OFFICE OF ADMINISTRATIVE HEARINGS

NOTICE OF THIRD EMERGENCY RULEMAKING

The Chief Administrative Law Judge of the Office of Administrative Hearings (OAH), pursuant to the authority set forth in Sections 8(a)(7) and 8(b)(7) of the Office of Administrative Hearings Establishment Act of 2001, effective March 6, 2002 (D.C. Law 14-76, D.C. Official Code § 2-1831.05(a)(7) and (b)(7) (2016 Repl.)), hereby gives notice of the adoption, on an emergency basis, of the following amendments to Chapter 28 (Office of Administrative Hearings: Rules of Practice and Procedure) and Chapter 29 (Office of Administrative Hearings: Rules for DCPS, Rental Housing, Public Benefits, and Unemployment Insurance Cases) of Title 1 (Mayor and Executive Agencies) of the District of Columbia Municipal Regulations (DCMR).

On March 11, 2020, the Mayor, in accordance with Section 5 of the District of Columbia Public Emergency Act of 1980, effective March 5, 1981 (D.C. Law 3-149; D.C. Official Code § 7-2304 (2018 Repl.)), and Section 5a of District of Columbia Public Emergency Act of 1980, effective October 17, 2002 (D.C. Law 14-194; D.C. Official Code § 7- 2304.01 (2018 Repl.)), declared both a public emergency and public health emergency in the District of Columbia due to the worldwide spread of the Coronavirus (COVID-19) until March 26, 2020. Mayor's Order No. 2020-045, dated March 11, 2020 (published at 67 DCR 2956 (March 13, 2020)); and Mayor's Order No. 2020-046, dated March 11, 2020 (published at 67 DCR 2961 (March 13, 2020)). The Mayor then extended both the public emergency and public health emergency by Mayor's Orders 2020-050, dated March 20, 2020; 2020-063, dated April 15, 2020; 2020-066, dated May 13, 2020; 2020-067, dated May 27, 2020; 2020-079, dated July 22, 2020; and 2020-103, dated October 7, 2020. (Published at 67 DCR 3601 (March 27, 2020); 67 DCR 4410 (April 17, 2020); and 67 DCR 5173 (May 15, 2020); 67 DCR 5612 (May 29, 2020); 67 DCR 9101 (July 24, 2020); 67 DCR 11802 (October 9, 2020)). Subsequently the Mayor extended the public emergency and public health emergency through March 31, 2021 in Mayor's Order 2020-127, dated December 18, 2020 (published at 67 DCR 14986 (December 25, 2020)), and the emergencies may be subject to further extension.

Further, the Mayor adjusted the District Government's operation status on an agency by agency basis. The Mayor determined that all OAH's operations be performed remotely. Accordingly, OAH's office located at One Judiciary Square, 441 4th Street NW, Suite 450 is closed to the public.

This rule proposes to amend OAH's Rules of Practice and Procedure to reduce the spread of COVID-19 by prohibiting in person filings at OAH, as well as other agencies, and personal service in most instances. Additionally, the rulemaking serves to encourage parties to file or serve documents electronically, telephonically, or through the mail. The rules also authorize OAH to serve orders, notices, and other documents by email without a party's consent in order to accommodate OAH's current remote operational status. Further the rulemaking authorizes OAH to make proper service by the methods authorized in this rulemaking throughout the duration of the emergency and for thirty (30) days following the end of the declared end of the public and public health emergencies.

A Notice of Emergency Rulemaking, published in the *D.C. Register* on April 10, 2020, at 67 DCR 4120, was adopted on April 1, 2020, and became effective on that date. A Second Notice of Emergency Rulemaking, published in the *D.C. Register* on July 24, 2020, at 67 DCR 9089, was adopted on July 14, 2020, and became effective on that date. These emergency rules are identical

to the emergency rules published on April 10, 2020, at 67 DCR 4120, and to the emergency rules published on July 24, 2020, at 67 DCR 9089.

This emergency rulemaking was adopted on February 18, 2021, and became effective immediately on that date. The emergency rulemaking will expire one hundred twenty (120) days from the date of adoption, or until June 18, 2021. If needed, an appropriate rulemaking will repeal this rulemaking if the declared end of the public emergency occurs prior to the expiration of this emergency rulemaking.

