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ADVANCE SHEET HEADNOTE
November 7, 2022

2022 CO 52

No. 21SC548, ***Colo. Jud. Dep't v. Colo. Jud. Dep't Pers. Bd. of Rev.*****—Colorado Judicial System Personnel Rules—C.R.C.P. 106(a)(4) Review—Judicial Department Employee Discipline.**

The supreme court holds that the Colorado Judicial System Personnel Rules ("Personnel Rules") preclude district court review of a final order by the Judicial Department Personnel Board of Review ("Board"). In light of this holding, the supreme court does not address whether the Board is a "governmental body" or a "lower judicial body" within the meaning of C.R.C.P. 106(a)(4), which allows district court review of some decisions by governmental bodies and lower judicial bodies. Because the Personnel Rules preclude C.R.C.P. 106(a)(4) review, that's the end of the analysis. Any potential conflict between the Personnel Rules and C.R.C.P. 106(a)(4) must be resolved in favor of the Personnel Rules because the supreme court promulgated both and the Personnel Rules are more specific than C.R.C.P. 106(a)(4). Accordingly, the supreme court affirms the judgment of the court of appeals.

The Supreme Court of the State of Colorado
2 East 14th Avenue • Denver, Colorado 80203

2022 CO 52

Supreme Court Case No. 21SC548
Certiorari to the Colorado Court of Appeals
Court of Appeals Case No. 20CA161

Petitioner:

Colorado Judicial Department, Eighteenth Judicial District,

v.

Respondents:

Colorado Judicial Department Personnel Board of Review and Abbey Dickerson.

Judgment Affirmed
en banc
November 7, 2022

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JUSTICE SAMOUR delivered the Opinion of the Court, in which **JUSTICE HOOD**, **JUSTICE GABRIEL**, and **JUSTICE BERKENKOTTER** joined.
JUSTICE MÁRQUEZ, joined by **CHIEF JUSTICE BOATRIGHT** and **JUSTICE HART**, dissented.

JUSTICE SAMOUR delivered the Opinion of the Court.

¶1 When employees of the Judicial Department ("Department") are disciplined, the Colorado Judicial System Personnel Rules ("Personnel Rules" or "C.J.S.P.R.") afford them an opportunity to appeal to the Judicial Department Personnel Board of Review ("Board").[1] The employee involved in this case, Abbey Dickerson, appealed to the Board after she was terminated by the Eighteenth Judicial District ("District"). As required by the Personnel Rules, the Board appointed an attorney (who happened to be a retired court of appeals judge) to serve as the hearing officer on her case. Following an evidentiary hearing, the hearing officer changed the disciplinary action to a ninety-day suspension without pay. The District then appealed to the Board, but the Board affirmed the hearing officer's decision. Because the District remained concerned about Dickerson's suitability to return to her position, however, it sought review of the Board's final

[1] The Personnel Rules apply only to employees of the Department "whose positions are within the classification and compensation plan established by these rules pursuant to section 13-3-105, C.R.S. and section 5(3) of article VI of the Colorado constitution." C.J.S.P.R. 3 (2018). When we generally refer to "employee" in this opinion, we mean any employee who falls within the scope of the Personnel Rules pursuant to C.J.S.P.R. 3. (We cite to the 2018 version of the Personnel Rules because that's the version that was in effect during the relevant timeframe; although we have amended the Personnel Rules since, the amendments are not relevant to our analysis.)

order by filing a C.R.C.P. 106(a)(4) claim in Denver district court. C.R.C.P. 106(a)(4) allows district court review where a governmental body or lower judicial body exercising judicial or quasi-judicial functions exceeds its jurisdiction or abuses its discretion in a civil matter and there is no plain, speedy, and adequate remedy otherwise provided by law.

¶2 So, is the Board either a "governmental body" or a "lower judicial body" within the meaning of C.R.C.P. 106(a)(4), such that its decision to affirm, modify, or reverse a disciplinary action may be challenged in district court? This is the first of two questions we agreed to review in this case.[2] We don't answer it, however, because our answer to the second question renders it purely academic. On the second question, we hold that the Personnel Rules preclude district court review of a final order by the Board. Accordingly, we affirm the court of appeals' judgment.

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[2] Here are the two questions as to which we granted certiorari:

1. Whether the Judicial Department Personnel Board of Review is a "governmental body" or "lower judicial body" within the meaning of Colorado Rule of Civil Procedure 106(a)(4).
2. Whether the Colorado Judicial System Personnel Rules preclude district courts from reviewing final decisions by the Judicial Department Personnel Board of Review.

¶3 We recognize the valid concerns raised by the District regarding the lack of an opportunity for judicial review of the Board's final orders. However, given the current review process within the Personnel Rules, there are equally valid concerns with permitting a district court to review final orders issued by the Board, especially since the Board is an eight-member body that includes a justice or a court of appeals judge, a district court judge, and a county court judge. We therefore believe that the District's concerns should be addressed, if at all, through revisions to the Personnel Rules. Our court promulgated the Personnel Rules and has the power to amend them.

I. Facts and Procedural History

¶4 On December 18, 2018, Dickerson, a probation officer in the District, posted a message on "the private side of her Facebook page" about a conversation she'd had earlier in the day with a client who was on probation for driving under the influence of alcohol. Although Dickerson did not identify the client by name, her posting stated that he "admittedly ha[d] an issue with alcohol but [had] been sober 10 months," had done "phenomenal[ly]" on probation, was a "nice guy," and was planning to have a tattoo added to his hand on the one-year anniversary of his sobriety to discourage drinking. According to Dickerson, her client had informed her that the tattoo, which would consist of a mirror whose reflection would show a man urinating in a toilet with someone watching, would serve as a reminder that

he'd "be back" on probation providing urinalysis samples should he ever "raise the bottle to [his] mouth" again.

¶5 Dickerson's posting was apparently viewed and discussed by some members of the public. After a federal probation officer who had previously been employed by the District responded that Dickerson should gift the client a cup when he finished probation, Dickerson replied that his last probation appointment coincided with his "year sober date" and that she would do as suggested to "mess with him." Dickerson added that the cup would "make him crack up!" The federal probation officer then recommended that Dickerson fill the cup with yellow M&M's, to which Dickerson replied "lol!!!!"

¶6 In January 2019, the chief probation officer of the District served Dickerson with a "Notice of Pre-Disciplinary Action Meeting," which alleged that her Facebook posting and comments had violated policies of the District and the Department, as set forth in the District's Probation Department Policies, the Department's Code of Conduct, and a Chief Justice Directive. Specifically, the notice indicated that a pre-disciplinary meeting was necessary because Dickerson had violated policies: (1) requiring probation officers to "maintain defendants' right to privacy and the confidentiality of private information"; (2) prohibiting probation officers from revealing "case information to anyone not having a legitimate or professional use for the information"; (3) barring probation officers

from disclosing "offender and/or case information that is not defined as public record"; (4) precluding Department employees from disclosing or using "confidential information," including case-related information that is not in a public record and that is "acquired during the performance of job duties for any purpose not connected with official duties"; and (5) forbidding Department employees from disclosing "sensitive, confidential or non-public court and probation information . . . for any purpose not connected with official duties."

¶7 The pre-disciplinary meeting between the chief probation officer and Dickerson was held on January 17, 2019. At that meeting, Dickerson admitted that she had written the Facebook posting and comments in question but denied violating any District or Department policies. Dickerson's refusal to acknowledge any wrongdoing was troubling to the chief probation officer.

¶8 Thereafter, in a "Notice of Disciplinary Action," the chief probation officer informed Dickerson that the District had decided to terminate her, effective immediately. Like the earlier notice, this notice was served with the agreement of the District's chief judge and the Department's chief human resources officer. In explaining the District's decision to terminate Dickerson, the chief probation officer stressed the importance of her failure to take responsibility for her actions:

> During the meeting on January 17, 2019, you repeatedly stated that your behavior was acceptable . . . as you had not disclosed identifying information related to your client. . . .

> . . . At no point during the January 17th meeting did you take responsibility for these actions. . . .
>
> . . . Your actions show a significant lack of insight, integrity and professionalism calling into question your suitability for your position as a probation officer and sworn officer of the court. . . .
>
> . . . .
>
> . . . I find your misconduct to be significant and your decision to take little responsibility for your actions as an indication to me that you do not understand the position that you have put the Judicial Department and the 18th Judicial District Probation Department in. I have lost confidence in your ability to honor the high standards for personal integrity and professionalism set by the Code of Conduct, particularly in your position as a sworn officer of the court.

