

**EMPLOYEES' RETIREMENT SYSTEM OF THE CITY OF BALTIMORE
BOARD OF TRUSTEES
HEARING EXAMINER RECOMMENDATION POLICY**

Adopted October 20, 2005. Amended April 16, 2015

PURPOSE AND BACKGROUND

The purpose of this Hearing Examiner Recommendation Policy is to provide the Board of Trustees ("Board") of the Employees' Retirement System of the City of Baltimore ("Retirement System" or "ERS") with a framework it can utilize as a basis for recommending hearing examiners to the City of Baltimore Board of Estimates ("Board of Estimates"). Pursuant to §§9(p) and 9.2(p) of Article 22 of the Baltimore City Code, the Board is charged with the responsibility of submitting to the Board of Estimates a list of recommended candidates for hearing examiner to serve on the Panel of Hearing Examiners. The role of a hearing examiner is to conduct hearings for ERS and Elected Officials' Retirement System ("EOS") members and beneficiaries on all matters relating to claims for disability benefits and line-of-duty death benefits. Selection of hearing examiners with demonstrated competence in disability claims evaluation must be made in a manner that assures that the due process rights of Retirement Systems members and their beneficiaries are met.

HEARING EXAMINER SELECTION PANEL

1. A Hearing Examiner Selection Panel ("Panel") shall be formed by the Executive Director. The Panel shall be responsible for both the selection and evaluation of hearing examiners as delineated herein.
2. The Panel shall consist of the following individuals:
 - a. ERS Executive Director,
 - b. ERS General Counsel, and
 - c. An ERS Board Trustee chosen by the ERS Board.

ADVERTISING FOR THE POSITION

1. In order to generate a list of hearing examiners, an advertisement shall be prepared.
2. At the discretion of the Executive Director, the advertisement may be run in general circulation newspapers, legal periodicals, medical or casualty insurance journals, and/or other relevant publications. The advertisement may also be posted at the City's or Retirement Systems' web site as well as other job-related web sites. Further, the advertisement may be sent to potential candidates that are brought to the Executive Director's attention.

QUALIFICATIONS

1. At a minimum, hearing examiner candidates shall have at least **3** years of experience:
 - a. in medical claims evaluation;
 - b. as an adjudicator (e.g., judge, administrative hearing officer, mediator, arbitrator, etc.);
 - c. in disability retirement or workers' compensation law;
 - d. as a medical or disability insurance claims adjuster; or
 - e. as a health care professional.

SELECTION PROCESS

1. The Panel shall review the responses to the advertisement and select qualified candidates for formal interviews.
2. The Panel shall conduct formal interviews of qualified candidates. At the Panel's discretion, writing samples, references, or other materials that would reflect on the hearing examiner's ability to competently perform his or her duties may be required of qualified candidates. Based on these interviews, the Panel shall compile a list of hearing examiner candidates for recommendation to the Board.
3. The Board shall review the list of qualified candidates recommended by the Panel and compile from that list its final recommendations of qualified hearing examiner candidates for submission to the Board of Estimates.
4. Upon approval for recommendation by the Board, the name of each hearing examiner shall be submitted by the Executive Director to the Board of Estimates for approval. However, under § 9(p)(2)(iv) of Article 22 of the Baltimore City Code, the Board of Estimates may select any candidate for hearing examiner of its choosing.

HEARING EXAMINER CONTRACTS

Submission for approval of each hearing examiner shall be in the form of a Request of Approval to the Board of Estimates to approve a Disability Services Hearing Agreement by and between the City and the hearing examiner substantially in the form provided in Attachment A. The agreement must be executed by the hearing examiner prior to submission to the Board of Estimates.

HEARING EXAMINER EVALUATION CRITERIA

1. A record shall be maintained which records the number of times that a hearing examiner's decision is overturned by the circuit court on review.
2. A record shall be maintained which records the number of decisions issued by a hearing examiner during a contract term and the number of times that a hearing

examiner's decision is issued beyond the required due date during a contract term.

