No. 24-CV-404

IN THE DISTRICT OF COLUMBIA COURT OF APPEALS

JULIA WASHINGTON,
APPELLANT,

v.

DISTRICT OF COLUMBIA DEPARTMENT OF FORENSIC SCIENCES, *et al*.,
APPELLEES.

ON APPEAL FROM A JUDGMENT OF THE
SUPERIOR COURT OF THE DISTRICT OF COLUMBIA

BRIEF FOR APPELLEE THE DISTRICT OF COLUMBIA DEPARTMENT OF FORENSIC SCIENCES

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STATEMENT OF THE ISSUES

The District of Columbia Department of Forensic Sciences ("Department") provides forensic science services to law enforcement and investigative agencies. In 2021, after the Firearm Examination Unit's forensic accreditation was suspended, the Department abolished the unit and separated all ten of its employees, including Julia Washington. The employees' union hired an attorney to appeal the separations to the D.C. Office of Employee Appeals ("OEA"). After the OEA upheld each employee's separation, their union instructed the attorney to file appeals in the Superior Court. Under Super. Ct. Agency Rev. R. 1 ("Agency Rule 1"), petitions for review of OEA decisions must be filed within 30 days. Washington's attorney did not file a petition for her or any of the other separated employees. When the union learned about this failure, it promptly hired new counsel, who filed Washington's petition two and a half months after the deadline had expired. The Superior Court dismissed the petition as untimely, holding that the deadline is a mandatory claim-processing rule that is not subject to equitable extension. Washington's appeal raises three issues.

1. Whether Agency Rule 1 authorizes the Superior Court to extend the petition deadline for excusable neglect, where the deadline uses mandatory terms and, unlike another Agency Rule 1 deadline, contains no exceptions for good cause or excusable neglect.

2. Whether equitable tolling is available to Washington, where she has not preserved a claim for equitable tolling or shown that her attorney's unexplained failure to timely file could support this extraordinary relief, and where alternatively Agency Rule 1 does not permit equitable tolling if, as here, an opposing party properly objects.

3. Alternatively, even assuming that the Agency Rule deadline could be extended for excusable neglect, whether the Superior Court abused its discretion by denying this relief, where Washington offered no reason for her attorney's failure to timely file or evidence of her own diligence in preserving her claim.

STATEMENT OF THE CASE

On January 18, 2024, Washington filed a petition for review of an OEA decision under Agency Rule 1. Joint Appendix ("JA") 1-22. Because the petition was filed more than two months after the deadline had expired, Washington then moved the Superior Court to extend the petition deadline for "excusable neglect." JA 23-28. The Department filed a timely motion to dismiss, arguing that the deadline is not subject to equitable extension and that, alternatively, Washington had not established sufficient grounds for such relief. JA 29-40. The Superior Court dismissed the appeal on March 25, finding that even if the deadline is subject to equitable extension Washington was not entitled to such relief. JA 41-68. Washington filed this timely appeal on April 23. JA 69.

STATEMENT OF FACTS

1. Overview Of The Law.

Most formal District agency adjudications are "contested cases" under the D.C. Administrative Procedure Act, D.C. Code § 2-509, and can be appealed by filing a petition for review in this Court, *id.* § 2-510. Other agency adjudications, such as those involving employee tenure and labor disputes under the D.C. Comprehensive Merit Personnel Act ("CMPA"), can be appealed only by filing a petition for review in the Superior Court. *Id.* §§ 1-606.03(d) (authorizing appeals of OEA decisions in the Superior Court), 2-502(8)(B) (excluding employee "tenure" from the definition of "contested case"). The rules of this Court and the Superior Court establish identical deadlines for these appeals: "Unless an applicable statute provides a different time frame, the petition for review must be filed within 30 days after notice is given, in conformance with the rules or regulations of the agency, of the order or decision sought to be reviewed." D.C. App. R. 15(a)(2); Super. Ct. Agency Rev. R. 1(b)(2).

The CMPA authorizes the District to abolish positions and separate employees who occupy them, so long as it follows procedures designed to ensure that the reduction in force ("RIF") is "conducted in a fair manner." *Dupree v. D.C. Off. of Emp. Appeals*, 36 A.3d 826, 829 (D.C. 2011); *see* D.C. Code § 1-624.01 *et seq.* Separated employees can appeal the personnel action to the OEA. D.C. Code

§§ 1-624.04, 1-624.08(f)(2); *see id.* § 1-606.03(a). Each OEA appeal is assigned to an administrative judge who, after an evidentiary hearing, must issue an initial decision supported by findings of fact and conclusions of law. *Id*. § 1-606.03(c). The initial decision becomes the final OEA decision 35 days after issuance unless, within that time, a party appeals to the OEA Board. *Id.* Any party aggrieved by the final OEA decision may "appeal . . . to the Superior Court . . . for a review of the record." *Id.* § 1-606.03(d).

Those appeals are governed by Agency Rule 1, which sets forth specialized procedures for the Superior Court's review of non-contested cases that are consistent with the rules governing this Court's review of contested cases. For more general procedures, Agency Rule 1 incorporates a list of about 20 Superior Court Rules of Civil Procedure "[e]xcept where [those provisions are] inconsistent with a statute or this rule." Super. Ct. Agency Rev. R. 1(i).

2. Washington Appeals An OEA Decision 80 Days After Her Agency Rule 1 Deadline Expires.

A. The Department abolishes its Firearms Examination Unit and separates all of its forensic scientists, including Washington.

The Department was created to provide forensic science services to the United States Attorney's Office as well as various District agencies. D.C. Code §§ 5-1501.02, 5-1501.06. In 2012, the Department assumed responsibility for the forensic examination of firearms. *Id.* § 5-1501.08(a)(6). The work was conducted by its

Firearms Examination Unit, which employed ten forensic scientists who specialized in firearm and toolmark analysis. JA 5-7.

In May 2021, the American National Standards Institute National Accreditation Board withdrew the accreditation of the Firearms Examination Unit. *See* Am. Nat'l Standards Inst. Nat'l Accreditation Bd., DC Department of Forensic Sciences Laboratory Assessment Report (Dec. 8, 2021), https://tinyurl.com/2an8wzcz. With no work to perform, the entire unit was abolished in August 2021, and all ten of its forensic scientists, including Washington, were separated. JA 5-7.

B. The OEA upholds Washington's separation on September 28, 2023, making her petition for review due in the Superior Court on October 30.

Washington and her colleagues were members of the National Association of Government Employees. JA 27. After the District abolished their positions, the union's general counsel, Sarah Suszczyk, retained an attorney to challenge the employees' separations in the OEA. JA 27. Each of the appeals was randomly assigned to one of four OEA administrative judges. JA 5. Those judges held a joint evidentiary hearing before issuing separate opinions. JA 5.

Senior Administrative Judge Joseph Lim issued an initial decision upholding Washington's separation on August 24, 2023. JA 3-22. Appended to the initial decision—which was served on both Washington and her attorney, JA 22—was a "NOTICE OF APPEAL RIGHTS," which advised Washington that the initial

decision would become the final OEA decision unless she appealed to the OEA Board within 35 calendar days. JA 21. Alternatively, the notice advised, she could "file a Petition for Review in the Superior Court of the District of Columbia" and, if she chose this course of action, she "should consult Superior Court Civil Procedure Rules, XV. Agency Review, Rule 1." JA 21. Because Washington did not appeal to the OEA Board, the initial decision became final on September 28, 2023.

Under Agency Rule 1(b)(2), a petition for review "must be filed within 30 days after notice is given." Washington already had notice of the OEA decision before it became final, so the 30-day deadline to appeal began running that day. *See* JA 22. Her petition for review in the Superior Court was thus due on October 30.

C. Washington files her petition for review in the Superior Court on January 18, 2024—80 days after the deadline expires.

Between August and October 2023, OEA administrative judges issued initial decisions that also upheld the separation of the other nine Department employees impacted by the RIF. The attorney for the employees did not timely file appeals for Washington or any of her separated colleagues. On January 18, 2024, Washington's new attorney filed her petition for review in the Superior Court. JA 1-22. The petition was filed 80 days after the deadline established by Agency Rule 1(b)(2).

3. The Superior Court Dismisses Washington's Petition As Untimely, Finding That Agency Rule 1(b)(2) Is Not Subject To Equitable Extension And, Alternatively, That Washington Had Not Shown Excusable Neglect.

The day after she filed her petition, Washington moved the Superior Court to equitably toll the deadline, arguing that she had "reasonably and in good faith relied on her counsel to timely submit her Petition" and that Suszczyk had acted "promptly and diligently" to secure new counsel as soon as she learned that Washington's petition had not been filed. JA 25-26.

The only evidence supporting the motion was Suszczyk's declaration. She attested that, "[a]fter OEA Administrative Judges upheld [the Department's] separation decisions in or around August 2023, [she] authorized the attorney who represented the [separated employees] to file Petitions for Review of OEA's decisions in the District of Columbia Superior Court." JA 27. More than four months later, on January 5, 2024, the attorney "informed [Suszczyk] that she had not filed the Petitions for Review and that the deadline for doing so had passed." JA 27. Suszczyk "immediately sought new counsel for the [employees]." JA 27. She received a referral on January 9, spoke to the new attorney on January 10, and retained him on January 15. JA 27-28.

Washington offered no evidence explaining why her former attorney failed to file her appeal. Washington also did not submit a declaration reflecting her personal knowledge of these events. The record therefore does not reflect when she learned

about the OEA decision, whether she spoke with her attorney or Suszczyk about appealing that decision to the Superior Court, whether she knew that the deadline to appeal was October 30, whether she was typically informed when her attorney filed pleadings on her behalf, or whether she took any steps to confirm that her petition for review had been timely filed.

The Department opposed Washington's motion and moved to dismiss the petition, arguing that Agency Rule 1(b)(2)'s 30-day deadline is a mandatory claim-processing rule that cannot be equitably extended. JA 31-35. The Department also argued that, even if the deadline could be extended for "excusable neglect," Washington's evidence could not justify this relief. JA 35-37.

The Superior Court granted the Department's motion to dismiss. JA 67. It held that Agency Rule 1(b)(2)'s deadline "is a mandatory claim-processing rule that is not subject to equitable tolling where the respondent timely raises the petitioner's noncompliance with the rule." JA 59. The court also ruled, in the alternative, that Washington had not established excusable neglect. Because she had not proffered a reason for her attorney's failure to timely file, the court had no basis to find that the neglect was excusable or relieve Washington of the conduct of her attorney. *See* JA 64 & n.13. And because Washington had provided no information about what her attorney had told her before the deadline expired, the court had no basis to find that Washington had acted in good faith despite her failure to follow up on the matter.