¶9 Dickerson appealed her termination to the Board. And, as required by the Personnel Rules, the Board appointed an attorney to serve as a hearing officer on her case. The hearing officer, a retired court of appeals judge, then held an evidentiary hearing on May 13, 2019. At the hearing, the District and Dickerson both were represented by counsel, called witnesses, and presented other evidence. Thereafter, on May 17, 2019, the hearing officer issued his decision.

¶10 The hearing officer found that Dickerson had violated District and Department policies but concluded that the District had "acted arbitrarily and capriciously" in imposing the most severe sanction available. In so doing, the hearing officer acknowledged that the District "may be justified" in its concerns about Dickerson's future conduct. But the hearing officer felt that "additional training and supervision" would effectively address those concerns. He added

that he believed Dickerson when she said that, although she didn't think she'd violated any policies, she'd be able to conform her behavior to the District's view of the policies.

¶11 Of particular relevance here, the hearing officer observed that the Department had admitted that Dickerson would not have been terminated if she had accepted responsibility for her actions. In the hearing officer's view, Dickerson had not acted improperly in asserting that her conduct was consistent with District and Department policies. He explained that, though she may have "argued more stridently than she should have," her denial of any wrongdoing did not justify losing her employment. Concluding that termination was not warranted, the hearing officer modified Dickerson's discipline to a ninety-day unpaid suspension, retroactive to March 1, 2019. Thus, absent any further appeals, Dickerson would have been reinstated on May 30, 2019.

¶12 But the District remained concerned about Dickerson's suitability to be a probation officer. So it appealed to the Board.

¶13 In July 2019, the parties, through counsel, filed briefs with the Board, including an opening brief, an answer brief, and a reply brief. The following month, the Board issued a "final order." By a vote of 5-3, it affirmed the hearing officer's decision. All three judicial officers on the Board, including the court of appeals judge (the Board's chairperson and the author of the Board's final order),

were in the majority. The Board determined that the District's termination of Dickerson was arbitrary and capricious. It thus upheld the ninety-day unpaid suspension. At the end of its final order, the Board declared that its decision was "final and binding on all parties and . . . not subject to appeal or review."

¶14 The District then sought review under C.R.C.P. 106(a)(4) in Denver District Court, arguing that the Board had applied an incorrect standard of review and abused its discretion. Dickerson intervened in the action and later joined the Board in moving to dismiss the case both for lack of subject matter jurisdiction under C.R.C.P. 12(b)(1) and for failure to state a claim upon which relief could be granted under C.R.C.P. 12(b)(5). The district court granted the motion to dismiss pursuant to C.R.C.P. 12(b)(1).[3] It ruled that it lacked subject matter jurisdiction because the Board was neither a "governmental body" nor a "lower judicial body" within the meaning of C.R.C.P. 106(a)(4). The court also reasoned that if it accepted jurisdiction over this case, "it would assume authority over another district court," which it could not do because it was "of equal stature to the District and cannot review or supervise the judgment of the District." Thus, the court concluded that

[3] The district court did not address the motion to dismiss under C.R.C.P. 12(b)(5).

the Personnel Rules do not allow any "further appellate process . . . after a decision issued by the Board."

¶15 Shortly thereafter, the District appealed the district court's order, but a division of the court of appeals affirmed on other grounds. *Colo. Jud. Dep't v. Colo. Jud. Dep't Pers. Bd. of Rev.*, 2021 COA 82, ¶ 2, 495 P.3d 355, 357. In a thoughtful opinion, the division unanimously held that the Personnel Rules precluded district court review of the Board's final order for four reasons: (1) the review process in the Personnel Rules—which includes "what in effect are a trial and an appeal," substantial procedural rights at both levels, and a final decision-making body (the Board) that has three judicial officers among its eight members—reflects that our court intended that process to be self-contained; (2) in contrast to the Administrative Procedure Act, § 24-4-106, C.R.S. (2022) ("APA"), the Personnel Rules contain no provision permitting judicial review; (3) the Personnel Rules make clear that an appeal to the Board is the last step before the disciplinary action takes effect; and (4) judicial personnel matters "lie within the exclusive province of the supreme court" by virtue of the state constitution, and allowing a district court to review the Board's final orders would undermine the supreme court's sole

authority to oversee this area.[4] *Id.* at ¶¶ 25–31, 495 P.3d at 360–61. Given this ruling, the division didn't have to determine whether the Board is a "governmental body" or a "lower judicial body" within the meaning of C.R.C.P. 106(a)(4). *Id.* at ¶ 40 n.9, 495 P.3d at 362 n.9.

¶16 The District sought certiorari review in our court, and we granted its petition.

II. Analysis

¶17 We begin by discussing the controlling standard of review and the relevant principles of rule construction. We then visit the Personnel Rules, exploring in detail the extensive review system in place for disciplinary actions. We end by answering the second question on which we granted certiorari—whether the Personnel Rules preclude district courts from reviewing the Board's final orders. For three reasons, we conclude that they do: (1) the architecture of the review process in the Personnel Rules demonstrates that our court intended a stand-alone review process; (2) in contrast to the APA, the Personnel Rules contain no provision permitting judicial review; and (3) the Personnel Rules expressly state

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[4] The division opined that the fourth reason was supported by our decision in *Chessin v. Office of Attorney Regulation Counsel*, 2020 CO 9, 458 P.3d 888, where we held that the district court lacked subject matter jurisdiction over the Office of Attorney Regulation Counsel's refusal to bring charges against an attorney. *Colo. Jud. Dep't*, ¶¶ 32–36, 495 P.3d at 361–62.

that an appeal to the Board is the last step before the disciplinary action takes effect.[5]

A. Controlling Standard of Review and Relevant Principles of Rule Construction

¶18 When, as here, there are no disputed facts, the question of subject matter jurisdiction "presents a question of law which is reviewed de novo." *Tulips Invs., LLC v. State ex rel. Suthers*, 2015 CO 1, ¶ 11, 340 P.3d 1126, 1131; *accord Jim Hutton Educ. Found. v. Rein*, 2018 CO 38M, ¶ 17, 418 P.3d 1156, 1161. The determination of jurisdiction in this case hinges on our interpretation of the Personnel Rules, which our court promulgated. We review court rules de novo. *People ex rel. Rein v. Meagher*, 2020 CO 56, ¶ 23, 465 P.3d 554, 560.

¶19 In construing court rules, we use the same tools that we use in interpreting statutes. *Id.* Consequently, we must look first to the words and phrases of the rule and accord them their plain and ordinary meaning. *See People v. Vanness*, 2020 CO 18, ¶ 17, 458 P.3d 901, 905. In doing so, we must be mindful that "we construe our own rules within the context of the broader scheme and the purpose to be served

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[5] While we generally see eye-to-eye with the division, we do not rely on the fourth reason it articulated to support its holding. *See Colo. Jud. Dep't*, ¶ 31, 495 P.3d at 361 ("Fourth, personnel matters in the Judicial Department lie within the exclusive province of the supreme court."). We pass no judgment on that part of the division's rationale.

by the scheme as a whole." *People in Int. of J.D.*, 2020 CO 48, ¶ 9, 464 P.3d 785, 788. If the language of the rule is unambiguous, we must apply it without resorting to other tools of construction. *People ex rel. Rein*, ¶ 23, 465 P.3d at 560.

B. The Personnel Rules

1. Background

¶20 Article VI of the Colorado Constitution establishes the state's Judicial Department. Section 5(3) of that article specifically directs our court to "appoint a court administrator and such other personnel as the court may deem necessary to aid the administration of the courts." Section 13-3-105(1), C.R.S. (2022), in turn, provides that, pursuant to section 5(3) of article VI, our court "shall prescribe, by rule, a personnel classification plan for all courts of record to be funded by the state." That plan must include, among other things, "[t]he procedures for and the regulations governing the appointment and removal of court personnel." § 13-3-105(2)(f).

¶21 Our court effectuated the plan mandated by section 13-3-105(1) by promulgating the Personnel Rules, which contain provisions regarding the hiring, classification, compensation, and discipline of employees. And, in conjunction with the Personnel Rules, it created the Board "pursuant to the authority vested by section 5(3) of article VI of the state constitution, and in fulfillment of the requirements of section 13-3-105." C.J.S.P.R. 2.