ASSIGNMENT OF CASES

Retirement Systems staff shall review, maintain, and formalize a system, which ensures that hearing examiners be assigned cases on a random basis. The Executive Director shall oversee this process.

NUMBER OF HEARING OFFICERS

The Panel shall make all reasonable efforts to maintain a Panel of Hearing Examiners sufficient in number to meet the needs of the Retirement Systems. The number of hearing examiners necessary to meet those needs shall be based upon the following factors:

- a. The average number of hearings per month during the calendar year
- b. The number of hearings per month assigned to each hearing examiner

With the consent of the Board, the Panel shall be allowed to advertise for additional hearing examiners whenever it determines that this action is necessary in order to maintain the appropriate number of hearing examiners.

REMUNERATION

In order to help attract and retain the most qualified hearing examiners possible, the Panel shall review, from time to time, the contracted rate of pay for the Panel of Hearing Examiners. The purpose of the review shall be to determine whether the Retirement Systems' rate of pay is competitive with current market rates. For purposes of this review, current market rates refers to rates paid by other governmental agencies or retirement systems for administrative hearing officer services similar to those provided by the Panel of Hearing Examiners.

ATTACHMENT A

DISABILITY HEARINGS SERVICES AGREEMENT

BY AND BETWEEN

MAYOR AND CITY COUNCIL OF BALTIMORE

AND

THIS DISABILITY HEARINGS SERVICES AGREEMENT (hereinafter “Agreement”) is entered into this _ day of _____, _____, by and between the **MAYOR AND CITY COUNCIL OF BALTIMORE**, a municipal corporation of the State of Maryland (the “City”), and _____, a Hearing Examiner (“Hearing Examiner”).

WHEREAS, Baltimore City Code Article 22, Sections 9(p) and 33(l) require the City to appoint hearing examiners for the purpose of presiding over administrative hearings and adjudicating claims for disability retirement and death benefits filed by members of the Employees’ Retirement System of the City of Baltimore (“ERS”), the Fire and Police Employees’ Retirement System of the City of Baltimore (“F&P”) and the Elected Officials’ Retirement System (“EOS”); and

WHEREAS, the Hearing Examiner has demonstrated knowledge and competence in disability and death claims evaluation and has been recommended to the Board of Estimates by the ERS and F&P Boards of Trustees, as required by law.

NOW, THEREFORE, in consideration of the mutual promises contained herein and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto agree as follows:

1. TERM

The City hereby agrees to retain the services of Hearing Examiner commencing on _____ and ending _____, unless terminated sooner.

2. COMPENSATION

The City agrees to pay the Hearing Examiner and the Hearing Examiner agrees to accept payment for his services at the following rates and under the following conditions:

(a) \$100.00 per hour for time spent in meetings with other Hearing Examiners and associated administrative duties;

(b) \$500.00 flat rate for each ERS, F&P, or EOS disability or death claim for which a written decision is rendered by the Hearing Examiner, if a hearing is held to adjudicate such claim;

(c) \$200.00 flat rate for each ERS, F&P, or EOS disability or death claim for which a written decision is rendered by the Hearing Examiner, if no hearing is held to adjudicate such claim;

(d) \$200.00 flat rate for each ERS, F&P, or EOS disability or death claim if the Hearing Examiner attends the hearing and the case is postponed on the day of the hearing because the applicant or the applicant's legal counsel fails to appear;

(e) \$70.00 flat rate for execution of: (i) forms approving ERS, F&P, or EOS disability and death claims application withdrawals and (ii) forms ordering continuance or discontinuance of reexamination of ERS, F&P, or EOS disability retirees;

(f) The maximum fees which shall be paid to the Hearing Examiner under this Agreement may not exceed \$20,000.00; and

(g) On a monthly basis, the Hearing Examiner shall submit to the applicable Board of Trustees an itemized statement of services rendered with regard to ERS, F&P, and EOS disability and death claims, and the City shall pay the Hearing Examiner thirty (30) days from the date of submission and approval of such billing.

