



# CAREER SERVICE REVIEW OFFICE

## FY 2018 ANNUAL REPORT

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## **ADMINISTRATION**

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Akiko Kawamura was appointed in 2012 by Governor Herbert to lead the CSRO. She is a graduate of the University of Utah S.J. Quinney College of Law. From 2005-2012, she served in the Utah Attorney General's Office as an Assistant Attorney General in the Employment Section, Litigation Division. She previously worked in the private sector with Hobbs & Olson, LC, handling civil litigation in federal and state courts. Her background is in employment law and human resource policy. She has represented both employees and employers.

Annette Morgan has served at the CSRO since 2010. She is a graduate of Utah Valley State College (AAS, Legal Assisting). After graduation, she interned with the law office of Armstrong, Rawlings & West. From 1997 to 2001, she worked at the law offices of Driggs, Osborne & Huang (and its successor, Driggs, Bills & Day). Prior to her tenure at the CSRO, she stepped away from legal work for several years, working for Tooele School District.

## **MISSION STATEMENT**

The Career Service Review Office administers the Utah State Employees' Grievance and Appeals Procedures for executive branch employees as set forth at *Utah Code* §§ 67-19a-101 through 501.

## **OVERVIEW**

The Career Service Review Office (CSRO) is an independent State entity. It is an administrative court for State employees, providing due process to executive branch employees who have been dismissed, disciplined, or subject to other agency employment actions. The CSRO is committed to ensuring fundamental fairness to State employees and employers alike.

Under the CSRO's governing statute, qualified executive branch employees are entitled to due process when particular forms of employment related discipline are imposed on them. The CSRO may review a grievance from a career service employee regarding: a dismissal; demotion; suspension; reduction in force; abandonment of position dispute; a wage grievance (if an employee is not placed within the salary range of the employee's current position); a violation of a rule adopted by the Department of Human Resource Management; and the equitable administration of certain benefits. The CSRO can review these disciplinary actions and, following a full evidentiary hearing, uphold or overturn the State action.

Under *Cleveland v. Loudermill*, a case decided by the United States Supreme Court in 1985, governmental employees who have a property interest in their job are entitled to due process when that property interest is challenged. Under Utah statutes, some State employees are granted career

service status. A career service employee has a property interest in their job and, under *Loudermill*, is entitled to some form of hearing when the State takes certain employment actions. The CSRO provides that hearing.

In 2013, the Legislature amended the CSRO's governing statute to allow *all* executive branch employees (regardless of career service status) to file grievances under the *Utah Protection of Public Employees Act*. In common parlance, this statute protects employees who are "whistleblowers." Traditionally, only the courts had jurisdiction over whistleblower claims. However, since 2013, the CSRO has also served as the final administrative body to review a grievance of retaliatory action in violation of *Utah Code* § 67-21-3. As of 2018, executive branch employees may request a review, by the CSRO, of the findings of an abusive conduct investigation conducted under *Utah Code* § 67-19-44.

The State of Utah has approximately 24,000 employees. Of those employees, approximately 15,000 have career service status and are eligible to file a grievance with the CSRO when they are subjected to one of the qualified employment actions. And under the 2013 and 2018 amendments, all 24,000 employees are eligible to file either whistleblower grievances or requests for review of an abusive conduct investigation.

The CSRO has 2 full time employees who manage its caseload and steer grievances to an appropriate resolution. When grievances result in an evidentiary hearing (at Level 4 of the State's grievance procedures), they are conducted by either the Administrator or by one of the CSRO's contract hearing officers.\*

To continue to serve the State's workforce, the CSRO has emphasized operational excellency by adhering to its established deadlines and performance goals. By consistently meeting those goals, the CSRO discharges its duties in an economically viable and time efficient manner, while simultaneously ensuring that employee grievances are resolved in a fair and independent forum.

\*Hearing officer contracts are awarded to attorneys through the bid process governed by the Division of Purchasing.

