

Chapter 8 Dispute Resolution

Authority for rules promulgated in this chapter is found in §§ 24-50-103, 104, 104.5, 123, 125, 125.3, 125.4, 125.5, 131, 24-50.5-101 to 107, 24-50-112.5, 24-4-105 and 106, 24-11-110, and 24-34-402, C.R.S. Board rules are identified by cites beginning with "Board Rule".

General Principles

Board Rule 8-1. Disputes should be resolved at the lowest level and as informally as possible. Fair and unbiased resolutions should be reached as quickly as possible. As such, parties are encouraged to use alternative dispute resolution methods, including those provided in this chapter, in an attempt to reach early solutions.

Board Rule 8-2. ~~Appeals may be dismissed if the employee, applicant, or department does not keep the Board informed of the proper email address or mailing address, fails to appear for a hearing either personally or through counsel, or if the appeal does not meet the requirements of these rules. (12/1/09)~~

~~Parties who are outside of a state department or the State Personnel System may file their written complaint directly with the department giving rise to the complaint. (1/14/18)~~

Board Rule 8-3. ~~Any person may file a complaint concerning a state employee's action. If the complaining party is an employee has a complaint about another employee in the same department, the complaint should be made through the grievance process. In the same department, the grievance procedure adopted by the department, or if none, as provided in this chapter, is to be used. If the complaining person is outside the department or the state personnel system, the person shall file a written complaint with the employee's appointing authority within a reasonable time period. The appointing authority will review a complaint and take the appropriate action, if any. (1/14/18)~~

~~A. If the dispute alleges a whistleblower claim or discrimination, the party should refer to the "Investigation of Retaliation for Disclosure of Information (Whistleblower Claims)" or "Allegations of Discrimination" sections of this chapter. (1/14/18)~~

Notice Of Appeal Rights—~~Corrective Or Disciplinary Actions~~

Board Rule 8-4. Affected persons shall be informed, in writing, of any rights to dispute a final agency decision on a grievance or an action that adversely impacts pay, status, tenure, or a performance rating and award. Such a notice must include the time limit to exercise such rights, the official and address to whom the dispute should be directed, the requirement that the dispute must be in writing, and the availability of any standard appeal form. ~~If the dispute alleges a whistle blower claim or discrimination, refer to the "Investigation Of Retaliation For Disclosure Of Information (Whistleblower Claims)" or "Allegations of Discrimination" sections of this chapter. (7/1/13) (1/14/18)~~

Board's Dispute Resolution Processes

Grievance Procedures

Board Rule 8-5. A permanent employee may grieve matters that are not subject to appeal or review by the Board or Director. Issues pertaining to leave sharing, discretionary pay differentials, granting or removal of in-range salary movements, or the performance management system that do not result in corrective or disciplinary action are not subject to grievance or appeal. (7/1/13)

Board Rule 8-6. Once a final written grievance decision is rendered by the highest level of relief in a department, an employee may petition the Board for discretionary review pursuant to the discretionary Board hearing section of this chapter.

Board Rule 8-7. If the complaining employee is no longer employed under the state personnel system, any grievance in process at the department level is considered concluded.

- A. If the complaining employee is separated from employment and does not appeal that separation to the Board, any grievance in progress at the department or Board level is considered concluded.
- B. If an employee is restored to a position following involuntary separation, by Board order, settlement or reemployment, the employee may reinstate, within 10 calendar days, any unrelated grievance pending at the time of separation. (7/1/13)

Grievance Process

Board Rule 8-8. The grievance process is designed to address and resolve problems, not to be an adversarial process. Each department may establish a grievance process but such process shall include the following elements. All established grievance processes must be made available to employees. (7/1/13)

A. The State of Colorado has a two-step grievance process, as follows:

1. Step One: To initiate the grievance process, the employee shall notify the supervisor and/or second level supervisor, as provided in the department's grievance process. The employee must initiate the grievance process within 10 days of the action or occurrence being grieved, or within 10 days after the employee had knowledge of or reasonably should have had knowledge of the action or occurrence. An informal discussion will be held to attempt to resolve the grievance. The employee shall be informed in writing of the decision within 7 days after the discussion. If a timely decision is not issued, the employee ~~may proceed to the next stage of the process~~ must initiate the formal grievance process no later than 12 days after the informal discussion. The decision reached at Step One of the grievance process shall be binding on the parties, unless the employee elects to proceed to Step Two of the grievance process. (1/14/18)

2. Step Two:

~~2.~~

- a) -The employee has 5 days after receipt of the informal decision to initiate the formal grievance process. The formal grievance must be in writing and submitted to the employee's appointing authority. Only the issues set forth in the written grievance shall be considered thereafter.
- a)
- b) -The appointing authority will issue the final department response to the grievance. The appointing authority may appoint an objective person or panel to make recommendations, or may delegate the decision. If the grievance concerns the actions of the appointing authority the department may, but is not required to, provide a process by which a different individual issues the final department response.
- b)
- c) The process is deemed completed upon issuance of a final department decision, which must be in writing and issued within 30 days of the initiation of the Step Two formal written grievance process. The final written grievance decision must notify the employee of the right to appeal the final decision, including the time frame for such an appeal, and the Board address and telephone and fax number for filing the appeal. (7/1/13), (1/14/18)

~~B. An employee must initiate the grievance process within 10 days of the action or occurrence being grieved; or within 10 days after the employee has knowledge of, or reasonably should have knowledge of, the action or occurrence. (7/1/13)~~

~~B. Appeal to the Board of final department decision:~~

~~C. Appeal to the Board of final department decision:~~

~~a.1. The final decision is binding unless the employee pursues the grievance with the Board. The Board may grant a petition for hearing only when it appears that the decision of the appointing authority has violated an employee's rights under federal or state constitution, the Colorado Anti-Discrimination Act (CADA), the State Employee Protection Act ("Whistleblower") or the grievance procedure as adopted. (1/14/18)~~

~~1. If a final decision is not issued in a timely manner, the employee may pursue the grievance with the Board.~~

~~b. 2. The employee has 10 days to file a petition for hearing with the Board after receipt of the final department decision. If the 30-day deadline for a decision or any extension period has expired without a final decision, the employee has 10 days after such expiration to file a petition for hearing with the Board. or after expiration of 30 days of initiation of the written grievance process or any extension period granted by the Board. The original written grievance and the department's final decision shall be attached to the petition for hearing. A copy must be provided to the person who made the department's final decision. (7/1/13) (1/14/18)~~

~~C. Any of the time frames for completion of the grievance process may be waived or modified if agreed to by both parties, including deferral of action to allow the parties a chance to resolve the issue. (1/14/18)~~

~~A. Any of the time frames for completion of the grievance process may be waived or modified if agreed to by both parties, including deferral of action to allow the parties a chance to resolve the issue. (7/1/13)~~

~~D. An employee may be represented by any person of the employee's choice at Step Two or beyond of the grievance process. That person may participate and speak for the employee. However, the employee is expected to participate in the discussion during the grievance process. (7/1/13) (1/14/18)~~

Alternative Dispute Resolution (Informal problem-solving processes)

Mediation Prior to Appealing or Petitioning the Board

8-9. Upon mutual agreement of the parties, mediation may be used in an attempt to resolve disputes. Parties participating shall have authority to settle disputes at the time of mediation. (7/1/13)

8-10. A trained, unbiased facilitator, who assists the parties in clarifying and understanding their different points of view, identifying common ground, generating and evaluating alternatives, and reaching a mutually acceptable resolution, conducts mediation. The costs associated with the use of a mediator are to be borne equally by the parties, unless otherwise agreed to between the parties prior to the commencement of the mediation process. Departments may notify participants to a grievance that mediation is an available form of alternate dispute resolution. (7/1/13)