3. EXPENSES NOT REIMBURSABLE

The City shall not reimburse the Hearing Examiner for travel, lodging, parking, postage, telephone, or other expenses related to rendering of services under this Agreement other than as outlined in Item 2.

4. ADDITIONAL FEES FOR CASES ON REMAND

The City shall pay the Hearing Examiner a new fee, in accordance with Item 2, for a written decision rendered in a claim remanded back to him by a court on appeal of a previous decision.

5. SCOPE OF SERVICES

The Hearing Examiner shall duly and properly conduct hearings to decide eligibility of claimants applying for ERS, F&P, and EOS disability retirement and death benefits in accordance with the applicable provisions of the ERS, F&P, and EOS law and render a written decision memorializing his determination as to disability or death benefit eligibility. In addition, the Hearing Examiner shall make determinations in all matters relating to disability and death claims including, but not limited to: (i) membership status of disability and death benefit applicants, (ii) approvals of disability and death application withdrawals, and (iii) reexamination continuance or discontinuance orders. All disability and death hearings shall be recorded by a transcription service. Decisions by the Hearing Examiner shall be submitted to ERS, 3.f. Hearing Examiner Recommendation Policy

F&P, or EOS, as applicable, within fifteen (15) business days of the later of: (i) the date of the hearing or (ii) the deadline for submitting additional evidence subsequent to the hearing.

6. CONFIDENTIALITY OF RECORDS AND NONASSIGNABILITY

The Hearing Examiner shall maintain the confidentiality of members' records and may not assign or transfer any part of the work to be done or services provided under this Agreement.

7. INDEPENDENT CONTRACTOR

The Hearing Examiner acknowledges that, in providing services under this Agreement, he is an independent contractor and not an employee of the Mayor and City Council of Baltimore. The Hearing Examiner is therefore not entitled to receive City of Baltimore employee benefits, including health benefits, paid holidays, vacation leave, personal leave, sick leave, compensatory time, death benefits, Worker's Compensation coverage, or retirement benefits.

8. CONFLICTS OF INTEREST

By executing this Agreement, the Hearing Examiner represents and asserts that he has not engaged in or entered into any practice that is in conflict with the services that he will render under this Agreement. The Hearing Examiner further agrees to refrain from entering into or engaging in any arrangements or agreements during the term of this Agreement that could give rise to even the appearance of a conflict of interest with any services rendered hereunder. The Hearing Examiner hereby represents and asserts that he has fully disclosed to the City any and all practices,

arrangements, or agreements that could give rise to even the appearance of a conflict of interest with any services to be rendered hereunder.

9. RECORDS RETENTION

The Hearing Examiner shall retain all records pertaining to this Agreement for a period of at least three (3) years after receipt of the final payment under the Agreement and shall make them available for inspection and audit by the City or its representatives or by any State or Federal agency. If the Hearing Examiner ceases to perform services under this Agreement, he shall immediately transfer custody of the records to the ERS, F&P, or EOS, as applicable. Any records pertaining to this Agreement must be destroyed three (3) years after receipt of the final payment under the Agreement.

10. AUDITS AND INSPECTIONS

At any time during normal business hours and as often as the examining party may deem necessary, there shall be made available for examination to the City or its representatives or to any Federal or State official, all of the Hearing Examiner's records with respect to all matters covered by this Agreement.

11. TERMINATION

If the Hearing Examiner materially fails to fulfill in a timely and proper manner his obligations under this Agreement or materially violates any of the covenants, terms, or conditions of this Agreement, the City may terminate this Agreement for cause by giving written notice to the Hearing Examiner of such termination specifying the Hearing Examiner's breach, at least five (5) business days prior to the effective date of the termination. Despite being terminated, the Hearing Examiner shall not be relieved of liability to the City for damages sustained by the City as a direct result of the Hearing

Examiner's breach. Notwithstanding any other provision of this Agreement, either the City or the Hearing Examiner may terminate this Agreement, at any time and for any reason, by giving thirty (30) days written notice to the other party. Upon termination, fees owed to the Hearing Examiner shall be paid for services rendered up to the date of termination. If this Agreement is terminated by either party, as provided herein, neither the notice of termination nor the actual termination will relieve the Hearing Examiner of his obligation to draft and submit written decisions with regard to any disability claims for which a hearing was held prior to the termination. To the extent that any services are required of the Hearing Examiner after termination, he shall be entitled to compensation.

