



**D E N V E R**<sup>®</sup>  
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 CSRs govern your employment rights and the appeal process. Copies of the CSRs and this procedural guide are available at the Hearing Office or online at [www.denvergov.org/hearings](http://www.denvergov.org/hearings) (“Forms to Download”). For a summary of our decisions by rule and subject, go to this website and click on rule number at the bottom of that page, or subject to search by topic. For example, to see how the rule prohibiting discrimination has been interpreted, you may search the decisions by the subject “discrimination” or by the rule number, “CSR 16-22”.

Unusual words and phrases are in **bold**, followed by an **asterisk (\*)**, and defined on the last page of this Procedural Guide.

Please contact us at (720) 913-5703, if you have any questions about the procedures outlined here. The office is open Monday through Friday from 8 a.m. to 5 p.m., 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 and/or Department, which are referred to as the Agency. Agencies are usually represented by the City Attorney's Office.

### **B. Filing an Appeal**

All appeals must be filed in the Hearing Office within **14 calendar days** after the notice of the action you are appealing, except whistleblower claims. Appeals under the Whistleblower Protection Ordinance must be filed in the Hearing Office within **30 calendar days** after the alleged retaliatory action. See CSR 19-31 regarding deadlines.

[www.denvergov.org/content/dam/denvergov/Portals/672/documents/CSARuleRevisions/RULE19.pdf](http://www.denvergov.org/content/dam/denvergov/Portals/672/documents/CSARuleRevisions/RULE19.pdf)

The deadline to file an appeal starts on the calendar day after the date of the agency’s notice of action or the date of the alleged retaliation for a whistleblower claim. When an agency gives written notice of its action, the date of notice of the action is the date of hand delivery or the date on the certificate of delivery. CSR 19-31

An appeal is on time if the Hearing Office receives it by 5 p.m. on the deadline date. An appeal or other document received after 5 p.m. will be considered filed on the next business day.

The appeal form is located at:

[www.denvergov.org/content/denvergov/en/grievances-hearings-and-appeals/appeal-form.html](http://www.denvergov.org/content/denvergov/en/grievances-hearings-and-appeals/appeal-form.html)

When filing your appeal electronically, attach to the appeal form a copy of the documents you are appealing (such as a notice of discipline), or your grievance and agency response. A copy of the appeal and your attachments will be emailed to you and the Agency with the Hearing Office's requirements.

### **C. Initial Review of the Appeal**

As soon as the appeal is filed, it is reviewed to determine if it is timely and if the Hearing Office has **jurisdiction\*** under the CSRs 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, and claims under the Whistleblower Protection Ordinance. CSR 19-20 A.1.
2. Unfavorable response to a grievance 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. CSR 19-20 B.1.a. and 2.a.
3. Unfavorable response to the grievances of an overall rating of an "Unacceptable" Performance Review. CSR 19-20 B.1.b.

If your appeal presents insufficient information to establish jurisdiction, we will send you an Order to Show Cause. The Order will identify the jurisdictional issues and give you an opportunity to respond within **5 days** with additional facts and argument why you believe your appeal or claim may be heard. The agency will have **2 days** to reply to your response. It is important that you respond to the order on time since the failure to respond may result in all or part of your appeal being rejected.

If we accept jurisdiction, we will set a hearing date.

## **III. BEFORE THE HEARING**

### **A. Pre-hearing Order**

If we accept jurisdiction, we set a hearing date not more than **77 days** after the date you filed your appeal. You will receive a Pre-hearing Order via email. The Order explains the appeal procedures and the deadlines that must be followed. Please read it carefully. If you need an extension of a deadline, let the Hearing Office know before that deadline.

The first sentence of the Pre-hearing Order identifies the claims in the appeal as we understand them. If the statement of claims is inaccurate, it is your responsibility to notify the Hearing Office within **7 days** so that your actual claims may be resolved.

If you are appealing discipline, the Agency has the burden to prove you violated the named CSRs (except Denver Sheriff's Department appeals– see CSR 20) by the conduct summarized in the disciplinary letter, and that the level of discipline was consistent with the purposes of discipline under CSR 16-41. If you were disqualified, the Agency has the burden to prove the disqualification was valid under CSR 14-30 through 14-32. You have the burden of proof in all other appeals, for example, if you were laid off, received an “unacceptable” performance review, if your agency denied your grievance, or if you claim a whistleblower violation.

