

RESOLUTION #2011-17 ADJUDICATIVE HEARING PROCEDURES

(Amends Resolution #2010-04)

December 15, 2011

WHEREAS, Utah Code Annotated §49-11-203(1)(c) provides that the Utah State Retirement Board shall ensure that the systems, plans, programs, and funds are administered according to law; and

WHEREAS, Utah Code Annotated §49-11-203(1)(a) provides that the Board shall appoint an executive director to administer the office; and

WHEREAS, the executive director after consultation with the board, shall hire a hearing officer to review claims in accordance with Utah Code Annotated §49-11-613(2)(a); and

WHEREAS, Utah Code Annotated §49-11-613 grants the Board the right to adopt rules governing the adjudicative hearing process; and

WHEREAS, the Board most recently amended the Adjudicative Hearing Procedures on August 19, 2010, pursuant to Resolution #2010-04; and

WHEREAS, the Utah Supreme Court recently approved amendments to the Utah Rules of Civil Procedure, effective for cases filed on or after November 1, 2011, which change the requirements and procedures for discovery; and

WHEREAS, the Board desires to update and clarify the Adjudicative Hearing Procedures to comply with the new rules for discovery, and in making a technical change in compliance with Utah law.

NOW, THEREFORE, BE IT RESOLVED, that the Board hereby adopts the Adjudicative Hearing Procedures attached hereto.

This Resolution is effective December 15, 2011.

ADJUDICATIVE HEARING PROCEDURES

In accordance with Utah Code Ann. §§ 49-11-203, 49-11-613, and 63G-4-101 et. seq., U.C.A. 1953, as amended, the following rules are hereby adopted by the Utah State Retirement Board ("Board") to govern all parties in any adjudicative proceeding held under the authority and direction of the Board:

1. DECLARATORY ORDERS

- a) The executive director, a participating employer, or any person eligible for benefits under a system, plan, or program administered by the Board may file a petition for a declaratory order determining the applicability of a statute, rule, or order of the Board within the primary jurisdiction of the Board to the specified circumstances of the person.
- b) The petition shall contain:
 - i) a clear and concise statement of facts upon which the request for a declaratory order is based;
 - ii) a citation to applicable statutes, rules or orders; and
 - iii) the specific type of order or relief requested.
- c) Upon the pleadings or following a hearing on the petition, the hearing officer shall issue a written order which:
 - i) declares the applicability of the statutes, rules, or orders to the specified circumstances of the person;
 - ii) sets the matter for adjudicative proceedings; or
 - iii) declines to issue a declaratory order.
- d) The declaratory order must contain:
 - i) the names of all parties to the proceeding;

- ii) the particular facts on which the order is based; and
 - iii) facts and law supporting the conclusion reached in the order.
- e) No declaratory order will be issued in the following circumstances:
 - i) where the Board lacks jurisdiction;
 - ii) if the person requesting the order participated in an adjudicative proceeding concerning the same issue.
- f) The hearing officer will not issue an order that substantially prejudices the rights of a person who would be a necessary party unless that person consents in writing to the determination of the matter by a declaratory proceeding.
- g) Any person who meets the requirements of intervention under Utah Code Ann. § 63G-4-207, *Procedures for formal adjudicative proceedings - Intervention*, may intervene in a declaratory order. The petition for intervention shall include a statement of facts demonstrating that the intervenor's legal rights or interest will be substantially affected by the declaratory order, and a statement of relief sought by the intervenor.
- h) A declaratory order issued by the hearing officer has the same status and binding effect as any other order issued in an adjudicative proceeding.

2. ADJUDICATIVE PROCEEDINGS

- a) All adjudicative proceedings shall be conducted formally pursuant to the provisions of Sections 63-46b-6 through 63-46b-11, U.C.A. 1953, as amended, *Utah Administrative Procedures Act*, as amended, before a hearing officer designated by the executive director.