Chapter 28, OFFICE OF ADMINISTRATIVE HEARINGS: RULES OF PRACTICE AND PROCEDURE, of Title 1 DCMR, MAYOR AND EXECUTIVE AGENCIES, is amended as follows:

Section 2809, FILING OF PAPERS, is amended as follows:

Subsection 2809.3 is amended to read as follows:

2809.3 To file any paper at OAH, a person must e-mail, mail, or fax the paper to OAH. Except as provided in Subsection 2809.4 below, a paper received during regular business hours, *i.e.*, 9:00 a.m. to 5:00 p.m., on a business day will be filed that day. The filing date for a paper received outside of normal business hours will be the next following regular business day. Any paper filed by email must comply with Section 2841.

Section 2813, MOTIONS PROCEDURE, is amended as follows:

Subsection 2813.5 is amended to read as follows:

2813.5 Before filing any motion (except a motion for summary adjudication, to dismiss, for reconsideration, relief from final order, or for sanctions), a party must make a good faith effort to ask all other parties if they agree to the motion.

(a) A "good faith effort" means a reasonable attempt, considering all the circumstances, to contact a party or representative by telephone, by fax, by email, or by other means.

(b) Contact by mail is a good faith effort only if no other means is reasonably available (for example, not having another party's telephone number or email address).

(c) By itself, serving a party with the motion is not a good faith effort.

(d) When this subsection requires a good faith effort, the motion must describe that effort and say whether all other parties agreed to the motion.

(e) If a party fails to comply with this Subsection, an Administrative Law Judge may deny the motion without prejudice.

Section 2824, SUBPOENAS FOR WITNESSES AND FOR DOCUMENTS AT HEARINGS, is amended as follows:

Subsection 2824.6 is amended to read as follows:

2824.6 It is the responsibility of the requesting party to serve a subpoena in a timely fashion. Any person, including a party, who is at least eighteen (18) years of age, may serve a subpoena.

Subsection 2824.9 is amended to read as follows:

2824.9 A subpoena for the production of documents at a hearing shall be served by any of the following means:

(a) Mailing it to the last known address of the person or a representative of the person;

(b) Mailing it to the last known address of an entity's office connected to the case; or

(c) Delivering it by any other means, including electronic means, if consented to in writing by the person or entity served, or as ordered by an Administrative Law Judge.

Subsection 2824.11 is amended to read as follows:

2824.11 A subpoena may be served at any place within the District of Columbia, or at any place outside the District of Columbia that is within twenty-five (25) miles of the place of the hearing. There is a rebuttable presumption that a subpoena served by e-mail was served at a party's business or residential address.

Section 2841, FILING AND SERVICE BY E-MAIL; OTHER ELECTRONIC SUBMISSIONS, is amended to read as follows:

Subsection 2841.16 is amended to read as follows:

2841.16 The Clerk may serve orders and notices by e-mail to any party who provides an email address and consents, in writing or on the record, to receiving papers by email. The party is responsible for ensuring that the Clerk has an accurate, up-to-date e-mail address. In the case of a public health emergency declared pursuant to section 5a of the District of Columbia Public Emergency Act of 1980, effective

October 7, 2002 (D.C. Law 14-194; D.C. Official Code § 7-2304.01), the Clerk may serve orders and notices by e-mail, without a party's advance consent, in addition to any other authorized method of service throughout the duration of the emergency and for thirty calendar days following the end of the public health emergency. In any other emergency, without a party's advance consent, the Clerk may serve orders and notices by e-mail or any other authorized method of service.

Chapter 29, OFFICE OF ADMINISTRATIVE HEARINGS: RULES FOR DCPS, RENTAL HOUSING, PUBLIC BENEFITS, AND UNEMPLOYMENT INSURANCE, of Title 1 DCMR, MAYOR AND EXECUTIVE AGENCIES, is amended as follows:

Section 2923, RENTAL HOUSING CASES- SENDING NOTICE, is amended as follows:

Subsection 2923.1 is amended to read as follows:

2923.1 OAH shall notify the parties by first-class mail of proceedings; except in the case of a public health emergency declared pursuant to section 5a of the District of Columbia Public Emergency Act of 1980, effective October 7, 2002 (D.C. Law 14-194; D.C. Official Code § 7-2304.01), OAH may serve notices by e-mail, without a party's advance consent, in addition to any other authorized method of service, throughout the duration of the emergency and for thirty calendar days following the end of the public health emergency.