Board Rule 8-11. Mediation is considered a confidential process. Communication during mediation is not discoverable or admissible, except for information that is required to be reported under a specific law. Mediator notes are confidential and must be destroyed after mediation. The mediator cannot be contacted for information or called as a witness in other later proceedings. (7/1/13)

Settlement

Board Rule 8-12. Subsequent to filing an appeal or petition for hearing under this chapter, any party may ask the Board ~~staff~~ to facilitate the settlement process and the Board will provide a facilitator, ~~which-who~~ may be an administrative law judge not assigned as the hearing judge for the matter. However, the parties must attempt to resolve an appeal before the hearing commences, which may include settlement or other form of alternative dispute resolution. If a party to an appeal makes such a request, the other party(ies) must appear at least once at a conference and attempt in good faith to settle the matter. If a party believes settlement is inappropriate, that party must file a motion stating the specific reasons why settlement is inappropriate. The administrative law judge assigned the case, upon good cause shown, may waive the requirement. An administrative law judge may require a settlement conference. (1/14/18)

Board Rule 8-13. The settlement process is private, confidential, and privileged unless the information disclosed is required to be reported under specific law.

Board Rule 8-14. Only the parties and their representatives shall participate in settlement proceedings, ~~which shall be closed to any other person. The settlement facilitator may permit a third party to attend the settlement conference if such attendance will facilitate the settlement proceedings. A respondent or complainant should provide at least a two business day notice if either party wishes to invite a third party to participate in the settlement conference.~~ (1/14/18)

Board Rule 8-15. All notes taken by the facilitator shall be kept in a separate file and are not accessible to the administrative law judge assigned to the appeal. At the end of the case, the files shall be destroyed. There will be no communication regarding the substance of the settlement negotiations between the facilitator and the administrative law judge hearing the appeal. (1/14/18)

Board Rule 8-16. The facilitator cannot be a witness in any proceeding on the subject matter. Communication between the parties at the settlement conference shall not be admissible at the hearing. However, this does not bar admission of evidence discovered by a party outside the settlement conference.

Board Rule 8-17. Any settlement agreement reached shall be reviewed by both parties prior to signature. Upon reaching a signed settlement agreement, the parties shall file a signed stipulated motion with the Board seeking dismissal of the case or action. ~~The Board's director or an~~ administrative law judge will promptly enter an order pursuant to the stipulated motion. ~~(7/1/13)~~ (1/14/18)

Board Rule 8-18. If the employee or the department contends the other party has not complied with the terms of the settlement agreement, the employee or the department may petition the Board for a hearing. ~~If the employee does not comply with the terms of the agreement, the action may be subject to the provisions in the "Performance" chapter.~~ (1/14/18)

A. If the employee is no longer employed by the department and either party contends the other has not complied with the terms of a settlement agreement, the employee or the department may seek review or enforcement of the Board's order entered pursuant to Board Rule 8-17 above, under the provisions of § 24-4-106, C.R.S. (1/1/07)

Petition for Declaratory Orders

Board Rule 8-19. Any person may petition the Board for a declaratory order to clarify the applicability of statute, Board rule or order to the petitioner.

A. Any petition for declaratory order must include: petitioner's name and address; whether petitioner is a state personnel system employee; the related statute or Board rule or order; and a concise factual statement of the issues involved. The Board may deny any petition that does not contain all of this information. (1/14/18)

- B. In determining whether to issue a declaratory order, the Board may consider factors including, but not limited to, whether a declaratory order will terminate the uncertainty or controversy giving rise to the petition; whether the petitioner has another remedy or avenue for review of the controversy; whether there is another case or investigation pending before the Board, a court, or another department involving the controversy; and whether the issue is ripe for review.
- C. The Board may grant the petition for declaratory order and order that the matter be set for hearing, order briefing on the issues presented in the petition, or deny or dismiss the petition. The Board will notify the petitioner of its decision.
- D. Any action or order of the Board is subject to judicial review.

Investigation ~~Of Of~~ Retaliation For Disclosure Of Information (Whistleblower Claims)

Board Rule 8-20. An employee who seeks to have an allegation of retaliation for disclosure of information reviewed by the Board must file a complaint with the Board in accordance with ~~§ 24-50.5-104~~ 24-50.5-104, C.R.S., ~~et seq.~~ (“Whistleblower Act”). The employee must file the complaint with the Board within 10 days after the employee knew or should have known of a disciplinary action that allegedly violates the Whistleblower Act. (1/14/18)

Board Rule 8-21. The Board will send a copy of the complaint to the department for an initial response. The response must be filed within 45 days after the date the complaint was filed with the Board. (1/1/07)

Board Rule 8-22. The Board will notify the employee of the notice requirements of the Governmental Immunity Act, § 24-10-101, C.R.S., et seq.

Board Rule 8-23. If an appeal is also filed asserting a constitutional or statutory right to a hearing, and the appeal and complaint relate to the same or closely related facts, they may be consolidated for evidentiary hearing. Either party may request, or the administrative law judge may order, consolidation if it would be more efficient and would not unduly prejudice any party. The hearing shall be set to commence not later than 90 days from transmittal of the acknowledgement to the parties of the written response filed by the agency and may be continued once for 30 days only upon good cause shown and upon approval of the administrative law judge. (7/1/13)

Board Rule 8-24. If the employee does not have a constitutional or statutory right to a hearing, the case will be set for preliminary review pursuant to the discretionary Board hearing section of these rules. The matter shall be set for preliminary review upon transmittal of the agency’s written response. (7/1/13)

Allegations Of Discrimination

Board Rule 8-25. Pursuant to § 24-50-125.3, C.R.S., the Board has jurisdiction over claims of discrimination within the state personnel system. If an employee or applicant seeks to have an allegation of discrimination reviewed by the Board, that person must file a petition for hearing within 10 days of the alleged discriminatory action or receipt of any final written decision (including, but not limited to, grievance decisions, selection decisions, or performance pay system dispute resolution decisions). All such final written decisions must notify that employee or applicant of the right to appeal the final decision, including the time frame for such an appeal, and the Board’s address and telephone and facsimile numbers for filing the appeal. Except for appeals, the Board will defer action to allow the parties a chance to resolve the issue. ~~(1/1/07)~~—(1/14/18)

Board Rule 8-26. Upon receipt of an appeal or a petition for hearing on matters covered by the Colorado Anti-Discrimination Act, (CADA) § 24-34-402, C.R.S., the Board will refer the matter to the Colorado Civil Rights Division (CCRD) for investigation and issue a notice of referral. (1/14/18)

- A. If the allegation is against the CCRD, the Board shall appoint an independent third party to investigate and will inform CCRD.
- B. If the applicant or employee wants the CCRD to investigate the discrimination claim, the employee must file a discrimination charge with the CCRD within 20 days of the date of the certificate of mailing of the notice of referral. The employee is responsible for ensuring that a ~~must file a~~ verification of filing form has been provided to with the Board no more than 10 days after filing the CCRD charge, with a copy to the respondent. (7/1/13) (1/14/18)

Board Rule 8-27. Any time an appointing authority becomes aware of an allegation of discrimination based on disability, the matter must be referred to the department's ADA coordinator for investigation, no later than 7 days from the date of the allegation. This includes grievances and meetings to consider adverse action against the employee. Any time limits are suspended pending the investigation.

