

 Corrections and Community Supervision DIRECTIVE	TITLE		NO. 8360
	Appeal Process-Board of Parole Decisions and Parole/Post-Release Supervision Revocation Decisions		DATE 10/29/2019
SUPERSEDES DIR# 8360 Dtd. 06/27/2017	DISTRIBUTION A B	PAGES PAGE 1 OF 3	DATE LAST REVISED
REFERENCES (Include but are not limited to) Executive Law §256-i(4), §259-i(3), §259-i(2)(c)(A); NYS Penal Law §70.40(2); 9 NYCRR Part 8006; ACA Expected Practice 2-1018	APPROVING AUTHORITY 		

- I. **DESCRIPTION:** This directive is intended to provide instruction to Program Services staff and Parole Violation Unit (PVU) staff regarding the Board of Parole’s administrative appeal process available to inmates or parole violators who have: (a) been denied release to parole supervision; (b) had a parole release decision rescinded; or (c) had their Community Supervision (e.g., parole, presumptive release, conditional release, and post-release supervision) revoked following a final revocation hearing.
- II. **POLICY:** An inmate/parole violator has a statutory right to appeal:
- A determination of the Board of Parole denying him or her parole release pursuant to Executive Law §259-i(2)(c)(A);
 - A decision of the Parole Board that rescinds a prior grant of parole release; or
 - A decision by one of the Parole Board’s Administrative Law Judges that revokes his or her Community Supervision pursuant to Executive Law §259-i(3).

Form #CS8360A, “Board of Parole Notice of Appeal,” must be filed with the Board of Parole’s Appeals Unit within 30 calendar days of receipt of the decision denying parole, rescinding a prior grant of parole, or revoking Community Supervision. Thereafter, the appellant, or their attorney, must perfect the appeal within four months of the date of filing the Notice of Appeal, by filing a written brief letter or other written document with the Appeals Unit.

It is the policy of the Department of Corrections and Community Supervision (DOCCS) to ensure that Form #CS8360A is made available to those inmates who have been denied parole, had a prior grant of parole rescinded, or violators who have had their Community Supervision revoked.

NOTE: A denial of Local Conditional Release (NYS Penal Law 70.40(2)) is NOT subject to the Administrative Appeal process.

III. PROCEDURE

- A. Correspondence and Document Filing: All correspondence and document filings regarding Administrative Appeals must be directed to the:

New York State Board of Parole, Appeals Unit
Department of Corrections and Community Supervision
Harriman State Campus
1220 Washington Avenue, Albany, NY 12226

B. Right to Counsel

1. Inmates/parole violators are entitled to be represented by counsel in this Administrative Appeal process. If they are unable to afford private counsel, they should contact the closest legal services organization that provides legal services to indigent inmates, or they should contact the appropriate court of jurisdiction in the county of confinement and request assignment of counsel under the county's 18-B plan for representation in connection with the Administrative Appeal process. Offender Rehabilitation Coordinator (ORC) staff shall have available a listing of legal services and organizations within the county in which the facility is located. This information shall be made available to inmates upon request. Legal services information should also be made available in the facility's Law Library. It is the inmate's/parole violator's responsibility to secure legal representation from an attorney or a legal services organization and make the appropriate arrangements for retaining counsel.
2. Counsel must file a Notice of Appearance with the Board of Parole Appeals Unit prior to corresponding or filing documents regarding the Administrative Appeal.

C. Filing an Administrative Appeal

1. Each Administrative Appeal must be commenced by filing a Notice of Appeal with the Appeals Unit of the Board of Parole within 30 calendar days of receipt of the decision denying parole, rescinding a prior grant of parole, or revoking Community Supervision. The Notice of Appeal can be either [Form #CS8360A](#), or a document containing the same information. The inmate/parole violator, or their attorney, must file the Notice of Appeal to the address above.
2. Offender Rehabilitation Coordinator (ORC) staff shall ensure that [Form #CS8360A](#) is attached to the Parole Board Release Decision Notice for all parole release denials and rescission hearing decision cases. The Notice of Appeal form shall be provided to inmates at the same time they are provided with the Parole Board Release Decision Notice.
3. Parole Violation Unit (PVU) staff shall ensure that [Form #CS8360A](#) is attached to the Parole Revocation Decision Notice for all revocation cases. The Notice of Appeal form shall be provided to adjudicated parole violators at the same time they are provided with the Parole Revocation Decision Notice.

D. Perfecting an Administrative Appeal

1. Each properly commenced Administrative Appeal must be perfected within four months of the filing of the Notice of Appeal with the Board of Parole's Appeals Unit.
2. The Administrative Appeal is perfected by the submission of a brief or other written document which describes the arguments of the appellant.

E. Final Determination of Administrative Appeal

1. Findings and Recommendations of the Appeals Unit: After the Administrative Appeal is perfected, the submission of the appellant and relevant portions of the case record will be reviewed by the Appeals Unit. After completing this review, the Appeals Unit will prepare a Statement of Appeals Unit's Findings and Recommendation for the Board's review.