## **B. Disclosures**

Within **14 days** after the Pre-hearing Order was issued, you are required to file Initial Disclosures [CSR 19-43 B] including:

1. The name, address, and telephone number of each individual you may call to testify, identifying the individual and what you expect they will say;
2. A list of all documents and other things you expect to use at hearing.

Within **35 days** after the Pre-hearing Order, if you expect to use an expert witness, you must file your Expert Disclosure [CSR 19-43 C] identifying such expert.

No later than **14 days** before hearing, if you expect to use an expert to refute the agency's expert, you must file your Rebuttal Expert Disclosures identifying such expert. CSR 19-43 C.

## **C. Discovery\***

The Agency may have documents that contain information relevant to your case. If the City Attorney has not included those documents in its Initial Disclosures, you may request limited discovery directly from the City Attorney within **21 days** after your appeal is filed. Responses to discovery are due within **14 days** after requests are submitted. CSR 19-43 D.

If you dispute the sufficiency of the discovery responses or the validity of objections asserted in the responses, you may file a Motion to Compel no later than **7 days** after the dates the discovery responses are received. The other side has **7 days** to respond to the Motion to Compel. The Hearing Officer will issue an order deciding the outcome. CSR 19-42.

All discovery must be completed **14 days** before hearing. CSR 19-43 H.

#### **D. Pre-hearing Statements and Stipulations**

Within **twenty-one days** before trial, you are required to confer with the Agency in order to narrow the issues, summarize 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 in the disciplinary letter, and you must identify the conduct or events in the disciplinary letter that you do not dispute.
2. In all appeals, each party must identify the nature and basis of the claims and defenses, identify their exhibits, and identify their witnesses.

Within **14 days** before hearing, the parties must file Pre-hearing Statements (we can provide a form) which includes the following:

1. 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 it claims in the disciplinary letter.
2. Your stipulation regarding any statements in the disciplinary letter that you do not dispute.
3. Your stipulation regarding exhibits and witnesses offered by the agency that you do not dispute, meaning you will not object to a witness or exhibit. It is not an admission that the testimony or exhibit is true.
4. A plain, short statement what you expect to prove at hearing.
5. A list of your witnesses, and brief description of their expected testimony.
6. A list of your exhibits.

Submit one electronic and **ONE paper copy of your exhibits** with your Pre-hearing Statement to the Hearing Office. Mark each exhibit at the bottom with consecutive letters of the alphabet. For exhibits with more than one page, mark each page number, so page one of your first exhibit will be marked A-1, page two of Exhibit A should be marked A-2 and the next exhibit will be B-1, B-2, and so on. You must make the entire document available to the other party prior to and at hearing.

Exhibits filed via email will be accepted as timely, but you must still submit one paper copy of each exhibit to the Hearing Office. The Hearing Office provides equipment at hearing to play audio and video exhibits.

You must provide a copy of your Pre-hearing Statement and a copy of each of your marked exhibits to the Assistant City Attorney assigned to your case. Likewise, the Assistant City Attorney must provide you with a copy of the Agency's Pre-hearing Statement and exhibits the Agency may offer at the hearing.

## **E. Filing Motions and Responses**

All requests (**motions\***) you make to the Hearing Officer must be in writing. The Hearing Officer is not allowed to discuss any matter concerning an appeal with one party without the other present. Motions must explain what you want the Hearing Officer to do, and why. 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 filing of pleadings is encouraged**, and will be accepted as original.

You must send the Assistant City Attorney assigned to your case a copy of each motion at the same time you file it 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 at [dlefilng.litigation@denvergov.org](mailto:dlefilng.litigation@denvergov.org). Please include your name and appeal number in the subject line of the email.

Be sure to 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 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 7 days** after the date of the motion. The Hearing Office will send you a copy of the order resolving the motion.

## **F. Subpoenas\***

Within **56 days** after the Pre-hearing Order was issued, you may file a Motion for Subpoena(s) with the Hearing Office and send a copy 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.

The City Attorney may object by filing a response to your motion no later than **7 days** after your motion is filed. 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 Office 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 emailed the approved subpoenas. It is your responsibility to have each subpoena served on the corresponding witness at least **48 hours** before the first day of hearing. **You may not serve subpoenas yourself**. Subpoenas must be served by someone over the age of 18 who is not a party to the appeal.