Board Rule 8-28. For claims asserted pursuant to § 24-34-402, C.R.S., an employee can waive the right to investigation and proceed to preliminary review or hearing any time prior to completion of the investigation. If no specific written charge is filed with the CCRD within 20 days of the date of the certificate of mailing of the referral order from the Board, or if the employee fails to file a verification form with the Board, the employee is deemed to have waived investigation and the matter will proceed to preliminary review or hearing. (1/01/15)

Board Rule 8-29. If the investigation is not completed within 270 days, absent granting a time extension, the Board will notify the parties and set the matter for preliminary review or hearing.

Board Rule 8-30. When the investigation is complete, a written opinion of probable cause or no probable cause will be prepared. The Board will electronically mail the opinion to the parties along with notice that if the complainant wishes to continue the claim of discrimination with the State Personnel Board, a written statement must be submitted to the Board within 10 days of the date of the Board's notification of the CCRD opinion.~~of their rights.~~ (1/14/18)

Board Rule 8-31. If the CCRD concludes that there is probable cause to believe that unlawful discrimination has occurred is found in the CCRD investigation, ~~the CCRD or third party investigator will send the opinion to the Board. The Board will electronically notify the parties of the CCRD opinion and advise of the right to appeal within 10 days of the date of the Board's notification. The Board may set the appeal for hearing or adopt the findings of the CCRD or third party. CCRD will attempt to conciliate. If conciliation succeeds, the results and any settlement agreement will be sent to the Board. The Board will notify the parties by mail. If attempts fail, CCRD will notify the Board in writing. The Board will notify the parties by mail, including informing them of the right to appeal within 10 days of the Board's notice. If a party appeals the probable cause finding, the issue of discrimination shall be set for hearing.~~ (1/14/18)

Board Rule 8-32. If the CCRD investigation concludes that there is no probable cause to believe that unlawful discrimination has occurred, ~~the no probable cause is found in the investigation,~~ CCRD or the independent third-party investigator will send the opinion to the Board, ~~who will notify the parties in writing by mail.~~ The Board will electronically mail the opinion to the parties and advise of the right to appeal within 10 days of the date of the Board's notification of the CCRD opinion. (1/14/18)

- A. The employee or applicant-complainant may appeal the no probable cause opinion within 10 days of receipt of the opinion by submitting a written statement to the State Personnel Board indicating that the complainant wishes to continue the claim of discrimination with

~~the Board.~~ -If the ~~employee complainant~~ fails to ~~file submit a an appeal or petition statement to the Board~~, the discrimination claim is considered abandoned and dismissed, and the matter will proceed without consideration of the issue of discrimination. (1/14/18)

Attorney Fees And Costs

Board Rule 8-33. Pursuant to § 24-50-125.5, C.R.S., attorney fees and costs may be assessed against an applicant, employee, or department, upon final resolution of a proceeding against a party if the Board finds that the personnel action from which the proceeding arose, or the appeal of such action was frivolous, in bad faith, malicious, was a means of harassment, or was otherwise groundless.

~~C.A.~~ _____ Frivolous means that no rational argument based on the evidence or law was presented;

~~D.B.~~ _____ In bad faith, malicious, or as a means of harassment means that it was pursued to annoy or harass, made to be abusive, stubbornly litigious, or disrespectful of the truth;

~~E.C.~~ _____ Groundless means despite having a valid legal theory, a party fails to offer or produce any competent evidence to support such an action or defense. (7/1/13)

Board Rule 8-34. Attorney fees may be assessed against an applicant, employee, department, or their respective counsel, for abuses of discovery procedures, prehearing procedures, or other proceedings before the Board or its administrative law judges as provided in the Colorado Rules of Civil Procedure (C.R.C.P.). (1/14/18)

- A. Any party seeking attorney fees under this rule shall file and serve a written motion for such fees no later than 10 days after the party knows or reasonably should have known of the alleged abuse giving rise to the request for fees. the conclusion of a proceeding, or For alleged abuse that arises during the course of a hearing, a party may make an oral motion for such fees during the course of a proceeding hearing. (1/14/18)
- B. Any response to a motion for attorney fees shall be filed within ~~ten (10)~~ days of the date of filing or making of the motion. (1/14/18)
- C. A person or party that may be affected by a motion for attorney fees may request a hearing. The administrative law judge may hold a hearing if it is determined, in his or her discretion, that a hearing would materially assist in ruling of the motion.

Board Appeal Process

Address

Board Rule 8-35. Appeals asserting claims or grounds within the Board's jurisdiction as authorized by the Colorado Constitution, statutes, or these rules must be submitted to the Board at the official address listed on the Board's website. ~~(7/1/13)~~(1/14/18)

Filing Deadlines

Board Rule 8-36. ~~Any a~~ Appeals or petitions for hearing are timely if ~~it is~~ received by the Board or postmarked within no later than 10 days after receipt of the written notice of the action. ~~Any appeal that is not timely will be denied except for the following.~~(1/14/18)

- A. If the 10th day falls on a weekend or legal official state holiday ~~(regular schedule)~~, the time period will be extended to the next regular business day. (1/14/18)

B. The Board may extend the period of time for filing for good cause as long as the request for an extension is received by the Board or postmarked within the 10-day appeal period. ~~The Board shall add up to three days to the date of notice if it was not sent by certified mail, hand-delivered, or filed by facsimile transmission; however, the 10-day period begins to run from the actual date of receipt. (1/14/18)~~

C. To be considered timely, all filings after the initial submission of the appeal form must be received by the Board no later than the deadline set by the Board or by Board Rule. (1/14/18)

D. Untimely appeals or petitions for hearing will be denied. (1/14/18)

Scope and Contents of Board Appeals

8-37. Claims (with no allegation of discrimination) based upon the selection and comparative analysis process, downward allocation of a position, disputes involving the performance pay system, matters involving the overall administration of the personnel system by a department, not otherwise subject to an appeal to the Board, and matters involving overtime, FMLA, removal of a name from an eligibility list, or rejection of an application shall be filed with the Director pursuant to the provisions of these rules governing "Director's Dispute Resolution Processes" in this chapter. (3/30/13)

Board Rule 8-38. The appeal must be in writing and copies provided concurrently to the Board and the affected department. Use of the standard ~~"Colorado State Personnel System "Consolidated Appeal/Dispute Form"~~ found on the Board's website is required. For good cause shown, the Board may waive this requirement provided the person filing the appeal ("complainant") sets forth such grounds at the time the appeal is submitted. (1/14/18)

A. The appeal or petition for hearing must clearly state the following in sufficient detail: ~~(1/01/15)(1/14/18)~~

1. Identification of the person filing the appeal ("complainant"), the complainant's address, telephone number, email address and whether the complainant is a certified employee or a probationary employee. The name, address, email address, and telephone number of the complainant and any representative. (7/1/13) (1/14/18)
2. The name, address, email address and telephone number of the complainant's legal representative if any. (1/14/18)
3. The department, agency, college or university ("respondent") whose action is being appealed or disputed. (1/14/18)
- 2.4. The specific action being appealed or disputed and reasons for the appeal or dispute, and a copy of the written notice. (1/14/18)
- 3.5. Notice of the action. The date the complainant was notified of received the notice of the action and a copy of the written notification if one was provided. (1/14/18)
4. ~~A short, specific statement giving the reason for the appeal.~~
6. The relief requested. (1/14/18)
7. Whether the complainant is a certified employee. The type of appeal or dispute being submitted for Board review, State Personnel Director's review or both. (1/14/18)
5. _____
6. The specific remedy sought.

