

Career Service Rule Section 2-20 B. - Adoption, Amendment or Repeal of Career Service Rules. When the Board or the OHR Executive Director determines that a change in the Rules is necessary or desirable, the procedure shall be as follows: ...
2) The proposed rule change shall be posted on the same bulletin boards as the local, state, and federal-mandated posters, as well as the Career Service Board's internet page, and made available to appointing authorities, employees, and the general public for comments and suggestions. A short summary of the proposed rule change and the reason(s) for the proposed change shall be posted with the proposed rule change. 4) A public hearing on the proposed rule change shall be held by the Board."

**PLEASE POST ON ALL BULLETIN BOARDS AS SOON
AS POSSIBLE**

Public Hearing Notice - No. 553 **REVISED POSTING**

A Career Service Board Public Hearing has been scheduled regarding proposed revisions to Career Service Rule 19 **APPEALS** and related rules.

The scheduled time for the public hearing is **THURSDAY, JANUARY 4, 2018, at 4:30 P.M.**, in **Room, 4.G.2.**, Webb Municipal Building, 201 West Colfax Avenue.

If anyone wishes to submit written comments or talk to OHR staff regarding this notice, please contact:

Dani Brown
Office of Human Resources
201 West Colfax, 4th Floor
Department 412
Denver, Colorado 80202
Danielle.Brown@denvergov.org

Comments regarding this notice should be submitted no later than **noon on TUESDAY, JANUARY 2, 2018.**

If anyone wishes to address the Board regarding this notice please contact Dani Brown at Danielle.Brown@denvergov.org no later than **noon on TUESDAY, JANUARY 2, 2018** to get on the agenda. **You are encouraged to submit written comments regarding the subject matter of your testimony at this time so that the Board has time to adequately consider your input.**

PLEASE POST ON ALL BULLETIN BOARDS
AS SOON AS POSSIBLE

RULE PROPOSAL 461B

TO: Appointing Authorities, Managers, and Employees
FROM: Karen Niparko, OHR Executive Director
DATE: December 19, 2017
SUBJECT: Proposed revision of Career Service Rule 19 APPEALS (**AMENDED**)

THIS PROPOSED REVISION TO THE CAREER SERVICE RULES IS BEING RE-POSTED FOR PUBLIC COMMENT AND HEARING TO BE HELD ON

THURSDAY, January 4, 2018, at 4:30 P.M.
Webb Municipal Building Room 4.G.2

Please refer to the following table for additional information on the former rule description, the revised rule description, and the intended impact of the revisions to Rule 19:

RULE 19 - APPEALS			
CURRENT RULE	REVISED RULE	NEW RULE NUMBER	REVISION INTENTION & IMPACT
Title of Rule 19 is APPEALS	Change title of Rule 19 to: APPEALS TO THE CAREER SERVICE HEARING OFFICE		Provides specificity as to the type of appeals covered by the rule
	Rewords and renumbers various provisions of Rule 19 for greater clarity.	Sections: 19-5, 19-15, 19-20, 19-30, 19-40, 19-50	Stylistic and grammatical changes.
	Revises deadlines to be based on seven days.	19-31 A.2., 19-45, 19-59	Avoids deadlines falling on a weekend.
	Defines good cause for motions or requests made by a party.	Section: 19-10, 20-10	Good cause was not previously defined in Rule 19. Provides clarity to the parties as to what does/does not constitute good cause for making a motion or request.
Discussions had during mediation may be admissible in Career Service hearings if the	Removed	Section: 20-15	Language is overly legalistic and unnecessary since the issues are already governed by state law and rarely come up

RULE 19 - APPEALS			
CURRENT RULE	REVISED RULE	NEW RULE NUMBER	REVISION INTENTION & IMPACT
parties to mediation and the mediator consent in writing, if the mediation communication reveals the intent to commit a felony, inflict bodily harm, or threaten the safety of a child; if it is required by statute to be made public; or writing signed by all parties as part of the mediation.			during appeals.
	Requires an employee to provide detailed information supporting an appeal filed pursuant to the City's Whistleblower Protection ordinance. Discrimination, harassment, or retaliation can only be included as a part of a direct appeal.	19-20 A.1.f	Provides both parties and the Hearing Office with more information at the time of filing the appeal as to the basis of the Whistleblower claim. The Hearing Officer has no jurisdiction for discrimination, harassment, or retaliation claims unless the appeal includes a claim that is a matter of direct appeal as described in 19-20 A.
	Employee bears the burden of proof when appealing a grievance of an "Unacceptable" performance evaluation rating.	19-20 B.1. b. ii	Current Rule 19 does not identify who has the burden of proof for these appeals.
	Provides a list of grievances that an employee cannot appeal.	19-20 B.4.	Provides clarity to the parties as to which grievances may not be appealed because the

RULE 19 - APPEALS			
CURRENT RULE	REVISED RULE	NEW RULE NUMBER	REVISION INTENTION & IMPACT
			remedy is outside the authority expressly granted to the Hearing Officer.
Requires an employee to provide the reason for the appeal without guidelines for what information should be provided.	Requires an employee to provide detailed information supporting the reasons for the appeal including why the employee disagrees with the action which is the subject of the appeal and how the action violates laws, rules, ordinances, policies, etc.	Section: 19-30	Provides both parties and the Hearing Office with more information at the beginning of the appeal as to the basis of the underlying claims.
No clarity as to what time a document must be filed with the Hearing Office or by what method it may be filed.	Requires documents to be filed with the Hearing Office by 5:00 p.m. on the due date or it will be considered to have been filed on the next business day. Requires documents to be served on the opposing party on the same date and by the same method as it was filed with the Hearing Office.	19-32, 20-32	Provides clarity to the parties as to filing deadlines and methods. Creates fairness to the parties by requiring that documents be served using the same method as they were filed with the Hearing Office; ensures timely receipt of documents by the parties; and ensures that the City Attorney's Office receives filings the same day as the Hearing Office.
Allows appellants to be represented by non-attorneys as authorized by law and the Hearing Officer.	Allows representation by a non-attorney as authorized by law and the Hearing Officer.	19-33 B.3 20-33 A.3	No <u>law</u> exists that authorizes a non-attorney to represent a party in a CSA Appeal.
	Requires the Hearing Officer to first review the appeal for jurisdiction. Hearing date is set no more than 77 calendar days after the date the Notice of Hearing and Pre-Hearing Order is issued.	19-41 A. 1. 19-41 A. 2. 20-41 A.2.	Eliminates unnecessary appeals by culling those for which the Hearing Officer has no jurisdiction.

RULE 19 - APPEALS			
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Hearing on an appeal limited to one day.	Hearing on an appeal of a dismissal limited to two days; hearing on all other appeals limited to one day.	19-41 B.	Decreases the number of motions for a longer hearing.
No specific requirement to confer prior to filing a motion; no specific deadline to file a response.	Requires a party to attempt to confer in good faith with the opposing party before filing a motion; provides a deadline for responding to a motion.	19-42 20-42	Provides clarity to the parties when filing motions with the Hearing Office.
No requirement to provide initial witnesses and documents or expert disclosures. Permits 10 requests for production and five interrogatories.	Requires the parties to exchange information in accordance with specific deadlines including initial disclosures, written discovery requests, and expert disclosures. Permits five requests for production and five interrogatories.	19-43 20-43	Requires the parties to exchange documents prior to making written discovery requests thereby providing more information about the appeal early in the litigation process and lessening the need for written discovery.
No mention of expert witnesses	It is within the Hearing Officer's discretion whether to allow expert testimony in an appeal. If the Hearing Officer allows expert testimony, the Hearing Officer may give the expert testimony any weight it is due or no weight as appropriate.	19-43 C. 20-43 C.	Clarifies the role of expert witnesses, should they be called to testify.
Prehearing statements are due within 20 days after an appeal is filed; amended prehearing statements may be filed within 10 days before the hearing.	Prehearing statements are due at least 14 days before the hearing.	19-44	Eliminates the requirement to file a prehearing statement within 20 days after an appeal is filed to avoid the production of duplicative information that was previously provided in initial disclosures.

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Deadline for requesting subpoenas is 20 days prior to hearing; subpoenas must be served at least five days prior to hearing.	Deadline for requesting subpoenas is 56 days prior to hearing, subpoenas must be served at least 48 hours prior to hearing and in accordance with C.R.C.P. 45., appointing authorities must allow employees to attend the hearing when they receive a subpoena or at the request of the City Attorney's Office, and the Hearing Officer may require subpoenaed witnesses that are unable to appear at hearing to answer written interrogatories, appear at deposition, or testify remotely.	19-45 20-45 D.	Provides guidelines to parties regarding how to properly serve subpoenas. Ensures adequate advance time for subpoena recipients to notify employer and related activities.
Hearing Officer may schedule pre-hearing conference to define issues for hearing, encourage ADR, resolve motions, etc.	Provides an opportunity to clarify issues, mediate, and resolve pending motions before the hearing starts.	19-46, 20-46	This language was removed from CSR 20 and should be reinstated to be consistent with CSR 19.
The Hearing Officer shall conduct the hearing in as informal a manner as is consistent with a fair, efficient, and speedy presentation of the appeal.	The Colorado Rules of Evidence applicable to civil cases should not be strictly applied.	20-50	Provides structure to an informal process.
	Describes numerous evidentiary principles.	19-51	Provides clarity to the parties, including pro se appellants, regarding evidentiary principles applicable to Career Service hearings.

