DEPARTMENT OF PERSONNEL AND ADMINISTRATION

OFFICE OF ADMINISTRATIVE COURTS

PROCEDURAL RULES

Preamble

Unless otherwise noted in a specific provision, the Office of Administrative Courts Procedural Rules were adopted in their entirety by the Department of Personnel & Administration on February 2, 2009.

This version reflects rulemaking by the Director to amend the Office of Administrative Courts Procedural Rules as follows: Rule 1.B.3., 1.B.4.,1.E.; Rule 5; Rule 8.A., 8.B.; Rule 9.C., 9.D.; Rule 22; Rule 23.A.; Appendix A, VIII effective August 30, 2014.

1 CCR 104-1

Rule 1. Scope of Rules.

A. Except as otherwise ordered by the administrative law judge and except as excluded below, these rules apply to the conduct of all cases before the Office of Administrative Courts, Colorado Department of Personnel, whether contested or not.

B. These rules do not apply to:

1. Juvenile and adult parole proceedings.

2. Disputes concerning workers' compensation.

3. Permanency hearings pursuant to Sec. 475 (5)(C) of the Social Security Act, 42 U.S.C. 675.

4. Hearings pursuant to the Individuals With Disabilities Education Act ("IDEA") as described in 20 U.S.C. § 1415(g) and 34 C.F.R. § 300 and also hearings pursuant to the Exceptional Children's Educational Act as described in Section 22-20-101, C.R.S. and 1 C.C.R. 301-8.

C. Rules 4-6, 8-17, 19, 21 and 26 are excluded from application to cases before the Colorado Department of Human Services, the Colorado Department of Health Care Policy and Financing, or any County Department of Social or Human Services pertaining to appeals by applicants for or recipients of public assistance, medical

assistance ("Medicaid") or food stamps and to intentional program violation proceedings.

D. Rule 4 does not apply to cases before the State Department of Human Services concerning confirmed reports of child abuse and neglect as described in 12 C.C.R. 2509-3.

E. Unless otherwise ordered by the administrative law judge, Rules 4 and 13 do not apply to the following cases:

1. Campaign and political finance cases pursuant to Colo. Const., art. XXVIII, and the Fair Campaign Practices Act, Section 1-45-101 et seq., C.R.S.

2. Proceedings pursuant to the Individuals with Disabilities Education Act, 20 U.S.C. Sections 1400 et seq.

3. Cases pursuant to the Teacher Employment, Compensation, and Dismissal Act, Section 22-63-101 et seq., C.R.S.

F. When a statute, rule or regulation of any agency on whose behalf a hearing is being conducted by an administrative law judge is in conflict with or inconsistent with these rules, the statute, rule or regulation of the agency shall take precedence.

Rule 2. Definitions and Rules of Construction.

A. As used in these rules, the following words have the following meanings:

1. "Agency" shall have the same meaning as set forth in Section 24-4-102(3), C.R.S.

2. "OAC" means the Office of Administrative Courts created in the Colorado Department of Personnel and Administration by Section 24-30-1001(1), C.R.S.

3. "Administrative law judge" means an administrative law judge appointed pursuant to Section 24-30-1003, C.R.S.

4. "Expanded media coverage" means any photography, video or audio recording of proceedings.

B. As used in these rules the following rules of construction shall apply unless the context otherwise requires:

1. Words in the singular shall include the plural and words in the plural shall include the singular.

2. These rules shall be liberally construed to secure the just, speedy and inexpensive determination of all matters presented to the OAC.

3. Appendices to these rules are considered to be part of these rules.

4. References in agency rules to the OAC's former name, the Division of Administrative Hearings, will be treated as references to the OAC.

Rule 3. Referral and Assignment of Cases.

Where an agency is given statutory authority to appoint an administrative law judge, to have its hearings conducted by an administrative law judge or in any way to refer a matter to an administrative law judge, the agency's action, or a party's action pursuant to statute or regulation, in filing pleadings with the OAC or in requesting a setting of any hearing dates by the OAC will be considered the appointment of or referral to an administrative law judge. Administrative law judges will be assigned to cases by the Director of the OAC or by the designee of the Director.

Rule 4. Setting of Hearings or Other Proceedings.

