

MEMORANDUM

REVISION 18 SERIES D

TO: Holders of Career Service Rule Books

FROM: Career Service Board

DATE: February 12, 2016

SUBJECT: Revision of Career Service Rules 15 **CODE OF CONDUCT**, 16 **DISCIPLINE AND DISMISSAL**, and 18 **DISPUTE RESOLUTION**

The Career Service Rules review project continues to make progress. The project will modernize our rules for a more progressive city, update them for the changes we've made in the city in recent years, remove duplication and redundancies, and consolidate rules wherever possible. The following information provides an update on the most recent rules changes. The following changes and revisions to Rules 15, 16 and 18 were approved by the Career Service Board on February 4, 2016:

Career Service Rule 15 **CODE OF CONDUCT**
Career Service Rule 16 **DISCIPLINE AND DISMISSAL**
Career Service Rule 18 **DISPUTE RESOLUTION**

In summary, Rule 15 was eliminated because it did not merit a standalone rule. Portions of the rule were combined with Rule 16 and Rule 18, and both of these rules were reorganized for better flow and clarity. By combining the rules we are able to create more efficiencies and modernize the language about discipline and the disciplinary process. The combination also creates more clarity around what conduct is expected of employees and makes it easier to calculate the timing for dispute filings and resolutions.

Following is a summary of the rule changes, the intention and impact. Also included are new rule pages to replace outdated information along with insertion instructions for Career Service Rule Books.

Please refer to the following tables for information on the former rule description, the revised rule description and the intended impact of the revisions for Rules 16 and 18.

Rule 16 CODE OF CONDUCT AND DISMISSAL		
CURRENT RULE	REVISED RULE	REVISION INTENTION & IMPACT
Most filing and service deadlines are 15 days.	Changes filing and service deadlines so that they are in seven day increments. Rule 16-48 Rule 18-20 B Rule 18-30	New deadlines make it easier to calculate when documents are due.
Employees have the right to bring representatives to every meeting with management, including staff meetings.	Right to representation at meetings with management limited to specified meetings which have the possibility to result in discipline or termination. Rule 16-27 D	Reduces potential disruption from the current employee right to demand representation at any meeting with management regardless of whether representation is needed.
No current rule.	Adds new rule banning the use of recording devices in the workplace without management consent. Rule 16-28	This is meant to address complaints about employees recording conversations and events without approval.
Employees who receive a failing rating on annual performance evaluation cannot be dismissed without long, drawn out progressive discipline process.	Allows agencies to dismiss employees who receive a failing PEPR and who fail to satisfactorily complete the requirements of a subsequent PIP. Rule 16-29 G.2	Agency is not forced to go through all the steps of progressive discipline if an employee is unable to correct performance within a reasonable time.
No current rule.	Adds new ground of discipline for refusal to cooperate in an investigation. Rule 16-29 S	This addition is intended to clarify employee responsibility to cooperate in an investigation.
Verbal reprimand is currently the first step in progressive discipline.	Verbal reprimand eliminated as a form of progressive discipline – management encouraged to document counseling and coaching sessions. Rule 16-42 B & C	It was too easy to confuse verbal and written reprimands, when the verbal reprimand was merely intended to document coaching and counseling. This brings the initial step in correcting behavior back to where it should be.

Involuntary temporary reduction in pay: Maximum reduction – 4.55% Minimum period – 7 pay periods	Changed to: Maximum reduction - 15% Minimum period - 1 pay period Rule 16-44	This change allows the impact of a temporary reduction in pay to be comparable to suspension.
Notices sent by e-mail not permitted.	Allows required notices to be sent by e-mail, if requested by employee. Rule 16-10 A	Utilize technology for efficiency.

