

## **Rule 5 – Hearings**

Effective **January 30, 2021** ~~November 15, 2020~~

- (a) Non-Revocation Hearings
  - (I) At any time, the Director may direct a respondent to appear at a hearing and show cause why the Board should not issue a remedial order. Not less than forty (40) days prior to the date set for such hearing, the Director shall transmit to the respondent written notice of such hearing, which must include:
    - (A) The date, time and place of such hearing; and
    - (B) That the respondent has the right to appear and be heard at such hearing, either in person or through legal counsel; and
    - (C) That the respondent has the burden of proving all of the facts relevant to their position; and
    - (D) A concise statement setting forth the subject of the hearing, all facts relevant to the matter, and the statute, rule, or order, to which the matter relates; and
    - (E) Copies of all documents considered by the Board in setting the hearing; and
    - (F) The nature of the proposed remedial order.
  - (II) Not less than ten (10) days prior to the date set for a hearing pursuant to subsection (I) of this rule, the respondent shall file a response, including:
    - (A) A concise statement setting forth the respondent's position; and
    - (B) All facts relevant to the matter; and
    - (C) Copies of all documents the respondent wishes the Board to consider in the matter.
    - (D) Notification if they intend to appear at the hearing. If no such notification is received, the hearing will be cancelled, and the **D**irector will make a finding on the documents presented.

- (III) Any person may request a formal hearing before the Board through the filing of a petition, which must include:
  - (A) The name and address of the petitioner and whether the petitioner currently possesses Colorado POST certification; and
  - (B) A concise statement setting forth the subject of the hearing, all facts necessary to the matter, and the statute, rule, or order, to which the petition relates; and
  - (C) Copies of all documents the petitioner wishes the Board to consider in the matter; and
  - (D) What action the petitioner wishes the Board to take.
- (IV) Not less than thirty (30) days prior to the date set for a hearing on a petition, the Board shall provide a written response to the petitioner, including:
  - (A) The date, time and place of such hearing; and
  - (B) That the petitioner has the right to appear and be heard at such hearing, either in person or through legal counsel; and
  - (C) That the petitioner has the burden of proving all of the facts relevant to their petition; and
  - (D) A summary of the Director's recommendation to the Board; and
  - (E) Copies of all documents submitted by the Director for the Board's consideration in the matter.
- (V) The Director and any petitioner or respondent may mutually agree to shorten or lengthen any of the time frames set forth in this rule.

**(VI) HEARINGS FOR THE ADMINISTRATION OF FINES OR OTHER ADMINISTRATIVE SANCTIONS:**

**(A) POST STAFF WILL RECOMMEND ACTION TO THE POST BOARD FOR LAW ENFORCEMENT AGENCY OR**

**CERTIFICATE HOLDER NON-COMPLIANCE WITH POST RULE.**

**(B) A MAJORITY OF THE POST BOARD MEMBERS SHALL DETERMINE WHETHER TO REFER THE MATTER TO A DESIGNATED SUBCOMMITTEE OF THE BOARD FOR A HEARING, OR TO DISMISS THE STAFF RECOMMENDATION. THE POST BOARD SHALL CONSIDER THE RESPONDENT'S POSITION CONCERNING THE ADMINISTRATIVE VIOLATION BEFORE THE BOARD.**

**(C) A HEARING OF THE SUBCOMMITTEE SHALL OCCUR WITHIN 30 DAYS OF THE REFERRAL DATE.**

**(D) THE HEARING SUBCOMMITTEE SHALL DETERMINE IF A FINE OR OTHER SANCTION IS APPROPRIATE, AND, IF SO, THE AMOUNT OF FINE, CONSTRUCT OF THE OTHER SANCTION, OR COMBINATION THEREOF.**

**Commented [EB1]:** This proposed modification has been withdrawn from consideration.

~~(VII)~~ (VI) Any final order entered pursuant to this rule shall constitute final agency action subject to judicial review under § 24-4-106, C.R.S.