JA 66-67. The court also found that the requested extension would prejudice the District because, "[o]nce the time for appeal has run, [the Department]—as with all other actors within the CMPA's ambit—reasonably rely on the final decision in the exercise of their powers and rights with the expectation that the matter is conclusively settled." JA 62.

STANDARD OF REVIEW

"The proper construction of court rules of procedure is a legal question that [this Court] review[s] de novo." *Dixon v. United States*, 304 A.3d 966, 968 (D.C. 2023). The Court reviews rulings on excusable neglect for abuse of discretion. *Admasu v. 7-11 Food Store # 11731G/21926D*, 108 A.3d 357, 361 (D.C. 2015).

SUMMARY OF ARGUMENT

This Court should affirm the Superior Court's dismissal of Washington's petition for review as untimely.

1. Agency Rule 1(b)(2) does not authorize extensions for good cause or excusable neglect. Its unqualified requirement that a petition for review "must be filed" within 30 days stands in stark contrast to Agency Rule 1(e)(3), which uses the same language for its deadline but explicitly authorizes extensions for "good cause." Court rules, like statutes, are interpreted to avoid surplusage, and (e)(3)'s good-cause exception would be superfluous if the same relief was implied by (b)(2)'s silence.

Washington does not argue otherwise. Instead, she relies on Agency Rule 1(i), which incorporates other rules of civil procedure. These include Super. Ct. Civ. R. 6, which broadly authorizes good-cause and excusable-neglect extensions. But Agency Rule 1(i) exempts provisions that are "inconsistent with" Agency Rule 1. And, as discussed, reading the Civil Rule 6 extensions into (b)(2)'s silence would render (e)(3)'s explicit authorization meaningless. As such, although paragraph (i) incorporates some Civil Rule 6 provisions, it does not incorporate the provision authorizing good-cause and excusable-neglect extensions.

Washington also argues that, even if it does not directly apply, Civil Rule 6 reflects a policy favoring lenient extensions. But a closer look at Rule 6 reveals a carefully balanced policy that favors such extensions during litigation but prioritizes finality following a decision on the merits. And Agency Rule 1 proceedings are *appeals* of adjudications on the merits. The Rule 6 policy thus favors the public's interest in finality over the losing party's interest in a second chance at appeal. Indeed, the public's interest in finality is particularly important for appeals arising out of the CMPA, which often involve complex and time-sensitive matters that affect agencies' budgets, their organization and provision of services, and labor relations.

2. Equitable tolling does not assist Washington either. This is a separate question from whether the deadline can be extended for good cause or excusable neglect—lenient standards that courts may apply if explicitly authorized. Equitable

tolling, in contrast, can be presumptively implied. But it is only warranted when extraordinary circumstances prevented the plaintiff from timely filing her claim. Washington argues that equitable tolling is presumptively available here. But she has forfeited any claim that she is entitled to such extraordinary relief; she argues only that she has established excusable neglect. And even if this Court were to excuse her forfeiture, she has not offered any evidence that could support her claim. She has not even proffered a reason for her attorney's failure to timely file, much less demonstrated that some exceptional circumstance prevented her from doing so.

Alternatively, if the Court reaches this novel question, it should hold that Agency Rule 1(b)(2) does not implicitly authorize tolling over the timely objection of opposing parties. The Supreme Court applies an equitable-tolling presumption to statutes of limitations because courts have equitably tolled these deadlines for more than a century, putting lawmakers on notice that these deadlines will be subject to tolling unless they specify otherwise. But Agency Rule 1(b)(2) is not a statute of limitations. It is a deadline to appeal, no different from an identical deadline to appeal agency adjudications to this Court. There is no historical practice of tolling deadlines to appeal, so the drafters had no reason to explicitly preclude such relief.

In any event, the text, historical application, and policies underlying Agency Rule 1(b)(2) support an interpretation that precludes tolling. The deadline has

always been strictly construed. And the public has a strong interest in finality of judgments involving the District's budget, agency operations, and labor relations.

3. Alternatively, even if this Court finds that Agency Rule 1(b)(2) authorizes extensions for excusable neglect, this Court should affirm the Superior Court's discretionary finding that Washington's evidence did not satisfy this standard. Although many factors are relevant to showing excusable neglect, one is truly essential: the plaintiff's reason for failing to comply with the deadline. A plaintiff who does not supply the reason for her failure cannot establish excusable neglect no matter how strongly the other factors favor such relief.

Washington offers no reason for her attorney's failure to file her petition for review, nor does she offer any excuse for her failure to provide this essential information. Instead, she merely proffers that she relied on her attorney to comply with the applicable rules. But she offers no evidence to support the claim that she relied on her attorney, not even a sworn statement from her explaining the circumstances. A client is bound by her attorney's conduct unless the attorney was outrageously in violation of her express instructions or the implicit duty of reasonable representation—and even then, only if the client *herself* was diligent in pursuing the claim. Washington has shown only that a third party authorized her attorney to file an appeal and that her attorney did not do so. If this could constitute excusable neglect, deadlines would be meaningless.

ARGUMENT

I. Agency Rule 1 Does Not Authorize Excusable-Neglect Extensions Of Its Petition Deadline.

A. The plain language of Agency Rule 1(b)(2) precludes extensions for good cause or excusable neglect.

This Court uses "the same methods of statutory construction in interpreting [a] procedural rule as [it] would use in interpreting the meaning of a statute." *Varela v. Hi-Lo Powered Stirrups*, 424 A.2d 61, 65 (D.C. 1980); *cf. Tovar v. Regan Zambri Long, PLLC*, 317 A.3d 884, 901 (D.C. 2024) (applying canons of statutory construction to interpret the Superior Court's emergency-tolling orders during the COVID-19 pandemic). "The primary and general rule of statutory construction is that the intent of the lawmaker is to be found in the language that he has used." *Stevens v. D.C. Dep't of Health*, 150 A.3d 307, 315 (D.C. 2016) (quoting *Peoples Drug Stores, Inc. v. District of Columbia*, 470 A.2d 751, 753 (D.C. 1983) (en banc)). "This [C]ourt therefore begins its process of statutory interpretation 'by looking at the statute on its face, and if the meaning is clear, . . . giv[ing] effect to that plain meaning.'" *Id.* (quoting *Rupsha 2007, L.L.C. v. Kellum*, 32 A.3d 402, 406 (D.C. 2011)); *see Dixon*, 304 A.3d at 969 ("[This Court's] first step in considering whether [a procedural rule] is a mandatory claim-processing rule is to look at the Rule's text and its surrounding context to discern the drafter's intent.").

Agency Rule 1(b)(2) states: "Unless an applicable statute provides a different time frame, the petition for review must be filed within 30 days after notice is given,

in conformance with the rules or regulations of the agency, of the order or decision sought to be reviewed."

Textual clues within this provision demonstrate that its filing deadline was meant to be enforced. The clause establishing the deadline uses mandatory, unqualified language, stating that a petition for review "must be filed" within a specified time. *See Leonard v. District of Columbia*, 801 A.2d 82, 84-85 (D.C. 2002) ("[T]he normal rule is that verbs such as 'must' or 'shall' denote mandatory requirements . . . 'unless such construction is inconsistent with the manifest intent of the [drafter] or repugnant to the context of the [rule].'" (quoting *Riggs Nat'l Bank of Wash. v. District of Columbia*, 581 A.2d 1229, 1257 (D.C. 1990)) (cleaned up). That clause is also preceded by an exception—"[u]nless an applicable statute provides a different time frame"—which "convey[s] the otherwise mandatory nature of the . . . deadline." *Holzsager v. D.C. Alcoholic Beverage Control Bd.*, 979 A.2d 52, 60 (D.C. 2009) (citing *Scholtz P'ship v. D.C. Rental Accommodations Comm'n*, 427 A.2d 905, 917 (D.C. 1981)). Thus, Agency Rule 1(b)(2)'s filing deadline cannot be extended for good cause or excusable neglect.

This intent to preclude such extensions is confirmed by comparing the deadline in Agency Rule 1(b)(2) to a deadline in (e)(3), which governs motions to intervene after a petition for review has been filed. Paragraph (e)(3) uses the same language as (b)(2) to establish the deadline but then adds: "*unless the court extends*

this time for good cause." (emphasis added). "It is a 'cardinal principle of . . . construction,' that 'a [rule] ought . . . to be so construed that . . . no clause, sentence, or word shall be superfluous, void, or insignificant.'" *TRW Inc. v. Andrews*, 534 U.S. 19, 31 (2001) (quoting *Duncan v. Walker*, 533 U.S. 167, 174 (2001)); *see Stevens*, 150 A.3d at 315 (describing this as "[o]ne of the most basic interpretive canons" (quoting *Corley v. United States*, 556 U.S. 303, 314 (2009)). When a rule "includes particular language in one section . . . but omits it in another . . . , it is generally presumed that [the drafters] act[ed] intentionally and purposely in the disparate inclusion or exclusion." *Russello v. United States*, 464 U.S. 16, 23 (1983) (quoting *United States v. Wong Kim Bo*, 472 F.2d 720, 722 (5th Cir. 1972)). To imply a good-cause or excusable-neglect extension under (b)(2) when (e)(3) has an explicit good-cause provision would violate these principles of statutory construction.

The Supreme Court applied these principles in *TRW*. There, the Court refused to apply the discovery rule to a statute of limitations for negligent misrepresentation because another clause specified that the limitations period for willful misrepresentation begins running "after discovery by the individual." 534 U.S. at 28 (quoting 15 U.S.C. § 1681p). The Court explained that, even though the discovery rule is usually implicit, *id.*, reading it into the misrepresentation deadline "would not merely supplement the explicit exception contrary to Congress' apparent

intent; it would in practical effect render that exception entirely superfluous," *id.* at 29. The Court thus concluded that Congress "implicitly excluded a general discovery rule by explicitly including a more limited one." *Id.* at 28; *see also Dixon*, 304 A.3d at 969 (finding a deadline to move for a sentence reduction "mandatory rather than permissive" in part because the rule states that the motion "may be made not later than 120 days after the sentence is imposed" while a neighboring provision authorizes the court to correct an illegal sentence "at any time").

It would likewise be unreasonable to infer an authorization for good-cause and excusable-neglect extensions from Agency Rule 1(b)(2)'s silence. The difference between (b)(2) and (e)(3) is stark. Both use the same language to establish their deadlines, stating that the pleading "must be filed within 30 days." But (b)(2) stops there, while (e)(3) adds: "unless the court extends this time for good cause." By adding this exception in (e)(3), the drafters made clear that it is not implicit in (b)(2). After all, if the drafters had understood the words "must be filed within 30 days" to implicitly authorize good-cause or excusable-neglect extensions, they would have had no reason to make that authorization explicit in (e)(3). Washington's proposed interpretation of (b)(2) would thus impermissibly render (e)(3)'s good-cause exception "inoperative or superfluous, void or insignificant." *Stevens*, 150 A.3d at 316 (quoting *Corley*, 556 U.S. at 314).

