portions ordered by the appellee are not reasonably necessary for full consideration of the issues raised by the appellant.
- 2905.6 Any transcript ordered by a party pursuant to this Rule shall be filed with this administrative court and not with the tribunal that issued the order being appealed. Unless otherwise ordered by the presiding Administrative Law Judge for good cause shown, a party required to order any transcripts shall file the transcripts within ninety (90) days of the issuance of an order pursuant to Section 2904.1 requiring the filing of the record, and shall make appropriate arrangements with the court reporter to ensure compliance with that deadline. If any transcripts are not filed within the deadline established by this Section, the missing transcripts shall not be considered as part of the record on appeal.
- 2905.7 Any motion to correct a filed transcript must be filed within fifteen (15) days of the filing of the transcript. The presiding Administrative Law Judge may decide all such motions or, in his or her discretion, may refer the motion to the tribunal that issued the decision under review. Failure to file a motion to correct a transcript within the deadline established by this Section shall preclude a party from challenging the accuracy of the transcript, except that the presiding Administrative Law Judge may ignore obvious typographical errors or other errors where the meaning is clear.
- 2905.8 Within thirty (30) days of issuance of an order requiring the filing of the record pursuant to Section 2904.1, the appellant shall file and serve a statement that no transcripts shall be ordered or demonstrating that all required transcripts have been ordered and that satisfactory arrangements for the cost of such transcripts have been made with the court reporter. The Chief Administrative Law Judge may prescribe a form to be used in complying with this obligation.

2906 Appellate Proceedings – Briefs

- 2906.1 After filing of the record, the presiding Administrative Law Judge shall issue an order setting a briefing schedule. Briefs generally shall be due according to the following schedule:
- a. If no transcripts have been ordered, the appellant's brief shall be due thirty (30) days after the filing of the record, the appellee's brief shall be due thirty (30) days after service of the appellant's brief, and the appellant's reply brief, if any, shall be due fourteen (14) days after service of the appellee's brief.
 - b. If a transcript has been ordered, the appellant's brief shall be due thirty (30) days after filing of the transcript, or thirty (30) days after expiration of the deadline for filing the transcript, whichever is earlier. The appellee's brief shall then be due thirty (30) days after service of the appellant's brief and the appellant's reply brief, if any, shall be due fourteen (14) days after service of the appellee's brief.
 - c. For good cause shown, the presiding Administrative Law Judge may alter the briefing schedule set forth above.
- 2906.2 As an alternative to filing a brief, an appellant may elect to rely upon the statement in the notice of appeal specifying why the order under review is wrong. *See* Section 2901.1(c). An appellant who elects to do so must file a statement notifying this administrative court of its decision to do so no later than the deadline for the filing of the appellant's brief.
- 2906.3 If the appellant does not file a brief or a statement pursuant to Section 2906.2 before expiration of the deadline, the presiding Administrative Law Judge may dismiss the appeal. If the appellee does not file a brief before expiration of the deadline, the presiding Administrative Law Judge may decide the appeal based solely upon the appellant's submission.
- 2906.4 The briefs of the appellant and the appellee shall contain the following, in the order specified:
- a. A cover page containing the caption of the case, the docket number, the title of the document (e.g., "Brief for Appellant," "Brief for Appellee," "Reply Brief for Appellant"), and the name and address of the counsel or individual submitting it;
 - b. A table of contents, with page references, unless the brief is ten (10) pages or less.
 - c. A statement of the issues presented on appeal;

- d. A statement of the case, briefly describing the nature of the case, the prior proceedings that have occurred and the ruling(s) being appealed, and showing how the issues on appeal were raised in the tribunal whose decision is being appealed;
- e. A statement of facts relevant to the issues presented on appeal, with appropriate references to the record;
- f. An argument, which may be preceded by a summary. The argument shall contain the party's contentions and the reasons for them, with citations to the legal authorities and portions of record upon which the party relies;
- g. A short conclusion stating the precise relief sought;
- h. The signature of the individual filing the brief; and
- i. A certificate of service showing that the brief has been served on all other parties to the appellate proceeding.

2906.5 If the appellant elects to file a reply brief, it shall contain the elements specified in Subsections (a), (b), (f), (g), (h) and (i) of Section 2906.4.

2907 Appellate Proceedings – Oral Argument

2907.1 After reviewing all briefs that have been timely filed, the presiding Administrative Law Judge shall decide whether to hear oral argument. If oral argument is to be heard, the presiding Administrative Law Judge shall issue an order setting the date and time for oral argument and the amount of time allotted to each party. If oral argument shall not be heard, the presiding Administrative Law Judge shall issue an order to that effect.

2907.2 If a party who has been served with an order setting oral argument fails, without good cause, to appear for the argument, the presiding Administrative Law Judge shall proceed to hear argument from any party that does appear.

2907.3 Any party that fails to file a brief or a statement pursuant to Section 2906.2 may not be heard at oral argument.

2908 Appellate Proceedings – Final Orders

2908.1 The presiding Administrative Law Judge shall decide each appellate proceeding on the basis of the record established before the tribunal that issued the decision under review, and shall issue an order explaining the reasons for the decision.

