



HEARING OFFICER SERVICES

Request for Proposal

KCERA
Kern County Employees' Retirement Association
11125 River Run Boulevard
Bakersfield, CA 93311
Tel (661) 381-7700
Fax (661) 381-7799

1. General Information

Statement of Objectives

The Kern County Employees' Retirement Association ("KCERA") is requesting proposals from qualified attorneys to serve as KCERA's Hearing Officer. The Hearing Officer serves as referee whenever it is necessary to hold an evidentiary hearing in regard to matters brought before the Board of Retirement ("Board").

Once selected as the Hearing Officer for a particular matter, the Hearing Officer will have 60 days in which to schedule and conduct said hearing. Within 30 days of the conclusion of the hearing or briefing schedule, the Hearing Officer will submit the proposed Findings of Fact and Recommendations to the Board.

Background and General Information

The Kern County Employees' Retirement Association (KCERA) was established on January 1, 1945 by the County of Kern Board of Supervisors under the provisions of the County Employees' Retirement Law of 1937. KCERA is governed by the California Constitution, the County Employees' Retirement Law of 1937, and the bylaws, procedures and policies adopted by the KCERA Board of Retirement. The Board of Retirement consists of nine members and two alternates. Four members are appointed by the Board of Supervisors (one of whom may be a member of the Board of Supervisors), two are elected by the active general members, one and an alternate are elected by active safety members, and one and an alternate are elected by the retired members. The County Treasurer-Tax Collector is the ninth regular Board member. The Kern County Board of Supervisors may also adopt resolutions, as permitted by the County Employees' Retirement Law of 1937, which may affect benefits of KCERA members.

KCERA is a cost-sharing multiple employer defined benefit plan. The participating agencies include the County of Kern, Berrenda Mesa Water District, Buttonwillow Recreation and Park District, East Kern Cemetery District, Inyokern Community Services District, Kern County Water Agency, Kern Mosquito & Vector Control District, North of the River Sanitation District, San Joaquin Valley Unified Air Pollution Control District, Shafter Recreation and Park District, West Side Cemetery District, West Side Mosquito Abatement District, and West Side Recreation and Park District and the Kern County Superior Court.

There are approximately 16,000 members served by KCERA, of which 6,200 are retirees. KCERA provides disability retirement benefits to its members who become permanently incapacitated for the performance of their job duties

Disability Application Review Process

KCERA staff will review the file for completeness, obtain additional records as required and then refer the application to the Staff Disability Application Group (SDAG) for review. At that time, SDAG may ask for additional evidence, including medical and personnel records or it may request an additional medical evaluation or investigation. Upon receipt of the additional information, the SDAG will refer the application to physicians employed in the Public Health Department to summarize the medical evidence and provide an opinion on permanent incapacitation and, where appropriate, service connection. If the SDAG recommendation is to deny, the applicant will be notified by mail and given an opportunity to request an administrative hearing.

Scope of Services

Successful proposers will be placed on a list of Hearing Officers and will conduct evidentiary hearings in accordance with the Board's Rules of Procedure for Disability Retirements (Attachment 'A') to determine the member's eligibility for benefits. At the conclusion of the hearing, the Hearing Officer prepares findings of fact and a recommended decision on the issues for consideration by the Board. Hearings on disability retirement applications generally last 1-4 hours and require the Hearing Officer to review confidential medical and other records, such as personnel files, which are accepted as evidence. Generally, the volume of records in the cases ranges from 200-400 pages.

Although the vast majority of cases to be considered by the Hearing Officer will involve questions of eligibility for disability retirement, other types of administrative hearings may arise. Rules adopted by the Board of Retirement provide members who have been overpaid benefits with the right to an administrative hearing prior to the KCERA collecting back the overpayment.

Compensation and Reimbursement of Expenses

Compensation to the Hearing Officer for services are as defined in Attachment 'A' to the sample Agreement, Exhibit I.

Selection and Retention Procedures

The selection and retention procedures for third party hearing officers are as defined in Exhibit II.

2. Proposal Submission Requirements

Proposal Inquiries and Submittal Timeline

This Request for Proposal (RFP) is issued by the Kern County Employees' Retirement Association. KCERA is the sole contact for questions related to this RFP. Questions

should be submitted in writing, via email or fax, citing the RFP title and page to:

**Gloria Domínguez, Assistant Executive Director
Kern County Employees' Retirement Association
11125 River Run Boulevard
Bakersfield, CA 93311
Fax: (661) 381-7799
Email: dominguezg@co.kern.ca.us**

The Request For Proposal issuance date is September 12, 2011.

Questions about and clarifications of this RFP for Hearing Officer Services and KCERA terms and conditions will be addressed at the end of the Proposer inquiry period. An official written answer will be provided to all questions critical to the competitive selection process.

Communications with KCERA: Upon receipt of this RFP, attorneys intending to submit a proposal should not contact any individual on the KCERA staff or trustee of the KCERA Board of Retirement, other than the contact person listed. KCERA may remove from consideration the proposal of any Proposer who violates this no-contact policy.

Proposals are due at KCERA before:

**4:00 p.m. PDT, October 20, 2011
Late proposals will not be accepted.**

Proposals are to be submitted to the attention of:

**Gloria Domínguez, Assistant Executive Director
Kern County Employees' Retirement Association
11125 River Run Boulevard
Bakersfield, CA 93311**

3. Proposal Organization And Submission Format

Proposers shall submit one (1) electronic/digital copy, one (1) original and five (5) copies of their proposals. Proposals that are faxed or emailed will **not** be accepted.

PROPOSAL CONTENTS

To be eligible for evaluation, the proposal must adhere strictly to the format set forth below. Each of the required sections identified must be addressed and must be specifically labeled. The content and sequence of the proposal will be as follows:

| <u>Section</u> | <u>Title</u> |
|----------------|---|
| 1 | Cover Letter |
| 2 | Proposer's Background |
| 3 | Information and Statements – Sections 3.2, 5.5, 6.1 |
| 4 | Curriculum Vitae |
| 5 | Cost |

- 3.1. Cover Letter: The proposal shall consist of a letter identifying the subject of the request for proposal, the date of the proposal, the proposer's name, address, telephone number, and e-mail address.
- 3.2. Proposer's Background. The proposer should provide the following:
- 3.2.1 An affirmative statement that he/she is independent of KCERA and not related in any way to KCERA's business operations.
 - 3.2.2 An affirmative statement that he/she is not currently in litigation with KCERA, the County of Kern or any other agency listed in Section I. In the event the proposer is currently in litigation with any of the above-listed entities, the proposer shall identify the litigation, including the parties and the nature of the action.
 - 3.2.3 Certification that he/she is an active member of the State Bar of California and provides his/her State Bar number.
 - 3.2.4 Information about the circumstances and status of any legal malpractice claims or lawsuits either pending or resolved, and any complaints about the proposer filed with any state regulatory bodies or professional organizations.
 - 3.2.5 Information about the circumstances and status of any past, present or pending discipline or complaints investigated by the State Bar of California.
 - 3.2.6 As much information as possible about past experience as an adjudicator (e.g., judge, judge pro-tem, arbitrator, etc.) in addition to past experience in retirement, disability, or workers' compensation law.
 - 3.2.7 A list of any prior work performed for the KCERA. Please indicate the nature and scope of the work as well as the dates.
 - 3.2.8 Detail of any work performed for any other retirement systems.
 - 3.2.9 Certification that the proposer has no conflict of interest with regard to any other work performed by the proposer for the KCERA. The proposer shall disclose any pending or anticipated litigation in which the proposer, or law

firm the proposer is associated with, represents a party in an action involving the KCERA, the County, or any of the special districts identified in Section II of this RFP, and describe the nature of the litigation, if any.

- 3.3. The proposer shall include any information and statements required pursuant to Sections 3.2, 5.5, 6.1.
- 3.4. Current Curriculum vitae must be included with the proposal.

4. Proposal Evaluation

A response to the RFP should address all points in the RFP, be well organized, clear, and include all requested and supporting information. An evaluation panel will independently review and rate each proposal on a variety of quantitative and qualitative criteria. The evaluation process is as follows:

4.1. Hearing Officer Review Panel

The Hearing Officer Review Panel of designated KCERA staff and the Board Chairman or designee shall evaluate submitted proposals. At the completion of the evaluation process, the panel may recommend one or more candidates to the Board of Retirement.

4.2. Review of Proposals

4.2.1. All proposals meeting the mandatory criteria set forth in Section II shall be fully considered and rated by the Hearing Officer Review Panel.

4.2.2. During the evaluation process, KCERA reserves the right to request additional information from the proposer.

4.3. Formal Interviews

The Evaluation Committee may conduct formal interviews of qualified proposers. At the committee's discretion, writing samples, references, or other materials that would reflect on the proposer's ability to competently perform the Hearing Officer's duties might be required of qualified candidates.

5. Solicitation Caveats

- 5.1. The KCERA reserves the right to reject any and all proposals and to waive informalities and minor irregularities in any proposals received.

- 5.2. The KCERA reserves the right to select the Proposal which in its sole judgment best meets the needs of the KCERA. The lowest proposed cost is not the sole criterion for recommending contract award.
- 5.3. KCERA employees and Board members will not participate in the selection process when those persons have a relationship with the person submitting a proposal which would preclude participation in the decision-making process as provided in Government Code section 87100. Any person submitting a proposal who has such a relationship with a KCERA employee or Board member shall advise the KCERA of the name of such person in the proposal.
- 5.4. The issuance of this solicitation does not constitute an award commitment on the part of the KCERA, and KCERA shall not be obligated for any costs incurred in the preparation or submission of proposals.
- 5.5. No contract with the KCERA is in effect until a contract has been signed by both parties. Attached to this RFP is a sample agreement (Exhibit I) which is in substantially the form the successful proposer(s) will be expected to sign. Exhibit I is for informational purposes and should not be returned with a proposal; however, the proposal shall include a statement that the proposer has reviewed the sample agreement and either i) will agree to the terms contained therein if selected, or ii) indicate those specific provisions of the sample agreement to which the proposer takes exception and why. (See section 6.2 below.)
- 5.6. All proposals received by the KCERA will be considered a "Public Record" as defined in section 6252 of the California Government Code and shall be open to public inspection.
- 5.7. KCERA reserves the right to conduct a background inquiry of each proposer that may include collection of appropriate criminal history information, contractual and business associations and practices, employment histories, reputation in the business community and financial condition. By submitting a Proposal to the KCERA the proposer consents to such an inquiry and agrees to make available to the KCERA such books and records the KCERA deems necessary to conduct the review.

