

Administrative Hearing Officer Services

Request for Proposal

October 2022

Orange County Employees Retirement System (OCERS)

2223 E Wellington Avenue Suite 100

Santa Ana, CA 92701 USA

1-(714)-558-6200

[ocers.org](https://www.ocers.org)

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Section 1: Introduction

The Orange County Employees Retirement System (“OCERS”) is requesting proposals from qualified attorneys interested in providing Administrative Hearing Officer Services.

Those who wish to be considered must submit their completed proposal no later than **5:00 p.m., PST, Thursday, December 1, 2022**. Specific instructions for proposal submissions are contained in Section 7 of this RFP.

Questions about this RFP must be submitted in writing no later than **5:00 pm, PST, Monday, October 17, 2022**, to Bill Singleton, Paralegal, by email at wsingleton@ocers.org.

Section 2: Background

OCERS was established in 1945 under the County Employees Retirement Law of 1937, providing members with retirement, disability, death, and cost-of-living benefits. There are approximately 49,000 members served by OCERS, of which over 19,000 are retirees. OCERS is governed by a nine-member Board of Retirement (“Board”), which has plenary authority and fiduciary responsibility for the investment of moneys and the administration of the retirement system. OCERS has over one hundred employees, and the Board appoints a Chief Executive Officer responsible for the agency’s management. For additional information about OCERS, please refer to the OCERS website at ocers.org.

Section 3: Scope of Services

The Hearing Officer, under the supervision of the OCERS General Counsel, will be expected to provide the following range of legal services to OCERS:

- The Hearing Officer will act as a referee pursuant to California Government Code Section 31533 and conduct administrative hearings for cases under the County Employees Retirement Law of 1937, Government Code sections 31450, et. seq. (the “CERL”). OCERS has no obligation to submit cases to the Hearing Officer.
- The Hearing Officer’s services must be performed in accordance with, and Hearing Officer must be familiar with:
 - i. all relevant provisions of the CERL, as amended;
 - ii. relevant and binding legal precedents interpreting the CERL;
 - iii. all other applicable laws, rules and policies of OCERS, including but not limited to the OCERS Board Policy: Hearing Officer Selection and Retention Policy; Administrative Review and Hearing Policy (Disability and Non-Disability Benefits) “Hearing Rules”(attached);
 - iv. the rules of procedure and evidence that are generally applicable in administrative hearings; and
 - v. the Orange County Bar Association Civility Guidelines.
- The Hearing Officer must warrant that they will be and remain fair and impartial and will comply with the applicable Rules for Professional Conduct of the State Bar of California, the Orange County Bar Association Civility Guidelines, and subdivision D of Canon 6 of the Code of Judicial Ethics.
- Any challenges to the Hearing Officer’s ability to hear a case based upon bias will be decided as set forth in the Hearing Rules.
- The Hearing Officer will conduct hearings, review evidence, and render timely written reports to the Board and the applicant for benefits, which reports must contain proposed findings of fact and a recommended decision.

- The Hearing Officer’s duties must be performed in a timely and efficient manner. The Hearing Officer must abide by the rules and timelines provided in the Hearing Rules and ensure that the parties in matters before them abide by the rules and timelines provided in the Hearing Rules. The Hearing Officer must provide a written report within the time frames set out in the Hearing Rules.

In addition to the foregoing, core skills and expertise of the Hearing Officer must include excellent oral and written communication skills, sound judgment, the ability to work well with and maintain the confidence of the Board and staff, and the ability to deliver services in a timely and cost-effective manner.

The selected attorney must provide all personnel, equipment, tools, materials, vehicles, supervision, and other items and services necessary to perform all services, tasks, and functions as defined in this RFP.

Section 4: General Conditions

All terms, conditions, requirements, and procedures included in this RFP must be met for a proposal to be qualified. A proposal that fails to meet any material term, condition, requirement, or procedure of this RFP may be disqualified. OCERS reserves the right to waive or permit the cure of non-material errors or omissions. OCERS reserves the right to modify, amend, or cancel the terms of this RFP at any time.

OCERS may modify this RFP before the date fixed for submission of a proposal by posting, mailing, emailing, or faxing an addendum to the respondents known to be interested in submitting a proposal. However, failure of a respondent to receive or acknowledge receipt of any addendum will not relieve the respondent of the responsibility for complying with the terms thereof.

A respondent’s proposal will constitute an irrevocable offer for the 120 days following the deadline for submission of proposals. Reference to a certain number of days in this RFP will mean calendar days unless otherwise specified.

All proposals submitted in response to this RFP will become the exclusive property of OCERS. Therefore, proposals will not be returned to respondents.

By submitting a proposal, the respondent acknowledges that they have read this RFP, understand it, and agree to be bound by its requirements unless clearly and specifically noted in the proposal submitted.

Section 5: Point of Contact

A quiet period will be in effect from the date of issuance of this RFP until announcement of the respondent(s) selected. During the quiet period, respondents are not permitted to communicate with any OCERS staff member or Board Member regarding this RFP except through the Point of Contact named herein. Respondents violating this quiet period may be disqualified at OCERS’ discretion. In addition, respondents having current business with OCERS must limit their communications to the subject of such business.

OCERS’ regular business hours are from 08:00 a.m. to 5:00 p.m., Monday through Friday, except for federal and state holidays.

The Point of Contact for all matters relating to this RFP is:

Name:	Bill Singleton
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Title:	Paralegal
Mailing Address:	Orange County Employees Retirement System (OCERS) P.O. Box 1229 Santa Ana, CA 92702
Telephone:	(714) 569-4813
Email:	wsingleton@ocers.org
OCERS Website:	ocers.org
Status:	See the OCERS website for status of the RFP and announcements. These items can also be found here: http://www.ocers.org/rfp/requestforproposal.htm

Section 6: Response to Request for Proposal

Proposals must be submitted to the Point of Contact identified in Section 5 and delivered no later than the due date and time stated below in the RFP Schedule.

OCERS will accept paper and electronic submissions(preferred). Proposals submitted electronically must be in Microsoft Word or Adobe Acrobat PDF format (not to exceed 30 MB) to the email address noted in Section 5. If submitting paper copies, two (2) copies must be submitted and mailed to the address noted in Section 5.

RFP Schedule

The following timetable constitutes a tentative schedule for this RFP process. OCERS reserves the right to modify this schedule at any time.

Deliverable	Date	Time
Release of RFP	October 3, 2022	5:00 p.m. (PST)
RFP Questions Deadline	October 17, 2022	5:00 p.m. (PST)
RFP Answers Posted to Website	October 25, 2022	5:00 p.m. (PST)
RFP Submission Deadline	December 1, 2022	5:00 p.m. (PST)
OCERS Review of RFP Submissions	December 1, 2022 through December 21, 2022	
Selection of Finalist(s)	December 21, 2022	
Interviews of Finalist(s)	To be determined	
Service Award [or recommendation to the Board]	To be determined	

Section 7: Proposal Requirements

Proposals must include the following information:

1. A current Curriculum Vitae.
2. The respondent must provide an affirmative statement that if they are selected to serve as a Hearing Officer, they will be independent of OCERS and not related in any way to OCERS' business operations. The respondent should also provide an affirmative statement that they are not currently in litigation with OCERS or the County of Orange.
3. The respondent must provide an affirmative statement that they have not given a gift or political campaign contribution to any officer, Board member, or employee of OCERS within the past twenty-four (24) months.
4. The respondent must certify that they are an active member, in good standing, with the State Bar of California and must also certify that they have been practicing law as a licensed member of the State Bar of California for a minimum of five (5) years. The respondent must provide their California State Bar number.
5. The respondent must provide information sufficient to determine the nature and severity of any legal malpractice case or claim against them in the last five (5) years, any sanctions used by any court against them for the last five (5) years, and any discipline (either public or private) issued by the California Bar, or the Bar of any other jurisdiction, ever issued against the respondent.
6. The respondent must provide as much information about their experience as an adjudicator (e.g., judge, judge pro-tem, hearing officer, arbitrator, etc.), in addition to any experience in CERL cases, other public agency retirement cases, disability, Social Security, or Workers' Compensation law.
7. The respondent must list separately any prior work performed for OCERS. Please indicate the nature and scope of the work as well as the dates. Note, there is a two-year moratorium prohibiting past Hearing Officers from being retained by OCERS for a subsequent contract term.
8. The respondent must detail any work performed for any other retirement system or pension plan.
9. The respondent must detail any work performed in the field of workers compensation law.
10. The respondent must detail any work performed as a judge, judge pro-tem, arbitrator, referee, or neutral.
11. The respondent must represent that they do not perform any work that would create a potential conflict of interest with the work to be performed for OCERS. Such work could include representation of OCERS' plan sponsors or retirement system members in actions against OCERS.
12. The respondent must submit writing samples for review that demonstrate the respondent's ability to fully discuss the merits of legal issues and apply relevant legal standards. Writing samples submitted are subject to the California Public Records Act. Therefore, writing samples should be redacted appropriately.
13. Any other information that the respondent deems relevant to OCERS' selection process.

Section 8: Evaluation Criteria

Respondents will be evaluated in the discretion of OCERS based upon the following factors:

- Information provided in the proposal, including writing samples
- Depth of experience and knowledge
- Information provided by references
- Communications skills
- Interviews, if any

The balancing of the above factors is at OCERS' sole discretion and will be considered as a whole. Factors other than those listed may be considered by OCERS in making its selection. OCERS reserves the right in its discretion to request additional information from the prospective Hearing Officer including, without limitation, information regarding malpractice claims and discipline, writing samples, references, and experience in adjudicatory roles, although such requests may not be made to all respondents.

