

Disciplinary Tickets in DOC Custody

Do NOT Plead Guilty!

Pleading guilty waives your right to appeal your disciplinary infraction.

Do NOT Plead “Guilty with an Explanation”

This is the same as pleading guilty – you will be found guilty and will have waived your right to appeal.

Get a Copy:

Be sure you receive a copy of the infraction and have had time to review it.

If you are called to a disciplinary hearing and have not received a copy of the ticket, **state on the record during the hearing that you did not receive a copy of the ticket.** If the hearing officer claims that you signed a refusal, state on the record that you did not refuse, and were not given a copy of the ticket.

If you are receiving your copy of the infraction for the first time at the hearing, **ask for 24 hours to prepare.** If the hearing officer denies you 24 hours to prepare for the hearing, simply state that you object - this may be grounds for successful appeal. Do NOT throw a fit, or you will be removed from the hearing and it will be held without you.

Preparing for the Hearing:

Accommodations:

If you have a mental health diagnosis, be sure to say this out loud at the beginning of the hearing. Ask if you have been cleared by mental health for the hearing.

If you cannot read, write or prepare for the hearing on your own, you may be provided with a hearing facilitator. This person is NOT an advocate, they are only available to help you gather materials. The Hearing Captain may serve this role as well.

If you need an interpreter for the hearing, ask for one right away.

Reviewing the Ticket:

Review the ticket and consider all the types of evidence which may be used against you or in your favor:

- Video or Photo evidence
- Documentation
- Physical Evidence (alleged weapons, damaged property etc.)
- Witnesses - both staff and detainee witnesses are important

At the Hearing:

Remember, the disciplinary process may feel unfair, and you may be found guilty despite what you perceive to be inadequate or contrary evidence. The tools below will not only help you navigate the hearing process, but will also increase your chances of beating the ticket on appeal.

Miranda Rights:

If the infraction is for an arrestable offense (violence against staff or other prisoners, weapons, etc.) you may be read Miranda Rights during the hearing. If you are Mirandized, **DO NOT TESTIFY** on your own behalf, as what you say **WILL** be used against you in any future criminal case regarding this incident. You may **call witnesses to testify on your behalf** even if you do not testify. If you are **NOT** Mirandized, your testimony during the disciplinary hearing cannot be used against you.

Request ALL Evidence:

Be sure to request review of all possible evidence in your case during the hearing. You **CANNOT** request new evidence during the appeal process, so the hearing is your only opportunity.

Video and Photo Evidence: You have the right to request review of any video and photo of the incident. If the video or photo evidence will show you are guilty, **DO NOT** request it.

Physical Evidence: Request to see any physical evidence noted in the infraction, including weapons allegedly in your possession.

Witnesses: Request **as many witnesses as possible**. You are entitled to have witnesses testify in your presence so long as it does not disrupt safety or institutional goals and the witness is “reasonably available.” **If you are denied witnesses this may be grounds for a successful appeal.**

Detainee Witnesses: You may call any witnesses who were present during an alleged incident. If you do not know the names of people, be as descriptive as possible, noting any characteristics you remember, the location where they were at the time, where they are housed, etc. You can be as general as “Any detainees present in intake on May 10, 2014 at 9:04 am.”

Staff Witnesses: It is very important to call staff witnesses even if you believe they will testify against you. Be sure to call any staff who were present at the time of the incident, especially the staff who wrote the infraction. Ask them detailed questions about the incident. If staff witnesses are not provided, it may be grounds for successful appeal.

Your Testimony: You have the right to testify during the infraction hearing. If your defense is based on self-defense, DOC must consider your testimony during the hearing. Remember, if you are read Miranda Rights, what you say WILL BE USED AGAINST YOU if you are arrested and criminal charges are brought against you for this incident.

If You Are Found Guilty

Within 2 Days - Appeal to the Warden:

If you are found guilty and given a Bing sentence of **30 days or less**, place a letter in the Warden’s box at your institution stating that you would like to appeal the guilty finding.