Rule 18 DISPUTE RESOLUTION		
FORMER RULE	REVISED RULE	REVISION INTENTION & IMPACT
Grievances and complaints were covered by separate rules and processes.	Combines grievances and complaints so that complaints are now a type of grievance with special rules about filing deadlines and appeals. Rule 18-31	Grievances (and complaints) are ways of addressing workplace disputes with management. Having two separate processes resulted in employees filing a grievance as well as a complaint over the same issues because they were sometimes confused as to which form to complete - and completed the incorrect form. Combining them will create a timely response when trying to resolve the dispute.
No current rule.	Adds language about Garrity advisements for employees being interviewed in an investigation. Rule 18-40 B	Makes it clear about employee obligations to testify in investigations that could result in criminal charges.

The following summary provides additional modifications that have less significant impact and are being proposed to simplify and streamline the rules.

Rule 16 CODE OF CONDUCT AND DISCIPLINE

CODE OF CONDUCT

- Explains how time periods for notices are measured (**see Rule 16-10 B**).
- 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**).

DISCIPLINE

- 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 C**).
- 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 D**).
- Terminology change – pre-disciplinary meeting changed to contemplation of discipline meeting (**see Rule 16-46**).

Rule 18 DISPUTE RESOLUTION

- Moves definitions at beginning of Rule 18 to sections of the rule they relate to.
- Explains what constitutes conclusion of mediation (**see Rule 18-20 C**).
- Provides that contemplation of discipline and disqualification meetings and notices cannot be the basis of grievances (**see Rule 18-30 A.5**)

	<u>Page Number</u>	<u>Issuance Dates</u>
Remove:	1-6 2-2 10-13, 15, 20, 22 13-3, 13-6 14-3	November 18, 2015 September 25, 2015 January 7, 2013 January 13, 2016 November 18, 2015
Remove entire Rule 15	15-1 through 15-9 15-10	January 7, 2013 June 25, 2013
Remove entire Rule 16	15-11, 15-12 16-1 through 16-7 16-8	January 7, 2013 January 7, 2013 November 22, 2013
Remove entire Rule 18	16-9 18-1 18-2 18-3 18-4 18-5 19-2 19-3	November 18, 2015 January 7, 2013 May 19, 2014 January 7, 2013 November 22, 2013 January 7, 2013 January 7, 2013 November 22, 2013
Replace with:	1-6 2-2 10-13, 15, 20, 22 13-3,13-6 14-3	February 12, 2016
Replace with entire Rule 16	16-1 through 16-15	
Replace with entire Rule 18	18-1 through 18-5 19-2, 19-3	

PLEASE INSERT IN YOUR RULE BOOK AS SOON AS POSSIBLE. THANK YOU.

Re-instatement List:

Employees shall be placed on the re-instatement list for the classification they have been laid off from, demoted in lieu of lay-off from, or have voluntarily resigned or voluntarily demoted in lieu of lay-off from. The re-instatement list shall only be used within the Lay-off Unit the employee was in when the lay-off took place (Effective May 4, 2007; Rule Revision Memo 18C).

Serious health condition:

An illness, injury, impairment or physical or mental condition, which involves inpatient care in a hospital, hospice or residential medical care facility or continuing treatment by a health care provider (Effective February 8, 2005; Rule Revision Memo 257B).

Staggered work schedule:

The assignment of differing reporting times to individual employees (Effective November 14, 1978; Rule Revision Memo 104A).

Workmen's compensation:

Benefits received by an employee who is injured while carrying out his work assignment as determined by the Workmen's Compensation Act of Colorado (Effective May 16, 1956; Rule Revision Memo 16A).