~~B. Failure to provide a~~ copy of the appeal must be provided to the affected “respondent” department at the time it is filed with the State Personnel Board. Failure to do so may be grounds for denial or dismissal of the appeal. (1/14/18)

Board Rule 8-39. If the ~~notice of~~ appeal or petition for hearing does not contain sufficient or appropriate grounds for filing an appeal, the Board may dismiss the appeal with prejudice. ~~Employees-Complainants~~ are required to keep the Board informed of their current email address, postal mailing address and telephone number, and to attend any required ~~meetings-conferences~~ or hearings. If either party does not follow these procedures, the Board may take appropriate action, including dismissal with prejudice. ~~(1/01/15)~~(1/14/18)

Board Rule 8-40. ~~The determination of timeliness of any subsequent documents will be the date of receipt in the Board’s office.~~ Whenever a ~~person or~~ party files any documents with the Board, copies must be provided to the opposing party at the same time. (1/14/18)

Discretionary Board Hearings

Board Rule 8-41. The Board may conduct a preliminary review and use its discretion to grant a hearing for actions that do not adversely affect a certified employee’s current base pay, status, or tenure, and where the individual employee does not, otherwise, have a right to a hearing, appeal, or review by law or rule. (1/14/18)

- A. The Board may grant a petition for a discretionary hearing only when it appears that the decision of the appointing authority violates an employee’s rights under the federal or state constitution, the State Employee Protection Act (“Whistleblower”), the Colorado Anti-Discrimination Act (CADA), the grievance procedures as adopted, in matters such as a violation of federal or state constitutional rights, an adverse written decision from the highest level of a department’s grievance process, a decision from the State Personnel Director in a “Director’s Review process” involving the overall administration of the state personnel system (referred to later in this chapter), unlawful discrimination where there is no mandatory right to a hearing, including discrimination in the selection and comparative analysis process, and reversion of a trial service employee for unsatisfactory performance. ~~(7/1/13)~~(1/14/18)
- B. The Board cannot grant a hearing to a probationary employees who appeals discipline for unsatisfactory performance unless the employee alleges unlawful discrimination or other statutory or constitutional violation. ~~(3/30/13)~~(1/14/18)

Board Rule 8-42. After the State Personnel Director’s final decision pursuant to § 24-50-112.5(4), C.R.S., any applicant directly affected by the comparative analysis process may file a written petition for discretionary review of the appointing authority’s decision with the Board. Such petition shall be filed within 10 days after the State Personnel Director’s final decision has been received by the applicant. The Board may only grant the petition when it appears that the appointing authority’s decision violates the comparative analysis standards set forth in § 24-50-112.5, C.R.S., in any other provision of law, or in any rules or procedures relating to the comparative analysis process. The Board shall review and summarily grant or deny a petition within one hundred twenty days of receipt of the petition. Any petition granted shall be determined in accordance with § 24-50-125.4, C.R.S. (3/30/13)

Board Rule 8-43. The written petition for hearing must be filed within 10 days after a complainant receives written notice of the action on which the petition is based, and must include a copy of the action. Contents of the petition must be the same as those required in an appeal as listed in the scope and contents of Board appeals section of this chapter. (7/1/13)

- A. Failure to provide a copy of the petition to the respondent at the same time it is filed with the Board may be grounds to deny the petition for a hearing.

Mandatory Disclosures

Board Rule 8-44. Within 15 days of the date of the certificate of mailing the notice of preliminary review, the parties shall provide to each other copies of all documents or information relied upon by that party in reaching, in the complainant's case, the decision to grieve the respondent's action(s) and to appeal the respondent's final agency decision, and, in the respondent's case, the final agency decision that constitutes the subject of the petition for hearing. If either party asserts a privilege regarding such documents or information, it shall specify the nature of the privilege and provide the other party a privilege log that describes each document by title, author, date, subject matter, and legal basis for preserving the privileged or confidential nature of the documents or information withheld. (7/1/13)

Information Sheets

Board Rule 8-45. Each party is required to file an information sheet which may be no longer than ~~ten~~ (10) pages single-spaced, excluding any exhibits or other attachments, and in no less than an 11 point font. For good cause, the Board may waive the 10-page limit requirement if a party makes a written request to the Board no later than ~~five~~ (5) days prior to the deadline for filing an information sheet and provides sufficient grounds to support the request. (1/14/18)

Information sheets for each party must clearly state the following information: (1/01/15)

A. Complainant

1. The facts complainant is prepared to prove, if a hearing is granted, that the respondent's actions were arbitrary, capricious, or contrary to rule or law;
2. Any legal argument or authority complainant relies upon to support his or her claims;
3. The names, addresses, and telephone numbers of all witnesses, and a brief description of the testimony of each such witness that would substantiate support complainant's allegations and claims; (1/14/18)
4. A list of exhibits that would substantiate support complainant's allegations and claims, with copies of such exhibits attached to the information sheet; (1/14/18) and
5. A description of the remedy or relief sought by complainant. (1/01/15)

B. Respondent

1. The response to the allegations and claims of complainant, including all facts respondent intends to prove if a hearing is granted that respondent's actions were not arbitrary, capricious, or contrary to rule or law;
 2. Any legal arguments or authority relied on by respondent;
 3. The names, addresses, and telephone numbers of all witnesses, and a brief description of testimony of each such witness that would substantiate support respondent's allegations and claims defenses; (1/14/18)
 4. A list of exhibits that would substantiate support respondent's allegations and claims defenses, with copies of such exhibits attached to the information sheet; (1/14/18) and
 5. The respondent's response to the remedy or relief sought by complainant. (1/01/15)
- ~~5.~~

- C. ~~Unless an investigation has been referred and is pending as provided in the allegation of discrimination section of this chapter, The~~ complainant shall file ~~his or her an~~ information sheet with the Board and serve a copy on the respondent within 25 days of the date on the certificate of mailing of the notice of preliminary review by from the Board. The respondent shall file its information sheet with the Board no more than 10_ days after respondent's receipt of complainant's information sheet. the complainant has filed his or her information sheet with the Board. The complainant may file a reply to the respondent's information sheet no more than within five 5 days after receipt of respondent's information sheet. Three days shall not be added for pleadings sent by mail. The Board may grant one extension of time to each party for the filing of information sheets. Such extension shall be for no more than ~~five (5)~~ days, and granted only upon good cause shown. ~~(7/1/13) (1/14/18)~~
- D. In the event a complaint has been referred to the Colorado Civil Rights Division (CCRD) for an investigation has been referred and is pending pursuant to the of an allegation of discrimination ~~section of this chapter,~~ the time periods to file an information sheets ~~as provided in this rule~~ shall not commence until the final written report or opinion letter is issued by CCRD and resulting from such investigation is served upon the parties by the Board. ~~(1/1/07) (1/14/18)~~
- E. The parties shall be required to file a hard copy of their respective information sheets and attached exhibits and to provide the Board with an electronic version of the information sheet as a Word document. Submitting an electronic version by itself does not constitute a filing. their respective information sheets with the Board electronically in an editable format, and to also submit a paper copy of the information sheet, with attached exhibits. The Board administrative law judge, for good cause, may waive the requirement of an electronically-filed information sheet for good cause if the party, no later than five days prior to the time the information sheet is due, makes a written request to the Board with detailed grounds ~~to~~ supporting the request. ~~(7/1/13) (1/14/18)~~
- F. If complainant fails to file a conforming complete and timely information sheet, the petition for hearing may be ~~considered abandoned and~~ dismissed. If the respondent fails to file an information sheet, the preliminary recommendation will be based solely upon the information submitted by complainant. ~~(1/14/18)~~
- G. The administrative law judge will review the information presented by the parties in their information sheets to determine whether valid issues exist which merit a hearing to grant or deny a discretionary hearing. The cComplainant has the burden of demonstrating establishing the existence of a valid issues which that would merit a hearing as set forth in Board Rule 8-41(A). ~~(1/01/15) (1/14/18)~~
- H. ~~An~~The administrative law judge will make issue to the Board and to the parties a written preliminary recommendation to the Board to grant or deny the petition for hearing, with copies provided to both parties, as to whether a hearing should be granted or denied. ~~(1/01/15) (1/14/18)~~

Board Rule 8-46. The Board will consider the preliminary recommendation and render its decision to grant or deny a hearing pursuant to § 24-50-123(3), C.R.S.

