

## **SUPERIOR COURT OF THE DISTRICT OF COLUMBIA**

### **Notice of Proposed Amendments to Superior Court Agency Review Rules**

The District of Columbia Superior Court Rules Committee recently completed review of proposed amendments to Superior Court Agency Review Rules 1 and 2.<sup>1</sup> The Rules Committee will recommend to the Superior Court Board of Judges that the amendments be approved unless, after consideration of comments from the Bar and the general public, the proposed amendments are withdrawn or modified.

Written comments must be submitted by June 14, 2019. Comments may be emailed as a PDF file to [Laura.Wait@dcsc.gov](mailto:Laura.Wait@dcsc.gov) or may be mailed to:

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All comments submitted in response to this notice will be available to the general public. New language is underlined and deleted language is stricken through.

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<sup>1</sup> Superior Court Agency Review Rules 1 and 2 are located in Title XV of the Superior Court Rules of Civil Procedure.

**Rule 1. Superior Court ~~r~~Review of ~~a~~Agency ~~e~~Orders or Decisions pursuant to D.C. Code 1981, Title 1, Chapter 6.**

**(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 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.

**(ba) PETITION FOR REVIEW.**

(1) In General. Review of the administrative order or decision is commenced ~~Time and manner of filing application. -- Unless a different time is prescribed by statute an appeal to the Superior Court of the District of Columbia permitted by the Act, shall be obtained by filing a petition for review with the C~~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 service of formal notice is given, in conformance with the rules or regulations of the agency, of the final order or decision sought to be reviewed, or within 30 days after the decision to be reviewed becomes a final decision under applicable statute or agency rules, whichever is later.

(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.

~~The petition shall show service, in accordance with Civil Rule 5, upon all other parties to the agency proceeding and the Office of the Corporation Counsel of the District of Columbia. The Clerk shall designate the petition as a miscellaneous action and affix the suffix "MPA" after the number assigned to the case.~~

~~A nonrefundable fee as prescribed in Civil Rule 202 shall accompany the filing of the petition. If two or more persons are entitled to petition for review of the same order or decision and their interests are such as to make joinder practicable, they may file a joint petition and proceed as a single petitioner.~~

(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.

**(db) Stay.—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 of the agency's decision or order pending direct review in may be made to this ~~C~~court may be filed with the Clerk.

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

(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 upon, and if the facts are subject to dispute the motion shall be supported by;

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

(iii) relevant parts of the record, including or copies thereof. A copy of the order or decision sought to be stayed shall be appended to the motion unless the agency record has previously been filed with the Court.

(3) Bond. The Court, upon such conditions as may seem to be required and to the extent necessary to prevent irreparable injury, may take appropriate and necessary action to preserve the status or rights of a petitioner or other party pending conclusion of the review proceedings. The Court may condition relief require a party seeking a stay of the decision or order on appeal in this Court to post a supersedeason the filing of a bond on such other appropriate security conditions, in such amount, and with such sureties as the Court deems necessary.

(cc) Intervention. -- INTERVENTION.

(1) Party to Agency Proceeding. A party to the agency proceeding before the agency who desires wants to intervene in this Court shall must file a notice of intention to intervene and serve the notice upon all parties to the proceeding, and file with the Clerk 1 copy of a notice of intention to intervene, whereupon such party The party will then shall be deemed an intervenor without the necessity of filing a motion.

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

(A) containing a concise statement of the interests of the moving party and the grounds upon which for intervention is sought; 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 shall must be filed within 30 days after the date on which the petition for review is filed unless the court extends such this time is extended by order of the Court for good cause shown.

(d) Content of petition for review; answer. -- The petition for review shall contain the information called for in the "Petition for Review of Agency Decision" form available from the Clerk, including the names of all the petitioners seeking review, and all the respondents, together with a concise statement of the agency proceedings, the decision sought to be reviewed, and the nature of the relief requested. In addition, a copy of the agency order or decision sought to be reviewed shall accompany the petition.

(e) Procedure following application. -- PROCEDURE FOLLOWING PETITION.