¶22 Under the Personnel Rules, the chief judge of each judicial district is the "Administrative Authority" responsible for that judicial district's employees, including probation department employees.[6] C.J.S.P.R. 6.A.4–5. The Personnel Rules then make each Administrative Authority "responsible to the Chief Justice and the Supreme Court for all personnel matters for all employees within the jurisdiction." C.J.S.P.R. 6.A.5.

2. Disciplinary Actions

¶23 C.J.S.P.R. 29 addresses disciplinary actions. The responsibility for administering discipline is "vested in the Administrative Authority." C.J.S.P.R. 29.A.1. When an Administrative Authority contemplates taking disciplinary action against an employee, the Administrative Authority must issue the employee a pre-disciplinary action notice and schedule a meeting with the employee. C.J.S.P.R. 29.C.5. At the meeting, which is not a formal hearing, the Administrative Authority must present information detailing the reasons why it

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[6] The chief judge may delegate responsibility for personnel matters, so long as doing so is not contrary to the constitution, a statute, a Chief Justice Directive, or the Personnel Rules. C.J.S.P.R. 6.A.6. The Personnel Rules treat both the chief judge and her designee as the "Administrative Authority." C.J.S.P.R. 6.A.7. In this case, it appears that the chief judge informally delegated her responsibility over Dickerson's discipline to the chief probation officer and then ratified the chief probation officer's action. *See* C.J.S.P.R. 6.A.6 (stating that the chief judge's delegation of responsibility need not be in writing if the chief judge ratifies the action taken by her designee).

is considering disciplinary action against the employee. *Id.* The employee must then be afforded an opportunity to respond or to present mitigating evidence. *Id.* Both sides are entitled to have legal representation at the meeting. *Id.* In lieu of attending the meeting, the employee may opt to provide the Administrative Authority a timely written response. *Id.*

¶24 In the event disciplinary action is subsequently imposed, C.J.S.P.R. 34 affords the employee an opportunity to seek review of that action. C.J.S.P.R. 29.C.9 (stating that the employee "may request review of the action as provided in Rule 34").[7] We turn to the review system next; we discuss it in great detail because its structure forms part of the basis for today's decision.

3. Review System

¶25 When an Administrative Authority disciplines an employee, the Administrative Authority must advise the employee in writing of the employee's right to appeal the disciplinary action. C.J.S.P.R. 29.C.7.d. The employee must be

[7] In the current version of the Personnel Rules, C.J.S.P.R. 34 deals with alternative dispute resolution; the review provisions have been relocated to C.J.S.P.R. 35. *See* C.J.S.P.R. 35 (2022).

given the deadline by which an appeal must be filed and the address where an appeal must be lodged.[8] *Id.*

¶26 C.J.S.P.R. 34 assigns "jurisdiction over appeals of disciplinary actions" to the Board, which is composed of eight members appointed by the chief justice for three-year terms. C.J.S.P.R. 34.A.1, 4. While C.J.S.P.R. 34.A.1 grants the chief justice discretion in appointing members to the Board, that discretion is not unfettered. There must be:

> an Appellate Court Justice or Judge; a District Judge other than a Chief Judge; a County Judge other than a Presiding Judge in a Multi-Judge County Court; a [Court Executive]; a Chief Probation Officer; a non-management administrative employee; a probation employee and a court employee not within the management occupational group.

C.J.S.P.R. 34.A.1. The chief justice must designate the justice or appellate court judge on the Board as its chairperson. *Id.*; *see also* C.J.S.P.R. 34.G (indicating that an appeal to the Board must be filed "with the Appellate Court Judge or Justice serving as Board Chairperson").

¶27 When the Board receives an employee's request for review, it must "assign the matter to a hearing officer." C.J.S.P.R. 34.D.1. The assigned hearing officer

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[8] At-will employees do not have appeal rights except under the circumstances delineated in C.J.S.P.R. 34.B.2. Dickerson was not an at-will employee.

must then hold an evidentiary hearing. *Id.*; *see also* C.J.S.P.R. 34.G.5.c (identifying a hearing officer's role in making "findings of evidentiary fact").

a. Evidentiary Hearing by Hearing Officer

¶28 The Board may appoint an attorney who has practiced law for at least five years to serve as a hearing officer. C.J.S.P.R. 34.A.7. A hearing officer may preside over evidentiary hearings for a two-year term. *Id.*

¶29 Upon being assigned a case by the Board, a hearing officer must hold an evidentiary hearing within ninety calendar days from the date of the appeal. C.J.S.P.R. 34.D.1. The hearing officer may continue the hearing for good cause, as long as the rescheduled hearing is held no later than 120 calendar days after the date of the appeal. *Id.* Prehearing motions may be filed and opposed in accordance with C.J.S.P.R. 34.D.3. Further, "[d]iscovery through informal information requests" pursuant to C.J.S.P.R. 34.D.4 is encouraged, while motions related to such requests are discouraged. *Id.* In addition to informal information requests, the Personnel Rules allow formal discovery—each party is entitled to two depositions, thirty interrogatories, ten requests for production of documents, and ten requests for admission. *Id.* The hearing officer may grant a request for additional formal discovery "upon a showing that it is essential for the [moving] party's hearing preparation." *Id.* All discovery, including depositions, must be completed no later than ten calendar days before the hearing. *Id.*

¶30 At least twenty calendar days before the hearing, both the employee and the Administrative Authority must file a "Prehearing Information Statement." C.J.S.P.R. 34.E.2. The Prehearing Information Statement must contain the following information: (1) a description of the circumstances that led to the disciplinary action under review; (2) the issues presented; (3) any admitted or undisputed facts; (4) the disputed facts; (5) the legal authorities relied upon; (6) a list of exhibits and a copy of each exhibit; and (7) a list of witnesses and a brief statement of the anticipated testimony of each witness. *Id.* The employee's filing must also spell out the remedy requested. *Id.*

¶31 "The hearing shall be open to the public, unless a closed hearing is requested by the employee or ordered by the hearing officer . . . ." C.J.S.P.R. 34.E.1. And the hearing must be recorded, be it stenographically or electronically. *Id.*

¶32 C.J.S.P.R. 34.E requires that the hearing be conducted in conformity with the provisions and procedures set forth in section 24-4-105, C.R.S. (2022), which is part of the APA, except where those provisions or procedures clash with the Personnel Rules, in which case the Personnel Rules shall prevail.[9] The Colorado Rules of Evidence apply, though they are not to be strictly enforced. C.J.S.P.R. 34.E.4. Still,

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[9] Employees are otherwise not subject to the APA's provisions. § 24-4-102(3), C.R.S. (2022).

the hearing officer must keep out irrelevant or unduly cumulative evidence. *Id.* The burden of proof is on the Administrative Authority, which has to show by a preponderance of the evidence that the disciplinary action was not arbitrary, capricious, or contrary to rule or law. C.J.S.P.R. 34.E.5, F.1.

¶33 At the hearing, the parties must be permitted to present evidence—"including testimony and statements of the complaining employee, the employee's representative, the person whose action is complained of, the Administrative Authority, their representatives, and other witnesses"—as well as "to cross-examine witnesses." C.J.S.P.R. 34.E.3. All testimony must be provided "under oath or affirmation." *Id.*

¶34 After considering the evidence and arguments presented by the parties, the hearing officer must make findings of fact, set forth conclusions of law, and determine whether the Administrative Authority has demonstrated by a preponderance of the evidence that its disciplinary action was not arbitrary, capricious, or contrary to rule or law. C.J.S.P.R. 34.F.1, 3. The hearing officer's decision, which must be announced in writing, must include a "notification of the right of either party to appeal to the Board," as well as the deadline to file an appeal and the name and address of the Board's chairperson (to whom the appeal must be addressed). C.J.S.P.R. 34.F.3, G. If no appeal is filed within fifteen calendar days after the hearing officer's decision is mailed, the hearing officer's decision

automatically becomes the Board's final order and is immediately effective. C.J.S.P.R. 34.F.4, G.1. If an appeal is timely filed, however, the Board must resolve the appeal. C.J.S.P.R. 34.F.4.

b. Appeal of Hearing Officer's Decision to the Board

¶35 Either party may appeal the hearing officer's decision by filing a timely notice of appeal with the chairperson of the Board. C.J.S.P.R. 34.G, G.1. The notice of appeal must include: (1) the employee's personal information; (2) the name, title, and business address of the Administrative Authority; (3) a statement of the errors or mistakes that the appealing party advances as grounds for reversal or modification of the hearing officer's decision; (4) a designation of the parts of the transcript of the hearing that are relevant to the appeal; and (5) a copy of the hearing officer's decision. C.J.S.P.R. 34.G.2.