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No limit on the number of exhibits that may be introduced at hearing or witnesses that may be called to testify.	Limits the number of exhibits a party may introduce at hearing to 50; limits the number of witnesses that may be called to testify at hearing to 15. Parties may stipulate to the admissibility of an exhibit after the prehearing statement deadline.	19-52, 20-52, 19-53	Creates a more efficient hearing; decreases the amount of cumulative and non-relevant exhibits and testimony.
	Permits the parties to submit written briefs in lieu of an appeal hearing when the material facts are undisputed and the appellant only disputes is with the level of discipline imposed.	19-54 20-54	Creates a more efficient appeal process when the facts are not in dispute.
No previous description regarding the order of hearing.	The party with the burden of proof proceeds first with witnesses and evidence. The opposing party proceeds second. The party with the burden of proof may present rebuttal evidence at the close of the opposing party's case.	19-55 20-55	Provides clarity to the parties regarding the order and conduct of hearing.
No previous description of the burden of proof applicable to each type of claim.	Provides a description of the burden of proof, as currently applied by the Hearing Office, applicable to each type of claim.	19-56	Provides clarity to the parties regarding the burden of proof applicable to each type of claim.
Either party may request sequestration of witnesses during hearing.	Sequestration of witnesses, except for the department or agency's advisory witness, is required. City Attorneys may consult with their client regarding testimony presented by witnesses, even if these clients may be called as witnesses.	19-58	Prevents witnesses from discussing their testimony with each other.
	Requires the Hearing Officer to provide a Notice of Appeal Rights advising the parties of the right to appeal to the Career Service Board.	19-59	Provides the parties with direction as to the next steps in the appeal process.

RULE 19 - APPEALS			
CURRENT RULE	REVISED RULE	NEW RULE NUMBER	REVISION INTENTION & IMPACT
	The process for appeals to the Career Service Board is moved to Rule 21.	Section: 19-60, 19-70	Creates greater clarity and easier reference when a party files an appeal with the Career Service Board.
At will employees or former employees may appeal separations based on discrimination or Whistleblower claims.	At will employees or former employees may only appeal separations based on Whistleblower claims.	5-31, 16-45 D., and 14-40	The Hearing Officer has no jurisdiction for discrimination claims.
Employees may file a grievance or appeal of a decision to allow or not allow telecommuting based on discrimination.	Employees may file a grievance of a decision to allow or not allow telecommuting based on discrimination, but may not appeal a decision to allow or not allow telecommuting.	APPENDIX 9. A. Telecommuting Guidelines	Hearing Officer has no jurisdiction for discrimination claims unless they are part of a direct appeal as described in CSR 19-20 A.
Requires contact information of the attorney when an employee is represented in an appeal.	Requires contact information of representative or attorney when an employee is represented in an appeal.	20-30 A. 1.	Provides language consistent with CSR 19-30 A. 1.
	Adds provision for pre-hearing conference at the request of either party or by the Hearing Officer's own initiative.	20-46	Supports a fair and efficient resolution to an appeal.
Requires application of the Colorado Rules of Evidence (C.R.E.) to the extent practicable.	While the CRE applicable to civil cases should not be strictly applied, common evidentiary principles still apply.	20-51	Provides language consistent with CSR 19-51. Current language in 20-51 is too restrictive for administrative hearings.

ATTACHED BELOW YOU WILL FIND A STRIKETHROUGH VERSION OF THE PROPOSED REVISIONS TO RULE 19 APPEALS.

DELETIONS ARE INDICATED BY strike through AND ADDITIONS ARE INDICATED BY **bold, italics, and underline.**

RULE 19
APPEALS TO THE CAREER SERVICE HEARING OFFICE

Purpose Statement:

The purpose of this rule is to **provide a fair, efficient, and speedy administrative review of actions of appointing authorities or an appointing authority's designee by** ~~describe the authority of and procedure for appeals before the Career Service Hearing Office ("Hearing Office") and the Career Service Board ("Board"),~~ **except for disciplinary appeals filed by deputy sheriffs which are governed by Rule 20 DISCIPLINARY APPEALS TO THE CAREER SERVICE HEARING OFFICE FILED BY DEPUTY SHERIFFS.**

Section 19-5 Hearing Office Hours

The Hearing Office shall be open for business from 8:00 a.m. to 5:00 p.m., Monday through Friday, with the exception of holidays and days when the City offices are closed or on modified hours due to inclement weather, a declared state of emergency, or for other good cause. The Hearing Office accepts electronic filings at any time, but filings made outside the Hearing Office's business hours will be deemed filed the following business day.

Section 19-10 Good Cause Defined

Except as otherwise stated in this Rule 19, good cause may be shown by circumstances beyond a party's control and does not generally include inadvertence, mistake, neglect or carelessness of the moving party. The lack of prejudice to the non-moving party does not constitute good cause.

Section 19-15 Alternative Dispute Resolution Available

A party may request mediation pursuant to Rule 18 DISPUTE RESOLUTION at any time during the appeal process. Parties are encouraged, but not required, to participate in mediation. Mediation will only be held if all parties agree to participate. Requesting mediation shall not suspend the time limitation for filing an appeal.

Section 19-~~20~~ Actions Subject to Appeal

A. ~~An employee who holds career status may appeal the following:~~

~~1. Direct Appeals: An employee or former employee must file an appeal directly with the Hearing Office in order to challenge the following action(s) of an appointing authority:~~

1. A current employee who holds career status or a former employee who held career status in the Career Service must file an appeal directly with the Hearing Office in order to challenge the following action(s) of an appointing authority:

- a. Dismissal;
- b. Suspension or temporary reduction in pay;
- c. Involuntary demotion with an attendant loss of pay. ~~However, the removal of an employee from Senior Command Staff status (as defined in Rule 5 **APPOINTMENTS AND STATUS**) is not considered an involuntary demotion and is not appealable; (Effective June 1, 2014; Rule Revision Memo 8D);~~
- d. Disqualification;
- e. Lay-off, **or failure to re-instate (as may be required by Rule 3 RECRUITMENT)**; or
- f. A retaliatory adverse employment action, as defined by the City's "Whistleblower Protection" ordinance (attached as an appendix).

i. For any appeal filed pursuant to the "Whistleblower Protection" ordinance, the employee must identify in the Notice of Appeal the official misconduct reported, when and to whom the report was made, the retaliatory action, and when it occurred. The appeal may be dismissed with prejudice if the employee fails to comply with these requirements.

g. No other action may be directly appealed.

It is not necessary that a ~~grievance~~ complaint be filed or an investigation be conducted prior to the **before** filing of a direct appeal where it is alleged that the action being appealed involved discrimination, harassment or retaliation, or violation of the City's "Whistleblower Protection" ordinance. **Discrimination, harassment, or retaliation can only be included as a part of a direct appeal.**

2. Career Service employees who do not hold career status or former employees who did not hold career status may only file direct appeals when they allege a violation of the "Whistleblower Protection" ordinance.

B.2. Appeals of Grievances:

1. An employee who holds career status may only file an appeal following a formal grievance response to the Hearing Office only as described below:

- a. ~~Only the following grievances can be appealed;~~
 - ~~i. A grievance which **That** alleges a violation of the Career Service Rules ("Rules"), the City Charter, ordinances relating to the Career Service, executive orders, or written agency policies which negatively impacted the employee's pay, benefits or status, and has not been resolved to the satisfaction of the employee;~~

- ~~ii.~~ **b.** **i.** ~~A grievance of~~ **O**f a performance review with an overall rating of “Unacceptable.” ~~Grievances of any other rating may not be appealed.~~
- ii.** The only basis for reversal of an “Unacceptable” rating shall be an express finding that the rating was arbitrary, capricious or without rational basis or foundation. **The employee bears the burden of proof on this issue.**
- ~~iii.~~ ~~A grievance of alleged discrimination, harassment, retaliation, or violence in the workplace that is not subject to a direct appeal, may be appealed if:~~
 - ~~➤ A formal grievance was filed in accordance with Rule 18 **DISPUTE RESOLUTION**, and~~
 - ~~➤ The action taken by the department or agency as a result of the investigation (if any) did not result in stopping or otherwise addressing the alleged discrimination, harassment, retaliation, or violence in the workplace.~~

2. An employee who holds career status may also appeal a grievance:

- aiv.** ~~A grievance i/~~ in which the agency/department **or agency** has failed to implement the remedy granted and the grievant has notified the **department or** agency of the intent to file an appeal in accordance with Rule 18 **DISPUTE RESOLUTION**; or
- bv.** ~~A grievance i/~~ in which the agency/department **or agency** failed to respond **as required by** according to Rule 18 **DISPUTE RESOLUTION**.
- 3b.** The grievance must **have** be**en** in conformance with and processed pursuant to the requirements of Rule 18 **DISPUTE RESOLUTION**.
- ~~c.~~ ~~Notwithstanding the above provisions, written reprimands may not be appealed.~~

4. Notwithstanding the above provisions, an employee in the Career Service cannot appeal a grievance of:

- a.** **Any performance review rating besides an “Unacceptable” or any other aspect of the performance review program;**
- b.** **A written reprimand;**
- c.** **An action that could have been the subject of a direct appeal;**
- d.** **Bonus or incentive payments, or any other aspect of the bonus or incentive program;**
- e.** **The mediation process;**

- f. A contemplation of discipline or disqualification notice or meeting;**
- g. The assignment to or removal from an acting role or working out of class assignment;**
- h. Alleged discrimination, retaliation, harassment, or violence in the workplace; or**
- i. Any action in which the remedy requested or available is outside the authority expressly granted to the Hearing Officer.**

- ~~B. 1. Career Service employees who do not hold career status or former employees who did not hold career status may only file direct appeals when they have alleged that an employment decision subject to direct appeal is discriminatory or when they allege a violation of the "Whistleblower Protection" ordinance.~~
- ~~2. Career Service employees who do not hold career status may appeal the disposition of a complaint alleging discrimination.~~

Section 19-230 Filing **Form** of Appeal

Every appeal shall be on the form prescribed by the Hearing Office and shall include:

- A. The full name, mailing address, e-mail address, and telephone number of the employee ("appellant") filing the appeal;**
 - 1. If a representative files the appeal on behalf of an employee, the appeal shall also contain the full name, mailing address (if filing by mail), e-mail address (if filing by email), and telephone number of the representative; and bar registration number if the representative is an attorney.**
- B. The action which is the subject of the appeal;**
- C. The reason for the appeal including, but not limited to, why the employee disagrees with the action which is the subject of the appeal and how the action violates state or federal law, the Rules, the City Charter, ordinances, executive orders or written agency policies;**
- D. A statement of the remedy sought; and**
- E. For all grievance appeals, the employee must identify in the Notice of Appeal the alleged violation of the Rules, the City Charter, ordinances, executive orders or written agency policies, and how the employee's pay, benefits or status were impacted.**

The appeal may be dismissed with prejudice if the appellant fails to comply with these requirements.

