

**City of New York
Office of Administrative Trials and Hearings**

Notice of Promulgation of Rule

NOTICE IS HEREBY GIVEN PURSUANT TO THE AUTHORITY VESTED in the Office of Administrative Trials and Hearings (OATH) in accordance with Sections 1049 and 1043 of the New York City Charter that OATH repeals and restates section 6-19 of subchapter D of chapter 6, and amends section 5-04 of chapter 5 of Title 48 of the Rules of the City of New York, concerning the appellate procedures at OATH. The proposed rule was published in *The City Record* on August 27, 2018, and a public hearing was held on September 26, 2018.

No one testified at the public hearing concerning this rule and OATH did not receive any written comments. Upon further review, OATH made one additional amendment adding a new paragraph (4) to section 6-19(d) that clarifies that a request for an extension to file an appeal does not extend the time by which a respondent must pay the penalty pursuant to section 6-18 of Title 48. This reflects OATH's current practice of requiring proof of payment of a penalty when a Respondent files a request for an extension of time to file an appeal.

Statement of Basis and Purpose of Final Rule

The Office of Administrative Trials and Hearings (“OATH”) repeals and restates Section 6-19 of Subchapter D of Chapter 6 of the Rules of the City of New York, concerning OATH's appellate procedures. The restated Section 6-19 clarifies the appellate procedures, simplifies the language, and re-organizes the rules to make them easier to read and understand. In addition to providing clearer appellate procedures, OATH also made the following substantive changes to the rules:

- A respondent who has chosen to perform community service instead of paying a monetary penalty is not required to pay the penalty as a condition to filing an appeal. This comports with Section 7-06(a) of OATH's rules on community service.
- A party who requests an extension of time to file an appeal or respond to an appeal will be granted one automatic extension of thirty (30) days. A request for an audio recording of the hearing will no longer provide an automatic extension of a party's time to appeal. After the automatic extension has been granted, any additional requests for an extension of time will be granted for good cause shown.
- Additional submissions by either party on an appeal other than the appeal and response will not be considered unless requested by the Appeals Unit.
- Former section 6-19(b) provided that the Appeals Unit only considered evidence that was presented to a hearing officer at the hearing. Now, upon good cause shown, the Appeals Unit may consider dispositive government records, such as a death certificate or deed to establish a material fact or defense.

OATH also amends section 5-04 of chapter 5 of title 48 of the Rules of the City of New York so that the requirement in section 19-506.1(c) of the New York City Administrative Code that respondents are not required to pay penalties, fines, or restitution in order to file an appeal is reflected in OATH's rules.

New material is underlined.

[Deleted material is in brackets.]

Section 1. Section 6-19 of subchapter D of chapter 6 of title 48 of the Rules of the City of New York is REPEALED and restated to read as follows:

(a) Filing an appeal.

(1) A party may appeal a decision of a Hearing Officer in whole or in part. An appeal will be considered by the Tribunal only upon timely completion of the following requirements:

(i) The party seeking to appeal the decision of a Hearing Officer must file the appeal with the Tribunal within thirty (30) days of the date of the Hearing Officer's decision, or within thirty-five (35) days if the decision was mailed, and the filing must contain proof that the appealing party served a copy of the appeal on the non-appealing party;

(ii) The appeal must be in writing and contain a concise statement of the issues, which must include specific objections to the findings of fact and conclusions of law in the Hearing Officer's decision, and the points of law and facts that support each objection. The appeal may be on a form prescribed by the Tribunal.

(iii) Where a respondent appeals, that respondent must indicate in writing that payment of any fines, penalties or restitution imposed by the decision has been made in full, unless:

(A) Respondent is granted a waiver of prior payment of fines or penalties due to financial hardship, as provided in subdivision (b) of this section;

(B) Respondent received a waiver of prior payment of fines or penalties as otherwise provided in law, rules or regulations;

(C) Respondent opted for community service in lieu of a monetary penalty at the hearing; or

(D) The agency responsible for collecting payment of the fines or penalties imposed enters into a payment plan with the Respondent prior to or at the time of the filing of the appeal.

(2) A party may not appeal a decision rendered on default, a denial of a request for new hearing after default (motion to vacate a default), or a plea admitting the violations charged.

(b) Financial hardship.

(1) An application to the Tribunal for a waiver of prior payment due to financial hardship must be made before or at the time of the filing of the appeal and must be supported by evidence of financial hardship. The Chief Administrative Law Judge or his or her designee has sole discretion to grant or deny a waiver due to financial hardship. Application for a waiver does not extend the time to appeal.

(2) Notwithstanding the provisions set forth in subdivision (a)(iii), above, payment of restitution is not subject to waiver due to financial hardship. If a Hearing Officer has ordered payment of restitution, the Respondent must, prior to or at the time of filing the appeal, submit proof that the Respondent has deposited the amount of restitution with the agency responsible for collecting payment, pending determination of the appeal.

(c) Responding to an appeal. Except as provided in § 5-04 of this Title, the non-appealing party may file a response to the appeal within thirty (30) days of being served with the appeal, or thirty-five (35) days if served by mail. The response must be in writing, served on the appealing party, and filed with the Tribunal with proof of such service within the time allotted. The response may be on a form prescribed by the Tribunal.