¶36 The party appealing the hearing officer's decision is responsible for making arrangements with the court reporter to transcribe the parts of the hearing designated in the notice of appeal. C.J.S.P.R. 34.G.3. The appellee may also designate portions of the hearing. *Id.* When that happens, the appellee is responsible for obtaining the transcript of those portions of the hearing. *Id.* Failure to designate a portion of the hearing is deemed a waiver of the corresponding transcript. *Id.* Transcripts are due thirty calendar days after the notice of appeal

is filed. *Id.* "In the absence of a transcript, the Board is bound by and cannot alter the findings of fact of the appointed hearing officer." *Id.*

¶37 The appellant must file an opening brief, the appellee must subsequently file a response brief, and the appellant may then file a reply brief. C.J.S.P.R. 34.G.4. The Board, in its discretion, may allow oral arguments. C.J.S.P.R. 34.G.5.b.

¶38 Upon completion of the briefing—and oral arguments (if any)—the Board must review the record of the proceedings, including any transcripts of the hearing, the briefs submitted, and the hearing officer's decision. C.J.S.P.R. 34.G.5.a. The hearing officer's findings of evidentiary fact "shall not be set aside by the Board" unless they are "contrary to the weight of the evidence." C.J.S.P.R. 34.G.5.c.

¶39 The Board must issue its final order in writing "within 90 calendar days of its receipt of the appeal and transcript, if any." C.J.S.P.R. 34.G.5.d. There are four options for the Board: it "may affirm, modify or reverse the decision of the appointed hearing officer in conformity with the facts and the law or may remand the matter to the hearing officer for such further proceedings as it may direct." C.J.S.P.R. 34.G.5.c. The Board's final order must be based on the vote of the majority of the members participating in the appeal. *Id.* If "a majority of the Board Members present do not agree to reverse or modify" the hearing officer's decision, then the hearing officer's decision must be affirmed. *Id.*

¶40 Significantly, C.J.S.P.R. 34.G.5.d provides that "[t]he decision of the Board is final, and there is no further right to appeal."

C. The Personnel Rules Preclude District Court Review of a Final Order by the Board

¶41 Against the above backdrop, we now consider whether a district court has subject matter jurisdiction over the Board's final orders. For three reasons, we conclude that it does not.[10] We discuss each in turn.

¶42 First, the architecture of the review system in the Personnel Rules demonstrates that our court intended a stand-alone review system. As the division observed, the review process in the Personnel Rules essentially provides a trial and an appeal, confers substantial procedural rights at both stages, and includes a final-decision-making body that has three judicial officers among its eight members. *Colo. Jud. Dep't*, ¶¶ 26–28, 495 P.3d at 360.

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[10] As mentioned, the District sought district court review of the Board's final order by filing a C.R.C.P. 106(a)(4) complaint in district court. As pertinent here, C.R.C.P. 106(a)(4)(I) provides that when (1) "any governmental body . . . or any lower judicial body exercising judicial or quasi-judicial functions has exceeded its jurisdiction or abused its discretion" in a civil matter and (2) "there is no plain, speedy and adequate remedy otherwise provided by law," then judicial review is available with respect to "whether the body . . . has exceeded its jurisdiction or abused its discretion, based on the evidence in the record before the defendant body or officer."

¶43 The evidentiary hearing conducted by the hearing officer resembles a civil bench trial. Such a hearing is recorded, presumptively public, generally governed by the Colorado Rules of Evidence, and subject to the preponderance of the evidence burden of proof. Each party is entitled to have legal representation, present witnesses and other evidence, cross-examine witnesses, and make arguments. And any testimony provided must be under oath or affirmation.

¶44 Even the prehearing provisions parallel civil pretrial provisions. The parties are expected to exchange information and may engage in formal discovery by conducting depositions and serving interrogatories, requests for production of documents, and requests for admission. They may also file prehearing motions, including to request additional formal discovery. And the requisite "Prehearing Information Statement" is the equivalent of a trial management order in civil cases governed by C.R.C.P. 16. *See* C.R.C.P. 16(f).

¶45 The similarities don't end there. Following the hearing, the hearing officer must render a written decision that contains findings of fact, conclusions of law, and a determination as to whether the party bearing the burden of proof has shown by a preponderance of the evidence that the challenged action was not arbitrary, capricious, or contrary to rule or law. In doing so, the hearing officer is required to consider the evidence and arguments presented by the parties. This is all very much in line with what a judicial officer does following a civil bench trial.

¶46 There are also similarities between an appeal to the Board and a civil litigant's appeal to an appellate court. If either party is dissatisfied with the hearing officer's decision, that party may appeal by filing a timely notice of appeal with the Board. *Compare* C.J.S.P.R. 34.G.1, *with* C.A.R. 3–4. The contents of the notice of appeal mirror those of its counterpart in the civil world. *Compare* C.J.S.P.R. 34.G.2, *with* C.A.R. 3(d). Further, just as in the civil arena, the appealing party is generally responsible for the transcript of the proceedings. And, as with civil appeals, in the absence of a transcript, the findings of fact are binding. Otherwise, factual findings may be set aside if they are contrary to the weight of the evidence.

¶47 The similarities continue to pile up from there. Both parties have the right to be represented by counsel during the appeal. The appealing party files an opening brief, the other party files an answer brief, and the appealing party may then file a reply brief. *Compare* C.J.S.P.R. 34.G.4, *with* C.A.R. 28. Either party may request oral arguments, but oral arguments are discretionary. *Compare* C.J.S.P.R. 34.G.5.b, *with* C.A.R. 34(a).

¶48 Much like an appellate court, the Board must review the record of the proceedings, including any transcripts filed, the briefs submitted, and the decision under challenge. And, similar to an appellate court, the Board must subsequently issue a decision in writing affirming, modifying, or reversing the decision in

question, or remanding the matter for further proceedings. *Compare* C.J.S.P.R. 34.G.5.c, *with* C.A.R. 35(a).

¶49 Continuing with the similarities to an appellate court, the decision of the Board must be based on the vote of the majority of its members who participated in the appeal. And in the event that there is no majority to reverse or modify, the decision under review is affirmed. *Compare* C.J.S.P.R. 34.G.5.c, *with* C.A.R. 35(b) (providing that if the supreme court is equally divided, the judgment being appealed stands affirmed).

¶50 Given the extensive similarities between a trial and an appeal in a civil case, on the one hand, and a hearing officer's evidentiary hearing and an appeal to the Board, on the other, it is not surprising that we conclude today that an employee who is disciplined enjoys substantial procedural rights under the Personnel Rules. The District nevertheless suggests that other decision-making systems are subject to C.R.C.P. 106(a)(4) review despite these systems also including substantial procedural rights. But that may be more gravy than the biscuit can handle. The procedural rights in other decision-making systems pale in comparison to those in the Personnel Rules. By way of example, in *Barnes v. City of Westminster*, 723 P.2d 164, 164 (Colo. App. 1986), following termination of a city employee, "a hearing" was held and the employee was given a letter signed by a majority of a five-member board indicating that the termination was justified. Similarly, in *Puckett*

v. City & County of Denver, 12 P.3d 313, 314 (Colo. App. 2000), an employee in the City Attorney's Office challenged his job classification and, following an evidentiary hearing before a hearing officer, the Career Service Board "affirmed the decision of the hearing officer *without any additional findings of fact or conclusions of law*." (Emphasis added.) The procedural rights afforded to the plaintiffs in *Barnes* and *Puckett* are a far cry from those found in the Personnel Rules.[11] *See supra* at ¶¶ 20–40.

¶51 Try as it might, the District can find no decision-making system that's as robust as the one our employees enjoy. And, critically, the District can point to no decision-making system that includes judicial officers.

¶52 True, the hearing officer under the Personnel Rules is an attorney and not necessarily a judicial officer (though a retired judicial officer presided over

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[11] *City of Colorado Springs v. Givan*, 897 P.2d 753 (Colo. 1995), isn't helpful to the District. There was neither an evidentiary hearing by a hearing officer nor an appeal to an administrative board in that case. *Id.* at 755. Instead, after the plaintiff was terminated by the city, he "appealed" the decision to the deputy city manager and then to the city manager, both of whom agreed with the discharge decision. *Id.* Thus, by the time the employee sought review in municipal court, only the employer's own deputy city manager and city manager had reviewed the discharge decision. *Id.* And by the time a C.R.C.P. 106(a)(4) claim was brought in district court, the only review by a neutral body had been conducted by the municipal court under an abuse of discretion standard. *Id.* There were certainly no factual findings by a neutral body for the district court to consider.

