

<p style="text-align: center;"><b>Office of Administrative Hearings (OAH) Procedures Transmittal</b></p> <p><b>Distribution:</b></p> <p>ALB OAH Staff <input checked="" type="checkbox"/>    UPS ALJs <input checked="" type="checkbox"/>    Upstate LDSS <input type="checkbox"/></p> <p style="padding-left: 100px;">SUP ALJs <input checked="" type="checkbox"/></p> <p>NYC OAH Staff <input checked="" type="checkbox"/>    NYC ALJs <input checked="" type="checkbox"/>    NYC Agencies <input type="checkbox"/></p> <p style="padding-left: 100px;">SUP ALJs <input checked="" type="checkbox"/></p>	<p><b>Transmittal Number:</b> 08-13</p>
	<p><b>Date:</b> June 23, 2008</p> <p><b>Page:</b> 1 of 2 plus Attach.</p>
	<p><b>Subject:</b></p> <p style="text-align: center;">New Scripted Letter J <u>Varshavsky</u> Withdrawal Procedures</p>

All withdrawal requests for home hearings (H3), whether such withdrawal is requested by an attorney, a non-attorney representative or the appellant him/herself, must be referred to the Homebound Telephone Hearing Unit (HTH Unit), as described below, for handling.

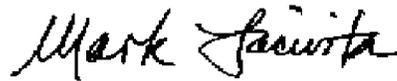
- When an attorney representing a homebound appellant seeks to withdraw an H3 hearing, he/she should be referred to the HTH Unit, currently Esperanza Riebel or Judi Ball. The HTH Unit will confirm the intention of the attorney to withdraw, enter UWTH in FHIS, and request confirmation of the withdrawal in writing.
- When a non-attorney representative or an appellant seeks to withdraw an H3 hearing, he/she should also be referred to the HTH Unit. The withdrawal request must now be referred to the Varshavsky class attorney in the form of a new scripted letter (Scripted Letter J), attached. It will be generated upon notification from either an appellant or a lay representative (non-attorney) that the appellant no longer needs the fair hearing and seeks to withdraw the hearing request. Letter J provides the attorney representing the Varshavsky class a 30-day period to communicate the effects of such a withdrawal to the appellant/lay representative and report back to the HTH Unit.

Communication Intake Unit (CIU) staff should, therefore, refer any requests for withdrawal of an H3 hearing to the designated staff member in the HTH Unit. If an attorney is involved, the HTH Unit will consult with the attorney representative, as noted above. In matters involving non-attorneys, the HTH Unit will ensure that Letter J is scripted by staff in the Correspondence Section of the CIU, will monitor the 30-day response period, and complete system updates, as appropriate.

If an Administrative Law Judge (ALJ) receives a withdrawal request from the appellant or lay representative prior to the hearing, the Letter J process described above applies. The ALJ should forward the withdrawal request to the HTH Unit for processing. The case will be placed in adjourned status by the HTH Unit pending passage of the 30-day response period.

Generally, if a withdrawal request is made while the ALJ is at the home hearing, testimony should be taken on the record regarding the intention to withdraw and the withdrawal should be entered. In home hearings that follow from representative or telephone hearings (code 997 or 999 hearings) that would otherwise result in an affirmance, the ALJ should clarify on the record whether the withdrawal request is intended to apply to the home hearing only or to the entire hearing process. If limited to a withdrawal of the home hearing, the affirmance should be issued with a fact finding that the appellant or lay representative declined on the record their opportunity for a home hearing. If the withdrawal is intended to apply to the entire hearing process, the withdrawal should be entered normally.

If there are any questions with respect to this transmittal, you may contact your supervisor or Susan Fiehl at (518) 473-4779 or via email [susan.fiehl@otda.state.ny.us](mailto:susan.fiehl@otda.state.ny.us).



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Mark Lacivita, Director of Administration  
Office of Administrative Hearings



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*Governor*

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OFFICE OF TEMPORARY AND DISABILITY ASSISTANCE  
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David A. Hansell  
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Date: \_\_\_\_\_

Nina Keilin  
Attorney at Law  
130 West 42<sup>nd</sup> Street, Suite #1801  
New York, New York 10036

Re: \_\_\_\_\_  
F.H. # \_\_\_\_\_

Dear Ms. Keilin:

The appellant and/or lay representative in the above-noted matter communicated to this office their intention to withdraw their fair hearing request, and consequently, the opportunity for a Varshavsky-related home hearing.

We are referring this matter to you to provide an opportunity for you to consult with the appellant and/or lay representative regarding their intention to withdraw the fair hearing request. We will take no action to affect the hearing status of this matter for the next 30 days, while we await further communication from you. **If we do not hear from you regarding your consultation with the appellant and/or lay representative within 30 days, we will accept their statement that a hearing is no longer necessary and view the hearing request as withdrawn.**

Our contact information for the appellant and lay representative is as follows:

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If you have any questions, please contact the Homebound Hearing Unit at (518) 474-5415.

Sincerely,

Mark Lacivita, Director of Administration  
Office of Administrative Hearings

cc: \_\_\_\_\_  
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