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

~~At the expiration of thirty (30) days after the filing of the record, or the time the record is due to be filed, whichever shall occur first, it shall be set down for a scheduling and settlement conference and certified by the Clerk to the judge assigned to review the case. The Court, for good cause shown, may shorten or extend the time above prescribed.~~

~~(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 ~~if the case is not settled~~, the assigned judge assigned to review the case shall ~~must~~ then~~

~~(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 shall ~~shall~~ must conform to the requirements of Civil Rule 12-1(e) and ~~shall~~ 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 thereof; 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.~~

~~(f) [Deleted].~~

~~(g) Determination of appeal, standard of review. --- This Court shall base its decision exclusively upon the administrative record and shall not set aside the action of the agency if supported by substantial evidence in the record as a whole and not clearly erroneous as a matter of law.~~

~~(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.~~

~~(ih) Incorporation of certain civil rules.--APPLICABILITY OF CERTAIN CIVIL RULES. Except where inconsistent with D.C. Code 1981, Title 1, Chapter 6 or with this Rule a statute or with this rule, the following Superior Court Rules of Civil Procedure shall apply to proceedings under this Rrule: SCR Civ 5 (Service and fFiling of pPleadings and eOther pPapers); SCR Civ 5-I (Proof of sService); 5-III (Sealed or Confidential Documents); SCR Civ 6 (Computing and Extending Time; Time for Motion Papers); SCR Civ 7-I (Stipulations); 7.1 (Disclosure Statement); 9-I (Verifications, Affidavits, and Declarations); SCR Civ 10 (Form of pPleadings); SCR Civ 10-I (Pleadings: Stationery and lLocational iInformation); SCR Civ 11 (Signing of pPleadings, Motions, and Other Papers; Representations to the Court; Sanctions); 12-I (Motions Practice); SCR Civ 54-II (Waiver of eCosts, Fees, or Security); 62 (Stay of Proceedings to Enforce a Judgment); SCR Civ 63-I (Bias or pPrejudice of a jJudge); 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); and SCR Civ 101 (Appearance and wWithdrawal of aAttorneys); 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 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).

Rule 1(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 2. Appeals from the Traffic Adjudication Appeals Board to the Superior Court pursuant to Under D.C. Code § 40-63550-2304.05.**

**(a) SCOPE AND PURPOSE.**

(1) Scope. This rule governs the procedure for appeals to the Superior Court from a decision by the Traffic Adjudication Appeals Board, except for a decision to suspend or revoke a driver's license or privilege to drive, which is reviewable by the District of Columbia Court of Appeals.

(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) APPLICATION FOR ALLOWANCE OF APPEAL.**

(1) In General. An original and three copies of ~~Time and manner of filing application.~~ ~~An application for leave to the allowance of an appeal from a decision of the Traffic Adjudication Appeals Board of the District of Columbia Department of Public Works pursuant to D.C. Code § 40-635 shall~~ must be filed with the ~~C~~ clerk of the Superior Court ~~Civil Division.~~

(2) Time for Filing. The application must be filed within ~~thirty (30)~~ days of the effective date of such the decision by the Traffic Adjudication Appeals Board.

(3) Form and Content. The application must conform to ~~in the format Civil Action Form [Insert Number] set forth in the appendix to this Rule.~~ A brief statement of the points and authorities relied upon may be filed with the application. ~~An original and three legible copies shall be filed with the Clerk and~~

(4) Service. The clerk must serve a copy of the application:

(A) on the Office of the Attorney General for the District of Columbia; and shall show service up

(B) on the Traffic Adjudication Appeals Board in accordance with D.C. Code § 2-510 (2016 Repl.) and the Corporation Counsel of the District of Columbia.

~~A nonrefundable fee as prescribed in Civil Rule 202 shall accompany the filing of each such application.~~

(c) RESPONSE TO THE APPLICATION. ~~The District of Columbia may file a response W~~ within ten (10) days after service of the application, ~~the Corporation Counsel may file a response.~~

(d) Procedure following REVIEWING THE APPLICATION. ~~-- At the expiration of ten (10) days following the filing of the application, the application and any response which may have been filed shall be transmitted by the Clerk to the judge designated by the Chief Judge to consider the application. Whenever, in the opinion of the judge, further information is necessary to~~

(1) Ordering the Record or a Response. ~~determine such application, t~~ The judge court may order request that:

(A) the record and any exhibits from the Traffic Adjudication Appeals Board transmit to the clerk a certified copy of . ~~In such cases the original record and any exhibits thereto shall be transmitted by the Traffic Adjudication Appeals Board to the Superior Court within twenty (20) days of after the receiving pt of such a the court's order request;~~ or

(B) If no response to the application has been filed, the judge may request the Corporation Counsel to the District of Columbia file a response.