2. Final Determination: Three members of the Board of Parole will review the Findings and Recommendation of the Appeal's Unit along with relevant portions of the case record, and make a final decision that will be set forth in the Administrative Appeal Decision Notice.

F. Notification of Final Determination

1. Notification in All Cases: After a final determination has been made by the Board, copies of the Administrative Appeal Decision Notice, and the Statement of Appeals Unit's Findings and Recommendation will be distributed as follows:
 - a. Notification of Appellant and Counsel: The Appeals Unit will provide copies of both documents to the inmate/parole violator and their attorney, if applicable.
 - b. Distribution: The Appeals Unit will also distribute copies of these documents to the Community Supervision case folder (at the assigned facility) and the Community Supervision central file.
2. Notification where Release Denial or Rescission is Vacated, Reversed, or Modified: Where the final determination of the Board of Parole vacates, reverses, or modifies a decision denying or rescinding release on parole, or otherwise changes the inmate's status in some manner (e.g., the need to schedule a *de novo* Board interview or the reinstatement of a parole release decision), the Board of Parole's Appeals Unit will notify the Supervising Offender Rehabilitation Coordinator of the change in status and direct that appropriate action be taken consistent with the Board's final decision on the appeal.
3. Notification where Revocation Decision is Vacated, Reversed, or Modified: Where the final determination of the Board of Parole vacates, reverses, or modifies a decision following the final revocation hearing, the Appeals Unit will provide a memorandum to DOCCS Quality Control Unit advising of the vacatur, reversal of the revocation decision, or the modification of the disposition.

**STATE OF NEW YORK
DEPARTMENT OF CORRECTIONS
AND COMMUNITY SUPERVISION
BOARD OF PAROLE**

NOTICE OF APPEAL

I hereby appeal from the decision of the Board of Parole or the Administrative Law Judge in my case:

Inmate Name	_____
NYSID Number and DIN	_____
Current Place of Incarceration	_____
Place of Interview/Hearing	_____
Date of Interview/Hearing	_____
Scheduled Reconsideration Date	_____

A transcript of the interview or hearing may be requested by an inmate/parole violator, or their attorney, by checking the appropriate box below. Transcripts provided by the Appeals Unit will be billed at a rate of twenty-five cents (25¢) per page. It normally takes between four and eight weeks from the filing of the Notice of Appeal until the transcript is prepared.

Check appropriate box:

- I request a transcript of the minutes of my interview/hearing as I believe it is necessary for the preparation of my appeal.
- I shall not require a transcript of the minutes of my interview/hearing to prepare my appeal; however, I reserve the right to alter this decision at a later date.

(Date)

(Signature)

NOTICE OF RIGHT TO APPEAL

You have the right to appeal any decision of the Board of Parole or an Administrative Law Judge and you have the right to the assistance of counsel in perfecting your appeal.

To appeal a decision of the Board or an Administrative Law Judge, you must file a Notice of Appeal within 30 calendar days of your receipt of the decision notice by sending the Notice of Appeal to:

New York State Department of Corrections
And Community Supervision
Board of Parole – Appeals Unit
Harriman State Campus
1220 Washington Avenue
Albany, New York 12226

You have four months from the date your Notice of Appeal is filed to perfect your appeal, unless an extension is granted for good cause upon written request within the four-month filing period. Your appeal may be perfected by submitting two copies of your brief on appeal or two copies of a letter which sets forth the specific grounds for setting aside the challenged decision. The brief or letter should contain a section which must include all pertinent documents if they are necessary to the determination of your appeal. Please only send your brief or letter when it is completed. DO NOT send portions of your appeal at different times or addendums to an initial filing. Failure to submit your perfected appeal within the initial four months, or during any extended period of time, will result in the dismissal of your appeal with prejudice.

Once your appeal is perfected, it will be reviewed and a statement of findings prepared. You can expect that it will take approximately four months to prepare the statement of findings. Once the statement of findings is prepared by the Appeals Unit, it will be submitted to the Board of Parole for a final decision. Once a final decision is rendered by the Board, a copy of the decision and the Appeals Unit's findings will be forwarded to you and your attorney, if applicable.

Questions on Appeal:

A. Release Denial, Rescission, or Final Revocation Determination:

1. Whether the proceeding and/or determination was in violation of lawful procedure, was affected by an error of law, was arbitrary and capricious, or was otherwise unlawful.
2. Whether the determination relied on erroneous information as shown in the record of the proceeding or relevant information was not available for consideration.
3. Whether the determination was excessive.

B. Final Revocation or Rescission Determination – Additional Ground for Appeal:

Whether the determination was supported by a preponderance of the evidence subject to the limitation that evidentiary rulings will be considered only if a timely objective was made at the hearing.

Form #CS8360A (Rev 10/19)

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