Part of the evaluation process will include formal Interviews. Finalists will be asked to attend an interview with OCERS legal staff, management, or Board Members.

OCERS reserves the right to require one or more interviews with any finalist.

Section 9: Non-Discrimination Requirement

By submitting a proposal, the respondent represents that it and its subsidiaries do not and will not discriminate against any employee or applicant for employment based on race, religion, color, national origin, ethnic group identification, mental disability, physical disability, medical condition, genetic information, marital status, ancestry, sex, gender, sexual orientation, gender identity, gender expression, age, or military and veteran status.

Section 10: Notice Regarding the California Public Records Act and the Brown Act

The information submitted in response to this RFP will be subject to public disclosure pursuant to the California Public Records Act (California Government Code Section 6250, et. seq., the "Act"). The Act provides that all records relating to a public agency's business are open to public inspection and copying unless exempted explicitly under one of several exemptions set forth in the Act. If a respondent believes any portion of its proposal is exempt from public disclosure under the Act, the respondent must provide a full explanation and mark such portion "TRADE SECRETS," "CONFIDENTIAL," or "PROPRIETARY," and make it readily separable from the balance of the response. Proposals marked "TRADE SECRETS," "CONFIDENTIAL," or "PROPRIETARY" in their entirety will not be honored, and OCERS will not deny public disclosure of all or any portion of proposals so marked.

By submitting a proposal with material marked "TRADE SECRETS," "CONFIDENTIAL," or "PROPRIETARY," a respondent represents it has a good faith belief that the material is exempt from disclosure under the Act; however, such designations will not necessarily be conclusive, and a respondent may be required to justify in writing why OCERS should not disclose such material under the Act. Fee and pricing proposals are not considered "TRADE SECRET," "CONFIDENTIAL," or "PROPRIETARY."

If OCERS receives a request pursuant to the Act for materials that a respondent has marked “TRADE SECRET,” “CONFIDENTIAL,” or “PROPRIETARY,” and if OCERS agrees that the material requested is not subject to disclosure under the Act, OCERS will either notify the respondent so that it can seek a protective order at its own cost and expense, or OCERS will deny disclosure of those materials. OCERS will not be held liable for inadvertent disclosure of such materials, data, and information or for disclosure of such materials if deemed appropriate in OCERS’ sole discretion. OCERS retains the right to disclose all information provided by a respondent.

If OCERS denies public disclosure of any materials designated as “TRADE SECRETS,” “CONFIDENTIAL,” or “PROPRIETARY,” the respondent agrees to reimburse OCERS for, and to indemnify, defend, and hold harmless OCERS, its Board, officers, fiduciaries, employees, and agents from and against:

1. Any and all claims, damages, losses, liabilities, suits, judgments, fines, penalties, costs, and expenses, including, without limitation, attorneys’ fees, expenses, and court costs of any nature whatsoever (collectively, “Claims”) arising from or relating to OCERS’ non-disclosure of any such designated portions of a proposal; and
2. Any and all Claims arising from or relating to OCERS’ public disclosure of any such designated portions of a proposal if OCERS determines disclosure is required by law, or if disclosure is ordered by a court of competent jurisdiction.

Section 11: Contract Negotiations

OCERS will propose a contract to the successful respondent, which will contain such terms as OCERS, in its sole discretion, may require. In addition, the selected attorney will agree that this RFP and the respondent’s proposal will be incorporated by reference into any resulting contract.

This RFP is not an offer to contract. Acceptance of a proposal neither commits OCERS to award a contract to any respondent, nor does it limit OCERS’ right to negotiate the terms of a contract in OCERS’ best interest, including the addition of terms not mentioned in this RFP. The final contract must, among other terms and conditions required by OCERS, allow OCERS to terminate the contract a) for OCERS’ convenience, b) if funds are not appropriated for the services, or c) for default.

The general form of the contract OCERS intends to use is included as Exhibit “A” (“Agreement for Hearing Officer Services”). OCERS reserves the right to make changes to the contract prior to execution, including material changes. The final Scope of Services to be included in the contract will be determined at the conclusion of the RFP process.

By submitting a proposal without comment on the Agreement for Hearing Officer Services, respondent will be deemed to have agreed to each term in that agreement, and to not seek any modifications to it. If respondent objects to any term or wishes to modify or add terms to the Agreement for Hearing Officer Services, the proposal must identify each objection and propose language for each modification and additional term sought. A rationale should be included for each objection, modification, or addition.

Section 12: Reservations by OCERS

In addition to the other provisions of this RFP, OCERS reserves the right to:

1. Cancel or modify this RFP, in whole or in part, at any time.

2. Make such investigation as it deems necessary to determine the respondent's ability to furnish the required services, and the respondent agrees to furnish all such information for this purpose as OCERS may request.
3. Reject the proposal of any respondent who is not currently able to perform the contract, or who has previously failed to perform similar contracts properly, or in a timely manner, or for any other reason in OCERS' sole discretion.
4. Waive irregularities, to negotiate in any manner necessary to best serve the public interest, and to make a whole award, multiple awards, a partial award, or no award.
5. Award a contract, if at all, to the firm which will provide the best match to the requirements of the RFP and the service needs of OCERS in OCERS' sole discretion, which may not be the proposal offering the lowest fees.
6. Request additional documentation or information from respondents, which may vary by respondent. OCERS may ask questions of any respondent to seek clarification of a proposal or to ensure the respondent understands the scope of the work or other terms of the RFP.
7. Reject any or all proposals submitted in response to this RFP.
8. Choose to not enter into an agreement with any of the respondents to this RFP or negotiate for the services described in this RFP with a party that did not submit a proposal.
9. Determine the extent, without limitation, to which the services of a successful respondent are or are not actually utilized.
10. Defer selection of a bidder to a time of OCERS' choosing.
11. Consider information about a respondent other than, and in addition to, that submitted by the respondent.

EXHIBIT A

AGREEMENT FOR HEARING OFFICER SERVICES

This Agreement is made and entered into by and between the Orange County Employees Retirement System (hereafter "OCERS"), having a principal place of business at 2223 East Wellington Avenue, Suite 100, Santa Ana, CA 92701 and _____, (hereafter "Hearing Officer"), having a principal place of business of _____.

RECITALS

- A. Pursuant to the provisions of the County Employees Retirement Law of 1937 ("CERL"), Cal. Gov't Code §§ 31450 *et seq.*, OCERS is authorized to provide for the conduct of hearings by a Hearing Officer in connection with the determination of applications of OCERS members for benefits under the CERL, Cal. Gov't Code § 31533; and
- B. The Hearing Officer represents, and OCERS has determined that the Hearing Officer is a member of the State Bar of California (State Bar No. _____) and has the requisite qualifications and experience to conduct administrative hearings in a competent and impartial manner; and
- C. The Board has determined to retain the services of Hearing Officer as one of the appointed referees on an as-needed, time-to-time basis to conduct such hearings; and
- D. The Hearing Officer wishes to act as one of the OCERS-appointed referees on such an as-needed basis, for the term of the contract; and
- E. OCERS has authorized the Chief Executive Officer to enter into this Agreement with the Hearing Officer.

NOW, THEREFORE, it is mutually agreed as follows:

1. Availability

Hearing Officer agrees, as needed, to act as a referee pursuant to California Government Code Section 31533 and to conduct hearings for OCERS. OCERS has no obligation to submit cases to the Hearing Officer.

2. Responsibilities

- A. Hearing Officer's services must be performed in accordance with, and Hearing Officer must be familiar with:
 - vi. all relevant provisions of the CERL, as amended;
 - vii. relevant and binding legal precedents interpreting the CERL;
 - viii. the OCERS Board of Retirement (Board) Policy: Adjudication Policy and Administrative Hearing Rules (Disability and Non-Disability Benefits) (the "Hearing Rules") as may be amended or superseded by OCERS from time to time;
 - ix. all other applicable laws, rules, and policies of OCERS, including but not limited to the OCERS Board Policy: Hearing Officer Selection and Retention Policy;

- x. the rules of procedure and evidence that are generally applicable in administrative hearings;
 - xi. the Orange County Bar Association Civility Guidelines; and
 - xii. subdivision D of Canon 6 of the Code of Judicial Ethics.
- B. Hearing Officer warrants they must be and remain fair and impartial and must comply with the applicable Rules for Professional Conduct of the State Bar of California, the Orange County Bar Association Civility Guidelines, and any other applicable rules or procedures addressing fairness or impartiality. Hearing Officer specifically agrees they are subject to and bound by the provisions of subdivision D of Canon 6 of the Code of Judicial Ethics.
- C. Hearing Officer hereby specifically the agrees that they will be bound by the OCERS Hearing Rules, which may be amended by OCERS from time to time, and that his or her duties will be performed in a timely and efficient manner, including within the time frames set forth in the OCERS Administrative Review and Hearing Policy.
- D. Any challenges to the Hearing Officer’s ability to hear the case based upon bias will be decided as set forth in the Hearing Rules.
- E. Hearing Officer services will include the conduct of hearings, the review of evidence, and the rendering of timely written reports to the Board and the applicant for benefits, which report will contain proposed findings of fact and a recommended decision.
- F. The Hearing Officer’s duties must be performed in a timely and efficient manner. The Hearing Officer must abide by the rules and timelines provided in the Hearing Rules and ensure that the parties in matters before them abide by the rules and timelines provided in the Hearing Rules. The Hearing Officer must provide their written report within the time frames set out in the Hearing Rules.

