

## OCERS Board Policy

# Hearing Officer Selection and Retention Policy

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### Purpose and Background

1. The purpose of the Hearing Officer Selection and Retention Policy (Policy) is to provide OCERS with procedures for the selection and retention of Hearing Officers who will conduct administrative hearings. The Board of Retirement (Board) is charged with the responsibility of administering the System in a manner to assure prompt delivery of benefits to plan participants and their beneficiaries. Selection of competent Hearing Officers must be made in a manner that ensures the due process rights of plan participants and their beneficiaries are met.
2. Pursuant to Government Code Section 31533, the Board may appoint either a member of the Board or a member of the State Bar of California to serve as a Hearing Officer in an administrative hearing. This Policy apply only to the appointment of members of the State Bar of California as 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 ensures only qualified, competent and impartial Hearing Officers are appointed;
  - c. Establish a procedure for monitoring and evaluating Hearing Officers' performance so 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 ensures 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 (Panel), the appointment of qualified Hearing Officers.
5. The role of the Disability Committee with respect to the selection of Hearing Officers is to:
  - a. Monitor compliance with this Policy.
6. A Panel will consist 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 and will be responsible for:
  - a. Interviewing and recommending to the Board for its approval competent and qualified Hearing Officers in conformity with the Selection Process set forth in this Policy;

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- b. Evaluating the performance of Hearing Officers in accordance with the process for conducting performance evaluations of Hearing Officers set forth in this 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. A Hearing Officers must be a member of the State Bar of California (Government Code Section 31533).
- 8. Factors for consideration when selecting Hearing Officers will include the following:
  - a. Past experience as an adjudicator (e.g. judge, judge pro-tem, arbitrator etc.); and
  - b. Past experience in disability retirement, workers' compensation law and all relevant provisions of the County Employees Retirement Law, as amended.

## 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 Panel will 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 and at other job related web sites. In addition, the RFP may be sent to potential candidates that are brought to the attention of the General Counsel.
- 10. Selection Process
  - a. The General Counsel or their designee will collect and review the responses to the RFP and select the qualified candidates for formal interviews.
  - b. The Panel will conduct formal interviews of the candidates selected by the General Counsel. The interviews may be conducted in person or virtually. The Panel will review writing samples, references, or other materials that would reflect upon the candidate's ability to competently perform the duties of a Hearing Officer. Based on the interviews and review of materials, the Panel will select the candidates to recommend to the Board for appointment as Hearing Officers.
  - c. Prior to submitting the list of recommended candidates to the Board, the list will be submitted to employers of OCERS and employee representation units. Those entities will be provided a brief outline of the qualifications of the candidates and be given fifteen (15) days to comment on the list of proposed Hearing Officers.
  - d. Employers, employee representation units may provide additional comments in writing or in person with respect to the proposed list of candidates at the time that the Board is to vote on the list of proposed Hearing Officers.

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### *Hearing Officer Contracts*

#### 11. Term of Appointment

- a. Subsequent to appointment by the Board, each Hearing Officer will execute an Agreement for Hearing Officer Services agreement (Agreement). Among other terms, the Agreement will allow for the termination of the Agreement by either party with cause.

#### 12. Expiration of Agreement for Hearing Officer Services

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

#### 13. Compliance with OCERS Administrative Review and Hearing Policy

- a. Each agreement will contain a provision whereby the Hearing Officer agrees that they will be bound by the OCERS Administrative Review and Hearing Policy, 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 Review and Hearing Policy.

#### 14. Code of Judicial Ethics

- a. Each Agreement will contain a provision whereby the Hearing Officer agrees that they are 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 their 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 will be maintained of the number of times that a Hearing Officer's recommendation is tardy.
  - ii. The record shall also include the number of recommendations issued by the Hearing Officer during the contract term.

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### 16. Evaluation Process

- a. The Panel will evaluate each Hearing Officer based on the criteria listed in Section 15, above, within four (4) years of their appointment.
- b. In addition, the General Counsel will at any time during the term of the Agreement evaluate a particular Hearing Officer to determine whether cause exists to terminate the Agreement with that Hearing Officer. Cause for termination includes, but is not limited to, a finding by the General Counsel that the Hearing Officer has repeatedly failed to file their Proposed Findings of Fact and Recommended Decision in a timely manner, 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 will recommend to the Board that it terminate the Agreement prior to its normal expiration date or take other appropriate action as necessary.

## Miscellaneous

### *Assignment of Cases*

17. Pursuant to the OCERS Administrative Review and Hearing Policy, the OCERS Legal Division will review, maintain, and formalize a system that ensures that Hearing Officers are assigned cases on a rotational basis, while ensuring that, to the extent possible, each Hearing Officer is assigned an equal number of cases. The General Counsel or their designee shall oversee this process.

### *Number of Hearing Officers*

18. At all times, the General Counsel will make reasonable efforts to maintain a list of Hearing Officers sufficient in number to meet the needs of OCERS, and if the General Counsel concludes that the number of Hearing Officers is insufficient, recommend to the Panel that additional Hearing Officers are necessary. 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;
  - b. The number of hearings per month assigned to each Hearing Officer;

### *Remuneration*

19. To attract and retain the most qualified Hearing Officers, the General Counsel will 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 will 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.

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20. Based on this review, the General Counsel may recommend that the Board of Retirement consider modifications to the Hearing Officers' 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.

### **Policy Review**

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

### **Policy History**

23. This Policy was adopted by the Board 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, January 16, 2018, and April 19, 2021.

### **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

**04/19/21**

Date