# REPRESENTING YOURSELF AT THE STATE PERSONNEL BOARD

Your case will be heard and decided by an Administrative Law Judge (ALJ) who works for the State Personnel Board (the Board). The Board hears appeals by classified employees and some applicants in the state personnel system. The information provided here is general information about Board hearings. The Board provides this information to help you in the hearing process, but it is not legal advice and is not intended to be a substitute for having your own lawyer. It is important to carefully read all Board Rules, especially those rules in Chapter 8, which may be found at http://www.colorado.gov/cs/Satellite/DPA-SPB/SPB/1213608768055. Not all cases are the same and your case may be different. You may not discuss your case with the ALJ without the other party being present. Board staff cannot provide legal advice.


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## 1. WHAT QUESTIONS CAN THE BOARD STAFF ANSWER?

- **We can** answer general questions about how the Board works, give you general information about Board rules, terminology, procedures, and practices, and answer general questions about Board deadlines.
- **We cannot** advise you as to how the Board rules and procedures will be applied to your case.
- **We cannot** explain decisions or let you speak to the ALJ without the other party being present, nor can we talk to the ALJ for you or change an order from an ALJ.
- **We can** provide you with contact information for legal services programs or a list of attorneys who practice in front of the Board.
- **We cannot** refer you to specific lawyers, contact programs or lawyers for you, or give answers that involve legal advice.
- **We can** provide you with certain information from your case file, including whether or not an order has been issued and what the order is.
- **We cannot** provide you with information that has been restricted by order or law.
- **We can** provide or refer you to Board forms and instructions.
- **We cannot** tell you how you should complete the forms or complete the forms for you.

- **We cannot** tell you what to say in hearing.
- **We can** provide schedules and information on how to file an appeal and schedule a hearing.
- **We cannot** advise you whether you should file an appeal or give you an opinion about what will happen if you file an appeal.
- **We cannot** correct forms for you or tell you what corrections should be made.

## 2. IS THERE A WAY TO SETTLE MY CASE WITHOUT A HEARING?

- Cases often settle without going to hearing. The parties may discuss settlement and settle a case at any time. You may contact the lawyer for the other side to see if you can work something out or you may request a settlement conference or mediation at the Board by calling 303-866-3300. This service is provided at no cost to either party. Upon request by either party, the Board provides trained settlement facilitators to conduct settlement conferences.
- Settlement discussions or mediation do not put your case on hold. All deadlines in the case, including the deadlines for your prehearing statement and your hearing, remain the same unless the ALJ changes them. You must request any change to deadlines regarding your hearing in writing; you may request a change to the date of your settlement conference by calling the settlement facilitator assigned to your case.
- Even if you do settle your case, you still need to show up for the hearing unless the case has been dismissed. See Board Rules 8-13 to 8-19 and Board Rule 8-62.

## 3. WHAT SHOULD I KNOW ABOUT THE LAW AND PROCEDURAL RULES?

You should familiarize yourself with the State Personnel Board Rules and Administrative Procedures at http://www.colorado.gov/cs/Satellite/DPA-SPB/SPB/1213608768055. The document you are reading is not a substitute for the Board Rules. You can also view the Board Rules and Administrative Procedures by clicking on **Board Rules** at the top of any page at the Board's website found at http://www.colorado.gov/spb and then on **Rules and Procedures** (effective 7/1/05 or later). The Board Rules contain important deadlines and procedural guidelines.

Decision Annotations on the Board's website provide a summary of cases by category or subject, in chronological order, bookmarks to each category or subject, and a hyperlink to each Initial Decision issued by the ALJs over the last 15 years, and may be found at: http://www.colorado.gov/cs/Satellite/DPA-SPB/SPB/1213608768060.

You should also carefully read your Notice of Hearing and Prehearing Order and pay attention to all deadlines, especially the deadline for the Prehearing Statement. The Prehearing Order sets forth the deadlines for filing your Prehearing Statements, in which you identify the witnesses and their expected testimony and the exhibits you plan to present as evidence at hearing. It also contains other critical information. Read and follow this document closely, as well as Chapter 8 of the Board Rules in particular and Board Rule 8-59.