6. General Terms and Conditions

6.1. Responsive Proposals

The proposal must be signed, complete, submitted in the prescribed format, and comply with specifications and legal requirements.

The Proposer must sign a cover letter, which will be considered an integral part of the proposal. The cover letter must contain a statement that he/she acknowledges that all documents submitted pursuant to this request for proposal process will become a matter of public record. The letter also must contain the following:

- 6.1.1 The Proposer's name, address, and telephone and facsimile numbers, and e-mail address.
- 6.1.2 The Proposer's Federal Employer Identification Number and Corporate Identification Number, if applicable.
- 6.1.3 The name, title or position, and telephone number of the individual signing the cover letter.
- 6.1.4 A statement indicating the signature is authorized to bind the Proposer contractually.
- 6.1.5 The name, title or position, and telephone number of the primary contact and/or account administrator if different from the individual signing the cover letter.
- 6.1.6 A statement to the effect that the proposal is a firm and irrevocable offer, good for five years with one 12-month option.
- 6.1.7 A statement expressing the Proposer's willingness to perform the services as described in this RFP.

6.2. Responsive Proposals

Specific exception must be taken to any term or portion of this RFP that Proposer will not accept in a contract issued pursuant to this RFP.

6.3. Responsive Proposals

KCERA is not liable for any costs incurred by Proposers in developing and preparing their proposal, attendance at any conferences or meetings that may be associated with this proposal, contract negotiations, or for work performed prior to issuance of a countersigned contract. Respondent is responsible for all costs associated with information, proposals, orientation or personnel required to comply with this RFP and potential subsequent contract. All proposals submitted become the property of KCERA and will not be returned.

6.4. RFP Withdrawal or Modification

Proposals may be withdrawn or modified by a written or faxed request from respondent before three business days prior to RFP closing due date.

KCERA may, by written notice to all respondents, cancel, postpone or amend the RFP prior to the due date. If, in the opinion of KCERA, the revisions or amendments will require additional time for response, the due date will be extended to all participants.

6.5. Corrections and Addenda

If a proposer discovers any ambiguity, conflict, discrepancy, omission, or other error in this RFP, the proposer shall immediately notify the Contact Person of such error in writing and request clarification or modification of the document. Modifications will be made by addenda as indicated below to all parties in receipt of this RFP.

If a proposer fails to notify the Contact Person prior to the date fixed for submission of Proposals of a known error in the RFP, or an error that reasonably should have been known, the proposer shall submit a Proposal at their own risk, and if the proposer is awarded a contract they shall not be entitled to additional compensation or time by reason of the error or its subsequent correction.

Addenda issued by the KCERA interpreting or changing any of the items in this RFP, including all modifications thereof, shall be incorporated in the Proposal. The proposer shall sign and date the Addenda Cover Sheet and submit same with the Proposal.

Any oral communication by KCERA's designated Contact Person or any other County staff member concerning this RFP is not binding on KCERA and shall in no way modify this RFP or the obligations of the KCERA or any proposers.

7. Terms and Conditions

Exhibit I is the form of the agreement KCERA intends to use. If the bidder objects to a term, or wants to suggest alternative language or additional terms, the bidder must, in its proposal:

7.1 Identify all objectionable terms and the basis for the objection.

7.2 Include all alternative language or additional terms desired.

Otherwise, by submitting a proposal, the bidder will be deemed to have agreed to each term in the agreement, without any alternative or additional terms. KCERA reserves the right to amend **Exhibit I** when preparing the final form of the contract.

8. Inquiries

- 8.1 Inquiries should be e-mailed or faxed to the attention of:
Gloria Domínguez, Assistant Executive Director
Kern County Employees' Retirement Association
11125 River Run Boulevard, Bakersfield, CA 93311
Email: dominguezg@co.kern.ca.us Fax: (661) 381-7799
- 8.2 Written requests for interpretation must be received no later than Monday, September 26, 2011. All questions must also identify the RFP section and page number for each question submitted.
- 8.3 Answers to all questions will be forwarded to all participating prospective offerors no later than Thursday, October 6, 2011.
- 8.4 In all cases, no oral communications will override written communications.

9. Proposal Due Date and Delivery

- 9.1 Due Date: Thursday, October 20, 2011, 4:00 p.m. PDT
- 9.2 RFPs received after the specified date and time may be considered for evaluation solely at the discretion of KCERA.
- 9.3 All information must be complete in every respect, and must answer concisely and clearly all questions proposed by the RFP.
- 9.4 Please submit 1 digital copy, 1 original, and 5 copies of your proposal to the attention of:

Gloria Domínguez, Assistant Executive Director
Kern County Employees' Retirement Association
11125 River Run Boulevard
Bakersfield, CA 93311
(661) 381-7700

10. Withdrawal of Proposals

The bidder may withdraw its proposal at any time prior to the deadline for submission upon presentation of a written request to KCERA. All proposals not timely withdrawn shall be firm offers and may not be withdrawn for a period of 180 days following the last day to accept proposals.

11. Rejection of RFP

- 11.1 KCERA reserves the right to reject any or all information in whole or in part received, by reason of this request, due to non-compliance with the requirements of this RFP, or for any other reason KCERA will not pay for any information herein requested, nor is it liable for any costs incurred by the bidder.
- 11.2 Bidders whose proposals do not meet the mandatory requirements will be so notified. After evaluation of the RFPs and approval by KCERA, all bidders will be notified of the successful bid.
- 11.3 KCERA reserves the right to reject individual bids due to their non-compliance with the requirements of this RFP. Additionally, KCERA reserves the right to not hire or to defer the hiring of Hearing Officer services.

12. Disclosure of Proposal Content

All proposals submitted in response to this RFP shall become the exclusive property of KCERA and shall be subject to public disclosure pursuant to the California Public Records Act (Cal Gov Code Sections 6250 et seq, the "Act"). The Act provides generally that all records relating to a public agency's business are open to public inspection and copying, unless specifically exempted under one of several exemptions set forth in the Act. In addition, if KCERA staff chooses to recommend any bidder(s) to the Board of Retirement for hiring, such recommendation and the relevant proposal(s) will appear on a publicly posted agenda for a public meeting of the Board of Retirement.

If a bidder believes that any portion of its proposal is exempt from public disclosure under the Act, such portion may be marked "CONFIDENTIAL." KCERA will deny public disclosure of any portions so designated. Proposals may not be marked "CONFIDENTIAL" in their entirety, and KCERA will not deny public disclosure of proposals so marked. By submitting a proposal with portions marked CONFIDENTIAL, bidder represents it has a good faith belief that such material is exempt from disclosure under the Act, and bidder agrees to reimburse KCERA for, and to indemnify, defend and hold harmless KCERA, its officers, fiduciaries, employees and agents from and against: (a) 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 KCERA's non-disclosure of any such designated portions of a proposal; and (b) any and all Claims arising from or relating to KCERA's public disclosure of any such designated portions of a proposal if disclosure is deemed required by law or by court order.

13. Disposition of RFP

All proposals become the property of the KCERA and will not be returned to the bidder.

KERN COUNTY EMPLOYEES' RETIREMENT ASSOCIATION**RULES OF PROCEDURE FOR DISABILITY RETIREMENT**

These Rules have been promulgated for the purposes of providing a procedure for submitting and acting upon applications for disability retirement benefits under the County Employees' Retirement Law of 1937, so that applications can be expeditiously processed. All proceedings for disability retirement shall be conducted in accordance with the following Rules.

Rule 1. Definitions. In these Rules, unless the context or subject matter otherwise requires:

(a) "Applicant" means a member of the Kern County Employees' Retirement Association claiming disability retirement benefits under the County Employees' Retirement Law of 1937, or any person or persons (including the employer) entitled to claim such benefits as a result of the death of a member. When the application is filed on behalf of the member by some other person or entity, the provisions of Rule 5 shall apply to the processing of the application.

(b) "Board" means the Board of Retirement of the Kern County Employees' Retirement Association.

(c) "Date of Application" means the date on which KCERA accepts a disability application as completed pursuant to these Rules and accepted for filing.

(d) "Disability" or "disabled," whether used singly or in combination with other words, means permanent incapacity for performance of job duties.

(e) "Member" means a current member of the Kern County Employees' Retirement Association who files, or on whose behalf is filed, an application for disability retirement.

(f) "Permanent incapacity for the performance of duty" means an impairment of the member's body and/or mind which causes the member to be substantially unable to perform the usual duties of the position last held by the member when it is determined by competent medical evidence that the impairment is permanent or of such prolonged and uncertain duration as to be considered permanent. A member need not be able to perform each and every duty of the member's classification and will not be considered permanently incapacitated if the member is able to substantially carry out his or her normal job duties with or without accommodation. A member is not considered to be permanently incapacitated when the member unreasonably refuses medical treatment (including surgery) or other available remedial treatment if the probabilities are great that such treatment will restore the member to capacity within a reasonable period of time and the risk of harm from such treatment would not deter a reasonable person from submitting to the same.

(g) "Executive Director" means the Executive Director appointed by the Board or his designee for purposes of administering proceedings taken under these Rules.

(h) "Retirement Association" or "KCERA" means the Kern County Employees' Retirement Association.

(i) "Staff Disability Application Group" means a committee comprised of KCERA staff designated by the Executive Director, the Board's medical advisor, and disability advisory counsel. The Staff Disability Application Group shall review all applications for disability retirement, refer cases to independent medical examiners and/or investigators as the Group deems appropriate, and make recommendations to the Board.

