

RULE 250: RULES GOVERNING HEARINGS BEFORE THE CHIEF EXECUTIVE OFFICER OF DENVER INTERNATIONAL AIRPORT

I. GENERAL ADMINISTRATION

1. Definitions. Unless the context otherwise clearly requires, the following terms shall have the following meanings when used below:

(a) “Administrative Record” shall mean all filings, motions, briefs, and orders related to a Petition, together with any exhibits attached to such documents or that may be admitted during a hearing, and the recordings of any hearings held during the administrative process.

(b) “Charter” means the Revised Charter of the City and County of Denver.

(c) “Chief Executive Officer,” “CEO,” or “Manager of Aviation” all mean the Manager of the Department of Aviation of the City.

(d) “City” means the City and County of Denver, State of Colorado, including its Department of Aviation.

(e) “C.R.E.” means the Colorado Rules of Evidence.

(f) “C.R.C.P.” means the Colorado Rules of Civil Procedure.

(g) “D.R.M.C.” means the Denver Revised Municipal Code.

(h) “Final Order” means the final ruling of the administrative process. After the Final Order, the administrative rulings are subject to the terms of C.R.C.P. 106(a)(4) in accordance with D.R.M.C. § 5-17(d).

(i) “Hearing” means the simplified hearing process outlined below.

(j) “Hearing Officer” means a person designated by the CEO to conduct a Hearing on behalf of the CEO.

(k) “Petition” means a request for a hearing on claim or dispute concerning any matter over which the CEO has authority by virtue of and in accordance with the Charter, D.R.M.C. § 5-17, or rules and regulations of the City or the Department of Aviation.

(l) “Petitioner” means any person or entity filing a Petition with the CEO.

(m) “Respondent” shall mean a person or entity opposing the position of the Petitioner.

(n) “Rules” means these Rules Governing Hearings Before the CEO of Aviation.

2. Authority and Scope.

(a) These Rules are adopted and issued by the CEO under the authority of Article XVI of the Charter of the City and County of Denver, and D.R.M.C. § 5-17.

(b) These Rules shall govern all hearings before the CEO falling under D.R.M.C. § 5-17 except the following: (a) hearings concerning airport identification badges, which are governed by the Security Rules under Airport Rule 20; (b) hearings governed by or pre-empted by federal law;

(c) hearings involving decisions by the Division of Small Business Opportunity, including ACDBE eligibility; (d) hearings before the Denver Prequalification Board; or (e) debarment proceedings.

(d) These Rules are effective on and after June 15, 2016, and supersede all former procedural rules. A copy of these Rules has been filed with the City Clerk of the City and County of Denver.

(e) Though these Rules are organized into several subparts, the Rules themselves are numbered sequentially.

3. Amendment of Rules. These Rules may be amended from time to time, and such amendments shall be binding and of full force and effect as of the date the CEO adopts such amendments, or such later date as the CEO may designate, pursuant to the provisions of D.R.M.C. § 2-96.

4. Severability. In the event that any provision of these Rules is held invalid, the validity of other provisions which are severable shall be unaffected.

II. FILING OF PETITIONS

5. CEO's Charge and Delegation. The CEO is the officer charged with reviewing Petitions and making a final determination and order as referenced in D.R.M.C. § 5-17(d). Such authority, however, may be delegated by the CEO as provided in D.R.M.C. § 5-17(b) and in these Rules.

6. Representation. A Petitioner who is a natural person may represent himself, or may be represented by an attorney admitted to practice in any of the United States and in compliance with Colorado law. A Petitioner that is a corporation, partnership, joint venture, or other form of corporate entity may be represented by an attorney admitted to practice in any of the United States, or by a corporate officer.

7. Filing of a Petition.

(a) Petitions must be filed with the CEO of Aviation, as stated in D.R.M.C. § 5-17. Petitions may be submitted in person or by mail to:

CEO of Aviation
Denver International Airport
8500 Peña Blvd, 9th Floor
Denver, Colorado, 80249
ATTN: Petition to the CEO

Or: Petitions may be submitted via fax or electronically to the fax number or e-mail address stated on the Airport's business web site: <http://business.flydenver.com>.