5. 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 16 **CODE OF CONDUCT AND DISCIPLINE**);
6. 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**);
7. For grievance procedures (Rule 18 **DISPUTE RESOLUTION**); and
8. For appeals from actions of appointing authorities (Rule 19 **APPEALS**). (Revised February 12, 2016; Rule Revision Memo 18D)

C. Duties of the Co-Chairpersons:

1. One of the Co-Chairpersons shall preside at all meetings of the Board and each Co-Chairperson shall perform such other duties as may be assigned or delegated by the Board, but shall have no authority to act on behalf of the Board or in its name in any respect whatever except by special authorization of the Board. Such authorization shall be entered in the minutes of the Board meeting where such authorization was given.
2. The Co-Chairpersons may vote on all questions before the Board.
3. The Board shall designate, at its discretion, which Co-Chairperson shall have primary responsibility for presiding at Board meetings. In the absence of the Co-Chairperson assigned to preside, the other Co-Chairperson shall preside.
4. If neither Co-Chairperson is present, the remaining members of the Board shall designate a Chairperson pro tem.

D. Minutes and Record-Keeping:

1. The minutes of all meetings of the Board, and all correspondence, documents and files relating to the business of the Board shall be kept in accordance with applicable state and local records retention requirements.
2. The OHR Executive Director shall be the official custodian of all such correspondence, documents and files.

E. Appointments:

The Board is responsible for appointing and overseeing the OHR Executive Director, Hearing Officers, and other appointees as allowed by the City Charter and Denver Revised Municipal Code.

3. A Career Service employee may donate PTO or sick leave to a non-Career Service City employee provided that the recipient employee's department or agency and any applicable collective bargaining agreement allow employees to receive donations of leave from Career Service employees and provided that the applicable donor requirements have been met.
4. A Career Service employee may donate PTO or sick leave to, or receive donated sick leave from, an employee covered by the Undersheriff pay schedule to the extent permitted by the applicable collective bargaining agreement and provided that the donor and recipient requirements applicable to the non-Undersheriff employee have been met.

B. Recipient requirements:

1. Before an employee can receive donated leave, the employee (or the employee's representative) must provide notice to the Department of Finance that the employee anticipates a need for donated leave. Such notice shall estimate how much donated leave the employee expects to use in the current calendar year. Should the employee need more donated leave beyond the original estimate, the employee shall provide notice of this to the Department of Finance before the employee can receive additional donations.
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;
 - i. Be receiving disability leave, or temporary disability benefits under the provisions of the Workers' Compensation Act. In either of these situations, the employee may only use donated leave to make up the difference between the employee's base salary, and the total of other paid leave received and the temporary disability benefits the employee is receiving;
 - ii. Be receiving FMLA leave;
 - iii. Be receiving ADA leave (Revised December 20, 2012; Rule Revision Memo 65C); or
 - iv. Have received written notice of a contemplation of 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. (Revised February 12, 2016; Rule Revision Memo 18D)

or

10-46 Effect of Separation on Leave Accrual
(Revised February 12, 2016; Rule Revision Memo 18D)

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** describe this date for dismissals and other types of separations.

SUMMARY OF THE PAID TIME OFF AND SICK AND VACATION ORDINANCES - continued
2. Re-instated employees
Employees who were laid off while receiving paid sick and vacation leave benefits, and are re-instated under the Career Service Rules after December 31, 2009, will be enrolled in the PTO plan unless they elect in writing to continue to receive sick and vacation leave. Such election must be made within thirty (30) days of the effective date of the re-instatement.
Source: D.R.M.C. §18-123 (c)
THIS SUMMARY IS PROVIDED FOR INFORMATIONAL PURPOSES AND IS NOT CONSIDERED A PART OF THE RULES.

10-47 Effect of Re-instatement and Re-employment on PTO and Sick Leave Balance

An employee who is re-instated after a lay-off shall have sick leave that he or she was not paid for at the time of separation restored as follows:

- A. Employees who are enrolled in the PTO plan upon re-instatement may be able to convert sick leave that was lost at the time of lay-off to the special PTO bank. The amount that may be converted is based on the employee's accumulated sick leave at the time of separation. Up to one-half of this amount may be converted to the special PTO bank;
 - 1. So long as the amount converted does not exceed four hundred (400) hours; and
 - 2. After the sick leave the employee was paid for at the time of separation is deducted from this amount.
- B. Employees who elect to receive sick and vacation leave after re-instatement shall have all sick leave that he or she was not paid for at the time of separation restored to the employee's sick leave bank.
- C. An employee who is re-employed while his or her name is on a re-instatement list shall also be entitled to restoration of eligible sick leave under the terms of this subsection.

