

CITY AND COUNTY OF DENVER
CAREER SERVICE HEARING OFFICE

PROCEDURAL GUIDE

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I. INTRODUCTION

Welcome to the Career Service Hearing Office, the administrative forum that serves the employees and agencies within the Career Service Authority for the City and County of Denver.

The appeal process has been designed to allow you to represent yourself in your personnel matter with your agency and the City and County of Denver. This manual will guide you in understanding the process, and in representing yourself during your appeal if you choose to do so. Our goal is to provide you with an appeal process that is orderly, efficient, and fair, in accordance with the Career Service Rules (abbreviated as “CSR”). The Rules govern your employment rights and these proceedings. Please let us know if we can assist you in answering any questions you may have about the procedure outlined in this guide. Our office number is (720) 913-5703. The office is open Monday through Friday except city holidays from 8 am to 5 pm.

A copy of the Career Service Rules is available at the Hearing Office for review and copying. The rules are also available online at: www.denvergov.org/hearings.

II. APPEAL PROCESS

A. Parties

You are referred to as the Appellant during your appeal. The other party is the City of Denver and your Agency or Department, which are referred to as the Agency. The Agency is generally represented by the City Attorney's Office.

B. Filing an Appeal

If you are filing an appeal as a Whistleblower you must file your appeal in the Hearing Office within 30 calendar days of the alleged retaliatory adverse action. All other appeals must be filed within 15 calendar days of the date of the notice of the action you are appealing.

The period of time for filing an appeal starts on the calendar day following: the date of the alleged adverse action in the case of a Whistleblower violation and retaliation appeal; or the date of the notice of the action or date of inaction in all other appeals.

When an action has a written notice, the date of notice of the action is the date on the certificate of delivery.

An appeal will not be considered filed on time unless it is in our office by 5 p.m. An appeal or other document received after 5 p.m. by fax or email will be considered filed on the next business day. We do not grant additional time for delays caused by mail, and so it is best to hand-deliver, fax or e-mail an appeal to the Hearing Office by 5 p.m. on or before the date it is due in order to ensure that it has been filed on time. See CSR § 19-20 A.

When filing your appeal, attach to the appeal form a copy of the document(s) you are appealing, and all grievances and responses. Your appeal will be date-stamped by the clerk in the Hearing Office. One copy of the appeal and your attachments will be provided to you without cost.

C. Initial Review of the Appeal

Once your appeal has been filed, it will be assigned a number. Your appeal will be reviewed by the Hearing Office to determine whether the appeal has been filed on time and whether the Hearing Officer has jurisdiction (authority) to consider your appeal under the Career Service Rules.

The Hearing Office has jurisdiction over the following types of cases:

1. Dismissals, suspensions, temporary reductions in pay, involuntary demotions, disqualifications, layoffs, or alleged Whistleblower Protection Ordinance violations [§ 19-10 A.],
2. The Agency's disposition of complaints of discrimination, harassment and retaliation [§ 19-10 A. 2 a.],
3. Grievances alleging violation of a Career Service Rule, City Charter, Career Service ordinance, executive order, or agency policy negatively impacting pay, benefits or status, or grievances to which the Agency failed to respond or implement the remedy granted [§ 19-10 A. 2. b.], and
4. Grievances of "needs improvement" ratings of Performance Enhancement Program Reports (PEPRs) [§ 19-10 A.2.c.]

If the Hearing Officer cannot determine whether there is jurisdiction over your appeal, an Order to Show Cause will be sent to you. It could be that your appeal does not appear to have been filed on time, or that the Rules may not provide a basis for jurisdiction or the relief you requested. You will be given time to file a response to the order. This is your opportunity to let the Hearing Officer know why you believe your appeal should be heard. The City Attorney may also file a response to the order. When your response is received or the time for your response has passed, the Hearing Officer will determine the jurisdictional issue on the basis of your response and the applicable rules. Your appeal will then be either set for hearing or dismissed for lack of jurisdiction. It is important to respond to the order within the time period stated in the order, since failure to respond may result in your appeal being dismissed as abandoned.

III. BEFORE THE HEARING

A. Pre-hearing Order

The Hearing Office will schedule your appeal for hearing within about 60 days from the date you filed your appeal. You will receive a Pre-hearing Order in the mail, which explains the appeal procedures and the deadlines that must be followed. Please read it very carefully, and let the Hearing Office know right away if you need any extensions of the deadlines set in the order.

