

Hearing Officer System Rules of Administration

Rule One - Applicability; Definitions.

- A. These rules are promulgated in accordance with § 2.2-4024 of the Code of Virginia and shall govern the administration of the Hearing Officer System as established and implemented by Article 4 of Title 2.2-4000. The rules shall apply to the constitution of the hearing officers list and the appointment of all hearing officers required to be selected from the list on and after July 1, 1986.
- B. References herein to "he," "it" and "its" shall apply equally to "she," "him," "his" or "her." The singular shall include the plural.

Rule Two - Appointment; Qualifications; Retention.

- A. **Appointment.** Any person desiring to be included on the hearing officer list must request appointment by submitting a letter of request and resume to the Executive Secretary of the Supreme Court of Virginia, 100 North Ninth Street, Third Floor, Richmond, VA 23219. The letter of request must contain information sufficient to satisfy the minimum qualifications as established by these rules.
- B. **Qualifications.** All hearing officers shall possess the following minimum qualifications for appointment to the hearing officer list:
 - 1. Active membership in good standing in the Virginia State Bar;
 - 2. Active practice of law for at least five years. In order to satisfy this requirement, the applicant must have completed five years of active practice of law with two of these years in Virginia. For purposes of these rules, the active practice of law exists when, on a regular and systematic basis, in the relation of attorney and client, one furnishes to another advice or service under circumstances which imply his possession and use of legal knowledge and skill. If not presently engaged in the active practice of law, the applicant must, in addition to the requirements of this section, have previously served as a hearing officer, administrative law judge, or possess extensive prior experience with administrative hearings;
 - 3. Prior experience with administrative hearings or knowledge of administrative law;
 - 4. Demonstrated legal writing ability;
 - 5. Willingness to travel to any area of the state to conduct hearings; and
 - 6. Completion of one training program for administrative hearing officers sponsored by the Office of the Executive Secretary. Such programs will be conducted on an annual basis.
- C. **Failure to Appoint.** After reviewing the request for appointment, if the Executive Secretary concludes that the applicant should not be appointed to the hearing officer list, he shall so advise the applicant in writing specifying the reason for his failure to make the appointment. The

applicant may, within 10 calendar days of the postmark of the notification letter, request by letter reconsideration and a personal appearance before the Executive Secretary. Within 15 calendar days of receipt of such request, the Executive Secretary shall arrange for this meeting or reconsideration and shall advise the applicant of his decision.

- D. **Retention.** Upon compliance with the provisions of subsections (A) and (B) of this rule, the Executive Secretary of the Supreme Court of Virginia shall notify the applicant of appointment to the hearing officer list. Retention of the Hearing Officer shall be determined by the Executive Secretary.

Rule Three - Training.

- A. **Continuing Education.** Once appointed to the hearing officer list, a hearing officer must satisfy the following minimum training requirements in order to maintain appointment to the hearing officer list:
1. Completion of one training program each calendar year. Such training programs for administrative hearing officers will be sponsored by the Office of the Executive Secretary and will be conducted on an annual basis.

If you are unable to attend the annual training program, you must notify the Educational Services Department of the Office of the Executive Secretary to request a waiver. If the waiver is granted, conference materials (video presentations and accompanying handouts) will be mailed to you, along with a "Certificate of Completion" form that must be signed and returned by the date specified. Failure to complete the continuing education requirements may result in removal from the list maintained by the Office of the Executive Secretary.

- B. **Specialized Training.** In order to comply with the demonstrated requirements of an agency requesting a hearing officer, the Executive Secretary may require additional specialized training before a hearing officer will be designated as qualified to be assigned to a proceeding before that agency. Any hearing officer desiring to be assigned to proceedings before such an agency must request instructions from the Executive Secretary on compliance with the specialized training requirements. The following is a list, which may from time to time be amended, of those agencies which require specialized training:
1. Special Education (Department of Education)
 2. Rate-Setting Procedures (Departments of Education, Corrections and Social Services)
 3. Department of Employee Dispute Resolution
 4. Department of Medical Assistance Services

Rule Four - Removal and Disqualification.

- A. **Removal.** The Executive Secretary shall have the authority to remove hearing officers from the hearing officer list. Any agency or individual seeking removal of a hearing officer from the list shall submit such a request to the Executive Secretary in the form of a letter specifying the grounds

for removal. Within 10 calendar days of receipt of such request, the Executive Secretary shall forward, by certified mail, a copy of the request for removal to the hearing officer involved. Within 15 calendar days of the postmark of such certified letter, the hearing officer shall submit a written response. The response should address the allegations contained in the request for removal and should indicate whether an ore tenus hearing is desired. If an ore tenus hearing is not requested, the Executive Secretary shall rule on the request for removal within 15 days of receipt of the response from the hearing officer. He shall communicate his decision to the requesting individual or agency and to the hearing officer. If an ore tenus hearing is requested, the Executive Secretary shall convene such a hearing within 30 days of receipt of the request.

