

§ 26.8

of this paragraph, an attorney is defined as a member of the bar of a Federal court or of the highest court of any State; or

(e) An individual not included within paragraphs (a) through (d) of this section may represent the respondent upon an adequate showing, as determined by the hearing officer, that the individual possesses the legal, technical or other qualifications necessary to advise and assist in the presentation of the case.

§ 26.8 Standards of practice.

Attorneys shall conform to the standards of professional and ethical conduct required of practitioners in the courts of the United States and by the bars of which the attorneys are members. Any attorney may be prohibited by the Hearing Officer from representing a party if the attorney is not qualified under § 26.7 or if such action is necessary to maintain order in or the integrity of the pending proceeding.

PLEADINGS AND MOTIONS

§ 26.9 Notice of administrative action.

In every case, there shall be a notice of administrative action. The notice shall be in writing and inform the party of the determination. The notice shall state the reasons for the proposed or imposed action except where general terms are permitted by 24 CFR part 24. The notice shall inform the party of any right to a hearing to challenge the determination, and the manner and time in which to request such hearing. A supplemental notice may be issued in the discretion of the initiating official to add to or modify the reasons for the action.

§ 26.10 Complaint.

(a) *Respondent.* A complaint shall be served upon the party against whom an administrative action is taken, who shall be called the respondent.

(b) *Grounds.* The complaint shall state the grounds upon which the administrative action is based. The grounds set forth in the complaint may not contain allegations beyond the scope of the notice of administrative action or any amendment thereto.

24 CFR Subtitle A (4-1-03 Edition)

(c) *Notice of administrative action as complaint.* A notice of administrative action may serve as a complaint provided the notice states it is also a complaint and complies with paragraph (b) of this section.

(d) *Timing.* When the notice does not serve as a complaint, the complaint shall be served on or before the thirtieth day after a request for hearing is made.

§ 26.11 Answer.

Respondent shall file an answer within thirty days of receipt of the complaint. The answer shall respond specifically to each factual allegation. A general denial shall not be permitted. Where a respondent intends to rely on an affirmative defense it shall be pleaded specifically. Allegations are admitted when not specifically denied in respondent's answer.

§ 26.12 Amendments and supplemental pleadings.

(a) *Amendments.* (1) By right: The Department may amend its complaint without leave at any time within thirty days of the date the complaint is filed or at any time before respondent's responsive pleading is filed, whichever is later. Respondent may amend its answer at any time within thirty days of filing of its answer. A party shall plead in response to an amended pleading within fifteen days of receipt of the amended pleading.

(2) By leave: Upon conditions as are necessary to avoid prejudicing the public interest and the rights of the parties, the hearing officer may allow amendments to pleadings upon motion of any party.

(3) Conformance to evidence: When issues not raised by the pleadings but reasonably within the scope of the proceeding initiated by the complaint are tried by express or implied consent to the parties, they shall be treated in all respects as if they had been raised in the pleadings, and amendments of the pleadings necessary to make them conform to the evidence shall be allowed at any time.

(b) *Supplemental pleadings.* The hearing officer may, upon reasonable notice, permit service of a supplemental

pleading concerning transactions, occurrences, or events which have happened or been discovered since the date of prior pleadings.

§ 26.13 Motions.

(a) *Motions.* All motions after the commencement of the action until decision shall be addressed to the hearing officer.

(b) *Content.* All written motions shall state the particular order, ruling, or action desired and the grounds for granting the motion.

(c) *Answers.* Within seven (7) days after receipt of any written motion, or within any other period as may be designated by the hearing officer, the opposing party shall answer the motion. Failure to make a timely answer shall constitute a party's consent to the granting of the motion. The moving party shall have no right to reply, except as permitted by the hearing officer.

(d) *Oral argument.* The hearing officer may order oral argument on any motion.

(e) *Motions for extensions.* The hearing officer may waive the requirements of this section as to motions for extensions of time.

(f) *Rulings on motions for dismissal.* When a motion to dismiss the proceeding is granted, the hearing officer shall make and file a determination and order in accordance with the provisions of § 26.24.

§ 26.14 Form and filing requirements.

(a) *Filing.* An original and two copies of a request for a hearing shall be filed with the Docket Clerk, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410, on official business days between 8:45 a.m. and 5:15 p.m. The Clerk shall assign the docket number and designate a hearing officer. An original and two copies of all other pleadings, submissions and documents should be filed directly with the appropriate hearing officer. A document is considered timely filed if postmarked on or before the date due or delivered to the appropriate person by close of business on the date due.

(b) *Title.* Documents shall show clearly the title of the action and the docket number.

(c) *Form.* Except as otherwise permitted, all documents shall be printed or typewritten in clear, legible form.

§ 26.15 Service.

(a) *Method of service.* Pleadings, motions, and other documents required or permitted under these rules shall be served upon all parties. Whenever these rules require or permit service to be made upon a party represented by an attorney, the service shall be made upon the attorney unless service upon the party is ordered by the hearing officer. Service shall be made by delivering a copy to the person to be served or by mailing it to that person at the last known address. Delivery of a copy within this rule means: handing it to the person to be served; or leaving it at that person's office with a clerk or other person in charge; or, if there is no one in charge, leaving it in a conspicuous place in the office; or, if the office is closed or the person to be served has no office, leaving it at that person's residence of usual place of abode with some person of suitable age and discretion who resides there. Service by mail is complete upon deposit in a mail box or upon posting.

(b) *Proof of service.* Proof of service shall not be required unless the fact of service is put in issue by appropriate motion or objection on the part of the person allegedly served. In these cases, service may be established by written receipt signed by or on behalf of the person to be served, or may be established prima facie by affidavit or certificate of service of mailing.

§ 26.16 Time computation.

(a) *Generally.* Computation of any period of time prescribed or allowed by this part shall begin with the first business day following the day on which the act, event, development or default initiating the period of time occurred. When the last day of the period computed is a Saturday, Sunday, or national holiday, or other day on which the Department of Housing and Urban Development is closed, the period shall run until the end of the next following