- b) The hearing officer may set any matter for adjudicative proceedings whether pursuant to a declaratory order, a notice of Board action, or a Request for Board Action.
- c) If the proceedings are commenced by the executive director in the name of the Board, the Notice of Board Action shall be in writing signed by the executive director or legal counsel, shall be sent to each respondent, and shall include:
 - i) the names and addresses of all respondents and other persons to whom notice will be given and the name, title, and mailing address of any attorney or employee who has been designated to represent the Board;
 - ii) the Board's file or other reference number;
 - iii) the name of the proceeding;
 - iv) the date the Notice of Board Action was mailed;
 - v) a notice that the proceeding will be conducted formally;
 - vi) a statement that a written response must be filed within 30 days of the mailing date of the Notice of Board Action;
 - vii) a statement of the time and place of any scheduled hearing, a statement of the purpose for which the hearing is to be held; and a statement that a party who fails to attend may be held in default;
 - viii) a statement of the legal authority and jurisdiction under which the adjudicative proceeding will be maintained;
 - ix) the name, mailing address, and telephone number of the executive director; and
 - x) a statement of the purpose of the adjudicative proceeding and the issues to be decided.
 - xi) a statement of the amount and/or type of damages sought and/or corresponding standard discovery tier, as required by the Utah Rules of Civil Procedure.

- d) If the action is initiated by a person or entity other than the executive director in the name of the Board, the Request for Board Action shall be in writing, signed by the person or legal counsel initiating the Action, shall be sent to each respondent, and include:
 - i) the names and addresses of all persons to whom a copy of the Request for Board Action is being sent;
 - ii) the Board's file or other reference number, if known;
 - iii) the name of the proceeding, if known;
 - iv) the date the Request for Board Action was mailed;
 - v) a statement of the legal authority and jurisdiction under which Board action is requested;
 - vi) a statement of the relief sought from the Board, including a designation of the amount and/or type of damages sought and/or corresponding standard discovery tier, as required by the Utah Rules of Civil Procedure; and
 - vii) a statement of the facts and reasons forming the basis for relief.

The Board may prescribe one or more printed forms eliciting the information required. The person or entity filing the request shall send copies to the executive director and to each person who is known to have a direct interest in the action.

- e) No party shall be allowed to bring a class action in any adjudicative proceeding before the Board.
- f) Any time before a final order is issued, the hearing officer may convert the formal proceeding to an informal proceeding if:
 - i) conversion of the proceeding is in the public interest;

- ii) conversion of the proceeding does not unfairly prejudice the rights of any party;
and
- iii) all parties so stipulate.
- g) If the proceeding is converted to informal proceedings, the provisions of Utah Code Ann. § 63G-4-203, *Procedures for informal adjudicative proceedings*, shall apply.

3. FORMAL PROCEEDINGS AND RESPONSIVE PLEADINGS

- a) Each respondent shall file and serve a written response within 30 days of the mailing date of the Notice of Board Action or Request for Board Action. The response shall include:
 - i) the Board's file or other reference number;
 - ii) the name of the adjudicative proceeding;
 - iii) a statement of relief requested by the respondent, including a designation of the amount and/or type of damages sought and/or corresponding standard discovery tier, as required by the Utah Rules of Civil Procedure;
 - iv) a statement of the facts; and
 - v) a statement summarizing the reasons for which the relief requested should be granted.
- b) The response shall be filed with the Retirement Office, and one copy sent by mail to each party. Other pleadings may be submitted in accordance with the Utah Rules of Civil Procedure or in accordance with the directions of the hearing officer.

4. DISCOVERY AND SUBPOENAS

- a) Discovery is permitted in accordance with the Utah Rules of Civil Procedure.
- b) The executive director or hearing officer may, upon request or upon his own motion, issue subpoenas and other orders to secure the attendance of witnesses or the

production of evidence and may seek judicial enforcement of such orders as provided by law.

