

**RULE 19
APPEALS**

(Effective January 1, 2006; Rules Revision Memo 3C)

Purpose Statement

The purpose of this rule is to describe the authority of and procedure for appeals before the Career Service Hearing Office ("Hearing Office") and the Career Service Board ("Board").

Section 19-10 Actions Subject to Appeal

(Revised effective October 2, 2007; Rules Revision Memo 22C)

- A. An employee who holds career status may appeal the following:
1. Direct Appeals: An employee or former employee must file an appeal directly with the Hearing Office in order to challenge the following action(s) of an appointing authority:
 - a. Dismissal;
 - b. Suspension or temporary reduction in pay;
 - c. Involuntary demotion with an attendant loss of pay;
 - d. Disqualification;
 - e. Layoff; or
 - f. A retaliatory adverse employment action, as defined by the City's "Whistleblower Protection" ordinance (attached as an appendix).

It is not necessary that a complaint be filed or an investigation be conducted prior to the filing of a direct appeal where it is alleged that the action being appealed involved discrimination, harassment or retaliation, or violation of the City's "Whistleblower Protection" ordinance.

2. Appeal of Complaint or Grievance: An employee may file an appeal following a formal complaint or grievance only as described below:
 - a. Discrimination, Harassment or Retaliation: Any action, that is not subject to a direct appeal, of any supervisor/manager or employee resulting in alleged discrimination, harassment or retaliation because of race, color, creed, religion, national origin, gender, sexual orientation, marital status, military status, age, disability, or political affiliation, or any other status protected by federal, state or local laws may be appealed if, after filing a formal complaint as required by Rule 15 **CODE OF CONDUCT**, the disposition of such complaint has not resulted in stopping or otherwise addressing the alleged discrimination, harassment or retaliation. (Revised effective January 22, 2010; Rules Revision Memo 44C)

- b. Grievance:
 - i. Any grievance which results in an alleged violation of the Career Service Rules ("Rules"), the City Charter, ordinances relating to the Career Service, executive orders, or written agency policies and negatively impacts the employee's pay, benefits or status;
 - ii. A grievance in which the agency/department failed to respond according to Rule 18 **DISPUTE RESOLUTION**; or
 - iii. A grievance in which the agency/department has failed to implement the remedy granted and the grievant has notified the agency of the intent to file an appeal in accordance with Rule 18 **DISPUTE RESOLUTION**.
 - iv. The grievance must be in conformance with and processed pursuant to the requirements of Rule 18 **DISPUTE RESOLUTION**.
 - v. Notwithstanding the above provisions, written reprimands may not be appealed.
- c. Grievance of Performance Enhancement Program Reports: Only grievances of Performance Enhancement Program Reports ("PEPRs") with overall ratings of "Failing" may be appealed. The only basis for reversal of the PEPR shall be an express finding that the rating was arbitrary, capricious, and without rational basis or foundation. (Revised effective January 1, 2010; Rule Revision Memo 43C)
- 3. Bonus or incentive payments or the lack thereof, or the criteria used by an agency or department to make or not make such payments, or any other aspect of the bonus or incentive program may not be appealed.
- B.
 - 1. Career Service employees who do not hold career status or former employees who did not hold career status may only file direct appeals when they have alleged that an employment decision subject to direct appeal is discriminatory or when they allege a violation of the "Whistleblower Protection" ordinance.
 - 2. Career Service employees who do not hold career status may appeal the disposition of a complaint alleging discrimination.