Of course, "good cause" is not strictly identical to "excusable neglect." The latter is "a more limiting standard" that usually comes into play after a deadline has expired. *Thompson v. District of Columbia*, 863 A.2d 814, 820 (D.C. 2004) (quoting *Wagshal v. Rigler*, 711 A.2d 112, 117 (D.C. 1998)); *see also* Super. Ct. Civ. R. 6(b)(1) (authorizing extensions for good cause before a deadline expires but requiring excusable neglect after that). *A fortiori*, if there is no good cause exception, there is no excusable neglect exception. At the very least, the standards are "cousins" and typically accompany each other in procedural rules, so their availability would rise and fall together. *Long v. United States*, 83 A.3d 369, 376 (D.C. 2013); *see* Super. Ct. Civ. R. 6(b)(1); Super. Ct. Crim. R. 45(b)(1). Moreover, (e)(3)'s good-cause provision demonstrates an intent to preclude *any* implicit exceptions to (b)(2). In *TRW*, the Supreme Court held that, by writing a "discovery rule" into the statute of limitations for willful-misrepresentation claims, Congress demonstrated its intent to exclude the discovery rule *and* equitable estoppel for negligent-misrepresentation claims. 534 U.S. at 31 n.5. The Court explained that "Congress's codification of one judge-made doctrine" should not be read "as a license to imply others, but rather as an intentional rejection of those it did not codify." *Id.* Paragraph (e)(3)'s good-cause exception should likewise be read as an intentional rejection of *any* comparable exception from the deadline in (b)(2), especially its cousin, excusable neglect.

B. Civil Rule 6(b)(1)'s good-cause and excusable-neglect extensions are not incorporated into Agency Rule 1(b)(2) because they are "inconsistent with" it.

Washington does not analyze the plain language of Agency Rule 1(b)(2) or try to harmonize it with paragraph (e)(3)'s good-cause exception. Instead, her textual analysis rests entirely on paragraph (i), which incorporates a lengthy list of Superior Court Rules of Civil Procedure into Agency Rule 1. Br. 8-9, 16-17. According to Washington, because that list includes Civil Rule 6, which authorizes extensions for good cause and excusable neglect, *see* Super. Ct. Civ. R. 6(b), the deadline in Agency Rule 1(b)(2) can be extended on these grounds. Br. 16-17.

However, Agency Rule 1(b)(2) does not incorporate Civil Rule 6(b). That is because the first clause in Agency Rule 1(i) incorporates the listed Civil rules "*[e]xcept where inconsistent with . . . this rule*." (emphasis added). As discussed, *supra* pp. 13-17, the plain text of Agency Rule 1(b)(2) precludes extensions for good cause or excusable neglect. Civil Rule 6(b)(1)'s good-cause and excusable-neglect provisions are thus "inconsistent with" Agency Rule 1(b)(2) and, as a result, not incorporated by Agency Rule 1(i).

The drafters of Agency Rule 1(i) still had good reason to include Civil Rule 6 in its list of rules incorporated into Agency Rule 1, so the non-incorporation of Rule 6(b) as to initial petitions for review does not create surplusage. Rule 6(a), for example, provides detailed guidelines for "computing any time period specified in

these rules, in any court order, or in any statute that does not specify a method of computing time." These add valuable clarity to many provisions in Agency Rule 1—including (b)(2)'s petition deadline. Rule 6(c) and (d), which address deadlines for affidavits, are also consistent with Agency Rule 1 and thus properly incorporated. And Rule 6(b)'s "good cause" and "excusable neglect" provisions may well apply to other deadlines in Agency Rule 1, such as (h)(1), which authorizes judicial extensions for motions for reconsideration but does not specify the standard the court should apply.

The non-incorporation of Civil Rule 6(b) also explains why Agency Rule 1(b)(2) does not appear in its list of deadlines that "[a] court must not extend." Super. Ct. Civ. R. 6(b)(2). Washington makes much of this omission, arguing that it confirms that Rule 6(b) applies. Br. 17. But this would make sense only if Rule 6(b) was incorporated into Agency Rule 1(b)(2) in the first place. Because Rule 6(b) is not so incorporated, nothing can be read into its failure to list Agency Rule 1(b)(2) as an exempted deadline.

C. Public policy supports an interpretation of Agency Rule 1(b)(2) that precludes extensions for good cause or excusable neglect.

Washington argues that public policy supports her lenient interpretation of Agency Rule 1(b)(2). Br. 17-20. Because this rule is not ambiguous, the Court need not consider its policy implications. *See Lincoln Hockey LLC v. D.C. Dep't of Emp. Servs.*, 810 A.2d 862, 868 (D.C. 2002) ("[W]hen the language of a statute is plain

and unambiguous, [this Court is] bound by the plain meaning of that language." (quoting *Hudson Trail Outfitters v. D.C. Dep't of Emp. Servs.*, 801 A.2d 987, 990 (D.C. 2002)). But if the Court does consider these arguments, it should find that public policy favors an interpretation of Agency Rule 1(b)(2) that precludes extensions for good cause and excusable neglect.

First, Washington argues that, because Civil Rule 6(b) permits good-cause and excusable-neglect extensions of many deadlines, this Court should adopt a "strong default rule" permitting such relief "unless expressly foreclosed." Br. 19. But this explicit authorization cuts the other way, demonstrating that the drafters did not believe that such relief is implicitly available. Indeed, Washington's interpretation would impermissibly render Civil Rule 6(b)—along with its criminal-procedure counterpart, Super. Ct. Crim. R. 45(b)—completely unnecessary. *See Stevens*, 150 A.3d at 315-16 (reiterating canon that statutes should be interpreted "so that no part will be inoperative or superfluous"). This is why, "where a rule . . . defines the boundaries of a particular procedural remedy, it occupies the field to the exclusion of any generalized inherent power on the part of the court to act." *Siddiq v. Ostheimer*, 718 A.2d 145, 148 (D.C. 1998).

Moreover, a closer look at Civil Rule 6(b) reveals a carefully balanced policy that favors lenient extensions during litigation but favors finality following a decision on the merits. Rule 6(b)(1) broadly authorizes extensions of most civil-

procedure deadlines, including those that govern discovery, summary judgment, and trial. But Rule 6(b)(2) exempts every deadline governing challenges to a verdict or judgment. *See id.* (exempting Super. Ct. Civ. R. 50(b) (post-verdict renewal of motion for judgment), 50(d) (new trial), 52(b) (amended judgment), 59(b) (new trial), 59(d) (new trial), 59(e) (amended judgment), and 60(b) (relief from final judgment)). The drafters thus plainly understood that, once a decision is reached, the "deep-seated interest in promoting the finality of judgments" takes precedence over an extended opportunity to seek reconsideration of the merits. *Deloatch v. Sessoms-Deloatch*, 229 A.3d 486, 492 (D.C. 2020) (quoting *Siddiq*, 718 A.2d at 147).

A petition for review under Agency Rule 1 is an *appeal*. D.C. Code § 1-606.03(d). It comes after a decision on the merits has been reached by the agency and does not allow for discovery or the introduction of new evidence. *See* Super. Ct. Agency Rev. R. 1(f)-(g) (limiting review to the agency record). Indeed, this Court "reviews agency decisions on appeal from the Superior Court the same way [it] review[s] administrative appeals that come to [it] directly." *Sium v. Off. of the State Superintendent of Educ.*, 218 A.3d 228, 232 (D.C. 2019). The deadline to file this appeal is thus more like the non-extendable deadlines in Civil Rule 6(b)(2) than any deadline subject to extension under Rule 6(b)(1). As such, to the extent that

Civil Rule 6(b) reflects the policy objectives of Agency Rule 1, that policy would preclude good-cause and excusable-neglect extensions under Agency Rule 1(b)(2).

Second, Washington invokes this Court's policy favoring decisions "on the merits." Br. 19 (first quoting *Vizion One, Inc. v. D.C. Dep't of Health Care Fin.*, 170 A.3d 781, 791 (D.C. 2017), then quoting *Walker v. Smith*, 499 A.2d 446, 448-49 (D.C. 1985)). But Washington has already had her day in court. An OEA administrative judge held an evidentiary hearing where Washington could introduce evidence, cross-examine witnesses, and present legal arguments, after which the judge issued a final decision on the merits. JA 3-23; *see Siddiq*, 718 A.2d at 147 (rejecting invocation of the "preference in favor of trial on the merits" because the appellant "had a trial on the merits before an arbitrator"). She now seeks an extension of the deadline to *appeal* that decision. And public policy dictates that, once a decision on the merits is reached, the prevailing party and the public have a predominant interest in finality. *See Clement v. D.C. Dep't of Hum. Servs.*, 629 A.2d 1215, 1218 (D.C. 1993) (citing cases applying this "fundamental principle of litigation . . . in a variety of contexts").

Third, Washington argues that, because the codified purpose of the CMPA uses the word "equitable," the statute favors good-faith and excusable-neglect extensions of Agency Rule 1(b)(2). Br. 19-20. But this clause merely seeks "equitable application of appropriate rules or regulations *among all agencies*," D.C.

Code § 1-604.01 (emphasis added), which means that the personnel rules for one agency should be "equitable [in] nature . . . to those governing other . . . agencies," *Harrison v. Bd. of Trs. of the Univ. of the D.C.*, 758 A.2d 19, 23 (D.C. 2000). Nothing in that provision suggests that the Council was even thinking about appeals of administrative decisions under the statute, much less whether the court-created deadline for those appeals would be subject to extensions for excusable neglect.

The CMPA does, however, demonstrate the public's compelling interest in finality of OEA adjudications—which Agency Rule 1 was originally drafted to govern. *See* Super. Ct. Agency Rev. R. 1 (2018) (titled "Superior Court review of agency orders pursuant to D.C. Code 1981, Title 1, Chapter 6"). The OEA adjudicates RIFs, D.C. Code § 1-606.03, which the District conducts to respond to fiscal emergencies, manage its budget, or restructure its agencies, *id*. §§ 1-624.01 *et seq.*; 6B DCMR § 2401.1; *see Stevens*, 150 A.3d at 319. Reversal of these fast-moving personnel actions can have serious and cascading effects on an agency's budget and operations, as well as on the rights of retained employees. Once the OEA has ruled and the deadline to appeal has expired, the public interest is best served if the agency can proceed with confidence that these structural changes will not be unwound by a court at some unascertainable point in the future, simply because an employee's attorney failed to timely file her appeal. *Cf. Wallace v. Warehouse Emps. Union # 730*, 482 A.2d 801, 807 (D.C. 1984) (noting that "the finality of

judgments will not be adversely affected" by a decision adding three days to a post-trial deadline because "the time period will remain precisely ascertainable").

