

Career Service Rule Section 2-20 B. - Adoption, Amendment or Repeal of Career Service Rules. When the Board or the OHR Executive Director considers 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 bulletin boards and made available to appointing authorities, employees, and the general public for comments and suggestions. A short summary of the proposed rule changes 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. 514

A Career Service Board Public Hearing has been scheduled regarding proposed revisions to Career Service Rules 15 **CODE OF CONDUCT**, 16 **DISCIPLINE AND DISMISSAL**, 18 **DISPUTE RESOLUTION** and related rules.

The scheduled time for the public hearing is **THURSDAY, DECEMBER 3, 2015, at 5:00 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:

Pete Garritt
HR Supervisor
Office of Human Resources
201 West Colfax, 4th Floor
Department 412
Denver, Colorado 80202

(720) 913-5671

Peter.Garritt@denvergov.org

Comments regarding this notice should be submitted no later than **12:00 noon on MONDAY, NOVEMBER 30, 2015.**

If anyone wishes to address the Board regarding this notice please contact Alisha Gronniger at (720) 913-5650 or at Alisha.Gronniger@denvergov.org no later than **12:00 noon on MONDAY, NOVEMBER 30, 2015** to get on the agenda.

PLEASE POST ON ALL BULLETIN BOARDS

AS SOON AS POSSIBLE

RULE PROPOSAL 443B

TO: Appointing Authorities, Managers, and Employees

FROM: Karen Niparko, OHR Executive Director

DATE: November 20, 2015

SUBJECT: Proposed revision of Career Service Rules 15 CODE OF CONDUCT, 16 DISCIPLINE AND DISMISSAL, 18 DISPUTE RESOLUTION and related rules

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

**THURSDAY, December 3, 2015, at 5:00 P.M.
Webb Building Room 4.G.2**

Here is a summary of this proposed rule change:

- Rule 15 **CODE OF CONDUCT** merged with Rule 16 **DISCIPLINE AND DISMISSAL** and Rule 18 **DISPUTE RESOLUTION**. Sections of Rule 15 regarding complaints and investigations moved to Rule 18 **DISPUTE RESOLUTION**. Rest of Rule 15 moved to Rule 16 **DISCIPLINE AND DISMISSAL**.
- Rules 16 and 18 re-organized for better flow and clarity.
- Changes filing and service deadlines so that they are in 7 day increments and easier to calculate.

Rule 16 DISCIPLINE AND DISMISSAL

- Re-names rule to **CODE OF CONDUCT AND DISCIPLINE**

CODE OF CONDUCT

- Clarifies how time periods for notices are measured (**see Rule 16-10**).
- Eliminates sections of the code of conduct that re-state City ordinances and Executive Orders, and replaces them with references to applicable ordinances and orders (**see Rule 16-21**).

- Code of conduct provisions related to the following will be moved from Rule 15:
 - Harassment and discrimination (**see Rule 16-22**), and retaliation (**see Rule 16-23**).
 - Reporting charges, convictions, nolo contendere pleas (**see Rule 16-24**).
 - Use of City facilities (**see Rule 16-25**).
 - Political activities (**see Rule 16-26**).
 - Employee organizations and representation (**see Rule 16-27**).
- Right to representation in meetings narrowed from every meeting with management to certain required meetings (**see Rule 16-27**).
- Adds new rule banning the use of recording devices in the workplace without management consent (**see Rule 16-28**).

DISCIPLINE

- Grounds for discipline simplified and consolidated.
- Allows agencies to dismiss employees who receive a failing PEPR and who fail to satisfactorily complete the requirements of a subsequent PIP (**see Rule 16-29 G**).
- Adds new ground of discipline for refusal to cooperate in an investigation (**see Rule 16-29 S**).
- Investigatory leave with pay rule has been changed to clarify that agencies can change the hours of an employee on investigatory leave if the employee needs to be available at times other than their regular hours (**see Rule 16-30**).
- Verbal reprimand eliminated as a form of progressive discipline – management encouraged to document counseling and coaching sessions (**see Rule 16-42**).
- Changes to the involuntary temporary reduction in pay rule (**see Rule 16-44**):
 - Maximum amount increased from 4.55% to 15%;
 - Minimum period reduced from 7 pay periods to 1 pay period;
 - Cannot reduce pay below the Federal minimum wage.
- Makes it clear that at-will employees can be dismissed without a pre-disciplinary meeting, but the notice of dismissal must notify the employee of the reasons for the dismissal (**see Rule 16-45**).
- Terminology change – pre-disciplinary meeting changed to contemplation of discipline meeting.
- Specifically allows required notices to be sent by e-mail.

Rule 18 DISPUTE RESOLUTION

- Moves definitions at beginning of Rule 18 to sections of the rule they relate to.
- Clarifies what constitutes conclusion of mediation (**see Rule 18-20**).
- Combines grievances and complaints so that complaints are a type of grievance with special rules about filing deadlines and appeals (**see Rule 18-31**).
- Adds language about Garrity advisements for employees being interviewed in an investigation (**see Rule 18-40**).

Attached below you will find:

- **Rule 16 revisions – clean version**
- **Rule 18 revisions – clean version**
- **Related rule revisions**
- **Deleted Rule 15**
- **Rule 16 revisions – strikethrough version**
- **Rule 18 revisions – strikethrough version**

If you would like to schedule a meeting with a member of the OHR to discuss this proposal prior to the Public Hearing, please contact Pete Garritt at (720) 913-5671.

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

RULE 16
CODE OF CONDUCT
AND DISCIPLINE

Purpose statement:

The purpose of this rule is **to provide Career Service employees clear expectations for their conduct in an effort to maintain the public trust; to promote both public and workplace safety; and** to establish a progressive discipline process that is governed by the principles of due process, personal accountability, reasonableness and sound business practice. **This rule contains information on the following topics:**

- A. Delegation of authority**
- B. Compliance with Code of Ethics and Executive Orders**
- C. Harassment and discrimination**
- D. Employee responsibility to report charges, convictions, and nolo contendere pleas**
- E. Use of City facilities**
- F. Political activities**
- G. Employee organization and representation**
- H. Recording devices in the workplace**
- I. Grounds for discipline**
- J. Investigatory leave**
- K. Disciplinary process**

Section 16-10 Service of Written Notice **and Computation of Time**

- A.** Written notices required to be served on an employee under this Rule 16 shall be served on the employee either in person with a certificate of hand delivery, or by first class U.S. mail, with a certificate of mailing to the employee's last known address, **or by e-mail.**

B. The computation of any time period stated in days in these rules shall be as follows:

- 1. The time period begins on the day after the event that triggers the time period.**
- 2. The time period shall include all calendar days including weekends and holidays.**
- 3. The time period ends at the close of business on the final day of the time period.**
- 4. If the final day of the time period falls on a weekend day, a holiday, or other day when the department or agency in question is not open for business, the time period shall end on the next working day.**

Section 16-15 Delegation of Authority

Appointing authorities may **delegate any authority given to them under this Rule 16 to a designee within his or her department or agency.**

Section 16-20 Code of Conduct

16-21 Compliance with Code of Ethics and Executive Orders

- A. All employees shall comply with the City Charter, the Denver Revised Municipal Code, and other applicable legal authority, including but not limited to:**
- 1. The Denver Code of Ethics, which regulates:**
 - a. Employment and supervision of family members;**
 - b. Gifts to City employees;**
 - c. Conflicts of interest while employed;**
 - d. Outside employment or business activity; and**
 - e. Use of public office for private gain.**
 - 2. Any provisions in the Denver Charter regarding ethical conduct of employees;**
 - 3. Any stricter or additional Code of Ethics promulgated by an employee's department or agency as authorized by the Denver Code of Ethics; and**

4. Any Executive Orders governing employee conduct including, but not limited to:

- a. Executive Order No. 16 – Use of Electronic and Communication Devices and Services
Sets terms of employee use of computers, cell phones, Internet and e-mail**
- b. Executive Order No. 55 – Department Information Centers
Regulates employee use of bulletin boards.**
- c. Executive Order No. 94 – City and County of Denver Alcohol and Drug Policy
Covers testing, training and discipline regarding employee drug and alcohol use.**
- d. Executive Order No. 112 – Violence in the Workplace
Defines improper behavior, establishes management responsibility, and discipline.**

16-22 Harassment and Discrimination

A. Career Service employees have a right to work in an environment free of discrimination and harassment because of **the employee's** race, color, creed, religion, national origin, **sex**, gender **identity**, sexual orientation, marital status, military status, age, disability, political affiliation, or any status protected by federal, state, or local laws.

B. **Types of Harassment**

Harassment because of race, color, creed, religion, national origin, **sex**, gender **identity**, sexual orientation, marital status, military status, age, disability, or political affiliation, or any status protected by federal, state, or local laws, includes but is not limited to:

- 1.** Verbal conduct such as epithets, derogatory comments, slurs, unwanted sexual advances, invitations, or comments;
- 2.** Visual conduct such as derogatory posters, photographs, cartoons, drawings, or gestures;
- 3.** Physical conduct such as assault, unwanted touching, blocking normal movement, or interfering with work directed at an employee because of the employee's sex, ~~or~~ race, or ~~any~~ other protected basis; **and**
- 4.** Threats or demands to submit to sexual requests in order to keep a job or avoid some other loss, and offers of job benefits in return for sexual favors.

16-23 Retaliation Prohibited

Retaliation against employees for reporting **or threatening to report** harassment or discrimination or assisting the City in the investigation of any complaint is **strictly prohibited**. Retaliation can include, but is not limited to, such acts as refusing to recommend an employee for a benefit for which he or she qualifies, spreading rumors about the employee, encouraging hostility from co-workers, and escalating the harassment. Any employee engaging in retaliation may be subject to corrective action, up to and including dismissal.

16-24 Employee Responsibility to Report Charges, Convictions, and Nolo Contendere Pleas

The employee or the employee's representative shall report criminal charges and convictions, and nolo contendere pleas (no contest pleas) to the employee's appointing authority as soon as possible as required by this section, but no later than three (3) calendar days after the occurrence.

A. **Offenses that must be reported:**

1. All employees who are charged with, **have entered a plea of nolo contendere on,** or **are** convicted of any felony, ~~or~~ misdemeanor, **or** any other offense which involves violence against persons, destruction of property, dishonesty, theft, or the sale or possession of illegal drugs, must report such charges, **pleas,** or convictions to their appointing authority.
2. In addition to the requirement set forth in subsection 1, any employee who operates a motor vehicle as part of **his or her** job assignment must report any citation for traffic violations, whether received on or off the job (this does not apply to parking violations).
3. Additional reporting requirements may be established by a department or agency consistent with business necessity. Such additional requirements must first be approved by the Office of Human Resources ("OHR") and approved for legality by the City Attorney's Office.

B. **A** conviction **is** the adjudication of a criminal charge through:

1. A guilty plea;
2. The acceptance of a plea bargain;
3. A finding of guilty by a judge or jury;
4. The acceptance of a deferred sentence or deferred judgment; or
5. A plea where a defendant enters a guilty plea without actually admitting guilt (Alford plea).

C. Contemplating or Imposing Discipline on an Employee Convicted of or Charged with a Crime

After notification that an employee has been charged with or convicted of a crime, the appointing authority shall follow the guidelines described below:

- 1.** If an employee has been charged with a crime, before imposing discipline, the department or agency must determine ***whether*** there is a preponderance of evidence demonstrating that the employee engaged in the conduct which forms the factual basis for the crime with which the employee is charged. The department or agency must also consider: the nature and type of the conduct which supports the charge; the nature of the position the employee holds in the City and the relationship of the position to the facts underlying the charge; and the impact of the facts on the employee's ability to perform the position.
- 2.** If an employee has been convicted of a crime, before imposing discipline, the department or agency must consider: the nature and type of crime for which the person has been convicted; the facts underlying the crime; the nature of the position the employee holds in the City and the relationship of the position to the crime; the impact of the facts on the employee's ability to perform the position; and any evidence of rehabilitation.

D. Record-keeping:

Records of ***criminal*** charges or convictions resulting from an employee's reporting shall not be included in the employee's personnel file unless and until disciplinary action has been taken pursuant to ***this Rule 16***.

16-25 Use of City Facilities

Employees may not solicit or distribute any non-job-related material of any kind during working time on City property except for designated City programs.

16-26 Political Activities

A. Employees are prohibited from engaging in political activities during working hours. ***Employees also are prohibited from using City facilities and/or resources in connection with campaigns or other political activities.***

B. ***City facilities and/or resources may not be used to solicit:***

- 1.** Monetary political contributions; or
- 2.** Any ***other*** contribution of services or resources for political purposes from any officer or employee.