3. Compensation

- A. Except as set out below, Hearing Officer’s sole and complete compensation for services rendered pursuant to this Agreement, including any and all overhead, secretarial, and supplies, will be payment at the rate of \$250/hour for time reasonably expended in conducting the hearing and preparing the written report, and for travel to and from the hearing location, up to a maximum of one hour.
- B. If a scheduled hearing is canceled, and Hearing Officer does not receive at least fifteen (15) calendar days’ notice of such cancellation, the Hearing Officer will receive a cancellation fee as follows:
- i. If Hearing Officer is notified of the cancellation fewer than fifteen (15) days prior to the scheduled hearing date, but before commencing travel to the designated hearing location, Hearing Officer will receive a cancellation fee of \$250.00.
 - ii. If Hearing Officer is notified of the cancellation after commencing travel to the designated hearing location, Hearing Officer will receive a cancellation fee of \$250.00, plus compensation for travel time at the rate of \$250/hour for up to one hour of travel each way.

- iii. If Hearing Officer is notified of the cancellation fifteen (15) or more calendar days prior to the scheduled hearing date, no cancellation fee will be paid.
- iv. If the Hearing Officer is notified of a postponement after they commences travel, they will be paid for actual travel time.

4. Term

- A. This Agreement will be effective for seven (7) years from the date of execution below, unless sooner terminated. This Agreement may not be renewed or extended after its expiration except as further set forth below. Either party may terminate this Agreement for cause on thirty (30) days' written notice to the other party.
- B. OCERS may immediately terminate this Agreement upon written notice to the Hearing Officer for any of the following reasons: fraudulent billing practices; discipline by the State Bar of California; and failing to maintain an active status with the State Bar of California, or for any other material breach of this Agreement by the Hearing Officer. If this Agreement is terminated by OCERS under this paragraph, the Hearing Officer will not be entitled to any compensation after the date of termination. Upon termination of this contract, the Hearing Officer will immediately return all documents received or prepared by the Hearing Officer in the performance of this Agreement. OCERS will appoint a new Hearing Officer on all pending cases to which the Hearing Officer was assigned.
- C. OCERS may terminate this Agreement upon thirty days prior written notice to the Hearing Officer for any of the following reasons: failure by the Hearing Officer to properly apply the CERL, the Hearing Rules and other policies adopted by the Board, or binding legal precedents; failing to submit written reports in a timely manner, and within the timelines required pursuant to the Hearing Rules; failing to effectively manage the cases before the Hearing Officer in a fashion that ensures that matters are adjudicated timely and within the timeframes specified in the Hearing Rules; acting in a fashion that violates the Orange County Bar Association's Civility Guidelines. If this Agreement is so terminated, the Hearing Officer must complete all pending reports before the termination date set out in such notice and will be paid for such services provided to the date of termination. Upon termination of this contract, the Hearing Officer must return all documents received or prepared by the Hearing Officer in the performance of this Agreement in a timely manner.
- D. The Hearing Officer must complete all pending reports before the expiration date set forth in the contract unless the contract is terminated sooner and will be paid for such services provided to the date of the expiration. Hearing Officer will not be entitled to any compensation after the date of expiration.
- E. Notwithstanding any other provisions of this contract, this Agreement may be extended by mutual agreement of the parties only for purposes of completing a hearing and the necessary written reports on any case(s) previously assigned to the Hearing Officer which is pending at the time the contract expires. Such extension will only be for such time as is necessary to complete the hearing and written reports on the pending matter(s). No extension of this contract will be given for any other purpose or reason. Any work performed by the Hearing Officer as a result of such a mutually agreed upon extension will be compensated at the same rate as set forth in this Agreement and subject to the same terms and conditions set forth in this Agreement. Any work performed by the

Hearing Officer subsequent to the expiration of this Agreement, whether subject to mutual agreement of the parties or not, will in no way constitute a renewal of the Agreement.

5. Non-Assignment

This Agreement has been entered into by OCERS based upon Hearing Officer's personal qualifications. Therefore, Hearing Officer may not assign this Agreement.

6. Independent Contractor

In performing services under this Agreement, the Hearing Officer is an independent contractor and is not and will not be deemed to be an employee of OCERS. The Hearing Officer will not acquire or accrue any benefits, rights, or compensations under this Agreement except as specifically set forth herein.

7. Governing Law and Venue

This Agreement is entered into, and must be performed, in Orange County, State of California. This Agreement will be interpreted and construed in accordance with the laws of the State of California and venue will be in Orange County Superior Court, Central Justice Center.

8. Income Limitation

By signing below, Hearing Officer certifies that the annual income derived from the performance of this Agreement will not exceed thirty-three percent (33%) of Hearing Officer's annual gross income, as reported on Form 1040, for any year during the term of the Agreement. Hearing Officer must provide to OCERS written evidence of compliance with this section on an annual basis at the anniversary date of the execution of this contract.

9. Ownership of Documents

Any and all documents received or prepared by the Hearing Officer in the performance of this Agreement will be and remain the property of OCERS.

10. Confidentiality

Hearing Officer acknowledges that they may receive confidential information from OCERS or otherwise in connection with this Agreement or the performance of the Services, including personally identifiable information of OCERS' members ("Member Data"). Except for information in the public domain, unless such information falls into the public domain by disclosure or other acts of OCERS or through the fault of OCERS, Hearing Officer agrees:

- a. To maintain Member Data in confidence;
- b. Not to use Member Data other than in the course of this Agreement;
- c. Not to disclose or release Member Data except on a need-to-know only basis;
- d. Not to disclose or release Member Data to any third person without the prior written consent of OCERS, except for authorized employees or agents of Hearing Officer;
- e. To promptly notify OCERS in writing of any unauthorized release of confidential information, including Member Data;

- f. To take all appropriate action, whether by instruction, agreement or otherwise, to ensure that third persons with access to the information under the direction or control or in any contractual privity with Hearing Officer, do not disclose or use, directly or indirectly, for any purpose other than for performing the Services during or after the term of this Agreement, any confidential information, including Member Data, without first obtaining the written consent of OCERS;
- g. Upon request by OCERS and upon the termination or expiration of this Agreement for any reason, Hearing Officer must promptly return to OCERS all copies, whether in written, electronic, or other form or media, of Member Data in its possession or in the possession of its employees or agents, or securely dispose of all such copies, and certify in writing to OCERS that such Member Data has been returned to OCERS or disposed of securely; and
- h. That the requirements in this Section 10 will survive the expiration or termination of this Agreement.

11. Miscellaneous

This writing contains the full Agreement of the parties and cannot be amended or altered except in a writing signed by both parties. No waiver of any term or condition of this Agreement will be a continuing waiver thereof.

12. Notice

Hearing Officer will keep OCERS informed of Hearing Officer’s current place of business. Hearing Officer must maintain an e-mail address to which service of all documents filed pursuant to the Hearing Rules will be sent and to which all notices required under this agreement may be sent.

All notices required under this Agreement will be directed to:

OCERS Legal Division
Attn: Bill Singleton
 P.O. Box 1229
 Santa Ana, California, 92702
 wsingleton@ocers.org

Hearing Officer
 [Name]
 [Street Address]
 [City, CA, 9____]
 _____@_____._____

///
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IN WITNESS WHEREOF, the parties have executed this Agreement as of the date set forth below:

DATE: [Date]

OCERS

[Hearing Officer]

Gina M. Ratto
General Counsel

[Hearing Officer]

Steve Delaney
Chief Executive Officer

OCERS Board Policy

Hearing Officer Selection and Retention Policy

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;

OCERS Board Policy

Hearing Officer Selection and Retention Policy

- 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.

OCERS Board Policy

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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

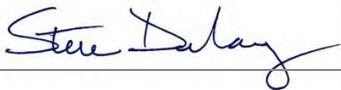
22. The Board will review this Policy at least every three (3) years to ensure that it remains relevant and appropriate.

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

OCERS Board Policy Administrative Review and Hearing Policy (Disability and Non-Disability Benefits)

1. Intent

The Board of Retirement (“Board”) of the Orange County Employees Retirement System (“OCERS”) intends that this Administrative Review and Hearing Policy (“Policy”) will apply to and govern OCERS’ Administrative Review and Administrative Hearing processes for Disability Determinations, Benefit Determinations and other final administrative orders or decisions of the Board. Any person who is entitled to a hearing and who does not request one under this Policy will be deemed to have waived the right to a hearing.

Nothing in this Policy will be deemed an acknowledgement by OCERS that any procedure set forth herein, including an administrative hearing, is required by law. The Board retains the right to amend this Policy or vary the process set forth in this Policy in any manner consistent with the law.

2. Definitions

The following terms will have the meanings set forth below.

Administrative Hearing; Hearing: The proceedings before a Hearing Officer or the Board on the merits of a particular Request for Administrative Hearing and related Application.

Administrative Record: The documents and other records relied upon by Staff or a fact-finding body in an Administrative Review or Hearing conducted pursuant to this Policy, including any documents submitted on behalf of an Applicant, documents prepared by OCERS or by independent sources that are received by OCERS, any transcripts or recordings of testimony, or any other documents relevant to an Application.

For purposes of any proceeding following an Administrative Review or Hearing, the Administrative Record also includes written correspondence, Party Pre-Hearing Statements, the Hearing Officer’s Proposed Findings of Fact and Recommended Decision, Party objections, hearing transcripts, and other documents relevant to an Application.

Administrative Review: The process described in this Policy (including the Rules) by which a Party may seek an administrative review of a Benefit Determination, CEO Determination or Disability Determination or any other final administrative order or decision of the Board.