## 4. HOW MAY I COMMUNICATE WITH THE ALJ?

You may only communicate with the ALJ in writing. Every state agency is represented by an attorney, usually an Assistant Attorney General (AAG), whom you may contact by telephone. Before you make a request (called a "motion"), you must contact the AAG and ask if the AAG supports or opposes your motion. You should include this information in your motion. If, for example, you want to ask for more time to file your Prehearing Statement, call the AAG and ask if the AAG opposes your request. Then, if the AAG does not oppose your request, you may say that in your motion, along with how much time you are requesting. If the other party files a motion, you have 10 days to file a response with the Board. Board Rule 8-57. Be sure to send the AAG a copy of the request when you file it with the Board. Whenever you file anything with the Board, a copy must be provided to the other side at the same time. Board Rule 8-45.

## 5. HOW MAY I RECEIVE AND SEND THINGS TO THE BOARD?

Although all Board orders will be sent to you via email and you are required to provide an email address on your appeal form, unless you have requested and been granted an exception, you may not file anything at the Board electronically because the Board has no way to check the source of any email that is sent. You may, however, mail, hand-deliver, or fax documents to the State Personnel Board at 303-866-5038, 633 17th Street, Suite 1320, Denver, Colorado 80202-3604.

## 6. HOW DO I GET RECORDS?

You may get records in several different ways:

- You may try to get the documents or records you need just by asking the AAG.
- You also have the right to subpoena records or other things to be produced at the hearing by individuals, businesses, and government agencies. Write a letter to the Board Program Assistant requesting subpoenas. It is important to request subpoenas as early as possible. The letter must include the name and case number of your case and the names of persons and addresses, if available, of those persons you wish to subpoena. Once the subpoenas are prepared, Board staff will inform you by telephone that your subpoenas are ready for you to pick up, usually after one or two business days. After you pick up the subpoenas, you must have a person not involved in your case, such as a process server, serve each subpoena on each witness, personally. Be sure to obtain the return of service form (swearing that the subpoena was served) and bring it to the hearing with you. If the witness does not appear, you can then prove you served the subpoena. <u>You must have your subpoenas served at least 48 hours prior to the hearing date and time (not including weekends or holidays).</u> See Board Rule 8-64 and Paragraph No. 9 below on subpoenas and witnesses.
- You can also obtain records through mandatory disclosure. Within 15 days of receipt of the notice of the appeal or the granting of a hearing, each party, Complainant and Respondent, must disclose information that is relevant to the party's claims and defenses. This can be done by sending to the other party by mail, a copy of all documents, information, data compilations and tangible items, in your control.
- Either party may also make a written request for documents and/or information from the other party, referred to as "discovery." See Board Rule 8-58 and Paragraph No. 7 below for an explanation of discovery.

## 7. WHAT IS "DISCOVERY"?

- Discovery is the process of requesting information from the other party. This may be done by requesting the production of documents, setting a deposition or giving the other party interrogatories.
- You may request any document or information necessary for your case, subject to objection by the opposing party by giving the other party a Request for Production of Documents.
- Discovery also includes depositions and interrogatories. Depositions are sworn statements of witnesses taken before the hearing before a court reporter, without the ALJ being present and with all parties having received notice of the deposition and an opportunity to be present and ask questions. If you want to take the deposition of a witness, you will be responsible for any witness fees, court reporter fees and other expenses of the deposition. Interrogatories are written questions, which must be answered in writing under oath.

- Once your case is set for hearing, you have just **fifteen (15) days** from the Notice of Hearing and Prehearing Order to send your written discovery request to the other party (either a Request for Production of Documents or Interrogatories). The other party has twenty (20) days from receipt of your request to respond. The same applies to you, of course. If you need more than fifteen (15) days to prepare your request for discovery or more than twenty (20) days to respond to the other party's discovery, you must file a motion asking the ALJ for more time before the deadline expires.
- If the agency fails to respond to your discovery within 20 days, you may file a motion with the ALJ requiring the other side to answer the questions or provide the documents or you may request a deposition of a witness to find out the information.
- All exchanges of information, including depositions, must be completed at least 10 days before the hearing.
- Be sure to read the documents you receive to verify the time that you have to respond to any discovery requests. If you believe there is a legal basis for not answering a written question, sitting for a deposition, or complying with other discovery requests, you may file a motion asking the ALJ to issue an order protecting you from the discovery. However, unless the ALJ issues such an order, you must comply with the discovery. If you fail to do so, your appeal may be dismissed and you may have to pay the state agency's costs and attorney fees. See Board Rule 8-58.

