

RULE 18
DISPUTE RESOLUTION

(Revised February 12, 2016; Rule Revision Memo 18D)

Purpose Statement:

The purpose of this rule is to provide a process to resolve workplace issues at the lowest possible level (the level at which they occur). The City expects employees and supervisors to use the dispute resolution process in good faith. Retaliation against those who participate in the dispute resolution process in good faith is prohibited.

Section 18-10 Open Door Policy

- A. Under the City's open door policy, employees are encouraged to informally and directly discuss work-related issues with their direct supervisors.
- B. If this does not resolve the concern, the employee is encouraged to bring the issue to the attention of the employee's manager/director, appointing authority, or a human resource (HR) representative.
- C. The utilization of the open door policy does not suspend the timelines for filing a grievance.
- D. The City will not tolerate retaliation against employees who utilize the open door policy in good faith.

Section 18-20 Mediation

Mediation is a formal, voluntary process in which a neutral, trained mediator assists parties to a workplace dispute to reach a mutually acceptable agreement.

A. Requesting Mediation:

- 1. An employee, HR representative, supervisor or manager may request formal mediation by contacting the Career Service Mediation Program ("Mediation Program"). The Mediation Program will submit the request to a Mediation Provider, who will notify the other parties.
- 2. Parties are encouraged, but not required to participate in mediation. If all parties agree to mediation, the Mediation Provider will assign a Mediator, who will schedule a mediation session on a date and time, and at a location agreeable to the parties.
- 3. All parties involved in a mediation must be informed of any representatives attending the proceedings at least seventy-two (72) hours before the beginning of the mediation.

B. Protection of Grievance Rights:

1. If a mediation request is submitted within fourteen (14) calendar days of an action or inaction giving rise to a grievance, the time to file a grievance is suspended. Should the grievant wish to continue with the grievance process, the grievance must be filed within seven (7) calendar days following the date of the termination of the mediation process.
2. If a mediation request is submitted after the filing of a timely grievance, the time to respond to the grievance is suspended. Should the grievant wish to continue with the grievance process, the agency must respond to the grievance within seven (7) calendar days following the termination of the mediation process.

C. Conclusion of the Mediation Process

1. Conclusion of the mediation process occurs when:
 - a. The mediation request is withdrawn;
 - b. The mediation request is declined;
 - c. The Mediator determines that future efforts at mediation would be futile;
or
 - d. Mediation occurs, and results in an agreement between the parties to the mediation.
2. Conclusion of the mediation process is effective on the date of mailing, e-mailing or hand delivery of a written notice of termination by the Mediator to the parties in the mediation process and to the Mediation Program.

D. Communications during Mediation not Admissible in Legal Proceedings

All proceedings held pursuant to or taken in conjunction with mediation 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 in furtherance thereof 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 18-30 Grievance Procedure

A. Defined:

A grievance is an allegation made by a Career Service employee regarding discrimination, harassment, retaliation, or violence in the workplace, or relating to actions/inactions taken by the employee's supervisor/manager that violate the employee's rights under the Rules, the City Charter, ordinances relating to the Career Service, executive orders, or written agency policies. Notwithstanding the above definition, the following shall not be grieved:

1. Issues for direct appeal (see Rule 19 **APPEALS**);
2. Any aspect of the performance review program other than an employee's performance rating; (Revised May 12, 2017; Rule Revision Memo 26D)
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;
4. The mediation process;
5. A contemplation of discipline or disqualification notice or meeting; or
6. The assignment to or removal from an acting role, working out of class assignment, or Senior Command Staff status (as defined in Rule 5 **APPOINTMENTS AND STATUS**).

B. Filing of Grievance:

In order to file a grievance an employee must:

1. Prepare and complete all sections of the current OHR grievance form.
2. Deliver the grievance to the appointing authority or an HR representative of the employee's department or agency within twenty-one (21) calendar days after notification of the action or inaction which gives rise to the grievance. If the grievance is mailed or e-mailed, it must be received within the twenty-one (21) calendar days.
3. Employees must use their own personal time when preparing grievances unless they are granted permission by their supervisors to use paid work time.

C. Responding to Grievance:

The department or agency shall consider the grievance and within twenty-one (21) calendar days following receipt of the grievance provide the employee a dated, written notice of a decision. The written decision shall contain a certificate of delivery which indicates the date the decision was sent or delivered to the employee.

D. Computation of Time:

The period of time shall be computed as follows (all time periods are calendar days):

1. The date of notification of the action or inaction shall be the date the employee knew or should have known of the action or inaction.
2. The period of time for filing the grievance starts on the day following the date of notice of the action or inaction.
3. The date for responding to a grievance starts on the day following receipt of the grievance.
4. If the final date for filing or responding to a grievance falls on a day the OHR is not open for business, the final date shall be the next working day.
5. The grievance filing or response period ends at 5:00 p.m. on the final date.

E. Failure to Implement Remedy Granted in a Grievance Response:

If a remedy is granted in the grievance response, and the department or agency fails to implement it, the employee must notify the department or agency designee in writing of their intent to file an appeal within seven (7) calendar days following the date the employee knew or should have known of the department or agency's failure to implement the remedy. If the department/agency designee fails to implement the remedy within fourteen (14) calendar days, the employee may appeal to the Hearing Officer in accordance with the provisions of Rule 19 **APPEALS**.

18-31 Grievances of Alleged Discrimination, Harassment, or Retaliation
(Revised June 22, 2018; Rule Revision Memo 43D)

Grievances that allege discrimination, harassment, or retaliation, when the underlying action is not subject to a direct appeal, shall follow the standard grievance procedure, except as modified below.

- A. Deadlines: The deadlines for filing a grievance and responding to such a grievance shall not apply when the grievance alleges discrimination, harassment, or retaliation. Employees who experience or witness discriminatory, harassing, or retaliatory behavior are urged to report such behavior promptly so it can be investigated and addressed.
- B. Employees who experience discrimination, harassment, or retaliation in violation of these rules, are urged to follow the reporting procedures in Rule 16-22.

Section 18-40 Investigations

- A. The agency (or the entity or individual designated by the agency) will conduct a timely investigation, as appropriate, concerning any allegations of harassment, discrimination, or violence in the workplace, in violation of these rules.
- B. Employees subject to an investigation under this Rule 18 regarding misconduct shall be provided with a Garrity Advisement when there is potential criminal wrongdoing. The Garrity Advisement will be administered by the investigator. A Garrity Advisement advises an employee:
 - 1. The purpose of the questioning is to obtain information which will be used to determine whether disciplinary action is warranted;
 - 2. The purpose of the questioning is not to initiate criminal proceedings;
 - 3. In the event the employee discloses information which indicates he or she may be guilty of criminal conduct, neither the self-incriminating statements, nor the fruits thereof, will be used against him or her in any criminal proceeding;
 - 4. The employee must answer each question or face dismissal; and
 - 5. The employee has the right to resign immediately instead of being questioned.
- C. Evidence gathered through the investigation can only be used in a civil proceeding, even if the Garrity Advisement was not administered.
- D. The determination of the investigation regarding the alleged harassment, discrimination, or violence in the workplace, will be communicated to the complaining employee as soon as practicable.
- E. The agency will take action, as deemed appropriate, based on the outcome of the investigation.