12. LIABILITY

As provided in Baltimore City Code Article 22, Sections 5(r) and 33(q), the City shall not indemnify the Hearing Examiner, as an independent contractor, from any liability arising out of services provided under this Agreement. In addition, the City shall not provide professional liability insurance coverage for the Hearing Examiner.

13. NOTIFICATION

All notices, requests, and demands upon the parties hereto shall be in writing and shall be deemed to have been given when deposited in the United States mail, postage prepaid and addressed as follows:

FOR THE CITY:

Roselyn H. Spencer, Executive Director
EMPLOYEES' RETIREMENT SYSTEM
OF THE CITY OF BALTIMORE
7 E. Redwood Street, 12th Floor
Baltimore, Maryland 21202

FOR THE HEARING EXAMINER:

14. APPLICABLE LAW

This Agreement is made in Maryland and Maryland law shall govern its interpretation, performance, and enforcement. Furthermore, the parties agree that any suits or actions brought by either party against the other shall be brought in Baltimore City.

15. COMPLIANCE WITH LAW

The Hearing Examiner shall comply with all Federal, State and local laws, ordinances, rules and regulations as well as applicable codes of ethics and policies of the City, pertaining to or regulating the provision of services, including those now in effect and hereafter adopted. This obligation shall include, but not be limited to, responsibility for confidentiality of protected health information and other regulatory requirements of the Health Insurance Portability and Accountability Act of 1996 (HIPAA). Any violation of said laws, ordinances, rules, regulations, codes of ethics or policies shall constitute a material breach of this Agreement and shall entitle the Mayor and City Council of Baltimore to terminate this Agreement in accordance with Section 11.

16. NONDISCRIMINATION

In the performance of the work covered by this Agreement, the Hearing Examiner shall not discriminate against any employee because of race, creed, color, political belief, age, religion, sexual orientation, gender, or national origin.

17. AMENDMENT

This Agreement may not be modified, waived, or terminated orally, and may only be amended by written agreement, signed by each of the parties hereto and approved by the Board of Estimates. Such amendment shall be effective as of the date therein provided.

18. ENTIRE AGREEMENT

This Agreement contains the entire and full understanding between the parties hereto, and neither party shall be bound by any oral or written representations, statements, promises, or agreements not expressly set forth herein.

19. NO WAIVER/CUMULATIVE REMEDIES

No failure by the City to exercise and no delay in exercising any right, power, or privilege under this Agreement shall operate as a waiver thereof; nor shall any single or partial exercise of any right, power, or privilege hereunder preclude any other or further exercise thereof or the exercise of any other right, power, or privilege.

20. MISCELLANEOUS

- (a) The Recitals are incorporated herein by reference.
- (b) Words of gender used in this Agreement may be construed to include any gender, and words in the singular may include the plural and words in the plural, the singular.
- (c) This Agreement may be executed in any number of copies and each such copy shall be deemed an original.

(d) Any heading of the paragraphs in this Agreement is inserted for convenience and reference only and shall be disregarded in construing and/or interpreting the Agreement.

(e) The signatories authorize that they are authorized to bind their respective organizations.

REST OF PAGE INTENTIONALLY LEFT BLANK

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed under seal the day and year first above written.

ATTEST:

MAYOR AND CITY COUNCIL OF BALTIMORE:

Custodian of City Seal

By: _____ (SEAL)
Stephanie Rawlings-Blake, Mayor

WITNESS:

, Hearing Examiner

APPROVED AS TO FORM
AND LEGAL SUFFICIENCY,
ON BEHALF OF THE
CITY SOLICITOR:

APPROVED BY THE BOARD OF ESTIMATES:

General Counsel
Employees' and Elected Officials'
Retirement Systems of the
City of Baltimore

Clerk

Date