



DEFERENCE TO CITY DECISIONS TO HIRE, FIRE AND DISCIPLINE ITS EMPLOYEES CONTINUES IN *ROYBAL V. CITY AND COUNTY OF DENVER*

When the City of Denver terminates an employee, it relies on the Department of Safety's Civilian Review Board to investigate the issue and take action. When terminating a City employee, the Board must follow procedural steps to make sure the employee is not treated unfairly. If an employee feels that she has been treated unfairly, she can appeal the Board's decision by asking for District Court review of the Board's actions.

The specific rule allowing review is Colorado Rule of Civil Procedure ("C.R.C.P.") 106(a), which provides that decisions rendered by government bodies acting in a judicial or quasi-judicial role are reviewable by district courts if there "is no other plain, speedy or adequate remedy." In essence, where a board has rendered a decision, and there is no appeal route provided, a terminated employee can appeal the decision to a Colorado court. Colorado courts are generally deferential to decisions made by government bodies and government officials. This deference is continued in *Roybal v. City & County of Denver*, Case No. 17CA1662 (Jan. 24, 2019).

In 2017, Denver Sheriff Department veteran, Robert Roybal, was terminated after the Department of Safety's Civilian Review Administrator conducted an investigation that uncovered multiple rule violations. Subsequently, an internal review and administrative hearing generated a decision to uphold the termination. Feeling the decision was unfair, Roybal sought judicial review pursuant to C.R.C.P. 106(a)(4), contending the administrative body abused its discretion by allowing the City to delegate the firing decision to the Civilian Review Board.

Relying on the Charter of the City and County of Denver, Roybal argued only the Manager of Safety or the Deputy Manager of Safety can hire, discipline, and terminate Denver

Sheriff Department employees; therefore, his termination by the Department of Safety's Civilian Review Administrator was improper.

The Colorado Court of Appeals disagreed and held that the City and County did not abuse its discretion. The Court held the Manager of Safety could designate someone else - not necessarily a Deputy - with authority to discipline or terminate employees of the Denver Sheriff Department. The *Roybal* Court concluded the City and County of Denver's Career Service Authority Board correctly interpreted the Charter, by finding that deviations from pre-disciplinary regulations do not warrant reversal of a termination decision of a government employee. The Court of Appeals perceived no error with the Board's finding that Roybal "received a full and fair pre-disciplinary process and that any irregularities in that process were trivial and in no way had an adverse impact on [his rights]."

The *Roybal* decision continues the philosophy which guides appeals in cases where review is done pursuant to C.R.C.P. 106(a)(4). The Court reviewing the Board decision generally defers to the Board and only asks "was discretion abused, or jurisdiction exceeded?" Administrative boards retain fairly broad authority to hire, fire, and discipline government employees so long as the necessary procedures are followed. Courts continue to review the decision in an effort to afford basic fairness to administrative processes, yet its review is a far cry from the scrutiny afforded a challenged criminal conviction.

If you have any questions about this update, please contact Kendra Smith, smithk@hallevans.com.

