

October 12, 2020

**OFFICE OF THE HEARING EXAMINER  
KING COUNTY, WASHINGTON**

King County Courthouse  
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**ORDER OF DISMISSAL**

SUBJECT: Regional Animal Services of King County file no. **V20010928-A20012838**

**PATRICK ROTH**

Animal Services Enforcement Appeal

Activity no.: A20012838

Appellant: **Patrick Roth**

Black Diamond, WA 98010

Telephone: [REDACTED]

Email: [REDACTED]

King County: Regional Animal Services of King County  
*represented by* **Chelsea Eykel**  
Regional Animal Services of King County  
21615 64th Avenue S  
Kent, WA 98032  
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In November 2019, Regional Animal Services of King County (Animal Services) issued a notice and order to Patrick Roth. Among other items, it declared Mr. Roth's dog, Dazzle, vicious and set requirements that needed to be met to keep Dazzle in King County. Mr. Roth belatedly appealed, and Animal Services moved to dismiss that appeal as untimely.

At the time of our motion hearing in that case, Animal Services had not produced sufficient proof of legal service, and we denied Animal Services' motion to dismiss. We scheduled a

hearing on the merits. For the merits hearing, Animal Services provided proof that its initial service had met the legal requirements. In our decision, we wrote that dismissal would have been warranted, but because we had previously denied Animal Service’s motion, we would not revisit timeliness but would instead reach the merits. Our March 2020 decision sustained Dazzle’s viciousness determination and containment requirements.<sup>1</sup>

Animal Services later served another violation notice on Mr. Roth, asserting that Dazzle was a vicious dog running at large on April 13, 2020. We went to hearing on July 14. On July 28 we granted his appeal, overturning that violation notice.<sup>2</sup>

On July 20, 2020, Dazzle had escaped again. Animal Services served a violation notice for trespass, by certified mail, which Mr. Roth signed for on July 27.

More seriously, on July 23, 2020, Animal Services hand-delivered an order to Mr. Roth, requiring him to remove Dazzle from King County. Animal Services sought removal under KCC 11.04.290.A.3, which authorizes removal for a failure to comply with the requirements for keeping a vicious dog in King County, in this case the containment terms in the original November 2019 notice and order. Animal Services cited multiple bases for removal: Dazzle’s original viciousness determination and confinement order, a second November 2019 running at large for Dazzle (one that did not reach us on appeal), the April 2020 Dazzle running at large violation we overturned, and the July 2020 Dazzle trespass.

Animal Services’ July 23, 2020, removal order stated that if Mr. Roth wished to appeal, he had to complete and file an appeal within 24 days from the issuance of that notice. It advised that a failure to appeal within 24 days would constitute a waiver of all right to an administrative hearing and determination of this matter. *See also* KCC 20.22.080.B & .H.

Unlike the appeal of the November 2019 notice and order, there is no question that Mr. Roth received the legal and actual service of the removal order on July 23, 2020.<sup>3</sup> He filed his appeal on August 31, two weeks after the August 17 appeal deadline.<sup>4</sup> Animal Services filed a motion to dismiss the appeal as untimely. On October 1, we held a hearing on Animal Services’ latest motion to dismiss.

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<sup>1</sup> This paragraph is taken from our first decision, publicly available from our case digest, at [https://www.kingcounty.gov/~media/independent/hearing-examiner/documents/case-digest/appeals/animal%20enforcement/2020/2020%20March/V19010071\\_Roth.ashx?la=en](https://www.kingcounty.gov/~media/independent/hearing-examiner/documents/case-digest/appeals/animal%20enforcement/2020/2020%20March/V19010071_Roth.ashx?la=en)

<sup>2</sup> This paragraph is taken from our second decision, publicly available from our case digest, at [https://www.kingcounty.gov/~media/independent/hearing-examiner/documents/case-digest/appeals/animal%20enforcement/2020/2020%20July/V20010590\\_Roth.ashx?la=en](https://www.kingcounty.gov/~media/independent/hearing-examiner/documents/case-digest/appeals/animal%20enforcement/2020/2020%20July/V20010590_Roth.ashx?la=en)

<sup>3</sup> At our October 1, 2020, motion hearing Ofc. Alison Wilcox testified to her personal interaction with, and service to, Mr. Roth on July 23, but service here is not in dispute.

<sup>4</sup> The 24<sup>th</sup> day after service of the removal order was August 16. However, August 16 was a Sunday. Per

**KCC 1.02.120 Computation of time.** The time within which an act is to be done, as provided in this code, is computed by excluding the first day and including the last unless the last day is a holiday, Saturday or Sunday, and then it is also excluded.

Monday, August 17, was thus the day the appeal window closed.

At that motion hearing, Mr. Roth testified that when he received our July 28 decision granting his appeal for the April violation, he called Animal Services, and someone told him the removal order was no longer in effect. He could not provide a date of the conversation or the name of the person he talked to. He said he talked again to someone at Animal Services who told him they could not answer any more questions. He said he was waiting for a dismissal letter and that the letter's failure to arrive was what prompted to him to call Sgt. Chelsea Eykel. (There is no dispute that his talk with Sgt. Eykel was August 22, five days *after* the appeal window closed.)

Sgt. Eykel testified that when she spoke with Mr. Roth on August 22, he did not say that he had spoken with anybody, but he did say he was confused about the appeal. She told him he could file an appeal statement, and Animal Services could respond with a motion to dismiss.

Mr. Roth waited another nine days after that August 22 conversation to email his appeal.

