

RULE 14

HEARING OFFICER RETENTION, QUALIFICATIONS, DUTIES AND SELECTION^{1 2}

(Amended April 23, 1998; November 7, 2006; August 8, 2012; July 17, 2015)

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¹ **Editor’s Note:** Rule 14, immediately prior to the amendments of November 7, 2006, was *Reserved* and had no existing provisions. Prior to being *Reserved*, this Rule 14 was titled *Validity of Rules*. Those provisions were re-enacted in Rule 18 with the amendments of April 23, 1998. Some of the provisions added to this Rule 14 § 1, *Selection of Hearing Officers*, in November 2006, were previously contained in Rule 12 § 7, *Retention of Hearing Officers*. Those provisions of Rule 12 § 7 were deleted and were re-enacted in this Rule 14, through the amendments of November 7, 2006. The Amendments of August 8, 2012 were limited to § 2(A), *License to Practice Law*.

² **Charter Note:** See Charter provisions at § 9.3.7, *Retention of Hearing Officers by the Commission*. Charter § C5.73-5(1) was recompiled in 2002 as § 9.3.7. Subsequently amended by Ord. No. 138-03 § 1, 2-24-03, election 5-6-03. Those Charter amendments included the removal of specific Hearing Officer qualifications from the Charter, and provided that Hearing Officer qualifications shall be prescribed by Commission rule.

Section 1. Retention of Hearing Officers.³

(Added July 17, 2015)

A. Independent Contractor: Any Hearing Officer shall be retained as an independent contractor and shall not be employed by nor be considered an employee of the City and County of Denver.

(Added November 7, 2006)

B. Every 3 Years: At least once every three (3) years, the Civil Service Commission shall contract with three (3) or more qualified persons to serve as Hearing Officers to hear disciplinary or disqualification appeals, and to serve as Settlement Officers to facilitate mediation in such appeals.

(Amended November 7, 2006)

Section 2. Hearing Officer Qualifications.⁴

(Added November 7, 2006)

A. License to Practice Law:

1. **For Application and Selection:** To qualify for application and selection as a Hearing Officer, an individual shall have a Colorado license to practice law. However, for purposes of application and selection the license **need not currently be active** provided that it has not been suspended or revoked pursuant to a disciplinary order.

(Amended August 8, 2012; July 17, 2015)

2. **For Service as a Hearing Officer:** Prior to execution of a Hearing Officer contract, and for continued service as a Hearing Officer, an individual must **have and maintain an active Colorado license** to practice law.

(Adopted July 17, 2015)

B. Experience: To qualify for selection as a Hearing Officer, an individual shall also meet one of the following experience requirements:

³ **Editor's Note:** The primary text of subsections A and B were previously contained in the former Section 1, *Selection of Hearing Officers*, Subsection A, *Hearing Officer Contracts*, and were moved here in the amendments of July 17, 2015.

⁴ **Editor's Note:** The provisions of Rule 14 § 2 were newly added to Commission Rules 11-07-2006. The qualifications were substantively the same as used in the 2003 Hearing Officer selection process. Provisions regarding *Hearing Officer Qualifications* were previously contained in Charter § 9.3.7. However, they were deleted therefrom in the election of 5-6-03, and are to be prescribed by Commission Rule [Charter § 9.3.7(A)]. Rule 14 § 2(A) was amended 8-08-2012 to eliminate an exception that permitted (under defined circumstances) service as a Hearing Officer with an inactive license to practice law; and to require an active Colorado license to practice law. See also, footnote 2.

1. Has served as an administrative law judge, neutral hearing officer or arbitrator in employer-employee or administrative law disputes for at least three (3) years out of the past six (6) years, and has conducted at least ten (10) hearings or arbitrations involving employer-employee disputes in the last six years; or
(Amended July 17, 2015)
2. Has a minimum five (5) years experience in the full-time, active practice of law, including two (2) years of experience practicing before federal or state courts or federal, state or local administrative agencies authorized to conduct evidentiary hearings; provided that the individual certifies that at least one-fourth (1/4) of his or her practice has involved the preparation and/or presentation of cases before federal or state courts involving employer-employee disputes, the National Labor Relations Board, state or local labor relations boards, the Merit Systems Protection Board, state or local personnel or civil service or career service boards, or labor-management arbitrators; or
3. Has a minimum of five (5) years of experience sitting as a judge in the Denver County Court, a state county court, a state district court, a state court of appeals, a state supreme court or in a federal court; or
(Added July 17, 2015)
4. Is currently under a contract to serve as a Hearing Officer for the Denver Civil Service Commission; or
5. Has a quality, level, and length of experience deemed acceptable to, and approved unanimously by the Civil Service Commission.
(Amended July 17, 2015)

C. Background Investigation: Prior to entering into a Hearing Officer contract with any applicant, the applicant shall be subject to a background investigation, with review and final approval by the Commission.