Agency Rule 1 also governs appeals of decisions by the D.C. Public Employee Relations Board ("PERB"), an agency created by the CMPA to oversee collective bargaining between the District and its employees. D.C. Code § 1-605.02. PERB certifies unions and decides which matters are within the scope of collective bargaining—questions that must be resolved before meaningful negotiations can take place. *Id.* § 1-605.02(1), (5). PERB also adjudicates unfair labor practices and orders remedial actions, which are essential for good-faith collective bargaining and productive labor relations. *Id.* § 1-605.02(3). And PERB reviews the legal sufficiency of arbitration awards involving employee discipline and RIFs which, as discussed, can seriously disrupt agency operations if reversed. *Id.* § 1-605.02(6). As with OEA adjudications, the public has a strong interest in finality of PERB decisions after time to appeal has expired.

The same is true for other agency adjudications appealable under Agency Rule 1 and D.C. App. R. 15, which this Court has indicated will be interpreted in the same manner. *See Brewer v. D.C. Off. of Emp. Appeals*, 163 A.3d 799, 802 (D.C. 2017) (finding "no legitimate basis to differentiate the two [deadlines]"). The prevailing parties have a strong interest in finality of these decisions, which resolve disputes over a broad range of matters such as zoning and construction permitting,

alcoholic beverage licensing, professional licensing, rental housing standards, and tax liability. Even if these parties could later demonstrate prejudice from an untimely appeal, the mere possibility of a favorable ruling on excusable neglect would preclude them (and other stakeholders) from proceeding with confidence that their plans would not be upended after the time to appeal has expired. After all, the Superior Court has granted excusable-neglect extensions to several of Washington's colleagues, despite the lack of any proffered explanation for their attorney's failure to timely file. *See* Br. 7 (citing cases). And even though such extensions were erroneous, *see infra* pp. 43-50, the District must wait for a final judgment before it can appeal those rulings.

II. Washington Has Not Preserved A Claim For The Extraordinary Remedy Of Equitable Tolling, Nor Is Such Relief Available Under Agency Rule 1(b)(2).

This Court has not yet considered whether Agency Rule 1(b)(2) or its appellate twin, D.C. App. R. 15(a)(2), can be equitably tolled over the timely objection of an opposing party. Throughout her brief, Washington erroneously conflates equitable tolling with excusable neglect. *See* Br. 15-21, 28-37. But these doctrines are miles apart. To establish excusable neglect, a party need only show "good faith . . . and some reasonable basis for non-compliance." *Admasu*, 108 A.3d at 361-62 (quoting *Dada v. Children's Nat'l Med. Ctr.*, 715 A.2d 904, 908 (D.C. 1998)). By contrast, to justify equitable tolling, a party must show that

"extraordinary" circumstances prevented her from meeting the deadline. *Ware v. D.C. Dep't of Emp. Servs.*, 157 A.3d 1275, 1280 n.4 (D.C. 2017) (quoting *Lawrence v. Florida*, 549 U.S. 327, 336-37 (2007)).

Whether Agency Rule 1(b)(2) is subject to equitable tolling is thus a separate question from whether it is subject to extensions for good cause or excusable neglect. And it is a question that the Court need not reach because Washington has forfeited it by failing to argue that she is entitled to this extraordinary relief. Even if this Court were to excuse the forfeiture, she has not even proffered a reason for her attorney's failure to meet the deadline, much less demonstrated that some exceptional circumstance prevented her from timely filing. Lastly, if the Court nevertheless needs to reach the question, equitable tolling is not available under Agency Rule 1(b)(2) if an opposing party properly objects.

A. Washington has forfeited any claim of entitlement to "equitable tolling" and, in any event, has offered insufficient evidence to justify this extraordinary relief.

This Court need not decide whether Agency Rule 1(b)(2) is subject to equitable tolling because Washington has never sought this relief. She argues only that she has demonstrated "excusable neglect." JA 24-26; Br. 29-42. This is not enough to preserve a claim for equitable tolling.

Equitable tolling and extensions based on excusable neglect are different remedies subject to very different standards. Although "excusable neglect does not

apply to 'run-of-the-mill situations,'" *Admasu*, 108 A.3d at 361 (quoting *Snow v. Capitol Terrace, Inc*., 602 A.2d 121, 125 (D.C. 1992)), these extensions are liberally granted and require only a showing of "good faith . . . and some reasonable basis for non-compliance," *id.* at 362 (quoting *Dada*, 715 A.2d at 908). Equitable tolling, by contrast, is only presumptively available for statutes of limitations, *see infra* pp. 34-40, and only under "extraordinary" circumstances. *Ware*, 157 A.3d at 1280 n.4. But Agency Rule 1(b)(2) is not a statute of limitations. And even if it were, "[e]quitable tolling" would apply only "if despite all due diligence [the plaintiff] [wa]s unable to obtain vital information bearing on the existence of his claim." *East v. Graphic Arts Indus. Joint Pension Tr.*, 718 A.2d 153, 160 n.21 (D.C. 1998) (quoting *Cada v. Baxter Healthcare Corp.*, 920 F.2d 446, 450-51 (7th Cir. 1990)); *see, e.g.*, *Johnson v. D.C. Dep't of Emp. Servs.*, 181 A.3d 155, 162 & n.17 (D.C. 2018) (noting that appellant "possibly may" invoke equitable tolling "[i]f [District officials] misled [her] into believing [the agency] was continuing to process her claim and that she should disregard [its] denial notice").

Even in cases where equitable tolling might be available, extensions based on mere excusable neglect are not. The Supreme Court's recent cases invoking an equitable-tolling presumption all rely on authority tracing back to *Irwin v. Department of Veterans Affairs*, 498 U.S. 89 (1990). *See Harrow v. Dep't of Def.*, 601 U.S. 480, 489 (2024) (citing *Boechler, P.C. v. Comm'r*, 596 U.S. 199 (2022));

Boechler, 596 U.S. at 209 (citing *Lozano v. Alvarez*, 572 U.S. 1, 10-11 (2014), and *Irwin*, 498 U.S. at 95-96); *Lozano* 572 U.S. at 10 (citing *Irwin*, 498 U.S. at 95). *Irwin*, in turn, explains that implicit equitable relief can be "extended . . . only sparingly," 498 U.S. at 96, such as when a plaintiff timely filed his complaint in the wrong court, *see id.* at 96 n.3, or where the delay was caused by "his adversary's misconduct," *see id.* at 96 & n.4. And *Irwin* explicitly rejects an argument that a deadline presumptively subject to equitable tolling can be extended on less compelling grounds, holding that the presumption "do[es] not extend to what is at best a garden variety claim of excusable neglect." *Id.* at 96. This is why, when drafters want a deadline to be subject to excusable-neglect extensions, they make that authorization explicit. *See, e.g.*, Super. Ct. Civ. R. 6(b) (authorizing excusable-neglect extensions for all civil procedure deadlines except those explicitly exempted); Super. Ct. Crim. R. 45(b) (same for criminal procedure deadlines).

To be sure, both the Supreme Court and this Court occasionally use "equitable tolling" to loosely describe *any* extension of a deadline, including for "good cause." *See, e.g.*, *Nutraceutical Corp. v. Lambert*, 586 U.S. 188, 194 (2019) (denying a "good cause" extension because the rule "is not amenable to equitable tolling"); *Dixon*, 304 A.3d at 969-70 (similar). But those cases were considering whether the *explicit* good-cause and excusable-neglect provisions applied to the deadlines in question. *See, e.g.*, *Nutraceutical*, 586 U.S. at 193 (holding that Fed. R. App. P. 2's

"good cause" provision does not apply to Fed. R. Civ. P. 26(b)); *Dixon*, 304 A.3d at 969-70 (holding that Super. Ct. Crim. R. 45(b)(1)'s "good cause" provision does not apply to Super. Ct. Crim. R. 35(b)(1)). They do not suggest that a rule or statute is *implicitly* subject to extensions for mere good cause or excusable neglect wherever equitable tolling might apply, or that the two remedies are equivalent. *See Hallstrom v. Tillamook County*, 493 U.S. 20, 27-28 (1989) ("The equities do not weigh in favor of modifying statutory requirements when the procedural default is caused by the petitioners' 'failure to take the minimal steps necessary' to preserve their claims.").

Washington claims only that her attorney's failure to timely file was due to "excusable neglect." JA 25; Br. 29-42. She has thus forfeited any claim for the type of equitable tolling that she argues is presumptively available. *See McFarland v. George Wash. Univ.*, 935 A.2d 337, 351 (D.C. 2007) (holding that claims not made in an opening brief are forfeited); *Wallace v. Skadden, Arps, Slate, Meagher & Flom LLP*, 799 A.2d 381, 388 (D.C. 2002) (same for claims not raised in the trial court).

Moreover, even if the Court were to consider the matter, it should reject Washington's claim for equitable tolling as a matter of law because she cannot show extraordinary circumstances. In *Irwin*, rather than remand the question to the trial court, the Supreme Court held that the plaintiff's justification for missing the deadline—that his attorney was out of the country when the agency issued the decision that started the 30-day clock—could not justify equitable tolling as a matter

of law. 498 U.S. at 96. The Court explained that such relief was not available where "the claimant failed to exercise due diligence in preserving his legal rights" and had, at best, presented "a garden variety claim of excusable neglect." *Id.*

Washington's justification for missing the Agency Rule 1 deadline is even weaker. She does not dispute that both Suszczyk and her attorney knew about the OEA's decision when it was issued. *See* JA 27 (declaration attesting that Suszczyk authorized the employees' attorney to appeal to the Superior Court). The OEA provided notice regarding where to appeal, when to appeal, and which procedural rules would govern, so she cannot claim that she did not know how to obtain judicial review. *See* JA 21 (notice appended to the OEA decision). And Washington offers no reason for her attorney's failure to timely file her petition. Even if the unexplained failure of Washington's attorney to timely file could reasonably establish "excusable neglect" (and it cannot), it does not reasonably establish the extraordinary circumstances required to justify equitable tolling.

B. If it reaches the question, this Court should hold that Agency Rule 1(b)(2) is not subject to equitable tolling over the timely objection of opposing parties.

1. This Court has not yet decided the issue, although it has traditionally treated such deadlines as mandatory and not subject to equitable extension.