Rule 2. Forms. Whenever forms are available for use, they shall, insofar as possible, be used by all interested parties. The Executive Director has the authority to create and revise forms used in the disability retirement process, as necessary, to obtain information necessary to the KCERA and its Board in rendering a decision on an application.

Rule 3. Application – Contents. The Executive Director shall furnish to members application forms for disability retirement benefits, a copy of these Rules of Procedure, a job description, and an Attending Physician's Report form ("Disability Booklet") upon request. An application filed by a member shall not be deemed complete unless it contains or is accompanied by the following:

(a) A "General Application Form," which asserts the existence of a disability that permanently incapacitates the member from the performance of his/her job duties and contains any and all other information requested on the application form. If the member is the Applicant, the application must also identify whether the disability is asserted to be service-connected and contain a release of confidential records (including, but not limited to, medical and employment records) signed by the Applicant. The completed application form shall be signed and dated by the Applicant or any party authorized pursuant to Government Code section 31721 to make application on his/her behalf.

(b) An "Attending Physician's Report," which certifies the existence of a permanent disability that incapacitates the Applicant from the substantial performance of his/her normal job duties, identifies the nature and extent of the disability, and contains other information specified in the form pertaining to medical treatment and history and relationship between the disability and performance of job duties. The Attending Physician's Report (APR) must be typed or printed legibly and signed by the attending physician. An illegible Attending Physician's Report will be rejected. Although the APR is required to complete an application filed by the member, the completed form is not sufficient to support a finding of permanent incapacity or service-connection.

(c) KCERA will provide to the Applicant a letter notifying them that their application has been received and accepted. The Applicant or his/her

representative shall have sixty (60) days from the date of that letter to submit to the Executive Director copies of all medical reports upon which the Applicant intends to rely in support of his/her application. In addition, the Applicant or his/her representative shall obtain and furnish to KCERA all medical reports requested by KCERA within the time period set by KCERA for compliance. The Applicant's failure to cooperate with the KCERA in obtaining such reports may result in dismissal of the application without prejudice.

The Board is interested in receiving and reviewing all competent and relevant evidence, including medical reports by physicians in Workers' Compensation proceedings, but it is emphasized that in light of the different legal standards governing retirement proceedings as distinguished from Workers' Compensation proceedings, neither the Board nor its referee is bound or precluded in any way by Workers' Compensation evidence, admissions, stipulations, findings or conclusions.

Except as otherwise provided hereinabove and in Rule 5, no application will be accepted or filed within the meaning of Government Code sections 31721 - 31724, inclusive, until both the application and the Attending Physician's Report are fully completed and received by the KCERA. All complete applications shall be marked "filed" as of the date they are deemed complete and accepted by the Executive Director.

Rule 4. Administrative Processing – Application Filed by the Member. At the time of furnishing the application forms, the Executive Director shall notify the Applicant of the following requirements:

(a) The Applicant, at his/her own expense, is required to obtain and cause to be timely filed (as provided in these Rules) with the Executive Director an "Attending Physician's Report," in the form prescribed by the Board, together with any and all other relevant evidence in the form of written medical reports, certificates or other documents which the Applicant wishes the Board to consider in support of the application. The Attending Physician's Report shall be completed by a duly licensed medical doctor of Applicant's choice, and the Executive Director shall provide the Applicant with the form for the APR, a letter of instruction to the physician, and a copy of the official job description for the position from which the Applicant claims permanent incapacity;

(b) The Executive Director and his/her designee, acting as Secretary of the Board, is authorized to issue subpoenas and subpoenas *duces tecum* when requested by the Applicant in order to obtain relevant evidence;

(c) If the application is for service-connected disability retirement, the Applicant may be interviewed by an investigator relative to the factual circumstances of the cause of such injury or disease. The Applicant must agree to any interview conducted by an investigator. If the Applicant fails or refuses to be interviewed by KCERA's investigator, the Board may dismiss the application without prejudice;

(d) The Applicant shall report at times and places specified by the Executive Director for one or more medical examination(s) by a physician or physicians selected by the Board, the Executive Director, the Staff Disability Application Group, the Hearing Officer, or the Board's legal counsel. Failure to report for such an examination may, in the proper discretion of the Board, be grounds for dismissing the application without prejudice;

(e) The Applicant shall authorize the release of all medical records, including but not limited to psychiatric and substance abuse records, personnel records and Workers' Compensation files. After the application is accepted and filed, the Executive Director shall forward a "Report of Department Head" for completion by the department head employing the Applicant, request from Applicant's Workers' Compensation carrier all claims and medical reports filed by the member for Workers' Compensation benefits, and obtain verification from the employer of the member's employment and pay status, as well as a copy of the member's application for employment and other personnel records, including performance evaluations and internal investigation files and reports;

(f) The Report of the Department Head shall include the Department Head's understanding of the member's work restrictions, a detailed statement of all action and efforts undertaken to modify the member's job within his/her medical restrictions or to find alternative employment for the member within the employing County or district. The Report shall also include the results of such action and efforts, or a detailed explanation as to why such efforts were not undertaken.

Rule 5. Administrative Processing – Application Filed on Behalf of a Member.

Pursuant to the authority provided in Government Code section 31721(a), an application may be filed on behalf of a member by any other person, including the head of the department or office employing the member. For purposes of Rule 5, "Applicant" shall mean the person or entity filing the application claiming disability benefits on behalf of a member.

Upon request, any person or entity filing on behalf of the member shall be provided with a disability application form for filing by the member's department, a copy of these Rules, and a Report of Department Head. If the application is filed by any person other than the member, an Attending Physician's Report shall not be required; however, the application must be accompanied by other medical documentation identifying the nature and extent of the disability (including physical limitations, if the disability is a result of a physical limitation); evidencing the existence of a permanent incapacity which incapacitates the member on whose behalf the application is filed from the performance of the normal job duties of his/her classification; and describing the professional capacity of the author of the documentation in rendering the opinions (e.g., treating physician, fitness for duty evaluator, Agreed Medical Examiner, Qualified Medical Examiner, etc.), together with any and all other relevant evidence in the form of written medical reports, certificates, or other documents which the Applicant wishes the Board to consider in support of the application.

As provided in Government Code section 31721(b), the Applicant has the burden of proving that the member is permanently incapacitated for the performance of his/her job duties. Thereafter, the member on whose behalf the application is filed has the burden of proving job causation. The additional procedures governing applications made by persons other than the member and on behalf of the member are set forth herein.

(a) Upon receipt of an application filed on behalf of a member by any person other than the member, the Executive Director shall, within five (5) working days, mail a copy of the application to the member at the member's home address on file with the Executive Director. The Executive Director shall include with the application a statement advising the member of the procedures which will be followed in processing the application and further advising the member of his/her rights, including:

(i) The right to provide medical and other evidence contesting Applicant's assertion that the member is permanently incapacitated for the performance of his/her job duties; and

(ii) The right to provide medical and other evidence showing that, if the Board determines that the member is permanently incapacitated, the disability arose out of and in the course of his/her job duties. The member specifically shall be advised that it is his/her burden to prove job causation; and/or

(iii) The right to file an application pursuant to the requirements set forth in Rule 3, and have it consolidated with the Applicant's application, in order to add injuries or illnesses that the member believes are permanently incapacitating but were not included in the Applicant's application or to modify the application to a service-connected disability. In order to be consolidated, the application must be filed within 60 days of mailing the application to the member.

The Executive Director shall also provide a form to the member on which the member shall indicate whether he/she agrees with the Applicant on the issue of permanent incapacity and whether the member believes that, if found permanently incapacitated, the condition is service-connected. If the member asserts that the injury or disease is service-connected, the member must complete and execute a release of confidential records provided by the Executive Director. The member shall return the completed form and APR to the KCERA within sixty (60) days of mailing the application to the member, including the consent form if service-connected disability retirement benefits are sought by the member. Failure to execute the consent to release confidential records will result in dismissal of the member's claim of service-connection without prejudice.

(b) It shall be the responsibility of the Applicant to provide to the Board medical reports supporting its application. At the request of the Applicant, the Executive Director shall provide the Applicant with the Board's form for the member's consent to release personal (including medical) information, or issue subpoenas

or subpoenas *duces tecum* pursuant to Government Code section 31535 and Rule 20.

(c) It shall be the responsibility of the member on whose behalf an application is filed to timely provide medical and other documentary evidence supporting the member's position on permanent incapacity (if the member denies that he/she is permanently incapacitated for the performance of job duties) and service-connection. The Executive Director shall provide the member with thirty (30) days' notice of the date by which such evidence must be received in order to be considered by the Staff Disability Application Group.

Rule 6. Investigation of Facts. The Executive Director may select an investigator approved by the Board to conduct an investigation of the facts giving rise to an alleged permanent incapacity whenever such an investigation is necessary to determine the factual circumstances surrounding the disabling injury or disease. When it is contended that a permanent incapacity for the performance of job duties resulted from a psychiatric injury arising out of and in the performance of job duties, an investigation shall be conducted.

Any Applicant (or member) has the right to have a representative present during any interview of the Applicant by the investigator. All interviews of the Applicant or other witnesses interviewed by the investigator shall be recorded. The investigator shall report to the Executive Director or his/her designee if any interview is not so recorded and shall report the reasons why no recording was made. The investigator shall make a report to the Board of the result of his investigation and provide transcriptions of recorded interviews.

Rule 7. Administrative Reports – Recommendation to Grant Application. After receipt of all requested documents, the Executive Director and the Board's medical advisor shall each make a report and recommendation, based on the majority view of the Staff Disability Application Group, to the Board at its next regular meeting, as follows:

(a) The medical reports and records are sufficient to support a finding by the Board that the member is permanently incapacitated for the performance of his/her duties.

(b) In the case of an application for a service-connected disability, that the medical records and reports and other pertinent documents are sufficient to support a finding by the Board that the incapacity was the result of an injury or disease arising out of and in the course of employment.

