

# **Hearing Officer Selection and Retention Policy**

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## **Purpose and Background**

1. The purpose of the Hearing Officer Selection and Retention Policy is to provide OCERS with a framework for selection and retention of Hearing Officers for administrative hearings. The Board of Retirement is charged with the responsibility of administering the System in a manner to assure prompt delivery of benefits and related services to plan participants and their beneficiaries. Selection of competent Hearing Officers must be made in a manner that assures the due process rights of plan participants and their beneficiaries are met.
2. Pursuant to Government Code Section 31533, the Board of Retirement has the right to appoint one of its own members to serve as a Hearing Officer in an administrative hearing. The procedures delineated in this policy apply only to external third party Hearing Officers.

## **Policy Objectives**

3. The objectives of the Hearing Officer Selection and Retention Policy are to:
  - a. Establish a procedure for the selection of Hearing Officers that complies with the due process rights of plan participants and their beneficiaries;
  - b. Establish a procedure for selection of Hearing Officers that assures only qualified, competent and impartial Hearing Officers are appointed;
  - c. Establish a procedure for monitoring and evaluating Hearing Officers' performance to assure that only qualified and competent Hearing Officers are retained after they have been appointed; and
  - d. Establish a procedure for assignment of Hearing Officers to individual cases that complies with the due process rights of plan participants and their beneficiaries.

## **Roles and Responsibilities**

4. The role of the Board of Retirement with respect to the selection of Hearing Officers is to:
  - a. Establish appropriate policies with respect to the selection and evaluation of Hearing Officers; and
  - b. Approve, upon the recommendation of the Hearing Officer Selection Panel, the appointment of Hearing Officers where it is determined that such Hearing Officers are qualified.
5. The role of the Disability Committee with respect to the selection of Hearing Officers is to:
  - a. Monitor compliance with Board of Retirement policies.
6. A Hearing Officer Selection Panel consisting of (i) the Chief Executive Officer, (ii) the General Counsel (iii) either the Assistant CEO for External Operations or the Director of Member Services; and (iv) either the Chair or Vice Chair of the Disability Committee shall be responsible for:
  - a. Interviewing and recommending to the Board of Retirement for its approval competent and qualified Hearing Officers in conformity with the Selection Process set forth in this Policy;
  - b. Evaluating the performance of Hearing Officers in accordance with the process for Hearing Officer Performance Evaluations set forth in this Policy;

## **Hearing Officer Selection and Retention Policy**

---

- c. Maintaining a list of Hearing Officers sufficient in number to meet OCERS' needs as set forth in this Policy.

### **Hearing Officer Qualifications**

7. All Hearing Officers must be members of the State Bar of California (Government Code Section 31533).
8. Additional factors for consideration when selecting Hearing Officers shall include the following:
  - a. Past experience as an adjudicator (e.g. judge, judge pro-tem, arbitrator etc.); and
  - b. Past experience in disability retirement or workers' compensation law.

### **Hearing Officer Selection and Retention Procedure**

#### *The Selection Process*

9. Request for Proposals
  - a. Whenever the General Counsel determines that it is necessary in order to maintain a sufficient number of Hearing Officers, the Hearing Officer Selection Panel shall initiate a Request for Proposals (RFP).
  - b. At the discretion of the Chief Executive Officer, the RFP may be published in major legal periodicals, journals, and/or bar association magazines. The RFP may also be posted at OCERS' web site as well as other job related web sites. Further, the RFP may be sent to potential candidates that are brought to the attention of the Chief Executive Officer.
10. Selection Process
  - a. The Hearing Officer Selection Panel shall review the responses to the RFP and select qualified candidates for formal interviews.
  - b. The Hearing Officer Selection Panel shall conduct formal interviews of qualified candidates. At the Hearing Officer Selection Panel's discretion, writing samples, references, or other materials that would reflect on the candidate's ability to competently perform the duties of a Hearing Officer may be required. Based on these interviews and review of materials, the Hearing Officer Selection Panel shall compile a list of candidates that it recommends to the Board of Retirement for appointment as Hearing Officers.
  - c. Prior to submitting the list of recommended candidates to the Board of Retirement, the list shall be submitted to plan sponsors of OCERS, employee representation units of these plan sponsors, and attorneys who regularly represent OCERS members in administrative hearings. These entities and individuals shall be allowed a reasonable amount of time in which to comment on the list of proposed Hearing Officers.
  - d. Plan sponsors, employee representation units, attorneys or other interested individuals may provide additional comments with respect to the proposed list of candidates at the time that the Board of Retirement is to vote on the list of proposed Hearing Officers.
  - e. These selection procedures shall apply to all external third party Hearing Officers.

