



D E N V E R[®]
THE MILE HIGH CITY

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.

Our goal is to provide you with an appeal process that is fair and efficient, in accordance with the Career Service Rules (abbreviated as “CSR”). The Rules govern your employment rights and these proceedings. A copy of the Career Service Rules is available at the Hearing Office. The Rules and copies of this procedural guide are also available online at www.denvergov.org/hearings. For a summary of our decisions by rule and topic, go to this website and click on the phrase rule number at the bottom of that page, or the word subject to search by topic. For example, if you have a question about how the rule prohibiting discrimination has been interpreted by the Hearing Office, you may search the decisions by the topic “discrimination” or by the rule number, “CSR § 15-100”.

For your convenience, words and phrases having a special meaning are in **bold** and followed by an **asterisk (*)**. Their definitions are given on the last page of this Procedural Guide.

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 from 8 am to 5 pm, except City holidays.

II. APPEAL PROCESS

A. Parties

You are referred to as the Appellant during your appeal. The other party is the City and County 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

All appeals must be filed in the Hearing Office within **15 calendar days** of the date of the notice of the action you are appealing, with the exception of whistleblower claims. Appeals claiming a violation of the Whistleblower Protection Ordinance must be filed in the Hearing Office within **30 calendar days** of the alleged retaliatory adverse action.

The period of time for filing an appeal starts on the calendar day following either 1) the date of the alleged retaliatory action in a whistleblower claim, or 2) the date of the notice of action or date of inaction in all other cases. When an action is taken by written notice, the date of notice of action is the date of hand delivery or the date on the certificate of delivery. See CSR § 19-20 A.

An appeal is timely if the Hearing Office receives it by 5 p.m. on the deadline for filing the appeal. 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, 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. Our email is CSAHearings@denvergov.org. CSR § 19-20 A.

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

C. Initial Review of the Appeal

As soon as the appeal is filed, it is assigned a case number and reviewed to determine if it is timely and if the Hearing Office has **jurisdiction*** under the Career Service Rules to decide the appeal.

The Hearing Office has jurisdiction over appeals of the following types of Agency actions:

1. Dismissals, suspensions, temporary reductions in pay, involuntary demotions with loss of pay, disqualifications, layoffs, or claims under the Whistleblower Protection Ordinance. [§ 19-10 A.1.]
2. The Agency's disposition of complaints of discrimination, harassment and retaliation. [§ 19-10 A.2.a.]
3. Grievances alleging the Agency violated a Career Service Rule, City Charter, ordinance related to the Career Service, executive order, or Agency policy that negatively impacts pay, benefits or status. You may also appeal an Agency's failure to respond to a grievance, or its failure to carry out the remedy it granted. [§ 19-10 A. 2. b.]
4. Grievances of an overall rating of "Failing" on Performance Enhancement Program Report (PEPRs) [§ 19-10 A.2.c.].

If the Hearing Office cannot determine if there is jurisdiction without further information, it will send you an Order to Show Cause within two days after the appeal is filed. The Order will identify the jurisdictional issues, and give you an opportunity to respond within **five days** with additional facts and argument about why you believe your appeal or claim should be heard. The City Attorney is then given two days to reply to your response. It is important that you respond to the order within the time period stated in the Order, since failure to respond may result in all or part of your appeal being dismissed.

After the Hearing Office receives the response and reply, or the deadlines for filing them have passed, it will resolve the jurisdictional issues within two days based on the parties' responses and the applicable rules. The order will then set the appeal for hearing or dismiss the appeal or claim for lack of jurisdiction. An appeal with more than one claim will be set for hearing on all issues determined to be within the Hearing Office's jurisdiction, and the remaining claims will be dismissed.

III. BEFORE THE HEARING

A. Pre-hearing Order

The Hearing Office will schedule your appeal for hearing 60 days from the date you filed your appeal. You will receive a Pre-hearing Order via the method of delivery you have requested in your appeal. The Order explains the appeal procedures and the deadlines that must be followed. Please read it carefully, and let the Hearing Office know if you need any extensions of the deadlines set in the Order before those deadlines pass.