(c) In the case of an application for nonservice-connected disability retirement, that the member has served the required period of time that entitles the member to a nonservice-connected disability retirement.

(d) The report of the Executive Director shall be in writing and shall summarize the evidence in support of the application and recommendation of the Staff Disability Application Group to grant the application. A copy of the report and recommendation shall be mailed to the Applicant (and the member if the

application is filed by someone other than the member) not less than ten (10) days prior to the date of the Board meeting.

Rule 8. Notice of Right to Hearing. If the Staff Disability Application Group does not recommend granting an application, the Executive Director shall send a notice to the Applicant (and the member if the member is not the Applicant) advising that the Applicant and/or the member has a right to request a full evidentiary hearing before a hearing officer (the "Notice of Right to Hearing"). The Applicant and/or the member shall have thirty (30) days from the date of mailing the Notice of Right to Hearing to complete and return his/her request for a hearing.

If a hearing is requested, the Staff Disability Application Group will accept additional medical reports, if requested in writing, and such evidence is submitted by the Applicant and/or member within thirty (30) calendar days of the date of mailing the Notice of Right to Hearing. The Staff Disability Application Group shall review and consider such evidence and, upon completion of review, shall either place the application on the Board's agenda with a recommendation to grant pursuant to Rule 7 or refer the application for hearing pursuant to Rule 11.

If the member and/or Applicant does not request an evidentiary hearing and the Applicant does not withdraw the application pursuant to Rule 9, the application will be placed on the Board's regular agenda with a recommendation to deny, in whole or in part, the application. The Executive Director and the Medical Advisor shall prepare reports summarizing the evidence and explaining the recommendation. A copy of the reports and recommendation shall be mailed to the Applicant (and the member if different from the Applicant) not less than ten (10) days prior to the date of the Board meeting. The application shall be placed on the Board's consent agenda for denial in whole or part.

The Applicant and/or the member may remove the application from the consent calendar, and it will be heard in closed session. The Applicant and/or the member may, if desired, address the Board regarding the application. However, no new documentary evidence shall be received and no witness testimony shall be heard by the Board.

Rule 9. Amendment, Withdrawal or Suspension of Application. An Applicant may withdraw an application filed by the Applicant at any time before the earlier of Board action taken on the application or the evidentiary hearing before the referee. An Applicant may amend an application at any time prior to the end of the thirty (30) day period (referenced in Rule 8), allowing a final opportunity to provide medical records during the administrative processing of an application permitted in Rule 8. If the application is amended to add a new basis for a claim of permanent incapacity (i.e., new injury or disability) and the Applicant has discontinued service more than four (4) months prior to the date of the amendment, the Applicant shall provide a statement and supporting medical records or reports from his/her attending physician that the Applicant has been continuously incapacitated as a result of the newly claimed injury, illness or disability from the date of discontinuing service until the date of filing the amended application.

An Applicant may request in writing that an application be suspended temporarily. At the SDAG's discretion, the application can be placed on hold for three months. At the end of this time, the Applicant may request an additional three-month extension of the suspension, with the appropriate documentation evidencing the need for the extension. The SDAG will review the additional information and, at its discretion, determine if an additional extension will be granted.

Rule 10. Board Administrative Action. After completion of administrative processing as described in these Rules, the Executive Director shall place the application on the Board's consent agenda.

If an application is taken off consent by anyone, the matter shall be moved to the closed session portion of the Board's agenda for further discussion.

The Board's action shall be either to refer the application back to the Staff Disability Application Group for additional information or to make the following determinations as requested in the application:

(a) Whether the member is permanently incapacitated for the performance of duty and, if so, the injury or disease that gives rise to such permanent incapacity. If permanent incapacity is not found, the application shall be denied.

(b) Whether the incapacity is a result of injury or disease arising out of and in the course of the member's employment for the County or participating district. If, by statute, a presumption of service-connection is applicable, the Board shall determine whether the evidence presented rebuts the presumption of service-connection.

(c) If requested by the member, and supported by facts demonstrating that the filing of the member's application was delayed by KCERA's administrative oversight or by inability to ascertain the permanency of the member's incapacity until after the date following the day for which the member last received regular compensation, the Board shall determine the effective date of filing the application for disability retirement allowance to be the day following the last day the member received regular compensation. The effective date of commencement of the disability retirement allowance shall be the day the application was filed (or deemed filed pursuant to this subdivision) or the day following the last day the member received regular compensation, whichever is later.

Within three (3) working days after the Board action on the application, the Executive Director shall notify the Applicant at the address shown in the application of the Board action (or such other address as may be designated by the Applicant) and, if the action of the Board denies in whole or in part any of the benefits sought in the application, the notice shall advise the Applicant of his/her right to commence proceedings in mandate as hereinafter provided.

The decision of the Board shall be final on the day it is made.

Rule 11. Hearings. When a request for an administrative hearing is filed pursuant to Rule 8, hearings will be scheduled and conducted in the following manner:

(a) Selection of Hearing Officer. The Board will designate a panel of hearing officers. New cases are assigned to the hearing officer on a rotational basis. After the application is referred for hearing, written notice of the hearing officer assignment, from the predetermined panel, shall be sent by the Board to the Board's counsel and to the Applicant's attorney or Applicant, if not represented by counsel. Applicant and Board's counsel shall have ten (10) calendar days from the date of the notice of the hearing officer assignment to exercise, in writing, a peremptory challenge. If either party exercises its challenge, the next hearing officer in the rotation shall be assigned the case and the other party will then have ten (10) calendar days from the notice to exercise, in writing, a peremptory challenge. Only one peremptory challenge may be exercised by a party. When the hearing officer selection is finally made, the hearing officer will be notified of his/her selection. In the event the hearing officer recuses himself or herself from the case and there are no additional hearing officers on the panel who have not been challenged or recused, the hearing officer challenged by the Board's counsel shall be assigned to the case.

A peremptory challenge by either party shall be supported by a declaration made under penalty of perjury, substantially in the following form:

A _____, declares under penalty of perjury: That (s)he is (a party)(an attorney for a party) to the application of _____ for disability retirement. That affiant believes that (s)he cannot have a fair and impartial trial before the hearing officer to whom the case is assigned. I declare under penalty of perjury that the foregoing is true and correct. Executed on _____, 20__ at _____, California.

Signature

The declaration shall be filed with the Board of Retirement.

(b) Setting of Hearing Date. The Executive Director shall provide written notification of hearing officer selection within sixty (60) calendar days of the request for hearing. The hearing officer has 180 calendar days from the date of notification of selection as a hearing officer to hold and complete the formal hearing, including receiving all evidence, both testimonial and documentary, and close the record. The hearing officer's jurisdiction to hold a hearing and complete the record expires 180 days after notification of selection as a hearing officer and the case will be returned to the Executive Director for reassignment to another hearing officer or hearing by the Board, or member of the Board. The hearing officer will coordinate the hearing date with all parties and set the dates when the prehearing statements are due, consistent with Rules 12 and 13, and set the cut-off date for requests to subpoena witnesses, which date shall be no later than thirty (30) calendar days before the date of the hearing. The hearing date selected must be within ninety (90) days of the filing of the respondent's

prehearing statement. If the parties cannot agree on a hearing date within the time specified, the hearing officer shall decide on a hearing date within the time specified and inform the parties in writing of the hearing date.

(c) Continuances. Once a hearing date has been set, any request for a continuance must be in writing to the hearing officer and copied to the other party or parties. Any party may oppose a request for continuance by filing written objections with the hearing officer within ten (10) days of receipt of the request for continuance. The hearing officer shall make a determination on the request no later than twenty (20) days from the date he/she receives the request and shall inform the parties in writing of his/her decision.

(d) Reporter. The proceedings of all hearings for disability retirement shall be reported by a stenographic reporter unless waived in writing by all interested parties. The stenographic report of the proceedings shall be transcribed only if requested by a party, and, if so, the party requesting the same shall pay for the cost thereof.

(e) Representation by Counsel. An Applicant shall be entitled to be represented by legal counsel at any hearing. Before an attorney appears on behalf of an Applicant, a written authorization from the Applicant shall be filed with the Executive Director. After an attorney appears on behalf of an Applicant pursuant to the written authorization of representation, all notices and evidence shall thereafter be served upon such counsel. Substitution or dismissal of an attorney shall be made in the manner provided in sections 284, 285 and 286 of the Code of Civil Procedure.

(f) Administrative Record. The Executive Director or designee shall provide the hearing officer with all medical reports and other documentary evidence considered by the Staff Disability Application Group ("Administrative Record") and shall provide all parties with a list of the contents of the Administrative Record (provided, however, that any medical or other records obtained by the KCERA which has not been authorized by release by the member shall not be provided to any party other than the member).

Rule 12. Applicant's Prehearing Statement. The Applicant shall serve upon the hearing officer and the Board's counsel (and the member, if the application is filed pursuant to Rule 5) a prehearing statement no later than ninety (90) days from the date of the request for hearing. The prehearing statement shall contain the following:

- (a) A statement of the issues and the contentions of the Applicant and a summary of the evidence to be presented;
- (b) A list of medical reports (if already part of the Administrative Record) and depositions of medical witnesses on which the Applicant will rely;
- (c) A list and copies of all medical reports not contained in the Administrative Record;

(d) The names, business addresses and telephone numbers of any lay witnesses whose testimony the Applicant intends to present at the hearing, and a synopsis of each witness's expected testimony;

(e) The names of any medical witnesses the Applicant intends to call for oral testimony at a hearing or hearings set for that purpose and a synopsis of the expected testimony.

If, in the prehearing statement or at any time during the administrative appeal process, the Applicant both alleges and offers medical proof that incapacity is the result of an injury or disease not listed on the application, Board's counsel may request that such allegations be stricken as irrelevant to the case at issue. Nothing herein shall be construed to constitute a waiver or denial of a member's right to file a separate application for disability retirement based on the newly alleged injury or disease. The hearing officer shall make a written determination on Board counsel's request within twenty (20) days of receipt and shall serve such decision on both parties.