Applicant; Member: A member of OCERS, or a person or other entity on behalf of a member of OCERS (including but not limited to the member’s surviving spouse), or any person who claims an interest in the pension or allowance of an OCERS member who files an Application or who seeks Administrative Review of a Benefit Determination.

Application: The submittal, including any amendments thereto, filed with OCERS by or on behalf of an Applicant for either: (i) a disability retirement; or (ii) a service retirement.

Benefit Determination: A determination made by Staff in connection with (i) a service retirement Application; (ii) a disability retirement Application with the exception of a Disability Determination; or (iii) an Applicant’s benefit (e.g., calculation of the amount of the benefit, benefit effective date, reciprocity determinations).

CEO Determination: A Benefit Determination made by the CEO or the CEO’s designee.

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Clerk, Clerk to the Hearing Officers. A person or persons designated by the OCERS General Counsel or their designee to fulfill the duties of providing administrative assistance to the Hearing Officers appointed by OCERS.

Consolidation/Consolidated Review or Hearings. Where two or more Requests for Administrative Review or Hearing that have common issues of fact or law are consolidated for Administrative Review or Hearing pursuant to Section 8 of this Policy or Rule 7 of the Rules.

Days: All days are calendar days, unless otherwise provided herein.

Disability Committee, Committee: A committee of the Board, chartered by the Board to review Applications for disability retirement and make recommendations to the Board with respect to Disability Determinations.

Disability Determination: The action taken by the Board in response to a disability retirement Application pursuant to Government Code Section 31724, limited to the following findings: (1) whether the Applicant is permanently incapacitated for performance of their duties in the service; (2) whether the disability was service-connected; and (3) the effective date of the disability retirement. Any other determinations affecting a disability retirement Application, including, but not limited to, timeliness of the Application, ineligibility due to termination for cause, and applicability of a disability offset, are Benefit Determinations pursuant to this Policy and subject to a CEO Determination.

Employer: The public agency who employed the OCERS member whose benefits are at issue in any given matter. The Employer is a Party to an Administrative Review but does not need to participate in an Administrative Review or Hearing. If the Employer initiates an Administrative Review or Hearing, it will act in the role of the Applicant with the corresponding burden of proof.

Expedited Administrative Hearing: An alternative administrative Hearing process, set forth in Rule 6 of the Rules.

Hearing Officer: A referee appointed pursuant to Government Code section 31533 who is either a member of the State Bar selected under the OCERS Hearing Officer Selection and Retention Policy, or a member of the Board.

Medical Witness: A person who by profession is a physician, surgeon, psychologist, optometrist, dentist or podiatrist licensed by the State of California or by such other jurisdiction of the United States in which such person maintains a regular practice in good standing.

Party or Parties: OCERS, an Applicant who seeks an Administrative Review or Hearing under this Policy, the Employer, and any other person who may be affected by the Board's decision and who participates in the Administrative Review or Hearing.

Pre-Hearing Statements: Statements filed by the Parties pursuant to Rule 9 of the Rules.

Proposed Findings of Fact and Recommended Decision: The recommendation of the Hearing Officer to the Board, as set forth in Rule 14 of the Rules.

Request for Administrative Review or Request for Administrative Hearing: The document filed by the Applicant (or in limited cases, the Employer) to seek a review of a decision of the Committee or Staff and initiate the Administrative Review or Administrative Hearing process. Where the Applicant requests a

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Hearing or the Board refers the matter to a Hearing, the document will be referred to as a Request for Administrative Hearing. Where the Applicant seeks review of a Benefit Determination or CEO Determination, the document will be referred to as a Request for Administrative Review.

Respondent: OCERS will always be the primary Respondent. The Employer may, but is not required to respond to the request for Administrative Review or Hearing. Where the Employer initiates a review or hearing, the Applicant may join as a Respondent.

Rules: The “Orange County Employees Retirement System Administrative Rules,” attached as an appendix to and made part of this Policy.

Staff: OCERS staff members other than the CEO and the CEO’s designee.

3. Disability Determination Process

For Disability Determinations:

- A. Staff will investigate all disability retirement Applications to determine (i) whether the Applicant is permanently incapacitated from the performance of their usual duties; (ii) whether the incapacity arose out of and in the course of employment, and (iii) the appropriate effective date of any disability retirement allowance. In undertaking this investigation, Staff will have the discretion, based on Staff’s review of the Application (including the Applicant’s treating physicians’ medical reports) to determine whether or not to seek further medical examination of the Applicant, expert medical advice, or expert review of Applicant’s medical records. Upon completion of the investigation, Staff will make a recommendation to the Committee regarding permanent incapacity, service connection, and effective date.
- B. The Committee will review the disability retirement Application and the Staff recommendation under subsection A, above, at a duly-noticed meeting of the Committee. Staff will give Applicant (and the Applicant’s attorney, if any) and the Employer notice of the date and time of the Committee meeting at which they will have the opportunity to be heard by the Committee.
- C. After the Committee reviews the disability retirement Application, the Committee will determine whether to recommend that the Board grant or deny the Application, in full or in part. Staff will notify the Applicant (and Applicant’s attorney), and the Employer by email of the Committee’s recommendation. They will also be provided with instructions on how to request an Administrative Hearing to challenge any part of the Committee’s recommendation. Notice will be effective when the email is sent.
- D. In the event the Committee recommends that the Application be denied in full or in part, the Applicant will have 90 days from the date of the notice required by 3.C., above, to file a Request for Administrative Hearing with the Clerk, as set forth in the Rules. In the event the Committee recommends the Application be granted in full, any other Party including the Employer aggrieved by the recommendation will have ten days from the date of the notice required by 3.C., above, to file a written Request for Administrative Hearing as set forth in the Rules.
- E. Where the Committee recommends (i) a grant of a non-service connected disability retirement, but denial of a service-connected disability retirement; or (ii) a grant of a either a service-connected or

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non-service connected disability retirement and the Applicant disputes the Committee's recommendation regarding the effective date of disability, the Applicant may request a Hearing on the denial of a service-connected disability or the effective date of disability. In such cases, the issues not disputed will not be at issue in the Hearing. Staff will forward those non-disputed issues to the Board for final action.

- F. If no Request for Administrative Hearing is filed within the time limit set forth in 3.D., above, the Committee's recommendation will be placed on the consent agenda at the next regularly scheduled meeting of the Board for action in accordance with Section 5, below.

4. Benefit Determination Review Process

For Benefit Determinations:

- A. Staff will notify the Member of the Benefit Determination, and the Member may request a CEO Determination within 90 days of the date of the notice of the Benefit Determination. The CEO Determination will be in the form of a written review completed and returned to the Member within 90 days of receipt of the request for a CEO Determination, and will include a synopsis of the Member's request and citation to any authority relied upon by the CEO in making the CEO Determination. In addition, the written review will include instructions regarding how the Member may request review of the CEO Determination by the Board.
- B. The Member will have 90 days from the date of the notice of the CEO Determination provided in 4.A., above, to file a Request for Administrative Review. If no timely Request for Administrative Review is filed, the CEO Determination will be final.

5. Board Action on Disability Determination Upon Recommendation from the Disability Committee

- A. **Consent Agenda.** When there has been no timely Request for an Administrative Hearing of the Disability Committee's recommendation under Section 3, above, the Board will consider the Committee's recommendation on the Board's consent agenda.
- B. **Removing Items from Consent Agenda/Action.** Any member of the Board may remove an item from the consent agenda to be discussed and voted on separately. If any Board member removes a Disability Determination from the consent agenda, the item will be considered by the Board in closed session as set forth in Section 7, below.
- C. **Action on Recommendations from the Disability Committee.** After consideration by the Board, the Board will either (i) adopt the recommendation of the Disability Committee; or (ii) refer the matter to a Hearing Officer for a Hearing (unless a Hearing is waived by the Applicant, in which case the Committee recommendation will be adopted).

6. Board Action on Disability Determinations After Hearing.

Following an administrative Hearing and the Board's receipt of the Hearing Officer's Proposed Findings of

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Fact and Recommended Decision, the Board will consider the matter at a duly-noticed meeting of the Board and take action in accordance with Rule 16 of the Rules.

7. Closed Sessions for Disability Determinations

Except for matters on the Disability Committee's or Board's consent agenda, the Disability Committee or Board will adjourn to a closed session, pursuant to Cal. Gov't Code § 54957(b), to discuss a recommended Disability Determination in connection with an Application for disability retirement, or a Hearing Officer's Proposed Findings of Fact and Recommended Decision in connection with a Disability Determination, unless the Applicant requests the matter be heard in open session.

- A. Closed Session With the Parties Present.** The Committee or the Board will conduct any discussion of an Application, including instances where the Board convenes and conducts its own Hearing, in closed session. Attendance at the closed session will be limited to 1) the Applicant; 2) counsel for the Applicant as well as any individual deemed by the Board Chair to be essential to the Applicant in the matter; 3) any OCERS disability Staff members and/or attorneys acting as advocates for the Staff recommendation or Committee recommendation; 4) Staff necessary to facilitate the Hearing (including the Clerk of the Board and IT Staff to provide technical support); 5) the CEO; 6) the OCERS General Counsel (or their designee); and 7) outside counsel to the Board. Additionally, in the event the Board conducts its own hearing, witnesses called to present testimony may be permitted to attend the closed session to do so.
- B. Closed Session Without Parties.** Before or after the Committee's or Board's consideration of a matter in a closed session under A, above, the Committee or the Board may adjourn to a closed session with only the CEO and the OCERS General Counsel (or their designee) to provide legal advice to the Committee or the Board in connection with the merits of the case and the Board's legal obligations.

