

Rule 5 – Hearings

Effective May 15, 2022

- a) Show Cause Hearings for revocation or suspension of certification for criminal disqualifying incidents
 - (I) At any time, the Director or the Director’s designee may direct a respondent to appear at a hearing and show cause why the Board should not take disciplinary action of certification for criminal convictions, deferred judgment and sentence agreements, deferred prosecution agreements, or pretrial diversion agreements. Disciplinary action may include revoking, suspending, or voluntary surrender of the certification of a peace officer for a qualifying criminal act.
 - (A) Not less than forty (40) days prior to the date set for such hearing, the Director or the Director’s designee shall transmit to the respondent written notice of the hearing, which must include:
 - 1) The date, time and place of the hearing;
 - 2) An advisement that the respondent has the right to appear and be heard at such hearing, either in person or through legal counsel;
 - 3) An advisement that the respondent has the burden of going forward, and the burden of proving all facts relevant to their position;
 - 4) A concise statement setting forth the subject of the hearing, facts relevant to the matter, and the statute, rule, or order, to which the matter relates;
 - 5) Copies of all documents considered by the Board in setting the hearing; and
 - 6) The nature of the proposed disciplinary action.
 - (B) Not less than ten (10) days prior to the date set for a hearing pursuant to section (a) of this rule, the respondent shall file a response, including:
 - 1) A concise statement setting forth the respondent's position;
 - 2) All facts relevant to the matter; and

- 3) Copies of all documents the respondent wishes the Director or the Director's designee to consider in the matter;
 - 4) If applicable, a list of witnesses from whom respondent intends to elicit a statement relevant to the matters at issue; and
 - 5) Notification of the respondent's intent to appear at the hearing. If no such notification is received, the hearing will be cancelled, and the Director or the Director's designee will make a finding on the basis of documents presented.
- (C) Actions against certifications may be based upon criminal disqualifying incidents, as defined in Rule 1, of certain offenses as identified or referenced in §§ 24-31-305(1.5), 24-31-904(1)(a)(I), (2)(a)(I).
- (D) When the Director receives notice or otherwise learns that a certificate holder was engaged in a criminal disqualifying incident of the enumerated offenses listed in §§ 24-31-305(1.5), 24-31-904(1)(a)(I), (2)(a)(I), the Director shall issue an Order to Show Cause for why the officer's certification should not be revoked.
- 1) At the show cause hearing, the court record of the conviction or agreement shall constitute prima facie evidence of the conviction or agreement.
 - 2) The certificate holder may be represented by counsel.
 - 3) The certificate holder bears the burden of proving that an exemption from revocation would meet the requirements articulated in Rule 8.
- (E) The Director will consider all information provided at the show cause hearing. If the Director determines by a preponderance of the evidence that disciplinary action is not appropriate, no further action will be taken. If the Director determines by a preponderance of the evidence that the disciplinary action is appropriate, the Director will make a recommendation to the Board regarding appropriate disciplinary action or actions.
- (II) Any certificate holder or chief law enforcement officer of the employing law enforcement agency ("petitioner") may request a hearing before the Director to address matters of this section (a), through the filing of a petition.
- (A) The petition supporting such request must include:

- 1) The name and address of the petitioner and whether the petitioner currently possesses Colorado POST certification;
- 2) 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;
- 3) A list of witnesses from whom petitioner intends to elicit a statement relevant to the matters at issue;
- 4) Copies of all documents the petitioner wishes the Director to consider in the matter; and
- 5) The action the petitioner wishes the Director to take.

(B) No less than thirty (30) days prior to the date set for a hearing on a petition, the Director shall provide a written response to the petitioner, including:

- 1) The date, time and place of such hearing;
- 2) An advisement that the petitioner has the right to appear and be heard at such hearing, either in person or through legal counsel;
- 3) An advisement that the petitioner has the burden of going forward, and the burden of proving all facts relevant to their petition; and

(III) The parties may mutually agree to shorten or lengthen any of the time frames set forth in these sections a) and b).

b) Administrative Hearings for Disqualifying Incidents Other Than Those Addressed in Subsection (a)(I)(C) of This Rule 5 (not criminal disqualifying incidents)

(I) When POST Staff receives appropriate written notification that a peace officer is subject to action against the peace officer's POST certificate pursuant to disqualifying incidents not related to criminal conduct, POST Staff shall take the following actions:

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

- 1) If the Director determines that the information provided in the written notification does not comply with statutory requirements, the Director shall advise the notifying party that determination, and POST will take no further action.
 - 2) If the certificate holder is subject to board action under § 24-31-305(2.5) or for a finding in an internal investigation as outlined in § 24-31-904(1)(a)(III)-(V) or (2)(a)(III)-(IV), C.R.S., and the Director determines that the information provided in the written notification does comply with the statutory requirements, the Director shall notify the peace officer of the right to request a hearing before a hearing officer to determine whether the peace officer certification should be revoked or suspended. The notice must also inform the peace officer that the peace officer must request the hearing within thirty (30) days of the date of the notice, which may be extended for good cause shown.
 - a. If the peace officer does not request a hearing within the required time frame, the Director will recommend revocation or suspension and the Board will vote on revoking or suspending the certification at its next regular meeting.
 - b. If the peace officer requests a hearing, the Director will request the law enforcement agency to provide documentation relevant to the information provided in the written notification. The Director will review the documentation provided by the law enforcement agency 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.
- (B) If the certificate holder is subject to board action for any other disqualifying incidents not addressed in (a) or (b)(1)(A)(2) of this rule, and the director determines that the information provided in the written notification does comply with the statutory requirements, the director shall review the documentation provided by the notifying party 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.
- (C) If the matter is referred for hearing, the Director shall appoint a hearing officer to conduct the hearing in accordance with §§ 24-4-104 and 105, C.R.S.

- 1) The Director shall advise the notifying party in writing that the matter will be set for hearing and that the law enforcement agency may submit any documentary evidence or argument that it wishes to provide to the hearing officer, and must serve any documentary evidence or argument on all parties. The law enforcement agency may not intervene or participate as a party to the hearing. Documentary evidence or argument must be submitted within fifteen (15) days of notification.
- 2) The hearing shall be conducted in accordance with § 24-4-105, C.R.S. upon filing of a notice of hearing, the hearing officer shall issue a protective order maintaining confidentiality of internal affairs investigation records, if any.
- 3) POST will appear at the hearing through its counsel, and will bear the burden of proving grounds for revocation or suspension of the certification by a preponderance of the evidence. The peace officer may be represented by counsel of their choice.
- 4) At a minimum, the hearing will be audio recorded.
- 5) Within forty-two (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.
- 6) Either party may file an appeal of the initial decision with the POST Board pursuant to § 24-4-105(14), C.R.S. by filing written exceptions within thirty (30) days of the date of service of the initial decision. Any party who seeks to reverse or modify the initial decision shall file a designation of the relevant parts of the record described in § 24-4-105(14), C.R.S. within twenty (20) days of the initial decision. Within ten (10) days thereafter, any other party or the law enforcement agency may also file a designation of additional parts of the transcript of the proceedings which is to be included and advance the cost thereof. All deadlines are jurisdictional and will not be extended. Timely filing is determined by the date the POST Board receives the appeal. Any appeal must be filed with the POST Board and not the hearing officer.

- 7) 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.
- 8) 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. No transcript is required if the review is limited to a pure question of law.
- 9) The POST Board will notify the parties when the record is certified. Opening briefs are due ten (10) days after the notice is served. Answer briefs are due ten (10) days after the opening brief is filed. Reply briefs are due ten (10) days after the answer brief is filed. These deadlines may be extended by the Director or Director's designee upon motion filed before the deadline upon good cause shown. No brief may exceed ten (10) pages without leave of the Director or Director's designee, which must be requested before the due date for the brief.
- 10) In general, no oral argument will be heard and the POST Board will decide the appeal based upon the briefs. A party may request an oral argument and if requested 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 ten (10) minutes per side. The moving party may reserve part of its time for rebuttal.
- 11) If neither party appeals, the initial decision of the hearing officer becomes the final decision of the POST Board thirty (30) days after the date of the initial decision.

c) Appeals of fines or other administrative sanctions issued by the Attorney General:

- (I) The administration of a fine or other administrative sanction by the Attorney General for violations of part 3, article 31, title 24 of the Colorado Revised Statutes or any rule promulgated under such authority is final unless appealed to the director within thirty (30) days of such decision.

- (II) Appeals of fines or other administrative sanctions shall be referred to a hearing officer, per § 24-4-105, C.R.S.
 - (A) The initial decision of the hearing officer, including the hearing officer's recommendations and any exceptions by the parties, shall be reviewed by the Board, which will adopt or reject the initial decision in whole or in part upon the issuance of a final agency order.

- d) Appeals from Director Decisions relating to Show Cause Hearings, Variance Decisions, or Other Director Decisions:
 - (I) A decision by the Director is final unless appealed to the Board within thirty (30) days of the date of such decisions.

 - (II) If a Director decision is appealed to the Board, the Board will decide whether to hear the appeal. An appeal of the Director's decision in the form of a notice of appeal must be made in writing and submitted to the POST Director. A notice of appeal will be brought before the board at the next scheduled meeting date. 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 forty-five (45) 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 constitute Final Agency Action. The appellant will be notified of the Board's action.

- e) Final Agency Action relating to the application of this Rule 5 is subject to judicial review under § 24-4-106, C.R.S.