- (b) Revocation Hearings for Criminal Convictions, Deferred Judgment and Sentence, Deferred Prosecution, or Pretrial Diversion Agreements:
- (I) Certifications may be revoked based upon conviction of certain offenses; or entry into a deferred judgment and sentence, deferred sentence, deferred prosecution, or pretrial diversion agreement for offenses as identified or referenced in § 24-31-305(1.5), 24-31-904, 18-8-802 (1.5)(d), and 18-8-803 C.R.S.
  - (II) When the Director learns that a certificate holder has been convicted of the enumerated offenses or has entered into one of the agreements described in paragraph (a), the Director shall issue an Order to Show Cause why the officer's certification should not be revoked.
    - (A) At the Show Cause hearing, the court record of the conviction or agreement shall be sufficient evidence to establish the conviction or agreement.
    - (B) The certificate holder may be represented by counsel.

(C) The certificate holder bears the burden of proving that it would not be in the public interest to revoke the certification.

(III) The Director will consider all information provided at the Show Cause hearing. If the Director determines that revocation is not appropriate, no further action will be taken. If the Director determines that revocation is appropriate, they will make a revocation recommendation to the Board.

(c) Appeals from Director Decisions:

(I) A decision by the Director on any of the above matters is final unless appealed to the Board within thirty (30) days of the date of such decisions.

(II) If a decision is appealed to the Board, the Board will decide whether to hear the appeal. An appeal of the Director's decision must be made in writing and submitted to the POST Director. Upon receipt of the appeal, the POST Director will notify the POST Board members and request a decision be made. If a majority of the POST Board members agree to hear the appeal, a five-member panel of Board members shall proceed to hear the Board appeal. The appeal hearing must commence within thirty (30) days from the date the Board agreed to hear the appeal. The certificate holder will be notified of the Board's action. This decision, whether summarily affirmed or decided by the board subcommittee, shall be deemed final Board action. The applicant will be notified of the Board's action.

(d) Revocation Hearings for Other Disqualifying Incidents

When POST receives appropriate written notification that a peace officer is subject to action against the Peace Officer's POST certificate per § 24-31-305(2.5), (2.7) and/or § 24-31-904 C.R.S. POST shall take the following actions:

(I) The POST Director shall review the written notification to determine whether the information provided complies with the statutory requirements.

(A) If the POST Director determines that the information provided on the written notification did not comply with statutory requirements, the POST Director shall notify the LEA of that determination and POST will take no further action.

- (B) If the POST Director determines that the information provided in the written notification did comply with the statutory requirements, the POST Director shall notify the peace officer of the right to request a show cause hearing to determine whether the certification should be revoked. The notice must also inform the peace officer that they must request the show cause hearing within 30 days of the date of the notice, which may be extended for good cause shown.
  - (C) If the peace officer does not request a show cause hearing within the required time frame, the Director will recommend revocation and the POST Board will vote on revoking the certification at its next regular meeting.
- (II) If the peace officer requests a show cause hearing, the Director will request the LEA to provide documentation relevant to the information provided in the written notification. The Director will review the documentation provided by the LEA and conduct additional investigation, if necessary and appropriate. Upon the conclusion of the Director's review and investigation, the Director will either recommend no action or refer the matter for hearing.
- (III) The Director shall appoint a hearing officer to conduct the hearing pursuant to § 24-4-104 and 105, C.R.S.
- (IV) The Director shall notify the LEA in writing that the matter has been set for hearing and that the LEA may submit any documentary evidence or argument that it wishes to provide to the hearing officer, but may not intervene or participate as a party to the hearing. Documentary evidence or argument must be submitted on or before the first day of the hearing.
- (V) The hearing officer shall confer with the parties to schedule the hearing and shall issue a Prehearing Order, which shall be served by first-class mail or email to the certificate holder or counsel and POST counsel. The Prehearing Order shall include the following information:
- (A) The date, time, and location of the hearing and the legal authority and jurisdiction under which it is to be held;
  - (B) Any orders relating to prehearing discovery, motions, or briefs;
  - (C) A protective order maintaining the confidentiality of internal affairs investigation records;