8. Board Action on CEO Determination.

- A. Board Review of CEO Determinations.** In the case of a timely Request for Administrative Review of a CEO Determination, the Board will consider the matter at a duly noticed regular meeting of the Board. Staff will make a recommendation to the Board regarding the issues raised in the CEO Determination and the Applicant (or the Applicant's attorney) will have the opportunity to be heard.
- B. Board's Options.** At the meeting, the Board may choose to hear and conduct the review at that meeting, continue it to a later meeting, or refer the matter to a Hearing Officer for a Hearing to be conducted pursuant to the Rules. If the Board chooses to hear and determine the matter, the Board's decision will be final. If the Board chooses to refer the matter to a Hearing, the Board will identify the factual and legal issues to be considered by the Hearing Officer.

In determining whether to hear and determine the matter or refer the matter to a Hearing Officer, the Board will consider all relevant factors, including, but not limited to, the following:

- i. whether the disputed issues are legal, not factual, in nature;

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- ii. relevant judicial authority on the disputed legal issue(s);
- iii. whether the Board and/or a Hearing Officer has previously ruled on substantively similar issue(s);
- iv. whether the Applicant is represented by an attorney;
- v. the efficient use of OCERS resources; and
- vi. the interests of the Applicant in receiving a timely decision.

- C. **Consolidation of Reviews.** When review by the Board of two or more CEO Determinations involves common questions of law or fact, the Board may order a Consolidated Review or Consolidated Hearing of the matters. Consolidation may be ordered for limited purposes or for all purposes.

In determining whether to order a Consolidation of the CEO Determinations, the Board will consider all relevant factors, including, but not limited to, the following:

- i. the complexity of the issues involved;
- ii. the potential prejudice to any party, including whether a Consolidation would result in undue delay;
- iii. the avoidance of duplicate or inconsistent orders; and
- iv. the efficient utilization of OCERS resources.

9. Board Action on CEO Determination After a Hearing.

In the case of a CEO Determination referred by the Board to a Hearing, the Board will consider the Hearing Officer's Proposed Findings of Fact and Recommended Decision at a duly-noticed meeting of the Board in accordance with Rule 16 of the Rules. The Board may adopt the Hearing Officer's recommendations or make its own determination based on the Administrative Record and the Board's decision will be final.

10. Policy Review

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

11. Policy History

This Policy was adopted by the Board of Retirement on February 19, 2002. It was amended most recently on August 17, 2020.

Secretary's Certificate

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



08/17/2020

Steve Delaney
Secretary of the Board

Date

OCERS Board Policy Administrative Review and Hearing Policy (Disability and Non-Disability Benefits)

Appendix - Administrative Rules

Rule 1. Definitions

All capitalized terms contained within these Rules will have the meaning set forth in Section 2 of the OCERS Administrative Review and Hearing Policy.

Rule 2. Filing of Documents

A. Administrative Review and Hearing Filing Procedures

1. The “Administrative Hearing Filing Procedures” sets forth the procedures by which the Parties and Hearing Officer will file documents, the Clerk will accept filing of documents, and the Clerk will serve documents on the Parties and the Hearing Officer.
2. The Administrative Hearing Filing Procedures may include forms that the Parties are permitted or required to use in connection with a Hearing.
3. The Clerk will provide the Applicant with a copy of the Administrative Hearing Filing Procedures upon the filing of a Request for Administrative Hearing.

B. Filing of Documents

1. All documents required or permitted to be filed by any Party in connection with a Hearing will be filed with the Clerk.
2. Filing of documents will be done electronically in conformance with the Administrative Hearing Filing Procedures, except that an Applicant (and only the Applicant) may opt to file documents in person, by US Mail or electronically. Applicants that opt for filing documents by US Mail, must inform the Clerk of this in writing. The Clerk will then inform all other Parties and the Hearing Officer that the Applicant has opted to file documents by US Mail.
 - i. Documents filed in person will be deemed filed on the day received by OCERS.
 - ii. Documents filed by US Mail will be deemed filed on the date post-marked on the envelope containing the documents.
 - iii. Documents filed electronically will be deemed filed on the date electronically received by the Clerk.

C. Service of Documents

1. The Clerk will serve on all Parties and the Hearing Officer any documents filed by a Party or the Hearing Officer within one (1) business day of receipt of the documents by the Clerk.
2. Service by the Clerk will be electronic, in conformance with the Administrative Hearing Filing Procedures, except where the Applicant has opted to file by US Mail pursuant to B.2., above, in which case the Clerk will serve documents on the Applicant by US Mail. In that case, the Applicant will be deemed to have received service three (3) days after the date the Clerk deposits the document in the US Mail. Electronic service will be deemed served upon electronic transmission by the Clerk.

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Rule 3. Administrative Hearing Request, Scope, and Settlement

- A. Request for Administrative Hearing.** A written Request for Administrative Hearing must be filed with the Clerk within the time frame set forth in Sections 3 and 4 of the Policy. The Request should include a short and plain statement of the grounds for the request.
- B. Referral from the Board.** In the event the Board refers a matter to a Hearing Officer for a Hearing (pursuant to Sections 5.C. or 8 of the Policy), the referral from the Board will be considered the Request for Administrative Hearing, but for all procedural purposes under these Rules, the request will be deemed to have been filed by the Applicant.
- C. Permitted Representatives, Attorneys.** Any Party is entitled, at the Party's expense, to be represented by an attorney at any stage of the proceedings. Such attorney must be a current, active member of the California State Bar in good standing. A Party must file with the Clerk a written notice of the hiring, changing, or dismissal of an attorney. Absent such written designation, OCERS is not obligated to recognize any attorney or other individual claiming to represent a Party.
- D. Burden of Proof.** The Applicant will have the burden of proof by a preponderance of the evidence to establish the right to the benefit sought. Where the Employer filed the Request for Administrative Hearing under Section 3.D. of the Policy, the Employer will have the burden of proof by a preponderance of the evidence to demonstrate that the Committee's recommendation should be overturned, and the Employer will be bound by all of the procedural rules applicable to the Applicant under these Rules.
- E. Scope of Hearing.**
1. The Hearing on a Disability Determination will only address the issues of permanent incapacity, service connection, and effective date. All other issues related to a disability retirement Application are subject to the Benefit Determination process under Sections 4 or 8 of the Policy.
 2. In accordance with Section 8 of the Policy, the Hearing on a CEO Determination will only address the factual and legal issues that are identified by the Board for consideration by the Hearing Officer.
 3. Except as set forth in these Rules, the Hearing Officer will not make a finding or recommendation on any issue that was not raised in the Applicant's Request for Administrative Hearing or included in the Board's referral of the matter to a Hearing. Likewise, the Hearing Officer will not consider any evidence or make a finding or recommendation on any medical condition not included in the disability retirement Application or that was not previously evaluated by Staff, except as provided in subsection 4, below.
 4. If at any time during the Hearing process the Applicant either (i) alleges an injury or disease not listed in the disability retirement Application or (ii) raises an issue that was not previously presented to the Committee, the Hearing process will be suspended by the Hearing Officer and the Application will be treated as an amended Application. The amended Application will be referred back to Staff to be processed. If the Committee subsequently recommends a denial of

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the amended Application, the matter will be returned to the Hearing Officer who will consider all the medical conditions (those raised in the Application and the amended Application). A new Hearing Date, Pre-Hearing Conference and deadlines for Pre-Hearing Statements will be set in accordance with Rule 8.

- F. **Settlement.** If at any time during the Hearing process it becomes apparent to Staff that a different result is appropriate, Staff may suspend the Hearing and refer a settlement to the Board. If the Board approves a settlement with the Applicant, the Hearing will be dismissed.

Rule 4. Assignment of Hearing Officers

- A. **Assignment of Hearing Officer.** Hearing Officers are selected and placed on the panel pursuant to OCERS' Hearing Officer Selection and Retention Policy. As matters are referred to a Hearing, the Clerk will assign the Hearing Officer on a rotational basis, while ensuring that, to the extent possible, each Hearing Officer on the panel is assigned an equal number of cases. Within fourteen (14) days after the Applicant files a Request for Administrative Hearing, the Clerk will serve notice to all Parties, including the Hearing Officer, indicating the name and address of the Hearing Officer to whom the matter is assigned, which notice will include information regarding the ability to challenge a Hearing Officer as set forth below.
- B. **Challenge/Removal of Hearing Officer.** A Party may object to a Hearing Officer in accordance with the following procedures.
1. **Peremptory Challenge:** Any Party other than OCERS is entitled to one peremptory (without cause) challenge to the assignment of the Hearing Officer. The challenge must be filed with the Clerk within fourteen (14) days of the date of the notice assigning the Hearing Officer. If the Applicant opts for service by US Mail, the time period for filing a challenge will be extended by three (3) days. In the event of a peremptory challenge, the Clerk will re-assign the case to another Hearing Officer selected in the same manner as the first Hearing Officer. In the event no challenge is made to a proposed Hearing Officer, or after the exhaustion of all challenges, the Clerk will notify the Parties that the matter will proceed with the assigned Hearing Officer.
 2. **Removal for Cause:** Any Party, including OCERS, may challenge a Hearing Officer for cause by filing a request at any time, with supporting declarations made under penalty of perjury and any other evidence upon which the Party is relying. Any opposing Party will have fourteen (14) days from the Clerk's service of the challenge for cause on all Parties to file a response to the request to remove for cause. The Clerk will then randomly assign the removal request to another Hearing Officer, who will consider all evidence and arguments for and against removal of the Hearing Officer and file a ruling with the Clerk within thirty (30) days from assignment. Cause for removal will be limited to demonstrated bias against a Party or counsel based on a personal or financial relationship (other than the Hearing Officer's contract with OCERS) that would cause a reasonable person to doubt the Hearing Officer's ability to render an impartial decision. If the request for removal is granted, the Clerk will re-assign the case to another Hearing Officer (other than the Hearing Officer who heard the challenge) in the same fashion as selection of the first Hearing Officer.