Agency Rule 1(b)(2) has historically been construed as "mandatory and jurisdictional," precluding equitable tolling even when waived or forfeited by

opposing parties. *Fisher v. District of Columbia*, 803 A.2d 962, 965 (D.C. 2002). So have other comparable deadlines, such as the identically worded D.C. App. R. 15(a)(2) governing administrative appeals to this Court, *see Capitol Hill Restoration Soc'y v. D.C. Mayor's Agent for Historic Pres.*, 44 A.3d 271, 277 (D.C. 2012), and D.C. App. R. 4, which governs direct appeals of Superior Court judgments, *see Frain v. District of Columbia*, 572 A.2d 447, 449 (D.C. 1990) (civil); *McKnight v. United States*, 764 A.2d 240, 241 (D.C. 2000) (criminal).

This Court now recognizes that these deadlines are not jurisdictional and can thus be forfeited or waived. *See Deloatch*, 229 A.3d at 489-90 (D.C. App. R. 4); *Brewer*, 163 A.3d at 802 (predecessor to Agency Rule 1(b)(2)); *Mathis v. D.C. Hous. Auth.*, 124 A.3d 1089, 1103 (D.C. 2015) (D.C. App. Rule 15(a)(2)). But it has not considered whether these deadlines can be extended *if timely invoked by an opposing party*. In other words, the Court has not determined whether they are mandatory claim-processing rules. In *Deloatch* and *Mathis*, the opponent never asserted a right to relief based on the missed deadline. *See Deloatch*, 229 A.3d at 493 & n.12 (noting that the appellees did not move to dismiss); *Mathis*, 124 A.3d at 1101 n.21 (stating that the DCHA "never addressed, much less contested, the propriety of equitable tolling in this case"). And in *Brewer*, "the government took no action whatsoever for three months" and then, in its first filing, suggested that the court "render a decision on the merits." *Brewer*, 163 A.3d at 803. Although the Court stopped one

step short of holding that this "constituted a forfeiture," it was "this extended inaction" that "le[ft] open the possibility of equitable tolling as allowed in *Mathis*." *Id.* at 803-04. The Court did not consider whether equitable tolling would have been available had the deadline been timely invoked. *See id.*

This makes all the difference. If the deadline is waived or forfeited, the court is free to fashion whatever equitable remedy it deems appropriate, be it excusable neglect, equitable tolling, or some other balancing test. *See, e.g.*, *Deloatch*, 229 A.3d at 492 (weighing the public's interest in finality of judgments and judicial economy against appellees' forfeiture); *Brewer*, 163 A.3d at 804 (applying a traditional equitable-tolling test to excuse petitioner's timely filing in the wrong court); *Mathis*, 124 A.3d at 1104 ("balancing the fairness to both parties"). But if the deadline is timely invoked, the court must then decide whether the rule was meant to authorize equitable extensions and, if so, what standard the rule was meant to require. *See Deloatch*, 229 A.3d at 493 & n.12 (noting that "mandatory claim-processing rules like Rule 4 'must be enforced' when properly invoked by the appellee" (quoting *Hamer v. Neighborhood Hous. Servs.*, 583 U.S. 17, 20 & n.3 (2017)).

Washington is therefore wrong to suggest that *Brewer* and *Mathis* provide "highly persuasive" support for an interpretation of Agency Rule 1(b)(2) that permits equitable tolling. Br. 21. These cases establish only that Agency Rule 1(b)(2) and D.C. App. R. 15(a)(2)'s deadlines can be forfeited and that there is "no legitimate

basis to differentiate the two rules." *Brewer*, 163 A.3d at 802; *see* Super. Ct. Agency Rev. R. 1, *Comment to 2019 Amendment* (noting that "[t]he substance of this rule has . . . been modified consistent with D.C. App. R. 15-20"). And Washington's reliance on a third case, *Baldwin v. D.C. Office of Employee Appeals*, 226 A.3d 1140 (D.C. 2020), is even farther from the mark. *Baldwin* holds only that that the statutory deadline to appeal an OEA administrative judge's initial decision to the OEA Board is not jurisdictional. *See id.* at 1144.

Moreover, although the Court has not yet considered whether Agency Rule 1(b)(2) or D.C. App. R. 15(a)(2) precludes equitable tolling if timely invoked, it has held that a comparable deadline—to appeal a magistrate judge's decision to the Family Court—must be "strictly enforced if the issue of timeliness is properly raised." *In re Na.H.*, 65 A.3d 111, 116 (D.C. 2013). The deadline uses "restrictive language," so the availability of equitable tolling rested on whether a tolling exception was implicit. *Id.* at 116 n.8; *see* Super. Ct. Fam. R. D(e)(1)(B). The Court held that it was not because, "*[e]ven in the era of claim-processing rules*, the time for noting an appeal has been treated as inflexible unless the opposing party has forfeited his objection." *Id.* at 116 n.8 (emphasis added). "For example, the Supreme Court took pains in *Eberhart* to explain why it continued to endorse the outcome of older cases like *United States v. Robinson*, [361 U.S. 220, 229 (1960)], which dismissed appeals not filed within the deadlines specified in court-

promulgated rules." *Id.* (citing *Eberhart v. United States*, 546 U.S. 12, 17 (2005)). *Eberhart* "said that *Robinson* 'is correct not because the District Court lacked *subject-matter jurisdiction*, but because district courts must observe the clear limits of the [applicable rules of procedure] when they are properly invoked.'" *Id.* (quoting *Eberhart*, 546 U.S. at 17). Precedent thus supports a strict interpretation here.

2. The Supreme Court's equitable-tolling presumption does not apply because Agency Rule 1(b)(2) is not a statute of limitations, and deadlines to appeal are not implicitly subject to tolling.

Washington urges this Court to adopt a presumption that all nonjurisdictional deadlines are subject to equitable tolling. Br. 12-13. She bases this on *Boechler*, where the Supreme Court applied an equitable-tolling presumption to a Tax Court deadline because tolling "is a traditional feature of American jurisprudence and a background principle against which Congress drafts limitations periods." 596 U.S. at 208-09. But *Boechler* does not suggest that the presumption applies to court-created rules or any other deadline not historically subject to tolling under the common law. And, more importantly, the case on which *Boechler* relies, *Lozano*, squarely holds that the equitable-tolling presumption can apply *only* to statutes of limitations. 572 U.S. at 10-11.

In *Lozano*, a father petitioned for the return of his minor child to England more than a year after her mother abducted her. *Id.* at 8. Under the Hague Convention, if such a petition is filed within one year of the child's removal, the trial court cannot

consider whether she has settled into her new environment. *Id.* at 5. The father moved for equitable tolling during the seven months the child's mother concealed her location. *Id.* at 9. Because "nothing in the Convention warrants tolling," its availability turned on whether the presumption applied. *Id.* at 11. The Supreme Court held that it did not, even if the deadline had been enacted by Congress and was thus "subject to [the] presumption," because "the 1-year period . . . *is not a statute of limitations*." *Id.* (emphasis added).

The Court explained that the presumption is simply a reflection of the drafter's intent. "Congress 'legislate[s] against a background of common-law adjudicatory principles,'" *id.* at 10 (quoting *Astoria Fed. Sav. & Loan Ass'n v. Solimino*, 501 U.S. 104, 108 (1991)), and "[e]quitable tolling, a long-established feature of American jurisprudence derived from 'the old chancery rule,' . . . is just such a principle," *id.* at 10-11 (quoting *Holmberg v. Armbrecht*, 327 U.S. 392, 397 (1946)). But, the Court explained, because this old chancery rule applied only to deadlines to initiate litigation, the equitable-tolling presumption applies only "if the period in question is a statute of limitations." *Id.* at 11 (citing *Young v. United States*, 535 U.S. 43, 49-50 (2002) ("Congress must be presumed to draft limitations periods in light of this background principle."); *Bailey v. Glover*, 88 U.S. 342, 349-50 (1875) (holding that equitable tolling for fraudulent concealment "is founded in a sound and philosophical view of the principles of the statutes of limitation")).

Other Supreme Court decisions confirm this. *Boechler* cites one other case, *Irwin*. *See Boechler*, 596 U.S. at 209. And *Irwin* holds that, because the presumption applied to a 30-day deadline to file suit against private employers after the exhaustion of administrative remedies under Title VII of the Civil Rights Act of 1964, 42 U.S.C. 2000e *et seq.*, this was "likely to be a realistic assessment of legislative intent" for a similar deadline governing Title VII suits against the federal government. 498 U.S. at 95-96. To support this premise, *Irwin* cited *Hallstrom*, where the Court refused to apply the equitable-tolling presumption to a deadline for pre-suit notice because it was *not* a statute of limitations. *See Irwin*, 498 U.S. at 96; *Hallstrom*, 493 U.S. at 27. *Hallstrom* distinguished that deadline from Title VII's deadline to exhaust administrative remedies because "both the language and legislative history of [Title VII] indicate that the [Title VII deadline] operated as a statute of limitations." *Id.* (distinguishing *Zipes v. Trans World Airlines, Inc.*, 455 U.S. 385, 393 (1982)).

This Court should likewise hold that the equitable-tolling presumption is limited to statutes of limitations. Equitable tolling, by its very nature, inserts an implied exception onto facially unqualified text. *See Lozano*, 572 U.S. at 10 (noting that "the doctrine effectively extends an otherwise discrete limitations period set by Congress"). A presumption that legislators intended such relief should thus be confined to the type of deadlines for which this implied exception has historically

applied. And this Court has never applied equitable tolling, over the timely objection of opposing parties, to a deadline that does not operate as a statute of limitations.

Agency Rule 1(b)(2) does not operate as a statute of limitations. "Statutes of limitations establish the period of time within which a claimant must bring an action," *Lozano*, 572 U.S. at 14 (quoting *Heimeshoff* v. *Hartford Life & Accident Ins. Co.*, 571 U.S. 99, 105 (2013)), and thus generally "begin[] to run when . . . 'the plaintiff can file suit and obtain relief,'" *Heimeshoff*, 571 U.S. at 105 (quoting *Bay Area Laundry & Dry Cleaning Pension Tr. Fund v. Ferbar Corp. of Cal.*, 522 U.S. 192, 201 (1997)). Here, the applicable statute of limitations is established by the CMPA, which requires separated employees to file their claims in the OEA "within 30 days of the effective date of the . . . action." D.C. Code § 1-606.03(a). After Washington satisfied that deadline, the OEA held an evidentiary hearing, considered her evidence and legal arguments, and entered a decision on the merits. JA 3-22.

Washington's petition for review was therefore an *appeal* of that decision to the Superior Court. *See* D.C. Code § 1-606.03(d) (providing that an employee may "appeal" the OEA's decision to the Superior Court). This Court has recognized that the Superior Court sometimes operates as an appellate body. *See Na.H.*, 65 A.3d at 116 (construing the Superior Court's review of a magistrate's determination as an "appeal"). And this Court has found no material difference between Agency Rule 1 review and its own review of "administrative appeals" under D.C. App. R. 15. *See*

Sium, 218 A.3d at 232 ("This [C]ourt reviews agency decisions on appeal from the Superior Court the same way we review administrative appeals that come to us directly."); Super Ct. Agency Rev. R. 1(f)-(g) (limiting review to agency record).