If the Member is asserting that the proper commencement date of the disability retirement allowance is a date other than the date of the application, the member shall raise the pension commencement date as an issue and shall state the member's contention in the prehearing statement. If the member is the Applicant, nothing in this Rule relieves the Applicant from the requirements of asserting the issue in the application.

Rule 13. Board Counsel's Prehearing Statement. Board's counsel shall serve upon the hearing officer and the Applicant (and the member if the application is filed pursuant to Rule 5) a prehearing statement no later than ninety (90) days from the date of service of the Applicant's prehearing statement. To the extent permitted pursuant to Rule 11(f), the prehearing statement shall contain the following:

(a) A statement of the issues and the position of the Board, and a summary of the evidence to be presented;

(b) A list and copies of any medical reports and depositions of lay witnesses on which the Board will rely;

(c) The names, business addresses and telephone numbers of any lay witnesses whose testimony the Board intends to present at the hearing, and a synopsis of each witness's expected testimony;

(d) The names of any medical witnesses the Board intends to call for oral testimony at a hearing or hearings set for that purpose and a synopsis of the expected testimony.

Rule 14. Extension of Time for Filing Prehearing Statement. Any party may request an extension of time to submit a prehearing statement upon showing of good cause. The hearing officer shall rule on such request.

Rule 15. Written Medical Reports as Evidence.

(a) Statement of Policy. It is the policy of the Board that production of medical evidence shall be in the form of written medical reports attached to the parties' prehearing statements. A written medical report bearing the signature of the medical witness shall be admissible in evidence as the author's direct testimony. Such medical reports shall not be inadmissible on the basis that they constitute hearsay, but each party shall have the right to cross-examine the authors of medical reports. However, the right to cross-examine a medical witness on his written report shall be deemed waived where the report of the medical witness has been attached to a party's prehearing statement and served upon the adverse party as provided in these Rules, unless the medical witness is caused to appear at the hearing by the party seeking to cross-examine him, provided, however, that the hearing officer may require an independent medical examination of the Applicant by a medical witness selected by the hearing officer; an independent medical examination shall be made at the expense of the Board.

(b) Medical Witness Defined. A medical witness is a person who by profession is a physician, surgeon, holding an M.D. or D.O. degree, psychologist, optometrist, dentist, podiatrist, or chiropractic practitioner, licensed by the State of California or by such other jurisdiction in which such person maintains his/her regular practice.

(c) Late Submission of Medical Reports. Submission of a medical report subsequent to the filing of the party's prehearing statement shall be allowed only upon a showing of good cause. The party requesting submission of such a medical report shall address the request to the hearing officer. The request shall state the reason the medical report was not timely produced. The hearing officer shall make the determination. However, if the medical report is allowed to be submitted into evidence, the adverse party shall have the right to a continuance to engage in further discovery, obtain rebuttal medical evidence and/or cross-examine the medical witness.

Rule 16. Oral Testimony of Medical Witnesses.

(a) Hearings. Oral testimony of a medical witness on direct or cross-examination, for any purpose, may be taken at the time and place set for the hearing or at a hearing set at a reasonable time as requested by the medical witness in the office of the medical witness, or such other reasonable place requested by the medical witness. If the parties and the hearing officer so agree, the hearing officer need not attend such a hearing, and the hearing officer shall consider the transcript of the testimony of a medical witness as evidence in reaching a recommended decision.

(b) Depositions. The deposition of a medical witness may be taken. The deposition shall be scheduled at a reasonable time as requested by the medical witness. The deposition shall take place in the office of the medical witness or such other reasonable place as requested by the medical witness. Depositions of

medical witnesses for any purpose shall be taken before the first day of the scheduled hearing.

(c) Subpoenas and fees.

(1) Issuance of a subpoena for a medical witness's attendance at a hearing or deposition shall be contingent on the party accepting the obligation to pay the medical witness the fees set forth herein.

(2) The party requesting oral testimony of the Applicant's treating physician shall advance to the treating physician such fees and mileage as Government Code section 68093 prescribes for ordinary, non-expert witnesses in the superior court. If the party requesting oral testimony of a treating physician intends to question the physician as to the physician's expert opinion, the party requesting the oral testimony shall advance to the medical witness an expert witness fee.

(3) The party requesting oral testimony of a medical witness who is not the Applicant's treating physician shall in all cases advance to the medical witness an expert witness fee. The witness shall be entitled to claim an expert witness fee on the same conditions that such witness would be entitled to claim under Government Code section 68092.5 if subpoenaed to testify in a civil action or proceeding.

(4) When payment of an expert witness fee is required, the party requesting the oral testimony shall contact the office of the medical witness and determine the witness's reasonable and customary hourly or daily fee and shall advise the office of the medical witness of the anticipated length of the deposition or hearing. The medical witness's fee, based on the witness's reasonable, customary rate and anticipated length of the testimony, shall be delivered to the medical witness at least ten (10) days in advance of the deposition or hearing. If a balance is due following the testimony, the party requesting the oral testimony shall pay the balance upon receipt of an itemized statement. Disputes as to fees between the medical witness and the party requesting the oral testimony shall be resolved by the hearing officer.

(5) Failure to serve a subpoena and/or pay the prescribed witness fee in advance may be treated by the hearing officer and Board as a waiver of the right to question such witness. Failure to advance the expert witness fee will be deemed a waiver of the right to question the witness or require the witness's appearance at the deposition or hearing, and any subpoena which may have been issued to compel the witness's attendance shall be canceled and shall be of no further force or effect. Service of the subpoena and payment of the fee may be made by mail if the witness so agrees.

Rule 17. Testimony of Witness Without Notice. Upon written request made to the hearing officer with a copy sent to opposing counsel, or, if no counsel, then to the opposing party, a witness not listed in the prehearing statement may be called to testify, provided the party making the request presents a synopsis of the expected testimony and a showing that this witness will testify to matters the party did not know about or could not have reasonably known about at the time the prehearing statement was due.

The hearing officer shall have the power to rule on the request. If the witness is allowed to testify, the adverse party shall have the right to a continuance to obtain rebuttal evidence and/or to cross examine the witness. The party originally calling the witness to testify shall bear the responsibility of insuring the witness's attendance at a further hearing set for the witness's cross-examination.

Rule 18. Depositions of Witnesses. Any party to the proceeding may cause the depositions of witnesses/applicant (or member) to be taken in the manner prescribed by law for depositions in civil actions in the superior courts of this state. Attendance of witnesses and production of records in regard to depositions may be required and appropriate subpoenas will be issued by the Board. The parties shall bear their own costs for such depositions. Depositions of lay witnesses must be scheduled and taken before the hearing. Depositions of medical witnesses shall be governed by Rule 16.

Rule 19. Resolution of Disputes in Regard to Discovery and Hearing Procedure. Disputes in regard to depositions and other discovery and hearing procedures shall be resolved by the hearing officer once a request for hearing has been made. If a discovery dispute arises prior to such request, it shall be resolved by the Board.

If not made at a hearing, a request for resolution of a dispute shall be made in writing and may be supported by declarations, a copy of the deposition transcript, if appropriate, a memorandum of points and authorities, and a proposed resolution. The other party and the witness involved shall have ten (10) working days after service of such a request in which to respond. The response may be accompanied by declarations, a copy of the deposition transcript, if appropriate, a memorandum of points and authorities, and a proposed resolution.

The hearing officer or Board, as the case may be, shall notify the parties and the witness involved of the resolution of the dispute within twenty (20) calendar days of receipt of the request for resolution of the dispute. If the witness continues to refuse to comply with the resolution, the Board, upon request of the party seeking the discovery, shall determine whether the witness or deponent should be held in contempt under the provisions of California Government Code section 31535 and 25170-25175. The deponent or witness shall be personally served with a subpoena to attend the hearing before the Board in regard to contempt, a copy of the request of the moving party, the hearing officer's recommendation, if any, and a notice that the Board will consider whether the witness or deponent is in contempt and report that fact to the judge of the superior court.

Rule 20. Subpoenas. The chairman and secretary of the Board, or the designee of the secretary of the Board, in accordance with the applicable code of Civil Procedure, are hereby authorized to issue and sign subpoenas for attendance at Board hearings and/or depositions on disability retirement applications, upon request of the Applicant or member, the Applicant's or member's attorney, the person filing on behalf of the member pursuant to Rule 5, and the Board's counsel.

Rule 21. Further Medical and Lay Evidence on Behalf of Respondent. At the request of the Board's counsel and with concurrence of the Executive Director, the Board's disability retirement staff may obtain independent medical examinations and/or investigations. The fees for these medical examinations and/or investigations shall be paid by the Board.

The Applicant shall submit to examinations by physicians appointed by the Board's disability retirement staff. Such examinations shall be scheduled with due consideration to the Applicant's convenience and ability to attend.

Rule 22. Evidence at Hearing Before Hearing Officer.

(a) An Applicant has the burden of going forward and the burden of proving, by a preponderance of the evidence, that the Applicant is entitled to the requested benefit.

(b) Oral evidence shall be taken only on oath or affirmation.

(c) Each party shall have these rights: to call and examine witnesses; to introduce exhibits, to introduce deposition transcripts as provided in these Rules, to include reports of medical witnesses; to cross-examine opposing witnesses on any matter relevant 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 the member does not testify, the member may be called and examined as if under cross-examination. If the application is filed by the member, the failure or refusal of the member to submit to examination for the purpose of answering relevant questions shall be grounds for dismissing the appeal in whole or in part with prejudice. If the application is filed pursuant to Rule 5 and the member is requesting disability benefits on a service-connected basis, the failure or refusal of the member to submit to examination for the purpose of answering relevant questions shall be grounds for denying the disability retirement on a service-connected basis.

(d) Hearsay evidence may be used for the purpose of supplementing or explaining other evidence but shall not be sufficient in itself to support a finding, unless it would be admissible over objection in civil actions. This section shall not be applicable to written medical reports received into evidence pursuant to Rule 15.

