

Effective Date: _____
Adopted by Advisory Committee: _____

City of Jacksonville Police and Fire Pension Fund Advisory Committee

**Procedures for Conducting
Administrative Hearings on Appeals Concerning Eligibility, Correction of Errors,
Time-Service Corrections and
Determination of Indebtedness**

WHEREAS, Section 8 of the Pension Fund’s Board of Trustees Corrections Policy for Errors in Pension Plan Administration authorizes the Advisory Committee to adopt administrative hearing procedures; and

WHEREAS, Section 121.304 of the Jacksonville Municipal Code provides that administrative hearings conducted will be done so in accordance with generally accepted rules of administrative procedure and with due regard for due process rights; and

WHEREAS, the Advisory Committee find Parts II and III of Section 28-106 of the Florida Administrative Code are those generally accepted rules of administrative procedure; and

WHEREAS, section 120.65(6), Florida Statutes, authorizes for the State of Florida Division of Administrative Hearings (“DOAH”) to provide administrative law judges on a contract basis to any governmental entity to conduct hearings and the Advisory Committee finds that it will be in the best interest of the Pension Fund and its participants and beneficiaries to refer certain appeals to a DOAH administrative law judge as the Advisory Committee may from time to time see fit; and

WHEREAS, the Advisory Committee wishes to adopt a policy establishing the process and procedure for any administrative hearings on matters within its jurisdiction;

NOW, THEREFORE, the Advisory Committee hereby adopts the following Advisory Committee Policy on Administrative Hearing on Appeals Concerning Eligibility, Correction of Errors, Time-Service Corrections and Determination of Indebtedness:

Section 1. Applicability.

This Policy shall apply to any hearing conducted on an appeal by a claimant concerning Pension Fund action or proposed action on eligibility, determination of indebtedness to the Plan, time service corrections, and correction of errors. A “Claimant” may only be an active member, a vested terminated member, a person claiming benefits or benefit credits, a benefit recipient or a personal representative, guardian or attorney (in-fact or at law) acting on behalf of such persons.

Section 2. Procedures for filing an appeal.

a. A Claimant seeking a hearing under this policy must provide a written request for hearing to the Plan Administrator as follows:

- i. The request must state the name, address, any e-mail address, and telephone number of the Claimant. If represented by an attorney, the request must also provide the name, address, telephone number, email address, and any facsimile number for the attorney.
- ii. The request must state what action or proposed actions of the Pension Fund are being appealed with sufficient specificity to give the Board reasonable notice of the action(s) at issue. The request must also contain a concise statement of the factual and/or legal basis for the Claimant's appeal. The request should also include any and all relevant supporting or corroborating documentation. Further, such request may, but is not required to, provide a more detailed statement of fact and/or a memorandum of law in support of Claimant's position.
- iii. The Advisory Committee may develop and approve a form for Claimants to use in requesting hearings, but the use of such a form is not required if a request otherwise contains the information described above.

b. Within 60 days of the Plan Administrator's receipt of a request for hearing, the Advisory Committee shall determine if the matter involves substantial interests of a Claimant affected by an action of the Pension Fund. Upon making such a determination, the Committee shall decide, at its sole discretion, whether to: (i) have the matter heard by the Advisory Committee itself, or a Committee designee, following the procedures set out in Section 5 herein; or (ii) refer the matter to be heard by DOAH under section 120.65(6) following the procedures set out in Section 4 herein

c. In order to provide a full presentation of the issues presented by the appeal, the Board of Trustees and the Office of General Counsel may appoint special counsel to advocate in opposition to the claim in such proceedings.

Section 3. General Provisions.

- a. The Claimant may be represented by a Florida licensed lawyer at the Claimant's expense, and shall have a full and fair opportunity to present evidence, testimony, and legal argument.
- b. In accordance with the Americans with Disabilities Act, persons needing a special accommodation to participate in this proceeding should contact the Plan Administrator no later than 7 days prior to any hearing.
- c. In computing any period of time, the provisions of section 28-106.103 of the Florida Administrative Code shall apply.
- d. Unless the presiding officer otherwise orders, after the commencement of a proceeding, every pleading and every other paper served in a proceeding, shall be served on each party or the party's representative via the email address provided.
- e. Under applicable Florida law, including section 121.304 of the Jacksonville Municipal Code, any determination by the Committee shall be supported by the greater weight of the evidence (a standard in all instances here that is identical to the "preponderance of the evidence" standard). The referral of a matter to DOAH shall not alter the standard or burden of proof nor grant DOAH jurisdiction beyond services provided under section 120.65(6).