Along with the order will be a blank Pre-hearing Statement. The Pre-hearing Statement is a form which requests information that is required of both parties. In it, you must state what the appeal is about and the issues in the appeal. You must also identify the witnesses you believe may help support your appeal, and give a brief summary of what you expect their testimony will be. You must list the documents you intend to present as evidence (exhibits) and any facts, issues, or exhibits you agree on (stipulations) after speaking with the other side.

You must file your Pre-hearing Statement and **TWO copies of your exhibits** with the Hearing Office. We ask that you mark the first page of each exhibit with consecutive letters of the alphabet to assist in identifying each exhibit, and that you number each page of multi-page exhibits. For example, page one of your first exhibit should be marked as "A-1" on the bottom of the page. Page two of Exhibit A should be marked as "A-2", and so on.

The due date for your Pre-hearing Statement and two sets of your exhibits is in the Pre-hearing Order. You must also provide a copy of your Pre-hearing Statement and ONE copy of each of your marked exhibits to the Assistant City Attorney who represents the Agency in your case. (The address for the City Attorney's Office is provided on the Pre-hearing Order.) Likewise, the Assistant City Attorney must provide you with a copy of the Agency's Pre-hearing Statement and the exhibits the Agency may offer at the hearing.

B. Discovery

The Agency may have documents you feel are necessary for your hearing. If the City Attorney has not included those documents as exhibits in its initial Pre-hearing Statement, you may contact the City Attorney and request a copy of those documents. If the City Attorney objects to giving you that information, you may file a written request (known as a "motion") to the Hearing Officer to require the City Attorney to make the documents available. Include in your motion all reasons why you believe the documents will help you prove your case, or help you disprove the evidence you expect the Agency to present against you.

You must file your motion requesting discovery with the Hearing Office, and provide a copy to the City Attorney on the same day. The City Attorney may object by filing a response to your motion. The Hearing Officer will then decide whether you are entitled to the documents. The timelines for completing requests for discovery are provided in the Pre-hearing Order.

C. Subpoenas

A subpoena is an order to appear at hearing to someone you believe has information relevant to your appeal. If the Agency's Prehearing Statement has not listed a person you believe has relevant information as someone they "will call" to the hearing, you may request a subpoena for that person. You must file any request for subpoenas with the Hearing Officer, and send a copy of your request to the City Attorney. Your request for subpoenas must state why you believe each witness has testimony that would be important to the issues in your appeal. For example, a witness may have seen the events that led to your discipline, and may have a different memory of it than the Agency witnesses. If you did not previously list your requested witnesses in your Pre-hearing Statement, you must state in your request for subpoena a good reason why you did not include them. For example, you may have just learned the person possessed information relevant to your appeal. The City Attorney may file an objection to the request. More information about requesting subpoenas, including deadlines, is contained in the Pre-hearing Order.

The Hearing Officer will review your request and decide whether to issue the subpoenas based on the issues in your appeal. The Hearing Officer will send you an order ruling on your request and explaining why any disapproved witnesses will not be allowed to testify. Once the Hearing Officer determines which witnesses may be subpoenaed, you will be notified to pick up the approved subpoenas. It is your responsibility to have the subpoenas served within the time required by the Pre-hearing Order. You may not serve them yourself. Subpoenas must be served by someone over the age of 18 who is not a party to the appeal.

D. Subpoenas to Produce Documents

If the City Attorney declines to give you documents you believe are necessary to present your case, you may request that the Hearing Officer issue a subpoena to produce documents that would order a person who has the documents to make them available to you. You must file a copy of your request with the City Attorney. The time for filing that request is contained in your Pre-hearing Order. Your request must clearly describe the documents you need, state why you need them to help you prove your case or disprove the Agency's case, and state who has the information you are requesting.

The City Attorney may file an objection to your request. You may file a reply to the City's objection. Then the Hearing Officer will determine whether to grant your request. If the Hearing Officer issues the subpoena for documents, it is your responsibility to have that subpoena served, in the same manner as you would serve a subpoena for testimony.

E. Filing of Pleadings

A pleading is a communication addressed to the Hearing Officer by either party, and includes motions (requests to the Hearing Officer to take some action) and responses to motions made by the other side. All requests you make to the Hearing Officer must be in writing because a Hearing Officer is not allowed to discuss any matter concerning an appeal with one party without the other being present. You must send a copy of all motions and other pleadings to the Assistant City Attorney assigned to your case. The City Attorney's Office will accept motions or responses sent as email attachments to the City Attorney's email address, which is dlefilng.litigation@denvergov.org. You may also send your motions and responses to the Hearing Office email address, which is CSAHearings@denvergov.org.