Section 19-20 Filing of Appeal

A. Time Limitation

(Revised effective October 2, 2007; Rules Revision Memo 22C)

1. a. Appeals claiming violation of the City's "Whistleblower Protection" ordinance shall be filed with the Hearing Office within thirty (30) calendar days of the alleged retaliatory adverse employment action.
- b. All other appeals shall be filed with the Hearing Office within fifteen (15) calendar days after the date of notice of the action being appealed.
2. The computation of the period of time for filing an appeal shall be as follows (all time periods are calendar days):
 - a. The date of notice of the action shall be the date on the certificate of hand-delivery if hand-delivered to the appellant or the date on the certificate of mailing of the notice if sent by U.S. mail or interoffice mail.
 - b. The period of time for filing the appeal starts on the day following the date of:
 - i. The alleged retaliatory adverse employment action in the case of an appeal brought under the "Whistleblower Protection" ordinance; or
 - ii. The notice of the action or date of inaction in all other cases.
 - c. If the final date of the appeal period falls on a day the Hearing Office is not open for business, the final date for appeal shall be construed to be the next working day.
 - d. The appeal period ends at 5:00 p.m. (close of business) on the final date for appeal.

B. Form of Appeal

1. Every appeal shall be on the form prescribed by the Hearing Office and shall include the name and address of the employee filing the appeal, the action which is the subject of the appeal, the reason for the appeal, and a statement of the remedy sought.

2. For any appeal filed pursuant to 19-10 A.2.a., the employee must identify the alleged discrimination, harassment or retaliation that has not been stopped or otherwise addressed. An appeal may be dismissed if the employee fails to comply.
3. For any appeal filed pursuant to 19-10 A.2.b.i., the employee must identify the alleged violation of the Rules, the City Charter, ordinances relating to the Career Service, executive orders or written agency policies, and how the employee's pay, benefits or status were impacted. An appeal shall be dismissed if the appellant fails to comply.
4. For any appeal filed pursuant to 19-10 A.2.c., the employee must identify why the employee asserts the "Failing" PEPR was arbitrary, capricious and without rational basis or foundation. An appeal shall be dismissed if the employee fails to comply. (Revised effective January 1, 2010; Rule Revision Memo 43C)

19-25 Alternative Dispute Resolution Available

- A. A party may request mediation pursuant to Rule 18 DISPUTE RESOLUTION anytime during the appeal process. Requesting mediation shall not suspend the time limitation for filing an appeal. Scheduling the matter for mediation will not affect the appeal process or the appeal hearing date, except by agreement of the parties. If the parties mutually determine that an extension of time or a stay of the appeal is necessary to facilitate mediation, the parties shall file a motion for such relief with the Hearing Office.
- B. All mediation proceedings are considered confidential. This confidentiality shall be specifically acknowledged and agreed to by each party to mediation prior to the commencement of mediation. No testimony concerning discussions had at or during the mediation shall be admissible in any Career Service hearing. The nature and scope of the confidentiality of discussions, documents and other materials presented at the mediation shall be governed by the terms of the Colorado Dispute Resolution Act, C.R.S. 13-22-307, Sections 1 through 4 inclusive, as it may be amended.

Section 19-30 Hearing Officers

A. Powers and Duties

The Hearing Officers shall have authority to hear and decide all appeals permitted by this Rule 19; and shall perform the functions necessary to implement and maintain a fair and efficient process for appeals.

B. Hours of Operation

The Hearing Officers shall keep the Hearing Office open for business from 8:00 a.m. to 5:00 p.m., Monday through Friday of each week, holidays excepted, unless good cause warrants a temporary or permanent change.

Section 19-35 Service defined

Pleadings, motions, statements, petitions, notices, and any other documents required to be served on a party under this Rule 19 shall be served either in person with a certificate of hand delivery, or by first class U.S. mail, with a certificate of mailing to the party's last known address.

Section 19-40 Pre-hearing Procedure

19-41 Representation of Parties

- A. All parties wishing to be represented shall promptly file a designation of representative signed by the representative.
- B. Parties may:
 - 1. Represent themselves;
 - 2. Be represented by an attorney; or
 - 3. Be represented by a non-attorney as authorized by law and the Hearing Officer.