~~A. Time Limitation:~~

19-31 Filing Deadlines

~~A.~~ **1a.** Appeals claiming violation of the City's "Whistleblower Protection" ordinance shall be filed with the Hearing Office within thirty (30) calendar days of the alleged retaliatory adverse employment action.

~~2b.~~ All other appeals shall be filed with the Hearing Office within ~~fifteen (15)~~ **fourteen (14)** calendar days after the date of notice of the action being appealed.

~~2.~~ ~~The computation of the period of time for filing an appeal shall be as follows (all time periods are calendar days):~~

~~a.~~ ~~The date of notice of the action shall be the date on the certificate of hand delivery if hand delivered to the appellant or the date on the certificate of mailing of the notice if sent by U.S. mail or interoffice mail.~~

~~B.~~ The period of time for filing the appeal starts on the day **after** following the date of:

~~1i.~~ The alleged retaliatory adverse employment action in the case of an appeal brought under the "Whistleblower Protection" ordinance; or

~~2ii.~~ The notice of the action or date of inaction in all other cases. **When an action is evidenced by a written notice, the date of notice of the action shall be the date of the certificate of delivery or service.**

~~c.~~ ~~If the final date of the appeal period falls on a day the Hearing Office is not open for business, the final date for appeal shall be the next working day (Revised November 22, 2013; Rule Revision Memo 6D).~~

~~d.~~ ~~The appeal period ends at 5:00 p.m. (close of business) on the final date for appeal.~~

C. Compliance with these initial appeal filing deadlines is required to confer jurisdiction over the appeal to the Hearing Office.

~~B.~~ ~~Form of Appeal:~~

~~1.~~ ~~Every appeal shall be on the form prescribed by the Hearing Office and shall include the name and address of the employee filing the appeal, the action which is the subject of the appeal, the reason for the appeal, and a statement of the remedy sought.~~

~~2.~~ ~~For any appeal filed pursuant to 19-10 A.2.a.iii, the employee must identify the alleged discrimination, harassment or retaliation that has not been stopped or otherwise addressed. An appeal may be dismissed if the employee fails to comply.~~

- ~~3. For any appeal filed pursuant to 19-10 A.2.a.i., the employee must identify the alleged violation of the Rules, the City Charter, ordinances relating to the Career Service, executive orders or written agency policies, and how the employee's pay, benefits or status were impacted. An appeal shall be dismissed if the appellant fails to comply.~~
- ~~4. For any appeal filed pursuant to 19-10 A.2.a.ii, the employee must identify why the employee asserts the "Unacceptable" rating was arbitrary, capricious and without rational basis or foundation. An appeal shall be dismissed if the employee fails to comply. (Revised May 12, 2017; Rule Revision Memo 26D)~~

19-32 Filing and Service Requirements

- A. Except for the appeal form, all documents that are required by this Rule 19 to be filed with the Hearing Office shall also be served on all parties to the appeal, or, if represented, to their representative(s). Such service shall be made on the same date and by the same method the document is filed with the Hearing Office.**
- B. If the final date of the period allowed for filing of a document required by this Rule 19 falls on a day the Hearing Office is not open for business, the due date is the next business day. The period for filing ends at 5:00 p.m. on the due date. In the event a document is received after normal business hours, it will be considered to have been filed on the next business day.**
- C. The filing of documents required by this Rule 19 shall be made by:**
 - 1. Hand delivery;**
 - 2. First class or more restrictive U.S. mail or other commercial delivery service;**
 - 3. Electronic mail ("e-mail"). If documents are filed by e-mail, the party filing by e-mail shall retain both an electronic and a hard copy of the e-mail including sender, date, subject, and the address to which the e-mail was sent; or**
 - 4. Facsimile.**
- D. Filing and service shall be made to the address or e-mail address provided:**
 - 1. By the party (or the party's representative); and**
 - 2. By the Hearing Office on its website.**

~~Section 19-25 Alternative Dispute Resolution Available~~

- ~~A. A party may request mediation pursuant to Rule 18 **DISPUTE RESOLUTION** anytime during the appeal process. Requesting mediation shall not suspend the time limitation~~

~~for filing an appeal. Scheduling the matter for mediation will not affect the appeal process or the appeal hearing date, except by agreement of the parties. If the parties mutually determine that an extension of time or a stay of the appeal is necessary to facilitate mediation, the parties shall file a motion for such relief with the Hearing Office.~~

~~B. All mediation proceedings 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 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 19-30 Hearing Officers~~

~~A. Powers and Duties:~~

~~The Hearing Officers shall have authority to hear and decide all appeals permitted by this Rule 19; and shall perform the functions necessary to implement and maintain a fair and efficient process for appeals.~~

~~B. Hours of Operation:~~

~~The Hearing Officers shall keep the Hearing Office open for business from 8:00 a.m. to 5:00 p.m., Monday through Friday of each week, holidays excepted, unless good cause warrants a temporary or permanent change.~~

~~Section 19-35 Service defined~~

~~Pleadings, motions, statements, petitions, notices, and any other documents required to be served on a party under this Rule 19 shall be served either in person with a certificate of hand delivery, or by first class U.S. mail, with a certificate of mailing to the party's last known address.~~

~~Section 19-40 Pre-hearing Procedure~~

19-~~33~~⁴⁴ Representation of Parties

- A. All parties wishing to be represented shall promptly file a designation of representative signed by the representative.
- B. ~~Parties~~ **Appellants** may:
 - 1. Represent themselves;
 - 2. Be represented by an attorney; or
 - 3. Be represented by a non-attorney as authorized by ~~law and~~ the Hearing Officer.

Section 19-40 Prehearing Procedures

All parties must adhere to the deadlines set forth in this Rule 19 and in the Notice of Hearing and Prehearing Order, as well as any other deadlines ordered by the Hearing Office.

19-4142 Hearings Setting the Hearing Date, Length of Hearing, Continuances, and Stays

A. Date for hearing:

After an appeal is filed, the Hearing Officer shall ~~either:~~

1. Review the appeal for jurisdiction. If the Hearing Officer does not have jurisdiction, the Hearing Officer shall dismiss the appeal with prejudice. If jurisdiction is in dispute, the Hearing Officer may issue a show cause order to determine whether jurisdiction exists.

24. Set a hearing date that is no more than ~~sixty (60)~~ **seventy-seven (77) calendar days after the date of filing of the appeal **Notice of Hearing and Pre-Hearing Order is issued.** ~~unless~~ **Within fourteen (14) days of the Prehearing Order, either party may request that a new hearing date be set to accommodate the availability of a party, a party's representative, or a key witness.** ~~a stipulated motion to waive the time limit is granted for good cause shown; or~~**

~~2. Issue an order to show cause to determine if the Hearing Officer has jurisdiction over the appeal. If the Hearing Officer subsequently determines that jurisdiction exists, the hearing date shall be set no more than sixty (60) calendar days after the date the parties receive notice of the decision.~~

B. Length of hearing:

~~A hearing on an appeal shall be limited to one day, unless a request for a longer hearing is granted for good cause shown.~~

1. The presumptive length of a hearing shall be no more than two days for the appeal of a dismissal, and one day for all other appeals. Longer hearings may be granted by the Hearing Officer only by the agreement of all parties or for good cause shown.

a. Any party requesting that the hearing be scheduled for longer than the presumptive length must state with specificity how much additional time is needed to present evidence that is material and relevant, and is not duplicative of other evidence.

b. Good cause, for purposes of extending the length of the hearing, requires a specific showing that the presumptive length of the hearing will be insufficient to present evidence that is material and relevant to the issues presented, and not cumulative. The Hearing Officer may delay a ruling on

whether good cause exists to extend the length of the hearing until the parties have made good faith efforts to stipulate to uncontested facts, the admissibility of exhibits, and the issues presented, and may deny such a request if the requesting party has not made such efforts in good faith.

c. The fact that the discipline being appealed is based on several events or types of alleged misconduct or that an appeal involves several issues or claims does not in and of itself establish good cause for extending the length of a hearing.

2. If two or more appeals are consolidated for hearing, the length of the hearing may be extended proportionately.

C. Continuances

1. Upon motion by either party, the Hearing Officer may grant a continuance of the hearing for good cause shown. Motions for a continuance filed less than fourteen (14) days prior to the hearing are discouraged.

2. Good cause for a continuance generally means any cause not attributable to a party or a party's representative's act or omission. Good cause for a continuance will normally include a pending settlement or the sudden unavailability of a party, a party's representative, or a key witness due to his or her own or an immediate family member's illness, injury or death.

3. Good cause for a continuance will normally not include unavailability of a key witness if the witness's testimony can be taken by telephone or deposition; a party obtaining representation less than two (2) weeks prior to the hearing; or failure of a party or a party's representative to timely prepare for the hearing.

D. Stays

A Hearing Officer may stay a matter for good cause shown including, but not limited to, mutual agreement by the parties, a pending dispositive motion, or a pending settlement. When an interlocutory petition based on jurisdiction has been filed, the appeal before the Hearing Officer shall be automatically stayed.