Be sure you ask for a delivery receipt for all messages sent to the Hearing Office and the City Attorney's Office by clicking on "request delivery receipt" under "Options" in Outlook. If you send your document via email, there is no need to mail the same document to either the Hearing Office or the City Attorney's Office.

F. Motions and Responses

Motions are written requests to the Hearing Officer. Both you and the City Attorney may file various motions, which may include a motion to extend a deadline in the Pre-hearing Order, a motion for subpoenas, or a motion to reconsider an order.

Any motion you file should explain what you want the Hearing Officer to do, and the reason you believe the granting of the motion will allow you to better prepare and present your appeal.

If you wish to **respond to a motion** filed by the Assistant City Attorney, you must do so **within 5 calendar days** after the date the motion was mailed, except for a motion to dismiss or a motion for subpoenas. A response to a motion to dismiss is due within 10 calendar days after the date the motion was mailed. Any objection to a request for subpoenas must be filed within 3 days after the date the motion was mailed. The Hearing Officer will send you a copy of the order resolving the motion.

G. Staying in Touch

It is the responsibility of the parties to keep the Hearing Office and each other up to date on their most current address and contact information. Failure to do so may result in a party not being notified of a ruling or a deadline, and it may affect your appeal. **Call (720) 913-5703** as soon as possible to report any change of address, phone numbers, or other contact information. If you provide us with your email address, we can send you our orders on the same day they are issued. Please reply promptly to all messages from the Hearing Office, and let us know whether you wish to have us mail you an additional copy of an order.

IV. THE HEARING

A. Persons Present at the Hearing

1. You, the Appellant,
2. The Assistant City Attorney for the Agency,
3. The Hearing Officer,

4. Approved witnesses, and
5. Any member of the public if hearing is not closed.

The hearing will be recorded by a digital recording system or by a court reporter.

B. Preliminary Matters

The Hearing Officer will open the hearing and the parties and their representatives will identify themselves. The Hearing Officer will hear and decide any motions that are still pending, and make orders to allow the hearing to proceed efficiently and fairly. For example, the Hearing Officer may ask you and the City Attorney to list the witnesses that are expected to testify, and to ask the parties to stipulate to exhibits. A stipulation means that you agree the exhibit relates to an issue in the appeal. By stipulating, you do not need to agree with the contents of an exhibit, such as the disciplinary letter. Even if you stipulate to an exhibit, you may still argue that it is not accurate, and you may present testimony that contradicts it.

A party who wants an exhibit to be considered as evidence must prove it is relevant to the appeal and that it is authentic; for instance, by having an author of a letter testify he wrote it. Hearsay and exhibits containing hearsay may be admitted under certain circumstances.

C. Opening Statements

After the preliminary matters are resolved, each party may make an opening statement. Opening statements are an opportunity for you to explain your case to the Hearing Officer, and summarize what you intend to prove at hearing. That usually includes a brief summary of the testimony you expect from your witnesses, including yourself, what you believe your evidence will show, and what you want the Hearing Officer to do as a result of your evidence. Opening statements are arguments and not testimony. That means your opening statement will not be considered as evidence. The evidence that is considered by the Hearing Officer is the testimony of witnesses, including you, and the exhibits.

In appeals of disciplinary matters, the City Attorney will make the first opening statement because the Agency must prove there was just cause to discipline you, and that the level of discipline was appropriate. You will then have the opportunity to make your opening statement.

In appeals of a Performance Enhancement Program Report (abbreviated as “PEPR”), a lay-off, or in the appeal of a discrimination, harassment or retaliation claim, you will be asked to give your opening statement first, since you bear the burden of proof in those appeals. To succeed in your PEPR claim, your evidence must prove the “needs improvement” performance rating was arbitrary, capricious and without rational basis or foundation.

D. Presentation of Evidence

After opening statements, the party with the burden of proof brings his first witness into the hearing room.¹ The Hearing Officer will administer the oath to each witness. When it is your turn to present your case, you will ask each of your witnesses any question you believe will allow the witness to testify to matters that are relevant to your appeal, and which may bring up evidence favorable to you. This is called **direct examination**. You may wish to prepare your questions for each witness in advance, as it is easy to forget a question you intended to ask when you are in the middle of a hearing. It is your choice whether to testify, and to decide

¹ In an appeal of discipline, the Agency has the burden of proof. In an appeal of a PEPR rating, a lay-off, or discrimination claim, the employee has the burden of proof, and therefore gives the first opening statement and presents evidence first.

which of your witnesses you would like to call first. If you do not have a representative, you may testify to the facts in narrative form without having anyone ask you questions.