- A. The Board will not consider any document or other information submitted by either party after issuance of the preliminary recommendation. If the Board denies the petition for hearing, its determination shall not be subject to reconsideration.
- B. If the Board grants a hearing, the date of the order will determine the deadlines for commencement of a hearing will be treated as the date the appeal was submitted for purposes of determining the deadline for commencing a hearing. If the hearing is denied, the Board will issue an order which will include further appeal rights. the date of the order

~~shall be used for purposes of any further appeal. (1/14/18)~~

- C. If a hearing is granted, the action that is the subject of the petition for hearing will not be reversed or modified unless it is found to be arbitrary, capricious, contrary to rule or law, or in violation of the grounds set forth in § 24-50-123 C.R.S., with the exception of selection decisions that are within the jurisdiction of the State Personnel Director. ~~or in violation of the grounds set forth in section § 24-50-123, C.R.S. (7/1/13)(1/14/18)~~

Board Rule 8-47. If an employee files a petition for hearing and an ~~additional~~ appeal asserting a constitutional or statutory right to a hearing ~~and the mandatory and discretionary appeals relate to~~ regarding the same or closely related matters, the administrative law judge may consolidate the cases if it is determined that consolidation would be more efficient and would not unduly prejudice any party. ~~(1/01/15)~~ (1/14/18)

Board Appeals

Board Rule 8-48. Any action that adversely affects a certified employee's current base pay, status, or tenure as defined by Board rule may be appealed and will be set for hearing. An adverse effect action results in a reduction of current base pay, or loss of other rights to which an employee is entitled by law, including denial of reemployment rights or removal from a reemployment list. Issues involving the annual total compensation survey, discretionary pay differentials, the granting of in-range salary movements, leave sharing, personal services contracts and job evaluation system and actions are not subject to appeal. ~~(7/1/13)~~ (1/14/18)

- A. Disciplinary actions are subject to appeal and will be set for hearing, except discipline of probationary employees for unsatisfactory performance, reversion of trial service employees for unsatisfactory performance, and demotion of conditional employees to the class in which last certified. An employee who resigns in lieu of disciplinary action forfeits appeal rights. (1/1/07)

Practice Before ~~The~~ Board And Preparation For Board Hearings

Board Rule 8-49. The Colorado Rules of Civil Procedure and Evidence apply to proceedings before the Board as follows:

- A. To the extent practicable, unless inconsistent with these rules, the Colorado Rules of Civil Procedure (C.R.C.P.) apply to matters before the Board. Unless the context otherwise requires, whenever the word "court" appears in the C.R.C.P., that word shall be construed to mean the Board or an administrative law judge for the Board.
- B. To the extent practicable, the Colorado Rules of Evidence (C.R.E.) applicable to civil cases apply to all hearings before the Board or its administrative law judges. Unless the context otherwise requires, whenever the word "court," "judge," or "jury" appear in the C.R.E., such word shall be construed to mean the Board or an administrative law judge for the Board. An administrative law judge for the Board has the discretion to admit evidence not admissible under C.R.E, as permitted by law.

Representation

Board Rule 8-50. An individual may appear before the Board ~~on his or her own behalf and self-represent, or or be represented~~ by an attorney authorized to engage in the practice of law in Colorado. Nothing shall preclude an out-of-state attorney from being admitted to practice before the Board in accordance with C.R.C.P. ~~221-4203.2.~~ (1/14/18)

- A. An attorney representing a party before the Board shall file an entry of appearance or sign a pleading. The entry of appearance shall contain the attorney's name, mailing address,

email address, telephone number, attorney registration number, and the identity of the party for whom the appearance is made.

- B. An attorney may withdraw from a case before the Board in conformance with the C.R.C.P. (7/1/13)

Board Rule 8-51. The filing and service of pleadings and other ~~papers documents~~, including facsimile filings, shall be governed by the following: (1/14/18):

- A. The appeal, petition for hearing, pleadings, or other ~~papers documents~~ shall be filed directly with the Board. After the Board has assigned a case number to ~~a matter an appeal~~, all pleadings and other ~~papers documents~~ filed with the Board shall contain the assigned case number. ~~(1/01/15)~~ (1/14/18)

- B. ~~The facsimile capabilities of the Board are limited.~~ Parties ~~are encouraged to avoid~~ may filing file pleadings or other ~~papers documents~~ with the Board by facsimile copy, ~~except~~ when reasonably required by time constraints. ~~Facsimile copies may be filed with the Board in lieu of the original document, provided, however, that if a complete facsimile copy fails to conform to Board rules, it will not be accepted for filing.~~ The party or attorney filing the facsimile copy shall keep the original document for production to the Board, if requested. (1/14/18)

- ~~C. Documents in excess of six pages, excluding the caption or cover sheet, may not be filed in lieu of the original unless otherwise ordered by the Board's director or an administrative law judge.~~

- ~~D.C.~~ Any ~~facsimile copy document~~ filed directly or transmitted by facsimile directly to the Board shall be accompanied by a caption ~~or a cover sheet~~ that contains: (1/14/18):

1. the title of the document being filed; transmitted and identifying it as a facsimile copy; (1/14/18)
2. the case number, if assigned; (1/14/18)
- ~~3. the number of pages;~~
- ~~4.3.~~ identity of the transmitter sender; and (1/14/18)
- ~~5.4.~~ contact information for the sender including email and telephone number. of the transmitter, along with any instructions. (1/14/18)

- ~~E.~~ D. All facsimile copies filed in lieu of the original document must be filed during normal business hours of the Board between 8:00 a.m. and 5:00 p.m., Monday through Friday, excluding official state holidays. In the event a facsimile copy is received outside of normal business hours, ~~it will be considered to have been filed on the next business day.~~ (1/14/18)

- ~~F.E.~~ Service of pleadings or other papers on a party or on an attorney representing a party ~~may should~~ be made by hand delivery, U.S. mail, facsimile transmission ~~to the facsimile number provided by the party or attorney, by mail or email and, where available by electronic mail~~, to the address contained in the pleadings, or to the party's last known address. When an attorney represents a party, service shall be made on the attorney. ~~(1/01/15)~~ (1/14/18)

Board Rule 8-52. The filing of motions shall be governed by the following:

- A. Prior to the filing of a motion, the party or legal counsel filing a motion ~~should must~~ confer with the opposing party or legal counsel. The first paragraph of the motion shall ~~at the beginning~~, contain a certification that the party filing the motion has, in good faith, ~~has~~ conferred with the opposing party or counsel about the motion. If no conference has

occurred, the reason why shall be stated. If the relief sought in the motion has been agreed to by the parties or will not be opposed, the motion shall so state. (1/14/18)