~~C. Continuances and Stays:~~

~~The Hearing Officer may grant a continuance or stay for good cause shown.~~

~~19-43 Motions~~

~~A. All pre-hearing motions shall be in writing and copies shall be served on all parties to the appeal, or their representatives, if any. Such service shall be made~~

~~on the same date the motion is filed with the Hearing Office. Motions must be supported by a showing of good cause.~~

~~B. Rulings by the Hearing Officer on motions regarding jurisdiction may be appealed immediately to the Board subject to the provisions of this Rule 19 governing interlocutory petitions to the Board. The appeal before the Hearing Office shall be stayed pending resolution of the interlocutory petition.~~

19-42 Motions

The filing of motions shall be governed by the following:

A. Before filing a motion, a party or his representative shall attempt to confer with the opposing party or his representative. The moving party shall include a certification that he either conferred with the opposing party or attempted to confer with the opposing party in good faith. If the motion is unopposed, the motion shall so state.

B. Except as otherwise stated in this Rule 19, the responding party shall have seven (7) days from the date of the motion to file a response. If there are less than seven (7) days before the hearing, the responding party may provide a written or oral response at the hearing. No reply from the moving party shall be permitted unless requested by the Hearing Officer. Motions in excess of ten (10) pages are not permitted.

C. Motions shall be determined promptly after the filing of the response, if any. However, the Hearing Officer may order expedited responses, oral argument or a hearing at his or her discretion or upon request of a party. The Hearing Officer shall not issue an order on an opposed motion until a response is filed or the response deadline has passed.

19-44 Pre-hearing Statements

~~A. Within twenty (20) calendar days after the date an appeal is filed, the parties shall file their pre-hearing statements listing witnesses (including a summary of their proposed testimony), exhibits relevant to the issues being appealed, and offered stipulations. The parties may file an amended pre-hearing statement within ten (10) calendar days of the hearing date listing final witnesses (including a summary of their proposed testimony), final exhibits relevant to the issues being appealed, and offered stipulations. Copies of any pre-hearing statements filed with the Hearing Office shall be served on all parties to the appeal, or their representatives, if any.~~

~~B. Failure to file pre-hearing statement:~~

~~1. An employee's failure to file a pre-hearing statement may be grounds for dismissal of their appeal as abandoned unless good cause is shown for that failure.~~

~~2. A department or agency's failure to file a pre-hearing statement may subject the department or agency to evidentiary sanctions unless good cause is shown for that failure.~~

~~C. Evidence that was not disclosed by a party in any of their pre-hearing statements shall not be introduced at hearing absent a showing of good cause.~~

19-~~43~~⁴⁵ Discovery and Subpoenas

Discovery is the process whereby parties share relevant documents, names of witnesses, and other information they may use during the hearing.

A. ~~The parties are encouraged to engage in informal discovery as soon as an appeal is filed. The parties may move for formal discovery by submission of the proposed requests to the Hearing Officer when informal discovery has failed. Discovery shall be narrowly limited to the issues **of fact that are in dispute and relevant to the** on appeal, and shall not exceed ten (10) requests for production of documents, and five (5) interrogatories absent good cause for an exception to these limitations. The party producing discovery may condition their production on the payment of reasonable copying costs. The Hearing Officer may waive or reduce the payment of such costs for good cause shown.~~

B. Initial Disclosures

Within fourteen (14) days of the date the Notice of Hearing/Pre-Hearing Order was issued, each party shall, without awaiting a discovery request, provide to the other party:

- 1. The name and, if known, the address and telephone number of each individual the party may call to testify regarding the material issues of fact in dispute, identifying who the individual is and the subjects of the information;**
- 2. A listing, together with a copy of, all documents, data compilations, and tangible things in the possession, custody, or control of the party which may be used by the party at hearing that are relevant to the material issues of fact in dispute and are not privileged or protected from disclosure.**

C. Expert Disclosures

- 1. In most CSA appeals, expert witnesses are not helpful or required. It is within the Hearing Officer's discretion whether to allow expert testimony in a particular appeal. If the Hearing Officer does allow expert testimony, and certifies a witness as an expert on a particular subject matter, the Hearing Officer may give the expert testimony any weight it is due or no weight as appropriate.**
- 2. Within thirty-five (35) days of the date the Notice of Hearing/Pre-Hearing Order was issued, a party shall disclose to the other parties**

the identity of any person who may provide expert testimony at hearing.

3. The opposing party shall disclose to the other parties, no later than fourteen (14) days prior to hearing, the identity of any person who may provide rebuttal expert testimony at hearing.

4. Expert disclosures shall be accompanied by a written report or summary containing a complete statement of all opinions to be expressed and the basis and reasons therefor; the data or other information considered by the witness in forming the opinions; any exhibits to be used as a summary of or support for the opinions; the qualifications of the witness, including a list of all publications authored by the witness within the preceding ten years; the compensation for the study and testimony; and a listing of any other cases in which the witness has testified as an expert at trial or by deposition within the preceding four years.

D. Written Discovery Requests

1. Written discovery requests shall be served no later than twenty-one (21) days of the date the Notice of Hearing/Pre-Hearing Order was issued. Extensions of time to submit written discovery requests may be granted only on a showing of good cause.

a. Each party may submit up to five (5) requests for production of documents and five (5) interrogatories, including all discrete subparts.

b. Each written discovery request must be narrowly tailored to seek specific information or documents. Overbroad requests such as requests for "all e-mails exchanged between the employee, the employee's supervisor, and the decision maker for the last six months" shall not be permitted or enforced.

2. Responses to discovery requests must be provided within fourteen (14) days after the certificate of mailing of the requests.

3. A party that disputes the sufficiency of discovery responses or the validity of objections asserted in responses to discovery may file a Motion to Compel no later than seven (7) days after the date the discovery responses are received. The responding party has seven (7) days thereafter to file a response to the motion. As soon as practicable thereafter, the Hearing Officer shall issue a written order or an oral ruling in a telephone conference which shall be recorded.

E. The party producing discovery may condition its production on the payment of reproduction costs at the rate of 25 cents per page. The Hearing Officer may waive or reduce the payment of such costs if the appellant demonstrates financial hardship.

F. Parties and Hearing Officers shall not request or compel the production of documents by a non-party to the appeal.

G. Parties shall not be permitted to take depositions unless an order is entered by the Hearing Officer in accordance with subparagraph 19-44 F.

H. All discovery shall be completed at least fourteen (14) days prior to hearing.

~~B. Subpoenas for the production of documents from non-parties to the appeal (including other City department or agencies that are not parties) which are relevant to the appeal may be issued by the Hearing Officer, upon the motion of either party, supported by good cause. Such motions must be filed no less than twenty (20) calendar days prior to the hearing date. The Hearing Officer shall require that the costs of production be paid by the party requesting the documents.~~

19-44 Prehearing Statements

A. The parties shall file their prehearing statements at least fourteen (14) calendar days before the hearing date listing final witnesses (including a detailed summary of their offered testimony and the estimated time required for direct examination), final exhibits relevant to the issues being appealed, and any agreed upon stipulations of the parties.

B. Failure to file a Prehearing Statement:

1. Except in the case of extraordinary circumstances, if an appellant fails to timely file a prehearing statement, the appeal shall be considered abandoned and shall be dismissed with prejudice.

2. Except in the case of extraordinary circumstances, if the department or agency fails to timely file a prehearing statement, the Hearing Officer shall impose appropriate non-monetary sanctions which may include reversal of the action being appealed.

C. Evidence that was not disclosed timely by a party in a prehearing statement shall not be admissible at hearing absent a showing of good cause.

19-45 Subpoenas

~~C. Subpoenas to compel the attendance of witnesses at hearing, whose testimony is **determined by the Hearing Officer to be** relevant **and necessary** to the appeal, may be issued **only** by the Hearing Officer upon the motion of either party, **and** supported by **an offer of proof as to the material facts that will be provided by the witness** good cause. Such subpoenas shall be served no less than five (5) calendar days prior to hearing.~~

- A. Such motions shall be filed within fifty-six (56) calendar days of the date the Notice of Hearing/Pre-Hearing Order was issued and shall describe with particularity the substance of the anticipated testimony sought from the non-party witness. The responding party has seven (7) days thereafter to file a response to the motion. The Hearing Officer shall, if practicable, issue an order regarding the motion within seven (7) days of the date the responding party files a response to the motion, if any.**
- B. Subpoenas shall be served on the witness to whom it is directed in the same manner as subpoenas served in proceedings in the district courts for the State of Colorado pursuant to Colorado Rule of Civil Procedure (C.R.C.P.) 45. A subpoena for testimony at a hearing shall be served at least forty-eight (48) hours before the first day of hearing. Immediately following service of a subpoena, the party who requested the subpoena shall serve a copy of the return of service on all parties.**
- C. Any non-party or a representative thereof may move to quash or modify a subpoena.**
- D. Appointing authorities shall make available for attendance at the hearing employees who have been properly and timely served with a subpoena issued by the Hearing Officer or at the request of the City Attorney's Office.**
- E. Subpoenas properly and timely served on an individual may be enforced in accordance with the Denver City Charter.**
- F. If it is not feasible for a subpoenaed witness to appear at the hearing in person, upon motion the Hearing Officer may require the witness to answer written interrogatories, to appear at a deposition, or to testify remotely by telephone or other means. The Hearing Officer shall require that the costs of such a deposition be paid by the party requesting the witness' testimony.**
- ~~D. The Hearing Officer may require witnesses, who have been subpoenaed to appear at a hearing, to answer written interrogatories or to appear at a deposition if it is not feasible for them to be available for hearing. The Hearing Officer shall require that the costs of such a deposition be paid by the party requesting the witness testimony.~~
- ~~E. Any party, non-party, or witness, or a representative thereof may move to quash or modify a subpoena if it is unreasonable and oppressive.~~

19-46 Pre-hearing Conference

The Hearing Officer may, at the request of the parties or on the Hearing Officer's own initiative, schedule a pre-hearing conference ~~in order~~ to define the issues for hearing, encourage alternate dispute resolution, resolve pending motions, or otherwise assist the parties in obtaining a fair and efficient resolution of the appeal.