As stated in the removal order, the April violation notice was only one of the bases Animal Services rested its removal order on. There was the November 2, 2019, violation that resulted in Dazzle being declared vicious and ordered confined, a November 11, 2019, violation for Dazzle running at large again, the April 2020, vicious dog running at large, and the July 2020, trespass. Our overturning the April 2020 violation knocked out one justification for the removal order, but it was not itself determinative.

It is not difficult to understand that Mr. Roth could be confused or have questions. It is difficult to understand why, without written clarification, Mr. Roth would have risked it and not emailed some bare bones appeal before the August 17 deadline, to protect his rights. It is even odder because he knew how to appeal, having filed two previous appeals. And he knew, from our proceedings around Animal Services' motion to dismiss as untimely his appeal to the November 2, 2019, violation, the potential consequences of a late-filed appeal.

Where someone contemplating an appeal has made an inquiry to the agency and not gotten an adequate response, we may later "authorize *an amendment* to an appeal statement to reflect information subsequently made available to the appellant." KCC 11.04.080.F (*italics added*). But we have no jurisdiction where the initial appeal statement was untimely. Instead, "If a person fails to timely deliver the appeal statement..., the office of the hearing examiner does not have jurisdiction to consider the appeal and the decision of the department or division becomes final and unreviewable." KCC 11.04.080.H. Mr. Roth's appeal was two weeks late.

We have tried to avoid just the scenario presented today by writing in our *Hearing Examiner Guide: Animal Services Enforcement Appeals*, in as plain language as we could muster, that:

The deadline to submit your appeal is 24 calendar days after [Regional Animal Services of King County] RASKC issues its decision. When RASKC posts a decision on a door or hands it directly to someone, the clock starts ticking that day. ...

Untimely appeals are barred—there is no flexibility. This may not seem fair, but it is the law.

...

If you are not sure about exactly what to say, make sure you still get an appeal, even if imperfect, delivered to RASKC by the deadline. If you get your initial appeal to RASKC on time, the examiner has authority to later allow you, before the hearing, to modify or add to the issues you originally raised. But, the examiner has no authority to hear an appeal if your original appeal statement did not arrive at RASKC on time. Whatever you do, make sure RASKC receives your appeal by the deadline!<sup>5</sup>

In other scenarios, an examiner has discretion and flexibility. For a timely appeal inadequate in content, an examiner “may” dismiss the appeal, but alternatively “may” allow a party to clarify the appeal issues. KCC 20.22.090.B. Requiring clarification, instead of dismissal, is always the approach we choose in that scenario. If, on or before August 17, Mr. Roth had emailed some appeal—any appeal—no matter how sparse, we would have jurisdiction to allow him to later flush out his statement to meet the appeal requirements. Even a timely, one sentence email akin to, “I don’t think I should have to appeal this, but because I have still not gotten any written confirmation, I want to preserve my rights,” would have given us enough to later work with.

Unfortunately, once August 17 came and went without an appeal statement, Animal Services’ decision became final and unreviewable, and we have no jurisdiction to consider his August 31 appeal. KCC 11.04.080.H. The examiner “shall” (not “may”) dismiss an untimely appeal. KCC 20.22.090.A.

Accordingly, we DISMISS Mr. Roth’s appeal.

We note however, that the \$1,000 penalty associated with removal orders only kicks in if an appellant fails to remove the animal from King County and meet the microchip and new owner requirements listed in the removal order (page 3 of 4). Here, we are well past the deadline for compliance with those terms. But until today, there was a pending, if ultimately time-barred, appeal. Thus, while we have no jurisdiction in this matter, we will ask Animal Services to give Mr. Roth two weeks, until **October 26, 2020**, before it treats the compliance terms in the removal order as unmet.

DATED October 12, 2020.



David Spohr  
Hearing Examiner

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<sup>5</sup> [https://kingcounty.gov/independent/hearing-examiner/~/\\_media/independent/hearing-examiner/documents/hearings%20guides/ANIMAL\\_6-d-,2018.ashx?la=en](https://kingcounty.gov/independent/hearing-examiner/~/_media/independent/hearing-examiner/documents/hearings%20guides/ANIMAL_6-d-,2018.ashx?la=en) at 1-2 (bold, underscore, color, and exclamation mark in original).

## **NOTICE OF RIGHT TO APPEAL**

King County Code 20.22.040 directs the Examiner to make the County’s final decision for this type of case. This decision shall be final and conclusive unless appealed to superior court by *November 11, 2020*. Either party may appeal this decision by applying for a writ of review in superior court in accordance with chapter 7.16 RCW.

DS/lo

October 12, 2020

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**CERTIFICATE OF SERVICE**

SUBJECT: Regional Animal Services of King County file no. **V20010928-A20012838**

**PATRICK ROTH**

Animal Services Enforcement Appeal

I, Lauren Olson, certify under penalty of perjury under the laws of the State of Washington that I transmitted the **ORDER OF DISMISSAL** to those listed on the attached page as follows:

EMAILED to all County staff listed as parties/interested persons and parties with e-mail addresses on record.

placed with the United States Postal Service, with sufficient postage, as FIRST CLASS MAIL in an envelope addressed to the non-County employee parties/interested persons to addresses on record.

DATED October 12, 2020.



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Lauren Olson  
Legislative Secretary

**Barrett, Amy/Thomas**

Hardcopy

**Eykel, Chelsea**

Regional Animal Services of King County

**Roth, Patrick**

Hardcopy

**Wilcox, Allison**

Regional Animal Services of King County