- 2908.2 Unless otherwise provided by statute, the presiding Administrative Law Judge shall set aside the decision under review only if:
- a. The order was issued without observance of procedures required by law;
 - b. The order is arbitrary, capricious, an abuse of discretion or otherwise not in accordance with the Constitution or applicable law; or
 - c. The order is not supported by substantial evidence in the record as a whole. In evaluating the evidence pursuant to this Subsection (c), the presiding Administrative Law Judge shall apply the same standard used by the District of Columbia Court of Appeals pursuant to Section 11(a)(3)(E) of the Administrative Procedure Act, D.C. Official Code § 2-510(a)(3)(E).

2908.3 The presiding Administrative Law Judge shall apply the rule of harmless error.

2908.4 The presiding Administrative Law Judge may affirm, reverse or modify the order under review and may remand a case for appropriate further proceedings. The presiding Administrative Law Judge may reverse or modify an order and/or remand a case only upon grounds presented to the tribunal below.

2909 Appellate Proceedings - Reconsideration

2909.1 A motion for reconsideration may be filed within ten (10) days of service of an order disposing of an appellate proceeding.

2909.2 Unless otherwise ordered by the presiding Administrative Law Judge, no response shall be filed to a motion for reconsideration of an order disposing of an appellate proceeding. No motion for reconsideration shall be granted unless the presiding Administrative Law Judge has ordered the filing of a response and has reviewed that response.

2909.3 The presiding Administrative Law Judge may issue an order denying a motion for reconsideration summarily, or, in the exercise of his or her discretion, may issue an order stating the reasons for denial of the motion. If the presiding Administrative Law Judge grants a motion for reconsideration, he or she must issue an order stating the reasons for the action.

2910 Appellate Proceedings – Costs and Mandate

2910.1 The prevailing party in an appellate proceeding may recover its costs from the adverse party.

- 2910.2 Allowable costs are limited to filing fees in this administrative court and the reasonable cost of any transcripts reasonably necessary for the appeal.
- 2910.3 A prevailing party shall file and serve a statement of its recoverable costs within ten (10) days of service of a final order. The pendency of a motion for reconsideration shall not alter this deadline. The statement shall be accompanied by receipts for all costs claimed, along with sufficient information for this administrative court to determine that the transcript costs are reasonable. Failure to file such a statement waives any claim for costs from the adverse party.
- 2910.4 Any opposition to the recovery of costs must be filed and served within seven (7) days of service of the statement of recoverable costs. Failure to file any such opposition waives a party's right to object to the claimed costs.
- 2910.5 After review of the parties' written submissions, the presiding Administrative Law Judge shall issue an order determining the amount of costs that must be paid to the prevailing party.
- 2910.6 This administrative court shall not issue a formal mandate at the conclusion of an appellate proceeding. Except as otherwise provided in this Chapter, the tribunal that issued the decision under review may not take any action in the case until the record is returned to it pursuant to Section 2904.12.
- 2911 Appellate Proceedings – Pending Cases**
- 2911.1 In every appellate proceeding transferred to this administrative court from the Board of Appeals and Review, the presiding Administrative Law Judge may issue an order requiring the appellant to file a statement specifying whether he or she wishes to continue the appeal.
- 2911.2 Any such statement shall be filed on a form approved by the Chief Administrative Law Judge, and shall be filed within thirty (30) days of service of an order issued pursuant to this Rule. Failure to file such a form in response to an order issued pursuant to Section 2911.2 shall be grounds for dismissal of the appellate proceeding for want of prosecution.
- 2912-2998 Appellate Proceedings – Reserved**
- 2999 Appellate Proceedings - Definitions**
- Unless otherwise provided, the definitions in Title 1 DCMR Chapter 28 apply to this Chapter.

Comments on these proposed regulations should be submitted, in writing, to Mr. Tracy J. BeMent, Acting Chief Administrative Officer, Office of Administrative Hearings, 825 North Capitol Street, N.E., Suite 4150, Washington, D.C. 20002, within thirty (30) days of the date of publication of this notice in the D.C. Register. Copies of these proposed regulations are available without charge from the above address.

DEPARTMENT OF CONSUMER AND REGULATORY AFFAIRS

NOTICE OF EMERGENCY RULEMAKING

CIVIL INFRACTIONS: SCHEDULE OF FINES AMENDMENTS

The Director of the Department of Consumer and Regulatory Affairs, pursuant to the authority set forth Section 104 and 105 of the Department of Consumer and Regulatory Affairs Civil Infractions Act of 1985, effective October 5, 1985 (the "Act"), (D.C. Law 6-42; D.C. Official Code § 2-1801.04); and Mayor's Order 99-68, dated April 28, 1999, hereby gives notice of the adoption on an emergency basis of amendments to Chapter 32 of Title 16 of the District of Columbia Municipal Regulations. These amendments will use a reserved section of the Civil Infractions Schedule of Fines (16 DCMR, Chapter 32), and establish fines for violations of Chapter 4 of Title 16 of the DCMR: Towing Service for Motor Vehicles. Currently, there are no provisions for the District government to assess civil fines against persons who do not comply with the municipal regulations while engaging in towing operations. This rulemaking is necessary in order to provide a civil fines structure for the issuance of notices of infractions to enforce recently amended towing regulations. The amendments will be placed in the formerly reserved section 3210, and will classify violations so as to make applicable civil infraction fines for violations of the rules for Towing Service for Motor Vehicles.