~~19-47 Interlocutory appeals~~

~~Rulings by the Hearing Officer regarding jurisdiction may be appealed immediately to the Board subject to the provisions of this Rule 19 governing interlocutory petitions to the Board. The appeal before the Hearing Office shall be stayed pending resolution of the interlocutory petition.~~

Section 19-50 Appeal Hearing **Process**

- ~~A. The Hearing Officer shall conduct the hearing in as informal a manner as is consistent with a fair, and efficient, **and speedy** presentation of the appeal. ~~Strict rules of evidence shall not apply.~~ **The Colorado Rules of Evidence applicable to civil cases should not be strictly applied.**~~
- ~~B. The parties may present evidence and witnesses, and may cross-examine the other party's witnesses.~~
- ~~C. Testimony shall be given under oath or affirmation.~~
- ~~D. The Hearing Officer shall rule on all objections, and may examine witnesses when necessary to establish a complete record.~~

19-51 Exhibits

A. **Number of exhibits:**

1. **Each party may introduce up to fifty (50) exhibits at hearing. If a party identifies more than fifty (50) exhibits in its prehearing statement, only the first fifty (50) exhibits may be introduced, with the remainder excluded.**
 2. **Except for purposes of impeachment and/or rebuttal, a party may only introduce exhibits at hearing which have been identified in the party's prehearing statement.**
- B. **Each party to the appeal is responsible for deciding what exhibits to use and admit into evidence in support of its case.**
- C. **Except for purposes of impeachment and/or rebuttal, a party may only introduce exhibits at hearing which have been identified in the party's prehearing statement. Any exhibit listed in a prehearing statement is considered as offered for admission at the hearing, and the opposing party may stipulate to its admission. In such situations, the exhibit shall be admitted into evidence. In consolidated appeals, stipulated exhibits are only deemed admitted by the stipulating parties.**
- D. **An exhibit shall typically consist of one document, such as a manual, an e-mail string, or a memorandum. Multiple documents shall not be combined or identified as a single exhibit except as agreed by the parties.**
- E. **Each party must provide a copy of its exhibits to the opposing party no later than the deadline for the filing of prehearing statements. If a party fails to provide a copy of an exhibit to the opposing party by this deadline,**

that party shall not be permitted to introduce the exhibit at hearing absent a showing of good cause. However, the parties may stipulate to the admissibility of an exhibit after this deadline.

19-~~52~~⁵⁴ Witnesses

A. Number of Witnesses:

- 1. Each party may call up to fifteen (15) witnesses at hearing, including parties and rebuttal witnesses. If a party identifies more than fifteen (15) witnesses in its prehearing statement, the first fifteen (15) witnesses listed may be called to testify, and the remainder shall not be permitted to testify.**
- 2. Except for purposes of impeachment and/or rebuttal, a party may only call witnesses to testify at hearing who have been identified in that party's prehearing statement.**

B. Each party to the appeal is responsible for deciding which witnesses to call in support of its case.

C. A rebuttal witness may only be called to rebut specific material testimony or evidence admitted in the opposing party's case-in-chief that could not be reasonably anticipated based on the opposing party's prehearing statement.

~~A. Appointing authorities shall make available witnesses who have been subpoenaed by the Hearing Officer and are City employees.~~

~~B. All parties and witnesses who are City employees shall be compensated at their regular straight time rate of pay for all hours spent at a hearing during their regular working hours, as if they were at work at their regular duty station. For any hours spent at a hearing outside of their regular working hours, there shall be no compensation.~~

~~C. The parties, representatives of the parties and witnesses shall not be subject to intimidation, interference, coercion, discrimination, or reprisal as a result of being a party or a witness in a hearing conducted by the Hearing Officer.~~

19-53 Submission on Briefs

In cases where the material facts are undisputed and the appellant only disputes the level of discipline imposed and not the facts underlying the disciplinary action, the Hearing Officer may, with the agreement of the parties, order the matter to be resolved by written briefs in lieu of conducting an appeal hearing. In that case, the Hearing Officer and the parties shall establish a briefing schedule and the Hearing Officer shall decide the appeal based exclusively on the facts (including exhibits) stipulated by the parties and arguments contained in the briefs submitted by the parties.

19-54 Conduct of Hearing

- A. Any stipulated exhibits and facts shall be admitted into evidence at the beginning of hearing.
- B. Any recommendations made during the investigative/disciplinary process are presumptively inadmissible.
- C. The party with the burden of proof shall proceed first and may call witnesses and seek the admission of evidence. The opposing party shall proceed second and may call witnesses and seek the admission of additional evidence. Witnesses may be called out of order as determined by the Hearing Officer. The party with the burden of proof may present rebuttal evidence at the close of the opposing party's case.
- D. The parties may present evidence and witnesses, and may cross-examine the other party's witnesses.
1. Testimony shall be given under oath or affirmation.
 2. At the request of the opposing party, the Hearing Officer may require an offer of proof before beginning the testimony of any witness to establish the witness's testimony is necessary to resolve the issues on appeal.
 3. A party may examine any hostile witness with leading questions.
 4. No witness shall be badgered, abused, insulted, or berated. The Hearing Officer may cut short any examination being conducted in an unproductive or unprofessional manner. The Hearing Officer may examine that witness or direct the examiner to inquire only about topics germane to the resolution of the appeal.

19-55 Burden of Proof

In any appeal, the following burdens of proof apply:

- A. Disciplinary appeals are reviewed de novo and the department or agency has the burden of proof by a preponderance of the evidence to establish that the appellant engaged in the misconduct as alleged in the Notice of Discipline and the discipline imposed was within a reasonable range of alternatives.
- B. If an appellant raises the issue of violation of the Whistleblower Ordinance, the appellant has the burden of proof by a preponderance of the evidence on that issue.
- C. For an appeal of a grievance or layoff, the appellant has the burden of proof to show the department or agency acted arbitrarily, capriciously, or contrary to rule or law.

D. For an appeal of a disqualification, the agency has the burden of proof based on a preponderance of the evidence.

E. For burden of proof issues not specifically addressed herein, the appellant has the burden of proof by a preponderance of the evidence.

~~19-52~~ Failure to Appear

~~In cases where a party fails to appear at the hearing, the Hearing Officer may continue the hearing, dismiss the appeal or rule on the available evidence of record.~~

19-~~56~~⁵³ Record of Hearing

Only one A record of the hearing shall be made. The record may be made by court reporter or any **reliable** recording device approved by the Hearing Officer. **Parties, their representatives, and observers are prohibited from recording the hearing. Parties and their representatives may obtain a copy of the record through the Hearing Office at the requesting party's expense.**

19-~~57~~⁵⁴ Public or Private Hearing

A. The hearing shall be open to the public except that the Hearing Officer may, ~~at the request~~ **upon the motion** of an interested party, conduct the hearing **or some part of the hearing** in private, if **doing so** ~~it~~ serves the interests of the parties and the public.

B. **All** ~~witnesses,~~ **except the department or agency's advisory witness,** shall be sequestered **until completion of the hearing** ~~at the request of either party or when the Hearing Officer decides sequestration is appropriate.~~ **Attorneys for the City may consult with their client regarding the testimony presented by other witnesses even if these clients may also be called as witnesses.**

19-~~58~~⁵⁵ Decision of Hearing Officer

The Hearing Officer shall issue a **written** decision **which includes findings of fact and conclusions of law** ~~in writing~~ affirming, modifying, or reversing the action, which gave rise to the appeal within **forty-nine (49)** ~~forty-five (45)~~ calendar days after the date on which the record is closed, or as soon as practicable thereafter. This decision shall **be binding upon all parties, although subject to appeal, and shall** contain findings on each issue necessary to resolve the appeal ~~and shall be binding upon all parties.~~ **The Hearing Officer's decision shall include a Notice of Appeal Rights advising the parties of the right of appeal to the Career Service Board in accordance with Rule 21 APPEALS TO THE CAREER SERVICE BOARD.**

~~Section 19-60~~ Petition for Review to the Board of a Hearing Officer's Decision

~~19-61~~ Grounds for Petition for Review

~~A party may petition that the Board review a Hearing Officer's decision only on the following grounds:~~

- ~~A. New evidence: New and material evidence is available that was not available when the appeal was heard by the Hearing Officer;~~
- ~~B. Erroneous rules interpretation: The Hearing Officer's decision involves an erroneous interpretation of the Rules;~~
- ~~C. Policy setting precedent: The Hearing Officer's decision is of a precedential nature involving policy considerations that may have effect beyond the appeal at hand;~~
- ~~D. Insufficient evidence: The Hearing Officer's decision is not supported by the evidence. The Board may only reverse a decision on this ground if the Hearing Officer's decision is clearly erroneous; or~~
- ~~E. Lack of jurisdiction: The Hearing Officer does not have jurisdiction over the appeal. A party may file an interlocutory appeal on this ground and if such interlocutory appeal is filed, the appeal before the Hearing Officer shall be stayed until the Board decides the interlocutory appeal.~~

~~19-62 Filing of Petition for Review~~

~~A petition for review shall be filed with the Board at the Office of Human Resources ("OHR") Executive Director's office within fifteen (15) calendar days after the date of the mailing of the Hearing Officer's decision. If the due date falls on a day that the OHR is not open for business, the due date shall be construed as the next business day. The request shall be in writing, and shall contain the following:~~

- ~~A. The name and number of the appeal;~~
- ~~B. The names and addresses of all parties to the appeal and of their attorneys or representatives;~~
- ~~C. The date of the Hearing Officer's decision;~~
- ~~D. A brief statement of the grounds for the petition for review from subsection 19-61, including the factual or legal basis which the party asserts exist to support each ground of the petition. If the party is asserting "new evidence," the party shall include an affidavit stating the nature of the new evidence and the reason(s) for its unavailability at hearing;~~
- ~~E. The action the petitioner wants the Board to take;~~
- ~~F. A copy of the Hearing Officer's decision; and~~
- ~~G. Proof of service on all parties. Copies of the petition for review and all other documents filed with the Board shall be served on the Hearing Office, and all parties, or their representatives, if any.~~