- C. **Employees shall not engage in the following activities at any time:**
- 1.** Taking any action or making any promise or threat of action to any employee because of the **employee's** giving or the withholding of a political contribution or service; **or**
 - 2.** Engaging in solicitation or politically motivated behavior that is harassing or discriminatory.

16-27 Employee Organization s and Representation

A. Career Service employee **s** shall have the right to join or refrain from joining any organization of employees. No **employee or applicant may be** discriminated **ed** **against, harassed or retaliated** against because such person belongs, or does not belong, to a union or other employee organization.

B. Employees shall not:

- 1.** Coerce **or attempt to coerce** any **other** employee to join or refrain from joining a union or other employee organization; **or**
- 2.** Accept **or offer** gratuities, prizes, or other valuable items for influencing any employee to join or refrain from joining, **or to vote for or against,** a union or employee organization.

C. **Employees in supervisory or management positions shall not make any effort to obtain members or votes for a union or any employee association.**

D. The representative of an employee, including officers and business agents of unions or other associations to which an employee belongs, shall be given the same rights to speak on behalf of the employee as would be given the employee **at the following meetings:**

- 1.** **Contemplation of discipline meetings required under this Rule 16;**
- 2.** **Contemplation of disqualification meetings required under Rule 14 SEPARATION OTHER THAN DISMISSAL; and**
- 3.** **Meetings to discuss a "Failing" PEPR required under Rule 13 PERFORMANCE ENHANCEMENT PROGRAM.**

This right to representation does not extend to meetings related to the normal business activities of the department or agency, such as staff meetings.

E. **The complainant and the accused may have a representative present while being interviewed during an investigation conducted pursuant to Rule 18 DISPUTE RESOLUTION. However, the representative shall be a silent observer and may not speak on behalf of the interviewee.**

F. **Counseling Employees During Working Hours**

A representative of an employee organization may visit an employee during working hours if the representative obtains the permission of the employee's immediate supervisor and such visitation does not interfere with the work of the agency.

G. **Designation of Representative**

1. Employees shall identify, in writing **to the person who signed the contemplation of discipline letter and the agency human resources representative**, agents to represent them in **a contemplation of discipline meeting, contemplation of disqualification meeting, meeting to discuss a "Failing" rating, or in** presenting a grievance or appeal.
2. No employee may be compelled to act as the representative of another employee.
3. If the representative is also a City employee, he or she shall be allowed, **with the prior approval of his or her supervisor**, to take up to a maximum of four (4) hours of approved administrative leave per pay period and use any accrued paid time off, vacation leave or compensatory time, or to take leave without pay to represent employees. Such leave shall not adversely impact the agency or department and must be approved in advance

16-28 Recording Devices in the Workplace

Employees shall not secretly record audio or video, or take photographs during work hours, when on City premises, when speaking to a City employee by phone, or when on City business unless requested to do so in writing by the employee's appointing authority.

16-29 Grounds for Discipline

The following may be cause for the discipline or dismissal of a Career Service employee:

- A. Neglect of duty or carelessness in performance of duties and responsibilities.
- B.** Theft, destruction, or neglect in the use of City property; or property or materials of any other person or entity.
- C.** Unauthorized operation or use of any vehicles, machines, or equipment of the City, or of any entity having a contract with the City, including, but not limited to, the unauthorized use of the internet, e-mail, or telephones.
- D.** Any act of dishonesty, which may include, but is not limited to, lying, or improperly altering or falsifying records, examination answers, or work hours.
- E.** Accepting, soliciting, or making a bribe, or using official position or authority for personal profit or advantage, including kickbacks.
- F.** Failing to comply with the lawful orders of an authorized supervisor or failing to do assigned work which the employee is capable of performing.
- G.**
 - 1.** Failing to meet established standards of performance including either qualitative or quantitative standards. When citing this subsection, a department or agency must describe the specific standard(s) the employee has failed to meet, such as standards in a Performance Enhancement Program (PEP) Plan or in a Performance Improvement Plan (PIP).
 - 2.** Any employee who receives a "Failing" PEP Rating and fails to correct his or her performance in the subsequent PIP, is considered to have been given an adequate opportunity to correct his or her behavior and may be dismissed without his or her appointing authority being required to resort to a lesser discipline first.
- H.** Intimidation or retaliation against an individual who has been identified as a witness, party, or representative of any party to any hearing or investigation relating to any disciplinary procedure, or any violation of a city, state, or federal rule, regulation or law, or against an employee who has used the dispute resolution process in good faith.
- I.** Failure to maintain satisfactory professional relationships with co-workers and other individuals the employee interacts with as part of his or her job.
- J.** Being charged with or convicted of a crime, or entering a plea of nolo contendere to a crime. Before imposing discipline under this subsection, the department or agency shall follow the guidelines contained in subsection 16-24.

- K.** Failure to report charges of, pleas to, or convictions of crimes as required by this Rule 16.
- L.** Discrimination or harassment as defined in this Rule 16. This includes making derogatory statements based on race, color, creed, religion, national origin, sex, gender identity, sexual orientation, marital status, military status, age, disability, or political affiliation, or any status protected by federal, state, or local laws. This prohibited conduct need not rise to the level of a violation of any relevant state or federal law before an employee may be disciplined and the imposition of such discipline does not constitute an admission that the City violated any law.
- M.** Unauthorized absence from work; or abuse of paid time off, sick leave, or other types of leave; or violation of any rules relating to any forms of leave.
- N.** Unauthorized deviation from scheduled shift including reporting to work after the scheduled start time of the shift, leaving work before the end time of the shift, or working unauthorized overtime.
- O.** Failure to use safety devices or failure to observe safety regulations.
- P.** Engaging in a strike, sabotage, or work slowdown.
- Q.** Divulging confidential or otherwise sensitive information to unauthorized individuals.
- R.** Conduct which violates the Career Service Rules, the City Charter, the Denver Revised Municipal Code, Executive Orders, written departmental or agency regulations, policies or rules, or any other applicable legal authority. When citing this subsection, a department or agency must cite the specific regulation, policy or rule the employee has violated.
- S.** Refusal to cooperate, including refusing to provide requested information and materials in the course of an investigation.
- T.** Conduct which is or could foreseeably:
 - 1.** Be prejudicial to the good order and effectiveness of the department or agency;
 - 2.** Bring a disrepute on or compromises the integrity of the City; or
 - 3.** Be unbecoming a City employee.

Section 16-30 Investigatory Leave with Pay

- A. An appointing authority may place an employee on investigatory leave with pay **for up to forty-five (45) days** pending an investigation of a possible rule violation or failure to meet standards of performance when it is determined by the appointing authority that it is in the best interest of the City. It may include the period of time required to complete the investigation, to conduct a **contemplation of discipline** meeting, and **to** render a decision regarding discipline.
- B. If the investigation has not been completed within the forty-five (45) calendar day time period, the appointing authority may request from the OHR Executive Director an extension of time appropriate to complete the investigation and render a decision. The OHR Executive Director may approve a request for an extension for good cause shown. Additional extensions may be granted at the discretion of the OHR Executive Director. The appointing authority shall notify the employee of any extension that is granted by the OHR Executive Director.
- C. The appointing authority may require the employee to remain at home and/or be available by telephone; to participate in the investigatory process and/or to perform work during their normal work hours; or to return to work prior to the end of the period of investigatory leave. **Normal work hours may be changed when an employee on investigatory leave needs to be available at a time the employee is not normally scheduled to work.** If an employee is unable to meet the **se** requirements, or chooses to attend to personal business during **his or her** normal hours of work, the appointing authority's regular procedures regarding the use of leave shall apply.

Section 16-40 Disciplinary Process

16-**41** Purpose of discipline

The purpose of discipline is to correct inappropriate behavior or performance, if possible. The type and severity of discipline depends on the gravity of the offense. The degree of discipline shall be reasonably related to the seriousness of the offense and **may** take into consideration the employee's past record. The appointing authority shall impose the type and amount of discipline he or she believes is needed to correct the situation and achieve the desired behavior or performance.

16-**42** Progressive Discipline

- A. 1. Whenever practicable, discipline shall be progressive. However, any measure of discipline may be used in any given situation as appropriate.
2. Failure to correct behavior or committing additional violations after progressive discipline has been taken may subject the employee to further discipline, up to and including dismissal from employment.
3. An employee may be dismissed **without prior discipline if the facts of that employee's case warrant dismissal.**

B. In order of increasing severity, the disciplinary actions which an appointing authority may take against an employee for violation of the **Career Service** Rules, the City Charter, or the Denver Revised Municipal Code, Executive orders, or any other applicable legal authority include:

- 1.** Written reprimand.
- 2.** Suspension without pay, or involuntary temporary reduction of pay.
- 3.** Involuntary demotion, with a reduction in pay pursuant to Rule 9 **PAY ADMINISTRATION.**
- 4.** Dismissal.

C. **Nothing in this rule should be interpreted to preclude an appointing authority from counseling and coaching employees about performance and discipline issues. Appointing authorities are encouraged to document the date and subject of the conversation in the supervisor's file.**

16-**43** Form for Written Reprimand

A. Written reprimands shall **contain the following:**

- 1.** **The specific conduct or omission committed by the employee which the department or agency believes is in violation of the Career Service Rules,** with sufficient specificity and detail so as to enable the employee to correct his or her behavior and to enhance future performance; **and**
- 2** A notice that the employee may file a grievance on the written reprimand and may also seek mediation in accordance with Rule 18 **DISPUTE RESOLUTION.**

B. **A written reprimand shall be sent to the OHR for inclusion in the employee's personnel file.**

16-44 Guidelines for Involuntary Temporary Reduction of Pay

When an involuntary temporary reduction in pay is imposed on an employee, the employee's pay shall not be reduced:

- A. More than fifteen percent (15%); or
- B. Below the range minimum of the employee's pay range; or
- C. For less than one (1) pay periods; or
- D. For more than thirteen (13) pay periods; **or**

E. Below the Federal minimum wage.

Any merit increase or merit payment shall be based on the employee's normal rate of pay, not the employee's temporarily reduced rate of pay.

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.**

16-~~46~~ Contemplation of Discipline

- A. Before an employee with career status is suspended, given an involuntary temporary reduction in pay, involuntarily demoted, or dismissed, the appointing authority shall hold a contemplation of discipline meeting. A contemplation of discipline meeting is not required for written reprimands.
- B. The purposes of the contemplation of discipline meeting are to allow an employee to:
1. Correct any errors in the department or agency's information or facts upon which it contemplates taking disciplinary action; and
 2. Tell his or her side of the story and present any mitigating information as to why the disciplinary action should not be taken.
- C. Since a contemplation of discipline meeting is not an administrative hearing, witness testimony is not allowed.
- D. Employees must be served with written notice seven (7) calendar days before the contemplation of discipline meeting. The seven (7) calendar day notice period starts on the day after the date shown on the certificate of hand delivery or mailing, or on the e-mail.
- E. The written notice of the contemplation of discipline meeting shall contain the following information:
1. That disciplinary action is contemplated;
 2. The specific conduct or omission committed by the employee which the department or agency believes is in violation of the Career Service Rules with sufficient specificity and detail so as to enable the employee to correct his or her behavior and to enhance future performance;
 3. The purpose of the contemplation of discipline meeting as described in this Rule 16;
 4. The date, time, and location of the contemplation of discipline meeting; and
 5. That the employee is entitled to have a representative of his or her own choosing present at the meeting.
- F. The department or agency may approve or deny requests to re-schedule contemplation of discipline meetings.

16-47 Notices of Discipline

- A.** Notices of discipline: **In addition to the information that must be part of written reprimands,** written notices of suspension, involuntary temporary reduction of pay, involuntary demotion, or dismissal shall **also**:
- 1.** Contain a reference to the opportunity afforded the employee to tell his or her side of the story in accordance with this Rule **16** and that the information presented at the **contemplation of discipline** meeting was considered by the department or agency in reaching a determination.
 - 2.** Contain a notice that the employee may appeal the suspension, involuntary temporary reduction of pay, involuntary demotion, or dismissal pursuant to Rule 19 **APPEALS**.
- B.** **The specific conduct or omissions listed on the written notice of discipline shall be the same as those listed in the contemplation of discipline letter, except for any charges or violations which were subsequently dropped.**
- C. A notice of suspension, involuntary temporary reduction of pay, involuntary demotion, and dismissal shall be sent to the OHR for inclusion in the employee's personnel file, along with **a** completed personnel action form.
- D. Failure of a supervisor or appointing authority to comply strictly with the provisions of this section shall not constitute a basis for reversing a disciplinary action on appeal unless the employee shows that his or her rights were substantially violated by the lack of compliance.