The inability to assess fines for violations of the towing regulations is having an immediate and detrimental effect on District's ability to effectively enforce the amended towing regulations and on the economic welfare of residents of the District who transact business with towing service providers. These circumstances constitute an emergency requiring immediate action. The adoption of this notice of emergency rulemaking will remove these detriments by allowing the public to receive the immediate benefit of enforceable towing regulations without undue delay.

This emergency rulemaking was adopted on February 25, 2004 and became effective on that date. The emergency rules will remain in effect for up to one hundred twenty (120) days unless superceded.

This emergency rulemaking adds a new section of infractions to the Civil Infractions Schedule of Fines (16 DCMR 32) for violations of 16 DCMR, Chapter 4-Towing Service for Motor Vehicles.

Chapter 32 of Title 16 DCMR (Consumers, Commercial Practices & Civil Infractions) (July 1998), is amended as follows to add:

- 3210 DCRA OFFICE OF INVESTIGATION, WEIGHTS AND MEASURES –
TOWING SERVICE FOR MOTOR VEHICLES INFRACTIONS
- 3210.1 [Reserved].
- 3210.2 Violation of any of the following provisions shall be a Class 2 infraction:

- (a) 16 DCMR § 401.2 (failure to permit inspection by an authorized government official, including inspecting and photographing of towing equipment, tow trucks, towing storage lots, logs and documents related to towing services initiated in the District);
- (b) 16 DCMR § 401.3 (failure to permit inspection of a towing service storage lot by officials of DCRA and other authorized government agencies);
- (c) 16 DCMR § 401.4 (interfering with an authorized inspection);
- (d) 16 DCMR § 401.5 (failure to surrender records upon lawful demand by an authorized government official);
- (e) 16 DCMR § 401.6 (submitting towing service records that were created after demand for inspection by an authorized government official; or, creating towing service records after an authorized government official demands an inspection);
- (f) 16 DCMR § 402.1 (owning a towing business without proper licensure);
- (g) 16 DCMR § 402.2 (owning a towing service storage lot without proper licensure);
- (h) 16 DCMR § 402.4(c) (failure to report discontinuance of availability of towing service storage lot to Director at least ten (10) days prior to discontinuance of availability);
- (i) 16 DCMR § 402.7 (failure to update information provided in an application for a license or endorsement to DCRA within fourteen (14) days of change);
- (j) 16 DCMR § 402.8 (failure to identify person with financial interest in towing business or towing service storage lot);
- (k) 16 DCMR § 402.9 (owning or operating a towing business or truck, or towing service storage lot within five (5) years of specified auto related misdemeanor or felony);
- (l) 16 DCMR § 403.1 (operating or using a tow truck without an authorized unique identifier);
- (m) 16 DCMR § 403.2 (unauthorized operation of a tow truck, or operating an unlicensed tow truck);
- (n) 16 DCMR § 403.4 (failure to display license in manner specified by the Director);

- (o) 16 DCMR § 404.1 (failure to maintain at least one fully equipped and licensed tow truck);
- (p) 16 DCMR § 404.2 (failure to mark cab of tow truck with trade name, primary location and primary telephone number, as specified);
- (q) 16 DCMR § 404.3 (failure to mark cab of tow truck with private towing and storage fees, as specified);
- (r) 16 DCMR § 404.4 (failure to mark cab of tow truck with alphanumeric identifier, as specified);
- (s) 16 DCMR § 404.5 (failure to equip tow truck with operable communication system, as specified; or, failure to produce a current permit and license, as required, to operate the communications system);
- (t) 16 DCMR § 404.11 (improper use of equipment while towing; or, towing without manufacturer's minimally specified equipment for a particular vehicle);
- (u) 16 DCMR § 405.1 (failure to locate secured storage lot in the District of Columbia; or, failure to provide descriptive signage on lot; or, failure to comply with other District laws and regulations; or, failure to comply with District zoning rules);
- (v) 16 DCMR § 406.3 (failure to obtain a towing control number before initiating a public tow);
- (w) 16 DCMR § 406.4 (failure to provide information to DPW before initiating a tow from private real property);
- (x) 16 DCMR § 406.7 (towing from private property without consent of the owner and without a citation for the vehicle issued by law enforcement personnel; or, towing from private property without being directed by a police officer in an emergency; or, failure to comply with provisions of D.C. Official Code §§ 50-2651 through 50-2654 (2001));
- (y) 16 DCMR § 408.1 (charging rates for public tows that exceed rates specified in the Director's Schedule of Maximum Rates in § 408.1);
- (z) 16 DCMR § 408.2 (charging rates for private tows that exceed rates specified in the towing business's Basic Business License Endorsement Application);
- (aa) 16 DCMR § 408.3 (failure to submit documentary evidence to Director within seventy-two (72) hours after collecting extra charges under extraordinary circumstances; or, failure to provide a refund of disapproved charges within seventy-two (72) hours of receipt of notice of disapproval);