10-63 Court Leave

- A. An employee shall be granted paid court leave during time the employee is regularly scheduled to work, if the employee is:
 - 1. Required to serve as a juror in a court of law;
 - 2. Subpoenaed to testify in court of law or administrative proceeding concerning matters arising out of the course of his or her employment; or
 - 3. Requested to serve as a witness in a court of law or administrative proceeding by his or her appointing authority or other authorized person to represent the City's interest in the legal proceedings.
- B. Court leave is intended only to apply to those time periods when the employee is needed for court service and for reasonable travel time between court and work.
- C. In order to receive court leave, an employee who is called for jury duty or to serve as a witness shall present the original summons or subpoena from the court to his or her supervisor and, at the conclusion of such duty, a signed statement from the Clerk of the Court or other evidence showing the actual time of attendance at court.
- D. Fees received for jury service in a Federal, State, or Municipal court shall be in addition to, and irrespective of, an employee's regular salary.

10-64 Investigatory Leave

(Revised February 12, 2016; Rule Revision Memo 18D)

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**. 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:
1. To present grievances or appeals to an official of the City or to represent an employee presenting a grievance or an appeal. However, if flexibility exists as to the exact date and time, the leave shall be granted at the convenience of the appointing authority;
 2. To participate in the Career Service Mediation Program. Administrative leave shall be granted to employees who participate in mediation either as a party or as the mediator and to an employee who attends mediator training; or
 3. To represent another City employee at meetings with that employee's supervisor or manager, as set forth in Rule 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. (Revised February 12, 2016; Rule Revision Memo 18D)
- B. Appointing authorities may grant paid administrative leave for the following purposes:
1. To compete for positions in the Career Service, including all related interviews and examinations;
 2. To reward exemplary performance, such as Employee of the Quarter, Employee of the Year, or if the appointing authority wishes to recognize an employee's outstanding contribution to the agency. The appointing authority may grant, and an employee may use up to twenty (20) hours of administrative leave per calendar year for exemplary performance; or
 3. When the appointing authority deems there is a business necessity, for a maximum of ten (10) calendar days per calendar year. The appointing authority may request an extension of up to twenty (20) calendar days from the OHR Executive Director. The OHR Executive Director may approve the request for an extension for good cause shown.

Granting or failing to grant administrative leave under this paragraph B shall not be subject to grievance or appeal.

10-68 Occasional Time Off

Exempt employees may be allowed paid occasional time off to attend to personal affairs, at the discretion of the appointing authority.

Section 13-30 PEP Process

13-31 Performance Ratings

- A. An eligible employee's overall performance shall be rated in an employee's PEPR as one of the following:
1. Failing: Work does not meet expectations in most, if not all, areas.
 2. Below expectations: Meets many, but not all job requirements. Outcomes are generally less than expected, with improvement required in one or more specific areas.
 3. Successful: Consistently achieved performance standards.
 4. Exceeds expectations: Consistently performs well above expected job requirements. Outcomes frequently surpass expectations.
 5. Outstanding: Consistently delivers outcomes not often achieved by others; always exceeds standards.
- 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 16 **CODE OF CONDUCT AND DISCIPLINE**. (Revised February 12, 2016; Rule Revision Memo 18D)
 2. The employee shall be provided with a PIP no later than ten (10) calendar days after the date the PEPR is reviewed with the employee.