When any party requests a hearing before the OAC, it shall be the responsibility of the agency or its counsel promptly to file and serve a notice to set a hearing on the merits, unless otherwise ordered by the administrative law judge. The agency or its counsel shall obtain a setting date from the OAC. When a statute or rule requires a more expedited setting, or at the discretion of the administrative law judge, the hearing on the merits may be set at any time. A notice to set any proceeding made by any party must be filed with the OAC and served upon all persons entitled to notice of the setting at least 5 days prior to the date of the setting. For the purpose of setting any matter, a party or a party's representative may appear at the OAC at the time established for the setting or may telephone the OAC at such time. Hearing dates will be set whether or not the parties participate at the setting. A prompt hearing on the merits will be set within 90 days from the setting date, unless otherwise ordered.

Rule 5. Entry of Appearance and Withdrawal of Counsel.

Entries of Appearance and Withdrawals of Counsel shall be in conformance with C.R.C.P. 121 § 1-1. Any out-of-state attorney shall comply with C.R.C.P. 221.1.

Rule 5 does not apply to a substitution of counsel if new counsel enters an appearance at the same time as prior counsel withdraws.

Rule 6. Expanded Media Coverage.

1 Expanded media coverage of cases before the OAC may be permitted at the discretion of the administrative law judge, under such conditions as the administrative law judge may designate. In determining whether expanded media coverage should be permitted, the administrative law judge shall consider the following factors:

A. Whether there is a reasonable likelihood that expanded media coverage would interfere with the rights of the parties to a fair hearing;

B. Whether there is a reasonable likelihood that expanded media coverage would unduly detract from the solemnity, decorum and dignity of the proceedings;

C. Whether expanded media coverage would create adverse effects that would be greater than those caused by traditional media coverage.

Rule 7. Consolidation.

A party seeking consolidation of two or more cases shall file a motion to consolidate in each case sought to be consolidated. If consolidation is ordered, and unless otherwise ordered by the administrative law judge, all subsequent filings shall be in the case first filed and all previous filings related to the consolidated cases shall be placed together under that case number. Consolidation may be ordered on an administrative law judge's own motion.

Rule 8. Default Procedures.

A. A person who receives notice of an agency adjudicatory hearing is required to file a written answer within 30 days after the service or mailing of notice of the proceeding. If a person receiving such notice fails to file an answer, an administrative law judge may enter a default against that person. Section 24-4-105(2)(b), C.R.S.

B. An administrative law judge will not grant a motion for entry of a default under this statutory provision unless the following requirements are met:

1. The motion for entry of a default must be served upon all parties to the proceeding, including the person against whom a default is sought.

2. The motion shall be accompanied by an affidavit establishing that both the notice of the proceeding and the motion for entry of default have been personally served upon the person against whom a default is sought, or have been mailed by first class mail to the last address furnished to the agency by the person against whom the default is sought.

3. Any motion for entry of default requesting a fine or civil penalty shall set forth the legal authority for the claim and any applicable calculation thereof.

Rule 9. Discovery.

A. To the extent practicable, C.R.C.P. 26 through 37 and 121, Section 1-12 and the duty to confer at Section 1-15(8) apply to proceedings within the scope of these rules, except to the extent that they provide for or relate to required disclosures, or the time when discovery can be initiated. Discovery may be conducted by any party without authorization of the administrative law judge.

B. C.R.C.P. 16 does not apply to proceedings before the OAC.

C. In addition to the requirements of C.R.C.P. 36, a request for admission shall explicitly advise the party from whom an admission is requested that failure to timely respond to the request may result in all of the matters stated in the request being deemed established unless the administrative law judge on motion permits withdrawal or amendment of the admission. The failure to comply with this rule may result in the matters contained in the request being deemed denied.

D. Discovery requests and responses should not be filed with the OAC, except to the extent necessary for the administrative law judge to rule upon motions involving discovery disputes.

E. Either party may move to modify discovery deadlines and limitations pursuant to Rule 13.

Rule 10. Determination of Motions.

A. Any motion involving a contested issue of law shall be supported by a recitation of legal authority. References to agency rules shall include the appropriate Colorado Code of Regulations citation. References to any superceded rules shall be accompanied by a copy of such rules. A responding party shall have 10 days from service or such lesser or greater time as the administrative law judge may allow in which to file and serve a responsive brief. Reply briefs will be permitted only upon order of the administrative law judge. If so ordered, the reply brief must be filed within 5 days of the order of the administrative law judge.

B. If facts not appearing of record before the administrative law judge are to be considered in disposition of the motion, the parties may file affidavits at the time of filing the motion or responsive or reply brief. Copies of such affidavits and any documentary evidence used in connection with the motion shall be served on all other parties.