19-42 Hearings

A. Date for hearing:

After an appeal is filed, the Hearing Officer shall either:

- 1. Set a hearing date that is no more than sixty (60) calendar days after the date of filing of the appeal, unless a stipulated motion to waive the time limit is granted for good cause shown; or

2. Issue an order to show cause to determine if the Hearing Officer has jurisdiction over the appeal. If the Hearing Officer subsequently determines that jurisdiction exists, the hearing date shall be set no more than sixty (60) calendar days after the date the parties receive notice of the decision.

B. Length of hearing:

A hearing on an appeal shall be limited to one day, unless a request for a longer hearing is granted for good cause shown.

C. Continuances and Stays

The Hearing Officer may grant a continuance or stay for good cause shown.

19-43 Motions

A. All pre-hearing motions shall be in writing and copies shall be served on all parties to the appeal, or their representatives, if any. Such service shall be made on the same date the motion is filed with the Hearing Office. Motions must be supported by a showing of good cause.

B. Rulings by the Hearing Officer on motions regarding jurisdiction may be appealed immediately to the Board subject to the provisions of this Rule 19 governing interlocutory petitions to the Board. The appeal before the Hearing Office shall be stayed pending resolution of the interlocutory petition.

19-44 Pre-hearing Statements

A. Within twenty (20) calendar days after the date an appeal is filed, the parties shall file their pre-hearing statements listing witnesses (including a summary of their proposed testimony), exhibits relevant to the issues being appealed, and offered stipulations. The parties may file an amended pre-hearing statement within ten (10) calendar days of the hearing date listing final witnesses (including a summary of their proposed testimony), final exhibits relevant to the issues being appealed, and offered stipulations. Copies of any pre-hearing statements filed with the Hearing Office shall be served on all parties to the appeal, or their representatives, if any.

B. Failure to file pre-hearing statement

1. An employee's failure to file a pre-hearing statement may be grounds for dismissal of their appeal as abandoned unless good cause is shown for that failure.

2. A department or agency's failure to file a pre-hearing statement may subject the department or agency to evidentiary sanctions unless good cause is shown for that failure.
- C. Evidence that was not disclosed by a party in any of their pre-hearing statements shall not be introduced at hearing absent a showing of good cause.

19-45 Discovery and Subpoenas

- A. The parties are encouraged to engage in informal discovery as soon as an appeal is filed. The parties may move for formal discovery by submission of the proposed requests to the Hearing Officer when informal discovery has failed. Discovery shall be narrowly limited to the issues on appeal, and shall not exceed ten (10) requests for production of documents, and five (5) interrogatories absent good cause for an exception to these limitations. The party producing discovery may condition their production on the payment of reasonable copying costs. The Hearing Officer may waive or reduce the payment of such costs for good cause shown.
- B. Subpoenas for the production of documents from non-parties to the appeal (including other City department or agencies that are not parties) which are relevant to the appeal may be issued by the Hearing Officer, upon the motion of either party, supported by good cause. Such motions must be filed no less than twenty (20) calendar days prior to the hearing date. The Hearing Officer shall require that the costs of production be paid by the party requesting the documents.
- C. Subpoenas to compel the attendance of witnesses at hearings whose testimony is relevant to the appeal, may be issued by the Hearing Officer upon the motion of either party, supported by good cause. Such subpoenas shall be served no less than five (5) calendar days prior to hearing.
- D. The Hearing Officer may require witnesses, who have been subpoenaed to appear at a hearing, to answer written interrogatories or to appear at a deposition if it is not feasible for them to be available for hearing. The Hearing Officer shall require that the costs of such a deposition be paid by the party requesting the witness testimony.
- E. Any party, non-party, or witness, or a representative thereof may move to quash or modify a subpoena if it is unreasonable and oppressive.

19-46 Pre-hearing Conference

The Hearing Officer may, at the request of the parties or on the Hearing Officer's own initiative, schedule a pre-hearing conference in order to define the issues for hearing, encourage alternate dispute resolution, resolve pending motions, or

otherwise assist the parties in obtaining a fair and efficient resolution of the appeal.