Dickerson's hearing). But the Board includes three judicial officers among its eight members, and one of the three judicial officers (the justice or the appellate court judge) has to be the chairperson. Furthermore, the Board appoints the hearing officer.

¶53 More importantly, the categories of judicial officers who must be on the Board provide a rather compelling indication that our court intended a self-contained review process in the Personnel Rules. If a C.R.C.P. 106(a)(4) claim challenging a final order by the Board were permitted, a decision authored or approved by a justice or a court of appeals judge could be reviewed (and potentially reversed or modified) by a district court judge. Talk about turning the judicial world as we know it upside down. And might such a district court judge feel undue pressure to affirm? Regardless, the public may well perceive the existence of such pressure in a case that is affirmed. As bright and as skilled as our learned colleagues on the district court bench are, we never intended to place them in the unfair position of having to review a decision authored or approved by an *active* appellate court judicial officer.[12] Nor did we mean to have a district

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[12] We decline to shrug off the self-evident difference between requiring a district court judge to review a decision by an *active* appellate court judicial officer and requiring a district court judge to review a decision by a *retired* appellate court judicial officer who is a *senior judge assigned to the county court bench*. In our view,

court judge in Denver—the proper venue for a C.R.C.P. 106(a)(4) complaint—review the disciplinary action taken by an *active* district court judge who has been appointed chief judge of a different judicial district. District court judges have no authority to affirm, modify, or reverse each other's decisions—regardless of whether those decisions are of a jurisprudential or administrative nature—because district court judges have equal legal stature.

¶54 This is not a question of whether our esteemed colleagues on the district court bench can handle a case requiring review of a final order by the Board (of course they can); it's a question of whether they should ever have to, given the composition of the Board. We are aware of no circumstances in our justice system that allow the perverse scenarios we've identified. Any refusal to acknowledge the validity of this concern is simply whistling past the graveyard.

¶55 Second, there is no provision in the Personnel Rules for judicial review of the Board's final orders. This stands in sharp contrast with the APA, which contains provisions expressly permitting judicial review of an administrative board's decision. *See* § 24-4-106. The comparison to the APA is particularly apt because we looked to the APA in drafting the Personnel Rules; in fact, we generally

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the difference is quite meaningful, and no wishful thinking to the contrary can establish otherwise.

incorporated by reference its provisions and procedures for evidentiary hearings. *See* C.J.S.P.R. 34.E (stating that a hearing officer must conduct an evidentiary hearing "in accordance with the provisions and procedures prescribed by section 24-4-105 . . . , except that where the statutory provisions are in conflict with the provisions of these rules, these rules shall control"). Had we intended to permit judicial review of the Board's final orders, we presumably would have said so or would have referenced the APA's judicial review provisions and procedures. We did neither. Instead, we deliberately deviated from the APA, including by having three judicial officers on the final decision-making body (the Board).

¶56 Third, the Personnel Rules state, in no uncertain terms, that "[t]he decision of the Board is final, and there is no further right to appeal." C.J.S.P.R. 34.G.5.d. This is not an ambiguous provision. Therefore, we are duty bound to give its words their plain and ordinary meaning. *Vanness*, ¶ 17, 458 P.3d at 905. And once we've done so, we cannot resort to other tools of rule interpretation. *People ex rel. Rein*, ¶ 23, 465 P.3d at 560.

¶57 Other provisions in the Personnel Rules buoy our conclusion. C.J.S.P.R. 34.B.1 states that "[a]ppeals [are] limited specifically to the circumstances described in section A.5." And section A.5, in turn, refers to "action[s] of an Administrative Authority which [are] appealable to the Board pursuant to [the Personnel Rules]." C.J.S.P.R. 34.A.5. Lastly, C.J.S.P.R. 34.A.6 emphasizes that

"[a]ll decisions of the Board shall be final and binding on all parties and are not subject to appeal or review procedures set forth in these rules." It's difficult to envision stronger disavowals of further review rights. Were we to permit C.R.C.P. 106(a)(4) claims, it would jettison all of these provisions.

¶58 The District's suggestion that the case for allowing C.R.C.P. 106(a)(4) review is strengthened by the finality of any Board decision and the Board's purported quasi-judicial nature is somewhat circular. To be sure, C.R.C.P. 106 covers decisions by "lower judicial bod[ies] exercising judicial or quasi-judicial functions," C.R.C.P. 106(a)(4), and requires that any petitions for review under subsection (a)(4) be filed after the decision of the judicial or quasi-judicial body is final, C.R.C.P. 106(b). However, even assuming for the sake of argument that the Board's final orders meet these two prerequisites for review under C.R.C.P 106(a)(4), that does not mean that the Personnel Rules themselves permit such review. And therein lies a key flaw in the District's position. Because the Personnel Rules preclude C.R.C.P. 106(a)(4) review, that's the end of the analysis. It matters not what C.R.C.P. 106(a)(4) says. Any potential conflict between the Personnel Rules and C.R.C.P. 106(a)(4) must be resolved in favor of the Personnel Rules because we promulgated both and the Personnel Rules are more specific than C.R.C.P. 106(a)(4). *See Indus. Claim Appeals Off. v. Zarlingo*, 57 P.3d 736, 737 (Colo. 2002).

¶59 Differently put, while the District devotes a great deal of time and energy to interpreting and applying C.R.C.P. 106(a)(4), it's all for naught. C.R.C.P. 106(a)(4) is irrelevant here because the Personnel Rules prohibit any C.R.C.P. 106(a)(4) review.

¶60 We are also not persuaded by the District's contention that "appeal," as used in the Personnel Rules, refers only to an appeal within those rules (not to judicial review outside the rules). While C.J.S.P.R. 34.A.6 states that the orders of the Board "are not subject to appeal or review procedures *set forth in these rules*," (emphasis added), it also states that the orders of the Board "shall be final and binding on all parties." Elsewhere the Personnel Rules reiterate that the Board's orders are "final." C.J.S.P.R. 34.G.5.d. If, as the District surmises, the Personnel Rules intended to allow judicial review of the Board's orders under C.R.C.P. 106(a)(4), why would they state that the Board's orders are "final" and "final and binding on all parties"? In any event, unlike C.J.S.P.R. 34.A.6, C.J.S.P.R. 34.G.5.d doesn't refer to an appeal "set forth in these rules." Rather, it simply says that "there is no further right to appeal." C.J.S.P.R. 34.G.5.d.

¶61 The definition of "appeal" in the Personnel Rules cannot rescue the District either. Under the Personnel Rules, an "appeal" is "[a] complaint or petition filed by an employee with the State Court Administrator or with a review board as provided in these rules." C.J.S.P.R. 35.A.3. This definition clearly refers to what

employees and Administrative Authorities may do if they don't prevail in front of a hearing officer. But that definition can't possibly apply to the word "appeal" in C.J.S.P.R. 34.G.5.d, which, again, states that "[t]he decision of the Board is final, and there is no further right to *appeal*." (Emphasis added.) The failure of the definition of "appeal" in C.J.S.P.R. 35.A.3 to account for the use of "appeal" in C.J.S.P.R. 34.G.5.d appears to be a simple oversight. It would be nonsensical to apply the definition in C.J.S.P.R. 35.A.3, which relates solely to *an appeal from a hearing officer's decision to the Board*, in construing C.J.S.P.R. 34.G.5.d, which relates solely to what happens *after the Board resolves an appeal from a hearing officer's decision*.

¶62 Notably, the District's position that C.J.S.P.R. 34.G.5.d merely precludes additional appeals *before the Board* would require the word "appeal" to have two meanings in the Personnel Rules: (1) sometimes it would refer to appeals from a hearing officer's decision to the Board; and (2) sometimes it would refer to appeals to the Board from the Board's final order. There is zero support in the Personnel Rules for this dichotomy. Besides, the second definition would be superfluous because the Personnel Rules contain no provision permitting any further administrative review or appeal after the Board issues its final order. By way of analogy, it would be superfluous for the Colorado Appellate Rules to have a

provision stating that there is no further appeal (as opposed to a petition for rehearing) to our court after we announce an opinion in a case.

¶63 In sum, we are convinced that the Personnel Rules do not permit district court review of the Board's final orders.