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3. **Removal Due to Unforeseen Circumstances:** If the service of a Hearing Officer is discontinued due to unforeseen circumstances, such as death, illness, or termination with or without cause, the Parties other than OCERS are entitled to a peremptory challenge to the new Hearing Officer in accordance with subsection B.1 of this Rule.
 4. **Assignment After Removal Due to Unforeseen Circumstances:** If the service of a Hearing Officer is discontinued due to unforeseen circumstances, such as death, illness, or termination with or without cause, any hearing date will be vacated and the Clerk will assign a new Hearing Officer pursuant to Rule 4.A above and schedule a new Pre-Hearing Conference pursuant to Rule 7, below.
- C. **Recusal of Hearing Officer.** If at any time the Hearing Officer determines that there is cause for their recusal, the Hearing Officer will immediately file with the Clerk a statement of recusal, and the Clerk will reassign the case pursuant to Rule 4.A.

Rule 5. Preparation and Service of Administrative Record

Within sixty (60) days of the filing of a Request for Administrative Hearing, the Clerk will assemble and serve on the Hearing Officer and each Party the initial Administrative Record. Except as provided in Rule 6, a Party may object to the admission of items into evidence or seek to admit additional information into evidence as set forth in these Rules, and the Hearing Officer will decide the admissibility of all evidence.

Rule 6. Expedited Administrative Hearing

- A. **Provisions for Expedited Administrative Hearing.** Expedited Administrative Hearing is an irrevocable waiver of the Applicant's right to the process described in Rules 7 through 12. The goal of the Expedited Administrative Hearing process is to complete the Hearing in less than six months. The Hearing Officer's Proposed Findings of Fact and Recommended Decision will be based only on the Administrative Record and written arguments without in-person testimony or argument.
- B. **Availability of Expedited Administrative Hearing.**
1. An Expedited Administrative Hearing is only available for those cases that OCERS General Counsel determines the process is appropriate.
 2. The determination as to whether Expedited Administrative Hearing is appropriate will be made in the sole discretion of the OCERS General Counsel, on a case-by-case basis. In doing so, the General Counsel will consider whether: there are any material facts in dispute; whether the introduction of testimonial evidence is likely to clarify the issues; whether there is controlling legal authority; and whether the Applicant's condition is such that time is of the essence in completing the Hearing process.
 3. In the event the General Counsel determines that a matter is appropriate for Expedited Administrative Hearing, the Clerk will notify the Applicant of this determination and the Applicant's right to accept or reject the Expedited Administrative Hearing along with a form in which to do so. The Applicant may file the acceptance or rejection any time prior to the Clerk's service of the Administrative Record on the Parties.

OCERS Board Policy Administrative Review and Hearing Policy (Disability and Non-Disability Benefits)

- C. **Timeline.** The Expedited Administrative Hearing will be conducted according to the following timeline.
1. Within fourteen (14) days of the date the Clerk serves the Administrative Record in accordance with Rule 5, each party may lodge with the Clerk any additional written evidence that it seeks to rely on in addition to the Administrative Record.
 2. Within thirty (30) days of the date the Clerk serves the Administrative Record, the Applicant will file a Statement of Issues of not more than five (5) pages setting forth the Applicant's contentions.
 3. Within fourteen (14) days after the Clerk serves Appellant's Statement of Issues on Respondent, Respondent will file a Statement of Issues of not more than five (5) pages setting forth its contentions.
 4. Within sixty (60) days from the date Respondent files its Statement of Issues, the Hearing Officer will file the Proposed Findings of Fact and Recommended Decision in conformance with Rule 14. Notwithstanding the timeframes for objections set out in Rule 14C, objections will be filed within 10 days rather than 20 days, and responses thereto likewise will be filed within 10 days rather than 20 days.

Rule 7. Consolidation of Hearings

In addition to Consolidation by the Board of two or more cases pursuant to Section 8.C. of the Policy, cases may be Consolidated in accordance with this Rule 7, and this Rule 7 will apply to all such Consolidations.

- A. When two or more pending Requests for an Administrative Hearing involve common questions of law or fact, a Hearing Officer, upon request by OCERS or the Applicant, may order the Hearings Consolidated. Consolidation may be ordered for limited purposes or for all purposes.

In determining whether to order Consolidated Hearings, the Hearing Officer will consider all relevant factors, including but not limited to the following:

1. the complexity of the issues involved;
 2. the potential prejudice to any Party, including whether granting Consolidation would unduly delay the resolution of any of the matters involved;
 3. the avoidance of duplicate or inconsistent orders; and
 4. the efficient utilization of OCERS' resources.
- B. Any Party may file a request with the Clerk to Consolidate two or more pending Hearings irrespective of the procedural stages of the affected Hearings, which request will be served by the Clerk on all Parties and the Hearing Officers.
- C. In all cases, the request for Consolidation will be referred to the Hearing Officer first assigned to any of the Hearings. The Hearing Officer may decide the matter on written submittals, or may convene the Parties, either in-person or electronically, to hear further argument on the request for Consolidation. Failure to timely oppose Consolidation will constitute a waiver of objection to an order of Consolidation.

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- D. If the Hearing Officer orders the Consolidation, all affected Hearings will be transferred to that Hearing Officer.
- E. Upon Consolidation, all hearing dates will be vacated and the Clerk will schedule a new Pre-Hearing Conference for the Consolidated Hearings. Following the Hearing, the Hearing Officer will have the option of preparing separate Proposed Findings of Fact and Recommended Decisions for each matter that was Consolidated or a single Proposed Findings of Fact and Recommended Decision.
- F. Nothing contained herein will prohibit the Parties from stipulating to Consolidated Hearings. In the event a stipulation is reached, the Parties will file a written stipulation with Clerk, signed by all Parties. The Clerk will then assign the Consolidated Hearings to the first assigned Hearing Officer.

Rule 8. Pre-Hearing Conference

- A. The Clerk will schedule a Pre-Hearing Conference to be held within thirty (30) days of the service of the Administrative Record on the Parties. The Clerk will use best efforts to schedule the Pre-Hearing Conference at a time convenient to all Parties.
- B. The Pre-Hearing Conference will be held telephonically or electronically. The Clerk will arrange for a court reporter to transcribe the conference at OCERS' expense.
- C. At the Pre-Hearing Conference, the Hearing Officer will advise the Applicant (whether or not the Applicant has initiated the matter) of the following:
 - 1. The Applicant has the right to be represented by an attorney;
 - 2. Any financial or personal interest that the Hearing Officer has in the case, other than the Hearing Officer's contract with OCERS;
 - 3. The scope of the Hearing and the issues to be decided consistent with the constraints of Rule 3.E., above;
 - 4. The Hearing will be conducted as if the Disability Determination or CEO Determination had not taken place. This means the Hearing Officer will consider anew all of the evidence submitted and defenses asserted, without relying on the past findings of the Committee, the Board or the CEO;
 - 5. The Hearing Officer's purpose in the process is to find the facts relevant to the Applicant's request and provide an impartial recommendation to the Board;
 - 6. The Applicant has the burden of proof in establishing by a preponderance of the evidence the right to the benefit sought;
 - 7. The Applicant must identify witnesses and other evidence when filing the Pre-Hearing Statement, and that failure to include in the Pre-Hearing Statement the witnesses and other evidence they intend to rely on could mean that evidence will be excluded unless the Applicant shows that they could not have discovered the information earlier through the exercise of reasonable diligence;

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8. The timelines required under these Rules for filing documents and for the Hearing, and the consequences of a failure to meet those deadlines, including that the Applicant's case can be dismissed; and
 9. Upon the completion of the Hearing, the matter will be referred to the Board pursuant to these Rules. Upon action by the Board, the decision will be final for all purposes. There will be no requirement for a further written decision from the Board or opportunity for the Board to reconsider its decision. Any Party aggrieved by the Board's decision may petition the Superior Court for judicial review as provided by law. The time for any Party to seek judicial review will be governed by the California Code of Civil Procedure Section 1094.6.
- D. At the Pre-Hearing Conference, each Party will:
1. Make a good faith effort to identify the witnesses, both expert and non-expert, that it intends to call;
 2. Identify any witnesses it intends to call who cannot either speak or understand English to permit OCERS to arrange a translator for the witnesses in accordance with Rule 10.K.;
 3. Indicate whether it will require an opposing Party's Medical Witness to appear in person at the Hearing;
 4. Identify any witnesses the Party seeks to depose and, if possible, set mutually convenient dates for any depositions.
- E. No later than the Pre-Hearing Conference, OCERS, through its counsel, will identify any issues related to eligibility of the Applicant such as timeliness of the Application or ineligibility due to termination for cause, which, if correct would moot the Hearing. The Hearing Officer will give the other Parties an opportunity to respond, and may continue the Pre-Hearing Conference to do so. If the Hearing Officer finds in favor of OCERS on the issue of eligibility, the Hearing process will be suspended and the issue of eligibility will be referred to the Board in accordance with Section 8 of the Policy and handled as if it were a CEO Determination.
- F. At the Pre-Hearing Conference, the Hearing Officer will set the date for the Hearing.
1. The Hearing Officer will confer with the Parties to determine a mutually agreeable date for the Hearing ("Hearing Date"), as soon as reasonably practicable, but in all cases the first Hearing Date will be set no later than six (6) months after the date of the Pre-Hearing Conference.
 2. Each Party will provide a good faith estimate of the amount of time it anticipates the Hearing will last. As much as practicable, the Hearing will continue from day-to-day until complete, and the Hearing Officer will schedule all Hearing Dates to which the Hearing Officer anticipates the Hearing will be continued until complete.
- G. Within five (5) days of the Pre-Hearing Conference, the Clerk will issue a Scheduling Order, which will include the Hearing Date(s) and the dates that each Party's Pre-Hearing Statements are due.
- H. After the Pre-Hearing Conference, the Hearing Officer may continue the Hearing Date only upon a showing of good cause, as set forth in Rule 15 below.