## 8. WHAT IF I CAN'T BE THERE ON THE DAY SET FOR THE HEARING?

If you cannot attend the hearing on the date and time shown, the ALJ may change this hearing date if you or the other party shows good cause for the change. However, by statute, the hearing must commence no later than 120 days after receipt of the appeal. To reschedule a hearing, you need to:

- Submit the request (motion) to the Board in writing and send a copy to the other party.
- Your request must explain why the hearing date should be changed, including details of any conflict with your schedule; whether or not the other party objects to or opposes the request to change the hearing date; and, if you are unable to contact the other party, explain what efforts you made to contact the other party.
- After you have contacted the other party, you and the other party shall promptly talk to the Board's Program Assistant at 303-866-3300 to get <u>at least two (2)</u> <u>alternate dates</u> available to you, the other party and the ALJ for the rescheduled hearing. You should include the dates that the Program Assistant gives you in your request. The Program Assistant cannot hold dates open indefinitely; therefore, your request to change the hearing date should be filed immediately with the Board once dates have been obtained.
- If you are unable to contact the other party to obtain a new date for the hearing, you must still contact the Program Assistant and get <u>at least two (2) alternate dates</u> the ALJ is available, and include such dates in your request to change the hearing date.
- If the other party does not agree with the request to change the hearing date, and the new dates for the hearing do not present a conflict in the schedule for you and the other party, should the request be granted, you should state in your request that there is no schedule conflict and both sides are available. In the event the other party objects to the

rescheduling of the hearing and agreement cannot be reached on dates for the rescheduled hearing, the ALJ may conduct a conference, either in person or by telephone, to resolve the issues and to reset the hearing date. See Board Rule 8-57.

## 9. HOW DO I GET A WITNESS TO COME TO THE HEARING?

At hearing, you have the right to call any witnesses you deem appropriate (subject to objection by the opposing party). You may be able to make arrangements with the AAG to have agency employees appear as witnesses, but the AAG is not obligated to make this agreement. If the AAG does not agree to produce witnesses, or if the witnesses you want are not employees of the state agency, you will need to serve subpoenas on witnesses you wish to call on your behalf. A subpoena is a command or order signed by an ALJ for a person to appear at a certain time and place to give testimony in a case. A witness can come voluntarily to the hearing; however, a subpoena protects your right to require that person to testify if his/her testimony is relevant to your case. Contact the Board well before the hearing to get a subpoena to require the witness to appear. It is important to request subpoenas as early as possible. The letter **must** include your name and case number; and the names of persons and addresses, if available, of those persons you wish to subpoena; and the day on which you wish them to testify. Once the subpoenas are prepared, Board staff will inform you by telephone that your subpoenas are ready for you to pick up, usually after one or two business days. You must pay required fees, including mileage to the hearing, and have someone else serve the subpoena at least 48 hours before the hearing, not counting weekends and holidays. Be sure to obtain the return of service form (swearing that the subpoena was served) and bring it to the hearing with you. If the witness does not appear, you can then prove you served the subpoena. <u>You **must** have your subpoenas served at least 48 hours prior to the hearing date and time (**not** including weekends or holidays).</u> If you subpoena expert witnesses, you may have to pay for their time to testify at the hearing and their time to travel to the hearing. See Board Rule 8-64.

## 10. WHAT KIND OF EVIDENCE WILL I NEED FOR THE HEARING?

- You may testify at the hearing, if you have listed yourself as a witness on the prehearing statement. You may also bring other witnesses to the hearing who know about the facts and issues involved in the case. If there are documents, such as letters or performance evaluations, that help prove your case, bring the original and at least three copies to the hearing. You may also bring photographs or other items that relate to your case that you want the ALJ to consider. Documents, photographs, records, and reports can be considered by the ALJ if permitted by the Colorado Rules of Evidence.
- If you file anything with the Board, you must send copies of it to the AAG or other attorney assigned to your case. His or her name and address are on the Certificate of Service on all Board orders. When you file your prehearing statement at the Board, you must provide a copy of the prehearing statement and all exhibits to the AAG.