- (D) Any other orders necessary or appropriate to guide the hearing efficiently.
- (VI) POST will appear at the show cause hearing through its counsel, and will bear the burden of proving grounds for decertification by a preponderance of the evidence. The peace officer may be represented by counsel of their choice.
- (VII) The show cause hearing will be recorded.
- (VIII) The hearing officer has the authority to: administer oaths and affirmations; sign and issue subpoenas; receive evidence and rule upon offers of proof; dispose of motions; regulate the course of the hearing, set the time and place for hearings, and set the time for filing briefs and other documents; direct the parties to appear and confer to consider simplifying issues; direct the parties to confer regarding stipulations of fact and exhibits; limit the number of expert witnesses; issue orders; reprimand or exclude from the hearing any person for any improper conduct in the hearing officer's presence; award attorney fees or impose sanctions for abuse of discovery procedures or as otherwise provided under the Colorado rules of civil procedure; and take any other action authorized by agency rule consistent with this statute or in accordance, to the extent practicable, with the procedure in the district courts. The hearing officer may direct the parties to confer about presenting their case by documentary evidence if that will expedite the hearing without substantially prejudicing any party.
- (IX) Subpoenas shall be served in the same manner as a subpoena issued by a district court. The party serving the subpoena shall provide the witness the fees and mileage provided for a witness in a court of record.
- (X) All parties shall have the right to examine and cross-examine witnesses.
- (XI) The rules of evidence and requirements of proof shall conform, to the extent practicable, with those in civil nonjury cases in the district courts. However, when necessary to do so in order to ascertain facts affecting the substantial rights of the parties to the proceeding, the hearing officer may receive and consider evidence not admissible under such rules if such evidence possesses probative value commonly accepted by reasonable and prudent people in the conduct of their affairs.

- (XII) Within 42 days of the conclusion of the hearing, the hearing officer shall prepare and file an initial decision, which the agency shall serve upon the parties. Each decision and initial decision must include a statement of findings and conclusions upon all the material issues of fact, law, or discretion presented by the record and the appropriate order, sanction, relief, or denial. A notice of appeal rights shall be attached to the initial decision.
- (XIII) Either party may file an appeal of the initial decision with the POST Board by filing written exceptions and designation of record within 30 days of the date of service of the initial decision. This deadline is jurisdictional and will not be extended. Timely filing is determined by the date the POST Board receives the appeal.
- (XIV) If neither party appeals, the initial decision of the hearing officer becomes the final decision of the POST Board 30 days after the date of the initial decision.
- (XV) If a party appeals the initial decision of the hearing officer, the appeal must describe in detail the basis for the appeal, the specific findings of fact and/or conclusions of law to be reviewed, and the remedy being sought.
- (XVI) The record shall be certified within 60 days of the appeal. Any party that 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. 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 the absence of a transcript, the POST Board is bound by the hearing officer's findings of fact.
- (XVII) The POST Board will notify the parties when the record is certified. Opening briefs are due 10 days after the notice is served. Answer briefs are due 10 days after the opening brief is filed. Reply briefs are due 10 days after the answer brief is filed. These deadlines may be extended by the POST Board or designee upon motion filed before the deadline upon good cause shown. No brief may exceed 10 pages without leave of the POST Board or designee, which must be requested before the due date for the brief.
- (XVIII) In general, no oral argument will be heard and the POST Board will decide the appeal based upon the briefs. A request for oral argument must be made no later than the date the requesting party's

brief is due. If oral argument is granted, the parties will be given notice of the time and place. If granted, oral argument will be limited to no more than 10 minutes per side.