For each witness called and questioned by the City Attorney, you will have the opportunity to question that witness about the testimony he or she has given. This phase of the hearing is called **cross-examination**. A witness must answer the questions as they are put during cross-examination unless the other party objects to the question. If you are being cross-examined, and you wish to explain your answer further, you will be able to do so after the City Attorney has completed cross-examination.

During **redirect examination**, the party who presented the witness may ask additional questions to follow up or clarify the testimony given on cross-examination. The Hearing Officer will decide whether to allow additional questions based on the evidence.

The same procedure will be followed for each witness. The City Attorney may call you as a witness and ask you questions. After the side with the burden of proof finishes his evidence, the other side will call its witnesses, and the same order of questions, cross-examination will apply.

While questioning a witness, or while you testify on your own behalf, you may **offer** (that is, ask the Hearing Officer to accept as evidence) any **exhibits** to which the City Attorney did not stipulate. You need to tell the Hearing Officer why you believe the exhibit is authentic (for example, not a forgery) and relevant to an issue in the appeal. Remember to offer the exhibit into evidence after you present testimony proving its relevance and/or authenticity.

If the Assistant City Attorney attempts to offer an exhibit to which you object, you have the right to question the witness yourself to determine whether it is authentic and/or relevant. You may then **object to the exhibit** if you do not believe it is not genuine, accurate, reliable, or relevant. After hearing from both sides, the Hearing Officer will decide whether to admit the exhibit.

In a disciplinary appeal, after you have presented your witnesses, the Agency has the right to call **rebuttal witnesses** to testify to anything new that you brought out in your testimony or your evidence. You may cross-examine each rebuttal witness.

The Hearing Officer may also ask questions of a witness. The Hearing Officer will always give both you and the City Attorney an opportunity to ask follow-up questions based on the Hearing Officer's questions.

E. Closing Argument

After all the evidence has been presented, each side may make a closing argument. This is the opportunity for you to summarize the evidence favorable to you, and to explain why the evidence supports a decision in your favor. For example, you may argue the evidence showed you did not commit the acts alleged by the Agency, or that the discipline was too severe. Your closing argument must refer only to evidence which has been admitted.

The party with the burden of proof makes the first closing argument. For example, in disciplinary appeals, the Assistant City Attorney will make the Agency's closing argument first, and then you may make a closing argument. The party with the burden of proof may present a rebuttal argument. If written closings are permitted, the Hearing Officer will set the date by which they must be filed.

V. AFTER THE HEARING

A. **Decision**

The Hearing Officer will issue a decision in your appeal within 45 days after the close of all the evidence, or as soon as practicable thereafter. The decision will summarize the evidence and make findings of fact, which state which facts were found to be true. The decision will then analyze how the facts relate to the applicable Career Service Rules and the relevant case law. “Case law” means decisions made in similar appeals that may show how the Career Service Rules applicable to your appeal should be interpreted. Go to www.denvergov.org/hearings to read the relevant decisions of the Hearing Office by searching a topic, rule, or case name. For example, if you have a question about how the disciplinary rule prohibiting neglect of duty has been interpreted by the Hearing Office, you may search the decisions by the topic “neglect” or by the rule number, “16-60 A”.

The decision in your appeal will be mailed to you at the last known address on file with the Hearing Office. The decision will also be sent to your representative and the designated Agency representative. CSR § 19-55.

B. **Review of Decision by Career Service Board**

If you disagree with the Hearing Officer’s decision, you may file a **Petition for Review** of the Hearing Officer's decision with the Career Service Board within **FIFTEEN** days of the date the decision was mailed. See CSR § 19-62. You will be known as the Petitioner during the proceedings before the Career Service Board. If the Agency files a Petition challenging the decision, the Agency is the Petitioner and you are the Respondent.

A Petition for Review is a document you prepare which should explain your grounds for reversal of the decision. The Career Service Board will review your petition only if it claims:

1. New evidence which was not previously available,
2. The Hearing Officer erred in interpreting the Rules,
3. The decision will have far-reaching policy consequences not considered by the Hearing Officer,
4. There was insufficient evidence to support the decision, or
5. The Hearing Officer did not have jurisdiction of the appeal.
[CSR § 19-61].

See Career Service Rule § 19-60 through § 19-70 for further information regarding Petitions for Review.

If you disagree with the decision of the Career Service Board on your Petition for Review, you may request review of its decision with the Denver District Court. You should consult that court for their procedures. The Denver District Court is located at 1437 Bannock St., Denver, Colorado 80202, and the Clerk's Office can be reached at (720) 865-8301.