(b) A Petition must be filed within the time limitations stated in D.R.M.C. § 5-17(a). A Petition filed electronically or by facsimile must be received in its entirety in the CEO's office by 11:59 p.m. Mountain time on or before the last day to file the Petition as provided for in D.R.M.C. § 5-

17. The burden is on the Petitioner to show that the Petition was timely received by the CEO. The CEO is not responsible for any electronic, mechanical, or telephone malfunctions of any kind which may delay or prevent the transmittal of an e-mail or fax, or the transmittal of a confirmation notice. Petitioners are therefore encouraged to mail a copy of the Petition within the applicable time limit for mailing Petitions.

(c) Petitions may not be made orally. A Petition must be presented to the CEO in a legibly written document containing the following information:

- 1) the project name and/or number of any contract, permit, or similar document related to the claim;
- 2) the nature of the claim;
- 3) the factual basis of the claim;
- 4) the date(s) the claim accrued or during which the events at issue occurred;
- 5) the reasons Petitioner believes the action or determination underlying the claim is objectionable, incorrect, or illegal;
- 6) the standing of the Petitioner to make the claim;
- 7) Petitioner's name, address, phone number, and e-mail, at which Petitioner may be contacted and to which notices and orders required by these Rules may be sent;
- 8) the name, address, phone number, and e-mail of the legal representative of the Petitioner, if any; and
- 9) the signature of the Petitioner or, if Petitioner is a corporate entity, the signature of its corporate agent.

8. Acceptance or Rejection of a Petition; Initiation of Hearing Process.

(a) Rejection. The CEO may reject a Petition for the following reasons, and shall promptly notify the Petitioner of such rejection and the reason for it, at the address provided by the Petitioner:

- 1) a Petition does not state a claim upon which relief can be granted pursuant to Colorado law;
- 2) a Petitioner lacks standing under Colorado law to bring a claim;
- 3) a Petition is submitted to any person other than the CEO;
- 4) the Petition is illegible;
- 5) the information or explanation required in Rule 7 is not provided;
- 6) any other basis for dismissal under the C.R.C.P.; or
- 7) the Petition is untimely under D.R.M.C. § 5-17.

(b) Early Determination or Choice of Hearing Officer.

- 1) **No Hearing needed.** The CEO may determine the matters stated in a Petition without a Hearing. If the CEO proceeds under this section, the CEO shall issue a written statement determining the issues stated in the Petition, awarding or declining

to award such relief as the CEO finds appropriate, and notifying the Petitioner of such determination. Such notification shall be the Final Order of the CEO.

- 2) **Hearing Officer.** For matters not determined under Rule 8(b)(1), the CEO may either serve as the Hearing Officer herself, or may designate as Hearing Officer an officer or employee of the Department of Aviation or a person retained as a Hearing Officer under Denver's Charter § 2.11.3(c).
- 3) **Rules still apply.** If the CEO serves as Hearing Officer rather than delegating to another person, the CEO will follow the Hearing process outlined below as the "Hearing Officer."

(c) Docketing. If a Petition complies with Rule 7 and the CEO has determined that the issues in the Petition should go to Hearing, the CEO shall assign a case number and record the filing of the Petition in a docket book. Petitions shall be numbered by first designating the year filed, followed by a number showing the sequential order in which a Petition was filed during that year, using the format, e.g., "DIA Case No. 2015-01."

(d) Notice of Acceptance. After docketing, the CEO shall issue a written "Notice of Docketing" generally in the form attached to these Rules as Attachment A. This Notice shall be sent to all parties, assigned City legal counsel if any, and the assigned Hearing Officer if any. A copy of these Rules also shall be sent to the Petitioner and any other non-City parties.

(e) City Representation. Upon the docketing of a Petition, the CEO shall request that the Director of Airport Legal Services assign counsel to represent the City, the CEO, and/or employee(s).

(f) Consolidation. If more than one Petition is filed involving the same contract, the same or closely related claims, closely related disputes, or common questions of law or fact, the Manager or an assigned Hearing Officer may consolidate the cases, and may order joint prehearing procedures and a joint hearing.

(f) Electronic Service. Upon acceptance of a Petition by the CEO, all communications shall be sent electronically to the parties at the emails of record.

