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March 9, 2021

VIA EMAIL: Doug.platt@state.co.us, rick.dindinger@state.co

Colorado State Personnel Board and Department of Personnel and Administration
1525 Sherman St., 4th floor
Denver, CO 80203

Re: Comments, Joint Rulemaking Hearing, Chapter 6

Dear Board members and State Personnel Director:

Below find the written comments submitted on behalf of Colorado WINS and Schwane Law, LLC. These comments are based on the collective experience of myself in years of representing state employees as well as Pamela Cress, grievance coordinator for Colorado WINS, who has participated in innumerable Rule 6-10 meetings on behalf of state employees over the years. These comments are based on this shared experience.

Rule 6.5: It states designated raters shall be evaluated on their performance management and evaluation of employees. Our experience is that this generally does not happen. We recommend clarifying who has the authority to do such an evaluation, who gets to see the results and what mechanism is available to disagree with it.

Rule 6-6: It states that a needs improvement performance rating shall result in a PIP and/or corrective action. The previous rule stated that a PIP should be used before a corrective action. We recommend that a PIP still be the first step in addressing performance issues early in the process as corrective actions have a punitive implication.

Rule 6-10: The paragraph about what is to be included in the written notice of the 6-10 is deficient in our opinion. The phrase "general information about the reasons for scheduling the meeting" is too vague. This is already an abused rule where, as a matter of practice, agencies provide scant to no information about the actions at issue prior to the meeting, or even in the meeting. The employee should know exactly why they are being called to a 6-10, which makes for a more productive meeting for all parties concerned. These meetings are frequently used as informal depositions to impeach employee's credibility, where an employee is often unknowledgeable about the specific allegations or claims against them which frequently occurred months before the meeting. Employees have had to file a CORA request, and pay

costs for that CORA, just to get an investigation of the incident at issue, at the direction of agency human resources persons, which is then redacted so extensively that relevant information such as dates of claims cannot even be ascertained. In the past two years, I have represented approximately four persons who sat on administrative leave for a period of three to seven months before their Rule 6-10 meeting, which is not good for the employee, the employer or the taxpayer. None of these incidents required extensive investigations of this nature. We recommend a change to the rule that requires an exchange of documentary information, including investigations, prior to the Rule 6-10 meeting for a more productive exchange of information.

Rule 6-15: We recommend employees be advised of the email filing option in the action letter. Employees who receive a corrective action should also be advised that filing an appeal with the Board is for discretionary review under certain claims as this causes confusion.

Rule 6-13.B: Whether intentionally or unintentionally, this rule appears to be an expansion of grounds for discipline. We would recommend the following:

> B.3: The additional phrase "other applicable directives" is ambiguous and overly broad. We would recommend clarifying directives as to who from, concerning what, how directive come, does the person giving the directive have authority to do so, etc.
> B.6: The phrase "omission of material facts" is an expansion from previous rule that is ambiguous and overly broad. First, there has to be some sort of duty that is violated before simply determining that a fact not provided is subject to discipline.
> B.7.b.: This rule is missing language, specifically it fails to identify a threat of what? Based on subpart a, the implication is that it a threat of violence, but this needs to be clarified.
> B.8: This is a reference to statutory language relating to vulnerable persons in the custody of the state. There is no provision in statute that provides for MANE of a person in general.

Finally, we recommend that should an appointing authority decided not to take action, the employee be advised in writing of such. Rarely are employees so notified and it results in employees uncertain if action will be taken against them sometime in the future. They continue to live under a cloud without any sort of written acknowledgement from the appointing authority. Good employee/employer relationships would support acknowledgement that the appointing authority has not found support for taking action.

Sincerely,

Mark A. Schwane