- (bb) 16 DCMR 408.4 (towing storage lot failure to remain open as required for the reclaiming of vehicles);
- (cc) 16 DCMR § 408.5 (charging for towing service, in response to a dispatch, after authorized official determines that service is not required; or, failure to notify DPW that a public tow has been discontinued);
- (dd) 16 DCMR § 408.6 (failure to discontinue tow and release vehicle upon request by owner/operator and after payment of lawful rate (and concurrence of requesting official, if present; or, failure to notify DPW that a tow has been discontinued);
- (ee) 16 DCMR § 408.8 (failure to accept lawful payment for towing services rendered);
- (ff) 16 DCMR § 408.10 (performing repair work on a public tow vehicle without written consent of the owner or owner's agent);
- (gg) 16 DCMR § 409.3 (charging for services not provided);
- (hh) 16 DCMR § 409.4 (failure to exhibit statements or receipts upon request; or, failure to retain statements and receipts for three (3) years from date of issuance);
- (ii) 16 DCMR § 409.6 (assessing charges for providing unnecessary services; or, assessing charges for the use of unnecessary equipment);
- (jj) 16 DCMR § 409.7 (failure to release vehicle after tender of lawful payment by owner or owner's agent);
- (kk) 16 DCMR § 410.1 (operating or offering to engage in the towing business without valid licensure; or, operating a towing storage lot without valid licensure);
- (ll) 16 DCMR § 410.3 (unauthorized removal of vehicle involved in accident);
- (mm) 16 DCMR § 410.8 (installing or maintaining a receiver capable of tuning to MPD radio frequencies);
- (nn) 16 DCMR § 410.9 (soliciting or providing unauthorized towing service at the scene of an accident);
- (oo) 16 DCMR § 410.10 (depositing a vehicle that is inoperable or in disrepair upon public space, without direction from an authorized official; or, depositing a vehicle that is inoperable or in disrepair upon private property without permission of the owner of the property);

- (pp) 16 DCMR § 410.11 (failure to provide an itemized receipt for charges related to towing or storing of a vehicle);
- (qq) 16 DCMR § 410.14 (failure to surrender suspended, revoked or canceled license or endorsement);
- (rr) 16 DCMR § 410.16 (permitting the unlawful use of a towing license or endorsement; or, the unlawful use of a towing license or endorsement);
- (ss) 16 DCMR § 410.18 (towing vehicles in the District of Columbia without current insurance coverage, as required);
- (tt) 16 DCMR § 411.3 (failure to appear when summoned by the Director);
- (uu) 16 DCMR § 411.8 (performing towing services, including operating a towing service storage lot, without a license or endorsement; or, performing towing services, including operating a towing service storage lot, with a license that has been revoked, cancelled or suspended);
- (vv) 16 DCMR § 411.9 (failure to remove accident debris from roadway before towing a vehicle involved in a collision); and
- (ww) 16 DCMR § 411.11 (failure to provide documentary proof of current insurance coverage, upon the request of any District government official).

3210.3

Violation of any of the following provisions shall be a Class 3 infraction:

- (a) 16 DCMR § 400.8 (failure to provide insurance information, upon request by the owner or operator of a towed vehicle, as requested);
- (b) 16 DCMR § 405.3 (failure to contact DPW with required information prior to releasing a public tow vehicle);
- (c) 16 DCMR § 405.7 (failure to provide "Owner's Bill of Rights for Towed Vehicles" to vehicle owner or operator on the scene before a tow; or, failure to post "Owner's Bill of Rights for Towed Vehicles" at towing service storage lot);
- (d) 16 DCMR § 406.3 (failure to display towing control number as prescribed by DPW; or, failure to use towing control number on documents related to the tow);
- (e) 16 DCMR § 406.5 (failure to obtain towing control number after emergency; or, failure to provide information as required after an emergency);

- (f) 16 DCMR § 406.8 (failure to assume responsibility for loss or damaged sustained as a result of a public tow; or, failure to provide appropriately trained personnel to tow vehicles);
- (g) 16 DCMR § 407.2 (initiating the private tow of a vehicle without obtaining written consent, as specified);
- (h) 16 DCMR § 408.7 (failure to release vehicle to authorized person when presented with proof of personal identification and lawful payment);
- (i) 16 DCMR § 408.9 (failure to provide Owner's Bill of Rights for Towed Vehicles upon release of vehicle; or, failure to provide legal authority for towing of vehicle, including towing control number; or, failure to provide itemized charges; or, failure to provide a receipt);
- (j) 16 DCMR § 408.11 (failure to provide separate form for written authorization of repair work);
- (k) 16 DCMR § 409.1 (for private tow: failure to furnish an itemized estimate of charges; or, failure to furnish an itemized estimate of charges on approved form; or, failure to obtain signature of owner or operator before initiating tow);
- (l) 16 DCMR § 409.3 (failure to document actual amount paid; or, failure to sign receipt);
- (m) 16 DCMR § 410.4 (soliciting or requiring repair work as a condition for towing of vehicle);
- (n) 16 DCMR § 410.5 (removing a vehicle from the scene of an accident or event and depositing it upon public space, without direction from a police officer);
- (o) 16 DCMR § 410.6 (charging more than one towing fee for towing to a repair facility owned or operated by person or entity conducting tow);
- (p) 16 DCMR § 410.7 (towing to a repair facility without prior written consent); and
- (q) 16 DCMR § 410.17 (failure to perform tow in accordance with vehicle manufacturer's instructions; or, failure to perform a tow in accordance with the tow crane manufacturer's instructions).