Section 3. Duties, Responsibilities and Limitations of Hearing Officers.⁵

(Added July 17, 2015)

- A. As may be provided by contract, in addition to the regular quasi-judicial or mediation activities, a Hearing Officer may assist the Commission with the orientation or training of other hearing officers, preparation of abstracts of appeal decisions, or other hearing related matters within their scope as an independent contractor and neutral party.
(Added November 7, 2006) (Amended July 17, 2015)

⁵ **Editor's Note:** New Section 3 added July 17, 2015. The provisions of Subsections A-D were previously contained in prior Section 1, Subsection A, *Hearing Officer Contracts*.

- B. A Hearing Officer shall always act in such a manner as to avoid even the appearance of a conflict of interest, a bias, or any impropriety.
(Added November 7, 2006)
- C. A Hearing Officer shall not engage in any activity for the Commission, outside the regular quasi-judicial or mediation activities, that directly affects a case to which he or she is currently assigned.
(Added November 7, 2006)
- D. A Hearing Officer shall not provide legal advice to or act as special counsel to the Commission.
(Added November 7, 2006)

Section 4. Selection of Hearing Officers.⁶

(Adopted March 26, 1987 as Rule 12 § 7; Added to Rule 14 and Amended November 7, 2006) (Amended July 17, 2015)

A. Recruitment and Solicitation of Applications: The availability of Hearing Officer positions shall be widely advertised, posted and/or disseminated in a manner deemed appropriate by the Commission. A resume and/or application form detailing the applicant's prior experience shall be accepted as announced by the Commission. As determined by the Commission, an applicant may also be interviewed. In its recruitment and solicitation of applications the Commission shall make reasonable efforts to obtain a pool of qualified applicants that reflect the diversity of the citizens of the City and County of Denver.
(Amended November 7, 2006; July 17, 2015)

B. List of Qualified Applicants:

1. A list of all qualified applicants shall be established by the Commission. The Commission shall submit the list of qualified applicants, along with their available resumes and applications, to the Executive Director of Safety and the designated representatives of the Firefighters and Police Officers. An opportunity to jointly interview the qualified applicants will be provided to the Executive Director of Safety and the designated representatives of the Firefighters and Police Officers during the fifteen (15) day time period provided for review of the list of all qualified applicants.
(Amended July 17, 2015)
2. The designated representatives, acting as a single entity, and the Executive Director of Safety shall then each strike no more than one third (1/3) of the names on the list.

⁶ **Editor's Note:** In the Amendments of July 17, 2015, this section was renumbered from Section 1 to 4 and two provisions were moved to a new Section 1, *Retention of Hearing Officers*. Some of the provisions of this former Rule 14 § 1, *Selection of Hearing Officers*, were previously contained in Rule 12 § 7, *Retention of Hearing Officers*. Those provisions were deleted from Rule 12 § 7 and re-enacted in former Rule 14 § 1, with amendments.

The remaining names shall then be numbered in order of preference and the list shall be returned to the Commission within fifteen (15) days of receipt. Subject to the provisions of this Rule 14 § 2(C) regarding Background Investigation, the Commission shall contract with those persons approved on both lists, in accordance with the designated order of mutual preference.⁷

(Amended November 7, 2006; July 17, 2015)

- C. Confidentiality of Returned List of Applicants:** The lists returned to the Commission by the Executive Director of Safety and the designated representatives are confidential and shall not be disclosed to anyone by the Commission, the Commission's staff, the Manager of Safety, or the designated representatives.

(Amended November 7, 2006; July 17, 2015)

- D. Designated Representatives:** The designated representatives of the Firefighters and Police Officers as referenced herein shall be the bargaining agents of the Firefighters and Police Officers as provided by City Charter.⁸

(Added November 7, 2006)

END

⁷ **Charter Note:** As provided by Charter Section 9.3.7 (A and B) and Section 1(B) of this Rule 14, the Commission is required to contract with a minimum of 3 individuals at least once every 3 years.

⁸ **Charter Note:** See Charter §§ 9.3.7(C), 9.7.4, and 9.8.4 for provisions regarding "Designated Representatives."