III. HEARINGS

A. PRE-HEARING PROCESSES:

9. Hearing Officer Authority. The Hearing Officer shall perform those duties and functions necessary and incidental to determining the issues raised in a Petition. The Hearing Officer shall construe these rules as a simplified procedure designed to enhance the provision of a just, speedy, and efficient determination of Petitioner's claims. This procedure requires early, full disclosure of persons, documents, damages, insurance and experts, and early, detailed disclosure of witnesses' testimony, where direct testimony at a hearing is then generally limited to that which has been disclosed. Normally, no depositions, interrogatories, document requests, or requests for admission are allowed. However, the Hearing Officer has the discretion to allow discovery that is proportional to the needs of resolving the Petition, upon consideration of the following factors: the importance of the issues at stake in the action, the amount in controversy, and the importance of the discovery in resolving the issues and whether the burden or expense of the proposed discovery outweighs its likely benefit.

10. Answer and Scheduling.

(a) Upon receipt of a Notice of Docketing, the Hearing Officer shall set a date for Respondent to file an answer or other response to the Petition.

(b) Within ten business days after Respondent's response is filed, the Hearing Officer shall conduct a conference of the parties to discuss dates for filing of motions, dates by which the parties' C.R.C.P. 26(a)(1) disclosures will be served, , whether expert witnesses will be offered, the dates by which the parties' expert testimony will be disclosed in accordance with C.R.C.P. 26(a)(2) and any other procedural matters the Hearing Officer determines would aid the expediency of the administrative process. The Hearing Officer shall issue a written order documenting the results of this conference. At or before the conference, either party may ask the Hearing Officer to determine the matter upon examination of written material submitted without a hearing. The Hearing Officer has sole discretion as to whether to grant such a request. If the outcome of the matter is determined on the written materials submitted, the Hearing Officer shall issue a written order within 30 days of such submission.

11. Dismissal of a Petition.

(a) If a Petition was not filed within the time required by D.R.M.C. § 5-17, applicable contract requirements, law, rule, or regulation, or the Hearing Officer for some other reason determines the CEO lacks jurisdiction, the case may be dismissed sua sponte by the Hearing Officer.

(b) A party may file a motion to dismiss in accordance with C.R.C.P. 12, and the Hearing Officer shall determine such motion generally in accordance with C.R.C.P. 12 and Colorado case law.

(c) Where appropriate, the Hearing Officer may also determine a case generally in accordance with C.R.C.P. 41 (Dismissal of Actions).

12. Summary Judgment. At any time at least six weeks before a hearing date, or less time if the Hearing Officer permits, either party may move for summary judgment in accordance with C.R.C.P. 56. The Hearing Officer shall set a date for responses or replies to such a motion, and shall set a date for oral argument on the motion if the Hearing Officer finds that oral argument would assist determination of the motion. After full briefing, and arguments on the motion if set, the Hearing Officer may deny the motion or determine the case, in whole or in part, generally in accordance with C.R.C.P. 56 and Colorado law.

13. Voluntary Discovery. In addition to the disclosures required by this Rule and any other discovery permitted Section 9 voluntary discovery may be conducted as agreed to by all the parties. However, the scheduling of such voluntary discovery may not serve as the basis for a continuance of the hearing. Disputes relating to such agreed upon discovery may not be the subject of motions to the Hearing Officer. If a voluntary deposition is taken, such deposition shall not preclude the calling of the deponent as a witness at trial.

14. Hearing Date, Prehearing Statements, and Prehearing Briefs.

(a) The Hearing Officer shall hold a hearing no later than 90 days after the conference or after entering an Order on dispositive motions, whichever occurs later. However, the Hearing Officer has discretion to extend these deadlines by up to 90 days only if she determines an extension is

warranted after considering the importance of the issues at stake in the action, the need for additional discovery, and whether the burden of the extension outweighs its likely benefit.

(b) The Hearing Officer shall provide no less than fourteen days' written notice to the Parties of the time and place for the Hearing.

(c) In the discretion of the Hearing Officer, parties may be required to file prehearing statements on a date occurring after the close of any discovery permitted by the Hearing Officer but no later than seven days before the Hearing date. Prehearing statements shall present the issues raised by the Petition, stipulated and disputed facts, a list of expected exhibits, names of witnesses with a brief statement summarizing their testimony, and an estimate of the time necessary to present a case-in-chief.

(d) The Hearing Officer also may require, or permit upon motion, pretrial briefs on legal issues that may be decided at or after the Hearing.