5. HEARING PROCEDURE

- a) A hearing shall be held in all formal proceedings if requested by one or more of the parties. The hearing officer shall regulate the course of the hearing to obtain full disclosure of relevant facts and to afford all parties reasonable opportunity to present their positions.
- b) The hearing officer, either on his own motion, or upon objection by a party:
 - i) may exclude evidence that is irrelevant, immaterial, or unduly repetitious;
 - ii) shall exclude evidence privileged in the courts of Utah;
 - iii) may receive documentary evidence in the form of a copy or excerpt if the copy or the excerpt contains all pertinent portions of the original document; and
 - iv) may take official notice of any facts that could be judicially noticed under the Utah Rules of Evidence, of the record of other proceedings before the Board, and of technical or scientific facts within the hearing officer's specialized knowledge.
- c) The hearing officer may not exclude evidence solely because it is hearsay.
- d) The hearing officer shall afford to all parties the opportunity to present evidence, argue, respond, conduct cross examination, and submit rebuttal evidence.
- e) The hearing officer may give persons who are not a party to the hearing an opportunity to present oral or written statements at the hearing.
- f) All testimony presented at the hearing, if offered as evidence to be considered in reaching a decision on the merits, shall be given under oath.

- g) The hearing shall be recorded at Board expense. The Board will determine the method of recording and may specify recording tape.
- h) Any party, at his own expense, may have a person approved by the hearing officer prepare a transcript of the hearing, but the hearing officer may take steps necessary to protect confidential information disclosed at the hearing.
- i) All hearings are open to all parties.
- j) The hearing officer may take appropriate measures to preserve the integrity of the hearing.
- k) The petitioner in all proceedings shall bear the burden of proving the Petitioner's case by a preponderance of the evidence and shall also have the burden of going forward with the case.
- l) The hearing officer may order additional briefing or evidence at the hearing officer's discretion.

6. INTERVENTION

- a) Any person not a party may file a signed, written petition to intervene in a proceeding with the Board, pursuant to the requirements of Utah Code Ann. § 63G-4-207, *Procedures for formal adjudicative proceedings - Intervention*.
- b) The intervenor shall mail a copy of the petition to each party which includes:
 - i) the Board's file or other reference number;
 - ii) the name of the proceeding;
 - iii) a statement of facts demonstrating that the intervenor's legal rights or interests are substantially affected by the proceeding, or that the intervenor qualifies as an intervenor under any provision of law; and
 - iv) a statement of relief that the intervenor seeks from the Board.

- c) The hearing officer shall grant a petition for intervention if the hearing officer determines that:
 - i) the intervenor's legal interest may be substantially affected by the proceeding;
and
 - ii) the interests of justice and the orderly and prompt conduct of the proceedings will not be materially impaired by allowing the intervention.
- d) Any order granting or denying a petition to intervene shall be in writing and sent by mail to the intervenor and each party.
- e) Any order granting intervention may impose conditions on the intervenor's participation in the proceedings that are necessary for a just, orderly and prompt conduct of the proceeding, and these conditions may be imposed at any time after the intervention.

7. ORDERS

- a) Within 30 days after the hearing, or after the filing of any post hearing papers permitted or required by the hearing officer, the hearing officer shall sign and issue an order that includes:
 - i) a statement of findings of fact based exclusively on the evidence of record in the proceeding or on facts officially noted;
 - ii) a statement of conclusions of law;
 - iii) a statement of reasons for the decision;
 - iv) a statement of any relief ordered;
 - v) a notice of the right to apply for reconsideration;
 - vi) a notice of any right to administrative or judicial review of the order available to aggrieved parties; and

- vii) the time limits applicable to any reconsideration or review.
- b) The hearing officer may use his experience, technical competence, and specialized knowledge to evaluate the evidence.
- c) No finding of fact that was contested may be based solely on hearsay evidence.
- d) The hearing officer shall not award any attorney fees to any party in an Order.
- e) The hearing officer may issue interim orders to:
 - i) notify parties of further hearings;
 - ii) notify parties of provisional rulings on a portion of the issues presented; or
 - iii) otherwise provide for the fair and efficient conduct of the proceeding.
- f)
 - (i) The hearing officer may either draft the order or direct the prevailing party to draft the order in accordance with these rules.
 - (ii) Parties shall have 5 days from the date the order is sent to file written objections to the order.
 - (iii) The hearing officer shall consider any written objections and then prepare a final order.