- 3210.4 Violation of any of the following provisions shall be a Class 4 infraction:
- (a) 16 DCMR § 405.2(b), (c), (d) (failure to maintain a log; or, failure to properly record entries in log; or, failure to retain log for inspection three (3) years after last entry);
 - (b) 16 DCMR § 408.12 (using an improper form to obtain consent for repair work on a public tow vehicle);
 - (c) 16 DCMR § 409.2 (failure to provide complete information in itemized estimate of charges);
 - (d) 16 DCMR § 410.2 (misrepresentation); and
 - (e) 16 DCMR § 411.10 (failure to report the presence of alleged hazardous materials, as required).
- 3210.5 Violation of any of the following provisions shall be a Class 5 infraction:
- (a) 16 DCMR § 404.6 (failure to maintain tie-down devices, chains, or straps, as specified);
 - (b) 16 DCMR § 404.7 (engaging in recovery towing without proper equipment, as specified);
 - (c) 16 DCMR § 404.8 (operating a crane tow truck without proper equipment, as specified);
 - (d) 16 DCMR § 404.9 (operating wheel lift tow truck without proper equipment, as specified);
 - (e) 16 DCMR § 404.10(a-h) (failure to maintain equipment in good working order);
 - (f) 16 DCMR § 405.4 (failure to clearly designate or identify towing business assigned to each apportioned section);
 - (g) 16 DCMR § 405.5 (failure to clearly designate storage spaces; or, failure to clearly identify towing business assigned to each space in an apportioned section); and
 - (h) 16 DCMR § 410.13 (failure to allow inspection of vehicle before receiving payment of fees; or, failure to allow inspection before release of vehicle).

DISTRICT OF COLUMBIA DEPARTMENT OF HEALTH

NOTICE OF EMERGENCY AND PROPOSED RULEMAKING

The Director of the Department of Health, pursuant to the authority set forth in An Act to enable the District of Columbia to receive federal financial assistance under Title XIX of the Social Security Act for a medical assistance program, and for other purposes, approved December 27, 1967 (81 Stat. 774; D.C. Official Code §1-307.02(b)), Reorganization Plan No. 4 of 1996, and Mayor's Order 97-42, entitled "Establishment of the District of Columbia Department of Health," dated February 18, 1997, hereby gives notice of the adoption, on an emergency basis, of a new Chapter 41 of Title 29 of the District of Columbia Municipal Regulations (DCMR) entitled "Ticket to Work Demonstration Project for Individuals with HIV" under the Ticket to Work and Work Incentives Improvement Act of 1999 (Public Law 106-170).

These proposed rules establish program requirements for the Ticket to Work and Work Incentives Improvement Act (TWWIA) Demonstration project to expand access to costly but highly effective anti-retroviral drug therapy for individuals diagnosed with Human Immunodeficiency Virus (HIV) and to increase access to Medicaid benefits for the District's HIV-identified population who wish to continue employment under the TWWIA.

Many citizens in the District of Columbia who are diagnosed as HIV positive want to retain their current employment. However, a large number of low-income D.C. residents with HIV, concentrated primarily within the geographical boundaries of Wards Seven (7) and Eight (8), are uninsured, under-insured, or simply cannot afford Highly Active Anti-Retroviral Therapy, which costs approximately \$12,000 annually. The District, therefore plans to expand Medicaid health benefit access for its low-income residents who are HIV.

The emergency rulemaking was adopted on February 24, 2004, and became effective immediately on that date. The emergency rules will expire 120 days from February 24, 2004, or upon publication of Final Rulemaking in the *D.C. Register*, whichever occurs first.

The Director also gives notice of the intent to take final rulemaking action to adopt these proposed rules in not less than thirty (30) days from the date of publication of this notice in the *D.C. Register*.

Title 29 DCMR is amended by adding the following new Chapter 41, which shall read as follows:

TICKET TO WORK DEMONSTRATION PROJECT FOR INDIVIDUALS WITH HIV

CHAPTER 41 TICKET TO WORK DEMONSTRATION PROJECT FOR
INDIVIDUALS WITH HIV

4100 GENERAL PROVISIONS

- 4100.1 The purpose of this Chapter is to establish standards governing the administration of the Ticket to Work Demonstration Project for individuals with HIV (the "Demonstration Project"), as authorized under §204 of the Ticket to Work and Work Incentives Improvement Act of 1999, approved December 17, 1999 (Public Law 106-170).
- 4100.2 The Demonstration Project term shall be from September 1, 2002, until August 31, 2008.
- 4100.3 The Demonstration Project shall not be construed as an entitlement and may be terminated at any time by the United States Department of Health and Human Services, Centers for Medicare and Medicaid Services (CMS), or by the District of Columbia.
- 4100.4 The Demonstration Project shall serve approximately four hundred twenty (420) people living with HIV.

4101 ELIGIBILITY REQUIREMENTS

- 4101.1 Each individual eligible to receive services shall meet all of the following requirements:
- (a) Be a District of Columbia resident;
 - (b) Have a gross income at or below three hundred percent (300%) of the Federal Poverty Level (FPL);
 - (c) Meet the Qualified Medicare Beneficiary (QMB) resources limits set forth in 42 U.S.C. §§1396a(a)(10)(E)(i), 1396d(p)(1), 1396d(p)(3). The resource limits shall be \$4000 for an individual and \$6000 for an and his/her spouse;
 - (d) Own no property other than the home in which he or she lives and a car;
 - (e) Not be eligible for the traditional Medicaid program under Titles XIX and XXI of the Social Security Act;

- (f) Be HIV-infected;
- (g) Not reside in a long-term care facility, mental health facility, or penal institution;
- (h) Complete an informed consent form at the time of application; and
- (i) Meet the employment requirements as set forth in Section 4102.