19-47 Interlocutory appeals

Rulings by the Hearing Officer regarding jurisdiction may be appealed immediately to the Board subject to the provisions of this Rule 19 governing interlocutory petitions to the Board. The appeal before the Hearing Office shall be stayed pending resolution of the interlocutory petition.

Section 19-50 Appeal Hearing

- A. The Hearing Officer shall conduct the hearing in as informal a manner as is consistent with a fair and efficient presentation of the appeal. Strict rules of evidence shall not apply.
- B. The parties may present evidence and witnesses, and may cross-examine the other party's witnesses.
- C. Testimony shall be given under oath or affirmation.
- D. The Hearing Officer shall rule on all objections, and may examine witnesses when necessary to establish a complete record.

19-51 Witnesses

- A. Appointing authorities shall make available witnesses who have been subpoenaed by the Hearing Officer and are City employees.
- B. All parties and witnesses who are City employees shall be compensated at their regular straight-time rate of pay for all hours spent at a hearing during their regular working hours, as if they were at work at their regular duty station. For any hours spent at a hearing outside of their regular working hours, there shall be no compensation.
- C. The parties, representatives of the parties and witnesses shall not be subject to intimidation, interference, coercion, discrimination, or reprisal as a result of being a party or a witness in a hearing conducted by the Hearing Officer.

19-52 Failure to Appear

In cases where a party fails to appear at the hearing, the Hearing Officer may continue the hearing, dismiss the appeal or rule on the available evidence of record.

19-53 Record of Hearing

A record of the hearing shall be made. The record may be made by court reporter or any recording device approved by the Hearing Officer.

19-54 Public or Private Hearing

- A. The hearing shall be open to the public except that the Hearing Officer may, at the request of an interested party, conduct the hearing in private, if it serves the interests of the parties and the public.
- B. Witnesses shall be sequestered at the request of either party or when the Hearing Officer decides sequestration is appropriate.

19-55 Decision of Hearing Officer

(Revised effective August 29, 2008; Rules Revision Memo 30C)

The Hearing Officer shall issue a decision in writing affirming, modifying, or reversing the action, which gave rise to the appeal within forty-five (45) calendar days after the date on which the record is closed, or as soon as practicable thereafter. This decision shall contain findings on each issue necessary to resolve the appeal and shall be binding upon all parties.

Section 19-60 Petition for Review to the Board of a Hearing Officer's Decision

19-61 Grounds for Petition for Review

A party may petition that the Board review a Hearing Officer's decision only on the following grounds:

- A. New evidence: New and material evidence is available that was not available when the appeal was heard by the Hearing Officer;
- B. Erroneous rules interpretation: The Hearing Officer's decision involves an erroneous interpretation of the Rules;
- C. Policy-setting precedent: The Hearing Officer's decision is of a precedential nature involving policy considerations that may have effect beyond the appeal at hand;
- D. Insufficient evidence: The Hearing Officer's decision is not supported by the evidence. The Board may only reverse a decision on this ground if the Hearing Officer's decision is clearly erroneous; or
- E. Lack of jurisdiction: The Hearing Officer does not have jurisdiction over the appeal. A party may file an interlocutory appeal on this ground and if such interlocutory appeal is filed, the appeal before the Hearing Officer shall be stayed until the Board decides the interlocutory appeal.