¶64 That's not to say that the concerns raised by the District about the lack of an opportunity for judicial review of the Board's final orders lack validity. Nevertheless, our charge here is to interpret the Personnel Rules as written, and those rules prohibit judicial review of the Board's final orders. Moreover, there are equally valid concerns with permitting judicial review of the Board's final orders under the current review system in the Personnel Rules. As we've explained, the review process within the Personnel Rules includes what in effect are a trial and an appeal, substantial procedural rights at both levels, and a final decision-making body (the Board) that has three judicial officers (one of whom must be a justice or an appellate court judge) among its eight members. Superimposing district court review on this review process would be duplicative, not to mention ill-advised, for the reasons we've articulated. Thus, we believe that the District's concerns should be addressed, if at all, through revisions to the Personnel Rules.

III. Conclusion

¶65 We wish to emphasize that we do not make any policy decisions today regarding the Personnel Rules. This is neither the place nor the time to contemplate whether the Personnel Rules should be revised. We are aware that the Personnel Rules are not identical to the rules governing personnel matters in the executive and legislative departments. But if we want a review system for our employees that ensures that they are treated in exactly the same manner as their executive and legislative counterparts—a double-edged sword that would grant additional protections but would take away existing protections—then the Personnel Rules ought to be revised.[13] They're *our* rules; there's nothing stopping *us* from kickstarting the process to revise them. The question here, though, is not whether we think our employees would be better off if we made the Personnel Rules identical to the rules governing personnel matters in our sister branches of government. Indeed, the question here has nothing to do with policy and is rather narrow: Did the Personnel Rules in effect in 2018 allow district court review of a

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[13] There is no statutory requirement that our employees be treated in *exactly the same manner* as employees in the executive and legislative departments. What the legislature has proclaimed is that all state employees must be treated "generally in a similar manner." *See* § 13-3-105(4). Accordingly, in promulgating the Personnel Rules, we took "into consideration the . . . conditions of employment applicable to employees of the executive and legislative departments." *See id.*

final order by the Board under C.R.C.P. 106(a)(4). Because the answer is no, we affirm.

JUSTICE MÁRQUEZ, joined by **CHIEF JUSTICE BOATRIGHT** and **JUSTICE HART**, dissented.

JUSTICE MÁRQUEZ, joined by CHIEF JUSTICE BOATRIGHT and JUSTICE HART, dissenting.

¶66 The narrow question before us is whether a district court can review a disciplinary decision of the Judicial Department Personnel Board of Review ("Board") under Colorado Rule of Civil Procedure 106(a)(4). That rule provides for district court review of quasi-judicial decisions made by "any governmental body" in a civil matter where the law otherwise provides "no plain, speedy and adequate remedy." C.R.C.P. 106(a)(4). Such review is limited to a determination of whether the governmental body exceeded its jurisdiction or abused its discretion. C.R.C.P. 106(a)(4)(I). The Board is a "governmental body" under the common, everyday meaning of those words. Moreover, both the plain text of Rule 106(a)(4) and its history show that its limited form of judicial review has always been available for the final decisions of public boards (like the Board here) where no other remedy is provided by law.

¶67 The majority does not address these arguments. It instead concludes that the Colorado Judicial System Personnel Rules ("C.J.S.P.R." or "Personnel Rules") preclude district court review of Board decisions under Rule 106(a)(4) because: (1) the structure of the review process under the Personnel Rules reflects the intent to establish a stand-alone review process; (2) in contrast to the Administrative Procedure Act ("APA"), § 24-4-106, C.R.S. (2022), the Personnel Rules contain no

provision permitting judicial review; and (3) the Personnel Rules expressly state that an appeal to the Board is the last step before disciplinary action takes effect. Maj. op. ¶ 17.

¶68 The majority flips the Rule 106 analysis on its head. In fact, the review process under the C.J.S.P.R. (which the majority accurately describes in detail, *see* Maj. op. ¶¶ 23–40) militates in *favor* of judicial review under Rule 106(a)(4) precisely because it highlights both the quasi-judicial nature and the finality of the decision rendered by the Board. Similarly, the Personnel Rules' silence regarding the availability of judicial review of the Board's final decision simply establishes that "there is no plain, speedy and adequate remedy otherwise provided by law." C.R.C.P. 106(a)(4). In other words, the quasi-judicial nature of the Board's final decision and the absence of any other adequate remedy are *prerequisites* for Rule 106(a)(4) review—not (as under the majority's logic) reasons to *deny* such review.

¶69 I am concerned that the majority's decision to preclude review in this context results in treating Judicial Department employees differently than all other state employees—despite express legislative guidance to the contrary. Because the Personnel Rules, as currently written, do not preclude district courts from reviewing final decisions by the Personnel Board under Rule 106(a)(4), the district court in this case had subject matter jurisdiction to review the Board's decision. Accordingly, I respectfully dissent.

I. Analysis

¶70 I first explain that the Personnel Board qualifies as a "governmental body" for purposes of Rule 106(a)(4) review given the plain meaning of that phrase and the history of the rule. Next, I discuss why—contrary to the majority's analysis—the structure and finality of Personnel Board review militates in favor of judicial review under Rule 106(a)(4). I further conclude that the text of the Personnel Rules likewise weighs in favor of Rule 106(a)(4) review. Finally, I discuss the troubling implications of the majority's holding in this case.

A. The Judicial Department Personnel Board of Review Is a "Governmental Body" Under Rule 106(a)(4)

¶71 Rule 106(a)(4) review exists "[w]here, in any civil matter, *any governmental body* or officer or any lower judicial body *exercising judicial or quasi-judicial functions* has exceeded its jurisdiction or abused its discretion, *and there is no plain, speedy and adequate remedy otherwise provided by law*." C.R.C.P. 106(a)(4) (emphases added). Review under Rule 106(a)(4) is commenced by filing a complaint in district court and is narrowly limited to a determination of whether the governmental body exceeded its jurisdiction or abused its discretion, based on the evidence in the record before the governmental body. C.R.C.P. 106(a)(4)(I)–(II).

¶72 We "interpret a rule of procedure according to its commonly understood and accepted meaning." *Antero Res. Corp. v. Strudley*, 2015 CO 26, ¶ 15, 347 P.3d 149, 154; *see also Schaden v. DIA Brewing Co.*, 2021 CO 4M, ¶ 32, 478 P3d 1264, 1270.

"When determining the plain and ordinary meaning of words, definitions in a recognized dictionary may be considered." *Hecla Mining Co. v. N.H. Ins. Co.*, 811 P.2d 1083, 1091 (Colo. 1991); *see also City of Arvada v. Colo. Intergovernmental Risk Sharing Agency*, 988 P.2d 184, 187 (Colo. App. 1999) (affirming district court's sole reliance on *Black's Law Dictionary* to ascertain meaning of legal concepts), *aff'd*, 19 P.3d 10 (Colo. 2001).

¶73 Although Rule 106(a)(4) does not define the term "governmental body," the plain and ordinary dictionary meaning of those words includes the Personnel Board. First, the word "governmental" means "[o]f, relating to, or involving a government." *Governmental*, Black's Law Dictionary (11th ed. 2019); *see also* Merriam-Webster Dictionary, https://www.merriam-webster.com/dictionary/*government* [https://perma.cc/9FML-V8VQ] (including definitions of "government" such as "the body of persons that constitutes the governing authority of a political unit or organization"). Here, the Board is "governmental" because it is in the judicial branch of our state government. *See generally* Colo. Const. art. VI. Next, a "body" means "[a]n aggregate of individuals or groups." *Body*, Black's Law Dictionary (11th ed. 2019). Similarly, a "board" means "[a] group of persons having managerial, supervisory, or advisory powers." *Board*, Black's Law Dictionary (11th ed. 2019). These definitions indicate that a "board" is a specific type of "body," namely, an aggregate of persons that, as a group, has

certain powers. In sum, a plain reading of the term "governmental body" under Rule 106(a)(4) includes the Personnel Board because it is an aggregate of persons organized within state government that, as a group, wields certain powers.[1]

¶74 Historical analysis of Rule 106(a)(4) also supports a reading of the term "governmental body" that includes the Personnel Board. Rule 106(a)(4) codified the common law writ of certiorari. *See, e.g.*, *Swift v. Smith*, 201 P.2d 609, 610, 616 (Colo. 1948) (validating an original proceeding "in the nature of certiorari" under Rule 106(a)(4) when there is no "plain, speedy or adequate remedy at law"). At common law, a proceeding by writ of certiorari was "a special proceeding by which a superior court require[d] some inferior tribunal, board, or judicial officer to transmit the record of its proceedings for review, for excess of jurisdiction." *Certiorari*, Black's Law Dictionary (11th ed. 2019) (quoting Benjamin J. Shipman, *Handbook of Common Law Pleading* § 340, at 541 (Henry Winthrop Ballantine ed., 3d ed. 1923)). This common law writ was available to address unauthorized acts or

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[1] The district court's reliance on dictionary definitions of "government agency" and "governmental department" was misplaced. Rule 106(a)(4) does not use either term. Its reliance on the definition of "governmental body" found in the Procurement Code, § 24-101-301(18), C.R.S. (2022), was likewise error. Nothing in the text or history of Rule 106(a)(4) suggests its use of the phrase "governmental body" was derived from, let alone limited by, the Procurement Code.

abuses of discretion by an inferior tribunal or board exercising judicial functions where no right of appeal or other adequate remedy existed:

> The writ [of certiorari] shall be granted in all cases where *an inferior tribunal, board or officer exercising judicial functions,* has exceeded its jurisdiction or greatly abused the discretion of such tribunal, board or officer, *and there is no appeal, nor* in the judgment of the court, *any plain, speedy and adequate remedy*.