4102**EMPLOYMENT REQUIREMENTS**

- 4102.1 Each salaried applicant shall document employment for at least a minimum of forty (40) hours in the month preceding the enrollment process or one hundred and twenty (120) hours during the preceding three (3) months prior to the enrollment process at the minimum wage level.
- 4102.2 Each applicant who is self-employed shall qualify for the Demonstration Project by showing economic activity that generated wages in employment for at least forty (40) hours in the month preceding the enrollment process or one hundred and twenty (120) hours during the preceding three (3) months prior to the enrollment process.
- 4102.3 Each recipient shall verify continued employment at the time of the annual re-determination by submitting current documentation of income as identified in Section 4103.1.
- 4202.4 Each recipient shall continue to be eligible for the Demonstration Project if he/she is involuntarily unemployed until their annual recertification.

4103**INCOME REQUIREMENTS**

- 4103.1 Each applicant shall provide documentation of income that shall include the following:
- (a) For wage amounts, each applicant shall provide pay stubs for at least one (1) month or a letter from the employer stating the number of hours worked and the wages that were paid; or
 - (b) For a gross income determination, each applicant shall provide evidence of any of the following documentation that is applicable:
 - (1) Social Security cash benefit verification;
 - (2) Unemployment compensation;
 - (3) Veteran's benefits;

- (4) Pension check stub;
- (5) Any other public assistance documentation; or
- (6) Any other award letter for receipt of cash benefits.

4104 ENROLLMENT PROCESS

4104.1 Each applicant shall complete a single application that shall be signed and dated. Application forms shall be made available and submitted to the District's HIV/AIDS Administration for review and approval.

4104.2 Each applicant shall obtain one (1) piece of documentation to support proof of residency within the Demonstration Project area as defined in Section 4101.1(a). Documents needed to prove residency include the following:

- (a) Copy of a utility bill or a letter from a government agency with the applicant's District of Columbia address listed;
- (b) Voter registration card;
- (c) District of Columbia driver's license, or non-driver's identification; or
- (d) Lease or mortgage agreement.

4104.3 Each applicant shall obtain one (1) of the following signatures on the application form to verify his or her HIV status:

- (a) Physician's signature; or
- (b) Case manager's signature.

4104.4 Each applicant shall provide evidence of receipt of other health insurance coverage from the following sources, if applicable:

- (a) Health insurance card;
- (b) Letter from the health insurance company;
- (c) COBRA coverage;
- (d) Retirement health benefit coverage;
- (e) Medicare coverage; or

(f) Any other health plan.

4104.5 Each applicant shall complete, sign and date an informed consent form as part of the application process during the initial enrollment. Each applicant shall certify the following:

(a) Participation in the Demonstration Project is voluntary; and

(b) Enrollment in the Demonstration Project is limited, and if the programs are already full at the time of application, the applicant will be placed on a waiting list;

4104.6 The applicant shall complete, sign to acknowledge receipt, and date the informed consent form in order to be placed on a waiting list.

4104.7 Each applicant shall be screened to determine if he or she is eligible for Medicaid benefits under other Medicaid eligibility groups.

4104.8 A recipient's eligibility shall be subject to re-determination annually. The re-determination date shall be one (1) calendar year from the date of enrollment.

4104.9 A recipient and the case manager, when appropriate, shall receive a notice of re-determination from the District's HIV/AIDS Administration.

4104.10 A recipient shall respond to a request for information or to resubmit re-determination forms within thirty (30) days from the date of notice of re-determination. The HIV/AIDS Administration may extend the thirty (30) day requirement in cases involving extraordinary circumstances.

4104.11 A recipient shall verify, at the time of the annual re-determination, recipient's employment in accordance with 4102.

4105 RECIPIENT PROVIDER ASSISTANCE

4105.1 A Demonstration Project recipient shall have the freedom to choose his or her Medicaid providers.

4105.2 The HIV/AIDS Administration shall provide, as necessary, to all waiver recipients a list of the following at the time of initial enrollment:

(a) List of Ryan White case management providers; or

(b) List of Ryan White HIV-experienced physician and clinic providers and Board-certified infectious disease specialists.

- 4106 ENROLLMENT CEILING AND WAITING LIST**
- 4106.1 If the number of applications exceed the annual enrollment ceiling prior to the Demonstration Project implementation, then participants in the Demonstration Project shall be selected by the District's HIV/AIDS Administration on a first come, first served basis, in the order in which their applications were received.
- 4106.2 After the initial selection of the participants Demonstration Project is made and the annual enrollment ceiling is established, all other applicants shall be placed on a waiting list.
- 4106.3 After the initial enrollment ceiling and initial waiting list are established by the District's HIV/AIDS Administration, each subsequent applicant shall be placed on the waiting list in the order in which the application is received by the HIV/AIDS Administration.
- 4106.4 An applicant on a waiting list shall receive quarterly statements from the HIV/AIDS Administration with the following information:
- (a) The applicant's position on the waiting list; and
 - (b) The projected length of time the applicant shall have to wait prior to enrollment into the TWWIA Demonstration Project.
- 4106.5 The applicant shall be eligible to enroll in the Demonstration Project when a Notice of Action (NOA) is received from the HIV/AIDS Administration. The NOA shall be mailed both to the initially chosen applicant and to the case manager (unless the applicant expressly prohibits such communication with the case manager to the HIV/AIDS Administration).
- 4106.6 A selected applicant shall have thirty (30) days from the date of the NOA in which to confirm enrollment in the Demonstration Project to the HIV/AIDS Administration.
- 4106.7 If the confirmation for enrollment is not received by the HIV/AIDS Administration within thirty (30) days from the date of the NOA, another applicant shall be invited to enroll in the Demonstration Project.
- 4106.8 If the HIV/AIDS Administration receives the selected applicant's confirmation after thirty (30) days but before ninety (90) days from the date of the NOA, the applicant shall be moved to the top of the waiting list.
- 4106.9 A selected applicant who has not confirmed enrollment within ninety (90) days from the date of the NOA shall be required to reapply to participate in the Demonstration Project.