(e) The hearing need not be conducted according to technical rules relating to evidence and witnesses. Any relevant evidence shall be admitted if it is the sort of evidence on which responsible persons are accustomed to rely in the conduct

of serious affairs, regardless 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 shall be effective to the extent that they are otherwise required by statute to be recognized at the hearing, and irrelevant and unduly repetitious evidence shall be excluded.

(f) A party may include as part of the party's prehearing statement a copy of any affidavit of any lay witness which the party proposes to introduce in evidence, together with a notice as provided below. The affidavit, if introduced in evidence, shall be given the same effect as if the affiant had testified orally. If an opportunity to cross-examine an affiant is not afforded after timely subpoena is requested and served as herein provided, the affidavit may be introduced in evidence, but shall be given only the same effect as other hearsay evidence. The notice required shall be substantially in the following form:

The accompanying affidavit(s) [here insert name of affiant(s)] will be introduced as evidence at the hearing in [here insert title of the proceeding]. [Here insert name of affiant] will not be called to testify orally and you will not be entitled to question him/her unless you subpoena the affiant(s).

(g) In reaching a decision, the hearing officer shall take official notice of those matters which must be judicially noticed pursuant to section 451 of the California Evidence Code, may take official notice of those matters which may be judicially noticed pursuant to section 452 of the California Evidence Code, and shall take official notice of any matter specified in said section 452 if the provisions of section 453 of the California Evidence Code are complied with by a party.

Rule 23. Order of Business for Hearings Before Hearing Officer. Unless the hearing officer rules that it is unnecessary or a different order of business is appropriate to suit the convenience of witnesses, all hearings shall proceed as follows:

(a) The hearing officer shall call the case and ask for appearances by or for all parties, which shall be recorded. After all of the appearances are made, the parties may make opening statements, orally or in writing, except the respondent may delay its opening statement until after Applicant's presentation of evidence.

(b) If the parties are ready to proceed, the hearing officer will describe the documentary file before the hearing and ensure that all parties have identical document sets.

(c) Applicant's full presentation, including any witness testimony, is given. During this presentation, the hearing officer and the Board's counsel (and other parties in interest, if present) have the right to ask questions. If the application was filed pursuant to Rule 5, the member shall also have the opportunity to present evidence under the same terms as the Applicant.

(d) Board's full presentation, including any witness testimony, is given. During this presentation, the hearing officer and the Applicant (and other parties in interest, if present) have the right to ask questions.

(e) Rebuttal evidence may then be presented in the same order.

(f) Applicant's summary and closing statements are made followed by other parties in interest, if any, including the member if the member is not the Applicant. The Board's summary and closing statements are last. Upon the request of either party, the summary and closing statements may be made in writing and submitted by all parties to the hearing officer, no later than fifteen (15) working days after the close of the hearing or as otherwise agreed to by the parties and the hearing officer.

Rule 24. Service of Proposed Findings of Fact and Recommended Decision.

At the conclusion of the hearing, Proposed Findings of Fact and the recommended decision of the hearing officer shall be sent to the Board by the hearing officer who presided at the hearing, no later than sixty (60) calendar days after the submission of the summary and closing statements. The Board will serve the findings and recommendations on the parties.

Rule 25. Objections to Proposed Findings of Fact and Recommended Decision. Any party objecting to the Proposed Findings of Fact and Recommended Decision has ten (10) calendar days after service of the Proposed Findings of Fact and Recommended Decision to submit written objections to the Board and the other party(ies). Within ten (10) calendar days of being served the objections, the other party(ies) can submit to the Board a written response to the objections.

Rule 26. Action by the Board. Upon receipt of the final Proposed Findings of Fact and Recommended Decision, the Executive Director shall place the item on the Board's next regular meeting occurring no less than fifteen (15) days from receipt of the final decision of the hearing officer. The Executive Director shall provide a copy of the record considered by the hearing officer for review by the Board, including the hearing officer's proposed decision, the pleadings of the parties, any written objections to the proposed decision and responses thereto, and the documentary evidence reviewed by the hearing officer. The Board shall:

(a) Approve and adopt the final Proposed Findings of Fact and Recommended Decision of the hearing officer; or

(b) Require a transcript or summary of all the testimony, plus all other evidence received by the hearing officer. Upon the receipt thereof, the Board shall take such action as in its opinion is indicated by such evidence; or

(c) Refer the matter back with or without instructions to the hearing officer for further proceedings; or

(d) Set the matter for hearing before itself. At such hearing the Board shall hear and decide the matter as if it had not been referred to the hearing officer.

Rule 27. Board's Decision After Review of the Record. In any case where the Board makes a decision based upon a transcript or summary of all the testimony, plus all other evidence received by the hearing officer, the Board may approve and adopt the hearing officer's Proposed Findings of Fact and Recommended Decision or the Board shall prepare its own Alternate Proposed Findings of Fact and conclusions of law. Upon the Board's adoption of Findings of Fact and Recommended Decision, the Board's decision is final.

Rule 28. Alteration of Time Requirements. Nothing in these procedures is to be construed as preventing the parties from stipulating to lesser intervals than those prescribed above. The hearing officer may, for good cause shown, after giving both parties an opportunity to be heard, shorten or lengthen the times specified above.

Rule 29. Service of Documents. Unless otherwise provided, service of documents provided in these rules may be made by mail or by personal service. The time requirements of California Code of Civil Procedure section 1013 shall govern all service by mail.

Rule 30. Dismissal for Lack of Prosecution. If, as a result of the Applicant's failure to comply with the procedures specified above, the matter is not heard within two (2) years after a request for hearing is made, the case shall be dismissed with prejudice. For purposes of this rule, "Applicant" shall include the member in those cases filed pursuant to Rule 5, when the member is claiming that his/her incapacity, if any, is service-connected.

Notwithstanding the above, no case shall be dismissed without sixty (60) days' prior written notice to the Applicant and the Applicant's attorney that failure to commence a hearing within sixty (60) days from the date of the notice will result in dismissal of the case with prejudice.

Rule 31. Judicial Review. Code of Civil Procedure section 1094.6 has been adopted and applies to judicial review of any decision of the Board or of the Kern County Employees' Retirement Association.

EXHIBIT I
AGREEMENT
FOR
HEARING OFFICER SERVICES

(KCERA -)

THIS AGREEMENT is made this ____ day of _____, 2011, by and between the Board of Retirement (“Board”) of the Kern County Employees’ Retirement Association (“KCERA”) and _____, an attorney admitted to the practice of law by the State Bar of California, whose principal address is _____ (“Hearing Officer”)

WITNESSETH:

WHEREAS:

- (a) Pursuant to Government Code section 31533, this Board has has the authority to appoint a hearing officer to hold administrative hearings upon request of this Board and to transmit in writing to this Board proposed findings of fact and a recommended decision or other appropriate finding; and
- (b) The Hearing Officer, who has represented to this Board that (s)he is an active member of the California State Bar, is qualified to conduct such hearings and is willing to accept such appointment;

NOW, THEREFORE, IT IS AGREED as follows:

- 1. **Appointment.** The Hearing Officer accepts the appointment of the Board to serve as a referee and conduct administrative hearings and transmit in writing to the Board the Hearing Officer’s proposed findings of fact and recommended decision under the County Employees’ Retirement Law of 1937 and other applicable laws and rules, including but not limited to rules adopted by the Board for the conduct of its administrative proceedings. In providing services under this Agreement, Hearing Officer understands that the following services are material terms of this Agreement and agrees to:
 - A. Within ten days of receipt of notice of assignment to a particular case, determine whether any grounds for disqualification exist under standards provided in Code of Civil Procedure section 170.1 and Government Code section 87100. If such grounds exist, the Hearing Officer shall recuse himself from the case by providing written notice to the KCERA.

- B. Schedule hearings within the time limits provided in the Board's rules and consider and rule on any contested requests for continuance of the scheduled hearing.
- C. Issue subpoenas on request pursuant to the Board's rules.
- D. Resolve disputes in regards to discovery and hearing procedures.
- E. Conduct hearings in accordance with the Board's Rules and substantive and procedural due process standards. Maintain control of the hearing to provide a civil, orderly, and equitable proceeding, and administer oaths, receive evidence, rule on questions of law and admissibility of evidence, and ensure that a true and correct record of the hearing is maintained.
- F. Transmit written findings of fact and recommended decision ("report") to the KCERA within sixty (60) days of completion of the hearing or, in the event further briefing is scheduled after the hearing, within sixty (60) days of Hearing Officer's receipt of such post-hearing briefs or within sixty-five (65) days of mailing of the final brief due, whichever is earlier..

2. **Compensation and Reimbursement of Expenses.** Compensation to Hearing Officer for services shall be as defined in Attachment 'A'.

3. **Term.** This Agreement shall be deemed in force as of the date first above written and shall remain in effect until XXXX, 2017, unless sooner terminated as hereinafter provided. The KCERA Executive Director may extend the Agreement for one year beyond its original term upon providing written notice to the Hearing Officer.

4. **Assignment.** Hearing Officer shall not assign, sublet or transfer this Agreement, or any part hereof.

5. **Negation of Partnership.** In the performance of services under this Agreement, Hearing Officer shall be, and acknowledges that Hearing Officer is, in fact and law, an independent contractor and not an agent or employee of KCERA. Hearing Officer has and retains the right to exercise full supervision and control of the manner and methods of providing services to KCERA under this Agreement. Hearing Officer retains full supervision and control over the employment, direction, compensation and discharge of all persons assisting Hearing Officer in the provision of services under this Agreement. With respect to Hearing Officer's employees, Hearing Officer shall be solely responsible for payment of wages, benefits and other compensation, compliance with all occupational safety, welfare and civil rights laws, tax withholding and payment of employee taxes, whether federal, state or local, and compliance with any and all other laws regulating employment.