~~19-63 Response to Petition for Review by the Board~~

- ~~A. The other party to the appeal may file a cross petition for review which shall comply with subsection 19-62, except that it shall be filed within ten (10) calendar days after service of the petition for review.~~
- ~~B. If the other party does not file a cross petition for review, no response is required until the answer brief is due.~~
- ~~C. If both parties file a petition for review by the Board, the employee shall be deemed the "petitioner" and the department or agency shall be deemed the "cross petitioner."~~

~~19-64 Hearing Transcript and Record~~

- ~~A. Within twenty (20) calendar days after filing the petition for review, the petitioner shall file with the Hearing Office a request for the transcript of the hearing, or such portions of the hearing, if any, that the petitioner deems necessary for consideration of its petition by the Board. The petitioner shall file a copy of the request for the transcript with the Board and serve a copy on the other party on the same day that the petitioner files the request with the Hearing Office.~~
- ~~B. If the petitioner does not request any portion of the transcript, the petitioner shall, within twenty (20) calendar days after filing the petition for review, file with the Board and serve on the other party a notice that no transcript is being requested from the Hearing Office.~~
- ~~C. Within ten (10) calendar days after the filing of a request for the transcript of the hearing or the filing of a notice that no transcript is being requested, the respondent (or cross petitioner) may file a request for additional portions of the transcript not included in the petitioner's request with the Hearing Office. The respondent (or cross petitioner) shall file a copy of the request for the transcript with the Board and serve a copy on the petitioner on the same day that the respondent (or cross petitioner) files the request with the Hearing Office.~~
- ~~D. The cost of preparing the transcript or portions thereof shall be advanced by the party making the request.~~
- ~~E. Once the transcripts are prepared, the Hearing Office shall file notice with the Board that the transcripts are complete, and shall provide the parties with copies of the notice and copies of the requested transcripts, upon the payment of reasonable copy costs. The Hearing Office shall include a date of service with its notice.~~
- ~~F. The parties may review the record at the Hearing Office and request copies of portions of the record necessary for preparation of a brief. The Hearing Office may charge reasonable copy costs.~~

~~19-65 Briefs~~

- ~~A. Petitioner's Brief: An original and five (5) copies of the petitioner's brief shall be filed by the petitioner with the Board within twenty (20) calendar days after the date of service by the Hearing Office of notice that the transcript is complete. If~~

~~neither party requests transcripts of the hearing, the petitioner's brief shall be filed with the Board within thirty five (35) calendar days after the date of service by the petitioner of notice that no transcript is being requested from the Hearing Office. The petitioner's brief shall separately address each ground for the petition; shall be supported by appropriate citations to the transcript and the record if necessary; shall include a brief statement of the relief sought by the petitioner; and shall include a copy of any portions of the transcript and record necessary for resolution of the petition. The petitioner's brief shall be served on the other party on the same date that it is filed with the Board.~~

- ~~B. Answer Brief: An original and five (5) copies of the answer brief shall be filed by the other party with the Board within twenty (20) calendar days after the date of service of the petitioner's brief. The answer brief shall contain a response to each argument contained in the petitioner's brief and, if the answer brief cites to additional portions of the transcript or record, such additional portions shall be included with the answer brief. If the other party is also a cross petitioner, the answer brief shall also separately address each ground for the cross petition; shall be supported by appropriate citations to the transcript and the record if necessary; shall include a brief statement of the relief sought by the cross petitioner; and shall include a copy of any portions of the transcript and record necessary for resolution of the cross petition. The answer brief shall be served on the petitioner on the same date that it is filed with the Board.~~
- ~~C. Reply Briefs: The parties are expected to fully address all issues in the petitioner's brief and answer brief. If, however, a cross petition is filed and arguments supporting the cross petition are included in the answer brief, the petitioner may file a reply brief which shall contain only a response to each argument advanced in support of the cross petition and contained in the cross petitioner's answer brief. An original and five (5) copies of the reply brief shall be filed by the petitioner with the Board within fifteen (15) calendar days after the date of service of the answer brief. If the reply brief cites to additional portions of the transcript or record, such additional portions shall be included with the reply brief. No further briefs shall be submitted by either party unless requested by the Board.~~
- ~~D. Extensions of Time to File Brief: If either party needs an extension of time to file a brief, the party may file a motion with the Board supported by good cause and the OHR Executive Director may, on behalf of the Board, grant an extension of up to ten (10) calendar days. The OHR Executive Director shall notify the parties in writing of any extensions granted.~~
- ~~E. Oral Argument: If either party believes that oral argument before the Board is necessary for resolution of the issues, the party shall include in the petitioner's brief or the answer brief a request for oral argument, and such request shall specifically indicate why oral argument is requested. The Board may grant a party's request for oral argument or may order oral argument when it determines oral argument is necessary.~~

19-66 Stay of Hearing Officer's Decision

- ~~A. When an interlocutory petition based on jurisdiction has been filed, the appeal before the Hearing Officer shall be automatically stayed.~~
- ~~B. When any other petition or cross-petition is filed, the Board may stay a Hearing Officer's decision if the party requesting a stay has filed a Request for Stay indicating the irreparable harm, injury or loss which would occur if the stay is not granted. A party may file a response or the Board may request a response to a Request for Stay. However, the Board may rule on a Request for Stay prior to the filing of a response.~~
- ~~C. Any stay permitted by this Rule shall expire at the time the Board issues a final decision on the petition and cross-petition, if any.~~

~~Section 19-70 Decision by the Board~~

~~Upon submission of the briefs and upon the conclusion of oral argument, if any, the Board shall issue a decision in writing, affirming, modifying, or reversing the Hearing Officer's decision. The Board may also remand part or all of the appeal for further action by the Hearing Officer. The Board shall issue its decision within sixty (60) calendar days after the date on which the final brief is submitted or oral argument is held, whichever is later. The binding effect of a decision is not affected by late issuance. The decision shall contain findings on each issue necessary to resolve the petition and cross-petition if any and shall be binding upon all parties. A decision of the Board shall be concurred in by at least three (3) members of the Board, whose names shall be included in the decision. The decision rendered by the Board shall constitute the final decision for purpose of requesting judicial review.~~

~~Section 19-80 Enforcement of Subpoenas~~

~~Subpoenas issued by the Hearing Officers or the Board shall be enforced in accordance with the City Charter.~~

APPENDIX 19.A.

RELEVANT PROVISIONS OF THE WHISTLEBLOWER PROTECTION ORDINANCE SECTION 2-100 OF THE DENVER REVISED MUNICIPAL CODE

Sec. 2-106. Legislative Declaration

The city council hereby determines and declares that employees of the City and County of Denver should never suffer retaliation from their supervisors or appointing authorities for communicating information about illegal activities, unethical practices or other forms of official misconduct experienced or witnessed by employees in the scope of their employment. The interests of the City and County and Denver and the larger interests of the citizens of Denver are served by encouraging all employees to speak out fully and frankly on any official misconduct which comes to their attention without fear of retaliation. Therefore, the purpose of this Article VII is to eliminate the possibility or the threat of any adverse employment action that may be taken against any City and County employee for reporting such information to appropriate reporting authorities.

Sec. 2-107. Definitions

As used in this Article VII:

- (a) “Appropriate reporting authority” means any officer, board or commission, or other person or entity vested with legal authority to receive, investigate, or act upon reports of official misconduct by officers and employees of the City and County, including, by way of example:
 - (1) The mayor and members of the mayor’s cabinet;
 - (2) The city council, any committee of the city council, and individual members of the city council;
 - (3) The auditor and the audit committee;
 - (4) The board of ethics;
 - (5) The district attorney and other law enforcement agencies; or
 - (6) The appointing authority for the officer or employee who is alleged to have engaged in the official misconduct that is the subject of the report.
- (b) “Adverse employment action” means any direct or indirect form of employment discipline or penalty, including, but not limited to, dismissal, suspension, demotion, transfer, reassignment, official reprimand, adverse performance evaluation, withholding of work, denial of any compensation or benefit, lay-off, or threat of any such discipline or penalty.
- (c) “Employee” means any employee of the City and County of Denver within the meaning of § 1.2.11 of the charter.
- (d) “Official misconduct” means any act or omission that is committed, intended, or planned by any officer or employee of the City and County that constitutes:

- (1) A violation of law;
 - (2) A violation of any applicable rule, regulation or executive order;
 - (3) A violation of the code of ethics as codified in article IV of this chapter 2, or any other applicable ethical rules and standards;
 - (4) The misuse, misallocation, mismanagement or waste of any city funds or other city assets; or
 - (5) An abuse of official authority.
- (e) "Supervisor" means any person who is authorized to recommend or to impose any adverse employment action upon an employee.

Sec. 2-108. Retaliation prohibited.

- (a) Except as provided in subsection (b) of this section, no supervisor shall impose or threaten to impose any adverse employment action upon an employee on account of the employee's disclosure of information about any official misconduct to any person.
- (b) The protections afforded by this Article VII shall not apply to any employee:
 - (1) Who discloses information that the employee knows to be false or who discloses information without regard for the truth or falsity thereof;
 - (2) Who discloses information in a manner prohibited by law including, by way of example, information that is prescribed as being confidential by law; or
 - (3) Who otherwise discloses information in bad faith.
- (c) It shall be the obligation of an employee who wishes to disclose information under the protection of this Article VII to make a good faith effort to provide to an appropriate reporting authority the information to be disclosed prior to the time of its disclosure. The protection of this Article VII shall not extend to reports of official misconduct that are made anonymously.

Sec. 2-109. Remedies.