16-48 Disciplinary Action Following **Contemplation of Discipline** Meeting

- A. Personnel decisions relating to progressive discipline may take into account prior disciplinary action, **including documented coaching and counseling.**
- B. A written notice of the disciplinary decision and the reasons for the disciplinary action based on the **contemplation of discipline** meeting and other pertinent information obtained by the appointing authority shall be served on the employee within **twenty-one (21)** calendar days after the meeting. The notice shall be considered served on the date shown on the certificate of hand delivery or mailing, **or on the e-mail.**
- C. If an appointing authority presents to the OHR Executive Director documented extenuating circumstances requiring additional time, the OHR Executive Director may extend the date for taking disciplinary action for an additional **seven (7)** calendar days. A request for an extension of time must be sent to the OHR Executive Director **before** the expiration of the time for taking disciplinary action. If disciplinary action is not taken within the initial time period and a request for extension of time is not timely submitted to the OHR Executive Director, the agency must repeat the steps contained in section 16-40 before disciplinary action may be taken.

- D. 1. An employee may file a grievance of a written reprimand in accordance with Rule 18 **DISPUTE RESOLUTION**. An employee may not appeal a written reprimand to the Career Service Hearings Office.
2. An employee may directly appeal a suspension, involuntary temporary reduction of pay, involuntary demotion with a loss of pay, or dismissal in accordance with Rule 19 **APPEALS**.

RULE 18 DISPUTE RESOLUTION

Purpose Statement:

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

Section 18-10 Open Door Policy

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

Section 18-20 Mediation

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

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

B. Protection of Grievance Rights:

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

C. ***Conclusion*** of the Mediation Process

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

D. Communications during Mediation not Admissible in Legal Proceedings

All proceedings held pursuant to or taken in conjunction with mediation are considered confidential. This confidentiality shall be specifically acknowledged and agreed to by each party to mediation prior to the commencement of mediation. No testimony concerning discussions had at or during the mediation shall be admissible in any Career Service hearing. The nature and scope of the confidentiality of discussions, documents and other materials presented at the mediation in furtherance thereof shall be governed by the terms of the Colorado Dispute Resolution Act, C.R.S. 13-22-307, Sections 1 through 4 inclusive, as it may be amended.

Section 18-30 Grievance Procedure

A. Defined:

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

1. Issues for direct appeal (see Rule 19 **APPEALS**);
- ~~2.~~ Any aspect of the Performance Enhancement Program other than an employee's performance rating;
- ~~3.~~ Bonus or incentive payments, or the lack thereof, or the criteria used by an agency or department to make or not make such payments, or any other aspect of the bonus or incentive program;
- ~~4.~~ The mediation process; **or**
- ~~5.~~ The **assignment to or removal from an acting role, working out of class assignment, or** Senior Command Staff status (as defined in Rule 5 **APPOINTMENTS AND STATUS**).

B. Filing of Grievance:

In order to file a grievance an employee must:

1. Prepare and complete all sections of the **current** OHR grievance form.
2. Deliver the grievance to the **appointing authority or an HR representative of the employee's** department or agency within **fourteen (14)** calendar days after notification of the action or inaction which gives rise to the grievance. If the grievance is mailed **or e-mailed**, it must be received within the **fourteen (14)** calendar days.
3. Employees must use their own personal time when preparing grievances unless they are granted permission by their supervisors to use paid work time.

C. Responding to Grievance:

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

D. Computation of Time:

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

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

E. Failure to implement remedy granted in a grievance response:

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

18-31 Grievances of Alleged Discrimination, Harassment, Retaliation, or Violence in the Workplace

Allegations of discrimination, harassment, retaliation, or violence in the workplace, when the underlying action is not subject to a direct appeal, shall be handled through the grievance procedure, except as modified below.

A. Deadlines: The deadlines for filing a grievance and responding to such a grievance shall not apply when the grievance alleges discrimination, harassment, retaliation, or violence in the workplace.

B. 1. Employees who experience harassment, retaliation, or violence in the workplace, in violation of these rules, are urged to:

a. Make it clear that such behavior is offensive to them and request that such behavior be discontinued; and

b. **File a grievance with the employee's appointing authority or HR representative.**

Section 18-40 Investigations

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

RULE 1 DEFINITIONS

Sexual harassment:

~~Unwelcome sexual advances, requests for sexual favors, or other verbal or physical conduct of a sexual nature, when:~~

- ~~A. Submission to such conduct is made either explicitly or implicitly a term or condition of an individual's employment; or~~
- ~~B. Submission to or rejection of such conduct by an individual is used as the basis for employment decisions affecting such individual; or~~
- ~~C. Such conduct has the purpose or effect of unreasonably interfering with an individual's work performance or creating an intimidating, hostile, or offensive environment (Effective March 22, 1984; Rule Revision Memo 60B).~~

2-11 Officers and Duties

- A. Duties and Organization of the Board:
- B. The Board is responsible for adopting, administering and enforcing rules necessary to foster and maintain this merit-based personnel system including, but not limited to rules providing:
 - 6. For equal employment opportunity without regard to race, color, creed, religion, national origin, gender, sexual orientation, marital status, military status, age, disability, or political affiliation or any other status protected by federal, state or local laws (Rule ~~45~~ **16 CODE OF CONDUCT AND DISCIPLINE**);
 - 7. That dismissals, suspensions or disciplinary demotions of non-probationary employees in the Career Service shall be made only for cause, including the good of the service (Rule 16 **CODE OF CONDUCT AND DISCIPLINE AND DISMISSAL**);

10-45 Donated Leave

B. Recipient requirements:

2. In order to use donated leave, an employee must:
 - a. Have exhausted his or her accumulated compensatory time, sick leave and vacation leave or PTO, be absent from work and;
 - iv. Have received written notice of a **contemplation of** ~~pre-~~ disqualification meeting. The employee may use donated leave until disqualification occurs or until the end of the period in which a decision on disqualification must be issued, whichever occurs first.

10-46 Effect of Separation on Leave Accrual
(Revised May 7, 2012; Rule Revision Memo 62C)

Employees shall not earn PTO or sick and vacation leave after the employee's last day as a City employee. Rule 14 **SEPARATION OTHER THAN DISMISSAL** and Rule 16 **CODE OF CONDUCT AND DISCIPLINE AND DISMISSAL** describe this date for dismissals and other types of separations.

10-64 Investigatory Leave

An appointing authority may place an employee on paid investigatory leave pending an investigation of a possible rule violation or failure to meet standards of performance as provided in Rule 16 **CODE OF CONDUCT AND DISCIPLINE AND DISMISSAL**. Investigatory leave may be for no more than forty-five (45) calendar days, unless an extension of time has been approved by the OHR Executive Director.

10-67 Administrative Leave
(Revised January 1, 2011; Rule Revision Memo 51C)

- A. Appointing authorities shall grant paid administrative leave for the following purposes:
 3. To represent another City employee at meetings with that employee's supervisor or manager, as set forth in Rule ~~45~~ **16 CODE OF CONDUCT AND DISCIPLINE**. The representative shall be allowed to take up to a maximum of four (4) hours of administrative leave per pay period so long as the use of such leave does not adversely affect the representative's department or agency and has been approved in advance.

13-31 Performance Ratings

B. “Failing” Rating Procedure:

1. If an eligible employee’s annual performance rating is expected to be “Failing,” the department or agency shall advise the employee of the expected rating a reasonable time in advance, but not less than seven (7) calendar days prior to the date of the meeting scheduled to review the employee’s PEPR, and shall allow representation at the meeting to review the PEPR in accordance with the provisions of Rule ~~15~~ **16 CODE OF CONDUCT AND DISCIPLINE.**

13-35 Enforcement of PEPR Schedule

- C. The failure of a supervisor or manager to meet the deadlines set forth in Appendix A may also be grounds for discipline, up to and including dismissal, for failure to perform assigned duties under Rule 16 **CODE OF CONDUCT AND DISCIPLINE AND DISMISSAL.**

13-38 Discipline

The PEP plan and PEPR may be used as a basis for disciplinary action under Rule 16 **CODE OF CONDUCT AND DISCIPLINE AND DISMISSAL.** up to and including dismissal, if an employee’s performance fails to comport with the standards set forth in the PEP plan.

14-22 Procedure

- A. The appointing authority shall follow the procedures for **contemplation of discipline** ~~pre-disciplinary~~ meetings before taking any action on the disqualification.
- B. The final notice of disqualification shall contain the same statement of the reason for the disqualification as contained in the **contemplation of** ~~pre-~~disqualification letter. Substantial amendments or additions are permitted only by repeating the **contemplation of** ~~pre-~~disqualification notice and meeting procedure. The final notice shall also contain a notice that the employee may appeal the disqualification.

Section 14-30 Separation of Employees Holding On-call, Paid Trainee or Paid Intern, or Employment Probationary Status

(Revised November 18, 2015; Rule Revision Memo 15D)

- C. Employees holding on-call, paid trainee or paid intern, or employment probationary status may also be dismissed as provided in Rule 16 **CODE OF CONDUCT AND DISCIPLINE AND DISMISSAL**.

Section 19-10 Actions Subject to Appeal
~~(Revised October 2, 2007; Rule Revision Memo 22C)~~

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

2. ~~Appeal of Complaint or Grievance~~**s**: An employee may file an appeal following a formal ~~complaint or grievance~~ only as described below:

~~b. Grievance:~~

a. Only the following grievances can be appealed;

i. Any grievance which ~~results in an alleged~~ **alleges a** violation of the Career Service Rules ("Rules"), the City Charter, ordinances relating to the Career Service, executive orders, or written agency policies ~~and~~ **which** negatively impact ~~eds~~ the employee's pay, benefits or status, **and has not been resolved to the satisfaction of the employee;**

~~ii e. Grievance of Performance Enhancement Program Reports: Only~~ **A** grievances of **a** Performance Enhancement Program Reports ("PEPRs") with **an** overall ratings of "Failing" ~~may be appealed.~~ **Grievances of any other rating may not be appealed.** The only basis for reversal of the PEPR shall be an express finding that the rating was arbitrary, capricious, ~~and~~ **or** without rational basis or foundation ~~(Revised January 1, 2010; Rule Revision Memo 43C).~~

~~iii a. Discrimination, Harassment or Retaliation: Any action~~ **A** **grievance of alleged discrimination, harassment, retaliation, or violence in the workplace,** that is not subject to a direct appeal, ~~of any supervisor/manager or employee resulting in~~ ~~alleged discrimination, harassment or retaliation because of race,~~ ~~color, creed, religion, national origin, gender, sexual orientation,~~ ~~marital status, military status, age, disability, or political affiliation,~~ ~~or any other status protected by federal, state or local laws~~ may be appealed if:

- after filing A formal **grievance** complaint **was filed in accordance with** as required by Rule **18 DISPUTE RESOLUTION, 45 CODE OF CONDUCT, and**
- **The action taken by the department or agency as a result of the investigation (if any)** the disposition of such **grievance** complaint has **did** not resulted in stopping or otherwise addressing the alleged discrimination, harassment, ~~or~~ **retaliation, or violence in the workplace** ~~(Revised January 22, 2010; Rule Revision Memo 44C).~~

iv ~~iii~~. A grievance in which the agency/department has failed to implement the remedy granted and the grievant has notified the agency of the intent to file an appeal in accordance with Rule 18 **DISPUTE RESOLUTION**; **or**

v ~~ii~~. A grievance in which the agency/department failed to respond according to Rule 18 **DISPUTE RESOLUTION**. ~~iii~~

b ~~iv~~. The grievance must be in conformance with and processed pursuant to the requirements of Rule 18 **DISPUTE RESOLUTION**.

c ~~v~~. Notwithstanding the above provisions, written reprimands may not be appealed.