Unlike statutes of limitations, deadlines for appeal have never been implicitly subject to tolling. Indeed, until recently, these rules were deemed "mandatory and jurisdictional." *Deloatch*, 229 A.3d at 489 (citing cases interpreting D.C. App. R. 4's deadline for appeal); *see Fisher*, 803 A.2d at 965 (interpreting predecessor to Agency Rule 1(b)(2) based on cases interpreting D.C. App. R. 15(a)(2)). Modern jurisprudence has clarified that these deadlines are not truly "jurisdictional," making them subject to waiver and forfeiture. *See, e.g.*, *Brewer*, 163 A.3d at 802 (deadline to appeal under Agency Rule 1(b)(2)); *Mathis*, 124 A.3d at 1103 (deadline to appeal under D.C. App. R. 15(a)(2)). But this Court has never held that, when timely invoked, these previously inflexible deadlines are now presumptively subject to equitable tolling. Instead, based on this history of rigid enforcement, the Court has held that a deadline to appeal a magistrate judge determination to the Family Court is *not* subject to tolling if timely invoked. *Na.H.*, 65 A.3d at 116; *see id.* at 116 n.8 (noting that, even after the Supreme Court acknowledged that court-promulgated deadlines are not jurisdictional, it continued to endorse older cases that had dismissed untimely *appeals*).

Boechler applied the presumption to a deadline to petition the Tax Court for review of an administrative decision, which could at first blush look like a deadline to appeal. 596 U.S. at 209. But the Court treated the deadline like a statute of limitations, no different from those embedded in other administrative schemes. *See id.* at 209 & n.1 (citing *Irwin*, 498 U.S. at 95-96 (deadline to file Title VII action)); *Young*, 535 U.S. at 47 ("lookback" period for bankruptcy discharge of tax debt); *United States v. Kwai Fun Wong*, 575 U.S. 402, 407, 420 (2015) (deadline to file tort claim after administrative exhaustion)). And, indeed, the *Boechler* deadline operates as a statute of limitations: the Tax Court considers the question of liability de novo, *see Goza v. Comm'r*, 114 T.C. 176, 182 (2000); its decision is reviewed "in the same manner and to the same extent as decisions of the district courts in civil actions tried without a jury," 26 U.S.C. § 7482(a)(1); and, in all but three jurisdictions, it can consider new evidence, *see Johannes v. Comm'r*, No. 6422-23SL, 2024 U.S. Tax Ct. LEXIS 2792, at *8 (T.C. Nov. 8, 2024) (citing cases). Moreover, *Boechler* does not purport to depart from *Lozano*, which explicitly holds that the presumption applies only "if the period in question is a statute of limitations." 572 U.S. at 11.

To be sure, *Harrow* contains a few sentences of dictum suggesting that the presumption also applies to the deadline to appeal an agency adjudication to the Federal Circuit. *See* 601 U.S. at 489. But even though "dicta of the Supreme Court

has persuasive force," *Cardozo v. United States*, 315 A.3d 658, 666 (D.C. 2024), there is good reason to reject it here. *See, e.g.*, *Porter v. United States*, 37 A.3d 251, 264 (D.C. 2012) (declining to follow Supreme Court dictum where inconsistent with other language in the decision); *Heard v. Johnson*, 810 A.2d 871, 881 (D.C. 2002) (inconsistent with governing standard); *Cunningham v. George Hyman Constr. Co.*, 603 A.2d 446, 450 (D.C. 1992) (inconsistent with plain language of statute). *Harrow* offers no reasoning or analysis for its assumption that the presumption applied—perhaps because the respondent did not argue that it applies only to statutes of limitations. *See* 601 U.S. at 489. And its passing dictum is impossible to square with *Lozano*, which based its holding on the rule that the presumption applies only to statutes of limitations, *see* 572 U.S. at 11, and *Na.H.*, which confirms that no such presumption applies to deadlines to appeal, *see* 65 A.3d at 116 & n.8.

In any event, *Harrow*'s dictum is distinguishable because that deadline was enacted by Congress, while Agency Rule 1(b)(2) is a court-created deadline. *Lozano* gave two independent reasons to reject the presumption, and one was that the Hague Convention was not enacted by Congress and thus "not adopted against a shared background of equitable tolling." 572 U.S. at 11. The same is true for Agency Rule 1, which was not enacted by Congress or the Council and thus was not drafted under any shared background of equitable tolling. *See Na.H.*, 65 A.3d at 116 & n.8.

3. The plain text, surrounding context, and policy underlying Agency Rule 1(b)(2) demonstrate the drafters' intent that it be strictly construed without equitable exception.

Regardless of whether a presumption applies, this Court should hold that Agency Rule 1(b)(2) precludes equitable tolling. The availability of such relief is "fundamentally a question of [the drafter's] intent." *Lozano*, 572 U.S. at 10; *see Dixon*, 304 A.3d at 969 (similar). And the language and policy underlying Agency Rule 1(b)(2) confirm the drafters' intent to preclude equitable tolling over the timely objection of opposing parties.

Plain language. As discussed, the text of Agency Rule 1(b)(2) demonstrates the drafter's intent to preclude equitable extensions. In *Dixon*, this Court held that the plain language of a deadline to move for criminal-sentence reduction—which states that the motion "may be made not later than 120 days after the sentence is imposed"—"establish[es] an 'unqualified bar' on procedural steps taken after the specified time." 304 A.3d at 969 (quoting *Merck & Co. v. Reynolds*, 559 U.S. 633, 650 (2010)). Agency Rule 1(b)(2)'s "must be filed within 30 days" clause likewise establishes an unqualified bar on late-filed petitions. *See Leonard*, 801 A.2d at 84-85 (explaining that the word "must" "denote[s] [a] mandatory requirement[]").

Next, *Dixon* compared the sentence-reduction deadline to a neighboring provision that "permits a sentencing court to 'correct an illegal sentence at any time.'" 304 A.3d at 969. This confirmed that the deadline to move for sentence

reduction—which had no "at any time" clause—"is properly treated as mandatory." *Id.* Similar reasoning confirms the mandatory nature of Agency Rule 1(b)(2), which is silent regarding extensions even though (e)(3) explicitly authorizes extensions for "good cause." Even though it is technically possible to preclude "good cause" and "excusable neglect" extensions while still permitting equitable tolling in extraordinary situations, this reading is unreasonable. As the Supreme Court explained in *TRW*—where it rejected an implicit authorization of equitable estoppel because a neighboring provision explicitly authorized equitable relief under the discovery rule—"Congress' codification of one judge-made doctrine [is not] a license to imply others, but rather . . . an intentional rejection of those it did not codify." 534 U.S. at 31 n.5.

Washington notes that both *Dixon* and *Nutraceutical* found support in the deadlines' "express carveout" from a rule that broadly authorized "good cause" and "excusable neglect" extensions. Br. 23-24 (quoting *Dixon*, 304 A.3d at 969; *Nutraceutical*, 586 U.S. at 193). But neither case suggests that this is the *only* way to draft a mandatory rule. In those cases, a carveout was needed because the deadlines were otherwise subject to rules that, like Civil Rule 6(b), broadly authorized extensions for "good cause" and "excusable neglect." *See Dixon*, 304 A.3d at 969 (citing carveout of deadline from Super. Ct. Crim. R. 45, which broadly applies to the rules of criminal procedure); *Nutraceutical*, 586 U.S. at 193 (citing

carveout of deadline from Fed. R. App. P. 2, which broadly applies to rules involving appeals). Not so for Agency Rule 1(b)(2), which is beyond the scope of Rule 6(b). *See* Agency Rule 1(i) (not incorporating provisions "inconsistent with" Agency Rule 1). It would be strange indeed to require the drafters to list this deadline with those exempted from Rule 6(b) when the rule does not apply in the first place.

Policy. As discussed, *supra* pp. 19-25, public policy strongly supports an interpretation of Agency Rule 1(b)(2) that precludes equitable tolling. Washington invokes a policy favoring decisions on the merits. Br. 19. But as explained, she has already had her day in court and obtained a decision on the merits, so the "interest in promoting the finality of judgments" predominates here. *Deloatch*, 229 A.3d at 492 (quoting *Siddiq*, 718 A.2d at 147). And, as discussed, the public's interest in finality is particularly important for appeals of CMPA adjudications because reversal can have serious and cascading effects on the District's response to fiscal emergencies, among other things. Public policy thus favors treating Agency Rule 1(b)(2) as a mandatory claim-processing rule.

III. Alternatively, Even If Agency Rule 1(b)(2) Authorizes Extensions For Excusable Neglect, The Superior Court Properly Denied This Relief.

This Court reviews rulings on excusable neglect for abuse of discretion. *See Admasu*, 108 A.3d at 361; *In re Grooms*, 123 A.3d 976, 978 (D.C. 2015); *In re Al-Baseer*, 19 A.3d 341, 345 (D.C. 2011). Washington argues that these are "[m]ixed questions of law and fact" that should be reviewed de novo, with deference only to

the Superior Court's "factual findings." Br. 30 (citing *Brewer*, 163 A.3d at 804; *Savage-Bey v. La Petite Academy*, 50 A.3d 1055, 1063 (D.C. 2012)). But the cases she cites do not support this. Excusable neglect was not at issue in *Brewer*, which found a "compelling" case for equitable tolling because the petition was "timely filed, but in the wrong court." 163 A.3d at 804; *see Irwin*, 498 U.S. at 96 & n.3 (noting that "wrong court" filings are traditional grounds for equitable tolling of statutes of limitations). And this Court applied deference in *Savage-Bey* but found that the administrative law judge abused its discretion because the agency had told the appellant to wait for a determination to arrive by mail and she filed her appeal the same day that she received the mailing. 50 A.3d at 1061-62.

"Determining whether a party's neglect is excusable 'is at bottom an equitable one, taking [into] account . . . all relevant circumstances surrounding the party's omission.'" *In re Estate of Yates*, 988 A.2d 466, 468 (D.C. 2010) (quoting *Pioneer Inv. Servs. Co. v. Brunswick Assocs. Ltd. P'ship*, 507 U.S. 380, 395 (1993)). Courts consider "the danger of prejudice [to other parties], the length of the delay and its potential impact on judicial proceedings, the reason for the delay, including whether it was within the reasonable control of the movant, and whether the movant acted in good faith." *Id.* (quoting *Pioneer*, 507 U.S. at 395). These factors, however, "do not carry equal weight." *Admasu*, 108 A.3d at 362 n.3 (quoting *Lowry v. McDonnell Douglas Corp.*, 211 F.3d 457, 463 (8th Cir. 2000)). "The principal factor that the

trial court must consider is the plaintiff's reason for failing to comply with the rule." *Thompson*, 863 A.2d at 818; *see Admasu*, 108 A.3d at 362 n.3 ("'[T]he excuse given for the late filing must have the greatest import' and 'the focus must be upon the nature of the neglect.'" (quoting *Lowry*, 211 F.3d at 463)); *Grooms*, 123 A.3d at 978 ("A 'run-of-the-mill situation[]' involving untimeliness . . . does not give rise to excusable neglect." (quoting *Admasu*, 108 A.3d at 361)).