Union Pac. R.R. Co. v. Wolfe, 144 P. 330, 331 (Colo. App. 1914) (emphases added) (quoting Mills' Ann. Code § 297).

¶75 Rule 106 was adopted in 1941 to abolish the myriad "forms of writs and the special forms of pleadings formerly required." *Berryman v. Berryman*, 172 P.2d 446, 447 (Colo. 1946). The rule thus eliminated the technical pleading requirements of the common law writs (including the writ of certiorari) in favor of new procedures under the Civil Rules. C.R.C.P. 106(a) ("Special forms of pleadings and writs . . . are hereby abolished . . . [R]elief may be obtained in the district court by appropriate action under the practice prescribed in the Colorado Rules of Civil Procedure . . . ."). That said, Rule 106 retained the substantive aspects of such proceedings and the relief provided. *Leonhart v. Dist. Ct.*, 329 P.2d 781, 783 (Colo. 1958) ("Even under the Rules of Civil Procedure the substantive aspects of remedial writs are preserved, and relief of the same nature as was formerly provided in such proceedings may be granted in accordance with precedents established under the old practice.").

¶76 Importantly, the rule applies to the same entities covered by the writ. Consistent with the common law, early versions of Rule 106(a)(4) provided for judicial review of an "*inferior tribunal (whether court, board, commission or officer)* exercising judicial or quasi-judicial functions." C.R.C.P. 106 (1941) (published in 1941 Replacement Volume 1 CSA: C.16, Rule 106 (1935)) (emphasis added). Amendments to Rule 106 in 1986 then replaced this language with "*any governmental body or officer or any lower judicial body* exercising judicial or quasi-judicial functions." C.R.C.P. 106 (1986) (published in C.R.S. 1986 Cum. Supp.) (emphasis added). But if anything, this updated language only broadened the entities encompassed by the rule; it did not alter the substantive relief available. *See* 13 Debra Knapp, *Civil Proc. Forms & Commentary* § 106:1 (3d ed. 2021) ("The substantive relief available under section (a) of Rule 106 remains quite similar, if not identical, to that formerly available pursuant to writ practice under the old Code of Civil Procedure.").

¶77 In sum, where other adequate relief is unavailable, both the common law writ of certiorari and Rule 106(a)(4) have consistently afforded judicial review of the final, quasi-judicial decisions of a public board (such as the Board here). C.R.C.P. 106(a)(4); *see also Holly Dev., Inc. v. Bd. of Cnty. Comm'rs*, 342 P.2d 1032, 1034 (Colo. 1959) ("Whenever the question is whether a public Board or

Commission has exceeded its jurisdiction or abused its discretion, certiorari is the proper remedy to secure a review of its action.”).

B. The Structure of Personnel Board Review Favors Rule 106(a)(4) Review

¶78 Contrary to the majority’s analysis, the structure of Personnel Board decision-making actually militates in favor of judicial review under Rule 106(a)(4).

¶79 Rule 106(a)(4) review applies broadly to judicial and quasi-judicial decisions made by governmental bodies or officials. *See Cherry Hills Resort Dev. Co. v. City of Cherry Hills Village*, 757 P.2d 622, 626 (Colo. 1988) (emphasizing the importance of broadly applying Rule 106(a)(4) review to diverse types of quasi-judicial governmental decision-making). While the majority reasons that the robust procedure in the Personnel Rules provides sufficient process and thus precludes judicial review under Rule 106(a)(4), *see* Maj. op. ¶ 42, in fact, it is precisely that robust process that shows the Board’s decisions are “quasi-judicial”—a key prerequisite for Rule 106(a)(4) review. Indeed, in *Cherry Hills*, we explained that the “essence of quasi-judicial action lies not so much in the specific characteristics of the decision-making body as in the nature of the decision itself and the process by which that decision is reached.” 757 P.2d at 626. A quasi-judicial action, reviewable under Rule 106(a)(4), is generally characterized by the following factors:

> (1) a state or local law requiring that the governmental body give adequate notice before acting on the matter; (2) a state or local law requiring the governmental body to conduct a public hearing, pursuant to notice, at which concerned citizens may be heard and present evidence; and (3) a state or local law requiring the governmental body to make a determination based upon an application of legal criteria to the particular facts before it.

Id.; *see also Baldauf v. Roberts*, 37 P.3d 483, 484 (Colo. App. 2001) (reframing factors for review of a Department of Corrections decision). The existence of law "mandating" such procedural requirements is "compelling proof that any decision under that . . . scheme is intended to be quasi-judicial in character and thus subject to judicial review under C.R.C.P. 106(a)(4)." *Cherry Hills*, 757 P.2d at 626.

¶80 Here, the process set forth in the Personnel Rules aligns with these quasi-judicial factors. As the majority describes in detail, the Personnel Rules mandate procedural safeguards like adequate notice and opportunities to respond. Maj. op. ¶¶ 6–8, 35, 46. They require the Personnel Board to appoint a Hearing Officer to hold a hearing before reaching a decision. *Id.* at ¶ 27. And they require the Personnel Board to make its decision based on the application of prescribed criteria to the individual facts of the case. *Id.* at ¶¶ 38–39. The majority reasons that the trial- and appellate-like aspects laid out in the Personnel Rules foreclose Rule 106(a)(4) review. But in fact, it's the opposite: The process mandated by the Personnel Rules is "compelling proof" that Personnel Board decisions are quasi-

judicial and thus subject to judicial review under Rule 106(a)(4). *See Cherry Hills*, 757 P.2d at 626.

¶81 Other decision-making systems reviewable under Rule 106(a)(4) similarly include evidentiary hearings and have internal appeals processes; these characteristics do not disqualify them from Rule 106(a)(4) review. Rather, such characteristics are precisely what make those proceedings eligible for Rule 106(a)(4) review. For example, in *City of Colorado Springs v. Givan*, 897 P.2d 753 (Colo. 1995), we held that the district court properly reviewed a municipal court's decision under Rule 106(a)(4). Under the City's Personnel Policies and Procedures Manual ("PPPM"), the municipal court decision had been the *third* appeal of the employment decision. *Id*. at 755. As we noted in that case, "[t]he PPPM require[d] a full evidentiary hearing and a written response at each level of appeal within the city hierarchy," which included an appeal to the to the Deputy City manager, an appeal to the City Manager, and finally an appeal to the municipal court. *Id*. at 755–756; *see also Puckett v. City & Cnty. of Denver*, 12 P.3d 313, 314 (Colo. App. 2000) (applying Rule 106(a)(4) review to a challenge to plaintiff's job classification that included an evidentiary hearing before a hearing officer, followed by an internal appeal resulting in a final Board decision). "'Quasi-judicial' decision making, as its name connotes, bears similarities to the adjudicatory function performed by courts." *Widder v. Durango Sch. Dist. No. 9-R*, 85 P.3d 518, 527 (Colo. 2004).

Procedural requirements and safeguards such as advance notice, adjudicatory hearings, the presentation of evidence, the opportunity to be represented by counsel, and board review of recommendations are the very factors that indicate the governmental body's decision is quasi-judicial. *Id.* at 528. And as *Givan* illustrates, Rule 106(a)(4) review is available even following an abundance of trial- and appellate-like procedures below. Those procedures simply establish the quasi-judicial nature of the decision; they do not foreclose Rule 106(a)(4) review.

