

**Public Hearing on FY 2006 Budget Request for the
Department of Consumer and Regulatory Affairs
before the
Council of the District of Columbia
Committee on Consumer and Regulatory Affairs**

Testimony of Nina K. Dastur
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Good afternoon Chairman Graham and members of the Committee on Consumer and Regulatory Affairs. My name is Nina Dastur. I am a resident of Ward 1, and an Equal Justice Works Fellow in the Catalyst Project at the Center for Community Change. The Center is a national non-profit organization committed to reducing poverty and rebuilding low-income communities by helping residents develop the skills and resources they need to change policies and institutions that affect their lives. The Catalyst Project provides technical policy assistance to grassroots organizing groups in the city regarding equitable development issues, primarily around the preservation and production of affordable housing. Thank you for the opportunity to testify today regarding the Committee's proposal to establish an Office of the Tenant Advocate (herein referred to as "the Office" and "OTA").

Over the course of the last few months the Committee has learned – both directly from tenants and housing advocates and from the devastating experiences related by tenants, that there is an overwhelming need for a range of tenant-focused assistance in the city. We applaud the Committee's action to respond to that need by establishing and funding the Office of the Tenant Advocate. My testimony focuses on recommendations related to two key issues: first, where the Office should be constituted, and second, the activities that it should be tasked to carry out. The recommendations derive from two critical principles: independence and impact.

Independence

To advocate successfully for tenants, the Office must be both independent and perceived to be independent. There has been some consideration of whether to locate the Office within the Department of Consumer and Regulatory Affairs (DCRA). This approach would undermine the operation and the legitimacy of the Office, for a number of reasons.

First, the hearings held over the last few months have revealed serious problems relating to decision-making by agency employees, oversight provided by senior level managers, and an ideological orientation to landlord and tenant-related issues that call into question the Department's capacity to successfully fulfill the general mandate of advocating for tenants. While I respect Acting Director Patrick Canavan's commitment to remedying those problems and hope that his efforts to reform DCRA will ultimately be successful, it does not make sense to add to the agency's workload until it demonstrates that it can effectively and honorably carry out its present responsibilities.

Second, aside from the actual capacity issues that exist at DCRA, the public perception of its dysfunction argues against siting OTA within the agency. The revelations of the last few months both exposed deep-seated suspicions regarding the agency's allegiance and increased the distrust of DC tenants in the agency's personnel and operations. It is hard to imagine that tenants would place any confidence in an arm of DCRA to advocate forcefully on their behalf in the immediate future or would seek its assistance in matters as critical as their housing.

Most importantly, inevitable conflicts between the mandate of the Office and other functions within DCRA would compromise the Office's independence. While the specific activities of the Office have yet to be defined (addressed below), in the natural course of advocating for tenants, the Office will certainly be required to evaluate activities that currently fall under DCRA -- for example, whether respective offices within the agency conduct housing inspections in a complete and timely manner, approve petitions relating to rents and capital improvements properly, and follow appropriate procedures governing multifamily property sales and conversions -- and perhaps even challenge some of these practices in the course of litigation. To site the Office inside an agency that it will be forced at least in some measure to police in order to fulfill its mission threatens to undermine both the Office's purpose and its integrity. This is unadvisable and unnecessary.

Alternatively, the Office should be established as an independent entity, either in the manner established by the Office of the People's Counsel, or by competitive grantmaking to a private, not-for-profit organization. Even in this latter scenario, there may be pressures derived from accepting government funding to suppress criticism or confine challenges to government activities, and it will be incumbent on the Committee to monitor and evaluate the Office to ensure that it executes its duties free from undue government influence.

Impact

As important as ensuring the Office's independence is defining its mandate to maximize impact. The overwhelming need that is driving the creation of the Office is the very thing that can undermine its ultimate effectiveness. For example, I understand that it has been proposed that the Office represent individual tenants in rent petitions before the RACD and in individual eviction actions in Landlord-Tenant Court. While these are critical, even desperate, cases, the need for such assistance is simply astounding. To put this in perspective, according to an evaluation by the Landlord-Tenant task force of the DC Bar, more than 25,000 cases are filed in Landlord Tenant Court each year, and tenants are unrepresented in more than 95% of them. In a report on civil legal services by the DC Bar Foundation, twenty-one (21) legal services programs reported providing some form of service – information, legal advice, brief services, or extended representation – to more than 20,000 clients in a variety of cases. Those services came at an estimated combined cost of more than \$15 million.¹ All of the resources of the Office could easily be consumed trying to meet a small sector of this individual need, without great impact on the overall landscape of tenants' rights, the imbalance between tenant and owner interests, or the preservation of affordable rental housing.²

¹ D.C. Bar Foundation, "Civil Legal Services Delivery in the District of Columbia: A Report by the District of Columbia Bar Foundation." September 2003, at page 18.

² The DC Court of Appeals recently established a commission to examine broader access to justice issues. Press release, D.C. Court of Appeals, March 27, 2005.

To make headway in redressing these imbalances and preserving safe, affordable housing in the city, the work of the Office must be tailored to achieve success on some scale by balancing its resources and rationing services strategically. This requires a few things:

- First, the Office should employ a range of advocacy approaches. This includes providing basic information to tenants, conducting workshops to educate tenants about their rights, screening and referrals for individual cases, perhaps pro se clinics involving issues relating to individual representation, direct legal representation, and administrative and legislative advocacy.³
- Second, and more specifically, while I wholeheartedly agree that the Office should provide legal representation to tenants, the scope of that representation should be focused on representing tenant associations (or, where they have standing, individual tenants) in actions that will have a building-wide impact. Specifically, the Office should represent tenant associations in building-wide challenges to rent levels or housing conditions before the RACD, in affirmative code enforcement cases and receivership actions in the DC Superior Court, and in transactional matters related to tenant purchase.⁴ The Office could also have the authority to assume individual representation in limited cases where the case presented a matter of first impression or one that would have a systemic impact on tenants rights in the District. To avoid unnecessary and wasteful duplication of administrative functions, and to ensure that these activities are carried out according to a coordinated strategy with consistent goals, one entity should be tasked to carry out all of these activities.
- Finally, the Office should employ staff with a range of skills appropriate to the activities outlined above to maximize efficiency. In particular, there is an overwhelming need for more tenant organizing in the city, which is essential to the types of cases recommended above. One colleague of mine who represents tenant associations in redevelopment deals estimates that he spends at least 10% and more often 25% of his time organizing tenants in the course of his representation.⁵ The Office should also be permitted to procure technical and financial assistance as appropriate, for example, to assess the extent of rehabilitation needed.

Thank you for the opportunity to share our recommendations regarding the establishment and focus of the Office of Tenant Advocate. The Center would be happy to provide further advice and assistance as the Office is developed.

³ The Office of People's Counsel is empowered by statute to conduct investigations. See D.C. Code §34-806(d)(4). It is unclear from the statute whether this includes subpoena power. If the OPC model is adopted for the OTA, equivalent investigative authority should be granted to OTA.

⁴ The Bar Foundation identified these areas as severely underserved, and a high priority of established providers. See p. 13.

⁵ This includes preparing meeting notices, agendas and minutes, going to many meetings where a lawyer was not required, and general advice and troubleshooting. A competent organizer could also work with a tenant association on capacity building issues -- i.e. trainings on bylaws, how to manage the management company, proper conduct of meetings and elections.