

**Rule 8 – Appeal Process for Peace Officer Applicants -
Certification Denial as a Result of a Misdemeanor
Conviction**

Effective March 1, 2006

- (a) The Board has promulgated these rules to ensure orderly and fair treatment of all POST approved training academy, renewal and provisional peace officer applicants. § 24-31-305, C.R.S., requires the POST Board deny or revoke certification of any person convicted of a felony or particular misdemeanors. For the purpose of this rule, the term ‘conviction’ includes deferred judgments and deferred sentences imposed by a court or judge.

- (b) If an applicant anticipates prior to the denial of certification that he or she will be denied certification on the ground that the applicant has been convicted of any misdemeanor or misdemeanors described in subsection 1.5 of § 24-31-305, C.R.S., the applicant must provide a fingerprint-based criminal history record check, through the submission of a POST fingerprint card to the Colorado Bureau of Investigation (CBI) and the Federal Bureau of Investigation (FBI), and may request an exemption from denial of certification.

- (c) To appeal denial of Colorado certification, an applicant or the chief law enforcement officer, if any, of the potential employing agency must submit a written petition to the POST Director, notifying the Board of such conviction or convictions, and request the Director to grant the applicant an exemption from denial of certification. The petition must fully explain all relevant facts. Any person seeking an exemption of a misdemeanor conviction and consideration of certification has the burden of establishing that:
 - (I) The appeal is consistent with the basic purposes and policies of § 24-31-305, et seq., C.R.S.; and
 - (II) Mitigating circumstances exist that warrant exemption; and
 - (III) A true and accurate copy of the court record with disposition and police offense/case report upon which the conviction resulted is attached to the petition. If the charging agency no longer has a copy of the report, a letter from the agency verifying that fact should be attached.

- (d) The Director, at his discretion, may determine the merits of the request based upon the applicant’s written submissions, or may request additional information.

- (e) Any exemption granted under this rule shall be subject to such limitations or conditions as the Director or Board deems necessary in order to conform to the basic purposes and policies of applicable law.
- (f) After a decision has been made by the POST Director, the applicant has thirty (30) days to appeal the decision to the POST Board. If any determination made by the Director pursuant to this rule is not appealed by the applicant within thirty (30) days pursuant to Rule 5(c), such determination shall become final. If a determination is appealed by the applicant, the Board will decide whether to hear the appeal. If at least six (6) Board members do not agree to hear the appeal, the determination of the Director shall be deemed to be summarily affirmed. If at least six (6) members do agree to hear the appeal, a three-member panel of Board members shall proceed to the merits of the matter. Any summary affirmance or decision on the merits by the sub-committee of the Board shall be deemed final agency action.
- (g) In accordance with § 24-31-303(5)(a) and § 24-31-305(1.6)(a)(b), C.R.S., no person may, through an exemption or otherwise, serve as a certified peace officer, as defined in § 16-2.5-102 or § 16-2.5-110, C.R.S., without having first passed the required certification requirements and become certified.