

EXHIBIT F

**DISTRICT OF COLUMBIA
OFFICE OF ADMINISTRATIVE HEARINGS**

2015 JUN -5 PM 2:16

One Judiciary Square
441 Fourth Street, NW
Washington, DC 20001-2714
TEL: (202) 442-9094 * * * FAX: (202) 442-4789

CASANDRA JOSEPH f/b/o
ADAMS MORGAN NEIGHBORS FOR
ACTION

Petitioner

v.

DCRA

and

DEPARTMENT OF THE ENVIRONMENT

Respondents

and

ADAMS MORGAN HOTEL OWNER, LLC

Intervenor.

Case No.: 2015-DCRA-00038

FINAL ORDER

Three weeks ago on May 21, 2015, I set this case for a status conference at 10:30 a.m. on June 3, 2015. The Petitioner, Casandra Joseph, received the Scheduling Order and knew about the date and time well in advance of the proceeding, as did the agency Respondents, DCRA and DDOE, and the hotel developer implicated in Ms. Joseph's Complaint, Adams Morgan Hotel Owner, LLC (hereafter the "Owner"). Though not a Respondent, the Owner received a service copy of the Scheduling Order because the Owner was implicated in alleged wrongdoing and was on the electronic distribution list of the Complaint. The Owner, through counsel, promptly filed a motion to intervene in the case.

The status conference was a critically important proceeding because the Complaint raised substantive issues of first impression about the scope of OAH's jurisdiction and authority to hear and redress grievances pursuant to the administrative appeals provision of the local air pollution control statute. D.C. Official Code § 8-101.05h(a). For these reasons, I crafted a detailed Scheduling Order framing the issues of jurisdiction and remedy for consideration at the status conference. I stressed that, as the party seeking OAH jurisdiction over the case, accountability for clarifying these issues rested with the Petitioner, Ms. Joseph. Ms. Joseph was thus on notice

weeks ahead of time that her attendance and participation in the status conference was crucial to the viability of her case. And, given the seriousness of the allegations raised in her Complaint, any reasonable person in Ms. Joseph's position would know that DCRA, DDOE, and the Owner would engage counsel and incur related costs to prepare for and attend the status conference to articulate their positions on the substantive issues framed in the Scheduling Order.

Yet, despite the importance of the status conference and the predictable costs to the opposing parties, Ms. Joseph decided not to appear. Instead, at 4:18 p.m. on June 2, just 42 minutes before the close of business the day before the 10:30 a.m. proceeding, Ms. Joseph emailed the court a request for a "postponement" of the status conference. And, as one might reasonably expect of any email transmitted shortly before the close of business, the document was not file-stamped and forwarded for my review until 9:42 a.m. the next business day—just 48 minutes before the status conference was set to begin.

Where, as here, a party submits a last-minute continuance motion and misses a scheduled proceeding, the motion must articulate a compelling reason for the continuance. Here, Ms. Joseph's email articulated *no reason* for the continuance. It merely stated, in pertinent part,

To Whom it may concern – The Adams Morgan Neighbors for Action have requested postponement for the scheduled STATUS CONFERENCE ORDER dated for WEDNESDAY, JUNE 3, 2015 @ 10:30 AM – we have contacted the office of the Intervener by email and have attempted to contact the Attorneys from the General Counsel's office with no success – we understand that the newly assigned personnel is [sic] Laura Maxwell and Runaka Allsopp – The Intervener – Philip Evans- has no contention to the postponement –

Because the submission articulated *no reason* for continuing the status conference, I had no reason to continue the status conference. And, as one would expect given the importance of the issues at stake, the opposing parties all appeared represented by counsel. Assistant General Counsel Lauren W. Maxwell represented DDOE, Assistant General Counsel Runako Allsopp represented DCRA, and Philip T. Evans, Esquire, represented the hotel Owner. In response to the issues framed in the Scheduling Order, Mr. Evans submitted a brief coauthored by Adrianna C. Rodriguez, Esquire, who also appeared at the status conference. Three agency representatives for DDOE and DCRA were also present. Even though her continuance motion was not granted, the party who commenced this case, Ms. Joseph, failed to appear.