- If you do not provide a copy of your exhibits to the AAG, the ALJ may not allow you to use them at your hearing. Again, be sure to read the Rules and Procedures found at http://www.colorado.gov/spb and follow all prehearing orders issued by the ALJ. If either party files a motion in your case, the other party has ten (10) days to file a response with the Board. See Board Rule 8-54, 8-56 and 8-57 to 8-63.

## 11. IS IT ACCEPTABLE TO BRING LETTERS INSTEAD OF WITNESSES?

A written statement by a witness who is not present at the hearing is usually not allowed. The best testimony is provided by witnesses present at the hearing, either in person or by telephone or videoconference. However, you must request permission from the ALJ (through a motion) to take testimony by telephone or videoconference in advance of the hearing.

## 12. IF I FORGET SOMETHING, CAN I SEND IT TO THE ALJ LATER?

Your chance to present evidence is at the hearing. Only in rare cases will the ALJ allow you to send evidence later. See Board Rules 8-59 to 8-61.

## 13. WHAT IF I NEED AN INTERPRETER?

If you or a witness needs a language interpreter, you should arrange to bring your own certified interpreter. **Normally, it is not okay to bring a friend or relative to interpret for you.** You may contact the lawyer for the other side to see if you can arrange for an interpreter or share an interpreter. If you need a sign-language interpreter, contact the Board at 303-866-3300.

## 14. WILL THE HEARING LOCATION BE ACCESSIBLE TO PEOPLE WITH DISABILITIES?

Hearing locations are accessible to persons with disabilities; however, check in advance with the Board to ensure accessibility. In addition, if you know of persons who plan to attend and who have special needs that require reasonable accommodation, contact the Board at 303-866-3300 as soon as possible so arrangements can be made.

## 15. WHAT IF I DON'T GO TO THE HEARING?

If your case is set for hearing and you do not attend the hearing, a dismissal order will be issued dismissing your appeal. You may also be ordered to pay the state agency's costs and attorney fees.

## 16. WHAT HAPPENS AT THE HEARING?

**In most cases, the employee must introduce evidence** to prove his or her case. Generally, you must show that the decision of the appointing authority was arbitrary, capricious or contrary to rule or law. If you have the burden of proof in a hearing, you must present your evidence first at the hearing, and the state agency then presents its evidence. See Representing Yourself at Hearing on the Board's website for information in a nutshell on such topics as discovery, motions, the prehearing order, settlement, subpoenas, and witnesses. This is an abbreviated version of this document and can be used to get a quick overview of procedures. See Board Rules 8-54 to 8-77.

## 17. WHAT WILL MY HEARING BE LIKE?

- Your hearing will be very similar to a trial in court, with witnesses and exhibits presented by all parties. The AAG will represent the agency whose action you are appealing. You may be represented by an attorney or you may appear and represent yourself. You may not be represented at hearing by anyone who is not an attorney. If you represent yourself, you must comply with the State Personnel Board Rules and Administrative Procedures, the Colorado Rules of Civil Procedure, and the Colorado Rules of Evidence. The ALJ must remain neutral, and cannot represent you.
- It is up to you to decide whether you will hire an attorney. The Board cannot appoint one for you. You may choose to represent yourself, but an attorney may be better able to present your case.
- The Colorado Bar Association keeps a list of attorneys you may be able to consult for free or for a small charge. The Board can also provide you with a list of attorneys who practice before the Board; however, the Board will not recommend that you hire a particular attorney.
- You may also ask for security during your hearing. You should contact the Board at 303-866-3300 well in advance of your hearing date to ask for help in obtaining security.
- You should arrive at the place where your hearing will be held before your scheduled hearing and ask your witnesses to be seated in the waiting area.
- The ALJ will electronically record the hearing. This is important because the electronically-recorded record is necessary to produce a transcript of the hearing if someone wants to appeal the ALJ's decision.
- When the hearing begins, the ALJ may ask each side what the issues are and what each side intends to prove. Your opening statement may describe what your appeal is about, why you are appealing, and what you are trying to prove. Each side then can introduce

relevant evidence to prove its case. Evidence can include testimony taken under oath or exhibits, such as letters or performance evaluations. In some cases, depositions may be used instead of live testimony. Each side is allowed to call witnesses, who will take an oath to tell the truth. You may call witnesses and you may testify yourself. If you call witnesses, you may ask them questions about the facts of your case (direct examination). After you are finished asking questions, the AAG will ask questions (cross-examination). You may then ask more questions about matters brought up by the other side during cross-examination (redirect). The ALJ may also ask some questions, once both sides have completed their questions.