## **G. Staying in Touch**

**Call (720) 913-5703** as soon as possible to report any change of address, phone numbers, or other contact information. All orders will be sent via email to the parties. 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.

## **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.

### **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 to an exhibit, 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. However, by stipulating to a fact, you agree that the fact is accurate and neither party needs to present any evidence to prove 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, 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 outlines, and will not be considered as evidence. The Hearing Officer must base

the decision only on the evidence admitted at the hearing, including the exhibits and testimony of all witnesses.

In all non-sheriff department appeals of disciplinary matters, the City Attorney will make the first opening statement because the agency has the burden to prove there was cause to discipline you, and that the level of discipline was appropriate. The agency also begins in an appeal of a disqualification. After the Agency's opening statement, you will have the opportunity to make your own opening statement.

If you are not appealing discipline but are appealing a layoff, an “unacceptable” performance review, an agency's denial of a grievance, or a whistleblower claim, you will give your opening statement first since you have the burden to prove those claims.

#### **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 representative or party will ask the witness questions about matters relevant to the appeal. This is called **direct examination**.<sup>\*</sup> You should prepare your questions for each witness in advance, to avoid forgetting a question during the hearing. It is your choice whether you wish to testify, and to decide the order of 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 state your evidence without anyone asking you questions.

After the City Attorney questions its witnesses, you may **cross-examine**<sup>\*</sup> that witness by asking questions to test the truth or reliability of the testimony. A witness must answer each question unless the other party objects to the question and the objection is upheld (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. 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 you testify, you may ask the Hearing Officer to accept any exhibits to which the City Attorney did not stipulate. You need to explain the relevance of the exhibit to the appeal (for example, the Agency admitted relying on it during the disciplinary process).

If the Assistant City Attorney asks the Hearing Officer to accept an exhibit, you have the right to question the witness about the exhibit. You may 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 accept the exhibit.

In a disciplinary or disqualification appeal, after you present your witnesses, the Agency may call witnesses to contradict evidence you presented during your case. You may cross-examine them as well.

The Hearing Officer may also question witnesses. The Hearing Officer will give 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, 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 or conclusions that follow from the evidence. 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 **49 days** after the close of all the evidence, or sooner, if possible. The decision will summarize the evidence and which evidence was found to be persuasive. The decision will then analyze the facts in light of the relevant Career Service Rules and other pertinent law, and will affirm, modify, or reverse the agency action being appealed. The decision will be emailed to you, your representative, and the Agency's representative.

### **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 **14 days** after the date the decision was sent. CSR 21-23. You will be known as the Petitioner. If the Agency files a Petition challenging the decision, the Agency is the Petitioner and you are the Respondent.

A Petition for Review summarizes the Petitioner's argument why the decision should be reversed. The Career Service Board will review your petition only if the Petition for Review claims one or more of the following:

1. There is new and material evidence not previously available,
2. The Hearing Officer erred in interpreting the Rules,
3. The Hearing Officer's decision is of a precedential nature involving policy considerations that may have effect beyond the appeal at hand,

4. There is insufficient evidence to support the decision, or
5. The Hearing Officer did not have jurisdiction over the appeal.

Refer to [CSR 21](#) for information about Petitions for Review.

If you disagree with the decision of the Career Service Board on your Petition for Review, you may request a review of that decision by the Denver District Court under [Colorado Rules of Civil Procedure Rule 106](#). You should consult that court for their procedures at:

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

You are always welcome to contact us with any questions about any of our procedures.

**\* DEFINITIONS \***

**Burden of proof** – The obligation imposed by rule or law to 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 states the date and method by which the document filed was delivered to the other parties.

**Cross-examination** – The opportunity after direct examination to ask an opposing witness questions to test the accuracy or truth of his/her testimony. CSR 19-54 D.

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

**Discovery** – Requests to the other party before hearing to produce information or documents about a matter relevant to claims or defenses in the appeal. CSR 19-43.

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

**Hearsay** – Testimony by a witness about a statement made outside of the hearing, that is presented to prove the statement is true.

**Jurisdiction** – The legal authority of a hearing officer to hear and decide an appeal or claim. CSR 19-20.

**Motion** – A party's request of a hearing officer to take a specific action. CSR 19-42.

**Pleadings** – Any document filed at the Hearing Office in an appeal.

**Stipulation** – An agreement 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. CSR 19-45.