13-32 Merit Increases and Merit Payments

(Revised January 1, 2016; Rule Revision Memo 17D)

- A. The funding for merit increases and merit payments is provided in the annual appropriation ordinance. The pay increase associated with a particular performance rating shall be reviewed annually and adjusted as necessary to reflect prevailing practices in the community. The award of merit increases and merit payments is contingent upon this annual appropriation being approved by City Council and the Mayor. In case of a conflict between ordinance and these rules, the ordinance will prevail.
- B. Departments and agencies are responsible for determining the percentage increase associated with each employee rating within each quartile. The percent increase for all eligible employees shall average 3.1% for merit increases and merit payments delivered in 2016.

- 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**. (Revised February 12, 2016; Rule Revision Memo 18D)

13-36 Review of PEPR with Employee

Each employee's PEPR shall be reviewed with the employee as provided in the schedule attached as Appendix A.

13-37 Official Records

The PEPR and any supporting documentation shall be made a permanent part of the employee's official personnel record.

13-38 Discipline

The PEP plan, PEPR, and/or PIP(s) may be used as a basis for disciplinary action under Rule 16 **CODE OF CONDUCT AND DISCIPLINE**, up to and including dismissal, if an employee's performance fails to comport with the standards set forth in any of these documents. (Revised February 12, 2016; Rule Revision Memo 18D)

13-39 Grievances and Appeals Relating to PEPRs

- A. An eligible employee may grieve any performance rating pursuant to Rule 18 **DISPUTE RESOLUTION**.
- B. An eligible employee may appeal a grievance of a "Failing" rating in accordance with Rule 19 **APPEALS**. Appeals of grievances of other ratings are not permitted.
- C. An eligible employee may not grieve or appeal any other aspect of the PEP.

B. Licensure, certification and other legal requirements:

1. When laws require a license, certification, or other authorization by a federal, state or local governmental entity to perform the essential functions of a position and the employee does not have the required authorization.
2. An employee shall be relieved immediately of any duties requiring a license, certification, or other legal authorization if the employee lacks such license, certification, or other legal authorization. If the license, certification, or other legal authorization is required to perform the essential functions of the position, the employee shall be immediately placed on unpaid leave, unless the employee elects to substitute available paid leave for the unpaid leave. The employee's pay or classification shall not otherwise be affected prior to the completion of the disqualification proceedings.

14-22 Procedure

(Revised February 12, 2016; Rule Revision Memo 18D)

- A. The appointing authority shall follow the procedures for contemplation of discipline 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 disqualification letter. Substantial amendments or additions are permitted only by repeating the contemplation of disqualification notice and meeting procedure. The final notice shall also contain a notice that the employee may appeal the disqualification.
- C. The appointing authority shall give the employee written notice of disqualification on or before the employee's last day as a City employee.

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)

- A. An employee holding on-call, paid trainee or paid intern, or employment probationary status may be separated at any time in accordance with Rule 5 **APPOINTMENTS AND STATUS**. Such separation may only be appealed on the grounds of alleged discrimination or when the employee has alleged a violation of the City's "Whistleblower Protection" ordinance, in accordance with Rule 19 **APPEALS**.
- B. The employee shall be given written notice of separation on or before the employee's last day as a City employee.
- C. Employees holding on-call, paid trainee or paid intern, or employment probationary status may also be dismissed as provided in Rule 16 **CODE OF CONDUCT AND DISCIPLINE**. (Revised February 12, 2016; Rule Revision Memo 18D)

**RULE 16
CODE OF CONDUCT
AND DISCIPLINE**

(Revised February 12, 2016; Rule Revision Memo 18D)

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; by first class U.S. mail, with a certificate of mailing to the employee's last known address; or by e-mail if the employee requests service by e-mail in writing.

- 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 in writing 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, race, or 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 guilty or nolo contendere on, or are convicted of any felony, 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 Organizations and Representation

- A. Career Service employees shall have the right to join or refrain from joining any organization of employees. No employee or applicant may be discriminated 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 **PAY FOR PERFORMANCE**.