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- I. If neither the Applicant nor the Employer, where the Employer has filed an Application on behalf of the Member (and is therefore also treated as an Applicant under these Rules), participates in the Pre-Hearing Conference, the Clerk will file and serve on all Parties and the Hearing Officer an Order to Show Cause why the matter should not be dismissed, and give all Applicants (including the Employer where the Employer has filed an Application on behalf of the Member) five (5) days to respond to the Hearing Officer. Other Parties are permitted, but not required to submit responses. Unless at least one of the Applicants shows good cause why the matter should not be dismissed, the Hearing Officer will dismiss the Hearing, and the matter will proceed as if no Request for Administrative Hearing had been filed in accordance with Section 5 of the Policy.

If the Hearing Officer determines that an Applicant has shown good cause, the Hearing Officer will direct the Clerk to reschedule the Pre-Hearing Conference and the Applicant will be liable to OCERS for any actual costs incurred by OCERS as a result of the delay.

Rule 9. Pre-Hearing Statements

- A. The Applicant will file a Pre-Hearing Statement of up to ten (10) pages no later than sixty (60) days prior to the first Hearing Date.
- B. Respondent will file a Pre-Hearing Statement of up to ten (10) pages no later than thirty (30) days prior to the first Hearing Date.
- C. Any Party may file supplemental Pre-Hearing Statements of up to five (5) pages no later than fourteen (14) days prior to the first Hearing Date.
- D. The Pre-Hearing Statements will include the following:
 1. A statement of the issues and contentions of the Party and a brief summary of the evidence to be presented;
 2. A list and copies of any expert's reports, transcripts of depositions of any witnesses, and any other documentary evidence on which the Party will rely, if not already in the Administrative Record;
 3. The names, addresses, and telephone numbers of any non-expert witnesses whose testimony the Party intends to call for oral testimony at the Hearing and a brief description of the content of that testimony; and
 4. The names, addresses, and phone numbers of any expert witnesses whom the Party intends to call for oral testimony at the Hearing and a brief description of the content of that testimony.
- E. If the Applicant disputes the effective date of the disability retirement, the Applicant will raise the effective date as an issue and will state Applicant's contention in the Pre-Hearing Statement.
- F. If the Applicant fails to timely file a Pre-Hearing Statement, the Clerk will file and serve on all Parties and the Hearing Officer an Order to Show Cause why the case should not be dismissed, and give the Applicant five (5) days to respond to the Hearing Officer. Other Parties are permitted, but not required to submit responses. Unless the Applicant shows good cause for the failure to timely file

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its Pre-Hearing Statement, the Hearing Officer will dismiss Hearing, and the matter will proceed as if no Request for Administrative Hearing had been filed in accordance with Section 5 of the Policy.

If the Hearing Officer determines that the Applicant has shown good cause, the Hearing Officer may allow the Respondent additional time to file its Pre-Hearing Statement or may re-schedule the Hearing within the time requirements of Rule 15. The Applicant will be liable to OCERS for any actual costs incurred by OCERS as a result of the delay.

Rule 10. Depositions and Subpoenas

- A. **Depositions:** Witness depositions may be taken by either Party in the presence of a certified court reporter and will be taken under oath or affirmation. The Party taking the deposition will pay all associated costs. If any Party offers any portion of any deposition testimony into evidence at the Hearing, that Party will provide a full copy of the deposition transcript to each adverse Party and the Hearing Officer free of charge.
- B. **Subpoenas and Related Fees/Costs:**
 - 1. OCERS will issue a subpoena for the personal appearance of a witness at the Hearing or at a deposition, or for the production of documents (subpoena *duces tecum*), in conformance with California Government Code Section 31535, upon the request of any Party filed at least seven (7) days before the date the subpoena is to be issued. Each request will state the witness's full name and the complete address of the witness's place of employment or residence. OCERS will issue the subpoena; however, the requesting Party will be obligated to serve the subpoena and pay all associated witness fees and costs of service and production. The Party requesting oral testimony of an expert witness will in all cases be responsible for any expert witness fees.
 - 2. Any fee disputes between a witness and the requesting Party is independent of any proceeding between the Applicant and OCERS. Those fee disputes will be resolved by the requesting Party and the witness in the California courts, not in this forum. The Hearing Officer has no authority to decide any such dispute.

Rule 11. Conduct of Hearings

- A. All Hearings will be held at the OCERS' office located at 2223 East Wellington Avenue, Santa Ana, California 92701.
- B. The Clerk will arrange for a court reporter to be present. Oral evidence will be taken only on oath or affirmation administered by the Hearing Officer or the court reporter.
- C. A written medical report bearing the signature (including a digital signature) of the Medical Witness will be admissible in evidence as the author's direct testimony, on the express condition that the adverse Party has had the opportunity to require the Medical Witness to be present and to cross-examine the witness at the Hearing, or to depose the witness and have the deposition transcript admitted into evidence.
- D. Each Party will have the right to call and examine witnesses; to introduce exhibits, including reports and depositions of medical witnesses; to cross-examine opposing witnesses on any matter relevant

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to the issues even though that matter was not covered in the direct examination; to impeach any witness regardless of which Party first called the witness to testify; and to rebut adverse evidence. If an Applicant does not testify by direct examination, OCERS may call and examine the Applicant.

- E. The Hearing need not be conducted according to technical rules relating to evidence and witnesses. Any relevant evidence will be admitted if it is the sort of evidence on which reasonable persons are accustomed to rely in the conduct of serious affairs regardless of the existence of any common law or statutory rule which might make improper the admission of such evidence over objection in civil actions. The rules of privilege will be effective to the extent that they are otherwise required by statute to be recognized at the Hearing. Irrelevant and unduly repetitious evidence will be excluded.
- F. Hearsay evidence may be used for the express purpose of supplementing or explaining other evidence but will not be sufficient by itself to support a finding unless it would be admissible over objection in civil actions. This section will not be applicable to written medical reports received into evidence pursuant to Rule 10.C. Every Hearing will proceed as though each Party had made a standing objection to all inadmissible hearsay at the commencement of the Hearing.
- G. The court reporter will lodge with the Clerk the transcript of the Hearing within thirty (30) days of the final Hearing Date.
- H. The record will be closed to new evidence at the conclusion of the final Hearing Date. However, if subsequent to the final Hearing Date, a Party discovers or obtains new evidence that is relevant and not repetitive of other evidence already admitted, that Party may lodge the new evidence with the Clerk and request that the Hearing Officer include it in the Administrative Record. The Hearing Officer may require the Parties to provide declarations and argument about inclusion of the new evidence. If, after showing of good cause as defined under Rule 10.I, the Hearing Officer allows inclusion of the new evidence, the opposing Party will be provided an opportunity to submit rebuttal evidence in accordance with Rule 10.I. No rebuttals of the rebuttal will be permitted.
- I. No Party may submit a medical report or other documentary evidence not included in the Administrative Record or listed in its Pre-Hearing Statement except for purposes of impeachment, unless the Party demonstrates good cause. Likewise, no Party will be permitted to call a witness not listed in its Pre-Hearing Statement, except for purposes of impeachment, unless the Party demonstrates good cause. For purposes of this Rule, "good cause" means that the relevant evidence or witness could not have been previously produced or identified even with the exercise of reasonable diligence. The Party requesting submission of such evidence or witness will file a written request prior to the Hearing, or if unable to do so in the exercise of reasonable diligence, will make an oral request at the Hearing. The request will state the reason the evidence or witness was not timely produced or identified. After providing a reasonable opportunity for each adverse Party to be heard, the Hearing Officer will rule on such a request. If the evidence is allowed to be admitted into evidence, or the witness is allowed to testify, the Parties will have the right to a continuance to engage in further discovery, obtain rebuttal medical evidence, or depose or cross-examine the Medical Witness in order to comply with Rule 10.C. In no event, will good cause permit admission of medical reports or other documentary evidence relating to a new medical condition covered by Rule 3.E.

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- J. Each Party will have the right to submit a closing oral argument at the conclusion of the Hearing.
- K. Use of Interpreter Services.
 - 1. If an Applicant or a witness does not speak or understand English sufficiently to participate in the proceedings or provide testimony, an interpreter certified to provide interpretation services in administrative hearings will be provided to that Applicant or witness at OCERS's expense. Notice that an Applicant or witness requires interpreting services will be given to OCERS at the Pre-Hearing Conference or be included in the Party's Pre-Hearing Statement. If a Party fails to provide such notice, then the witness may not be called unless good cause is shown, as set forth Rule 10.I.
 - 2. All interpreters must be certified to provide interpreting services in administrative hearings pursuant to Government Code Section 11435.30. The interpreter must not have had any involvement in the issues of the case prior to the Administrative Hearing.
 - 3. If an Applicant objects to the interpreter provided by OCERS, the Applicant may supply their own interpreter, provided that the interpreter is certified under Government Code Section 11435.30. However, time for an Applicant to find and hire an interpreter will not be considered good cause to continue the Hearing. OCERS will pay the chosen interpreter the same amount OCERS would have paid an interpreter hired directly by OCERS. The Applicant will be responsible for any amounts charged by the interpreter that are over the amount OCERS would have paid to an interpreter hired directly by OCERS. Fee disputes between the interpreter and the Applicant will not be resolved in this forum, and the Hearing Officer will not have authority to resolve any fee disputes between interpreters and the Parties.