- Either side may object to the offering of exhibits, and the exhibits will not be admitted into evidence unless they comply with the Colorado Rules of Evidence. The ALJ will decide whether to admit exhibits into evidence.
- If you testify, the ALJ, as with other witnesses, may ask some questions. You also can make a statement. Then the other side will ask you questions (cross-examination). You then will have a chance to make another statement to respond to the questions asked by the other party, but not to bring up new issues or topics.
- After each side has presented its case, rebuttal witnesses may be called. Rebuttal witnesses may only testify to issues already brought up by the other side.
- After all testimony has been heard, the ALJ may allow each side to make a closing argument. Closing argument addresses facts brought out in testimony of the witnesses or in exhibits received into evidence and explains how those facts relate to the law that applies to your case. Closing argument is not a chance to testify and you may not mention things that were not received in evidence. Sometimes the ALJ may request instead that the parties file a written closing argument after the hearing. This is your chance to argue about how the law applies to the facts of your case.
- **Before the hearing closes, you must submit all the evidence you want the ALJ to consider.**

## 18. ARE THE HEARINGS AND RECORDS CONFIDENTIAL?

Hearings are open to the public, and files are also open to the public. If a hearing or record that normally would be open to the public contains sensitive or personal information (such as medical records), you or the other party can ask the ALJ to close the hearing to the public and can also request in writing that the Initial Decision of the Administrative Law Judge not be published on the Board's website. You are encouraged to bring these matters to the attention of the other party, the Administrative Law Judge, or the Board's Director as soon as such issues arise or are identified. Confidential matters should be addressed before the hearing commences or during the hearing, before a decision is issued. In the event such issues are brought to the attention of the Board after a final decision is rendered, the Board may not be able to address the issue and provide a remedy.

## 19. WHEN WILL I GET A DECISION?

After the closing arguments have been presented, the record is closed unless the ALJ has ordered written closing arguments. The ALJ will issue a written decision within 45 days after the closing of the record.

## 20. CAN I APPEAL THE ALJ'S DECISION?

- To appeal the decision of the ALJ, you must file a designation of record and a notice of appeal with the Board. The designation of record describes the portions of the evidentiary record you want to be considered on appeal, which may or may not include a transcript of testimony and/or exhibits. If you wish to appeal the ALJ's decision, you must file the designation of record within 20 calendar days of the date the ALJ's decision was mailed to the parties. You must file the notice of appeal within 30 calendar days after the ALJ's decision was mailed to the parties. The Board must receive the designation of record and the notice of appeal by these deadlines. If you do not file the designation of record or notice of appeal by the deadline, the ALJ's decision automatically becomes final. See Board Rules 8-67 to 8-76.
- You may file a petition for reconsideration of the ALJ's decision within 5 calendar days after you receive the decision. If you file a petition for reconsideration, that <u>does not extend</u> the 20-day deadline to file your designation of record or the 30-day deadline to file your notice of appeal of the ALJ's decision. See Board Rule 8-65.
- If you appeal the ALJ's decision, you will have to pay a $50.00 fee to have the Board prepare and certify its record. If you designate a transcript of the hearing, you will have to make arrangements for and pay a court reporter to prepare that transcript. You may make a request in writing that the Board waive the $50.00 fee for the record preparation. The Board cannot waive the cost of preparing a transcript.
- You may obtain a CD-ROM of the hearing by making a request in writing addressed to the Board. You need to put the case name and case number of the proceeding, date(s) of the hearing, and what portion(s) of the hearing you want on CD-ROM.
- A $10 per disk preparation fee is payable at the time the written request is submitted to the Board, either in the form of a check or money order made payable to the "Colorado State Personnel Board" (not cash). If you want a copy quickly, the fee is $20 per disk, and you must tell the Board that you want a copy of the disk sooner than 5 business days.
- A player is required to listen to the CD-ROM. When the Board prepares the CD of a hearing, a copy of the player is installed on the CD-ROM for you to use.