- 4106.10 The District of Columbia may extend the NOA time lines for confirmation for applicants in extraordinary circumstances.
- 4106.11 An applicant who has reapplied to participate in the Demonstration Project pursuant to 4106.9 may be allowed to fill a vacancy which becomes available for the following reasons:
- (a) An initial Demonstration Project recipient has disenrolled for reasons such as, relocation, death, or failure to meet program eligibility requirements at re-determination; or
 - (b) An initial Demonstration Project recipient has become eligible, due to re-determinations, for other existing Medicaid coverage through Titles XIX or XXI of the Social Security Act.
- 4107 PROGRAM SERVICES**
- 4107.1 Each applicant determined to be eligible pursuant to the criteria set forth in Section 4101 shall be entitled to full Medicaid benefits, including but not limited to the following services:
- (a) Laboratory and diagnostic services;
 - (b) Pharmacy benefits;
 - (c) Highly active antiretroviral drug therapy (HAART);
 - (d) Hospital care;
 - (e) Physicians' services;
 - (f) Mental health and substance abuse services;
 - (g) Medical equipment and supplies;
 - (h) Transportation; and
 - (i) Case management services.
- 4107.2 Each participant shall receive HIV prescription medications through the Department of Health's pharmacy network.
- 4107.3 Medical treatment for waiver recipients shall not include investigational or experimental therapy, drugs, or surgery.

4108 PROVIDER QUALIFICATIONS

- 4108.1 Each provider shall enter into a provider agreement with the Department of Health, Medical Assistance Administration, which shall specify the services to be provided, methods of operation, and financial and legal requirements.
- 4108.2 Each provider shall furnish the necessary personnel, facilities, equipment, material, and supplies to provide comprehensive Medicaid benefit package services as required pursuant to these rules.
- 4108.3 Each provider shall have a demonstrated ability to comply with all District and federal laws and rules governing participation of providers in the District of Columbia Medicaid Program, including the ability to meet all District and federal requirements for documentation, billing, and audits.
- 4108.4 Each provider shall comply with the requirements set forth in the District of Columbia Health Occupations Revision Act of 1985, effective March 25, 1986 (D.C. Law 6-99; D.C. Official Code §3-1201 *et seq.*) or comply with the licensure requirements to provide health or medical services in the jurisdiction where the services are rendered.
- 4108.5 All providers participating in the Demonstration Project shall be licensed to do business in the District of Columbia.
- 4108.6 Each provider participating in the Demonstration Project shall ensure that all staff providing services to waiver participants are qualified and properly supervised.
- 4108.7 Each provider shall establish and adhere to policies and procedures for selection and hiring of staff, including but not limited to requiring:
- (a) Evidence of licensure, certification, or registration required by the job being performed;
 - (b) For unlicensed staff, evidence of completion of an appropriate degree, training program, or credentials;
 - (c) Appropriate references and criminal background checks; and
 - (d) Evidence of completion of communicable disease testing as required by District laws and rules.
- 4108.8 Each provider shall comply with all applicable provisions of District and Federal law and rules pertaining to Title XIX of the Social Security Act,

and all District and federal law and rules applicable to the services or activity provided.

4109 CONFIDENTIALITY AND DISCLOSURE OF INFORMATION

4109.1 The District and all providers shall protect the confidentiality of all information that identifies individual Demonstration Project recipients. The District and all providers shall maintain the same standards of confidentiality for recipient information as it maintains for recipients in the Medicaid program.

4109.2 Identifying individual recipient information shall not be disclosed except for purposes directly connected with the administration of the Demonstration Project or as otherwise provided by applicable District and/or federal law and regulations.

4110 TREATMENT OF RECORDS

4110.1 Each provider shall maintain accurate records reflecting treatment, evaluation, and management services. The record for each recipient shall include, but is not limited to, the following information:

- (a) General information including the patient's name, address, date of birth, demonstration recipient identification number, telephone number, and telephone number of emergency contact person;
- (b) Medical information, including medical and social history, results of the initial physical examination, and any other follow-up exams;
- (c) A description of any tests ordered and their results;
- (d) Initial certification and annual re-certifications;
- (e) Plan of care;
- (f) A description of treatment and follow-up care, including the dates of scheduled revisits;
- (g) Recommendations for and referrals to other sources of care;
- (h) Bill of Rights and Responsibilities;
- (i) Signed and dated progress notes, which identify the services provided;
- (j) Evidence of written consent to treatment or documentation of refusal to consent to any treatment, evaluation, or management services; and

(k) Documentation of the treatment, evaluation, and management of each determination of an emergency medical condition.