Rule 12. Resolution of Disputes about Depositions and Conduct of Hearings

The Hearing Officer will resolve disputes about depositions and the conduct of the Hearing. A request for resolution of a dispute may be made verbally at a Pre-Hearing Conference, at the Hearing, or by written motion filed with the Clerk at any time prior to the Hearing. The Hearing Officer, in the exercise of sound discretion, may permit written argument or briefs.

Rule 13. Closing Briefs

- A. Each Party will have the right to submit a written closing brief. Unless the Parties waive closing briefs, the Parties will adhere to the following schedule for filing closing briefs:
 - 1. The Applicant's closing brief will be filed within thirty days (30) of the date the transcript of the Hearing is lodged with the Clerk.
 - 2. Respondents' closing briefs will be filed within thirty days (30) days of the date the Clerk serves the Applicant's closing brief on the other Parties.
 - 3. Applicant's reply brief will be filed within fifteen (15) days of the date that the Clerk serves Respondents' closing briefs on the Applicant.
- B. Each Party's closing brief may be supported by facts in the record and citation to law. The Applicant's and Respondents' closing briefs may not exceed fifteen (15) pages and the reply brief

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may not exceed ten (10) pages unless the Hearing Officer, in the proper exercise of discretion, determines that a longer limit is appropriate under the circumstances. The Hearing Officer may reject briefs exceeding the foregoing limits.

Rule 14. Hearing Officer's Findings of Fact and Recommended Decision

- A. **Time for Filing.** The Hearing Officer will file the Proposed Findings of Fact and Recommended Decision with the Clerk within sixty (60) days of the date that the Applicant's reply brief is due or, if the Parties waived closing briefs, within sixty (60) days of the date the transcript of the Hearing is due (i.e, within 30 days of the final Hearing Date) or actually lodged (if earlier than 30 days after the final Hearing Date).
- B. **Content of Proposed Findings of Fact and Recommended Decision.** The Hearing Officer's Proposed Findings of Fact and Recommended Decision will include a summary of the following: (1) issues raised by the parties; (2) the testimony; (3) all other evidence received by the Hearing Officer; (4) a factual discussion of matters on which the Hearing Officer relied; (5) conclusions of law with citations to legal authority; and (6) recommended decision. The summary of the testimony, plus all other evidence received, will be sufficient to satisfy the requirements of Government Code Section 31534(b).
- C. **Objections/Requests for Clarification.** Within twenty (20) days from the date that the Hearing Officer files the Proposed Findings of Fact and Recommended Decision with the Clerk, any Party may file with the Clerk objections or written requests for clarification to the Hearing Officer's Proposed Findings of Fact and Recommended Decision. The Clerk will serve such objections or written requests for clarification on the Hearing Officer as well as the other Parties. The other Parties will then have twenty (20) days after service to file a response with the Clerk. Within thirty (30) days after the later of: (a) the date that Hearing Officer receives the objections or requests for clarification or (b) an adverse party's response to such objections or requests for clarification, the Hearing Officer will:
1. Affirm the Proposed Findings of Fact and Recommended Decision findings, conclusions, and recommendations as originally submitted without change, or
 2. Make such changes to the Proposed Findings of Fact and Recommended Decision as the Hearing Officer deems appropriate in light of the evidence, the objections or requests for clarification submitted by the Parties, and the responses thereto.

The objections and/or requests for clarification and the response thereto and the Hearing Officer's final Proposed Findings of Fact and Recommended Decision following any objections, will be added to the Administrative Record and submitted for consideration by the Board.

Rule 15. Continuances and Relief from Orders

- A. The deadlines and timelines established in these Rules are for the purpose of expediting the Hearing process as quickly as reasonably possible in order to give certainty to the Applicant in the retirement process. Therefore, delays, continuances, or relief should be granted for documented good cause (as defined hereafter) and any delay should be the absolute shortest necessary under

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the circumstances. If the Hearing Officer believes the request is primarily for the purpose of delay or caused by inattention or lack of preparation of a Party, the request should be denied.

- B. Upon the request of a Party, the Hearing Officer may amend or continue the time periods set forth in these rules, but only for good cause shown by the Party seeking the delay.
- C. Good cause for purposes of this Rule will be only for the following reasons:
 - 1. The discovery of relevant evidence that, in the exercise of reasonable diligence, could not have been previously produced (in which case there will only be one continuance permitted for each request);
 - 2. The need to engage in further discovery, obtain rebuttal medical evidence, or depose or cross-examine a Medical Witness (in which case there will only be one continuance permitted for each request), as set forth under Rule 10.I; or
 - 3. The illness or disability of the Applicant, witness, attorney, or the Hearing Officer which was unknown to the person at the time of the Pre-Hearing Conference (or other time at which the deadline was set) which makes it impossible for the person to participate in the Administrative Hearing process. Relief in these instances will be granted only if the person raises the request as soon as practicable. The Hearing Officer will consider a failure to timely seek relief a waiver by the person.
- D. If a continuance is sought due to an illness or disability affecting an attorney who will not be able to participate in the process within a reasonably short period of time, then the continuance will be for a maximum of sixty (60) days to secure substitute counsel, and the Clerk will schedule a Pre-Hearing Conference pursuant to Rule 7.
- E. If a continuance is sought due to an illness or disability affecting the Hearing Officer, and the Hearing Officer cannot proceed within the time period set forth in Rule 17, below, the Hearing Officer will be recused and the Clerk will appoint a new Hearing Officer pursuant to Rule 4 and schedule a new Pre-Hearing Conference pursuant to Rule 7.
- F. If good cause is found to exist to reschedule a Hearing, the Hearing Officer will order that the Clerk schedule a Pre-Hearing Conference no more than seven (7) days from the date of the Hearing Officer's order and the Hearing Date will be reset no more than ninety (90) days from the date of the Pre-Hearing Conference.
- G. Until such time as the matter has been referred to the Board, the Hearing Officer may, upon any terms as may be just, relieve a party from an order, or other action taken against that Party through mistake, inadvertence, surprise, or excusable neglect on the part of the Party. Application for this relief will be made within a reasonable time. Once the matter has been placed on the Board agenda, the Hearing Officer will no longer have jurisdiction.

Rule 16. Hearing and Action by the Board

- A. The Clerk will refer to the Board for its consideration the Hearing Officer's Proposed Findings of Fact and Recommended Decision as well as any related objections/requests for clarification,

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responses thereto, and the Hearing Officer's final Proposed Findings of Fact and Recommended Decision following any objections.

- B. The Clerk will place the matter on the agenda of a regular meeting of the Board which will be no later than two (2) calendar months after the later of the date the Clerk receives the Hearing Officer's Proposed Findings of Fact and Recommended Decision; or the date the Clerk receives the Hearing Officer's final Proposed Findings of Fact and Recommended Decision following any objections or requests for clarification from the Parties.
- C. The Clerk will provide written notice to the Parties and the Hearing Officer of the time and date of the regular meeting where the matter will be placed on the Board's agenda for action. The Parties will have the opportunity to be heard at the Board meeting subject to appropriate time limitations as set out in the OCERS By-laws.
- D. Pursuant to Government Code Section 31534, after reviewing the Hearing Officer's Proposed Findings of Fact and Recommended Decision and any related objections/requests for clarification, the Board may:
 - 1. Approve and adopt the Proposed Findings of Fact and Recommended Decision of the Hearing Officer; or
 - 2. Require a transcript or summary of all testimony, plus all other evidence received by the Hearing Officer; and upon receipt thereof, take such action as the Board in its opinion is indicated by such evidence; or
 - 3. Refer the matter back with or without instructions to the Hearing Officer for further proceedings; or
 - 4. Set the matter for hearing before itself. At such hearing, the Board will hear and decide the matter.
- E. The Hearing Officer's Proposed Findings of Fact and Recommended Decision (and responses to objections/requests for clarification) will be sufficient to satisfy the requirements of Government Code Section 31534(b) and Rule 15.D.2, above.
- F. In any case where the Board makes a decision under Rule 15.D.2 or 15.D.3, above, the Board may approve and adopt the Proposed Findings of Fact and Recommended Decision of the Hearing Officer or prepare its own Findings of Fact and Decision, either itself or through direction to Staff with its approval.
- G. Upon action by the Board, the decision will be final for all purposes. There will be no requirement for a further written decision from the Board or opportunity for the Board to reconsider its decision. Any Party aggrieved by the Board's decision may petition the Superior Court for judicial review as provided by law. The time for any party to seek judicial review will be governed by the California Code of Civil Procedure Section 1094.6. The Clerk will notify the Applicant (and attorney), and the Employer by email of the Board's final action. Notice will be effective when the email is sent.



Applicable to cases filed on or after August 18, 2020

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Rule 17. Dismissal for Failure to Pursue the Administrative Review and Hearing

Except as otherwise provided, if as a result of an Applicant's failure to pursue the case or to comply with any of these Rules, a Hearing is not conducted within one year after the filing of a Request for Administrative Hearing (or the Board's referral of a case to a Hearing Officer), the Hearing Officer will dismiss the Hearing and the matter will proceed as if no Request for Administrative Review or Hearing had been filed in accordance with Section 5 of the Policy.