The first sentence of the Pre-hearing Order identifies the claims the appeal appears to present. If they are not accurate, it is your responsibility to notify the Hearing Office within **five days** so that your actual claims may be resolved during the appeal process. The second sentence of the Pre-hearing Order specifies which party has the **burden of proof*** in the hearing.

In an appeal of a disciplinary action, the Agency has the burden of proof that Appellant violated the Career Service Rules in the disciplinary letter by the conduct summarized in that letter, and the level of discipline imposed was consistent with the purposes of discipline under CSR § 16-20. The Agency also has the burden of proof in a disqualification under CSR § 14-20 et. seq. Appellant has the burden in all other appeals, i.e., a layoff, a “Failing” PEPR rating, an Agency's denial of a grievance, and claims of discrimination, harassment, retaliation and whistleblower violations.

B. Pre-hearing Statements and Stipulations

Five days before filing your Pre-hearing Statement, you are required to confer with the Agency in order to narrow the issues, disclose the **evidence*** to be presented at hearing, and **stipulate*** to all facts and evidence not in dispute.

1. In disciplinary appeals, the Agency must identify the specific conduct supporting each rule violation alleged in the disciplinary

letter, and Appellant must identify the conduct or events alleged in the disciplinary letter that are not in dispute.

2. In all appeals, each party must identify the nature and basis of the claims and defenses raised, disclose the exhibits relied upon, and identify the anticipated witnesses.

Within the time set in the Pre-hearing Order, the parties must file a pre-hearing statement which includes the following:

1. A statement that you have conferred with the other party in a good faith effort to define the issues, disclose the evidence you will present, and develop stipulations as to undisputed evidence.
2. The nature and basis of the claims and defenses you are raising in this appeal. The Agency must identify the specific conduct supporting each rule violation alleged in the disciplinary letter, and you must identify the testimony or exhibits you will present that proves any claims you have raised.
3. Your stipulations as to all undisputed facts, including the conduct or events alleged in the disciplinary letter that you do not dispute.
4. Your stipulations on the exhibits and witnesses to be offered by the other party.
5. A plain, concise statement of all facts you expect to prove at hearing.
6. A list of your witnesses, along with a description of their expected testimony.
7. A list of your exhibits. **Pleadings*** are considered part of the evidence and will not be admitted as exhibits.
8. A description of your efforts to settle the appeal.

The parties must file with the Hearing Office **TWO copies of their exhibits** with the Pre-hearing Statement. Please identify each exhibit by

marking the first page of each exhibit with consecutive letters of the alphabet, and number each page of multi-page exhibits on the bottom of the page. For example, page one of your first exhibit should be marked as “A-1”.

Page two of Exhibit A should be marked as “A-2”, and so on. If a document is lengthy, file only the first and last pages and those pages with information relevant to the appeal. You must make the entire document available to the other party prior to and at hearing.

Exhibits should be submitted in paper form. Exhibits filed via email will be accepted as timely, however, parties must still submit two paper copies of each exhibit to the Hearing Office. Parties must provide their own audio/visual equipment at hearing to play any exhibits that are not documents.

You must 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. 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.

All amended pre-hearing statements with additional stipulations, exhibits, or witnesses must be filed **15 days** before hearing. Each addition to the initial pre-hearing statement must be shown in **bold type** and each deletion shown by ~~striketrough~~. List any additional information in the same manner as required for the pre-hearing statement.

C. Filing Motions and Responses

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. All **motions*** must explain what you want the Hearing Officer to do, and the reason you believe granting the motion will allow you to better prepare and present your appeal. The Assistant City Attorney may file a response to any motion you file. The Hearing Officer will rule on your motion after considering the issues in the case, your motion and any Agency response. In the interest of saving time and resources, **e-mail filings of pleadings are**

encouraged, and will be accepted as originals. The Hearing Office email address is CSAHearings@denvergov.org

You must send the Assistant City Attorney assigned to your case a copy of all motions on the same day they are filed with the Hearing Office. 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. Please include your name and appeal number in the subject line of the email.