# **Hearing Officer Selection and Retention Policy**

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## ***Hearing Officer Contracts***

### **11. Term of Appointment**

- a. Subsequent to appointment by the Board of Retirement, each Hearing Officer shall execute an independent contractor agreement (contract) to provide services as a Hearing Officer for OCERS. Among other terms, the contract shall allow for the termination of services by either party with cause.
- b. The contract shall provide for a term of seven years.

### **12. Expiration of Contract**

The contract shall terminate at the end of its seven year term, provided however, that the term may be extended by the Chief Executive Officer in order for the Hearing Officer to complete any appeals that are not yet final (as defined by the OCERS Administrative Hearing Rules) as of the end of the seven year term. Upon expiration of the contract, the Hearing Officer cannot reapply to serve as a Hearing Officer until two years after the expiration of the previous contract, and must participate in the Hearing Officer Selection Process again as a condition to being awarded a new contract.

### **13. Compliance with OCERS Rules**

- a. Each contract shall contain a provision whereby the Hearing Officer agrees that s/he will be bound by the OCERS Administrative Hearing Rules, which may be amended by OCERS from time to time, and that his or her duties shall be performed in a timely and efficient manner, including within the time frames set forth in the OCERS Administrative Hearing Rules.

### **14. Code of Judicial Ethics**

- a. Each contract shall contain a provision whereby the Hearing Officer agrees that he or she is subject to and bound by the provisions of subdivision D of Canon 6 of the Code of Judicial Ethics.

## ***Hearing Officer Performance Evaluations***

### **15. Evaluation Criteria**

- a. Quality of opinions
  - i. A record shall be maintained of the number of times that a Hearing Officer's recommendation is overturned by the Superior Court on a writ.
  - ii. Recommendations of the Hearing Officer shall be reviewed by the General Counsel or his or her designee to determine whether they are well reasoned and logically apply the law to the facts of a given case.
- b. Timeliness of opinions
  - i. A record shall be maintained of the number of times that a Hearing Officer's recommendation is issued after its due date.
  - ii. The record shall also include the number of recommendations issued by the Hearing Officer during the contract term.

## **Hearing Officer Selection and Retention Policy**

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### 16. Evaluation Process

- a. The Hearing Officer Selection Panel will evaluate each Hearing Officer based on the criteria listed in Section 15, above, within four years of his or her appointment.
- b. In addition, the Hearing Officer Selection Panel shall at any time during the term of the contract evaluate Hearing Officers to determine whether cause exists to terminate the contract with the Hearing Officer. Cause for termination includes, but is not limited to, a finding by the Hearing Officer Selection Panel that the Hearing Officer has repeatedly failed to submit Findings, Conclusions of Law and Recommendations in a timely manner, has engaged in fraudulent billing practices, or has been publicly disciplined by the State Bar of California.
- c. Based on the above referenced evaluations with respect to a particular Hearing Officer, the Chief Executive Officer or General Counsel may recommend to the Board of Retirement that it terminate the contract prior to its normal expiration date or take other appropriate action as necessary.

## **Miscellaneous**

### *Assignment of Cases*

17. OCERS staff shall review, maintain, and formalize a system that ensures that Hearing Officers are assigned cases on a random basis. The General Counsel or his or her designee shall oversee this process.

### *Number of Hearing Officers*

18. At all times, the Hearing Officer Selection Panel shall make all reasonable efforts to maintain a list of Hearing Officers sufficient in number to meet the needs of OCERS. The General Counsel will determine the number of Hearing Officers necessary to meet those needs based upon the following factors:
  - a. The average number of hearings per month during the calendar year;
  - b. The number of hearings per month assigned to each Hearing Officer;

### *Remuneration*

19. In order to help attract and retain the most qualified Hearing Officers possible, the General Counsel shall review, from time to time and before the issuance of any RFP, the contracted rate of pay for OCERS' Hearing Officers. The purpose of the review shall be to determine whether OCERS' rate of pay is competitive with current market rates paid for Hearing Officer services by other public retirement systems similarly situated to OCERS.
20. Based on this review, the General Counsel may recommend that the Board of Retirement consider modifications to the Hearing Officers' contracted rate of pay.

## **Document Terms**

21. For purposes of this policy, the term Hearing Officer shall have the same meaning as the term referee, as that term is used in the relevant sections of the California Government Code.

# **Hearing Officer Selection and Retention Policy**

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## **Policy Review**

22. The Board of Retirement will review this policy at least every three (3) years to ensure that it remains relevant and appropriate.

## **Policy History**

23. The Hearing Officer Selection and Retention Policy was originally approved and adopted by the Board of Retirement on April 17, 2000. It was amended on February 22, 2005 and May 16, 2005; reviewed on June 18, 2007 with no changes; and amended on August 23, 2010, January 21, 2014, December 19, 2016 and January 16, 2018.

## **Secretary's Certificate**

I, the undersigned, the duly appointed Secretary of the Orange County Employees Retirement System, hereby certify the adoption of this policy.



Steve Delaney, Secretary of the Board

**01/16/18**

Date