Section 4. Procedures where hearing conducted by DOAH under section 120.65(6).

- a. When a matter is referred to DOAH, the scope of DOAH's services and its fees shall be set forth in a written agreement between the Pension Fund and DOAH to conduct hearings in accordance with the procedures set forth in chapter 120, Florida Statutes, and chapter 28-106, Florida Administrative Code. The scope of DOAH's services shall be narrowly tailored to hearing and adjudicating only the merits of the underlying claim that the Advisory Committee refers to DOAH in writing. DOAH shall have no jurisdiction to decide questions or issues other than those the Advisory Committee specifically refers to DOAH in writing.
- b. The Pension Fund shall supply a court reporter for any DOAH hearing at which evidence or testimony will be offered.
- c. Once a Recommended Order is entered on its docket, DOAH's jurisdiction shall immediately cease and the Advisory Committee shall immediately regain jurisdiction.
- d. A party may, within 45 days of the date of the Recommended Order, file written exceptions to the Recommended Order with the Plan Administrator. Such

exceptions must clearly identify the disputed portion of the Recommended Order by page number or paragraph, identify the legal basis for the exception, and include appropriate and specific citations to the record. A hearing on the exceptions will be held within 90 days after receipt of the exceptions.

e. Within 90 days after receiving a Recommended Order, or a hearing on any exceptions filed, whichever is later, the Advisory Committee shall adopt a Recommended Final Order and forward the Final Order to the Pension Plan Board of Trustees within fifteen days of adoption along with a copy of all written exceptions, if any.

f. The Recommended Final Order shall include an express ruling on each properly filed exception. The Recommended Final Order may adopt the DOAH Recommended Order as a whole or modify or reject the Recommended Order subject to the following conditions:

i. The Advisory Committee may reject or modify conclusions of law over which it has substantive jurisdiction and it may reject or modify an interpretation of plan documents or administrative rules over which the Advisory Committee has substantive jurisdiction. If the Board of Trustees rejects a conclusion of law or an interpretation of plan documents or administrative rules, it shall set forth its reasons in the Recommended Final Order and explain why the substitute conclusion or interpretation is more appropriate.

ii. If the Advisory Committee rejects or modifies the findings of fact in the DOAH Recommended Order, it must first determine from a review of the entire record that the findings of fact were not based on competent substantial evidence or that the proceedings on which the findings were based did not comply with essential requirements of law. Any such rejection or modification of the findings of fact shall be described and explained with particularity in the Final Order.

g. If the Final Order is adverse to the Claimant, the Claimant may appear before the Board of Trustees when the Board considers the Advisory Committee's Recommended Final Order.

Section 5. Procedures where hearing conducted by Board or its designee.

a. "Presiding Officer" refers to the Chairperson of the Advisory Committee, or his or her designee, who conducts the administrative hearing. The Presiding Officer shall be responsible for resolving all legal issues and procedural questions which may arise before and throughout the course of the formal administrative hearing.

b. The Advisory Committee's special counsel may file an answer to any factual or legal matter raised in the request for hearing.

c. Any request for relief on a procedural matter shall be by motion made in writing unless made on the record during a hearing stating the action requested and the grounds relied upon. Other parties and opposing counsel may, within 7 days of service of a written motion, file a response in opposition. No reply to the response shall be permitted. Motions for extension of time shall be filed prior to the expiration of the deadline sought to be extended and shall state good cause for the request or consent to the request by all other parties.

d. Persons other than the Claimant whose substantial interest will be affected by the proceeding may move the Presiding Officer, at their sole discretion, for leave to intervene. The motion to intervene shall contain the name, address, e-mail address, and telephone number of the intervener. Further, the intervener, or its representative, shall state the factual basis and allegations sufficient to demonstrate that the intervenor is entitled to participate in the proceeding as a matter of constitutional or statutory right.

e. Discovery may be conducted through the means and in the manner provided in Rules 1.280 through 1.400, Florida Rules of Civil Procedure. The Presiding Officer may issue appropriate orders to effectuate the purposes of discovery and to prevent unnecessary delay.

f. The Presiding Officer, or designee, shall set the time and place for all hearings and shall serve written notice on all parties at their respective address of record. No less than 14 days' notice shall be given for the hearing on the merits of the petition unless otherwise agreed by the parties or unless otherwise provided by law.