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 each have a representative present while being interviewed during an investigation conducted pursuant to Rule 18 **DISPUTE RESOLUTION**. However, the representative may not answer interview questions on behalf of the interviewee unless requested to do so by the interviewer.

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, a contemplation of disqualification meeting, a 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. Any 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 record audio or video during work hours, when on City premises, when speaking to a City employee by phone, or when on City business without the prior permission of 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 (or PIPs), 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 first being required to resort to progressive discipline.
- 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 working 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 guilty or 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 relevant to the investigation.
- T. Conduct which is or could foreseeably:
 - 1. Be prejudicial to the good order and effectiveness of the department or agency;
 - 2. Bring disrepute on or compromises the integrity of the City; or
 - 3. Be unbecoming of 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 these 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 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 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 period; or
- D. For more than thirteen (13) pay periods; or
- E. Below the 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. 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, or dismissal in accordance with Rule 19 **APPEALS**.

RULE 18
DISPUTE RESOLUTION

(Revised February 12, 2016; Rule Revision Memo 18D)

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 regarding discrimination, harassment, retaliation, or violence in the workplace, or 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;
5. A contemplation of discipline or disqualification notice or meeting; or
6. 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 twenty-one (21) 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 twenty-one (21) 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 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.

2. Employees who experience discrimination, harassment, retaliation or violence in the workplace, in violation of these rules, by someone in the employee's chain of command, are urged to:
 - a. Address the matter with a supervisor or manager in the employee's chain of command; or
 - 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.

2. Grievances: An employee may file an appeal following a formal grievance only as described below:
- a. Only the following grievances can be appealed;
 - i. A grievance which alleges a violation of the Career Service Rules (“Rules”), the City Charter, ordinances relating to the Career Service, executive orders, or written agency policies which negatively impacted the employee’s pay, benefits or status, and has not been resolved to the satisfaction of the employee;
 - ii. A grievance of a Performance Enhancement Program Report (“PEPR”) with an overall rating of “Failing”. 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 or without rational basis or foundation.
 - iii. A grievance of alleged discrimination, harassment, retaliation, or violence in the workplace that is not subject to a direct appeal, may be appealed if:
 - A formal grievance was filed in accordance with Rule 18 **DISPUTE RESOLUTION**, and
 - The action taken by the department or agency as a result of the investigation (if any) did not result in stopping or otherwise addressing the alleged discrimination, harassment, retaliation, or violence in the workplace.
 - iv. 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. A grievance in which the agency/department failed to respond according to Rule 18 **DISPUTE RESOLUTION**.
 - b. The grievance must be in conformance with and processed pursuant to the requirements of Rule 18 **DISPUTE RESOLUTION**.
 - c. Notwithstanding the above provisions, written reprimands may not be appealed.

(Revised February 12, 2016; Rule Revision Memo 18D)

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

Section 19-20 Filing of Appeal

A. Time Limitation:

(Revised October 2, 2007; Rule Revision Memo 22C)

- 1. a. Appeals claiming violation of the City’s “Whistleblower Protection” ordinance shall be filed with the Hearing Office within thirty (30) calendar days of the alleged retaliatory adverse employment action.
- b. All other appeals shall be filed with the Hearing Office within fifteen (15) calendar days after the date of notice of the action being appealed.
- 2. The computation of the period of time for filing an appeal shall be as follows (all time periods are calendar days):
 - a. The date of notice of the action shall be the date on the certificate of hand-delivery if hand-delivered to the appellant or the date on the certificate of mailing of the notice if sent by U.S. mail or interoffice mail.
 - b. The period of time for filing the appeal starts on the day following the date of:
 - i. The alleged retaliatory adverse employment action in the case of an appeal brought under the “Whistleblower Protection” ordinance; or
 - ii. The notice of the action or date of inaction in all other cases.
 - c. If the final date of the appeal period falls on a day the Hearing Office is not open for business, the final date for appeal shall be the next working day (Revised November 22, 2013; Rule Revision Memo 6D).