¶82 Contrary to the majority's analysis, it is the *absence* of sufficient trial- or appellate-like procedures that forecloses Rule 106(a)(4) review. For example, in *Chellsen v. Pena*, 857 P.2d 472, 475 (Colo. App. 1992), the court of appeals concluded that Rule 106(a)(4) review was not available because the governmental body's decision-making procedures did not require notice or a hearing, nor was the decision required to be based on application of legal standards to facts developed at a hearing. *Id.*

¶83 Colorado case law therefore shows that to the extent we look to the process that led to the governmental body's decision, we do so to determine whether the decision was quasi-judicial—and thus *eligible* for Rule 106(a)(4) review. The majority inverts this principle and instead relies on the existence of robust processes to *preclude* Rule 106(a)(4) review. In essence, the majority implies that

the Personnel Board's decision-making process is "too judicial" such that Rule 106(a)(4) review is unwarranted.

¶84 The majority also focuses on the fact that the Personnel Board includes three judicial officers. *See* Maj. op. ¶¶ 52–54. But the composition of the Board is irrelevant to the availability of judicial review under Rule 106(a)(4). In any event, Rule 106(a)(4) expressly contemplates district court review of decisions made by other judges because it applies to final decisions of "any lower judicial body." C.R.C.P. 106(a)(4); *see also Givan*, 897 P.2d at 755–57 (discussing district court review of municipal court's decision under Rule 106(a)(4)).

¶85 To the extent the majority opines that district court judges should not be allowed to review a decision of the Personnel Board just because it may have been authored by another judge (perhaps an appellate judge), I simply disagree. *See* Maj. op. ¶¶ 53–54. I trust my colleagues serving on the district courts to adjudicate such matters fairly and impartially—as they do with all matters. I see nothing "perverse" in such a scenario, nor do I fear that it would "turn[] the judicial world as we know it upside down." *Id.*

¶86 As a practical matter, our district court judges routinely review the work of lower tribunals. Occasionally those tribunals are staffed by retired court of appeals judges and supreme court justices serving as senior judges. Thus, it is not unheard of for trial court judges to review the work of a lower tribunal where

the decision happened to be rendered by an appellate court judge. In fact, this very case is a perfect example. Here, the Hearing Officer was Judge Henry Nieto, a retired court of appeals judge. *See* Maj. op. ¶¶ 1, 9, 52. Yet the district court judge and county court judge who serve on the Personnel Board had no apparent difficulty reviewing the Hearing Officer's findings and decision. *See id*. at ¶¶ 3, 13, 26, 48. I see no reason to think that a district court judge would have any difficulty reviewing the Board's decision under Rule 106(a)(4) simply because the eight-member Board includes an appellate judge. The point is that our district court judges understand that when conducting Rule 106(a)(4) review, they are examining the *decision of the governmental body or lower court*. The identity of the individual decision-maker(s) below is irrelevant to that review process.[2]

C. The Personnel Rules Do Not Foreclose Review

¶87 The text of the Personnel Rules likewise supports Rule 106(a)(4) review.

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[2] For this reason, the majority's attempt to distinguish between district court review of a county court decision (possibly rendered by a retired senior appellate judge) and district court review of a Personnel Board decision (in which an active appellate judge participated as a Board member) is unpersuasive. Maj. op. at ¶ 53 n.12. In any event, a senior judge's ruling is certainly no less valid than any active judge's ruling, and a senior appellate judge who serves a rotation in county court one month may well serve a rotation on a court of appeals division the following month. It is therefore not at all "self-evident" what relevance an appellate judge's *senior* status has to the majority's analysis. *See id.*

¶88 Notably, the Personnel Rules define the term "[a]ppeal" as "*[a] complaint or petition filed by an employee with the State Court Administrator or with a review board as provided in these rules.*" C.J.S.P.R. 35.A.3. (2018) (emphasis added). By definition then, the term "appeal" as used in the Personnel Rules cannot mean "judicial review." The majority dismisses this key definition as "nonsensical," concluding that it simply doesn't apply in one specific phrase: "The decision of the Board is final, and there is no further right to appeal." Maj. op. ¶ 61 (quoting C.J.S.P.R. 34.G.5.d).

¶89 Rule 35 explicitly states that "[a]s used in these rules, the following terms shall have the stated meanings." C.J.S.P.R. 35.A. The word "appeal" and its derivatives appear in Rule 34 at least seventy-one times. *See* C.J.S.P.R. 34. The majority nevertheless contends that the term "appeal"—as used in one phrase in C.J.S.P.R. 34.G.5.d—must instead refer to judicial review, despite a definition that plainly excludes such a meaning. I cannot agree. Because the Personnel Rules define "appeal" to mean an "appeal to the Personnel Board," Rule 34.G.5.d is a simple statement of finality, precluding any further appeal or rehearing before the Personnel Board itself. Importantly, Rule 106 *requires* a decision to be final to trigger review. C.R.C.P. 106(b) ("[A] complaint seeking review under subsection (a)(4) of this Rule shall be filed in the district court not later than 28 days after the *final* decision of the body or officer." (emphasis added)). The statement of finality

in Rule 34.G.5.d therefore establishes that the decision has become reviewable under Rule 106(a)(4).

¶90 Rule 34.G.5.d could have stated broadly that there is "no further right of review" or expressly that "there is no right of judicial review." But it doesn't. It simply states that there is no further right of "appeal," which has an explicit and limited definition according to the Personnel Rules themselves. I see no basis to selectively disregard that definition here.

¶91 The majority's reliance on the APA's explicit provision allowing judicial review is likewise misplaced. True, executive branch employees are subject to the APA and thus have a separate opportunity for judicial review of their employment decisions. § 24-4-106, C.R.S. (2022). Just like Rule 106(a)(4) review, this type of limited review is a separate "action" to review the administrative decision for a specific list of errors. § 24-4-106(3), (7). But it is the very *availability* of judicial review under the APA (a "plain, speedy and adequate remedy") that forecloses Rule 106(a)(4) review to such employees. Here, the *absence* of such an avenue of relief under the Personnel Rules is precisely what qualifies final Board decisions for judicial review under Rule 106(a)(4).[3]

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[3] Notably, the court of appeals division also relied on our decision in *Chessin v. Office of Attorney Regulation Counsel*, 2020 CO 9, 458 P.3d 888, to conclude that

D. Practical Implications

¶92 I am concerned that the majority's ruling today treats judicial branch employees differently than other state government employees, despite legislative guidance to the contrary.

¶93 The legislature has instructed this court to treat Judicial Department employees in personnel matters similarly to state employees in the other branches of our government. *See* § 13-3-105(4), C.R.S. (2022) ("To the end that all state employees are treated generally in a similar manner, the supreme court, in promulgating rules as set forth in this section, shall take into consideration the . . . conditions of employment applicable to employees of the executive and legislative departments."). But by concluding that Personnel Board decisions are unreviewable, the majority's opinion means that Judicial Department employees are to be treated differently than other state employees, contrary to this legislative guidance.

106(a)(4) review is not available for Personnel Board decisions. Although the majority does not take a stance on this argument, *Chessin* concerned the court's constitutional plenary authority over the regulation of the practice of law, and specifically, the non-reviewability in district court of a decision by Regulation Counsel not to prosecute a case. *See id.* at ¶¶ 15–18, 458 P.3d at 891–92. That context is distinguishable in several ways from the Judicial Department's administrative role as an employer, which is derived from statute. § 13-3-105, C.R.S. (2022). *Chessin* is therefore inapposite.

¶94 Although here it is the District seeking review, in future cases it may be an employee seeking review of the Personnel Board's decision. For example, a non-at-will Information Technology ("IT") worker at a Colorado state agency has the right to appeal an adverse employment decision to the State Personnel Board and then seek judicial review under the APA. Under today's decision however, a similarly-situated IT worker in the Judicial Department cannot seek judicial review of a comparable adverse employment decision by the Personnel Board. Although both employees are doing essentially the same state government job, they will have different rights of review regarding adverse employment decisions depending on whether they happen to work for the executive or judicial branch. I fear that this disparity may undermine both employers' and employees' sense of equity and fairness in employment decisions.

II. Conclusion

¶95 For the reasons above, I conclude that the Personnel Board is a "governmental body" that exercises quasi-judicial functions and thus Rule 106(a)(4) permits district court review of its final decisions; nothing in the Personnel Rules forecloses such review. Because the majority's decision foreclosing such review is contrary to the plain language and history of Rule 106(a)(4) and treats Judicial Department employees differently than other state employees, I respectfully dissent.

I am authorized to state that CHIEF JUSTICE BOATRIGHT and JUSTICE HART join in this dissent.