19-62 Filing of Petition for Review

A petition for review shall be filed with the Board at the Career Service Personnel Director's ("Personnel Director's") office in the Career Service Authority ("CSA") within fifteen (15) calendar days after the date of the mailing of the Hearing Officer's decision. If the due date falls on a day that the CSA is not open for business, the due date shall be construed as the next business day. The request shall be in writing, and shall contain the following:

- A. The name and number of the appeal;
- B. The names and addresses of all parties to the appeal and of their attorneys or representatives;
- C. The date of the Hearing Officer's decision;
- D. A brief statement of the grounds for the petition for review from subsection 19-61, including the factual or legal basis which the party asserts exist to support each ground of the petition. If the party is asserting "new evidence," the party shall include an affidavit stating the nature of the new evidence and the reason(s) for its unavailability at hearing;
- E. The action the petitioner wants the Board to take;
- F. A copy of the Hearing Officer's decision; and
- G. Proof of service on all parties. Copies of the petition for review and all other documents filed with the Board shall be served on the Hearing Office, and all parties, or their representatives, if any.

19-63 Response to Petition for Review by the Board

- A. The other party to the appeal may file a cross-petition for review which shall comply with subsection 19-62, except that it shall be filed within ten (10) calendar days after service of the petition for review.
- B. If the other party does not file a cross-petition for review, no response is required until the answer brief is due.
- C. If both parties file a petition for review by the Board, the employee shall be deemed the "petitioner" and the department or agency shall be deemed the "cross-petitioner."

19-64 Hearing Transcript and Record

- A. Within twenty (20) calendar days after filing the petition for review, the petitioner shall file with the Hearing Office a request for the transcript of the hearing, or such portions of the hearing, if any, that the petitioner deems necessary for consideration of its petition by the Board. The petitioner shall file a copy of the request for the transcript with the Board and serve a copy on the other party on the same day that the petitioner files the request with the Hearing Office.
- B. If the petitioner does not request any portion of the transcript, the petitioner shall, within twenty (20) calendar days after filing the petition for review, file with the Board and serve on the other party a notice that no transcript is being requested from the Hearing Office.
- C. Within ten (10) calendar days after the filing of a request for the transcript of the hearing or the filing of a notice that no transcript is being requested, the respondent (or cross-petitioner) may file a request for additional portions of the transcript not included in the petitioner's request with the Hearing Office. The respondent (or cross-petitioner) shall file a copy of the request for the transcript with the Board and serve a copy on the petitioner on the same day that the respondent (or cross-petitioner) files the request with the Hearing Office.
- D. The cost of preparing the transcript or portions thereof shall be advanced by the party making the request.
- E. Once the transcripts are prepared, the Hearing Office shall file notice with the Board that the transcripts are complete, and shall provide the parties with copies of the notice and copies of the requested transcripts, upon the payment of reasonable copy costs. The Hearing Office shall include a date of service with its notice.
- F. The parties may review the record at the Hearing Office and request copies of portions of the record necessary for preparation of a brief. The Hearing Office may charge reasonable copy costs.

19-65 Briefs

- A. Petitioner's Brief: An original and five (5) copies of the petitioner's brief shall be filed by the petitioner with the Board within twenty (20) calendar days after the date of service by the Hearing Office of notice that the transcript is complete. If neither party requests transcripts of the hearing, the petitioner's brief shall be filed with the Board within thirty-five (35) calendar days after the date of service by the petitioner of notice that no transcript is being requested from the Hearing Office. The petitioner's brief shall separately address each ground for the petition; shall be supported by appropriate citations to the transcript and the record if necessary; shall include a brief statement of the relief sought by the petitioner; and shall include a copy of any portions of the transcript and record necessary for resolution of the petition. The petitioner's brief shall be served on the other party on the same date that it is filed with the Board.
- B. Answer Brief: An original and five (5) copies of the answer brief shall be filed by the other party with the Board within twenty (20) calendar days after the date of service of the petitioner's brief. The answer brief shall contain a response to each argument contained in the petitioner's brief and, if the answer brief cites to additional portions of the transcript or record, such additional portions shall be included with the answer brief. If the other party is also a cross-petitioner, the answer brief shall also separately address each ground for the cross-petition; shall be supported by appropriate citations to the transcript and the record if necessary; shall include a brief statement of the relief sought by the cross-petitioner; and shall include a copy of any portions of the transcript and record necessary for resolution of the cross-petition. The answer brief shall be served on the petitioner on the same date that it is filed with the Board.
- C. Reply Briefs: The parties are expected to fully address all issues in the petitioner's brief and answer brief. If, however, a cross-petition is filed and arguments supporting the cross-petition are included in the answer brief, the petitioner may file a reply brief which shall contain only a response to each argument advanced in support of the cross-petition and contained in the cross-petitioner's answer brief. An original and five (5) copies of the reply brief shall be filed by the petitioner with the Board within fifteen (15) calendar days after the date of service of the answer brief. If the reply brief cites to additional portions of the transcript or record, such additional portions shall be included with the reply brief. No further briefs shall be submitted by either party unless requested by the Board.
- D. Extensions of Time to File Brief: If either party needs an extension of time to file a brief, the party may file a motion with the Board supported by good cause and the Personnel Director may, on behalf of the Board, grant an extension of up to ten (10) calendar days. The Personnel Director shall notify the parties in writing of any extensions granted.