(c) Denial of application.

The application for leave to appeal shall be granted unless, applying the standard of review set forth in D.C. Code § 1-1510(a)(3), the application states no grounds on which the applicant would be entitled to relief.

(2) Effect of Denial. If the judge denies the application for leave to appeal, the denial of the application shall stand as an affirmation of the decision of the Traffic Adjudication Appeals Board, and is a final order of the Superior Court there shall be no further appeal in the Superior Court. An

(3) Notice of Decision on Application.

(A) Application Denied. If the court denies the application, the court must issue an order shall be entered by the judge when an application is denied, stating the reason for the denial, and must send a copy thereof shall be sent of the order to the applicant, the Traffic Adjudication Appeals Board, and the Office of the Attorney General for the District of Columbia Corporation Counsel.

(B) Grant of leave to appeal. ~~Application Granted.~~ If the judge court grants the application for leave to appeal, the court must send a copy of the notice of the allowance of the appeal shall be sent by the Clerk to the applicant, the Traffic Adjudication Appeals Board, and the Corporation Counsel Attorney General of the District of Columbia.

(e) PROCEDURE AFTER APPLICATION GRANTED.

(1) Appeals Board Record. If the court grants the application and the record has not previously been filed, the Traffic Adjudication Appeals Board shall must transmit to the Clerk a certified copy of the original record and any exhibits within twenty (210) days of after receipt of receiving the notice of the allowance of the appeal.

(2) Additional Submissions by Court Order.

(A) In General. After granting the application, the court may order:

(i) that the Attorney General of the District of Columbia file a response, if no response in opposition to the application for leave to appeal was filed; by the Corporation Counsel or the judge wishes or

(ii) that either party file a more detailed submission.

(B) Leave of Court Required. No further submissions are permitted without leave of court. from either the plaintiff or the Corporation Counsel, the judge may order that such additional

(C) Service. Any additional submissions pleadings must be filed within ten (140) days of the date of such the court's order, or such other time as the court may specify. and Any filing after the initial application must be served on the opposing party served in accordance with SCR Civil Rule 5.

(f) Record of appeal; determination of appeal; standard of review. --- DETERMINING APPEAL.

(1) Oral Argument. The court may order oral argument.

(2) Record for Appeal. If the application for leave to appeal is granted, The court must determine the appeal based exclusively on the record for appeal shall consist of: the application, the answer, if one has been filed, the notice of the allowance of the appeal and

(A) a certified copy of the original record, including a certified copy of any order of the Traffic Adjudication Appeals Board, of the original Notice of Infraction, and any exhibits previously filed; and

(B) a certified copy of the transcript of any testimony before the agency if a party obtained a transcript, or, if no transcript is available, a certified narrative statement by the applicant of relevant proceedings and evidence any findings or report on which it is based. any additional pleadings ordered by the judge pursuant to paragraph (d) of this Rule. No further pleadings shall be filed except by leave of the judge. The judge shall determine the appeal exclusively upon the record for appeal as provided in this Rule and in accordance with the standards for review provided in D.C. Code § 1-1510(a)(3). The judge may order oral argument. Otherwise, the decision shall be made on the pleadings and the record.

(3) *Written Decision Required.* The court's decision of the judge shall must be in writing and, shall be accompanied by must include a statement of reasons. The written decision and shall must be sent to the applicant, the Traffic Adjudication Appeals Board, and the Office of the Corporation Counsel Attorney General for the District of Columbia.

#### COMMENT TO 2019 AMENDMENT

Stylistic changes were made to this rule to conform with the 2007 amendments to the Federal Rules of Civil Procedure. D.C. Code citations were also updated. The manner of service was amended to be consistent with requirements in D.C. Code § 2-510 (2016 Repl.). In addition, a statement of the standard of review has been deleted because the standard of review can be found in the relevant statutes and case law. See D.C. Code § 50-2304.05 (2014 Repl.) (providing that the manner of and standards for appeals to the Superior Court are governed by D.C. Code § 2-510).

#### COMMENT

It is contemplated that the Traffic Adjudication Appeals Board record shall include the Board's opinion, any findings of fact and conclusions of law made by the hearing examiner, any transcript or tape recording of the fact-finding proceeding and any other pertinent documents.