### **INDEPENDENCE**

The CSRO is an independent administrative entity. Its independence is important to both employees and agencies. Under *Loudermill*, the law requires that post disciplinary due process is provided by an impartial tribunal. The CSRO is that impartial forum. In addition, as a quasi-judicial agency, the CSRO serves to check and balance executive branch agencies. The executive branch agencies have authority over day-to-day employee discipline, but the CSRO has authority to confirm that those actions are in accordance with the law.

### **CSRO DUTIES**

On a day to day basis, it is the CSRO's primary responsibility to: solicit and maintain hearing officer contracts under the rules adopted by the Division of Purchasing; train and oversee hearing officers; assign hearing officers to grievances on a rotating basis; hire court reporters under the rules adopted

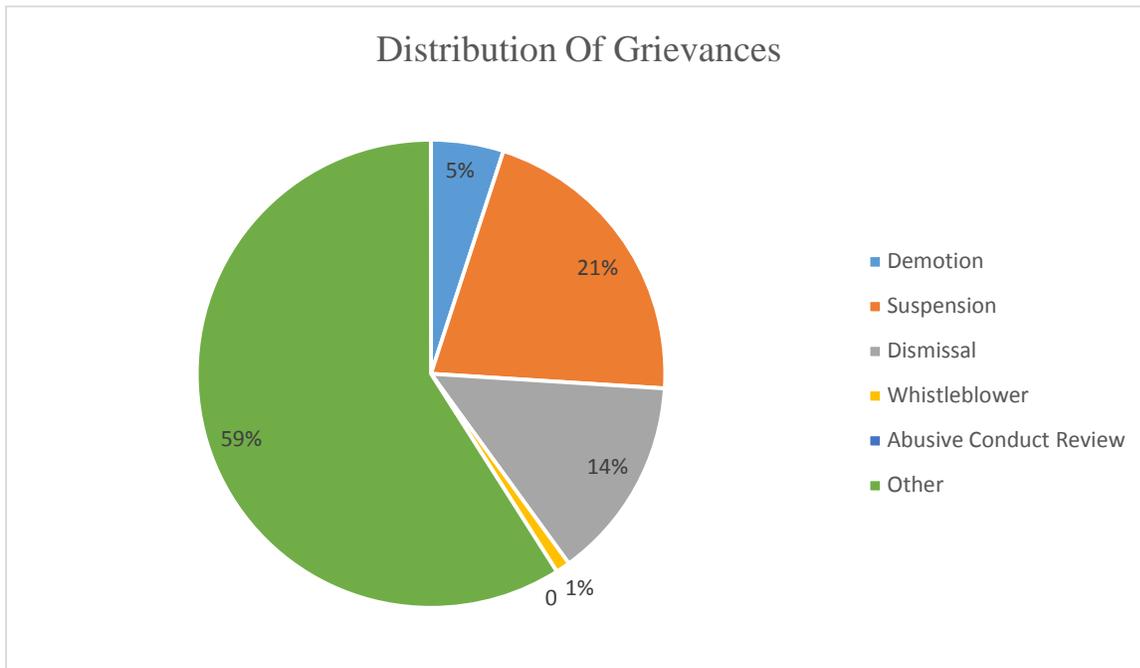
by the Division of Purchasing; schedule court reporters; find and schedule sites for hearings, mediations, conferences, and hearing officer trainings; prepare and issue subpoenas; maintain files; receive motions, create briefing schedules, conduct hearings, and issue decisions; record, oversee and manage hearings; prepare records on appeal; intake and review grievances; issue dismissals for lack of jurisdiction; prepare and issue scheduling orders; schedule and conduct mediations; meet performance goals and deadlines; update, review and maintain CSRO rules; update and maintain website; guide parties through procedural rules; respond to GRAMA requests; oversee discovery; conduct hearings on discovery disputes; conduct pre-hearing conferences; conduct Level 4 evidentiary hearings; issue Level 4 decisions; manage the budget; enforce CSRO rules; and oversee the grievance process.

