



Civil Service Commission
Police and Fire Classified Service

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DISCIPLINARY APPEAL PROCESS -- SUMMARY

(Effective 3/09/2013 – Revised 11/07/2014)

FILING A DISCIPLINARY APPEAL WITH THE CIVIL SERVICE COMMISSION:

With the exception of a disciplinary reprimand (oral or written), and the discharge of a probationary member, a member of the Classified Service (sworn Firefighter or Police Officer) may file an appeal of any Departmental Order of Disciplinary Action issued by the Executive Director of Safety (or delegate). Upon appeal, the Departmental Order would be subject to review first by a Hearing Officer and then, upon a further appeal, by the Civil Service Commissioners, or the courts.

An appeal must be filed in writing within 10 days of the date of service of the Departmental Order of Disciplinary Action upon the member.

APPEAL AND HEARING BEFORE A HEARING OFFICER:

Within 5 days of filing, a Hearing Officer is randomly assigned to the appeal (from among those under contract with the Commission). At the request of either party to the appeal, or of the Hearing Officer, a Settlement Officer also may be randomly assigned to the appeal to mediate any or all of the disputed issues.

A hearing should be scheduled to begin within 60 days of the assignment of the Hearing Officer. The Member may request an expedited hearing, to begin within 30 days, if the request is made at the time the appeal is filed. The hearing is scheduled based on the availability of the Hearing Officer, the parties, the parties' legal representatives and key witnesses.

The Classified Member may represent himself or herself at the hearing, or may be represented by an attorney. The Executive Director of Safety is routinely represented by the City Attorney's office. The hearing is a "public hearing" unless closed in whole or part for "good cause". Witnesses may be subpoenaed and called to testify under oath, and evidence may be admitted.

Prior to the hearing, the parties shall jointly file a proposed "Prehearing Order" respectively providing their positions, their list of witnesses which may be called to testify and their exhibits which may be offered at hearing.

The Department of Safety shall proceed first at hearing and shall offer evidence in justification of the Departmental Order. That is, the Department of Safety has the initial burden to present sufficient evidence to create a reasonable inference of the correctness of the sustained rule violation(s) and the imposed penalty(s). The Classified Member may then offer evidence in support of his or her objections to the Departmental Order. Time for rebuttal and sur-rebuttal may be permitted by the Hearing Officer.

Depending on the level of disciplinary penalty(s) that was imposed, a hearing may last from 1 to 3 days. The length of a hearing may be extended by the Hearing Officer for good cause.



Commissioners
Federico C. Alvarez – Neal G. Berlin – Anna Flores – Cecelia E. Mascarenas – Hillary A. Potter
Executive Director
Earl E. Peterson

HEARING OFFICER'S DECISION:

The Hearing Officer shall review the full record before him or her. In reviewing the disciplinary action, the Hearing Officer shall not substitute his or her judgment for that of the Executive Director of Safety concerning any policy considerations underlying the imposed discipline, and in determining the level of penalty imposed for a sustained violation. The Hearing Officer may only reverse or modify an Executive Director's decision concerning policy considerations, or determining the appropriate level of penalty to be imposed for a sustained violation, when the action of the Executive Director is shown to be clearly erroneous.

A Departmental Order of Disciplinary Action shall be deemed to be clearly erroneous when: The decision is contrary to what a reasonable person would conclude from the record as a whole; The Executive Director of Safety fails to follow the applicable Departmental guidelines, rules or regulations, and absent such failure the discipline imposed would not have resulted, or; The Executive Director otherwise exceeds his authority.

The Hearing Officer shall issue a written decision within 30 days of the closure of the hearing. The decision shall include findings of fact and conclusions of law. The findings of evidentiary fact in the decision shall be binding upon the Commission. The Hearing Officer may affirm or reverse any of the charged violations of departmental rule or regulation. For charged violations that are affirmed by the Hearing Officer, the Hearing Officer has the authority to decrease, sustain, or increase the penalty that was imposed by the Executive Director of Safety.

APPEAL OF THE HEARING OFFICER'S DECISION TO THE FULL COMMISSION OR TO DISTRICT COURT:

Either the Executive Director of Safety or the member (or both) can appeal the Hearing Officer's decision to the five-member Civil Service Commission, or directly to Denver District Court. An appeal to the Commissioners must be filed within 15 days of date noted on the Certificate of Mailing/Service of the Hearing Officer's decision. An appeal of a Hearing Officer's decision to the Commissioners does not involve holding a new hearing, but only a review of the "record" in the appeal.

There are four limited grounds for appeal of a Hearing Officer's decision, as clarified in Commission Rule: 1) New and material evidence; 2) Erroneous interpretation of Departmental or Civil Service Rules; 3) Policy considerations that may have effect beyond the case at hand; and 4) The discipline affirmed or imposed is inconsistent with discipline received by other members of the department under similar circumstances.

Following the filing of the appeal, the filing party has 42 days to have the designated portions of the transcript of the hearing prepared and to file the original with the Commission. The parties' written briefs (legal arguments) are then due as follows: The appealing party shall file an opening brief within 28 days; the opposing party may then file an answer brief within 28 days; the appealing party may then file a reply brief within 14 days. (Should both parties appeal the Hearing Officer's decision, the briefing schedule is modified.)

The Commissioners will then decide whether to review the appeal based on the record and the written briefs, or to order the parties to also present oral argument before the Commissioners. The oral argument, if any, is held at a special public meeting of the Commission.

COMMISSIONERS' DECISION:

The Commissioners, in their review of a Hearing Officer's findings, conclusions and decision, are bound by the findings of evidentiary fact that have been entered by the Hearing Officer. They may not resolve disputed issues of fact. The Commissioners' review of the matters of law, or mixed matters of fact and law, is confined to the four limited grounds for appeal of a Hearing Officer's decision as listed herein above.

The Commissioners may affirm, reverse, or modify the decision of a Hearing Officer. The Commissioners cannot impose a level of discipline more severe than the greater of that imposed by the Executive Director of Safety or by the Hearing Officer.

Following consideration of the formal record in the appeal, the parties' written arguments (briefs), and any oral argument, the Commission will issue a written decision. The Commissioners' written decision will be issued within 90 days following the date of filing of the final brief or the date of any Oral Argument. The Commissioners' decision and order shall be final and is subject only to judicial review.

APPEAL TO DISTRICT COURT:

Either party to the disciplinary appeal does have the option to then appeal the Commissioners' final decision to Denver District Court, in accordance with the Colorado Rules of Civil Procedure. As provided by City Charter, judicial review shall not be extended further than to determine whether the Commission has exceeded its jurisdiction or abused its discretion under the provisions of the Charter.