If the plaintiff does not supply the reason she failed to comply, she cannot establish excusable neglect, no matter how strongly the other factors favor her claim. In *Dorsey v. District of Columbia*, 839 A.2d 667 (D.C. 2003), the Superior Court dismissed a complaint against the District because the plaintiff did not timely file proof of service on both the Mayor and the Corporation Counsel. *Id.* at 668. The plaintiff moved for reinstatement under a rule that authorized such relief for "good cause." *Id.* at 669 (citing Super. Ct. Civ. R. 41(b) (2003)). But she "offered no explanation for her failure to comply with the service requirement." *Id.* at 670. "Instead, [she] merely argued to the trial court that," although her claim had been extinguished by the statute of limitations, "the District was not prejudiced." *Id.* This Court found this insufficient as a matter of law because "prejudice to the plaintiffs and lack of prejudice to the defendants" "cannot by themselves provide good cause for the failure." *Id.* (quoting *Cameron v. Wash. Metro. Area Transit Auth.*, 649 A.2d 291, 294 (D.C. 1994)). "[O]nly after the plaintiff provides some explanation for the

failure to comply (even if insufficient in itself to constitute good cause) does the door open for the exercise of discretion by the trial judge to take into account the plaintiff's explanation and other factors, such as prejudice to the plaintiff, lack of prejudice to the defendant, and due diligence." *Id.* at 669. And "[b]ecause [the plaintiff] did not meet her initial burden of offering some explanation for her failure, . . . the trial court was obligated to deny the motion to reinstate." *Id.* at 670.

Washington has likewise failed to offer any reason for her failure to timely file her petition for review. The only evidence she submitted was the declaration of her union's general counsel, who is neither a party nor an attorney of record. *See* JA 27-28. And Suszczyk's declaration is conspicuously silent as to the *reason* for the failure. She attests that, when the OEA began issuing decisions upholding the RIF in August 2023, she "authorized the [employees'] attorney" to file petitions for review in the Superior Court and that, four months later, the attorney "informed [her] that she had not filed" them. JA 27. Suszczyk does not say *why* the employees' attorney failed to file their petitions—it seems reasonable to assume that she asked, but her declaration is silent as to what, if any, response was given. *See* JA 27-28.

Washington offers no excuse for her failure to provide this essential evidence. She argues that the requirement "puts [her] in an impossible situation" because, "even if the former attorney had told her, such statements would simply be hearsay." Br. 40. But Washington does not claim to have made any effort to obtain a sworn

statement from her former attorney, or even to have spoken with her attorney at all after the failure was revealed. Nor is it clear that hearsay—if that was all that could be obtained—would have been rejected. After all, no rule prevents a party from proffering hearsay to the court, especially for a preliminary matter such as whether a deadline should be extended for good faith or excusable neglect. *Cf.* Super. Ct. Civ. R. 56(c)(4) (requiring evidence at summary judgment to be based on personal knowledge). And even at summary judgment or trial, a court can consider hearsay if the opponent fails to object, *see Wallace v. Eckert*, 57 A.3d 943, 957 (D.C. 2012), or if it is trustworthy and more probative than any other evidence the proponent can reasonably obtain, *see* Fed. R. Evid. 807.

Because Washington has "offered no explanation" for her failure to timely file, the Superior Court was "obligated to deny" excusable-neglect relief. *Dorsey*, 839 A.2d at 670. At the very least, this Court should defer to the Superior Court's finding that Washington could not satisfy her "burden to demonstrate excusable neglect" by leaving the court to "[s]peculate[e] about the reasons for the first attorney's failure." JA 65 n.13.

Washington also claims to have met this burden by proffering *her* reason for failing to timely file: that she relied on her attorney to do so. Br. 37, 41. But she has not offered a shred of evidence to support this assertion—not even her own declaration describing her subjective expectations. The record is therefore silent as

to when, if ever, Washington spoke with the attorney (who was retained by Suszczyk); whether Washington inquired of the status of her case in the OEA; or whether Washington instructed her attorney to file an appeal in the Superior Court. Her alleged expectation that her attorney would file a timely petition in the Superior Court is thus entirely unsupported and without reasonable basis.

Nor did Washington give the court any reasonable basis to depart from the rule that "the client, not the adversary or the court, must bear responsibility for retaining counsel who failed to understand the rules of court." *Lynch v. Meridian Hill Studio Apts., Inc.*, 491 A.2d 515, 519-20 (D.C. 1985) ("[C]ounsel's mistake must usually be imputed to, and thus bind, the client."). A client is excused from such failures only "in exceptional cases where an attorney's conduct was . . . plainly contrary to 'his express instructions or his implicit duty to devote reasonable efforts in representing his client'" and, even then, only if "'the client himself is diligent in pursuing the claim.'" *Long*, 83 A.3d at 379 (quoting *Lynch*, 491 A.2d at 519).

The Superior Court found that Washington had not satisfied either element. *First*, it noted that, while a failure to timely file an appeal "may be 'outrageously in violation" of express instructions or the attorney's implicit duty, JA 64-65 (quoting *Flax v. Schertler*, 935 A.2d 1091, 1103 (D.C. 2007)), the court could not make such a finding "[w]ithout an explanation for [the] attorney's failure," JA 64 n.13. This is plainly correct because, for example, mere "ignorance of filing deadline [is] not the

kind of outrageous attorney conduct that warrants relief for the client." *Lynch*, 491 A.2d at 519-20.

Second, the court found that Washington had not offered "sufficient information to ascertain whether . . . [her] own conduct [was] reasonable (and excusable) in view of the circumstances." JA 65. This also is correct. Even where an attorney's conduct was outrageous, the client is excused from the consequences only if she "[her]self [wa]s diligent.'" *Long*, 83 A.3d at 379 (quoting *Lynch*, 491 A.2d at 519). In *Long*, this Court granted relief because the client had "brought his . . . claim to the attention of his counsel . . . over a decade [earlier], and ha[d] attempted to litigate it, with or without the assistance of counsel, ever since." *Id*. at 376. Moreover, the client "himself . . . [had] made extraordinary efforts to obtain a resolution on [the] claim, even writing his counsel on direct appeal advising him of the applicability of [the relevant authority] and filing his own motion for relief." *Id.* at 376-77. Washington, however, offered no evidence of her own diligence. She does not attest, for example, that she sought or expected updates on her case while it was progressing through the OEA, that she knew Suszczyk had authorized her attorney to appeal the OEA decision to the Superior Court, or that Washington personally instructed her attorney to do so. *Cf. Grooms*, 123 A.3d at 980 (noting that a finding of "good faith" requires consideration of "the party's knowledge of the obligations neglected").

This Court need not consider any other factors to affirm. *See Dorsey*, 839 A.2d at 670. But if it does, it should hold that the Superior Court did not abuse its discretion in finding that the 80-day delay would prejudice the District. Washington argues that prejudice is limited to the Department's ability to present its case, which can never be established for appeals because they "merely involve[] judicial review of a closed . . . record." Br. 36. But, as the Superior Court explained, there are many ways the District could be prejudiced by a post hoc extension of a deadline to appeal a final agency adjudication. *See* JA 62; *cf. Brewer*, 163 A.3d at 804 (acknowledging that the agency could have shown prejudice from "fiscal or budgetary impact").

Washington has thus failed to establish excusable neglect as a matter of law. Any alternative ruling would render the standard meaningless. *Every* client presumably relies on her attorney to comply with filing deadlines. If an attorney's mere failure to do so was enough to excuse the client from the consequences, every deadline would be subject to extension on this ground, leaving only *pro se* litigants bound by the rules. "To accept such an excuse as 'good cause'" would "'negate the meaning of the words.'" *Rest. Equip. & Supply Depot v. Gutierrez*, 852 A.2d 951, 957 (D.C. 2004) (quoting *Morgan v. Barry*, 785 F. Supp. 187, 198 (D.D.C. 1992)).

CONCLUSION

The judgment of the Superior Court should be affirmed.

Respectfully submitted,

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March 2025

CERTIFICATE OF SERVICE

I certify that on March 5, 2025, this brief was served through this Court's electronic filing system to:

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ADDENDUM

1. Super. Ct. Agency Rev. R. 1.

2. Super. Ct. Civ. R. 6.

Rule 1. Superior Court Review of Agency Orders or Decisions

(a) SCOPE AND PURPOSE.

(1) *Scope*. This rule governs the procedure for Superior Court review of administrative agency orders or decisions in cases subject to review in the Superior Court except those addressed in Agency Review Rule 2.

(2) *Purpose*. This rule should be construed, administered, and employed by the court and the parties to secure the just, speedy, and inexpensive determination of every review.

(b) PETITION FOR REVIEW.

(1) *In General*. Review of the administrative order or decision is commenced by filing a petition for review with the clerk of the Civil Division. If their interests make joinder practicable, two or more persons may join in a petition for review.

(2) *Time for Filing*. Unless an applicable statute provides a different time frame, the petition for review must be filed within 30 days after notice is given, in conformance with the rules or regulations of the agency, of the order or decision sought to be reviewed.

(3) *Contents of Petition for Review*. The petition for review must:

(A) state the names of each party seeking review—using such terms as "et al.," "petitioners," or "respondents" does not effectively name the parties;

(B) state the names of the respondents, including the agency;

(C) specify the order or decision to be reviewed and include a copy of the order or decision; and

(D) state the nature of the relief requested.

(c) SERVICE OF THE PETITION. The petitioner must serve a copy of the petition, as provided in Civil Rule 5, on the agency that conducted the proceeding, the Office of the Attorney General for the District of Columbia, and all other parties to the agency proceeding.

(d) STAY.

(1) *Initial Motion Before Agency*. A petitioner must ordinarily move first before the agency for a stay pending review of its order or decision.

(2) *Motion in the Superior Court*. A motion for stay may be made to this court.

(A) *Reason for Filing in Superior Court*. The motion must:

(i) show that moving first before the agency would be impracticable; or

(ii) state that, a motion having been made, the agency denied the motion or failed to afford the relief requested and state any reasons given by the agency for its action.