**CASELOAD**

Since not all files are resolved within a single fiscal year, the CSRO counts its cases on a rolling 18 month basis, including grievances that have not reached the CSRO (Level 4 of the grievance procedures) and cases that are on appeal. The CSRO’s caseload averages 100 cases.

**DISTRIBUTION OF GRIEVANCES**

Under the CSRO rules, there only three “disciplinary” actions designated by statute: demotion, dismissal, and suspension. No other issues qualify as “disciplinary.” The distribution of closed grievances (by percentage) for FY2018 was:



*\*1% of grievances were filed under the “whistleblower” category. Upon review, none resulted in an actual claim under the Utah Protection of Public Employees Act.*

*\*\*There were no abusive conduct review requests filed in FY 2018.*

*\*\*\* “Other” includes, but is not limited to: written reprimand, harassment, written warning, working conditions, work schedule, performance, interview process, career mobility and involuntary transfer.*

## **JUDICIAL REVIEW FY 2018**

Two CSRO decisions are on appeal and pending before the Utah Court of Appeals: *A.A. v. Dep't of Corrections and Career Serv Rev Office*, 20160030-CA; and *B.M. v. Career Serv Rev Office and Dep't of Public Safety*, 20180199-CA.

## **RESOLUTION OF GRIEVANCES**

Some employee grievances are never reported to the CSRO. Of those reported, the statistical summary shows that in FY18: 24% of grievances were dismissed for lack of jurisdiction; 5% of grievances resulted in a Level 4 evidentiary hearing; 21% of grievances were scheduled for a hearing; and 95% of cases were resolved prior to the hearing. The CSRO has increased its efforts to help parties resolve grievances by encouraging participation in mediation. As a result, the number of grievances filed and the average number of hearings has trended down.

## **PERFORMANCE MEASURES**

Traditional performance metrics are difficult to apply to the CSRO's services. However, the CSRO has statutory time limits and requirements it is required to meet. The CSRO has tracked its performance by converting those statutory time limits to output and efficiency measures.

By statute, the CSRO shall issue a written decision within 20 working days after an evidentiary hearing is adjourned. *Utah Code* § 67-19a-406(3)(a). In FY18, the average number of days between the end of an evidentiary hearing and the issuance of a written decision was 19 days.

The CSRO shall issue a jurisdictional decision within 15 days of the date a new grievance is filed. *Utah Code* § 67-19a-403(3)(b). In FY 17, the average number of days between the date a grievance was filed and the issuance of a written jurisdictional was 13.2 days.

In the absence of extraordinary circumstances warranting extension, the CSRO shall conduct an evidentiary hearing within 150 days of the date jurisdiction is established. *Utah Code* § 67-19a-404(1)(b)(ii)(B). In FY18, the average number of days between the date establishing jurisdiction and the beginning of a scheduled evidentiary hearing was 141 days.\*

The CSRO shall hire and retain hearing officers who meet the performance standards for Administrative Law Judges set by the Utah Department of Human Resource Management. In FY18, the CSRO's met established performance standards; the CSRO did not receive any formal complaints about the performance of hearing officers by any party.

\*In *E.C. v. Dep't of Public Safety*, *B.M. v. Dep't of Public Safety*, and *S.O. v. Dep't of Environmental Quality*, the parties successfully established extraordinary circumstances warranting an extension of the time to conduct an evidentiary hearing. At the stipulated request of the parties, those three hearings were conducted 187, 181 and 257 days, respectively, from the date the CSRO established jurisdiction.

**ENVIRONMENTAL RESOURCE STEWARDSHIP**

In cooperation with Governor Herbert’s office, the CSRO has developed an Environmental Resources Playbook, which outlines measures for making the day-to-day activities environmentally efficient and sustainable. In an effort to minimize the office’s carbon footprint, over the past three years, the CSRO has altered habits, consumed less energy, and reduced waste.

**ANNUAL COMPARISON OF RESOLVED GRIEVANCES FOR PAST TEN YEARS**