Article 78 Appeal

Wait **10 days** after submitting the letters described above. Then you may submit an Article 78 appeal, which will be heard at writ court. An Article 78 Template is attached

to this guide with instructions. An Article 78 with instructions [in red](#) is included if you find it easier to follow along as you fill out your own writ.

Once you have submitted an Article 78, you will be appointed an attorney from the Legal Aid Society who will represent you during the appeal process.

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF BRONX

_____,
PETITIONER,

For a Judgement under Article 78 of the
Civil Practice Law and Rules

-AGAINST-

NYC DEPARTMENT OF CORRECTION,
WARDEN OF _____,
RESPONDENT.

NOTICE OF MOTION
TO
**CHALLENGE
DISCIPLINARY
DECISIONS
PURSUANT TO
CPLR §7800**

NYSID No. _____
B & C No. _____

STATE OF NEW YORK }
COUNTY OF THE BRONX } ss:

PLEASE TAKE NOTICE, that upon the annexed petition of _____
_____, verified on the ____ day of _____, 20____ and upon the petition and
affidavit, an application hereby made challenging petitioner's Disciplinary Decision pursuant to
subdivision(s) of the CPLR 7800 to the Bronx County Supreme Court, First Judicial Department, located
at 851 Grand Concourse, Bronx, New York 10451, on the ____ day of _____, 20____, at 9 o'
clock in the forenoon of that day, or as soon thereafter as counsel can be heard, for a judgement releasing
petitioner from Central Punitive Segregation Unit and dismissal of the Disciplinary decision rendered on
the _____ day of _____, 20____, judgment made and entered by the Disciplinary
Hearing Judge of the Rikers Island Judicial Center, convicting him the hereafter listed disciplinary
infractions.

Yours, etc...

PETITIONER

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF BRONX

_____,
PETITIONER,

For a Judgement under Article 78 of the
Civil Practice Law and Rules

-AGAINST-

NYC DEPARTMENT OF CORRECTION,
WARDEN OF _____,
RESPONDENT.

**AFFIDAVIT IN SUPPORT
TO
CHALLENGE
DISCIPLINARY
DECISION
PURSUANT TO
CPLR §7800**

NYSID No. _____
B & C No. _____

STATE OF NEW YORK }
COUNTY OF THE BRONX } ss:

I, _____, being duly sworn, deposed and state:

I am the Petitioner in the above-entitled action, and am personally familiar with the facts and circumstances herein stated.

I am a detainee presently being detained at _____, listed hereunder the mailing address of _____ Hazen Street, Rikers Island, East Elmhurst, New York_11370, herein considered the County of the Bronx.

Whereupon, although I am personally familiar with all of the facts and statements hereinafter stated to the best of my knowledge, information and belief, I am a layperson in matters of the law and seek this Court's indulgence for errors, defects and faults pursuant to sec. 2101(f) of the Civil Practice Law and Rules.

On the _____ day of _____, 20____, an Infraction was written against me for allege violation of the following Department of Correction Detainee Conduct rule(s):

No previous application for the relief herein prayed for has been made.

Whereupon, this petitioner respectfully request the Court to order the petitioner's immediate release from the Punitive Segregation Unit and dismissal of the disciplinary decision rendered on the _____ day of _____, 20____, made and entered by the Disciplinary Hearing Judge of the Rikers Island Judicial Center, pursuant to the laws, statutes, and arguments annexed herein.

STATEMENT OF FACTS

LEGAL ARGUMENT

In addition to the above stated facts, the following situations MAY apply and warrant dismissal of the infraction pursuant to Directive 6500, paragraph III.B.4.