Subsection 2923.2 is amended to read as follows:

2923.2 OAH shall mail a copy of any tenant petition, by first-class mail, to any adverse party named in the tenant petition and to the housing provider listed on the registration statement for the housing accommodation; except in the case of a public health emergency declared pursuant to Section 5a of the District of Columbia Public Emergency Act of 1980, effective October 7, 2002 (D.C. Law 14-194; D.C. Official Code § 7-2304.01), OAH may provide the tenant petition to an adverse party or housing provider, without advance consent, by e-mail in addition to any other authorized method of service for the duration of the emergency and for thirty calendar days following the end of the public health emergency.

Section 2937, RENTAL HOUSING CASES- FINAL ORDERS, is amended as follows:

Subsection 2937.1 is amended to read as follows:

2937.1 OAH shall serve all final orders on the parties by first-class mail; except In the case of a public health emergency declared pursuant to Section 5a of the District of Columbia Public Emergency Act of 1980, effective October 7, 2002 (D.C. Law 14-194; D.C. Official Code § 7-2304.01), OAH may serve final orders by e-mail, without a party's advance consent, in addition to any other authorized method of

service for the duration of the emergency and for thirty calendar days following the end of the public health emergency.

Section 2951, PUBLIC SECTOR WORKERS' COMPENSATION- BEGINNING A CASE, is amended as follows:

Subsection 2951.1 is amended to read as follows:

2951.1 Appeals shall be initiated by filing a written hearing request at OAH. The request shall be made on a form supplied by the Public Sector Workers' Compensation Program (the Program) and approved by OAH. A hearing request must contain:

(a) The name, address, and email address of the claimant and of the claimant's representative, if any;

(b) The type of claim;

(c) Claimant's employing agency when the injury occurred;

(d) A statement identifying the date and nature of the decision being appealed;

(e) The reason(s) why the claimant considers the decision to be incorrect;

(f) A detailed statement of facts in support of each reason;

(g) The specific nature and extent of the relief sought;

(h) A statement that the person signing the hearing request has read it and attests that the contents are true and accurate to the best of his or her knowledge; and

(i) The signature of the claimant or the claimant's representative, if any.

Section 2971, PUBLIC BENEFITS CASES- BEGINNING A CASE, is amended as follows:

Subsection 2971.1 is amended to read as follows:

2971.1 A person can request a hearing in writing or by telephone.

Subsection 2971.2 is repealed.

Subsection 2971.3 is amended to read as follows:

2971.3 A hearing request must describe the type of benefits and the action or inaction to which the person objects. The request also must contain the name, address, telephone number, and e-mail address if available of the person requesting a hearing; provided, however, a person who requests a hearing under the Homeless Services Reform Act may provide an e-mail address at which they can receive any papers in the case, including notices and orders, if they do not have a street address where they can receive mail.

Subsection 2971.4 is amended to read as follows:

2971.4 A person may mail or fax a written hearing request to:

(a) The Department of Human Services;

(b) The Department of Health Care Finance for a hearing concerning Medicaid, Healthcare Alliance, or other healthcare programs administered by the District of Columbia;

(c) The District Department of the Environment for a hearing concerning Low Income Home Energy Assistance Program benefits (LIHEAP);

(d) A shelter or other service provider for a hearing under the Homeless Services Reform Act;

(e) The Division of Early Childhood Education at the Office of the State Superintendent of Education for a hearing concerning child care benefits;

(f) The Department on Disability Services, Rehabilitation Services Administration for a hearing concerning vocational rehabilitation services; or

(g) OAH.

Subsection 2971.5 is repealed.

Subsection 2976, PUBLIC BENEFIT CASES- HEARINGS AND EVIDENCE, is amended as follows:

Subsection 2976.7 is amended to read as follows:

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

(a) Any agency or service provider must send copies to all other parties;

(b) If an individual is represented by a person other than a family member, the representative shall send copies to all other parties;

(c) If a shelter makes free copying services available to a shelter resident, the shelter resident must make and deliver a copy to the shelter director;

(d) For all other individuals, OAH will deliver copies by e-mail to the appropriate agency.

Section 2983, UNEMPLOYMENT INSURANCE CASES- FILING OF PAPERS, is amended as follows:

Subsection 2983.1 is amended to read as follows:

2983.1 In cases concerning unemployment compensation:

(a) When a request for hearing is emailed to OAH, the filing for an electronic filing received during business hours (9 a.m. to 5 p.m., Eastern Time, on any business day) will be the date it is received at oah.filing@dc.gov, provided that the document comports with the requirements of Rules 2809 and 2841. The filing date for an electronic filing received after OAH business hours will be the next day that the Clerk's Office is open for business. The date recorded by oah.filing@dc.gov shall be conclusive proof of the date and time that the e-mail was received.

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