g. No later than 10 days before the hearing, parties must serve a prehearing statement:

- i. identifying disputed issues of material fact to be presented for resolution;
- ii. identifying legal questions to be presented for resolution;
- iii. identifying the names, addresses and telephone numbers of any witnesses to be called at the hearing, except rebuttal witnesses, as well as a brief statement identifying the issues for which their testimony will be offered;
- iv. attaching copies of all exhibits that will be introduced;
- v. identifying any outstanding motions or procedural questions to be resolved; and
- vi. providing a summary of the case law and statutory authority, if any, to be relied upon.

h. At any time after an appeal has been filed with the Pension Fund, the presiding officer may schedule a conference for the purpose of clarifying and simplifying issues, discussing the possibilities of settlement, examining documents and other exhibits, exchanging names and addresses of witnesses, resolving other procedural matters, and entering into a pre-hearing stipulation.

i. Where there are disputed issues of fact, evidence shall be taken as follows:

- i. Oral evidence shall be taken only on oath or affirmation.
- ii. Each party shall have the right to impeach any witness regardless of which party called the witness to testify.
- iii. Hearsay evidence, whether received in evidence over objection or not, may be used to supplement or explain other evidence, but shall not be sufficient in itself to support a finding unless the evidence falls within an exception to the hearsay rule as found in Sections 90.801-.805, F.S.
- iv. The rules of privilege apply to the same extent as in civil actions under Florida law.
- v. If requested and if the necessary equipment is reasonably available, testimony may be taken by means of video teleconference or by telephone.

1. If a party cross-examining the witness desires to have the witness review documents or other items not reasonably available for the witness to review at that time, then the party shall be given a reasonable opportunity to complete the cross-examination at a later time or date for the purpose of making those documents or other items available to the witness.
2. For any testimony taken by telephone, a notary public must be physically present with the witness to administer the oath. The notary public shall provide a written certification to be filed with the Presiding Officer confirming the identity of the witness, and confirming the affirmation or oath by the witness. It shall be the responsibility of the party calling the witness to secure the services of a notary public. This requirement may be waived with the consent of all parties and the Presiding Officer.

vi. When official recognition is requested, the parties shall be notified and given an opportunity to examine and contest the material. Requests for official recognition shall be by motion and shall be

considered in accordance with the provisions governing judicial notice in Sections 90.201-.203, F.S.

j. The hearing shall be conducted as follows, varied at the sole discretion of the Presiding Officer provided that all parties are allowed a full and fair opportunity to present evidence:

- i. Equal time shall be given to Claimant and Special Counsel for opening statements. Claimant begins with an opening statement followed by the Special Counsel's opening statement, with no rebuttal argument permitted.
- ii. Claimants then present their case first, followed by the Special Counsel. This practice may be varied by the Presiding Officer to allow witnesses to be examined and cross-examined out of order in an efficient manner, or to accommodate personal needs or travel schedules.
- iii. Equal time shall then be given to Claimant and Special Counsel for closing statements. Claimant proceeds first in closing argument, followed by the Special Counsel's closing argument, with no rebuttal argument permitted. A rebuttal argument by the Claimant is permitted if the Claimant reserved time for such rebuttal and if rebuttal is limited to issues raised by the Special Counsel not addressed in its opening statement. Allowance for any rebuttal argument shall be decided by the Presiding Officer, but will not be unreasonably withheld.

k. A Claimant who decides to appeal any recommendation made by the Advisory Committee or any decision made by the Board of Trustees with respect to an appeal will need a record of the proceedings. The Claimant must ensure that a verbatim record of the proceedings is made, at the Claimant's expense, which record includes the testimony and evidence upon which the appeal is to be heard.

l. After the hearing, the parties may submit proposed findings of fact, conclusions of law, orders, and memoranda on the issues within a time designated by the Presiding Officer.

m. Within 60 days after the hearing or filing of post-hearing pleadings, whichever is later, a Recommended Final Order shall be served and include a caption, time and place of hearing, appearances entered at the hearing, statement of the issues, findings of fact and conclusions of law.

n. If the Recommended Final Order is adverse to the Claimant, the Claimant may appear before the Board of Trustees when the Board considers the Advisory Committee's Recommended Final Order.

Section 6. Amendment.

This Policy may be amended at any time with the approval of a majority of the Advisory Committee.

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