C. If the moving party fails to incorporate legal authority into the motion and fails to file a separate brief with the motion, the administrative law judge may deem the motion

abandoned and may enter an order denying the motion. Failure of the responding party to file a responsive brief may be considered a confession of the motion.

D. If possible, motions will be determined upon the written motion and briefs submitted. The administrative law judge may order oral argument or evidentiary hearing on the administrative law judge's own motion or on request of a party. If any party fails to appear at an oral argument or hearing without prior showing of good cause for non-appearance, the administrative law judge may proceed to hear and rule on the motion.

E. An expedited hearing on any motion may be held at the instance of the administrative law judge. If any party requests that a motion be determined immediately with or without a hearing, or that a hearing be held on a motion in advance of a previously set motions date, that party shall:

1. Inform the administrative law judge in writing of said request.

2. Contact all other parties, determine their position on the motion, and indicate on the face of the motion whether other parties oppose the motion and whether they will request a hearing on the motion.

3. If a hearing is desired by any party and authorized by the administrative law judge, the moving party, upon advance notice to the administrative law judge or the docket clerk, shall notice in all other parties to set the matter directly with the administrative law judge on an expedited basis.

F. Parties shall comply with C.R.C.P. 12 unless otherwise ordered by the administrative law judge for good cause shown.

Rule 11. Place of Hearing.

All cases within the scope of these rules will be heard at the OAC in Denver. The administrative law judge for good cause shown may change the place of hearing when the convenience of witnesses and parties and the ends of justice will be promoted by the change.

Rule 12 Mediation Conferences.

At any time after a proceeding is initiated, any party may file with the administrative law judge and serve upon all other parties a request for a mediation conference. If the request is granted, the conference shall be conducted by any available administrative law judge other than the assigned administrative law judge. All of the discussions at the mediation conference shall remain confidential and shall not be disclosed to the administrative law judge assigned to the case. Statements at the mediation conference

shall not be admissible evidence for any purpose in any other proceeding. Participation in a mediation conference shall constitute an agreement by all parties and attorneys not to call the administrative law judge conducting the mediation as a witness to the matters discussed in the mediation conference in any subsequent proceeding. An administrative law judge may require a mediation conference on the administrative law judge's own motion.

Rule 13. Prehearing Procedures, Statements and Conferences.

A. Unless otherwise ordered by the administrative law judge, each party shall file with the administrative law judge and serve on each other party a prehearing statement in substantial compliance with the form as outlined in Appendix A to these rules. Prehearing statements shall be filed and served no later than 20 days prior to the date set for hearing or such other date established by the administrative law judge. Exhibits shall not be filed with prehearing statements, unless ordered by the administrative law judge. Exhibits shall be exchanged between the parties by the date on which prehearing statements are to be filed and served on such other date as ordered by the administrative law judge.

1. The authenticity of exhibits, statutes, ordinances, regulations or standards set forth in the prehearing statement shall be admitted unless objected to in a written objection filed with the administrative law judge and served on other parties no later than 10 days prior to hearing.

2. The information provided in a prehearing statement shall be binding on each party throughout the course of the hearing unless modified to prevent manifest injustice. New witnesses or exhibits may be added only if the need to do so was not reasonably foreseeable at the time of filing of the prehearing statement and then only if it would not prejudice other parties or necessitate a delay of the hearing. An agency shall use numbers to identify exhibits and any opposing party shall use letters.

3. In the event of noncompliance with this rule, the administrative law judge may impose appropriate sanctions including, but not limited to, the striking of witnesses, exhibits, claims and defenses.

B. Prehearing conferences may be held at the discretion of the administrative law judge, upon request by any party or upon the administrative law judge's own motion. Any party may request a prehearing conference to address issues such as discovery, motions deadlines, scheduling orders and status conferences.

C. If a prehearing conference is held and a prehearing order is entered, the prehearing order will control the course of the hearing.

Rule 14. Rules of Evidence.

To the extent practicable, the Colorado Rules of Evidence apply in all hearings conducted by the OAC. Unless the context requires otherwise, whenever the word "court" , "judge" or "jury" appears in the Colorado Rules of Evidence such word shall be construed to mean an administrative law judge. An administrative law judge has the discretion to admit evidence not admissible under such rules, as permitted by Section 24-4-105(7), C.R.S. or other law.

Rule 15. Rules of Civil Procedure.