Be sure you ask for a delivery receipt for all email 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 a paper copy of the same document to either the Hearing Office or the City Attorney's Office.

If you wish to respond to a motion filed by the Assistant City Attorney, you must do so **within five 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 ten days** after the date the motion was mailed. Any objection to a request for subpoenas must be filed **within three days** after the date the motion was mailed. The Hearing Officer will send you a copy of the order resolving the motion.

D. Discovery*

The Agency may have documents that contain information relevant to your case. If the Assistant City Attorney has not included those documents as exhibits in its 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 motion asking the Hearing Officer to order the City Attorney to give you a copy of the documents. Include the reason you believe the documents are relevant to your case, and file the motion within the deadline set for discovery motions in the Pre-hearing Order. 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 based on the issues and the parties' arguments.

E. Subpoenas*

If the Agency's Pre-hearing Statement has not listed a person you believe has relevant information as a "will call" witness, you may request a subpoena ordering that person's attendance at the hearing. You must file a motion for a subpoena with the Hearing Officer within the deadline set in the Pre-hearing Order, and send a copy of your request to the City Attorney. Your motion must state why you believe the person has information relevant to a disputed issue 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 include your requested witnesses in your Pre-hearing Statement, you must state in your motion why you did not include them. For example, you may have just learned about this person as a result of information you obtained from the Agency during the discovery process, after you filed your Pre-hearing Statement. The City Attorney may file an objection to your motion. For example, the Agency may argue that the subpoena is not necessary because other witnesses will present the exact same testimony. Consult the Pre-hearing Order for more information about requesting subpoenas, including deadlines.

The Hearing Officer will review your request and decide whether to issue the subpoenas based on your motion, the Agency's response, and the issues in your appeal. The Hearing Officer will send you an order ruling on your request and explaining the reasons for the ruling. 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.

F. Subpoenas to Produce Documents

If a person who is not a party to this appeal has documents you believe are necessary to prove your case, you may request that the Hearing Officer issue a subpoena ordering the person to produce those documents. Your motion must clearly describe the documents you need, state why you need

them to help you prove your case or rebut the Agency's case, and identify the person who has the information you are requesting. You must file a copy of your motion with the City Attorney. The deadline for filing this motion is contained in your Pre-hearing Order.

The City Attorney may file an objection to your request. The Hearing Officer will then decide whether to order the subpoena based on your motion, the response and the issues in the appeal. 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.

G. Staying in Touch

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 orders on the same day they are issued. It is your responsibility to keep the Hearing Office and the Agency notified of your contact information in order to avoid delays in receiving motions and orders that may affect your appeal. Please reply promptly to all messages from the Hearing Office, and let us know if you need another 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 the hearing is not closed.

The hearing will be recorded by a digital recording system.

B. Procedural 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 pending motions, 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 will testify, and to ask the parties if there are any additional stipulations. 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, you may present the testimony of the author or recipient of a memo. Evidence containing **hearsay*** may be admitted if it is sufficiently reliable and trustworthy.

C. Opening Statements

After the procedural 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 action you want the Hearing Officer to take as a result of your evidence. Opening statements are arguments, and will not be considered as evidence. The Hearing Officer may base the decision only on the evidence admitted at the hearing, including the exhibits and testimony of all witnesses.

In appeals of disciplinary matters, the City Attorney will make the first opening statement because the Agency has the burden to prove there was just cause to discipline you, and that the level of discipline was appropriate. The Agency also begins in an appeal of a disqualification under CSR § 14-20 et. seq. After the Agency's opening statement, you will have the opportunity to make your own opening statement.