- A) There is no proof of service to show that the inmate received the Notice of Infraction because the inmate did not sign the Notice and there is no acknowledgement by a staff member that the inmate refused to sign it.
- B) There is contradictory information and/or inconsistent allegations of facts recited in the Report and these are material or important facts.
- C) The “Statement of Infraction Details” are so vague as to not give notice to the inmate of the charges against him.
- D) There is incorrect material information within the body of the charges.
- E) The supervising Officer or Captain who investigated the incident was a participant in the incident, which formed the basis for the charges.
- F) The investigation of the infraction was not commenced within twenty-four (24) hours of the incident.
- G) The witnesses requested by the inmate were not allowed to testify.
- H) The inmate was not allowed to review relevant documentary or physical evidence introduced at the hearing and therefore was unable to dispute the evidence.
- I) The inmate was not allowed to be present during witnesses’ testimony and no or inadequate reasons were given for excluding the inmate.
- J) The inmate was not allowed to ask the witnesses any questions and dispute the testimony.
- K) The Hearing Officer did not summarize the testimony setting forth specific reasons for his finding of guilt.
- L) The inmate was denied the assistance of an interpreter.
- M) The records of the hearing are incomplete because the Hearing Officer failed to tape record the proceeding.
- N) The Hearing Officer considered evidence outside the record or which was not presented at the hearing.
- O) The inmate was not allowed to appear at the hearing and no good reason was given for excluding the inmate.

The Petitioner respectfully requests the right to make any and all further motions as may be necessary as a result of information and disclosure from the granting of the requests made herein and/or information received from any record within a reasonable time.

WHEREFORE, this Petitioner respectfully prays that an order be issued granting this motion pursuant to the aforesaid sections of the New York State Civil Procedure Law & Rules, and taking into consideration the facts and argument annexed herein, or, in the alternative, an order be issued granting partial relief, or whatever relief the Court sees and deems fit and appropriate to insure the swift and proper administration of justice.

Yours, etc...

PETITIONER

Sworn to before me this
_____ day of _____, 20____.

NOTARY PUBLIC / COMMISSIONER OF DEEDS

AFFIDAVIT OF SERVICE

STATE OF NEW YORK)
COUNTY OF BRONX) ss:

I, _____, being duly sworn deposed and states:

That I have on the ____ day of _____, 20____, placed and submitted the original and copies of this motion to be duly mailed via the United States Postal Service, through the institutional mailroom of _____ the papers were mailed to the following concerned parties:

Bronx County Hall of Justice
Supreme Court – Criminal Division
Writ Court Clerk
265 East 161st Street
Bronx, New York 10451

Appeals Attorney
Department of Correction, Legal Division
75 – 20 Astoria Boulevard
East Elmhurst, New York 11370

Yours, etc...

PETITIONER

Sworn to before me this
____ day of _____, 20____.

NOTARY PUBLIC / COMMISSIONER OF DEEDS

INSTRUCTIONS

ARTICLE 78 BING WRIT

The attached motion is blank and is to be completed by YOU with the particulars of your case. The information below instructs you on what is to go in the blank spaces on each page. The explanations are numbered to coincide with the line number on that particular page. For example: explanation # 6 goes on the blank space on the 6th line of that page. Start counting lines at the very top of the page.

PAGE # 1 – NOTICE

- 3) Print your name.
- 13) Print your first name.
- 14) Print your last name; Day, Month, & Year you completed this motion.
- 17) Day two weeks from day on line # 14.
- 18) Month & Year two weeks from the date on line # 14.
- 20) Day & Month your disciplinary decision was made.
- 21) Year your disciplinary decision was made.
- 23) Sign your name!

PAGE # 2 – AFFIDAVIT

- 3) Print your full name.
- 13) Print your full name.

PAGE # 3 – AFFIDAVIT CONTINUED

- 3) Day, Month, & Year your infraction was written.
- 6-10) List the infraction charges against you, number and description.
- 14) Day, Month, & Year infraction decision made.

PAGE # 4 – STATEMENT OF FACTS

- 1) Write out the facts of your case and why you feel your rights have been violated. Explain why you think your infraction should be dismissed or the days should be reduced. Use additional paper if need. DO NOT write on the back of any pages!

PAGE # 5 – LEGAL ARGUMENT

- 1) Review argument if included. Use additional paper to add any new law if applicable. DO NOT write on the back of pages!