- E. Oral Argument: If either party believes that oral argument before the Board is necessary for resolution of the issues, the party shall include in the petitioner's brief or the answer brief a request for oral argument, and such request shall specifically indicate why oral argument is requested. The Board may grant a party's request for oral argument or may order oral argument when it determines oral argument is necessary.

19-66 Stay of Hearing Officer's Decision

- A. When an interlocutory petition based on jurisdiction has been filed, the appeal before the Hearing Officer shall be automatically stayed.
- B. When any other petition or cross-petition is filed, the Board may stay a Hearing Officer's decision if the party requesting a stay has filed a Request for Stay indicating the irreparable harm, injury or loss which would occur if the stay is not granted. A party may file a response or the Board may request a response to a Request for Stay. However, the Board may rule on a Request for Stay prior to the filing of a response.
- C. Any stay permitted by this Rule shall expire at the time the Board issues a final decision on the petition and cross-petition, if any.

Section 19-70 Decision by the Board

Upon submission of the briefs and upon the conclusion of oral argument, if any, the Board shall Issue a decision in writing, affirming, modifying, or reversing the Hearing Officer's decision. The Board may also remand part or all of the appeal for further action by the Hearing Officer. The Board shall issue its decision within sixty (60) calendar days after the date on which the final brief is submitted or oral argument is held, whichever is later. The binding effect of a decision is not affected by late issuance. The decision shall contain findings on each issue necessary to resolve the petition and cross-petition if any and shall be binding upon all parties. A decision of the Board shall be concurred in by at least three (3) members of the Board, whose names shall be included in the decision. The decision rendered by the Board shall constitute the final decision for purpose of requesting judicial review.

Section 19-80 Enforcement of Subpoenas

Subpoenas issued by the Hearing Officers or the Board shall be enforced in accordance with the City Charter.

APPENDIX 19.A.

RELEVANT PROVISIONS OF THE WHISTLEBLOWER PROTECTION ORDINANCE SECTION 2-100 OF THE DENVER REVISED MUNICIPAL CODE

Sec. 2-106. Legislative Declaration

The city council hereby determines and declares that employees of the City and County of Denver should never suffer retaliation from their supervisors or appointing authorities for communicating information about illegal activities, unethical practices or other forms of official misconduct experienced or witnessed by employees in the scope of their employment. The interests of the City and County and Denver and the larger interests of the citizens of Denver are served by encouraging all employees to speak out fully and frankly on any official misconduct which comes to their attention without fear of retaliation. Therefore, the purpose of this Article VII is to eliminate the possibility or the threat of any adverse employment action that may be taken against any City and County employee for reporting such information to appropriate reporting authorities.