B. CONDUCT OF HEARING

15. General Conduct. Determination of motions, conduct of hearings, and admission of evidence shall generally be in accordance with these Rules and with the C.R.C.P. and C.R.E., including as follows:

(a) Petitioner shall have the burden of proof to show by a preponderance of the evidence the correctness of the Petitioner's position.

(b) The rules of evidence shall generally conform with those in civil, nonjury cases in state district court.

(c) Damages shall be supported by actual costs rather than estimate or opinion, unless good reason is provided for failure to do so, and shall be supported by invoices, time cards, or other business records commonly accepted in the industry.

16. Order of Proceedings. The order of proceedings in a Hearing shall be as follows:

(a) The docket call by Hearing Officer.

(b) Opening statement by Petitioner and by the representative of Respondent(s), unless waived by either party or reserved by a Respondent until the opening of the Respondent's case.

(c) Presentation of evidence by Petitioner, allowing cross-examination by Respondent. Petitioner exhibits shall be numbered for identification by the Hearing Officer.

(d) Presentation of evidence by Respondent, with cross-examination by Petitioner. Respondent exhibits shall be lettered for identification by the Hearing Officer.

(e) Rebuttal evidence, if any.

(f) Closing argument by Petitioner, followed by answering argument from Respondent, with opportunity to reply to answering argument by Petitioner. Alternatively, either Party may request or the Hearing officer may require that closing arguments and any responses be submitted in writing on dates set by the Hearing Officer.

17. Recording. Hearings shall be recorded by electronic means. The Hearing Officer shall provide and maintain custody of the recording device. This recording shall be the official record of the hearing. Transcripts of such recordings may be made, but at the expense of the party requesting a transcript. In addition to a recording, a party may employ at its own expense a certified court reporter.

18. Witness Oath or Affirmation. All testimony in proceedings before the Hearing Officer shall be given under oath or affirmation, to be administered by the Hearing Officer in substantially the following form:

“I solemnly swear [or affirm] that the testimony I am about to give is the truth, the whole truth, and nothing but the truth.”

C. POST-HEARING PROCEDURES

19. Determination by the Hearing Officer. No later than one (1) months after closing arguments are complete, the Hearing Officer shall issue a written opinion determining the issues stated in the Petition. The Hearing Officer may award damages pursuant to Colorado law. The written opinion shall state the facts, evidence, and law the Hearing Officer relied upon to reach the determination made.

20. Final Order, and Appeals.

- (a) The Hearing Officer’s written opinion under Rule 20 shall be the Final Order.
- (b) Any appeal of a Final Order must be made in accordance with C.R.C.P. 106(a)(4).
- (c) Any party, including the City, may appeal a Final Order of the Hearing Officer.

21. Administrative Record.

- (a) The Hearing Officer is responsible for maintaining the Administrative Record.
- (b) Within fourteen days of issuing a Final Order, the Hearing Officer shall prepare and certify the Administrative Record in a manner consistent with the requirements of C.R.C.P. 106(a)(4), and create a listing of all documents, physical evidence, and recordings comprising the Administrative Record.

ATTACHMENT A

BEFORE THE CEO OF AVIATION, CITY AND COUNTY OF DENVER

Case No. DIA -----

NOTICE OF DOCKETING

In the matter of -----, Petitioner

----- ("Petitioner"), submitted to the CEO of Aviation a "Petition for Hearing" (the "Petition") dated -----. The CEO determines that a Hearing is necessary to decide the issues raised in the Petition.

Accordingly, the CEO of Aviation orders as follows:

1. This case shall be governed by the "Rules and Regulations Governing Hearings before the CEO of Aviation" (the "Rules"), a copy of which is enclosed with this Order.

2. This matter is assigned Case Number DIA -----.

3. [CHOOSE ONE:

The Hearing shall be held before the CEO, who may be contacted as follows: Mailing Address, Phone, E-mail

OR

In accordance with Rule 8, -----, is hereby designated the Hearing Officer for this matter. The Hearing Officer's contact information is as follows:

Name, Mailing Address, Phone, E-mail]

4. No party shall send any document to the [Hearing Officer] [CEO] without at the same time furnishing a copy of such document to the other party or to the other party's attorney if one has entered an appearance for the party.

5. Further orders in this case shall be made by the [Hearing Officer] [CEO].

Dated this ____ day of-----, 20---.