PAGE # 6 – NOTARY PAGE

- 13) Sign your name!

PAGE # 7 – AFFIDAVIT OF SERVICE

- 4) Print your name.
- 5) Day, Month, & Year the motion is notarized.
- 20) Sign your name!

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF BRONX

Your Name Here,
PETITIONER,

For a Judgement under Article 78 of the
Civil Practice Law and Rules

-AGAINST-

NYC DEPARTMENT OF CORRECTION,
WARDEN OF Jail Where Incident Occured,
RESPONDENT.

STATE OF NEW YORK }
COUNTY OF THE BRONX } ss:

**NOTICE OF MOTION
TO
CHALLENGE
DISCIPLINARY
DECISIONS
PURSUANT TO
CPLR §7800**

NYSID No. Your NYSID
B & C No. Book + Case

PLEASE TAKE NOTICE, that upon the annexed petition of Your Name Here
_____, verified on the Today's Date day of Month, 20Year and upon the petition
and affidavit, an application hereby made challenging petitioner's Disciplinary Decision pursuant to
subdivision(s) of the CPLR 7800 to the Bronx County Supreme Court, First Judicial Department, located
at 851 Grand Concourse, Bronx, New York 10451, on the 14 Days after today's date day of Month
(if 14 days later is the next month, write the next month), 20Year, at 9 o' clock in the forenoon of that
day, or as soon thereafter as counsel can be heard, for a judgement releasing petitioner from Central
Punitive Segregation Unit and dismissal of the Disciplinary decision rendered on the Date you were found
guilty day of Month, 20Year, judgment made and entered by the Disciplinary Hearing Judge of the
Rikers Island Judicial Center, convicting him the hereafter listed disciplinary infractions.

Yours, etc...

Sign Here
PETITIONER

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF BRONX

Your Name Here,
PETITIONER,

For a Judgement under Article 78 of the
Civil Practice Law and Rules

-AGAINST-

NYC DEPARTMENT OF CORRECTION,
WARDEN OF Jail Where Incident Occured,
RESPONDENT.

**NOTICE OF MOTION
TO
CHALLENGE
DISCIPLINARY
DECISIONS
PURSUANT TO
CPLR §7800**

NYSID No. Your NYSID
B & C No. Book + Case

STATE OF NEW YORK }
COUNTY OF THE BRONX } ss:

I, Your Name, being duly sworn, deposed and state:

I am the Petitioner in the above-entitled action, and am personally familiar with the facts and circumstances herein stated.

I am a detainee presently being detained at Jail where you are housed, listed hereunder the mailing address of Jail Address Hazen Street, Rikers Island, East Elmhurst, New York_11370, herein considered the County of the Bronx.

Whereupon, although I am personally familiar with all of the facts and statements hereinafter stated to the best of my knowledge, information and belief, I am a layperson in matters of the law and seek this Court’s indulgence for errors, defects and faults pursuant to sec. 2101(f) of the Civil Practice Law and Rules.

On the Date of Infraction day of Month, 20Year, an Infraction was written against me for allege violation of the following Department of Correction Detainee Conduct rule(s):

List the charges on your infraction

No previous application for the relief herein prayed for has been made.

Whereupon, this petitioner respectfully request the Court to order the petitioner's immediate release from the Punitive Segregation Unit and dismissal of the disciplinary decision rendered on the Date you were found guilty day of Month, 20Year, made and entered by the Disciplinary Hearing Judge of the Rikers Island Judicial Center, pursuant to the laws, statutes, and arguments annexed herein.

STATEMENT OF FACTS

- 2) State that you were not guilty of the infraction. Write out the facts of your case and why you feel your rights have been violated – if you were denied time to prepare for the hearing, if you were denied witnesses you requested, or the opportunity to view evidence used against you (video, weapons recovered, etc.). Explain why you think your infraction should be dismissed or the days should be reduced. Use additional paper if need. DO NOT write on the back of any pages.