- (a) Employees in the career service. Any employee in the career service may file a complaint with the career service board or its designated hearing officer alleging a violation of section 2-108 within thirty (30) days of the alleged retaliatory adverse employment action. The complaint shall be processed in accordance with the rules of the board governing employee appeals; provided, however, that the employee shall not be required to pursue a complaint or grievance within the employee's department or agency prior to appealing the alleged retaliatory adverse employment action to the board or its designated hearing officer. In addition to the foregoing procedure, any employee who is otherwise contesting a disciplinary action before the board or its designated hearing officer in accordance with the rules of the board may defend against the disciplinary action upon a showing by the employee that the disciplinary action constitutes a violation of section 2-108. In either event, if the board or the designated hearing officer finds that a violation of section 2-108 has occurred, the board or the

hearing officer shall order appropriate relief on behalf of the employee including, but not limited to, reinstatement, back pay, restoration of all benefits and seniority rights, and the expunging of the records of any retaliatory adverse employment action made in violation of section 2-108.

- (d) Sanction against supervisors. Upon a determination by the career service board or its designated hearing officer, the civil service commission or its designated hearing officer, or an appointing authority that a violation of section 2-108 has occurred, any supervisor who committed the violation shall be subject to appropriate disciplinary action by the supervisor's appointing authority, up to and including termination from employment.

Sec. 2-110. Posting Required.

All departments, agencies and other appointing authorities of the City and County of Denver shall post and maintain, in one or more prominent locations accessible to employees of the department or agency, a notice of the rights and protections afforded to employees by this Article VII. The notice shall be in a form approved by the city attorney.

This Appendix is provided for informational purposes and is not considered a part of the Rules.

Related Rules:

5-31 At-will Status

At-will employees:

- A. May be separated with or without notice and with or without cause at any time; and
- B. May not appeal any decision relating to his or her employment, including separation, except on the grounds of ~~alleged discrimination or~~ violation of the City's "Whistleblower Protection" ordinance.

APPENDIX 9.A.

TELECOMMUTING GUIDELINES (REFERRED TO IN RULE 9-80 F)

- A. The position for which telecommuting is proposed shall be suitable for such an assignment, with the ability to provide high quality service to the public while telecommuting being the most significant determining factor.
- B. There shall not be any disruption of service or decline in the quality of services provided by the department or agency to the public as a result of telecommuting.
- C. No employee may telecommute unless their most recent performance rating is "Successful" or higher.
- D. If an employee subsequently receives a performance rating of "Unacceptable" or "Below expectations," the employee's authorization to telecommute shall cease. (Revised May 12, 2017; Rule Revision Memo 26D)
- E. The employee shall agree not to engage in employment activities other than for the agency or department during telecommuting hours.
- F. The employee must designate a primary workspace at home that is maintained in safe condition, free from hazards. As an extension of the City's work site, the same insurance and workers' compensation coverage applies.
- G. When the employee uses his or her own equipment, the employee is responsible for maintenance and repair of that equipment.
- H. The employee will take all necessary precautions to secure department or agency information and equipment in his or her home and to prevent unauthorized access to any department or agency system or information.
- I. Employees must receive prior written approval to telecommute from their appointing authority.
- J. An employee's status, benefits, compensation, and work responsibilities shall not change due to telecommuting.
- K. Representatives from the City's Office of Technology Services, the OHR, and Workers' Compensation section, a designated City supervisor or the individual appointed by the employee's appointing authority for such purpose may inspect an employee's home for a business purpose related to this program upon giving reasonable notice to the employee.
- ~~L~~M. The employee must at all times be accessible to the workplace via cellular phone, e-mail, or other means of direct communication and be able to report to work when notified or to respond immediately to communications from other staff, supervisors, managers or clients.
- ~~M~~N. An employee who is granted telecommuting privileges must demonstrate that his or her productivity has been equal to or greater than his or her productivity before telecommuting was authorized.

- ~~NQ.~~ A telecommuting employee's home address and telephone number shall remain confidential and will not be released by the agency or department.
- ~~OP.~~ The amount of time the employee is expected to work per day or pay period will not change as a result of telecommuting.
- ~~PQ.~~ Training will be available from the OHR for all employees, supervisors and managers interested in telecommuting.
- ~~QR.~~ Any abuse of the telecommuting privileges will be investigated and may result in corrective action, up to and including dismissal.
- ~~RS.~~ Equipment provided by the City to the employee shall be immediately returned when telecommuting is stopped or the employee separates from employment with the City.
- ~~ST.~~ Employees may not grieve or appeal a decision to allow or not allow telecommuting unless there is alleged discrimination.

T. Employees may not appeal a decision to allow or not allow telecommuting.

Section 14-40 Separation of Employees Holding At-will, Trainee or Intern Probationary, or Employment Probationary Status

- A. An employee holding at-will, trainee or intern probationary, or employment probationary status may be separated at any time in accordance with Rule 5 **APPOINTMENTS AND STATUS**. Such separation may only be appealed ~~on the grounds of alleged discrimination or~~ when the employee has alleged a violation of the City's "Whistleblower Protection" ordinance, in accordance with Rule 19 **APPEALS**.
- B. The employee shall be given written notice of separation on or before the employee's last day as a City employee.
- C. Employees holding on-call, trainee or intern probationary, or employment probationary status may also be dismissed as provided in Rule 16 **CODE OF CONDUCT AND DISCIPLINE**.

16-45 Procedure for Dismissal

- A. The appointing authority shall give an employee written notice of dismissal on or before the employee's last day as a City employee.
- B. Dismissed employees are not eligible for future employment in the Career Service for a minimum of five years following such dismissal. The OHR

Executive Director shall establish procedures governing how dismissed employees may be placed on eligible lists after the five years have elapsed.

- C. Current address: It is the responsibility of each Career Service employee to ensure that official personnel records of the City reflect the employee's current mailing address, current residence address and telephone number at all times.
- D.
 1. An employee holding on call, paid trainee, paid intern, or employment probationary status may be dismissed at any time. Such action may only be appealed ~~on the grounds of alleged discrimination, or~~ when the employee has alleged a violation of the "Whistleblower Protection" ordinance, in accordance with Rule 19 **APPEALS**.
 2. The notice of dismissal for an on call, paid trainee, paid intern, or employment probationary status employee shall identify the violations or failures to meet performance standards with sufficient detail so as to enable the employee to understand the basis for the dismissal. The notice of dismissal shall also contain a statement that the employee may appeal the dismissal only on the grounds of ~~alleged discrimination or~~ an alleged violation of the "Whistleblower Protection" ordinance.
 3. The appointing authority is not required to hold a contemplation of discipline meeting before dismissing an employee holding on call, paid trainee, paid intern, or employment probationary status.

Section 20-5 Hearing Office Hours

~~The Hearing Office shall be open for business from 8:00 a.m. to 5:00 p.m., Monday through Friday, with the exception of holidays and days when City offices are closed or on modified hours due to inclement weather or a declared state of emergency.~~

The Hearing Office shall be open for business from 8:00 a.m. to 5:00 p.m., Monday through Friday, with the exception of holidays and days when the City offices are closed or on modified hours due to inclement weather, a declared state of emergency, or for other good cause. The Hearing Office accepts electronic filings at any time, but filings made outside the Hearing Office's business hours will be deemed filed the following business day.

Section 20-10 Definitions

- A. Good cause: Except as otherwise stated in this Rule 20, good cause may be shown by circumstances beyond a party's control and does not generally include inadvertence, mistake, neglect or carelessness of the moving party. The lack of prejudice to the non-moving party does not constitute good cause. ~~The good cause requirement may be waived by stipulation of the parties.~~

20-15 Alternate Dispute Resolution Available

- ~~A.~~ A party may request mediation pursuant to Rule 18 DISPUTE RESOLUTION at any time during the appeal process. Parties are encouraged, but not required, to participate in

mediation. Mediation will only be held if all parties agree to participate. Requesting mediation shall not suspend the time limitation for filing an appeal.

~~B. All mediation proceedings are private, confidential, and privileged unless the information disclosed is required to be reported under specific law. This confidentiality shall be specifically acknowledged and agreed to by each party at the beginning of the mediation.~~

~~C. The following shall not be admissible in any Career Service hearing for any purpose:~~

~~1. Testimony concerning discussions had during mediation regarding the subject in dispute in the appeal, with the following exceptions:~~

~~a. All parties to the alternative dispute resolution proceeding and the mediator consent in writing;~~

~~b. The mediation communication reveals the intent to commit a felony, inflict bodily harm, or threaten the safety of a child under the age of eighteen (18) years; or~~

~~c. The mediation communication is required by statute to be made public.~~

~~d. Any writing signed by all parties as part of the mediation.~~

~~This does not bar admission of evidence discovered by a party outside of mediation.~~

Section 20-30 Form of Appeal

Every appeal shall be on the form prescribed by the Hearing Office and shall include:

- A. The full name, mailing address, e-mail address, and telephone number of the employee ("appellant") filing the appeal;
1. If ~~an attorney~~ **a representative** files the appeal on behalf of an employee, the appeal shall also contain the full name, mailing address (**if filing by mail**), e-mail address (**if filing by email**), **and** telephone number **of the representative**; and bar registration number ~~of the~~ **if the representative is an** attorney.

20-31 Filing Deadlines

- C. Compliance with these **initial appeal** filing deadlines is required to confer jurisdiction over the appeal to the Hearing Office.

20-32 Filing and Service Requirements

- A. Except for the appeal form, all documents that are required by this Rule 20 to be filed with the Hearing Office shall also be served on all parties to the appeal, or, if represented, to their representative(s). Such service shall be made on the same date and, ~~when possible,~~ by the same method the document is filed with the Hearing Office.

20-33 Representation of Parties

- A. Appellants may:
1. Represent themselves;
 2. Be represented by an attorney; or
 3. Be represented by a non-attorney as authorized by ~~law and~~ the Hearing Officer.