To the extent practicable, and unless inconsistent with these rules, the Colorado Rules of Civil Procedure apply to matters before the OAC. Unless the context otherwise requires, whenever the word "court" appears in a rule of civil procedure, that word shall be construed to mean an administrative law judge. The following do not apply:

A. C.R.C.P. 16.

B. The filing deadlines for motions and cross motions for summary judgment set forth in C.R.C.P. 56(c).

Rule 16. Files and Hearings Open to the Public.

All files shall be open to public inspection, unless otherwise prohibited by law, regulation or court order, or when upon motion and order the agency or administrative law judge otherwise has the authority or discretion to prohibit public inspection. All hearings shall be open to the public unless prohibited by law, regulation or court order or closed by order of the administrative law judge or the agency.

Rule 17. Motions for Continuance.

A. Continuances shall be granted only upon a showing of good cause. Motions for continuance must be filed in a timely manner. Stipulations for a continuance shall not be effective unless and until approved by the administrative law judge.

B. Good cause may include but is not limited to: death or incapacitation of a party or an attorney for a party; a court order staying proceedings or otherwise necessitating a continuance; entry or substitution of an attorney for a party a reasonable time prior to the hearing, if the entry or substitution reasonably requires a postponement of the hearing; a change in the parties or pleadings sufficiently significant to require a postponement; a showing that more time is clearly necessary to complete authorized discovery or other mandatory preparation for the hearing; or agreement of the parties to

a settlement of the case which has been or will likely be approved by the final decision maker.

C. Good cause normally will not include the following: unavailability of counsel because of engagement in another judicial or administrative proceeding, unless the other proceeding was involuntarily set subsequent to the setting in the present case; unavailability of a necessary witness, if the witness's testimony can be taken by telephone or by deposition; or failure of an attorney or a party timely to prepare for the hearing.

Rule 18. Subpoenas.

A. Upon oral or written request of any party or of counsel for any party, an administrative law judge shall sign a subpoena or subpoena duces tecum requiring the attendance of a witness or the production of documentary evidence, or both, at a deposition or hearing. Unless otherwise provided by agency statute, rule or regulation, practice before the OAC regarding subpoenas shall be governed by C.R.C.P. 45.

B. Staff persons of the OAC are authorized to use a stamp signature or to otherwise duplicate the signature of an administrative law judge on subpoenas completed by the parties. However, no other party or person may duplicate the signature of an administrative law judge. Subpoenas issued in contravention of this rule are invalid and may subject the party using them to sanctions.

C. Any attorney representing a party to a proceeding before the OAC may issue a subpoena or subpoena duces tecum requiring the attendance of a witness or the production of documentary evidence, or both, at a deposition or hearing.

Rule 19. Settlements.

Parties shall promptly notify the administrative law judge of all settlements, stipulations, agency orders or any other action eliminating the need for a hearing. An agency shall file a motion to dismiss when a case has settled.

Rule 20. Ex Parte Communications.

With the exception of scheduling or other purely administrative matters, and with the exception of mediation processes, a party or counsel for a party shall not initiate any communication with an administrative law judge pertaining to a matter before the OAC unless prior consent of all other parties or their counsel has been obtained. Copies of all pleadings or correspondence filed with the OAC or directed to an administrative law judge by any party shall be served upon all other parties or their counsel.

Rule 21. Procedure in Summary Suspension Matters.

A. All deadlines and procedures set forth herein or in the Colorado Rules of Civil Procedure may be modified as necessary to afford the right to a prompt hearing.

B. In all matters involving a summary suspension, the agency shall immediately file a charging document and a Notice to Set the hearing on the merits with the OAC. The Notice to Set shall contain a setting date obtained from the OAC that provides advance notice to the opposing party at least 5 days but no more than 10 days from the Notice to Set.

C. The Notice to Set shall provide the telephone number and address of the OAC. The Notice to Set shall prominently inform the opposing party of its right to an expedited hearing and of the option to request a prehearing conference before an administrative law judge.

D. Either party may request in writing a prehearing conference before an administrative law judge in a summary suspension case. The purpose of the prehearing conference shall be to arrange for expedited disclosures, discovery schedules, motion dates, and further prehearing conferences as necessary.

E. In any case in which hearing is set 45 days or fewer from the date of the setting, the OAC will set a prehearing conference.

Rule 22. Computation and Modification of Time.

In computing any period of time prescribed or allowed by these rules, the provisions of C.R.C.P. 6 shall apply. The time periods of these rules may be modified at the discretion of the administrative law judge.

Rule 23. Filing of Pleadings and Other Papers.