~~3. Bonus or incentive payments or the lack thereof, or the criteria used by an agency or department to make or not make such payments, or any other aspect of the bonus or incentive program may not be appealed.~~

~~**RULE 15**~~
~~**CODE OF CONDUCT**~~

~~Section 15-5 Employee Conduct~~
~~(Effective June 5, 1980; Rule Revision Memo 121A)~~

~~Every employee in the Career Service shall conscientiously fulfill the duties and responsibilities of his or her position. The conduct of every employee during work hours or at any time while representing the agency, department, or City shall reflect credit on Career Service and the City and County of Denver (City).~~

~~Section 15-10 Definition~~
~~(Revised June 12, 2006; Rule Revision Memo 10C)~~

~~Conviction: The adjudication of a criminal charge through:~~

- ~~A. A guilty plea;~~
- ~~B. The acceptance of a plea bargain;~~
- ~~C. A finding of guilty by a judge or jury;~~
- ~~D. A plea of nolo contendere (no contest);~~
- ~~E. The acceptance of a deferred sentence or deferred judgment; or~~
- ~~F. A plea where a defendant enters a guilty plea without actually admitting guilt (Alford plea).~~

~~Section 15-15 Employee Responsibility to Report Charges or Convictions~~
~~(Revised June 12, 2006; Rule Revision Memo 10C)~~

- ~~A. Offenses that must be reported:~~
 - ~~1. All employees who are charged with or convicted of any felony or misdemeanor, as well as any other offense which involves violence against persons, destruction of property, dishonesty, theft, or the sale or possession of illegal drugs, must report such charges or convictions to their appointing authority.~~
 - ~~2. In addition to the requirement set forth in subsection 1, any employee who operates a motor vehicle as part of their job assignment must report any citation for traffic violations, whether received on or off the job (this does not apply to parking violations).~~

~~3. Additional reporting requirements may be established by a department or agency consistent with business necessity. Such additional requirements must first be approved by the Office of Human Resources ("OHR"), and approved for legality by the City Attorney's Office.~~

~~B. Reporting procedure:~~

~~1. The department or agency must post or provide to all employees the name and telephone number of the department or agency designee(s) to whom employees must report charges and convictions as required by this section. If the department or agency does not appoint a designee, employees shall report charges and convictions to the appointing authority.~~

~~2. The employee or the employee's representative must report charges and convictions as required by this section as soon as possible, but no later than three (3) calendar days after the occurrence.~~

~~C. Record keeping:~~

~~Records of charges or convictions resulting from an employee's reporting shall not be included in the employee's personnel file unless and until disciplinary action has been taken pursuant to Rules 16-60 P. and 16-61.~~

~~D. Disciplinary action~~

~~Failure to report as required under this section may lead to disciplinary action, up to and including dismissal from employment.~~

~~Section 15-20 Ethics~~

~~All employees shall comply with the following:~~

~~A. The Denver Code of Ethics, D.R.M.C. § 2-51 et seq, as currently codified and any subsequent amendments thereto;~~

~~B. Any provisions in the Denver Charter regarding ethical conduct of employees; and,~~

~~C. Any stricter Code of Ethics promulgated by an employee's Department or Agency as authorized by D.R.M.C. § 2-51.~~

~~A violation of the Denver Code of Ethics, Denver Charter provisions regarding ethical conduct of employees, or any stricter departmental or agency code of ethics shall be grounds for discipline up to and including dismissal from employment.~~

~~15-21 Retaliation Prohibited~~

~~A. Except as provided in subsection (B) of this section, no Appointing Authority or supervisor shall initiate or administer any disciplinary or adverse employment action against an employee on account of the employee filing an inquiry or other complaint with the Denver Board of Ethics, testifying before the Denver Board of Ethics, or otherwise participating in any proceeding or investigation of the Denver Board of Ethics.~~

~~B. Subsection (A) shall not apply to:~~

- ~~1. An employee who files an inquiry or complaint knowing that the underlying information of the inquiry or complaint is false;~~
- ~~2. An employee who files an inquiry or complaint without regard to the truth or falsity of the allegations; or,~~
- ~~3. An employee who has intentionally lied as a witness in any investigation, hearing, or other proceeding of the Denver Board of Ethics.~~

~~15-22 Solicitation and Distribution~~

~~Employees may not solicit or distribute any non job related material of any kind during working time on City property except for designated City programs.~~

~~Section 15-30 Political Activities~~

~~(Effective June 5, 1980; Rule Revision Memo 121A)~~

~~Employees are prohibited from engaging in political activities during working hours. Accordingly, the following practices are prohibited on City premises during work hours:~~

- ~~A. Soliciting monetary political contributions from any officer or employee;~~
- ~~B. Soliciting any contribution of services or resources for political purposes from any officer or employee;~~
- ~~C. Taking any personnel action or making any promise or threat of action with regard to any employee because of the giving or the withholding of a political contribution or service;~~
- ~~D. Engaging in solicitation or politically motivated behavior that is harassing or discriminatory; or~~
- ~~E. Using employer resources for political purposes.~~

~~Accordingly, employees are not permitted to spend work time involved in campaign activities. Employees also are prohibited from using City facilities and/or resources in connection with campaign or other political activities. City resources include, but are not limited to, telephones, e-mail, fax machines, interoffice mail, voice mail, photocopiers and office supplies.~~

~~Section 15-40 Private Practice of Attorneys
(Effective October 20, 1983; Rule Revision Memo 50B)~~

~~15-41 Policy~~

~~Private law practice by attorneys of the Department of Law is prohibited, except as herein provided. Attorneys of the Department of Law shall not accept a forwarding fee or a referral fee.~~

~~15-42 Scope~~

~~These provisions apply to all attorneys of the Department of Law, except special counsel retained pursuant to Section A10.5 of the Charter of the City and County of Denver.~~

~~15-43 Pro Bono and Family Practice Exception~~

~~Attorneys of the Department of Law may handle legal matters involving pro bono activities or legal matters involving the attorney personally or his or her parents, spouse, child, brother, sister, grandchild, or grandparent subject to all of the following conditions:~~

- ~~A. The attorney receives no compensation for work performed;~~
- ~~B. The attorney has submitted a written request stating the reasons for this exception to the City Attorney and has received written approval from the City Attorney;~~
- ~~C. Any pro bono work shall be done during off duty hours, while on paid or unpaid leave. (Revised January 1, 2010; Rule Revision Memo 42C)~~

~~Section 15-50 Outside Employment
(Effective March 22, 1984; Rule Revision Memo 60B)~~

~~Any employee desiring to take outside employment or engage in other business activities must submit a written request to his or her appointing authority before the outside employment or business activities commence. The appointing authority will not approve outside employment that compromises an employee's ability to perform effectively or to accept overtime or travel assignments. Outside employment or business activities shall not be incompatible with an employee's duties, nor shall the outside employment or business activities create an actual or apparent conflict of interest.~~

~~Violation of the outside employment policy can lead to corrective action, up to and including dismissal.~~

~~Section 15-60 Alcohol Policy~~

~~The Career Service Board has a special concern about the use and abuse of alcohol because alcohol can affect an employee's productivity and efficiency; jeopardize the safety of the employee, co-workers, and the public; and harm the reputation of the City and its employees. Employees are subject to pre-employment, post-accident and/or random drug and alcohol testing if there is reasonable suspicion that the employee is in violation of this rule. Accordingly, the Career Service Board strictly enforces the following rules:~~

- ~~A. The consumption, possession or storage of alcoholic beverages on City property, except for officially sanctioned functions when the employee is not on duty, is prohibited. When an employee is involved in a workplace accident or where there is reasonable suspicion that an employee is intoxicated while on the job, the employing agency shall require the employee to submit to an alcohol and drug test.~~
- ~~B. The serving of alcohol at City functions must be approved in advance, in writing, by the appropriate appointing authority or designee. The appointing authority is responsible for seeing that events comply with state and local alcohol regulations and are planned with the safety of employees and the public in mind.~~
- ~~C. Off the job use of alcohol that adversely affects an employee's job performance or the City, or jeopardizes the safety or property of employees is prohibited. Employees are also prohibited from reporting to work under the influence of alcohol.~~
- ~~D. Employees who drive a motor vehicle as a part of their work can be removed from their position if they are found to have been driving under the influence of alcohol, whether on duty or off duty. The supervisor may initiate a post-accident drug and alcohol screening. Employees with a CDL license are subject to random drug and alcohol testing.~~
- ~~E. The City provides an employee assistance program for any employee who wants to seek confidential counseling.~~
- ~~F. A supervisor who has reasonable suspicion that an employee is in violation of this policy may initiate drug and alcohol testing.~~
- ~~G. Violations of this policy can lead to corrective action, up to and including dismissal.~~

~~Section 15-70 Drug-Free Workplace Policy~~

~~The Career Service Board has a special concern about the use and abuse of illegal drugs (controlled substances) because illegal drugs can affect an employee's productivity and efficiency; jeopardize the safety of the employee, co-workers, and the public; and harm the reputation of the City and its employees. Employees are subject to pre-employment, post-accident and/or random drug and alcohol testing if there is reasonable suspicion that the employee is in violation of this rule. Accordingly, the Career Service Board strictly enforces the following rules:~~

- ~~A. The manufacture, distribution, dispensation, possession, sale, or use of a controlled substance is strictly prohibited in all City facilities, on all City property, in any City-owned vehicle, and at any City-sponsored event. When an employee is involved in a workplace accident, or where there is reasonable suspicion that an employee is under the influence of a controlled substance or illegal drug while on the job, the employing agency can require the employee to submit to a drug test.~~
- ~~B. The OHR presents a drug-free awareness education program for all employees at all levels on a periodic basis.~~
- ~~C. Off the job use of controlled substances that adversely affects an employee's job performance or the City, or jeopardizes the safety or property of employees, is prohibited. Employees are prohibited from reporting to work under the influence of illegal drugs or controlled substances.~~
- ~~D. Employees who drive a motor vehicle as a part of their work can be removed from their position if they are found to have been driving under the influence of illegal drugs, whether on duty or off duty. Employees on legally prescribed or over-the-counter medications that could impair their ability to drive shall notify their immediate supervisor who will take appropriate steps to ensure that there are no risks to the employee or other. The supervisor may initiate a post-accident drug and alcohol screening. Employees with a GDL license are subject to random drug and alcohol testing.~~
- ~~E. The City provides an employee assistance program for any employee who wants to seek confidential counseling.~~
- ~~F. A supervisor who has reasonable suspicion that an employee is in violation of this policy may initiate drug and alcohol testing.~~
- ~~G. Violations of this policy can lead to corrective action, up to and including dismissal.~~

~~Section 15-80 Electronic Communications Policy~~

~~15-81 Policy~~

~~To better serve our customers and give our talented workforce the best tools to perform their jobs, the City continues to adopt and make use of new means of communication and information exchange. Employees who have access to one or more forms of electronic media and services, including but not limited to computers, e-mail, telephones, voice mail, fax machines, external electronic bulletin boards, wire services, on-line services, and the internet should use these services for official business.~~

~~The City encourages the use of these media and associated services because they can make communication more efficient and effective, and because they are valuable sources of information about customers, technology, and new products and services. However, all employees should remember that electronic media and services provided by the City are City property and their purpose is to facilitate and support City business.~~

~~15-82 Prohibited Communications~~

~~Electronic media shall not be used for knowingly transmitting, retrieving, or storing any communication that is:~~

- ~~A. Discriminatory or harassing;~~
- ~~B. Derogatory to any individual or group;~~
- ~~C. Obscene;~~
- ~~D. Defamatory or threatening; or~~
- ~~E. Engaged in for any purpose that is illegal or contrary to the City's policies or business interests.~~

~~15-83 Personal Use~~

~~The City provides electronic media and services primarily for employees' business use. Limited, occasional or incidental use of electronic media for personal, non-business purposes is understandable as long as it is of a reasonable duration and frequency, does not interfere with the employee's performance of job duties, and is not in support of a personal business. Employees are expected to demonstrate a sense of responsibility and not abuse this privilege. Abuse of this privilege may result in corrective action, up to and including dismissal.~~

~~15-84 Access to Employee Electronic Communications~~

~~Employees cannot have an expectation of privacy with respect to messages or files sent, received, or stored on the City's electronic communication systems, including Internet activity. Any information gathered or communicated using the City's electronic communication systems can be accessed, monitored, and read by authorized employees.~~

~~Section 15-90 Employee Organization and Representation~~

~~15-91 Membership~~

~~A Career Service employee shall have the right to join or refrain from joining any organization of employees. No discrimination shall be exercised against an employee or applicant because such person belongs, or does not belong, to a union or other employee organization.~~

~~15-92 Supervisory Employees~~

~~Employees in supervisory positions shall not attempt to coerce any employee to join or refrain from joining a union or other employee organization, shall not make any effort to obtain members for a union or any employee association, and shall not accept gratuities, prizes, or other valuable items for influencing any employee to join or refrain from joining a union or employee organization.~~

~~15-93 Representation~~

~~The representative of an employee, including officers and business agents of unions or other associations to which an employee belongs, shall be given the same rights to speak on behalf of the employee during any type of meeting with the employee's supervisor or manager as would be given the employee.~~

~~15-94 Counseling Employees during Working Hours~~

~~A representative of an employee organization may visit an employee during working hours if the representative obtains the permission of the employee's immediate supervisor and such visitation does not interfere with the work of the agency.~~