(d) Requests for Extensions of time.

(1) A party who requests an extension of time to file an appeal or respond to an appeal will receive one automatic extension of thirty (30) days from the date the Appeals Unit grants the request. Any further requests for an extension will be granted for good cause shown.

(2) All parties are entitled to request a copy of the hearing recording from the Appeals Unit. Any requests for hearing recordings will not further extend the party's time to appeal as set forth in subsection (1) of this subdivision.

(3) Requests under subsection (1) of this subdivision must be made in writing within the time allotted to file an appeal or a response, served on all parties, and timely filed with the Tribunal with proof of service. Requests for an extension may be on a form prescribed by the Tribunal.

(4) Unless one of the exceptions in subdivision (a)(1)(iii) of this section applies, a request for an extension of time to file an appeal does not extend the time by which the Respondent must pay the penalty pursuant to section 6-18 of this title.

(e) Further filings on an appeal with the Tribunal by either party will not be considered unless requested by the Appeals Unit.

(f) Review of an Appeal.

(1) Appeals decisions are made upon the record of the hearing. The record of the hearing includes all items enumerated in § 6-11(g) of this Chapter.

(2) The Appeals Unit will only consider evidence that was offered to the Hearing Officer at the hearing; provided however, upon good cause shown, the Appeals Unit may consider dispositive government records, such as a death certificate or deed, that establish a material fact or defense.

(3) In all cases other than those subject to § 5-04 of this Title, the Tribunal will decide an appeal even if there is no hearing recording.

(g) Appeals Decision.

(1) When an appeal is filed, the Appeals Unit will determine whether the facts contained in the findings of the Hearing Officer are supported by a preponderance of the evidence in the record, and whether the determinations of the Hearing Officer, as well as the penalties imposed, are supported by law. Except as provided in sections 3-15, 5-04 and 5-05 of this Title, the Appeals Unit has the power to affirm, reverse, remand or modify the decision appealed from.

(2) Except as provided in sections 3-15, 5-04 and 5-05 of this Title, the Appeals Unit will promptly issue a written decision. Such decision is the final determination of the Tribunal, and judicial review of such decision may be sought pursuant to Article 78 of the New York Civil Practice Law and Rules. A copy of the decision will be delivered to the Petitioner and served on the Respondent by mail, stating the grounds upon which the decision is based. Where appropriate, the decision will order the repayment to the Respondent of any penalty that has been paid.

(3) For summonses returnable to the Tribunal as authorized by the Board pursuant to §1049-a of the New York City Charter and provisions of the New York City Administrative Code, any rules and regulations made thereunder, or provisions of New York State law, any decision of the Appeals Unit is a recommended decision to the Board. The Board or a panel consisting of members thereof will review the recommended decision and issue a final determination pursuant to §3-15 of this Title.

§ 2. A new subdivision (a) of section 5-04 of chapter 5 of title 48 of the Rules of the City of New York is added and prior subdivisions (a) through (d) are renumbered to read as follows:

(a) Pursuant to Administrative Code § 19-506.1(c), a Respondent will not be required to pay the fines, penalties, or restitution imposed in the decision in order to file an appeal.

[(a)] (b) Expedited appeals. Either party may appeal a decision pursuant to section 6-19. Where the appeal involves the suspension or revocation of a TLC-issued license, the Appeals Unit will issue an expedited appeal.

[(b)] (c) A party responding to a request for appeal where the appeal involves the suspension or revocation of a TLC-issued license must file the response with the Tribunal within seven (7) days after being served with the appeal. The responding party must also serve a copy of the response on the appealing party, and file proof of such service with the Tribunal.

[(c)] (d) Requests for hearing recording. Pursuant to Administrative Code § 19-506.1(d), if a Respondent appealing a decision requests in writing a copy of the hearing recording, the recording will be produced to the Respondent within thirty (30) days after receipt of the request. If the recording cannot be produced within the thirty (30) day period, the determination being appealed will be dismissed without prejudice.

[(d)] (e) Finality. A decision of the Appeals Unit becomes the final determination of the Tribunal, unless either party petitions the TLC Chairperson in accordance with § 68-12(e) of Chapter 68 of Title 35 of the Rules of the City of New York (RCNY).



THE CITY OF NEW YORK
LAW DEPARTMENT
100 CHURCH STREET
NEW YORK, NY 10007

ZACHARY W. CARTER
Corporation Counsel

STEVEN GOULDEN
Division of Legal Counsel
Room 6-231
Tel: (212) 356-4028
Fax: (212) 356-4019
sgoulden@law.nyc.gov

Hon. Fidel Del Valle
Commissioner
Office of Administrative Trials and Hearings

Re: Amendment of Rules of Appellate Procedure

No. 2018 RG 094

Dear Commissioner Del Valle:

Pursuant to New York City Charter § 1043 subd. c, the above-referenced rule has been reviewed and determined to be within the authority delegated by law to your agency.

Sincerely,

A handwritten signature in cursive script that reads "Steven L. Goulden".

STEVEN GOULDEN
Senior Counsel
Division of Legal Counsel

cc: Simone Salloum (OATH)