(B) *Other Content*. The motion must also include:

(i) the reasons for granting the relief requested and the facts relied on;

(ii) originals or copies of affidavits or other sworn statements supporting disputed facts; and

(iii) relevant parts of the record, including a copy of the order or decision sought to be stayed.

(3) *Bond*. The court may condition relief on the filing of a bond or other appropriate security.

(e) INTERVENTION.

(1) *Party to Agency Proceeding*. A party to the agency proceeding who wants to intervene in this court must file a notice of intention to intervene and serve the notice on

all parties to the proceeding. The party will then be deemed an intervenor without the necessity of filing a motion.

(2) *Other Persons*. Any other person who wants to intervene must file and serve on all parties a motion that:

(A) contains a concise statement of the interests of the moving party and the grounds for intervention; and

(B) states on which side the party seeks to intervene.

(3) *Time for Filing*. The notice of intention or motion for leave to intervene must be filed within 30 days after the date on which the petition for review is filed unless the court extends this time for good cause.

(f) PROCEDURE FOLLOWING PETITION.

(1) *Agency Record*. Within 60 days after being served with the petition for review, the agency must certify and file the agency record, including all of the original papers comprising that record. The pages of the agency record must be numbered sequentially and the accompanying documents listed in an index. The agency must notify the petitioner of the date on which the record is filed.

(2) *Scheduling Conference*. When the petition is filed, the clerk must set the case for an initial scheduling conference before the assigned judge. At the scheduling conference, the assigned judge must:

(A) establish a briefing schedule for the parties; and

(B) schedule a status hearing for a date after the briefing period concludes.

(3) *Requirements for Briefs*. Briefs must conform to the requirements of Civil Rule 12-I(d) and must include specific references to the pages of the agency record that support the averments relied upon by the parties.

(g) RECORD ON REVIEW.

(1) *Composition of the Record*. The record on review consists of:

(A) the order involved;

(B) any findings or report on which it is based;

(C) the original papers and exhibits filed with the agency, or a legible certified copy of the papers and exhibits; and

(D) a certified copy of the transcript of any testimony before the agency, or, if no transcript is available, a certified narrative statement of relevant proceedings and evidence.

(2) *Omissions From or Misstatements in the Record*. The parties may at any time, by stipulation, supply any omission from the record or correct a misstatement, or the court may so direct. If necessary, the court may direct that a supplemental record be prepared and filed.

(h) MOTIONS FOR RECONSIDERATION.

(1) *Time*. Unless the time is shortened or extended by order, a motion for reconsideration may be filed within 21 days after entry of judgment.

(2) *Contents*. The motion must state with particularity each point of law or fact that the movant believes the court has overlooked or misapprehended and must argue in support of the motion. Oral argument in support of the motion is not permitted.

(3) *Response*. Unless the court requests, a party may not file a response to a motion for reconsideration or a reply to a response.

(4) *Consolidation*. In a case where two or more persons have joined in a petition for review, a motion for reconsideration filed by one party will not be deemed filed by any other party.

(5) *Length*. Unless the court permits otherwise, a motion for reconsideration, or a response if requested by the court, must not exceed 15 pages.

(i) APPLICABILITY OF CERTAIN CIVIL RULES. Except where inconsistent with a statute or with this rule, the following Superior Court Rules of Civil Procedure apply to proceedings under this rule: 5 (Service and Filing Pleadings and Other Papers); 5-I (Proof of Service); 5-III (Sealed or Confidential Documents); 6 (Computing and Extending Time; Time for Motion Papers); 7-I (Stipulations); 7.1 (Disclosure Statement); 9-I (Verifications, Affidavits, and Declarations); 10 (Form of Pleadings); 10-I (Pleadings: Stationery and Locational Information); 11 (Signing Pleadings, Motions, and Other Papers; Representations to Court; Sanctions); 12-I (Motions Practice); 54-II (Waiver of Costs, Fees, or Security); 62 (Stay of Proceedings to Enforce a Judgment); 63-I (Bias or Prejudice of a Judge or Magistrate Judge); 79 (Records Kept by the Clerk); 79-I (Copies and Custody of Filed Papers); 82 (Jurisdiction Unaffected); 83 (Directives by Judge or Magistrate Judge); 86 (Effective Dates); 101 (Appearance and Withdrawal of Attorneys); and 202 (Fees).

COMMENT TO 2019 AMENDMENT

This rule was amended consistent with the stylistic changes to the civil rules. The substance of this rule has also been modified consistent with D.C. App. R. 15-20, which address the District of Columbia Court of Appeals' review of administrative agency orders.

This rule has been expanded to cover review of agency orders or decisions in all cases reviewable by the Superior Court (other than those addressed in Agency Review Rule 2). *See In re A.T.*, 10 A.3d 127 (D.C. 2010) (explaining that the Superior Court has jurisdiction to directly review orders of District of Columbia agencies in noncontested cases).

Subsection (b)(2) treats notice of the order or decision as service within the meaning of Civil Rule 6(d).

Former section (g), which addressed the standard of review, has been deleted as unnecessary. The standard of review can be found in the relevant statutes (such as D.C. Code § 2-510(a) (2016 Repl.)) and case law.

Section (h) is new. It is modeled on D.C. App. R. 40, although the time to file a motion for reconsideration of a final order is 21 instead of 14 days because of the nature of many Superior Court agency review proceedings and the high percentage of self-represented litigants.

Section (i), which addresses the applicability of other civil rules, has been amended to include additional rules.

Finally, while the form petition is no longer appended to the rule, it is available in the clerk's office and on the D.C. Courts' website.

Rule 6. Computing and Extending Time; Time for Motion Papers

(a) COMPUTING TIME. The following rules apply in computing any time period specified in these rules, in any court order, or in any statute that does not specify a method of computing time.

(1) *Period Stated in Days or a Longer Unit*. When the period is stated in days or a longer unit of time:

(A) exclude the day of the event that triggers the period;

(B) count every day, including intermediate Saturdays, Sundays and legal holidays; and

(C) include the last day of the period, but if the last day is a Saturday, Sunday, or a legal holiday, the period continues to run until the end of the next day that is not a Saturday, Sunday, or legal holiday.

(2) *Period Stated in Hours.* When the period is stated in hours:

(A) begin counting immediately on the occurrence of the event that triggers the period;

(B) count every hour, including hours during intermediate Saturdays, Sundays, and legal holidays; and

(C) if the period would end on a Saturday, Sunday, or legal holiday, the period continues to run until the same time on the next day that is not a Saturday, Sunday, or legal holiday.

(3) *Inaccessibility of the Clerk's Office.* Unless the court orders otherwise, if the clerk's office is inaccessible:

(A) on the last day for filing under Rule 6(a)(1), then the time for filing is extended to the first accessible day that is not a Saturday, Sunday, or legal holiday; or

(B) during the last hour for filing under Rule 6(a)(2), then the time for filing is extended to the same time on the first accessible day that is not a Saturday, Sunday, or legal holiday.

(4) *"Last Day" Defined.* Unless a different time is set by a statute or court order, the last day ends:

(A) for electronic filing, at midnight in the court's time zone; and

(B) for filing by other means, when the clerk's office is scheduled to close.

(5) *"Next Day" Defined.* The "next day" is determined by continuing to count forward when the period is measured after an event and backward when measured before an event.

(6) *“Legal Holiday” Defined*. “Legal holiday” means:

(A) the day set aside by statute for observing New Year’s Day, Martin Luther King Jr.’s Birthday, Washington’s Birthday, District of Columbia Emancipation Day, Memorial Day, Juneteenth National Independence Day, Independence Day, Labor Day, Columbus Day, Veterans’ Day, Thanksgiving Day, or Christmas Day; and

(B) any day declared a holiday by the President or Congress, or observed as a holiday by the court.

(C) [Omitted].

(b) EXTENDING TIME.

(1) *In General*. When an act may or must be done within a specified time, the court may, for good cause, extend the time:

(A) with or without motion or notice if the court acts, or if the request is made, before

the original time or its extension expires; or

(B) on motion made after the time has expired if the party failed to act because of excusable neglect.

(2) *Exceptions*. A court must not extend the time to act under Rules 50(b) and (d), 52(b), 59(b), (d), and (e), and 60(b).

(3) *Emergency Declaration*. Notwithstanding Rule 6(b)(2), the Court may, by order, extend the time to act under Rules 50(b) and (d), 52(b), 59(b), (d), and (e), and 60(b), to the extent authorized by emergency order of the Chief Judge pursuant to D.C. Code § 11-947.

(c) TIME FOR SERVING AFFIDAVITS. Any affidavit supporting a motion or opposition must be served with the motion or opposition unless the court orders otherwise.

(d) ADDITIONAL TIME AFTER CERTAIN KINDS OF SERVICE. When a party may or must act within a specified time after being served and service is made under Rule 5(b)(2)(C) (mail), (D) (leaving with the clerk), or (F) (other means consented to), 3 days are added after the period would otherwise expire under Rule 6(a).

COMMENT TO 2024 AMENDMENTS

Subsection (a)(6)(A) has been amended to add the full title of the Juneteenth holiday consistent with the 2023 amendments to *Federal Rule of Civil Procedure 6(a)(6)(A)*. New subsection (b)(3) has been added in response to subsection (c)(2)(A) of new *Federal Rule of Civil Procedure 87*. The new federal rule permits an extension of no more than 30 days; this new Rule 6(b)(3), consistent with D.C. Code § 11-947, contains no such limitation.

COMMENT TO 2022 AMENDMENTS

Subsection (a)(6)(A) has been amended to include District of Columbia Emancipation Day and Juneteenth in the definition of legal holiday.

COMMENT TO 2017 AMENDMENTS

This rule is identical to *Federal Rule of Civil Procedure 6*, as amended in 2007, 2009, and 2016, except for 1) deletion of reference to local rules; 2) modification of subsection (a)(6)(B) to include holidays observed by the court, which made federal subsection (a)(6)(C) inapplicable; and 3) in section (c) (formerly section (d)), retention of language reflecting District of Columbia practice for service of affidavits in support of a motion or opposition. As explained in the Advisory Committee Notes to the federal rule, the 2009 federal amendments were intended to simplify and clarify the process for computing deadlines.

COMMENT

Rule 6 identical to *Fed. Rule of Civil Procedure 6* except for deletion from section (a) of reference to local rules of district courts and states in which district courts are held, deletion from section (b) of reference to Federal Rule 74(a), which prescribes the

method of appeal from a judgment of a magistrate, and revision of section (d) in accordance with local practice respecting service of motions and affidavits. In addition, section (a) of the Superior Court Rule, like Superior Court Criminal Rule 45(a), has been modified to permit an extra day for the computation of time for the filing of legal papers only when the office of the clerk has been ordered closed.