~~15-95 Designation of Representative~~

~~A. Employees shall identify, in writing, agents to represent them in presenting a grievance or appeal.~~

~~B. No employee may be compelled to act as the representative of another employee.~~

~~15-96 Representing Employees during Working Hours~~

~~If the representative is also a City employee, he or she shall be allowed to take up to a maximum of four (4) hours of approved administrative leave per pay period and use any accrued paid time off, vacation leave or compensatory time, or to take leave without pay to represent employees. Such leave shall not adversely impact the agency or department and must be approved in advance (Revised January 1, 2010; Rule Revision Memo 42-C).~~

~~Section 15-100 Harassment and/or Discrimination~~

~~15-101 Policy (Revised January 22, 2010; Rule Revision Memo 44C)~~

~~It is the policy of the Career Service Board ("Board") that all employees have a right to work in an environment free of discrimination and unlawful harassment. The City maintains a strict policy prohibiting discrimination, sexual harassment and harassment because of race, color, creed, religion, national origin, gender, sexual orientation, marital status, military status, age, disability, or political affiliation, or any other status protected by federal, state, or local laws. All such harassment or discrimination is unlawful. The Board's anti-harassment policy applies to all persons involved in the operation of the City and prohibits unlawful harassment or discrimination by any employee of the City, including supervisors and co-workers. Unlawful harassment in any form, including verbal, physical, and visual conduct, threats, demands, and retaliation is prohibited.~~

~~15-102 Types of Harassment (Revised January 22, 2010; Rule Revision Memo 44C)~~

~~Unlawful harassment because of race, color, creed, religion, national origin, gender, sexual orientation, marital status, military status, age, disability, or political affiliation, or any other status protected by federal, state, or local laws, includes but is not limited to:~~

- ~~A. Verbal conduct such as epithets, derogatory comments, slurs, unwanted sexual advances, invitations, or comments;~~
- ~~B. Visual conduct such as derogatory posters, photographs, cartoons, drawings, or gestures;~~
- ~~C. Physical conduct such as assault, unwanted touching, blocking normal movement, or interfering with work directed at an employee because of the employee's sex or race or any other protected basis;~~
- ~~D. Threats or demands to submit to sexual requests in order to keep a job or avoid some other loss, and offers of job benefits in return for sexual favors; and~~
- ~~E. Retaliation for having reported or threatened to report harassment.~~

~~15-103 Action of Individual Experiencing Unlawful Harassment~~

~~Individuals who experience unlawful harassment are urged to:~~

- ~~A. Make it clear that such behavior is offensive to them and request that such behavior be discontinued; and~~
- ~~B. Report such conduct to their supervisor so that the agency may investigate and resolve the problem. If the complaint involves an employee's supervisor or someone in the direct line of supervision, or if the employee for any reason is uncomfortable in dealing with his or her immediate supervisor, the employee may go to another supervisor, to his or her agency human resource representative or directly to the OHR Employee Relations Section.~~

~~15-104 Investigation~~

~~(Revised June 25, 2013; Rule Revision Memo 5D)~~

~~The agency or the OHR will conduct a timely investigation concerning any allegations of harassment or discrimination and will take action, as deemed appropriate, based on the outcome of the investigation. The determination of the investigation regarding the alleged harassment or discrimination will be communicated to the complaining employee as soon as practicable.~~

~~15-105 Action~~

~~If it is determined that unlawful harassment or discrimination has occurred, the agency will take effective remedial action commensurate with the severity of the offense. Appropriate action will be taken to deter any future harassment.~~

~~15-106 Retaliation Prohibited~~

~~Retaliation against employees for reporting unlawful harassment or discrimination or assisting the City in the investigation of any complaint is against the law and will not be permitted. Retaliation can include, but is not limited to, such acts as refusing to recommend an employee for a benefit for which he or she qualifies, spreading rumors about the employee, encouraging hostility from co-workers and escalating the harassment. Any employee engaging in retaliation may be subject to corrective action, up to and including dismissal.~~

~~Section 15-110 Preventing Violence in the Workplace~~

~~Violence, or the threat of violence, will not be tolerated in any City work locations. Any violence or the threat of violence will subject the employee to serious corrective action, up to and including dismissal and possible criminal charges.~~

~~The following, though not inclusive, will not be tolerated:~~

- ~~A. Intimidating, threatening or hostile behaviors, physical assault, vandalism, arson, sabotage, unauthorized use of weapons, bringing unauthorized weapons onto City property or other acts of this type clearly inappropriate to the workplace.~~
- ~~B. Jokes or comments regarding violent acts which are reasonably perceived to be a threat of imminent harm.~~
- ~~C. Encouraging others to engage in violent behaviors.~~

~~15-111 Reporting~~

- ~~A. In an emergency situation, call 9-911 or 911. Next, immediately contact the building security, division/department/office manager involved, and agency human resource and safety officers.~~
- ~~B. In a non-emergency situation, if the employee feels that he or she has been subjected to any type of violence or threat of violence, or has observed or has knowledge of any violation of this rule, the employee shall immediately report the incident to his or her supervisor, the agency human resource representative or safety officer, or to the OHR Employee Relations Section.~~

~~15-112 Management Responsibility~~

~~Management shall investigate any and all complaints and/or incidents of workplace violence and take appropriate actions.~~

~~Section 15-120 Open Door Policy~~

~~The Career Service Board supports an open door policy. If an employee has a problem or concern that arises in the scope or course of his or her employment, the employee should discuss the concern with his or her immediate supervisor, manager, appointing authority, human resource representative, or a member of the OHR Employee Relations Section. The City will not tolerate retaliation of any kind against any employee who utilizes the open door policy in good faith.~~

~~Section 15-130 Reporting Violations~~

~~Any alleged violation of this rule should be reported to the appropriate supervisor, manager, agency human resource representative, appointing authority, or the OHR Employee Relations Section.~~

~~Any alleged ethics violation covered under this rule should be reported to the appropriate supervisor, manager, appointing authority, human resource representative, or the OHR Employee Relations Section. The employee may also contact the Board of Ethics.~~

**RULE 16
CODE OF CONDUCT
AND DISCIPLINE**

Purpose statement:

The purpose of this rule is to provide Career Service employees clear expectations for their conduct in an effort to maintain the public trust; to promote both public and workplace safety; and to establish a progressive discipline process that is governed by the principles of due process, personal accountability, reasonableness and sound business practice. This rule contains information on the following topics:

- A. Delegation of authority
- B. Compliance with Code of Ethics and Executive Orders
- C. Harassment and discrimination
- D. Employee responsibility to report charges, convictions, and nolo contendere pleas
- E. Use of City facilities
- F. Political activities
- G. Employee organization and representation
- H. Recording devices in the workplace
- I. Grounds for discipline
- J. Investigatory leave
- K. Disciplinary process

Section 16-5 Disclaimer

~~This Rule 16 pertaining to discipline and dismissal does not create or constitute any contractual rights between or among the City, the Career Service Board ("Board"), the Office of Human Resources ("OHR"), and any employee. This Rule 16 may only be modified, rescinded, or revised, in writing, by the Board, which reserves the right to unilaterally modify, rescind, or revise Rule 16 at any time consistent with its rule-making process.~~

Section 16-10 Service of Written Notice **and Computation of Time**

- A.** Written notices required to be served on an employee under this Rule 16 shall be served on the employee either in person with a certificate of hand delivery, or by first class U.S. mail, with a certificate of mailing to the employee's last known address, **or by e-mail.**
- B.** **The computation of any time period stated in days in these rules shall be as follows:**
- 1.** **The time period begins on the day after the event that triggers the time period.**
 - 2.** **The time period shall include all calendar days including weekends and holidays.**
 - 3.** **The time period ends at the close of business on the final day of the time period.**
 - 4.** **If the final day of the time period falls on a weekend day, a holiday, or other day when the department or agency in question is not open for business, the time period shall end on the next working day.**

Section 16- ~~15~~ **Delegation of Authority** ~~70~~ ~~Disciplinary procedures~~

Appointing authorities may **delegate any authority given to them under this Rule 16 to a designee within his or her department or agency** ~~designate agents to act for them in imposing discipline under this Rule 16.~~

Section 16-20 Code of Conduct

16-21 Compliance with Code of Ethics and Executive Orders

- A.** **All employees shall comply with the City Charter, the Denver Revised Municipal Code, and other applicable legal authority, including but not limited to:**
- 1.** **The Denver Code of Ethics, which regulates:**
 - a.** **Employment and supervision of family members;**
 - b.** **Gifts to City employees;**
 - c.** **Conflicts of interest while employed;**
 - d.** **Outside employment or business activity; and**
 - e.** **Use of public office for private gain.**

2. *Any provisions in the Denver Charter regarding ethical conduct of employees;*
3. *Any stricter or additional Code of Ethics promulgated by an employee's department or agency as authorized by the Denver Code of Ethics; and*
4. *Any Executive Orders governing employee conduct including, but not limited to:*
 - a. *Executive Order No. 16 – Use of Electronic and Communication Devices and Services*
Sets terms of employee use of computers, cell phones, Internet and e-mail
 - b. *Executive Order No. 55 – Department Information Centers*
Regulates employee use of bulletin boards.
 - c. *Executive Order No. 94 – City and County of Denver Alcohol and Drug Policy*
Covers testing, training and discipline regarding employee drug and alcohol use.
 - d. *Executive Order No. 112 – Violence in the Workplace*
Defines improper behavior, establishes management responsibility, and discipline.

~~Section 15-100~~ 16-22 Harassment and/or Discrimination
~~15-101 Policy~~

- A. ~~It is the policy of the Career Service Board ("Board") that all employees have a right to work in an environment free of discrimination and unlawful harassment. The City maintains a strict policy prohibiting Discrimination, sexual harassment and harassment because of the employee's race, color, creed, religion, national origin, sex, gender identity, sexual orientation, marital status, military status, age, disability, or political affiliation, or any other status protected by federal, state, or local laws. All such harassment or discrimination is unlawful. The Board's anti-harassment policy applies to all persons involved in the operation of the City and prohibits unlawful Harassment or discrimination by any employee of the City, including supervisors and co-workers. Unlawful harassment in any form, including verbal, physical, and visual conduct, threats, demands, and retaliation is prohibited.~~

B. ~~15-102~~ Types of Harassment

~~Unlawful~~ Harassment because of race, color, creed, religion, national origin, **sex**, gender **identity**, sexual orientation, marital status, military status, age, disability, or political affiliation, or any ~~other~~ status protected by federal, state, or local laws, includes but is not limited to:

- ~~A~~ **1.** Verbal conduct such as epithets, derogatory comments, slurs, unwanted sexual advances, invitations, or comments;
- ~~B~~ **2.** Visual conduct such as derogatory posters, photographs, cartoons, drawings, or gestures;
- ~~C~~ **3.** Physical conduct such as assault, unwanted touching, blocking normal movement, or interfering with work directed at an employee because of the employee's sex, ~~or~~ race, or ~~any~~ other protected basis; **and**
- ~~D~~ **4.** Threats or demands to submit to sexual requests in order to keep a job or avoid some other loss, and offers of job benefits in return for sexual favors. **and**

~~E.~~ ~~Retaliation for having reported or threatened to report harassment.~~

~~15-106~~ **16-23** Retaliation Prohibited

Retaliation against employees for reporting ~~unlawful~~ **or threatening to report** harassment or discrimination or assisting the City in the investigation of any complaint is **strictly prohibited** ~~against the law and will not be permitted~~. Retaliation can include, but is not limited to, such acts as refusing to recommend an employee for a benefit for which he or she qualifies, spreading rumors about the employee, encouraging hostility from co-workers, and escalating the harassment. Any employee engaging in retaliation may be subject to corrective action, up to and including dismissal.

~~Section 15-15~~ **16-24** Employee Responsibility to Report Charges, ~~or~~ Convictions, **and** **Nolo Contendere Pleas**

The employee or the employee's representative shall report criminal charges and convictions, and nolo contendere pleas (no contest pleas) to the employee's appointing authority as soon as possible as required by this section, but no later than three (3) calendar days after the occurrence.

A. Offenses that must be reported:

1. All employees who are charged with, **have entered a plea of nolo contendere on,** or **are** convicted of any felony, ~~or~~ misdemeanor, ~~as well as~~ **or** any other offense which involves violence against persons, destruction of property, dishonesty, theft, or the sale or possession of illegal drugs, must report such charges, **pleas,** or convictions to their appointing authority.
2. In addition to the requirement set forth in subsection 1, any employee who operates a motor vehicle as part of ~~their~~ **his or her** job assignment must report any citation for traffic violations, whether received on or off the job (this does not apply to parking violations).
3. Additional reporting requirements may be established by a department or agency consistent with business necessity. Such additional requirements must first be approved by the Office of Human Resources ("OHR") and approved for legality by the City Attorney's Office.