- B. Except for motions made during hearing or where the administrative law judge deems an oral motion appropriate, motions should be filed as early as possible prior to hearing, and in no event later than 10 days prior to hearing. Substantive motions shall be supported by references to relevant a-recitation-of legal authority either incorporated in the motion or set forth in a separate brief. The responding party shall have 10 days from the date of the motion to file a response. If there are less than 10 days before the hearing, the responding party may provide a written or oral response at the hearing. No reply from the moving party shall be permitted unless ordered by the administrative law judge. Motions and briefs in excess of 10 pages in length are discouraged. (1/14/18)
- C. Motions shall be determined promptly, upon the written motion and briefs filed. However, the administrative law judge may order expedited responses, oral argument or an evidentiary hearing on the administrative law judge's own motion or at the discretion of the administrative law judge, on request of a party. The party filing a motion requiring an immediate decision disposition shall call it to the attention of the administrative law judge, or Board's director. (1/14/18)
- D. A motion shall be deemed a confession upon failure of a party to file a response. If any party fails to appear at oral argument or hearing, without a prior showing of good cause for non-appearance, the administrative law judge or Board's director may proceed to hear and rule on the motion. (1/14/18)
- E. Motions for extensions of time or continuance of hearings shall be determined in accordance with this rule. A hearing may only be continued once and only for good cause; motions for extensions of time shall also be granted only for good cause. Stipulations for extensions of time or continuances shall not be effective unless and until approved by an administrative law judge, or Board's director. (7/4/13), (1/14/18)

Prehearing Procedures

Discovery

Board Rule 8-53. Discovery in proceedings before the Board shall be governed by the following:

- A. To the extent practicable, C.R.C.P. 26 through 37 apply to proceedings before the Board and its administrative law judges, except to the extent they provide for or relate to disclosures, numerical limitations on discovery requests, or the time discovery can be initiated.
- B. Preparation for hearing may be done through informal information requests or the formal discovery procedures. No specific order by an administrative law judge is needed for a party to conduct discovery. Without an order, the following applies to preparation for all hearings; however, upon the filing of a proper motion and a showing of good cause, an administrative law judge may modify or waive the following provisions in a specific case.
 - 1. Within 15 days of the certificate of mailing of the notice of hearing, the parties, without awaiting a discovery request, are to disclose to each other a listing, together with a copy of all documents, information, data compilations and tangible things-evidence in the possession, custody, or control of the party that are relevant to the facts, claims and defenses in the appeal before the Board. Each party shall also make available for inspection and copying the documents or other evidentiary materials not privileged or protected from disclosure. If a party claims a privilege relative to any document or evidentiary materials, that party shall provide the other

parties a privilege log describing the title, author, date, and subject matter of the document or material, along with the legal basis for preserving the privileged or confidential nature of the document or materials withheld. (1/14/18)

2. All requests for information, either informal or formal, other than depositions, must be served no later than ~~45~~25 days from the certificate of mailing of the notice of hearing. The deadlines are not extended if the hearing is continued unless the administrative law judge orders an extension. (1/14/18)
3. Responses to all requests for information, either informal or formal, must be provided within 20 days after the certificate of service of the request.
4. All exchanges of information, including depositions, must be completed at least ~~40~~20 days prior to the ~~commencement~~ start of an evidentiary hearing. (1/14/18)-
5. Each party is allowed to take three depositions. Each party is allowed to submit 30 interrogatories consisting of one question each, 20 requests for production of documents consisting of one request each, and 20 requests for admissions consisting of one admission each.
6. A party must make a good faith effort to resolve any discovery disputes prior to filing a motion to compel discovery. Failure to make such an effort may result in the imposition of sanctions against the moving party. Any motion concerning discovery disputes must certify compliance with this rule. (7/1/13)

Prehearing Statements

Board Rule 8-54. The parties shall file with the Board and serve on each other party, no less than 15 days prior to the commencement of a hearing, a prehearing statement setting forth the following:

- A. Statement of claims and defenses: ~~{a plain,~~ concise statement of all claims or defenses asserted by the party filing the prehearing statement. Complainants should include the action being appealed and date of the action, the date complainant was notified of the action, complainant's job position and time in the position at the time of the action (including date complainant was certified in the position), complainant's current position, and the remedy ~~or~~ /relief requested; (1/14/18)
- B. Undisputed facts: ~~{a plain,~~ concise statement of all facts ~~which that~~ the party filing the prehearing statement contends are or should be undisputed; (1/14/18)
- C. Disputed issues of fact: ~~{a plain,~~ concise statement of the facts ~~which that~~ the party filing the prehearing statement claims are in dispute; (1/14/18)
- D. Pending motions: ~~{a listing of all outstanding motions that have not been ruled upon by the administrative law judge};~~ (1/14/18)
- E. Points of law: ~~{a plain,~~ concise statement of all points of law that are to be relied upon or that may be in controversy, citing pertinent statutes, regulations, rules, cases, and other authority; (1/14/18)
- F. Witnesses: ~~{the name, address,~~ email address, and telephone number of any witness whom the party may call at hearing, together with a description of the content of such person's testimony; (1/14/18)
- G. Experts: ~~{the name, address,~~ email address, telephone number and a brief summary of the qualifications of any expert witness a party may call at hearing, together with a detailed

statement as to the opinions or conclusions to which the expert is expected to testify. These requirements may be satisfied by the party incorporating a resume for each expert and a report containing the opinions or conclusions of each expert, along with the basis of each opinion or conclusion); (1/14/18)

- H. Exhibits: ~~{a description of any physical or documentary evidence to be offered at the hearing. Complainant's exhibits should be marked using letters, and respondent's exhibits marked using numbers. Exhibits should not be attached to the prehearing statement filed with the Board.}~~ (6/1/06); (1/14/18) and,
- I. Stipulations: ~~{a listing of all stipulations of fact or law, or admissibility of exhibits reached between the parties, as well as any additional stipulations offered to facilitate disposition of the case}.~~ (1/14/18)

Board Rule 8-55. Compliance with the prehearing procedures set forth in these rules is mandatory unless modified by order by the administrative law judge on ~~his or her~~the judge's own motion, or motion by one of the parties. Failure to timely file a prehearing statement may result in a party being restricted from asserting claims or defenses, calling witnesses or offering exhibits at hearing. Such order may require the parties to participate in a prehearing conference before the administrative law judge. (1/14/18)

Board Rule 8-56. The hearing must commence no later than 90 days after receipt of the appeal. ~~All prehearing matters, including the filing of prehearing or amended prehearing statements and completion of discovery, must be concluded prior to commencement of the hearing.~~ (1/14/18)

A. The commencement will be in person, by telephone or videoconference at the discretion of the administrative law judge. At the commencement, the administrative law judge may ask the parties to present opening statements, factual stipulations, and stipulated exhibits. or if ordered by the administrative law judge prior to the commencement, upon good cause shown, may be by telephone or videoconference where appropriate. Presentation of an opening statement, factual stipulations, and stipulated exhibits will be sufficient to constitute the commencement of the hearing. (1/14/18)

A.B. All prehearing matters, including the filing of prehearing or amended prehearing statements and completion of discovery, must be concluded prior to the start of the evidentiary hearing. (1/14/18)

Board Rule 8-57. Both parties must attempt to resolve an appeal before the hearing. This may include ~~settlement participation in the Board's settlement program.~~ (1/14/18)

Responsible/Lead Counsel

Board Rule 8-58. If ~~all~~both parties are represented by counsel in proceedings before the Board, each counsel of record shall be jointly responsible for scheduling conferences and preparing and filing prehearing pleadings and documents as may be required. In the event a party is not represented and will be participating in the hearing, counsel for the represented party in the proceeding shall be responsible for coordinating with the unrepresented party for the purpose of scheduling conferences, obtaining hearing dates, and preparing and submitting prehearing pleadings and documents. (1/14/18)

Subpoenas

Board Rule 8-59. Upon ~~an oral or~~ written request of a party or counsel for a party at least 3 business days in advance of the hearing, an administrative law judge shall issue a subpoena or subpoena duces tecum requiring the attendance of a witness or the production of documentary evidence, or

both. Attorneys for parties in actions pending before the Board may also issue subpoenas in conformance with C.R.C.P. 45. (1/14/18)

B.A. The subpoena or subpoena duces tecum shall be served on the witness to whom it is directed in the same manner as subpoenas served in proceedings in the district courts for the State of Colorado pursuant to C.R.C.P. 45. A subpoena for testimony at a hearing must be served at least 48 hours prior to the commencement of the hearing. A subpoena for testimony in a deposition shall be served at least 7 days before the deposition. A subpoena duces tecum commanding a person to produce records or tangible things shall be served at least 14 days before compliance is required. Immediately following service of a subpoena, the party or attorney who issues the subpoena, shall serve a copy of the subpoena on all parties.