8. DEFAULT

- a) The hearing officer may issue a default order if a party to the formal proceeding:
 - i) fails to attend or participate in the proceedings after notice;
 - ii) fails to file a response as a respondent; or
 - iii) fails, as the moving party, to take affirmative steps to pursue their claim within six months.
- b) The order shall include the grounds for default and shall be mailed to all parties.
- c) A defaulted party may seek to have the hearing officer set aside the default order according to procedures outlined in the Utah Rules of Civil Procedure.

- d) After issuing the default order, the hearing officer shall complete the proceeding without the defaulted party and shall determine all issues in the proceeding, including those affecting the defaulting party.

9. BOARD REVIEW

- a) In accordance with Section 49-11-613, U.C.A. 1953, as amended, *Appeals Procedure - Right of Appeal to hearing officer - Board reconsideration - Judicial review*, the Board shall review the order of the hearing officer within (30) days or at the next regularly scheduled meeting of the Board in excess of 30 days.
- b) The Board may allow parties to file briefs or other papers to supplement the record made before the hearing officer. In no case will a de novo hearing be held by the Board.
- c) The Board may, if it is not satisfied with the record before it, refer the matter back to the hearing officer for the taking of additional evidence as directed.
- d) Notice of hearings on review shall be mailed to all parties.
- e) Within 30 days of the date on which the order is reviewed, or the last date on which any supplemental findings are allowed, whichever is later, the Board shall issue a written order on review or may adopt the written order of the hearing officer.
- f) The Board order shall be signed by the Board President or the Board President's designee and shall be mailed to each party.
- g) The Board order on review shall contain each of the items listed in Section 7(a) of these Rules for Adjudicative Procedures.

10. BOARD RECONSIDERATION

- a) Within 10 days after the date that a Board order on review is issued, any party may file a written request for reconsideration stating the specific grounds upon which

relief is requested as set forth in Utah Code Ann. § 49-11-613, *Appeals procedure - Right of Appeal to hearing officer - Board reconsideration - Judicial review*. This filing for reconsideration is not a prerequisite for seeking judicial review of the order on review.

- b) The request for reconsideration shall be filed with the Board and one copy sent by mail to each party by the person making the request.
- c) The Board President or executive director shall issue a written order granting or denying the request within 20 days of receipt. If no order is issued within 20 days, the request is denied.

11. JUDICIAL REVIEW

- a) Any party aggrieved by the final Board order may seek a judicial review within 30 days after the date that the order constituting final Board action is issued.
- b) The petition shall name the Board and all other appropriate parties as respondents.
- c) The Utah Court of Appeals has jurisdiction to review all final Board actions resulting from formal adjudicative proceedings. All petitioners shall follow the procedure established in Utah Code Ann. § 63G-4-403, *Judicial review - Formal adjudicative proceedings*, in the appeals process.

12. STAYS AND OTHER TEMPORARY REMEDIES

- a) The Board may grant a stay or other temporary remedy during the tendency of judicial review if such order is deemed essential to effect substantial justice.
- b) Parties shall petition for a stay or other temporary remedy unless extraordinary circumstances require immediate judicial intervention.

- c) If the Board denies a stay or other temporary remedy, the Board's order of denial shall be mailed to all parties and shall specify the reasons why the stay or other temporary relief was not granted.

13. CIVIL ENFORCEMENT OF ORDERS

- a) The Board may seek enforcement of an order by seeking civil enforcement in the district courts by following the procedure established under Utah Code Ann. § 63G-4-501, *Civil enforcement*.
- b) Any person whose interests are directly impaired or threatened by the failure of the Board to enforce an order may timely file a complaint seeking civil enforcement of that order in accordance with the procedures established under Utah Code Ann. § 63G-4-501(2), *Civil enforcement*.

14. THE ROLE OF THE MEMBERSHIP COUNCIL

The executive director or hearing officer shall report the final Board order in any adjudicative proceeding to the membership council. The council may then review the order and elect to seek legislation to correct any inequities which it finds has resulted from the proceedings.

15. RULES OF EVIDENCE AND RULES OF PROCEDURE

Except as specifically modified herein, the Utah Rules of Civil Procedure and the Utah Rules of Evidence shall apply.