~~Section 15-10 Definition~~

B. **A** conviction: **is** the adjudication of a criminal charge through:

- ~~A~~ **1.** A guilty plea;
- ~~B~~ **2.** The acceptance of a plea bargain;
- ~~C~~ **3.** A finding of guilty by a judge or jury;
- ~~D.~~ ~~A plea of nolo contendere (no contest);~~
- ~~E~~ **4.** The acceptance of a deferred sentence or deferred judgment; or
- ~~F~~ **5.** A plea where a defendant enters a guilty plea without actually admitting guilt (Alford plea).

~~B.~~ ~~Reporting procedure:~~

~~1. The department or agency must post or provide to all employees the name and telephone number of the department or agency designee(s) to whom employees must report charges and convictions as required by this section. If the department or agency does not appoint a designee, employees shall report charges and convictions to the appointing authority.~~

~~2. The employee or the employee's representative must report charges and convictions as required by this section as soon as possible, but no later than three (3) calendar days after the occurrence.~~

~~16-64~~ **C.** Contemplating or Imposing Discipline on an Employee Convicted of or Charged with a Crime

After notification that an employee has been charged with or convicted of a crime, the appointing authority shall follow the guidelines described below:

A. 1. If an employee has been charged with a crime, before imposing discipline, the department or agency must determine **whether** there is a preponderance of evidence demonstrating that the employee engaged in the conduct which forms the factual basis for the crime with which the employee is charged. The department or agency must also consider: the nature and type of the conduct which supports the charge; the nature of the position the employee holds in the City and the relationship of the position to the facts underlying the charge; and the impact of the facts on the employee's ability to perform the position.

B. 2. If an employee has been convicted of a crime, before imposing discipline, the department or agency must consider: the nature and type of crime for which the person has been convicted; the facts underlying the crime; the nature of the position the employee holds in the City and the relationship of the position to the crime; the impact of the facts on the employee's ability to perform the position; and any evidence of rehabilitation.

~~C. Conviction of a crime or the facts underlying a charged crime may be grounds for any form of discipline outlined in this Rule 16, up to and including dismissal.~~

D. Record-keeping:

Records of **criminal** charges or convictions resulting from an employee's reporting shall not be included in the employee's personnel file unless and until disciplinary action has been taken pursuant to **this Rule 16** ~~Rules 16-60 P. and 16-64.~~

16-25 Use of City Facilities ~~15-22 Solicitation and Distribution~~

Employees may not solicit or distribute any non-job-related material of any kind during working time on City property except for designated City programs.

~~Section 15-30~~ **16-26** Political Activities

- A.** Employees are prohibited from engaging in political activities during working hours. **Employees also are prohibited from using City facilities and/or resources in connection with campaigns or other political activities.**
- B.** Accordingly, **City facilities and/or resources may not be used to solicit** the following practices ~~are prohibited on City premises during work hours:~~
- ~~A~~ **1.** ~~Soliciting~~ Monetary political contributions ~~from any officer or employee; or~~
- ~~B~~ **2.** ~~Soliciting~~ Any **other** contribution of services or resources for political purposes from any officer or employee.
- C. Employees shall not engage in the following activities at any time:**
- 1.** Taking any ~~personnel~~ action or making any promise or threat of action ~~with regard~~ to any employee because of the **employee's** giving or the withholding of a political contribution or service; **or**
- ~~D~~ **2.** Engaging in solicitation or politically motivated behavior that is harassing or discriminatory. ~~or~~
- ~~E.~~ ~~Using employer resources for political purposes.~~

~~Section 15-90~~ **16-27** Employee Organization~~s~~ and Representation
~~15-91~~ Membership

- A.** ~~A~~ Career Service employee~~s~~ shall have the right to join or refrain from joining any organization of employees. No **employee or applicant may be discriminated against, harassed** ~~ion shall be exercised~~ **or retaliated** against an ~~employee or applicant~~ because such person belongs, or does not belong, to a union or other employee organization.

~~15-92~~ Supervisory Employees

- B.** Employees ~~in supervisory positions~~ shall not:
- 1.** ~~attempt to~~ Coerce **or attempt to coerce** any **other** employee to join or refrain from joining a union or other employee organization; **or**
~~shall not make any effort to obtain members for a union or any employee association, and~~
- 2.** ~~shall not~~ Accept **or offer** gratuities, prizes, or other valuable items for influencing any employee to join or refrain from joining, **or to vote for or against,** a union or employee organization.

C. **Employees in supervisory or management positions shall not make any effort to obtain members or votes for a union or any employee association.**

~~15-93~~ **Representation**

D. The representative of an employee, including officers and business agents of unions or other associations to which an employee belongs, shall be given the same rights to speak on behalf of the employee ~~during any type of meeting with the employee's supervisor or manager~~ as would be given the employee **at the following meetings:**

- 1.** **Contemplation of discipline meetings required under this Rule 16;**
- 2.** **Contemplation of disqualification meetings required under Rule 14 SEPARATION OTHER THAN DISMISSAL; and**
- 3.** **Meetings to discuss a "Failing" PEPR required under Rule 13 PERFORMANCE ENHANCEMENT PROGRAM.**

~~with the employee's supervisor or manager as would be given the employee.~~

This right to representation does not extend to meetings related to the normal business activities of the department or agency, such as staff meetings.

E. **The complainant and the accused may have a representative present while being interviewed during an investigation conducted pursuant to Rule 18 ALTERNATIVE DISPUTE RESOLUTION. However, the representative shall be a silent observer and may not speak on behalf of the interviewee.**

~~15-94~~ **F.** **Counseling Employees During Working Hours**

A representative of an employee organization may visit an employee during working hours if the representative obtains the permission of the employee's immediate supervisor and such visitation does not interfere with the work of the agency.

~~15-95~~ **G.** Designation of Representative

1. Employees shall identify, in writing **to the person who signed the contemplation of discipline letter and the agency human resources representative**, agents to represent them in **a contemplation of discipline meeting, contemplation of disqualification meeting, meeting to discuss a "Failing" rating, or in** presenting a grievance or appeal.
2. No employee may be compelled to act as the representative of another employee.

~~15-96~~ Representing Employees during Working Hours

3. If the representative is also a City employee, he or she shall be allowed, **with the prior approval of his or her supervisor**, to take up to a maximum of four (4) hours of approved administrative leave per pay period and use any accrued paid time off, vacation leave or compensatory time, or to take leave without pay to represent employees. Such leave shall not adversely impact the agency or department and must be approved in advance

16-28 Recording Devices in the Workplace

Employees shall not secretly record audio or video, or take photographs during work hours, when on City premises, when speaking to a City employee by phone, or when on City business unless requested to do so in writing by the employee's appointing authority.

~~Section 16-60~~ **29 Grounds for Discipline and Dismissal**

The following may be cause for the discipline or dismissal of a Career Service employee:

- A. Neglect of duty **or**
- ~~B.~~ carelessness in performance of duties and responsibilities.
- B** ~~C.~~ 4. Theft, destruction, or neglect in the use of City property; or property **or materials** of any **other person** agency or entity ~~having a contract with the City; or~~
- ~~2.~~ ~~Theft of property or materials of any other person while the employee is on duty or on City premises.~~
- C** ~~D.~~ Unauthorized operation or use of any vehicles, machines, or equipment of the City, or of any entity having a contract with the City, including, but not limited to, the unauthorized use of the internet, e-mail, or telephones.

- D** ~~E.~~ Any act of dishonesty, which may include, but is not limited to,
- ~~1.~~ ~~Altering or falsifying official records or examinations;~~
 - ~~2.~~ ~~Accepting, soliciting, or making a bribe;~~
 - ~~3.~~ ~~lying, to superiors or **improperly altering or falsifying records, examination answers, or work hours.** with respect to official duties, including work duties, disciplinary actions, or false reporting of work hours.~~
- E** ~~F.~~ **Accepting, soliciting, or making a bribe, or** using official position or authority for personal profit or advantage, including kickbacks.
- ~~G.~~
- ~~1.~~ ~~Being under the influence, subject to the effects of, or impaired by alcohol, an illegal drug or a legal drug being used improperly: while on duty; while performing City business; while in a City facility; or while operating a City vehicle or other equipment.~~
 - ~~2.~~ ~~Consumption of alcohol, an illegal drug or a legal drug being used improperly: while on duty; in a City facility; on City property; while operating City vehicles or equipment; or while performing City business. The consumption of alcohol at an officially sanctioned function by an off-duty employee is not a violation of this rule.~~
- ~~H.~~ ~~Selling, purchasing, transferring or possessing an illegal drug or a legal drug improperly: while on City property; while in a City facility; while on City equipment or in a City vehicle; or while on duty.~~
- ~~I.~~ ~~Possessing a weapon on City property or a work location without written permission of the employee's appointing authority.~~
- F** ~~J.~~ Failing to comply with the lawful orders of an authorized supervisor or failing to do assigned work which the employee is capable of performing.
- ~~K~~ **G**
- 1.** Failing to meet established standards of performance including either qualitative or quantitative standards. When citing this subsection, a department or agency must describe the specific standard(s) the employee has failed to meet, **such as standards in a Performance Enhancement Program (PEP) Plan or in a Performance Improvement Plan (PIP).**
 - 2.** **Any employee who receives a "Failing" PEP Rating and fails to correct his or her performance in the subsequent PIP, is considered to have been given an adequate opportunity to correct his or her behavior and may be dismissed without his or her appointing authority being required to resort to a lesser discipline first.**

- ~~L.~~ Failure to observe written departmental or agency regulations, policies or rules. When citing this subsection, a department or agency must cite the specific regulation, policy or rule the employee has violated.
- ~~M.~~ Threatening, fighting with, intimidating, or abusing employees or officers of the City, or any other member of the public, for any reason.
- ~~H N.~~ 1. Intimidation or retaliation against an individual who has been identified as a witness, party, or representative of any party to any hearing or investigation relating to any disciplinary procedure, or any violation of a city, state, or federal rule, regulation or law, or against an employee who has used the dispute resolution process in good faith.
2. ~~A determination by the Career Service Board or Hearing Officer that the employee has violated the City's "Whistleblower Protection" ordinance.~~
- ~~I O.~~ Failure to maintain satisfactory **professional** working relationships with co-workers **and** other **individuals the City employees interacts with as part of his or her job**, or the public.
- ~~J P.~~ Conviction of or **Being charged with or convicted of a crime, or entering a plea of nolo contendere to a crime.** Prior to **Before** imposing discipline under this subsection, the department or agency shall follow the guidelines contained in subsection 16-24 ~~64~~.
- ~~K Q.~~ Failure to report charges **of, pleas to,** or convictions of crimes as required by **this** Rule ~~16~~ **45 CODE OF CONDUCT** (Revised June 12, 2006; Rule Revision Memo 10C).
- ~~L R.~~ Discrimination or harassment **as defined in this Rule 16** of any employee or officer of the City because of race, color, creed, religion, national origin, gender, sexual orientation, marital status, military status, age, disability, or political affiliation, or any other status protected by federal, state, or local laws. This includes making derogatory statements based on race, color, creed, religion, national origin, **sex,** gender **identity,** sexual orientation, marital status, military status, age, disability, or political affiliation, or any other status protected by federal, state, or local laws. Discipline for This prohibited conduct **does need** not have to rise to the level of a violation of any relevant state or federal law before an employee may be disciplined and the imposition of such discipline does not constitute an admission that the City violated any law (Revised January 22, 2010; Rule Revision Memo 44C).
- ~~M S.~~ Unauthorized absence from work; or abuse of paid time off, sick leave, or other types of leave; or violation of any rules relating to any forms of leave defined in Rule 10 **PAID LEAVE** or Rule 11 **UNPAID AND EXTENDED LEAVE** (Revised January 1, 2010; Rule Revision Memo 42C).