In appeals of a layoff, a “Failing” PEPR rating, an Agency's denial of a grievance, and claims of discrimination, harassment, retaliation and whistleblower violations, 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 your overall “Failing” 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 begins their case by bringing the first witness into the hearing room. The Hearing Officer will administer the oath to each witness. The representative or party will ask the witness any question that will allow the witness to testify to matters that are relevant to the issues in the appeal or present evidence favorable to the party. 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 on whether you wish to testify, and to decide the order in which you would like to call your witnesses. You may be called by the City Attorney as a witness and questioned about the facts underlying your appeal. If you do not have a representative, you may testify to the facts in narrative form without having anyone ask you questions.

After the direct examination of each witness called and questioned by the City Attorney, you will have the opportunity to question that witness to test the truth or reliability of the testimony. This 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 and the objection is sustained by the Hearing Officer. 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.

After cross-examination, the party who initially called the witness may ask follow-up questions to clarify the testimony given during cross-examination. This is called redirect examination. The Hearing Officer will decide whether to allow additional questions based on the evidence.

After the party with the burden of proof finishes presenting his or her evidence, the other side will call its witnesses, and the same order of examination will be followed.

While questioning a witness, or while testifying on your own behalf, you may ask the Hearing Officer to admit into 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 (for example, the Agency admitted relying on it during the disciplinary process.) Remember to offer the exhibit into evidence after you present testimony proving its relevance and authenticity.

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

In a disciplinary or disqualification appeal, after you have presented your witnesses, the Agency has the right to call rebuttal witnesses for the purpose of contradicting evidence you presented during your case. You may cross-examine each rebuttal witness.

The Hearing Officer may also ask questions of a witness when necessary to establish a complete record on all issues in the appeal. 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 your opportunity to summarize the evidence favorable to you, and to explain why the evidence supports a decision in your favor. For example, you may argue that the evidence showed you did not commit the acts alleged by the Agency, that your conduct did not violate the rules

alleged by the Agency, or that the discipline was too severe. You must refer only to evidence that 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, stating which facts were found to be true. The decision will then analyze the facts in light of the relevant Career Service Rules and case law. "Case law" means decisions made in similar appeals that apply the Career Service Rules at issue in your appeal. The decision in your appeal will be mailed to you at the last known address on file with the Hearing Office, and sent to your representative and the Agency's representative. CSR § 19-55.

B. Petition for Review 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 **15 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 that summarizes a party's argument as to why the decision should be reversed. The Career Service Board will review your petition only if the Petition for Review claims:

1. There is new and material evidence 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 is insufficient evidence to support the decision, or
5. The Hearing Officer did not have jurisdiction of the appeal.

CSR § 19-61. See CSR §§ 19-60 to 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 under Colorado Rules of Civil Procedure Rule 106. You should consult that court for their procedures at the following location:

Denver District Court
1437 Bannock St., Denver, Colorado 80202
Clerk's Office (720) 865-8301

* DEFINITIONS *

Burden of proof The party with the burden of proof must present evidence that convinces the hearing officer that the party's claim is true.

Certificate of Service The statement at the bottom of all pleadings that certifies the date and method by which the pleading was delivered to the other parties.

Cross-examination The opportunity after direct examination to ask an opposing witness questions for the purpose of testing the accuracy or truth of the testimony given during direct examination. See CSR § 19-50.

Direct Examination Initial questions asked of a witness by the party who subpoenaed him for the purpose of obtaining testimony to support that party's claim.

Discovery Requests to another party to produce information or documents about any matter relevant to the claims or defenses in an appeal. See CSR § 19-45.

Evidence Testimony or exhibits relevant to the issues on appeal presented for the hearing officer's consideration in deciding the appeal.

Hearsay Testimony by a witness about a statement made by another person, who is not in court or available for cross-examination.

Jurisdiction The legal authority of a hearing officer to hear and decide an appeal or claim. See CSR § 19-10.

Motion A party's request of a hearing officer to take a specific action. See CSR § 19-43.

Pleading Any document filed at the hearing office in an appeal.

Stipulation An admission that certain facts are not in dispute, eliminating the need to present evidence about those facts at hearing.

Subpoena An order issued to a person to appear at a hearing for the purpose of testifying in an appeal. See CSR § 19-45.