20-41 Setting the Hearing Date, Length of Hearing, Continuances, and Stays

- A. After an appeal is filed, the Hearing Officer shall:
2. Set a hearing date that is no more than seventy-~~seven (70)~~ **(77)** calendar days after the date the ~~appeal was filed~~ **Notice of Hearing and Pre-Hearing Order is issued**. Within fourteen (14) days of the Prehearing Order, either party may request that a new hearing date be set to accommodate the availability of a party, a party's representative, or a key witness. ~~The new hearing date shall be set within the original seventy (70) calendar days.~~
 - ~~3. Nothing in this rule prohibits any party from raising jurisdictional issues at any time during the appeal.~~

D. Stays

A Hearing Officer may stay a matter for good cause shown including, but not limited to, mutual agreement by the parties, a pending dispositive motion, ~~a pending interlocutory appeal~~ or a pending settlement. **When an interlocutory petition based on jurisdiction has been filed, the appeal before the Hearing Officer shall be automatically stayed.**

20-42 Motions

- A. ~~Prior to the filing of a motion, the party or the party's representative filing a motion should confer with the opposing party or the opposing party's representative. The motion shall, at the beginning, contain a certification that the party filing the motion has conferred in good faith with the opposing party or the opposing party's representative about the motion. If no conference has occurred, the reason why shall be stated. If the relief sought in the motion has been agreed to by the parties or will not be opposed, the motion shall so state.~~ **Before filing a motion, a party or his representative shall attempt to confer with the opposing party or his representative. The moving party shall include a certification that he either conferred with the opposing party or attempted to confer with the opposing party in good faith. If the motion is unopposed, the motion shall so state.**
- B. Except as otherwise stated in this Rule 20, the responding party shall have seven (7) days from the date of the motion to file a response. If there are less than seven (7) days before the hearing, the responding party may provide a written or oral response at the hearing. No reply from the moving party shall be permitted unless requested by the Hearing Officer. Motions in excess of ten (10) pages are ~~discouraged~~ **not permitted**.

- ~~D. An opposed motion shall be deemed confessed upon failure of a party to file a response. If any party fails to appear at oral argument or hearing on the motion, without a prior showing of good cause for non-appearance, the Hearing Officer may proceed to hear and rule on the motion.~~

20-43 Discovery

- A. Discovery shall be narrowly limited to the ~~material~~ issues of fact that are in dispute and relevant to the appeal.

20-43 B. Initial Disclosures

1. Within fourteen (14) days of the date the ~~appeal was filed~~ **Notice of Hearing/Pre-Hearing Order was issued**, each party shall, without awaiting a discovery request, provide to the other party:

20-43 C. Expert Disclosures

1. **In most CSA appeals, expert witnesses are not helpful or required. It is within the Hearing Officer's discretion whether to allow expert testimony in a particular appeal. If the Hearing Officer does allow expert testimony, and certifies a witness as an expert on a particular subject matter, the Hearing Officer may give the expert testimony any weight it is due or no weight as appropriate.**
- ~~4=~~ **2.** Within thirty-five (35) days of the date the ~~appeal was filed~~ **Notice of Hearing/Pre-Hearing Order was issued**, a party shall disclose to the other parties the identity of any person who may provide expert testimony at hearing.
- ~~2=~~ **3.** The opposing party shall disclose to the other parties, no later than fourteen (14) days prior to hearing, the identity of any person who may provide rebuttal expert testimony at hearing.
- ~~3=~~ **4.** Expert disclosures shall be accompanied by a written report or summary containing a complete statement of all opinions to be expressed and the basis and reasons therefor; the data or other information considered by the witness in forming the opinions; any exhibits to be used as a summary of or support for the opinions; the qualifications of the witness, including a list of all publications authored by the witness within the preceding ten years; the compensation for the study and testimony; and a listing of any other cases in which the witness has testified as an expert at trial or by deposition within the preceding four years.

D. Written Discovery Requests

1. Written discovery requests shall be served no later than twenty-one (21) days after the date the ~~appeal was filed~~ **Notice of Hearing/Pre-Hearing Order was issued**. Extensions of time to submit written discovery requests may be granted only on a showing of good cause.
3. A party that disputes the sufficiency of discovery responses or the validity of objections asserted in responses to discovery may file a Motion to Compel no later than ~~fourteen~~ **seven (7)** days after the date the discovery responses are received. The responding party has seven (7) days thereafter to file a response to the motion. As soon as practicable thereafter, the Hearing Officer shall issue **a written order or** an oral ruling in a telephone conference which shall be recorded.

20-45 Subpoenas

- A. Such motions shall be filed within ~~thirty five (35)~~ **fifty-six (56)** calendar days of the date the ~~appeal was filed~~ **Notice of Hearing/Pre-Hearing Order was issued** and shall describe with particularity the substance of the anticipated testimony sought from the non-party witness. The responding party has seven (7) days thereafter to file a response to the motion. The Hearing Officer shall, if practicable, issue an order regarding the motion within seven (7) days of the date the responding party files a response to the motion, if any.
- B. Subpoenas shall be served on the witness to whom it is directed in the same manner as subpoenas served in proceedings in the district courts for the State of Colorado pursuant to Colorado Rule of Civil Procedure (C.R.C.P.) 45. A subpoena for testimony at a hearing shall be served at least ~~seven (7) calendar days~~ **forty-eight (48) hours** before the first day of hearing. Immediately following service of a subpoena, the party who requested the subpoena shall serve a copy of the return of service on all parties.
- D. Appointing authorities shall make available for attendance at the hearing employees who have been properly and timely served with a subpoena issued by the Hearing Officer **or at the request of the City Attorney's Office.**

20-46 Pre-hearing Conference

The Hearing Officer may, at the request of the parties or on the Hearing Officer's own initiative, schedule a pre-hearing conference to define the issues for hearing, encourage alternate dispute resolution, resolve pending motions, or otherwise assist the parties in obtaining a fair and efficient resolution of the appeal.

20-50 Hearing Process

The Hearing Officer shall conduct the hearing in as informal a manner as is consistent with a fair, efficient, and speedy presentation of the appeal. **The Colorado Rules of Evidence applicable to civil cases should not be strictly applied.**

20-51 Evidence Allowed

~~To the extent practicable, the Colorado Rules of Evidence (C.R.E.) applicable to civil cases apply to all hearings before the Career Service Hearing Office. Unless the context otherwise requires, whenever the word "court," "judge," or "jury" appears in the C.R.E., such word shall be construed to mean the Hearing Officer.~~

~~While the Colorado Rules of Evidence should not be strictly applied, evidentiary principles still apply, including but not limited to the following:~~

- C. ~~Common evidentiary privileges apply including but not limited to the following privileges and doctrines:~~

- ~~1. Attorney-client privilege;~~

~~2. Attorney work product doctrine; and~~

~~3. Deliberative process privilege.~~

~~D. Hearsay is admissible to prove an element of a rule violation if there are additional indications that the statement is reliable, trustworthy, and relevant. The factors to be considered in determining the reliability and trustworthiness of a hearsay statement include (1) whether the statement was written and/or signed; (2) whether the statement was sworn by the declarant; (3) potential bias or lack of bias of the witness; (4) whether the hearsay statement is corroborated or contradicted by other evidence; (5) whether the declarant is credible; (6) whether the case turns on credibility of the witness; (7) whether the party against whom the hearsay is used had access to the statements prior to the hearing or the opportunity to subpoena the declarant. Hearsay is also admissible if it is subject to an exception by the Colorado Rules of Evidence.~~

20-52 Exhibits

~~An exhibit is a tangible piece of evidence presented at hearing.~~

- A. Each party to the appeal is responsible for deciding what exhibits to use and admit into evidence in support of its case. ~~Parties shall not be compelled to submit evidence.~~
- C. Other than the IAB file which may be listed and offered by the DOS as a single exhibit, an exhibit shall typically consist of one document, such as a manual, an e-mail string, or a memorandum. Multiple documents shall not be combined or identified as a single exhibit **except as agreed by the parties.**
- D. Each party must provide a copy of its exhibits to the opposing party no later than the deadline for the filing of prehearing statements. If a party fails to provide a copy of an exhibit to the opposing party by this deadline, that party shall not be permitted to introduce the exhibit at hearing absent a showing of good cause. However, if the parties stipulate to an exhibit after this deadline, the exhibit shall be admitted **the parties may stipulate to the admissibility of an exhibit after this deadline.**

20-54 Submission on Briefs

In cases where the material facts are undisputed and the ~~appellant's only dispute is with~~ **appellant only disputes** the level of discipline imposed and not the facts underlying the disciplinary action, ~~the parties may agree to submit the matter to the Hearing Officer on written briefs,~~ **the Hearing Officer may, with the agreement of the parties, order the matter to be resolved by written briefs** in lieu of conducting an appeal hearing. **In that case, the** The Hearing Officer and the parties shall establish a briefing schedule and the Hearing Officer shall decide the appeal based exclusively on the facts (including exhibits) stipulated by the parties and arguments contained in the briefs submitted by the parties.

20-55 Conduct of Hearing

- F. The parties may present evidence and witnesses, and may cross-examine the other party's witnesses. ~~No further examination of a witness may be made beyond re-cross examination.~~
1. Testimony shall be given under oath or affirmation.
 2. At the request of the opposing party, the Hearing Officer may require an offer of proof before beginning the testimony of any witness to establish the witness's testimony is necessary to the resolution of the issues on appeal.
 3. A party may examine any hostile witness with leading questions.
 - ~~4. The Hearing Officer shall promptly rule on all objections and may examine witnesses when necessary to establish a complete record.~~
 - ~~5.~~ **4.** No witness shall be badgered, abused, insulted, or berated. The Hearing Officer may cut short any examination being conducted in an unproductive or unprofessional manner. The Hearing Officer may examine that witness or direct the examiner to inquire only about topics germane to the resolution of the appeal.