- N** ~~≠~~. **Unauthorized deviation from scheduled shift including reporting to work after the scheduled start time of the shift, leaving work before the end time of the shift, or working unauthorized overtime.**
- U** ~~≠~~. ~~Unauthorized performance of work by non-exempt employees outside of the established work schedule.~~
- O** ~~≠~~. Failure to use safety devices or failure to observe safety regulations ~~which results in injury to self or others; jeopardizes the safety of self or others; or results in damage or destruction of City property.~~
- P** ~~≠~~. Engaging in a strike, sabotage, or work slowdown.
- Q** ~~≠~~. Divulging confidential or otherwise sensitive information to unauthorized individuals.
- R** ~~≠~~. Conduct which violates the **Career Service** Rules, the City Charter, the Denver Revised Municipal Code, Executive Orders, **written departmental or agency regulations, policies or rules**, or any other applicable legal authority. **When citing this subsection, a department or agency must cite the specific regulation, policy or rule the employee has violated.**
- S**. **Refusal to cooperate, including refusing to provide requested information and materials in the course of an investigation.**
- T** ~~≠~~. Conduct **which is or could foreseeably:**
- 1.** **Be** prejudicial to the good order and effectiveness of the department or agency ~~or~~;
 - 2.** ~~conduct that~~ brings disrepute on or compromises the integrity of the City; **or**
 - 3.** **Be unbecoming a City employee.**

Section 16-30 Investigatory Leave with Pay

- A. An appointing authority may place an employee on investigatory leave with pay **for up to forty-five (45) days** pending an investigation of a possible rule violation or failure to meet standards of performance when it is determined by the appointing authority that it is in the best interest of the City. ~~Investigatory leave may be for no more than forty five (45) calendar days.~~ It may include the period of time required to complete the investigation, ~~as well as any time necessary to conduct a pre-disciplinary~~ **contemplation of discipline** meeting, and **to** render a decision regarding discipline.

- B. If the investigation has not been completed within the forty-five (45) calendar day time period, the appointing authority may request from the OHR Executive Director an extension of time appropriate to complete the investigation and render a decision. The OHR Executive Director may approve a request for an extension for good cause shown. Additional extensions may be granted at the discretion of the OHR Executive Director. The appointing authority shall notify the employee of any extension that is granted by the OHR Executive Director.
- C. The appointing authority may require the employee to remain at home and/or be available by telephone; to participate in the investigatory process and/or to perform work during their normal work hours; or to return to work prior to the end of the period of investigatory leave. **Normal work hours may be changed when an employee on investigatory leave needs to be available at a time the employee is not normally scheduled to work.** If an employee is unable to meet the ~~se~~ requirements listed above, or chooses to attend to personal business during ~~the~~ **his or her** normal hours of work, the appointing authority's regular procedures regarding the use of leave shall apply.

Section 16-40 Disciplinary Process

~~Section 16-20~~ **41 Purpose of discipline**

The purpose of discipline is to correct inappropriate behavior or performance, if possible. The type and severity of discipline depends on the gravity of the offense. The degree of discipline shall be reasonably related to the seriousness of the offense and **may** take into consideration the employee's past record. The appointing authority shall impose the type and amount of discipline he or she believes is needed to correct the situation and achieve the desired behavior or performance.

~~Section 16-50~~ **42 Progressive Discipline**

- A.
 1. Whenever practicable, discipline shall be progressive. However, any measure of discipline may be used in any given situation as appropriate. ~~A lesser discipline other than dismissal may be imposed where circumstances warrant.~~
 2. Failure to correct behavior or committing additional violations after progressive discipline has been taken may subject the employee to further discipline, up to and including dismissal from employment.
 3. ~~This rule should not be interpreted to mean that Progressive discipline must be taken before~~ An employee may be dismissed **without prior discipline if the facts of that employee's case warrant dismissal.**

B. In order of increasing severity, the disciplinary actions which an appointing authority may take against an employee for violation of the **Career Service** Rules, the City Charter, or the Denver Revised Municipal Code, Executive orders, or any other applicable legal authority include:

- ~~1.~~ ~~Verbal reprimand.~~
- ~~2.~~ Written reprimand.
- ~~2~~³. Suspension without pay, or involuntary temporary reduction of pay.
- ~~3~~⁴. Involuntary demotion, with a reduction in pay pursuant to Rule 9 **PAY ADMINISTRATION.**
- ~~4~~⁵. Dismissal.

C. **Nothing in this rule should be interpreted to preclude an appointing authority from counseling and coaching employees about performance and discipline issues. Appointing authorities are encouraged to document the date and subject of the conversation in the supervisor's file.**

~~16-72~~ **43** ~~Form for Written Reprimand, and Notices of Discipline~~

A. ~~Written reprimands:~~ Written reprimands shall **contain the following:**

- 1.** **The specific conduct or omission committed by the employee which the department or agency believes is in violation of the Career Service Rules,** ~~identify the violations or failures to meet performance standards on the job~~ with sufficient specificity and detail so as to enable the employee to correct his or her behavior and to enhance future performance; **and**
- ~~2~~ ~~Written reprimands shall also contain~~ A notice that the employee may file a grievance on the written reprimand and may also seek mediation in accordance with Rule 18 **DISPUTE RESOLUTION.**

B. **A written reprimand shall be sent to the OHR for inclusion in the employee's personnel file.**

16-74 ~~44~~ 44 Guidelines for Involuntary Temporary Reduction of Pay

When an involuntary temporary reduction in pay is imposed on an employee, the employee's pay shall not be reduced:

- A. More than ~~four and fifty five hundredths~~ fifteen percent (~~4.55~~ 15%); or
- B. Below the range minimum of the employee's pay range; or
- C. For less than ~~seven~~ one (~~7~~ 1) pay periods; or
- D. For more than thirteen (13) pay periods; **or**

E. Below the Federal minimum wage.

Any merit increase or merit payment shall be based on the employee's normal rate of pay, not the employee's temporarily reduced rate of pay.

16-75 ~~45~~ 45 Procedure for Dismissal

- ~~B~~ **A.** The appointing authority shall give an employee written notice of dismissal on or before the employee's last day as a City employee.
- ~~C~~ **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.
- ~~D~~ **C.** Current address: It is the responsibility of each Career Service employee to ~~assure~~ **ensure** that official personnel records of the City reflect the employee's current mailing address, current residence address and telephone number at all times.
- ~~A~~ **D.**
 - 1.** An employee holding ~~non-career~~ **on call, paid** trainee, ~~or~~ **paid** intern ~~probationary~~, 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.

~~16-40~~ **46 Pre-disciplinary Notification of Contemplation of Discipline or Dismissal and Notice of Pre-disciplinary Meeting**

- A. Before an employee with career status is suspended, given an involuntary temporary reduction in pay, involuntarily demoted, or dismissed, the appointing authority shall hold a ~~pre-disciplinary~~ **contemplation of discipline** meeting. A ~~pre-disciplinary~~ **contemplation of discipline** meeting is not required for verbal ~~or~~ written reprimands.
- B. The purpose~~s~~ of the ~~pre-disciplinary~~ **contemplation of discipline** meeting is **are** to allow an employee to:
1. Correct any errors in the department or agency's information or facts upon which it **contemplates taking** ~~proposes to take~~ disciplinary action; and
 2. Tell his or her side of the story and present any mitigating information as to why the disciplinary action should not be taken.
- C. Since a ~~pre-disciplinary~~ **contemplation of discipline** meeting is not an administrative hearing, witness testimony is not allowed.
- D. Employees must be served with written notice seven (7) calendar days ~~prior to~~ **before** the ~~pre-disciplinary~~ **contemplation of discipline** meeting. The seven (7) calendar day notice period starts on the day **after** ~~following~~ the date shown on the certificate of ~~mailing or certificate of~~ hand delivery **or** mailing, **or on the e-mail**.
- E. The written notice of the ~~pre-disciplinary~~ **contemplation of discipline** meeting shall contain the following **information**:
1. That disciplinary action is contemplated;
 2. The specific conduct or omission committed by the employee which the department or agency believes is in violation of the Career Service Rules ("Rules") **with sufficient specificity and detail so as to enable the employee to correct his or her behavior and to enhance future performance**, ~~the City Charter, the Denver Revised Municipal Code, Executive Orders or other applicable legal authority;~~
 3. The purpose of the ~~pre-disciplinary~~ **contemplation of discipline** meeting as described in **this Rule 16** ~~Section 16-40 B. of this rule;~~
 4. The date, time, and location of the ~~pre-disciplinary~~ **contemplation of discipline** meeting; and

5. That the employee is entitled to have a representative of his or her own choosing present at the meeting.
- F. The department or agency may approve or deny requests to re-schedule ~~pre-disciplinary~~ **contemplation of discipline** meetings but shall accommodate such requests whenever practicable.

~~16-71 Verbal reprimand~~

~~Verbal reprimands must be accompanied by a notation in the supervisor's file and the agency's file on the employee. The employee shall be notified that a verbal reprimand is being documented in their file.~~

~~16-72~~ **47 Form for Written Reprimand, and Notices of Discipline**

A ~~B.~~ ~~Notices of discipline or dismissal:~~ **In addition to the information that must be part of written reprimands,** written notices of suspension, involuntary temporary reduction of pay, involuntary demotion, or dismissal shall **also**:

- ~~1.~~ ~~Identify the violations or reasons for failure to meet performance standards in detail so as to enable the employee to understand the basis for the discipline. The violation(s) indicated shall be those listed in the notice of contemplation of disciplinary action, except for any charges or violations which are dropped.~~
- 1** ~~2.~~ Contain a reference to the opportunity afforded the employee to tell his or her side of the story in accordance with ~~section 16-40 of this Rule~~ **16** and that the information presented at the ~~pre-disciplinary~~ **contemplation of discipline** meeting was considered by the department or agency in reaching a determination.
- 2** ~~3.~~ Contain a notice that the employee may appeal the suspension, involuntary temporary reduction of pay, involuntary demotion, or dismissal pursuant to Rule 19 **APPEALS** and that an employee may also seek mediation pursuant to Rule 18 **DISPUTE RESOLUTION**.

B. **The specific conduct or omissions listed on the written notice of discipline shall be the same as those listed in the contemplation of discipline letter, except for any charges or violations which were subsequently dropped.**

C. A ~~written reprimand,~~ notice of suspension, ~~notice of~~ involuntary temporary reduction of pay, ~~notice of~~ involuntary demotion, and ~~notice of~~ dismissal shall be sent to the OHR for inclusion in the employee's personnel file, along with ~~a~~ **the** completed personnel action form, ~~if required.~~

- D. Failure of a supervisor or appointing authority to comply strictly with the provisions of this section ~~16-70~~ shall not constitute a basis for reversing a disciplinary action on appeal unless the employee shows that his or her rights were substantially violated by the lack of compliance.

~~16-73~~ **48** Disciplinary Action Following ~~pre-disciplinary~~ **Contemplation of Discipline Meeting**

- A. Personnel decisions relating to progressive discipline may take into account ~~any relevant~~ prior disciplinary action, **including documented coaching and counseling.**
- B. A written notice of the disciplinary decision and the reasons for the disciplinary action based on the ~~pre-disciplinary~~ **contemplation of discipline** meeting and other pertinent information obtained by the appointing authority shall be served on the employee within ~~fifteen (15)~~ **twenty-one (21)** calendar days after the meeting. The notice shall be considered served on the date shown on the certificate of hand delivery or mailing, **or on the e-mail.** ~~If the fifteenth day falls on a day the OHR is not open for business, the appointing authority has until the next working day to serve the notice of discipline.~~
- C. ~~However,~~ If an appointing authority presents to the OHR Executive Director documented extenuating circumstances requiring additional time, the OHR Executive Director may extend the date for taking disciplinary action for an additional ~~ten (10)~~ **seven (7)** calendar days. A request for an extension of time must be sent to the OHR Executive Director ~~prior to~~ **before** the expiration of the time for taking disciplinary action. If disciplinary action is not taken within the initial time period and a request for extension of time is not timely submitted to the OHR Executive Director, the agency must repeat the steps contained in section 16-40 before disciplinary action may be taken.
- D. 4. ~~A verbal reprimand may not be grieved or appealed.~~
- ~~1-2~~ 1. An employee may file a grievance of a written reprimand in accordance with Rule 18 **DISPUTE RESOLUTION**. An employee may not appeal a written reprimand to the Career Service Hearings Office.
- ~~2-3~~ 2. An employee may directly appeal a suspension, involuntary temporary reduction of pay, involuntary demotion **with a loss of pay,** or dismissal in accordance with Rule 19 **APPEALS**.