6. **Indemnification.** Hearing Officer agrees to indemnify, defend and hold harmless KCERA and KCERA's agents, board members, elected and appointed officials and officers, employees, volunteers and authorized representatives from any and all losses, liabilities, charges, damages, claims, liens, causes of action, awards, judgments, costs, and expenses (including, but not limited to, reasonable attorneys' fees of County Counsel and counsel retained by KCERA, expert fees, costs of staff time, and investigation costs) of whatever kind or nature, which arise out of or are in any way connected with any negligent act or omission of Hearing Officer or Hearing Officer's officers, agents, employees, independent contractors, sub-contractors of any tier, or authorized representatives. Without limiting the generality of the foregoing, the same shall include bodily and personal injury or death to any person or persons; damage to any property, regardless of where located, including the property of KCERA; and any workers' compensation claim or suit arising from or connected with any services performed pursuant to this Agreement on behalf of Hearing Officer by any person or entity.

7. **Insurance.** At Hearing Officers' sole cost and expense, Hearing Officer shall obtain and keep in force at all times during Hearing Officers' performance of services under this Agreement the following insurance:

- A. Commercial General Liability Insurance - A combined single-limits Commercial General Liability Insurance policy covering personal injury liability and property damage liability in an amount of not less than one million dollars (\$1,000,000) per occurrence, and shall contain the following endorsements:
 - 1. Name KCERA, KCERA's governing board, KCERA's officials, officers, agents and employees as additional insureds; and
 - 2. Provide that said insurance may not be canceled or reduced without thirty (30) days prior written notice to the KCERA.
- B. Workers' Compensation Insurance in the amounts required by California law.
- C. Professional Liability Insurance shall be in an amount not less than ten million dollars (\$10,000,000), with a deductible not to exceed one million dollars (\$1,000,000).
- D. All insurance except as provided under paragraph C of this Article VI shall be issued by companies authorized to transact business in the State of California and which hold a Best's Rating of at least "A-, VII".
- E. Upon the KCERA's request, Hearing Officers shall file with the KCERA all necessary certificate(s) which indicate that the above-described insurances are in full force and effect. The required insurance coverage shall be maintained by Hearing Officer for the period from the execution of this Agreement until the expiration of this Agreement.

8. **Termination.** Hearing Officer may at his/her election terminate this Agreement upon sixty (60) days' written notice. In addition to the termination rights provided in Section 11 of this Agreement, KCERA may terminate this Agreement immediately upon written notice only in the event Hearing Officer breaches any material term or condition of this Agreement and fails to correct the breach after notice of the breach is provided by the KCERA on thirty (30) days written notice of breach. In the event this Agreement is terminated by either party, Hearing Officer shall submit to KCERA a final status report on each assigned case, and shall deliver to KCERA's Executive Director all files, memoranda, documents, evidence, exhibits, correspondence and other items generated in the course of performing this Agreement, within fifteen (15) days after the effective date of any written Notice of Termination.

KCERA shall not terminate this Agreement, except for cause, which shall consist of persistent failure to timely render opinions, unavailability for hearings (i.e., unable to schedule or hold hearings in a timely fashion due to the Hearing Officer's calendar), and/or demonstrated inability to conduct hearings and control the proceedings so that the hearings are conducted in a civil and orderly fashion, and/or failure to maintain an active license to practice law in accordance with Government Code section 31533. During any license suspension or active investigation by the State Bar into a Hearing Officer's conduct, the Hearing Officer shall be suspended from hearing KCERA matters until such time as there is a final determination on the status of the Hearing Officer's license to practice law. Failure to abide by any material term or condition of this Agreement may also constitute cause for termination in addition to any other remedy that may be available to KCERA.

9. **Ownership and Inspection of Files.** All files, pleadings, reports, exhibits, evidence and other items generated or gathered in the course of providing services to the KCERA under this Agreement are and shall remain the property of the KCERA, and shall be returned to KCERA upon full completion of each matter assigned to Hearing Officer or termination of this Agreement, whichever first occurs. With respect to completed cases, "full completion" shall be 60 days after Hearing Officer transmits his/her findings of fact and recommended decision to the KCERA, provided that the Board adopts the Hearing Officer's decision.

10. **Notices.** All notices required or provided for in this Agreement shall be provided to the parties at the following addresses, by personal delivery or deposit in the U.S. Mail, postage prepaid, registered or certified mail, addressed as specified below. Notices delivered personally shall be deemed received upon receipt; mailed or expressed notices shall be deemed received five (5) days after deposit. A party may change the address to which notice is to be given by giving notice as provided above.

To KCERA: Anne M. Holdren, Executive Director
11125 River Run Boulevard
Bakersfield, California 93311

To Hearing Officer:

Nothing in this Agreement shall be construed to prevent or render ineffective delivery of notices required or permitted under this Agreement by leaving such notice with the receptionist or other person of like capacity employed in Hearing Officer's office, or the KCERA.

11. **Conflict of Interest.**

- A. The parties to this Agreement have read and are aware of the provisions of Section 1090 et seq. and Section 87100 et seq. of the Government Code relating to conflict of interest of public officers and employees. Hearing Officer agrees that he/she is unaware of any financial or economic interest of any public officer or employee of the KCERA relating to this Agreement. It is further understood and agreed that if such a financial interest does exist at the inception of this Agreement, the KCERA may immediately terminate this Agreement by giving written notice thereof. Attorney shall comply with the requirements of Government Code section 87100 et seq. during the term of this Agreement.
- B. Hearing Officer shall not, during the term of this Agreement and any extension, represent or provide advice to any KCERA member regarding KCERA matters. This prohibition shall extend six (6) months beyond the expiration of the Agreement or without limitation to any matter reviewed by the Hearing Officer during the term, and any extension of the Agreement.

12. **Sole Agreement.** This document contains the entire agreement of the parties relating to the services, rights, obligations and covenants contained herein and assumed by the parties respectively. No inducements, representations or promises have been made, other than those recited in this Agreement. No oral promise, modification, change or inducement shall be effective or given any force or effect.

13. **Authority to Bind KCERA.** It is understood that Hearing Officer, in Hearing Officer's performance of any and all duties under this Agreement, except as otherwise provided in this Agreement, has no authority to bind KCERA to any agreements or undertakings.

14. **Modifications of Agreement.** This Agreement may be modified in writing only, signed by the parties in interest at the time of the modification.

15. **Nonwaiver.** No covenant or condition of this Agreement can be waived except by the written consent of KCERA. Forbearance or indulgence by KCERA in any regards whatsoever shall not constitute a waiver of the covenant or condition to be performed by Hearing Officer. KCERA shall be entitled to invoke any remedy available to KCERA under this Agreement or by law or in equity despite said forbearance or indulgence.

16. **Choice of Law/Venue.** The parties hereto agree that the provisions of this Agreement will be construed pursuant to the laws of the State of California. This Agreement has been entered into and is to be performed in the County of Kern. Accordingly, the parties agree that the venue of any action relating to this Agreement shall be in the County of Kern.

17. **Confidentiality.** Hearing Officer shall not, without the written consent of the KCERA's Executive Director, communicate confidential information, designated in writing or identified in this Agreement as such, to any third party and shall protect such information from inadvertent disclosure to any third party in the same manner that they protect their own confidential information, unless such disclosure is required in response to a validly issued subpoena or other process of law. Any and all information relating to a member is designated as confidential. Upon completion of this Agreement, the provisions of this paragraph shall continue to survive.

18. **Enforcement of Remedies.** No right or remedy herein conferred on or reserved to KCERA is exclusive of any other right or remedy herein or by law or equity provided or permitted, but each shall be cumulative of every other right or remedy given hereunder or now or hereafter existing by law or in equity or by statute or otherwise, and may be enforced concurrently or from time to time.

19. **Severability.** Should any part, term portion or provision of this Agreement be decided finally to be in conflict with any law of the United States or the State of California, or otherwise be unenforceable or ineffectual, the validity of the remaining parts, terms, portions, or provisions shall be deemed severable and shall not be affected thereby, provided such remaining portions or provisions can be construed substance to constitute the agreement which the parties intended to enter into in the first instance.

20. **Compliance with Law.** Hearing Officer shall observe and comply with all applicable County, KCERA, state and federal laws, ordinances, rules and regulations now in effect or hereafter enacted, each of which are hereby made a part hereof and incorporated herein by reference.

21. **Captions and Interpretation.** Paragraph headings in this Agreement are used solely for convenience, and shall be wholly disregarded in the construction of this Agreement.

No provision of this Agreement shall be interpreted for or against a party because that party or its legal representative drafted such provision, and this Agreement shall be construed as if jointly prepared by the parties.

22. **Time of Essence.** Time is hereby expressly declared to be of the essence of this Agreement and of each and every provision hereof, and each such provision is hereby made and declared to be a material, necessary and essential part of this Agreement.

23. **Counterparts.** This Agreement may be executed simultaneously in any number of counterparts, each of which shall be deemed an original but all of which together shall constitute one and the same instrument.

24. **Nondiscrimination.** Neither Hearing Officer, nor any officer, agent, employee, servant or subcontractor of Hearing Officer shall discriminate in the treatment or employment of any individual or groups of individuals on the grounds of race, color, religion, national origin, age, or sex, either directly, indirectly or through contractual or other arrangements.

25. **Audit, Inspection and Retention of Records.** Hearing Officer agrees to maintain and make available to KCERA accurate books and records documenting time spent by Hearing Officer on any case referred to Hearing Officer under this Agreement. Hearing Officer shall permit KCERA to audit, examine and make excerpts and transcripts from such records, and to conduct audits of all invoices, materials, records or personnel or other data related to all other matters covered by this Agreement. Hearing Officer shall maintain such data and records in an accessible location and condition for a period of not less than three (3) years from the date of final payment under this Agreement, or until after the conclusion of any audit, whichever occurs last. The State of California and/or any federal agency having an interest in the subject of this Agreement shall have the same rights conferred upon KCERA herein.

26. **Non-Collusion Covenant.** Attorney represents and agrees that it has in no way entered into any contingent fee arrangement with any firm or person concerning the obtaining of this Agreement with KCERA. Hearing Officer has received from KCERA no incentive or special payments, nor considerations not related to the provision of services under this Agreement.