At the status conference, Attorneys Maxwell and Allsopp reported that they had been contacted by Ms. Joseph and told her they opposed the last-minute continuance. Attorney Evans was also contacted by Ms. Joseph and said he could take no position on the continuance because his motion to intervene was pending and his client was not yet a party to the case. The assertion in the motion that “Philip Evans . . . has no contention to the postponement” was thus misleading because it is suggested he did not oppose the continuance when, in fact, he took no position on the subject. Attorneys Maxwell, Allsopp, and Evans also reported that they were never served with copies of the continuance motion filed with the court. They received different emails about the continuance, creating additional confusion.

Against this backdrop, I will grant the Owner’s unopposed motion to intervene. I will also deny Ms. Joseph’s continuance motion and dismiss this case with prejudice. In so doing, I note that Ms. Joseph violated the Scheduling Order by failing to appear without good cause—and indeed *without articulating any cause* in her motion. She also failed to serve the motion on the opposing parties in violation of OAH Rule 2811.2. The motion was also opposed by both agency Respondents, and it misrepresented the Owner’s position on the continuance. And, most importantly, because the motion specified no reason for the continuance, there is no reason to grant the motion, especially because this court, four attorneys, and three agency representatives invested scarce resources preparing for and attending the status conference. Granting a last-minute continuance under the circumstances would, contrary to common sense and applicable case law, disrupt this court’s busy docket and force the court and the parties who obeyed the Scheduling Order to incur the increased (and prejudicial) costs of further proceedings.¹

¹ Absent compelling reasons, litigants who miss hearings do so at their peril. The District of Columbia Court of Appeals has noted that, with respect to OAH cases, “parties . . . are strictly obliged to appear in timely fashion on the day of [a hearing]” and that “[a] weighty and convincing justification is required to excuse failure to do so.” *Prime v. D.C. Dep’t of Pub. Works*, 955 A.2d 178, 181 (D.C. 2010) (internal citations omitted). It is also well settled that, because last-minute rescheduling interferes with the expeditious disposition of cases on busy dockets, “No principle of administrative law is more firmly established than that of agency control of its own calendar.” *Ammerman v. D.C. Rental Accommodations Comm’n*, 375 A.2d 1060, 1063 (D.C. 1977) (internal citations omitted). A judge “understandably need not look kindly upon last-minute maneuvers which would wreak havoc on the court’s trial calendar” *Fisher v. Estate of Flax*, 816 A.2d 1, 9 (D.C. 2003) (affirming denial of last-minute continuance); *Dobbs v. Providence Hosp.*, 736 A.2d 216, 221 (D.C. 1999) (affirming denial); *D.C. Transit Sys. Inc. v. Young*, 283 A.2d 488, 490 (D.C. 1972) (“It is important that the trial calendar be kept moving and that last minute continuances be avoided where possible.”).

Where, as here, the party who initiates a case violates a case management order and applicable rules “or otherwise fails to prosecute the case,” the presiding judge may dismiss the case, and the “dismissal will ordinarily be with prejudice.” OAH Rule 2818.1. *See also* OAH Rule 2818.4 (authorizing dismissal for failing to appear at status conferences). Dismissal with prejudice is appropriate in this case, given the rule and Scheduling Order violations, the last-minute nature of the continuance motion, the absence of a compelling reason for the continuance, the Petitioner’s failure to appear even though the motion was not granted, and the waste of resources expended by the other parties who appeared at the status conference as ordered.

THEREFORE, based upon the foregoing considerations and the entire record, it is this 5th day of June 2015,

ORDERED, that the motion to intervene submitted by Adams Morgan Hotel Owner, LLC is **GRANTED**; and it is further

ORDERED, that this case is **DISMISSED WITH PREJUDICE** without further obligation to the parties; and it is further

ORDERED, that the appeal rights of any person aggrieved by this Order are attached.²



Scott A. Harvey
Administrative Law Judge

² In addition to the right to appeal to the D.C. Court of Appeals, any party served with a final order may file a motion for reconsideration within 10 days of service of the final order. 1 DCMR 2828. When the final order is served by mail, five days is added to the 10-day period. 1 DCMR 2812.5.