C.B. Except for witnesses subpoenaed on behalf of the State of Colorado, or an officer or department of the State of Colorado, witnesses subpoenaed for testimony pursuant to this rule shall be paid the same fees for mileage as are paid to witnesses in the district courts of the State of Colorado. The party requesting that the subpoena be issued shall pay such fees to the witness at the time the subpoena is served as required by this rule.

D.C. Consistent with C.R.C.P. 45 criteria for mandatory or discretionary quashing or modification of a subpoena, upon the failure of a party or counsel to comply with the requirements of either subparagraphs A or B of this rule, the party or witness subject to the subpoena may petition the administrative law judge for an order quashing or modifying such subpoena. The administrative law judge, in his or her discretion, may also award attorney fees for such non-compliance pursuant to Board Rule 8-34.

E.D. Upon failure or refusal of any witness to comply with a subpoena issued and served upon a witness under this rule, either party may petition the district court for the City and County of Denver for an order enforcing the subpoena, and upon failure or refusal to comply, for an order citing such witness as in contempt for such failure or refusal. The procedure for such contempt proceedings shall be governed pursuant to § 24-4-105(5), C.R.S. (1/1/14)

Post-Hearings Proceedings

Board Rule 8-60. A petition for reconsideration of the initial decision may be filed by an original party within five days of receipt of the initial decision. The administrative law judge may also reconsider an initial decision on the judge's own motion without the petition within 10 days of issuance. Petitions shall be limited to matters alleged to be overlooked or misunderstood by the administrative law judge and cannot contain other arguments. Oral arguments shall not be permitted on any petition. A determination on the petition is typically issued but if no order is issued, the petition is considered denied. Filing a petition does not extend the time for filing an appeal of the initial decision. (1/14/18)

Board Rule 8-61. Recordings of a hearing may be deleted after expiration of all rights resulting from that hearing. Digital recordings of hearings are stored on a protected server and are retained permanently. Older, non-digital, taped recordings may be deleted after the expiration of all appeal rights. (7/1/13)(1/14/18)

Board Review Of Initial Decisions ~~a~~And Dismissal Orders

Board Rule 8-62. Appeals of dismissal orders, initial decisions, and orders issued subsequent to an initial decision by the administrative law judge are made in accordance with statute. Appeals ~~should~~ must be filed with the Board and a copy served on the opposing party, within 30 days ~~of following~~ the date of the certificate of mailing of the order or initial decision. Any party who seeks review of all or part of the order or initial decision must file an appeal within 30 days, with no extensions for cross-appeals. Timely filing is determined by the date the Board actually receives the appeal.

Failure to serve a copy on the opposing party may result in dismissal. The Board is required by statute to certify the record within 60 days after the date the record is designated. The Board will review and render a written decision within 90 days of the date the record is certified. ~~(7/1/13)~~ (1/14/18)

Board Rule 8-63. Any party who seeks to reverse or modify the initial decision must file with the Board a designation of record within 20 days following the date of the certificate of mailing of the initial decision. A copy of this designation shall be served on all parties. Within 10 days, any other party or the Board may also file a designation of additional parts of the transcript of the proceedings which is to be included. Any appeal of the initial decision must be filed within 30 days of the date of the decision. Any appealing party shall submit appropriate payment for preparation of the record at the time the appeal is filed. (7/1/13)

Board Rule 8-64. Any party who designates a transcript as part of the record is responsible for obtaining and paying a certified court reporter who shall prepare the transcript and file it with the Board no more than 59 days after the designation of record. The transcript must be prepared by a neutral and certified transcriber. Failure to designate a transcript is deemed a waiver of a request to prepare the transcript. If no transcript has been filed within the time limit, the record will be certified and the transcript will not be included in the record or considered on appeal. In absence of a transcript, the Board is bound by the findings of fact of the administrative law judge. (1/14/18)

Board Rule 8-65. The appeal of the initial decision shall describe, in detail, the basis for the appeal, the specific findings of fact and/or conclusions of law that are alleged to be improper, and the remedy being sought.

Board Rule 8-66. Upon certification of the record of administrative proceedings, the parties shall be notified in writing of the date the Board will consider the appeal. The Board is required by statute to decide the appeal no more than 90 days after the certification of the record.

Board Rule 8-67. Absent specific orders to the contrary, the appellant shall serve and file the opening brief within 20 days after the Board certifies the record. The opposing party's answer brief shall be filed within 10 days after receipt of the opening brief, date of the certificate of service of the appellant's brief. The appellant may file a reply brief within five days after receipt of the answer brief. ~~Three days shall not be added for pleadings sent by mail.~~ (1/14/18)

A. The final brief must be filed no later than 12 days before the Board meeting where the appeal will be considered. No extensions of time will be granted unless they allow both parties to file briefs within that time limit.

B. In cases where both parties have filed an appeal, they will be ordered to file simultaneous briefs as described above unless the parties file a stipulated amended briefing schedule. (7/1/13)

Board Rule 8-68. All briefs must be typewritten and the text double-spaced, using only 8 ½ x 11-inch paper and no less than an 11-point font. Except by permission of the Board's ~~director~~, briefs shall not exceed 10 pages, exclusive of pages containing the table of contents, tables of citations, and any addendum containing statutes, rules, regulations, and the like. An original and ~~nine-seven~~ copies must be filed with the Board and a copy must also be served on the opposition. ~~(6/1/06)~~ (1/14/18)

Board Rule 8-69. For any appeal to the Board, an original and ~~nine-seven~~ copies of any motion (except for an extension of time) must be filed. For extensions of time or motions to dismiss based upon settlement of the appeal, the original and one copy must be filed with the Board. ~~The Board director may grant motions for extension of time or motions to dismiss based upon settlement.~~ A copy of any motion must be served on the opposition. ~~(6/1/06)~~ (1/14/18)

Board Rule 8-70. In general, no oral argument will be heard and parties need not be present before the Board. Oral arguments may be allowed at the discretion of the Board. A request for oral argument shall be filed no later than the date the requesting party's brief is due. If granted, oral argument shall not exceed 15 minutes for each party. A request for additional time may be made by motion within 10 days after the briefs are closed but granted only for good cause. If oral argument is granted, parties are given reasonable notice of the time and place. The Board may terminate the argument whenever, in its judgment, further argument is unnecessary.

Board Rule 8-71. Any party appealing a final Board order to the Colorado Court of Appeals shall serve a copy of the notice of appeal on the Board at the time of filing the notice. (7/1/13)

Security

Board Rule 8-72. Security during Board meetings and Board hearings may be obtained by any party at that party's expense. Board staff will assist the parties in obtaining security when possible.