LEGAL ARGUMENT

This section of the template describes all possible challenges to your ticket to be sure your challenge is complete – you do not need to add or remove anything from this section.

In addition to the above stated facts, the following situations MAY apply and warrant dismissal of the infraction pursuant to Directive 6500, paragraph III.B.4.

- P) There is no proof of service to show that the inmate received the Notice of Infraction because the inmate did not sign the Notice and there is no acknowledgement by a staff member that the inmate refused to sign it.
- Q) There is contradictory information and/or inconsistent allegations of facts recited in the Report and these are material or important facts.
- R) The “Statement of Infraction Details” are so vague as to not give notice to the inmate of the charges against him.
- S) There is incorrect material information within the body of the charges.
- T) The supervising Officer or Captain who investigated the incident was a participant in the incident, which formed the basis for the charges.
- U) The investigation of the infraction was not commenced within twenty-four (24) hours of the incident.
- V) The witnesses requested by the inmate were not allowed to testify.
- W) The inmate was not allowed to review relevant documentary or physical evidence introduced at the hearing and therefore was unable to dispute the evidence.
- X) The inmate was not allowed to be present during witnesses’ testimony and no or inadequate reasons were given for excluding the inmate.
- Y) The inmate was not allowed to ask the witnesses any questions and dispute the testimony.
- Z) The Hearing Officer did not summarize the testimony setting forth specific reasons for his finding of guilt.
- AA) The inmate was denied the assistance of an interpreter.
- BB) The records of the hearing are incomplete because the Hearing Officer failed to tape record the proceeding.
- CC) The Hearing Officer considered evidence outside the record or which was not presented at the hearing.
- DD) The inmate was not allowed to appear at the hearing and no good reason was given for excluding the inmate.

The Petitioner respectfully requests the right to make any and all further motions as may be necessary as a result of information and disclosure from the granting of the requests made herein and/or information received from any record within a reasonable time.

WHEREFORE, this Petitioner respectfully prays that an order be issued granting this motion pursuant to the aforesaid sections of the New York State Civil Procedure Law & Rules, and taking into consideration the facts and argument annexed herein, or, in the alternative, an order be issued granting partial relief, or whatever relief the Court sees and deems fit and appropriate to insure the swift and proper administration of justice.

Yours, etc...

Sign Here

PETITIONER

Your petition must be notarized. Notaries Are Available in the Law Library or you can ask your attorney for help.

Sworn to before me this _____ day of _____, 20____.

NOTARY PUBLIC / COMMISSIONER OF DEEDS

You must sign an affidavit of service – this swears that you sent copies of your petition to the appropriate places. Have your signature notarized by Social Services or in the Law Library when you send your petition.

AFFIDAVIT OF SERVICE

STATE OF NEW YORK)
COUNTY OF BRONX) ss:

I, Your Name, being duly sworn deposed and states:

That I have on the Date you send your petition day of Month, 20Year, placed and submitted the original and copies of this motion to be duly mailed via the United States Postal Service, through the institutional mailroom of Jail where you are housed the papers were mailed to the following concerned parties:

Bronx County Hall of Justice
Supreme Court – Criminal Division
Writ Court Clerk
265 East 161st Street
Bronx, New York 10451

Appeals Attorney
Department of Correction, Legal Division
75 – 20 Astoria Boulevard
East Elmhurst, New York 11370

Yours, etc...

Sign Here
PETITIONER

Sworn to before me this
_____ day of _____, 20____.

PLEASE BE ADVISED

The courts favor motions from your attorney, unless you are officially Pro Se.' You should always consult your attorney before submitting a motion on your own behalf. If you choose to submit a motion on your own, please remember,

LAW LIBRARY MOTIONS ARE TEMPLATE SAMPLES.

They are broad and blank, only providing the general format of the particular motion. Motions should be tailored specifically for your case with specific facts and relevant laws. You should check to make sure all the law cited is up to date. Remember, you are responsible for anything you sign and submit to the courts.