4110.2 Each provider shall allow designated personnel of the Department of Health, the HIV/AIDS Administration, and other authorized agents of the District of Columbia government and the federal government full access to the records for audit purposes.

4110.3 All providers shall maintain for a period of six (6) years a complete copy of the recipient's treatment record.

4110.4 Each recipient's treatment record shall include written documentation of the recipient's treatment needs and services. The documentation shall be written so that it is easily understood by a lay person.

4111 PATIENT RIGHTS AND RESPONSIBILITIES

4111.1 Each provider participating in the Demonstration Project shall develop a written statement of patient rights and responsibilities consistent with the requirements of this section, which shall be given to each recipient in advance of receiving services or during the initial enrollment before the initiation of services.

4111.2 The written statement of patient rights and responsibilities shall be available for distribution to the general public.

4111.3 Each provider participating in the Demonstration Project shall develop policies that ensure that each recipient receiving services has the following rights:

- (a) To be treated with courtesy, dignity, and respect;
- (b) To control his or her own household and lifestyle;
- (c) To participate in the planning of his or her care and treatment;
- (d) To receive treatment, care, and services consistent with the plan of care and to have the plan of care modified, as necessary, for achievement of outcomes;
- (e) To receive services by competent personnel who can communicate with the patient;
- (f) To refuse all or part of any treatment, care, or service and be informed of the consequences thereof;

- (g) To be free from mental and physical abuse, neglect, and exploitation from persons providing services;
- (h) To be assured that for purposes of record confidentiality, the disclosure of the contents of the patient's records is subject to all the provisions of applicable District and federal laws and regulations;
- (i) To voice a complaint or grievance regarding treatment or care, lack of respect for personal property by persons providing services without fear of reprisal; and
- (j) To have access to his or her records.

4111.4

Each recipient shall be responsible for the following:

- (a) Treating all provider personnel with respect and dignity;
- (b) Providing accurate information when requested;
- (c) Informing provider personnel when instructions are not understood or cannot be followed;
- (d) Cooperating in making a safe environment for care within the home; and
- (e) Notifying the provider of changes in address, insurance, and other personal information.

4111.5

Each provider shall take appropriate steps to ensure that each recipient, including patients who cannot read or have a language or communication barrier, has received the information required pursuant to this section in a format designed to make the information understandable. Each provider shall document in the recipient's treatment record the steps taken to ensure that each patient has received the information.

4112

GRIEVANCE AND APPEALS

4112.1

Each Demonstration Project recipient that is aggrieved by a decision of the District affecting that recipient's eligibility to receive a covered service through the Demonstration Project shall be entitled to a hearing before the Department of Human Services' Office of Fair Hearings as provided in D.C. Official Code §4-210.01 and 42 CFR Part 431.200.

4199

DEFINITIONS

For the purposes of this Chapter, the following terms shall have the meaning ascribed:

AIDS – acquired immune deficiency syndrome.

ADAP - AIDS Drug Assistance Program. Program that supplies anti-retrovirals and other HIV-related medications to persons with gross incomes under four hundred percent (400%) of the Federal poverty level.

CMS – Centers for Medicare and Medicaid Services, United States Department of Health and Human Services.

COBRA- Consolidated Omnibus Budget Reconciliation Act of 1986. This program administered by the United States Department of Labor and the United States Pension and Welfare Benefits Administration allows an employee who voluntarily resigns from employment or is terminated for any reason other than “gross misconduct” to continue their former employer’s group health plan (both for individual and family coverage) coverage for a period up to eighteen (18) months from the effective date of employment termination or resignation.

Demonstration Project - funded under the Demonstration to Maintain Independence and Eligibility initiative in the TWWIIA.

DOH – Department of Health.

DOH HIV Pharmacy Network - group of participating pharmacies that distribute anti-retrovirals and other HIV-related medications for the Demonstration Project, Medicaid, the ADAP.

Enrollment ceiling – the limit on the number of recipients in the Demonstration Project.

Gross income – total pre-tax income for a household; this amount includes all income that the Income Maintenance Administration and other agencies may disregard in their eligibility determinations for other programs (including current law Medicaid).

HAART – Highly Active Anti-Retroviral Therapy. A broad category of treatment regimens for individuals with HIV usually comprised of three (3) or more anti-retroviral drugs that, in previously untreated HIV-1-infected patients, are expected to reduce plasma virus levels below the

limits of detection. Most HAART regimens include drugs from at least two (2) of the three (3) classes of anti-retroviral therapy (nucleoside analog reverse transcriptase (RT) inhibitors, non-nucleoside analog RT inhibitors, and protease inhibitors).

HIV – human immunodeficiency virus. A retrovirus that causes AIDS, formerly known as HTLV-III.

TWWIA Demonstration - demonstration project funded under the Demonstration to Maintain Independence and Eligibility initiative in the Ticket to Work and Work Incentives Improvement Act of 1999 (TWWIA) (Public Law 106-170).

Comments on the proposed rules shall be submitted in writing to Robert Maruca, Senior Deputy Director, Medical Assistance Administration, Department of Health, 825 North Capitol Street, N.E., 5th Floor, Washington, D.C. 20002, within thirty (30) days from the date of publication of this notice in the D.C. Register. Copies of the proposed rules may be obtained from the same address.