A. Pleadings and other papers may be filed by mail, electronically, or by facsimile subject to Rule 24.

B. After the OAC has assigned a case number to a matter, all pleadings and papers filed with the OAC shall contain that case number.

Rule 24. Filing of Pleadings and Other Papers by Facsimile Copy.

A. The facsimile capabilities of the OAC are limited. Parties are encouraged to avoid filing pleadings by facsimile copy, except when reasonably required by time constraints.

B. Subject to the limitations of Rule 24(C), facsimile copies may be filed with the OAC in lieu of the original document. If a facsimile copy is filed in lieu of the original document, the attorney or party filing the facsimile copy shall retain the original document for production to the administrative law judge, if requested. If an original or copy of a pleading in addition to the facsimile filing is filed with the OAC the additional copy or original may be discarded and not made part of the OAC file.

C. Pleadings or other documents in excess of 10 pages (excluding the cover sheet) may not be filed by facsimile copy in lieu of the original document unless otherwise ordered by the administrative law judge.

D. Facsimile copies shall be accompanied by a cover sheet that states the title of the document, case number, number of pages, identity and voice telephone number of the transmitter and any instructions.

Rule 25. Service of Pleadings and Other Papers.

A. Service of pleadings or other papers on a party or on an attorney representing a party may be made by hand delivery, by mail to the address given in the pleadings, by facsimile transmission to a facsimile number given in the pleadings, or to the party's last known address, or with agreement of the parties, by e-mail. When a party is represented by an attorney, service shall be made on the attorney.

B. Pleadings or other papers sent to the OAC must contain a certificate of service attesting to service on the opposing party and in the case of service by mail providing the address where pleadings or other papers were served.

C. Attorneys and parties not represented by attorneys must inform the OAC and all other parties of their current address and of any change of address during the course of the proceedings.

Rule 26. Testimony by Telephone or Other Electronic Means.

A. Upon motion of any party the administrative law judge may conduct all or part of a hearing by telephone or videophone. The motion must be filed sufficiently prior to hearing to permit a response and ruling pursuant to OAC Rule 10.

B. All arrangements for the taking of testimony by telephone or videophone shall be made by the party requesting such testimony, who shall be responsible for all costs associated with the testimony.

C. Exhibits and other documents that will be used or referred to during all or part of a hearing conducted by telephone or other electronic means must be filed with the OAC

and, unless previously supplied, provided to all other parties at least two days before the hearing. Exhibits necessary to the testimony of a witness must be provided to the witness prior to the witness's testimony.

Rule 27. Court Reporters.

A. The OAC does not supply court reporters. If any party wishes to have all or a portion of a proceeding transcribed by a court reporter, that party may make private arrangements to do so at that party's own expense. The recording of any proceeding made electronically by the OAC shall be the official record.

B. A request to the OAC for a recording must be in writing and must contain the case number and the date and time of the hearing or conference.

APPENDIX A

OUTLINE FOR PREHEARING STATEMENT

The following shall be included in each party's Prehearing Statement:

I. PENDING MOTIONS. A list of all outstanding motions that have not been ruled upon by the administrative law judge.

II. STATEMENT OF CLAIMS AND DEFENSES. A concise statement of all claims or defenses asserted by all parties, together with all matters in mitigation or aggravation.

III. UNDISPUTED FACTS. A concise statement of all facts that the party contends are or should be undisputed.

IV. DISPUTED ISSUES OF FACT. A concise statement of the material facts that the party claims or concedes to be in dispute.

V. POINTS OF LAW. A concise statement of all points of law that are to be relied upon or that may be in controversy, citing pertinent statutes, regulations, cases and other authority. Extended legal argument is not required but may be reserved for a trial brief at the option of the party.

VI. WITNESSES. The name, address and telephone number of any witness or party whom the party may call at hearing, together with a detailed statement of the content of that person's testimony.

VII. EXPERTS. The name, address and brief summary of the qualifications of any expert witness a party may call at hearing, together with a statement that details the opinions to which each expert is expected to testify. These requirements may be satisfied by the incorporation of an expert's resume or report containing the required information.

VIII. EXHIBITS. A description of any physical or documentary evidence to be offered into evidence at the hearing. An agency shall use numbers to identify exhibits and any opposing party shall use letters.

IX. STIPULATIONS. A listing of all stipulations of fact or law reached, as well as a listing of any additional stipulations requested or offered to facilitate disposition of the case.

X. TRIAL EFFICIENCIES. An estimate of the amount of time required to try the case.