RULE 18
DISPUTE RESOLUTION
~~(Effective January 1, 2006; Rule Revision Memo 3C)~~

Purpose Statement:

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

Section 18-10 Definitions

~~For the purposes of the Career Service Rules ("Rules"), the following terms apply:~~

~~A. Open Door Policy:~~

~~An open door policy encourages employees and supervisors/managers to communicate informally and directly.~~

~~B. Mediation:~~

~~A voluntary process in which a trained mediator assists parties involved in work-related issues to reach a mutually acceptable agreement.~~

~~C. Grievance:~~

~~An issue raised by a Career Service employee relating to actions/inactions taken by the employee's supervisor/manager that violate the employee's rights under the Rules, the City Charter, ordinances relating to the Career Service, executive orders, or written agency policies. Notwithstanding the above definition, the following may not be grieved:~~

- ~~1. Issues for direct appeal (see Rule 19 **APPEALS**);~~
- ~~2. Complaints of discrimination, harassment or retaliation, because there is a separate process for an employee to follow to bring a complaint involving discrimination, harassment or retaliation (see Rule 15 **CODE OF CONDUCT**);~~
3. Verbal reprimands;
- ~~4. Any aspect of the Performance Enhancement Program other than an employee's performance rating (Revised January 1, 2011; Rule Revision Memo 51C);~~
- ~~5. Bonus or incentive payments, or the lack thereof, or the criteria used by an agency or department to make or not make such payments, or any other aspect of the bonus or incentive program; and~~
6. The mediation process

~~7. The removal of an employee from Senior Command Staff status (as defined in Rule 5 **APPOINTMENTS AND STATUS**). (Effective June 1, 2014; Rule Revision Memo 8D)~~

~~D. Supervisor/manager:~~

~~When the term "supervisor/manager" is used in this Rule 18 and in Rule 19 **APPEALS**, it shall mean any person has been granted or delegated decision-making authority to take action on behalf of the appointing authority.~~

Section 18-~~10~~ ~~20~~ Open Door Policy Process

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

Section 18-~~20~~ ~~30~~ Mediation Process

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

~~If any employee or supervisor/manager has a work-related issue that was not taken to or resolved through the open door process, mediation may be requested.~~

- A. Requesting Mediation:
~~(Effective May 19, 2008; Rule Revision Memo 27C)~~
1. An employee, **HR representative**, supervisor or manager may request **formal** mediation by **contacting** ~~submitting a Mediation Request Form to the Career Service Mediation Program ("Mediation Program").~~ The Mediation Program will **submit the request to a Mediation Provider, who will** notify the other parties.

2. Parties are encouraged, ***but not required*** to participate in mediation. ***If all parties agree to mediation, the Mediation Provider will assign a Mediator, who will schedule a mediation session on a date and time, and at a location agreeable to the parties.*** ~~If either party declines to participate in mediation, then the declining party must notify the other party, the appointing authority or designee and the Mediation Program in writing the reason(s) for declining within 10 calendar days of receiving notice of the request for mediation from the Mediation Program. The notification shall include a certificate of service.~~

~~3. If all parties agree to mediation, the Mediation Program will assign a mediator.~~

3 4. ~~No less than seventy two (72) hours prior to the date of the mediation~~ All parties ***involved in a mediation*** must be informed of any representatives attending the proceedings ***at least*** ~~No less than seventy-two (72) hours prior to~~ ***before*** the ***beginning*** ~~date~~ of the mediation.

B. Protection of Grievance Rights:

1. If a mediation request is submitted within ~~fifteen (15)~~ ***fourteen (14)*** calendar days of an action or inaction giving rise to a grievance ~~as defined in paragraph 18-10 €~~, the time to file a grievance is suspended. Should the grievant wish to continue with the grievance process, the grievance must be filed within seven (7) calendar days following the date of the termination of the mediation process.

2. If a mediation request is submitted after the filing of a timely grievance, the time to respond to the grievance is suspended. Should the grievant wish to continue with the grievance process, the agency must respond to the grievance within seven (7) calendar days following the termination of the mediation process.

~~C.~~ Permanent Adjournment

~~Permanent adjournment occurs when the mediator issues a written statement to the parties indicating the mediation is permanently adjourned.~~

C ~~D.~~ Termination of the Mediation Process

1. ~~Termination~~ ***Conclusion*** of the mediation process ***occurs when:***

a. The mediation request is withdrawn;

b. The mediation request is declined;

c. The Mediator determines that future efforts at mediation would be futile; or

d. Mediation occurs, and results in an agreement between the parties to the mediation.

2. Conclusion of the mediation process is effective on ~~occurs on either the date of mailing, e-mailing or hand delivery of a written notice of termination by the Mediator to the parties in the mediation process and to the Mediation Program. delivering the notice of permanent adjournment or the written notice of refusal to mediate or the withdrawal of the mediation request.~~

~~C. Permanent Adjournment~~

~~Permanent adjournment occurs when the mediator issues a written statement to the parties indicating the mediation is permanently adjourned.~~

D E. Communications during Mediation not Admissible in Legal Proceedings

All proceedings held pursuant to or taken in conjunction with mediation are considered confidential. This confidentiality shall be specifically acknowledged and agreed to by each party to mediation prior to the commencement of mediation. No testimony concerning discussions had at or during the mediation shall be admissible in any Career Service hearing. The nature and scope of the confidentiality of discussions, documents and other materials presented at the mediation in furtherance thereof shall be governed by the terms of the Colorado Dispute Resolution Act, C.R.S. 13-22-307, Sections 1 through 4 inclusive, as it may be amended.

Section 18-30 40 Grievance Procedure

~~Section 18-10 Definitions~~

~~C. Grievance:~~

A. Defined:

A grievance is ~~an issue~~ **allegation made** raised by a Career Service employee relating to actions/inactions taken by the employee's supervisor/manager that violate the employee's rights under the Rules, the City Charter, ordinances relating to the Career Service, executive orders, or written agency policies. Notwithstanding the above definition, the following ~~may~~ **shall** not be grieved:

1. Issues for direct appeal (see Rule 19 **APPEALS**);
- ~~2. Complaints of discrimination, harassment or retaliation, because there is a separate process for an employee to follow to bring a complaint involving discrimination, harassment or retaliation (see Rule 15 **CODE OF CONDUCT**);~~
- ~~3. Verbal reprimands;~~
- 2 4.** Any aspect of the Performance Enhancement Program other than an employee's performance rating (~~Revised January 1, 2011; Rule Revision Memo 51C~~);

- ~~3~~ 5. Bonus or incentive payments, or the lack thereof, or the criteria used by an agency or department to make or not make such payments, or any other aspect of the bonus or incentive program; ~~and~~
- ~~4~~ 6. The mediation process; or
- ~~5~~ 7. The assignment to or removal from an acting role, working out of class assignment, or ~~of an employee from~~ Senior Command Staff status (as defined in Rule 5 **APPOINTMENTS AND STATUS**). ~~(Effective June 1, 2014; Rule Revision Memo 8D)~~

~~If a work-related issue was not taken to or resolved through the open door policy or mediation, and a Career Service employee has a grievance as defined in paragraph 18-10 C of this rule, the following procedures shall apply:~~

A. Notice to Employees:

~~The department or agency must post or provide to all employees a copy of this procedure, the name and telephone number of the department or agency designee(s) who may accept grievances, and the acceptable methods of delivery of grievances. If the department or agency fails to appoint a department or agency designee, the appointing authority shall be deemed to be that department or agency's designee.~~

B. Filing of Grievance:

In order to file a grievance an employee must:

- 1. Prepare and complete all sections of the ~~official~~ current OHR grievance form.
- 2. Deliver the grievance to the appointing authority or an HR representative of the employee's department or agency designee within ~~fifteen (15)~~ fourteen (14) calendar days after notification of the action or inaction which gives rise to the grievance. If the grievance is mailed or e-mailed, it must be received within the ~~fifteen (15)~~ fourteen (14) calendar days.
- 3. Employees must use their own personal time when preparing grievances unless they are granted permission by their supervisors to use paid work time.

C. Responding to Grievance:

~~The department or agency shall consider the grievance and within fifteen (15) days following receipt of the grievance provide the employee a dated, written notice of a decision. The written decision shall contain a certificate of mailing, e-mailing or certificate of hand delivery which indicates the date the decision was mailed or hand delivered sent or~~ delivered to the employee.

D. Computation of Time:

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

1. The date of notification of the action or inaction shall be the date the employee knew or should have known of the action or inaction.
2. The period of time for filing the grievance starts on the day following the date of notice of the action or inaction.
3. The date for responding to a grievance starts on the day following receipt of the grievance.
4. If the final date for filing or responding to a grievance falls on a day the OHR is not open for business, the final date shall be the next working day (~~Revised November 22, 2013; Rule Revision Memo 6D~~).
5. The grievance filing or response period ends at 5:00 p.m. on the final date.

E. Failure to implement remedy granted in a grievance response:

~~E. Filing with Career Service Hearing Office:~~

- ~~1. Only grievances in conformance with and processed pursuant to the requirements of this Rule 18 may be appealed. Notwithstanding other provisions in these rules, written reprimands and PEPR ratings of "Below expectations" or higher may not be appealed (Revised January 1, 2011; Rule Revision Memo 51C).~~
- ~~2. If the department or agency has not responded within fifteen (15) calendar days of the delivery of the grievance, and the employee wants to pursue the action/inaction giving rise to the grievance further, the employee may appeal within fifteen (15) calendar days to the Career Service Hearing Officer ("Hearing Officer") in accordance with the provisions of Rule 19 **APPEALS**.~~
3. If **a remedy is granted in the grievance response, and** the department or agency fails to implement **it** ~~a remedy awarded in the grievance response~~, the employee must notify the department or agency designee in writing of their intent to file an appeal within seven (7) calendar days following the date the employee knew or should have known of the department or agency's failure to implement the remedy. If the department/agency designee fails to implement the remedy within ~~fifteen (15)~~ **fourteen (14)** calendar days, the employee may appeal ~~within fifteen (15) calendar days~~ to the Hearing Officer in accordance with the provisions of Rule 19 **APPEALS**.
- ~~4. If a grievance negatively impacts an employee's pay, benefits or status and is not resolved to the satisfaction of the employee, the employee may appeal within fifteen (15) calendar days to the Hearing Officer in accordance with the provisions of Rule 19 **APPEALS**.~~

18-31 Grievances of Alleged Discrimination, Harassment, Retaliation, or Violence in the Workplace

Allegations of discrimination, harassment, retaliation, or violence in the workplace, when the underlying action is not subject to a direct appeal, shall be handled through the grievance procedure, except as modified below.

A. Deadlines: The deadlines for filing a grievance and responding to such a grievance shall not apply when the grievance alleges discrimination, harassment, retaliation, or violence in the workplace.

B. ~~15-103~~ Action of Individual Experiencing Unlawful Harassment

1. Individuals Employees who experience unlawful harassment, retaliation, or violence in the workplace, in violation of these rules, are urged to:

a A. Make it clear that such behavior is offensive to them and request that such behavior be discontinued; and

b B. File a grievance with the employee's appointing authority or HR representative. Report such conduct to their supervisor so that the agency may investigate and resolve the problem. If the complaint involves an employee's supervisor or someone in the direct line of supervision, or if the employee for any reason is uncomfortable in dealing with his or her immediate supervisor, the employee may go to another supervisor, to his or her agency human resource representative or directly to the OHR Employee Relations Section.

~~15-104~~ Section 18-40 Investigation
(Revised June 25, 2013; Rule Revision Memo 5D)

A. The agency (or the entity or individual designated by the agency) OHR will conduct a timely investigation, as appropriate, concerning any allegations of harassment, ~~or~~ discrimination, or violence in the workplace, in violation of these rules.

B. Employees subject to an investigation under this Rule 18 regarding misconduct shall be provided with a Garrity Advisement when there is potential criminal wrongdoing. The Garrity Advisement will be administered by the investigator. A Garrity Advisement advises an employee:

1. The purpose of the questioning is to obtain information which will be used to determine whether disciplinary action is warranted;

2. The purpose of the questioning is not to initiate criminal proceedings;

3. *In the event the employee discloses information which indicates he or she may be guilty of criminal conduct, neither the self-incriminating statements, nor the fruits thereof, will be used against him or her in any criminal proceeding;*
 4. *The employee must answer each question or face dismissal; and*
 5. *The employee has the right to resign immediately instead of being questioned.*
- C. *Evidence gathered through the investigation can only be used in a civil proceeding, even if the Garrity Advisement was not administered.*
- D. *The determination of the investigation regarding the alleged harassment, discrimination, or violence in the workplace, will be communicated to the complaining employee as soon as practicable.*
- E. *The agency* and will take action, as deemed appropriate, based on the outcome of the investigation. ~~The determination of the investigation regarding the alleged harassment or discrimination will be communicated to the complaining employee as soon as practicable.~~

~~15-105 Action~~

~~If it is determined that unlawful harassment or discrimination has occurred, the agency will take effective remedial action commensurate with the severity of the offense. Appropriate action will be taken to deter any future harassment.~~