1. Procedure at Hearing. The following general procedure shall be followed at the ore tenus hearing:
 - a. The Executive Secretary shall convene the hearing, state the purpose and read the list of allegations.
 - b. The person making the request for removal shall be allowed to testify as to the acts or omissions that he believes constitute the need for dismissal. That person may call any other witnesses necessary to support the request.
 - c. The hearing officer shall be allowed to testify and produce any witnesses or evidence to rebut the request.
 - d. All testimony shall be taken under oath.
 - e. All witnesses are subject to cross-examination and may be questioned by the Executive Secretary.
 - f. The Rules of Evidence shall not be strictly applied.
 - g. The Executive Secretary may call any witnesses that he desires to hear.
 - h. Both parties may present oral arguments.
 - i. At the conclusion of the hearing, the Executive Secretary will render his decision or advise the parties of a date that such decision will be made. Such date shall not be more than 15 calendar days from the hearing.
2. Grounds for Removal. In considering requests for removal, the Executive Secretary shall consider allegations of:
 - a. Continuous pattern of untimely decisions; failure to render decision within regulatory time frames;
 - b. Unprofessional demeanor;
 - c. Inability to conduct orderly hearings;
 - d. Improper ex parte contacts;
 - e. Violations of due process requirements;
 - f. Mental or physical incapacity;
 - g. Unjustified refusal to accept assignments;
 - h. Failure to complete training requirements of Rule Three (A);
 - i. Professional disciplinary action.
3. Reconsideration. Upon notification of removal from the hearing officer list, the hearing officer may, within 10 calendar days of the postmark of the letter of notification, request reconsideration of the decision. Such request shall be in the form of a letter and shall contain any additional information desired for consideration. No ore tenus hearing shall be held. The Executive Secretary must render a decision on the reconsideration within 10 calendar days of receipt of the request for a reconsideration. Upon receipt of this decision,

the hearing officer shall have available judicial review in accordance with the Administrative Process Act.

- B. **Disqualifications.** A hearing officer shall voluntarily disqualify himself and withdraw from any case in which he cannot accord a fair and impartial hearing or consideration, or when required by the applicable rules governing the practice of law in the Commonwealth. Any party may request the disqualification of a hearing officer by filing an affidavit with the Executive Secretary of the Supreme Court of Virginia prior to the taking of evidence at the hearing. The affidavit shall state, with particularity, the grounds upon which it is claimed that a fair and impartial hearing cannot be accorded, or the applicable rule of practice requiring disqualification. A copy of this affidavit shall be sent to the hearing officer. Within 5 calendar days of receipt of the affidavit, the hearing officer shall submit any response by affidavit to the Executive Secretary. The issue shall be determined not less than 10 calendar days prior to the hearing by the Executive Secretary. No ore tenus hearing shall be permitted. The filing of an affidavit for disqualification shall not stay the proceedings or filing requirements in any way except that the hearing may not be conducted until a ruling on the request for disqualification has been made. If the Executive Secretary determines that the hearing officer shall not be disqualified, the hearing shall proceed as scheduled. If the Executive Secretary determines that the hearing officer is disqualified, he shall appoint a new hearing officer so that the hearing can proceed as scheduled whenever possible.

Rule Five - Selection.

- A. **Organization of List.** The hearing officer list will be maintained by geographic regions. The regions are composed as follows: Region One - Judicial Circuits 1, 2, 3, 4, 5, 7, 8, 9; Region Two - Judicial Circuits 17, 18, 19, 20, 31; Region Three - Judicial Circuits 6, 11, 12, 13, 14, 15; Region Four - Judicial Circuits 27, 28, 29, 30; Region Five - Judicial Circuits 10, 21, 22, 23, 24; Region Six - Judicial Circuits 16, 25, 26. Appropriate hearing officers will also be designated as having received any required specialized training.
- B. **Selection.** Upon request from the head of any agency, his designee, or from any entity authorized by statute to utilize the hearing officer list, the Executive Secretary, or his designee, will select a hearing officer from the appropriate region using a system of rotation. The hearing officer within the appropriate region with the oldest previous selection date will be named. In cases requiring specialized training, the same procedure will be followed except that the person selected must also have received the specialized training.
1. Requests for selection of a hearing officer should be submitted by contacting the Executive Secretary by telephone at 804/786-6455. When making the request, the following information shall be provided:
 - a. Name and address of requesting party;
 - b. Style of hearing;
 - c. Location (county or city) of the parties.
 2. When the request for selection is received, the Office of the Executive Secretary shall advise the requestor of the name and address of the selected hearing officer. All further contacts and arrangements with the hearing officer will be made by the requesting party.

- Should the first person selected be unavailable to conduct the hearing, the requesting party shall advise the Executive Secretary immediately and request another hearing officer.
3. Upon making the selection, the Executive Secretary shall, at least two days after the selection, confirm the selection by letter to the requesting party.

Rule Six - Compensation.

- A. **Compensation.** The agency or entity requesting appointment of the hearing officer shall be responsible for all compensation of the hearing officer. Each agency or entity shall have authority to determine the rate of compensation.
- B. **Suggested Compensation.** In order to create greater uniformity, the following compensation guidelines are suggested. These guidelines are not mandatory, but are suggested as an indication of reasonable allowances.
 1. **Hourly rate**
 - Hearing time \$100.00
 - Administrative time 75.00
 - Clerical 25.00

Hearing time - hours reading the record, conducting the prehearing conference and the hearing, or writing the decision.

Administrative time - hours in research, composing and reviewing correspondence, and telephone calls.

Clerical - preparing and mailing correspondence, making arrangements for hearings, faxing, and other tasks normally performed by clerical staff.
 2. **Other expenses** - Hearing officers shall be reimbursed for actual expenses associated with travel to the hearing at the rates established in the state's Travel Regulations. If a hearing location is greater than 35 miles from the place of business, the hearing officer shall be compensated an additional \$100 for each round trip to a hearing site. Postage, telephone, fax, and photocopying shall be billed at the actual cost.
 3. **Billing** - All fees and billing arrangements shall be discussed and agreed to with the employing agency. All bills shall be itemized and calculated in increments of 0.1 hours. Agencies shall not be charged for telephone calls made where no business has been transacted. Bills are to be submitted to the agency receiving services.

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