Director's Dispute Resolution Processes

General

8-73. Disputes asserting claims or grounds within the Director's jurisdiction as authorized by Colorado Constitution, statute, or these rules must be submitted to the Director at the official address as listed on the Director's website. (7/1/13)

8-74. Disputes must be in writing. Use of the standard "**Colorado State Personnel System Consolidated Appeal/Dispute Form**" found on the Director's website is required. For good cause shown, the Director may waive this requirement provided the person filing the appeal ("complainant") sets forth such grounds at the time the appeal is submitted.

A. The dispute must clearly state the following in sufficient detail:

1. The name, address, and telephone number of complainant and any representative.
2. The specific action being disputed and a copy of the written notice.
3. The date complainant received the notice of action.
4. A short, specific statement giving the reason for the dispute.
5. Whether complainant is a certified employee.
6. The specific remedy sought.

B. Copies of the written dispute must be provided concurrently to the affected department. Failure to do so may result in denial or dismissal of the dispute. (7/1/13)

Director's Appeals

8-75. An applicant or employee who is directly affected may appeal to the Director within 10 days of receipt of notice or knowledge of the action. The appeal is timely filed if it is in writing and received by 5:00 p.m. or postmarked by the 10th day. It may be filed by mail, hand delivery or facsimile to the Director:

A. An allocation of an individual position to a lower pay grade.

B. Objection to the selection and comparative analysis process.

C. Matters that are not otherwise covered in this chapter e.g., removal of name from an eligible list, rejection of an application, violation of FLSA, or FMLA. (1/1/14)

~~C.~~

- 8-76. A request for review may be filed with the Director within 10 days after receipt of notice or knowledge of the action. It must be in writing to the Director and include the following: job title, department involved, name of the department representative spoken to during informal resolution attempts, the date of the conversation, the specific issue, and the reason it is believed the decision is arbitrary, capricious, or contrary to rule or law.
- A. A request may also be filed for a Director's review of a general matter that affects the overall administration of the state personnel system that is not otherwise covered by this chapter (except annual compensation survey, the granting of in-range salary movements, discretionary pay differentials, leave sharing, granting and application of discretionary saved pay during exercise of retention rights, and job evaluation system and actions). A Director's decision in this type of review is subject only to a discretionary Board hearing. (7/1/13)
- 8-77. The decision may be overturned only if found to be arbitrary, capricious, or contrary to rule or law. Both parties will receive a copy of the decision. If a decision is not issued within the time period, the initial decision is upheld. (7/1/13)
- 8-78. Confidentiality of Examination Materials. Examination data and documents will be filed in a sealed envelope with the Director only. Such documents include, but are not limited to: test questions, scoring keys and scores or results. A list of documents sent under sealed envelope will be given to all appellants.
- A. Use or disclosure of the information outside the appeal review process is strictly prohibited. Confidentiality of material in sealed envelopes shall be maintained throughout *all phases of the review process, including preparation of any record for judicial review.* The confidential material will be returned to the Director after the completion of a panel review. The Director will return the contents to the responding party if no request for judicial review is filed.
- 8-79. Oral Argument. No party is entitled to oral argument; it is discretionary with the Director or advisor(s). Either party may request oral argument in writing. A request must be granted before oral argument is permitted. The Director or advisor(s) may request oral argument on any issue raised regardless of whether any party has requested it.
- A. The Director or advisor(s) will notify all parties of the date, time, and place. No continuances will be granted. All parties may speak. Each party is allowed 15 minutes. The appellant speaks first, followed by the opposing side. No witnesses or new written material will be allowed. Questions asked by the Director or advisor(s) are outside the 15 minutes allotted to a party.
- B. Oral argument will be tape recorded unless all parties agree in writing to waive the recording. The tape recording will be destroyed 90 days after the decision is issued if no notice of judicial review is received.
- 8-80. The Director shall issue a written decision no later than 90 days after receipt of the appeal. The action may be overturned only if found to have been arbitrary, capricious, or contrary to rule or law. Failure to issue a decision within the time limit will cause the initial decision to be upheld. The matter appealed must be resolved within the 90 days, after which the Director loses jurisdiction and does not have the authority to extend the time period.
- 8-81. Decisions of the Director are subject to judicial review in accordance with statute. Any person directly affected by the comparative analysis process may seek Board review pursuant to Board Rule 8-38. (7/1/13)

8-82. An appellant may withdraw an appeal at any time prior to the final decision. If the remedy is granted during the course of the appeal, the appeal will be considered moot and dismissed with prejudice.

Performance Management Disputes

8-83. The performance management dispute resolution process is an open, impartial process that is not a grievance or appeal. No party has an absolute right to legal representation, but may have an advisor present. The parties are expected to represent and speak for themselves. (7/1/07)

8-84. Only the following matters are disputable:

- A. the individual final overall performance evaluation, including lack of a final overall evaluation; and,
- B. the application of a department's performance management program to the individual employee's final overall evaluation. (1/1/14)

8-85. The following matters are not disputable:

- A. the content of a department's performance management program; (7/1/07)
- B. matters related to the funds appropriated; and, (8/1/08)
- C. the performance evaluations and merit pay of other employees. (9/1/12)

8-86. Every effort shall be made by the parties to resolve the issue at the lowest possible level in a timely manner. Informal resolution before initiating the dispute resolution process is strongly encouraged.

8-87. Dispute Resolution Process. Only the issue(s) as originally presented in writing shall be considered throughout the dispute resolution process.

A. Internal Stage. The first stage is the department internal dispute resolution process. Each department shall continually communicate and administer a detailed internal dispute resolution process that complies with the requirements of, and is approved in advance by, the Director. A description of the process must be communicated to all employees and must include the following elements.

1. The time limits and the process for filing a written request for review of the issue(s) throughout the dispute resolution process.
2. Who will decide the issue(s). The appointing authority is the decision maker unless it is delegated in writing and publicized in advance. Employees must be notified of the authorized decision maker for their disputes.
3. The time limits for issuing the final written department decision.
4. Any other specific requirements established by the Director.

A department's decision on issues involving an individual performance evaluation concludes at the internal stage and no further recourse is available. For issues disputable at the external stage, the employee shall be given written notice, including deadlines and address for filing and the requirement to include a copy of the original written dispute and the department's final decision.

B. External Stage. This stage is administered by the Director. Only those original issues involving the application of the department's performance management program to the individual evaluation are disputable at this stage. (1/1/14)

1. Within five working days from the date of the department's final decision, an employee may file a written request for review with the Director at the address specified in the Director's dispute resolution processes section of this chapter.
 2. The request for external review shall include a copy of the original issue(s) submitted in writing and the department's final decision.
 - a. The Director or designee shall retain jurisdiction but may select a qualified neutral third party to review the matter. The Director or designee shall issue a written decision that is final and binding within 30 days.
- C. In the event that an employee with a pending dispute separates from the state personnel system, the dispute is dismissed. (8/1/08)
- 8-88. The scope of authority of those individuals making final decisions throughout the dispute resolution process is limited to reviewing the facts surrounding the current action, within the limits of the department's performance management program. These individuals shall not substitute their judgment for that of the rater, reviewer, or the department's dispute resolution decision maker if an issue is being considered at the external stage. Further, these individuals shall not render a decision that would alter a department's performance management program. (7/1/07)
- A. In reaching a final decision, these individuals have the authority to instruct a rater(s) to:
1. follow a department's performance management program;
 2. correct an error; or,
 3. reconsider an individual performance plan or final overall evaluation.
- B. These individuals may also suggest other appropriate processes such as mediation.
- 8-89. Retaliation against any person involved in the dispute resolution process is prohibited.