Sec. 2-107. Definitions

As used in this Article VII:

- (a) "Appropriate reporting authority" means any officer, board or commission, or other person or entity vested with legal authority to receive, investigate, or act upon reports of official misconduct by officers and employees of the City and County, including, by way of example:
 - (1) The mayor and members of the mayor's cabinet;
 - (2) The city council, any committee of the city council, and individual members of the city council;
 - (3) The auditor and the audit committee;
 - (4) The board of ethics;
 - (5) The district attorney and other law enforcement agencies; or
 - (6) The appointing authority for the officer or employee who is alleged to have engaged in the official misconduct that is the subject of the report.
- (b) "Adverse employment action" means any direct or indirect form of employment discipline or penalty, including, but not limited to, dismissal, suspension, demotion, transfer, reassignment, official reprimand, adverse performance evaluation, withholding of work, denial of any compensation or benefit, layoff, or threat of any such discipline or penalty.
- (c) "Employee" means any employee of the City and County of Denver within the meaning of § 1.2.11 of the charter.

- (d) "Official misconduct" means any act or omission by any officer or employee of the City and County that constitutes:
- (1) A violation of law;
 - (2) A violation of any applicable rule, regulation or executive order;
 - (3) A violation of the code of ethics as codified in article IV of this chapter 2, or any other applicable ethical rules and standards;
 - (4) The misuse, misallocation, mismanagement or waste of any city funds or other city assets; or
 - (5) An abuse of official authority.
- (e) "Supervisor" means any person who is authorized to recommend or to impose any adverse employment action upon an employee.

Sec. 2-108. Retaliation prohibited.

- (a) Except as provided in subsection (b) of this section, no supervisor shall impose or threaten to impose any adverse employment action upon an employee on account of the employee's disclosure of information about any official misconduct to any person.
- (b) The protections afforded by this Article VII shall not apply to any employee:
- (1) Who discloses information that the employee knows to be false or who discloses information without regard for the truth or falsity thereof;
 - (2) Who discloses information in a manner prohibited by law including, by way of example, information that is prescribed as being confidential by law; or
 - (3) Who otherwise discloses information in bad faith.
- (c) It shall be the obligation of an employee who wishes to disclose information under the protection of this Article VII to make a good faith effort to provide to an appropriate reporting authority the information to be disclosed prior to the time of its disclosure. The protection of this Article VII shall not extend to reports of official misconduct that are made anonymously.

Sec. 2-109. Remedies.

- (a) Employees in the career service. Any employee in the career service may file a complaint with the career service board or its designated hearing officer alleging a violation of section 2-108 within thirty (30) days of the alleged retaliatory adverse employment action. The complaint shall be processed in accordance with the rules of the board governing employee appeals; provided, however, that the employee shall not be required to pursue a complaint or grievance within the employee's department or agency prior to appealing the alleged retaliatory adverse employment action to the board or its designated hearing officer. In addition to the foregoing procedure, any employee who is otherwise contesting a disciplinary action before the board or its designated hearing officer in accordance with the rules of the board may defend against the disciplinary action upon a showing by the employee that the disciplinary action constitutes a violation of section 2-108. In either event, if the board or the designated hearing officer finds that a violation of section 2-108 has occurred, the board or the hearing officer shall order appropriate relief on behalf of the employee including, but not limited to, reinstatement, back pay, restoration of all benefits and seniority rights, and the expunging of the records of any retaliatory adverse employment action made in violation of section 2-108.

- (d) Sanction against supervisors. Upon a determination by the career service board or its designated hearing officer, the civil service commission or its designated hearing officer, or an appointing authority that a violation of section 2-108 has occurred, any supervisor who committed the violation shall be subject to appropriate disciplinary action by the supervisor's appointing authority, up to and including termination from employment.

Sec. 2-110. Posting Required.

All departments, agencies and other appointing authorities of the City and County of Denver shall post and maintain, in one or more prominent locations accessible to employees of the department or agency, a notice of the rights and protections afforded to employees by this Article VII. The notice shall be in a form approved by the city attorney.

This Appendix is provided for informational purposes and is not considered a part of the Rules.