27. **No Third Party Beneficiaries.** It is expressly understood and agreed that the enforcement of this Agreement and all rights of action relating to such enforcement, shall be strictly reserved to KCERA and Hearing Officer. Nothing contained in this Agreement shall give or allow any claim or right of action whatsoever by any other third person. It is the express intention of KCERA and Hearing Officer that any such person or entity, other than KCERA or Hearing Officer, receiving services or benefits under this Agreement shall be deemed an incidental beneficiary only.

28. **Signature Authority.** Each party has full power and authority to enter into and perform this Agreement, and the person signing this Agreement on behalf of each party has been properly authorized and empowered to enter into this Agreement.

IN WITNESS WHEREOF, each party has signed this Agreement on the day first written above and agrees to be fully bound by its terms and conditions.

APPROVED AS TO CONTENT:
KCERA Executive Director

KERN COUNTY EMPLOYEES'
RETIREMENT ASSN.

By _____
Anne M. Holdren
Executive Director

By _____
Norman Briggs, Chairman
Board of Retirement

"KCERA"

APPROVED AS TO FORM:
Office of the County Counsel

By _____
Deputy

By: _____
Hearing Officer

ATTACHMENT 'A'
COMPENSATION AND REIMBURSEMENT EXPENSES SCHEDULE

As compensation for all services to be provided by the Hearing Officer, KCERA shall pay the Hearing Officer at the following rates in an aggregate amount not to exceed \$7,000 per case:

- A. If report is rendered within sixty (60) days after case has been submitted as provided in section 1.F., Hearing Officer shall be entitled to **ONE HUNDRED FIFTY DOLLARS** (\$150.00) per hour.
- B. If report is rendered more than sixty (60) days after case has been submitted, Hearing Officer shall be entitled to **SEVENTY-FIVE** (\$75.00) per hour.
- C. Hearing Officer shall be entitled to **ONE HUNDRED DOLLARS** (\$100.00) per hour for reasonable or actual travel time, whichever is less. Reasonable travel time shall be calculated as the trip time estimated by Map Quest plus one (1) hour.
- D. Hearing Officer shall be reimbursed at **\$ 0.555** per mile for travel by automobile and **FORTY-SIX DOLLARS** (\$46.00) per diem for meals while performing services under this Agreement. All other out of pocket expenses (photocopy, secretarial, postage, etc.) shall be absorbed by the Hearing Officer.
- E. All arrangements for hotel and air travel shall be made through the office of the Executive Director and shall be paid directly by the KCERA. Hearing Officer shall notify the KCERA of air travel and hotel reservation requirements within three (3) days of setting a hearing date.
- F. Hearing Officer shall be entitled to invoice and receive a cancellation fee of \$600.00 due to cancellation of a scheduled hearing date upon less than two (2) weeks' advance notice of cancellation.
- G. Hearing Officer shall submit a detailed invoice for services rendered upon completion of each case including any cancellation fee. Hearing Officer's invoice shall specify the date, details and amount of time with respect to each service rendered. The invoice shall include, but not be limited to, separate entries for the prehearing review, conducting the hearing and preparation of the recommendation. The entries shall be made to the nearest quarter hour. KCERA shall promptly pay each approved invoice.

- H. In the event Hearing Officer determines that a matter is of such complexity or if the matter involves an unusually large quantity of evidence the Hearing Officer may petition KCERA for extraordinary fees. (Extraordinary fees are those in excess of the \$7,000.00 not to exceed amount.) Extraordinary fees shall be paid at the discretion of KCERA on a factual showing of necessity. Ten (10) days prior to the expiration of the 60 day post hearing submission date, Hearing Officer shall notify KCERA in writing whether Hearing Officer believes the matter may involve extraordinary fees. All decisions as to whether to grant in full or in part any request for extraordinary fees are in the sole discretion of KCERA. In no event shall extraordinary fees exceed three thousand (\$3,000.00) dollars.

If the report is not rendered within ninety (90) days from the date the case has been submitted, the Board may transfer the case to another Hearing Officer, in which case the Hearing Officer shall not receive any fee for services performed in connection with said case.

EXHIBIT II

THIRD PARTY HEARING OFFICERS **SELECTION AND RETENTION PROCEDURE**

I. Selection of Hearing Officers

A. Hearing Officer Review Panel

1. A Hearing Officer Review Panel shall consist of the following individuals:
 - a. Assistant Executive Director or his/her designee
 - b. General Counsel (Deputy County Counsel) or Legal Counsel as appointed by the Board of Retirement
 - c. Board Chairman, or designee
2. The Hearing Officer Review Panel shall be responsible for the selection and evaluation of Hearing Officers. KCERA shall maintain contracts with at least six (6) Hearing Officers, who shall hear cases on a rotation basis established pursuant to the Rules of Procedure for Disability Retirement. The Executive Director shall be responsible for assembling the Review Panel, as necessary, to carry out the necessary functions outlined in this Procedure.

B. Request for Proposals

1. In order to generate a list of Hearing Officers, a Request for Proposals shall be prepared by the Executive Director.
2. At the discretion of the Executive Director, notice of the Request for Proposals may be run in those periodicals/magazines, or other media, which are likely to reach qualified candidates. Further, the Request for Proposals may be sent to potential candidates known to, or brought to the attention of, the Executive Director.

C. Qualifications

1. At a minimum, Hearing Officer candidates shall meet the requirements of Government Code section 31533.
2. Additional factors for consideration shall include the following:
 - a. Past experience as an adjudicator (e.g., judge, judge pro-tem, arbitrator, etc.).

- b. Past experience in disability retirement or workers' compensation law.
- c. Judicial temperament and ability to conduct hearings fairly and impartially, maintaining control over the proceedings to ensure an orderly and consistent process.
- d. Ability to provide logical and well-written recommendations, applying the facts of a case to the applicable law.

D. Selection Process

- 1. The Hearing Officer Review Panel shall review the responses to the Request for Proposals and select qualified candidates for formal interviews.
- 2. The Hearing Officer Review Panel shall conduct formal interviews of qualified candidates. Based on the interviews, qualifications, and response to the Request for Proposals, the Review Panel shall compile a list of candidates for recommendation to the Board of Retirement for appointment as Hearing Officers.
- 3. Prior to submitting the list of recommended candidates to the Board of Retirement, the list shall be submitted to plan sponsors of KCERA, recognized employee representation units of the plan sponsors, and attorneys who regularly represent members in disability retirement hearings before the Board of Retirement. These entities and individuals shall be allowed a reasonable amount of time during which to comment on the list of proposed Hearing Officers. Any written comments received shall be provided to the Board of Retirement at the time that the Board is to vote on the proposed list of Hearing Officers.

II. Hearing Officer Contracts

A. Term of Appointment

- 1. Subsequent to their approval for appointment by the Board of Retirement, each Hearing Officer shall execute an independent contractor agreement to provide services as a Hearing Officer for the KCERA.
- 2. The contract shall provide for a term of five years, with a one (1) 12-month renewal option. The contract shall provide that the KCERA shall not terminate the contract, except for cause, which shall consist of persistent failure to timely render opinions,

unavailability for hearings (i.e., unable to schedule or hold hearings in a timely fashion due to the Hearing Officer's calendar), and/or demonstrate inability to conduct hearings and control the proceedings so that the hearings are conducted in a civil and orderly fashion, and/or failure to abide by the terms and conditions of any agreement between the Hearing Officer and KCERA, and/or failure to maintain an active license to practice law in accordance with Government Code section 31533. During any license suspension or active investigation by the State Bar into a Hearing Officer's conduct, the Hearing Officer shall be suspended from hearing KCERA matters until such time as there is a final determination on the status of the Hearing Officer's license to practice law.

B. Expiration of Contract

Upon the expiration or termination of the contract (including renewal), the Hearing Officer shall be required to participate in the initial selection process again prior to being awarded a new contract.

III. Hearing Officer Performance Evaluation

A. Evaluation Criteria

1. Quality of Opinions:

- a. A record shall be maintained which records the number of times that a Hearing Officer's recommendation is not followed by the Superior Court on a writ.
- b. Selected recommendations of the Hearing Officer shall be subjectively reviewed by the Hearing Officer Review Panel to determine whether they are well reasoned and logically apply the law to the facts of the case.

2. Timeliness of Opinions:

- a. A record shall be maintained which records the number of times that a Hearing Officer's recommendation is issued beyond the required due date during the contract term.
- b. The record shall also include the number of opinions issued by that Hearing Officer during that same contract term.

B. Evaluation Process

1. The Hearing Officer Review Panel shall perform Hearing Officer evaluations.
2. The records delineated in Section III shall be maintained by the Retirement Benefits Supervisor.
3. Prior to the termination date of each Hearing Officer's contract, the Retirement Benefits Supervisor shall forward the above-referenced records and selected recommendations to the Hearing Officer Review Panel for their review.
4. The Hearing Officer Review Panel shall meet and reach a consensus with respect to the continuation of the Hearing Officer's contract and recommend termination or renewal of the contract, as appropriate, to the Executive Director.
5. At the Executive Director's discretion, the Review Panel may meet more frequently in the event that there are concerns about the performance of a particular Hearing Officer.
6. At the time that a Hearing Officer's contract is set for renewal in the option year, comments regarding the Hearing Officer may be solicited, at the Review Panel's discretion, from plan sponsors, employee representation units, and attorneys regularly appearing before the Board of Retirement on disability retirement cases.
7. Based on the above referenced evaluations, the Hearing Officer Review Panel may recommend that the Board of Retirement take any one of the following courses of action with respect to a particular Hearing Officer's contract: that it be terminated prior to its normal expiration date on a showing of good cause; that it not exercise the 12-month option at the expiration of its normal term; that it exercise its option to renew for a 12-month term; that it be renewed at the expiration of its term, including renewal; or that other appropriate action be taken.

IV. Right to Appoint Board Members

Pursuant to Government Code section 31533, the Board of Retirement has the right to appoint one of its own members to serve as a Hearing Officer in a disability retirement case. The procedures delineated in this document shall apply to Non-Board of Retirement members Hearing Officers only.