

840 CMR: PUBLIC EMPLOYEE RETIREMENT ADMINISTRATION

840 CMR 10.00: STANDARD RULES FOR DISABILITY RETIREMENT

10.12: Hearing by Retirement Board

(1) Notice. The retirement board shall give all parties at least 30 days notice of the time and place for the hearing and of the issues involved in the hearing. If the issues cannot be fully stated in advance of the hearing, they shall be fully stated as soon as practicable. In all cases of delayed statements, or where subsequent amendment of the issues is necessary, sufficient time shall be allowed after full statement or amendment to afford all parties reasonable opportunity to prepare and present evidence and argument respecting the issues. **In the case of hearings conducted to enforce or implement the provisions of M.G.L. c. 32, §§ 91, 91A or 91B of Chapter 32, the Commission shall participate at its discretion. The Commission shall present all documents to the Board, including testimony and documentation, and respond to questions from the Board or Hearing Officer, and at no point will PERAC be able to cross examine the retiree.**

(2) Discovery. Any party and any authorized representative shall, at any time after a hearing has been requested or ordered and after reasonable notice to the retirement board, be permitted to examine and copy or photocopy, at cost and during normal business hours, any document in the case file pertaining to the member's file or the record of the hearing. All other discovery shall be at the discretion of the retirement board. A request for discovery may be made by any party at any time after a hearing has been requested or ordered.

(3) Conduct of Hearing. Hearings shall be conducted in an informal manner that affords all parties an opportunity to present all information and argument relevant to the proceeding.

(a) Presiding Officer. The chairperson of the retirement board, any other member of the board acting as chairperson, or any individual designated by the board, shall be the presiding officer and shall assure parties the right to call and question witnesses and introduce exhibits, and to present argument, relevant to the proceeding. The presiding officer shall assure an orderly presentation of the evidence and argument and that a record is made of the hearing.

(b) Continuances. The presiding officer may change the date, time or place of the hearing on his own motion or on the request of any party, upon due notice to all other parties and may continue the hearing to a subsequent date to permit any party to present additional evidence, witnesses or other materials. At any time prior to decision, the presiding officer may reconvene the hearing for any purpose upon ten days written notice to all parties, stating therein the purposes for reconvening, and the date, time and place of the reconvened hearing.

(c) Oaths; Rulings; Briefs. The presiding officer shall administer the oath or affirmation to witnesses, shall rule upon the admissibility of evidence and upon any requests for rulings, and may order that written briefs be submitted by the parties.

(d) The Record. All proceedings in connection with the hearing shall be recorded by electronic or stenographic means and such record shall be maintained as part of the hearing record. Transcripts or duplicate tapes of the proceedings shall be supplied to any

party, upon request, at that party's expense. At the discretion of the presiding officer, any party may be permitted to maintain a record so long as this does not interfere with the conduct of the proceedings. All documents and other evidence received shall also become part of the record.

(e) Executive Session. Since the principal purpose of a hearing on a disability retirement application is to discuss and evaluate the physical condition or mental health of the member, the hearing shall be held in executive session unless the member requests that the meeting be open. In such executive session only the retirement board, the secretary and the retirement board's counsel, the parties and their authorized representatives and such other persons as the presiding officer shall deem necessary for the conduct of the hearing shall be permitted to be present. No executive session shall be held until the retirement board has first convened in open session for which notice has been given, a majority of the members of the board have voted to go into executive session and the vote of each member is recorded on a roll call vote and entered into the minutes, the presiding officer has stated the purpose for an executive session, and has stated before the executive session if the board will reconvene after the executive session. The records of the hearing in executive session shall not be made available to the public except in accordance with the board's regulations on privacy and confidentiality and such other laws or regulations as may be applicable to such records.

(f) Evidence.

1. General. The retirement board need not observe the rules of evidence observed by courts but shall observe the rules of privilege recognized by law. Evidence shall be admitted and given probative effect only if it is the kind of evidence on which reasonable persons are accustomed to rely in the conduct of serious affairs. Unduly repetitious evidence may be excluded.

2. Testimony; Stipulations. Witnesses shall testify under oath or affirmation and shall be available for questions by all parties. If a witness cannot, as a practical matter, be available in person the witness shall be available and testify by telephone conference call, or by any other reasonable means ordered by the presiding officer. Stipulations by the parties as to any fact or as to the testimony that would be given by an absent witness may be offered and received as evidence.

3. Documentary Evidence. Documentary evidence may be received in the form of copies or excerpts or by incorporation by reference in the discretion of the presiding officer.

4. Taking Notice of Facts. The retirement board may take notice of any fact which may be judicially noticed by the courts, and any fact within the retirement board's specialized knowledge. Parties shall be notified and afforded an opportunity to contest any facts so noticed.

5. Evidence to be Part of Record. All evidence, including any records, reports and documents of the retirement board, to be considered in making a decision shall be offered and made a part of the record of the proceeding and the record shall at all

times be open for inspection by any party or authorized representative during business hours. The retirement board may, with notice to all parties, require any party to submit additional evidence for the record and shall afford parties an opportunity to submit rebuttal evidence.

(g) Subpoenas.

1. Issuance. The presiding officer shall, within five days of a written request of a party, issue a subpoena requiring the attendance and testimony of a witness or the production of any evidence including books, records, correspondence or documents relating to any matter in question at a hearing on a disability application.

2. Request to Vacate. Any person subpoenaed may file a written request requesting the presiding officer to vacate or modify the subpoena.

3. Decision on Request to Vacate or Modify Subpoena. The presiding officer shall notify all parties of the request to vacate or modify the subpoena and afford parties a reasonable time to respond. The presiding officer shall grant the request to vacate or modify the subpoena if the testimony or evidence subpoenaed does not relate with reasonable directness to any matter at issue in the proceeding or if the subpoena is otherwise unreasonable or oppressive.

(h) If any person fails to comply with a properly issued subpoena, the retirement board or the party requesting the issuance of the subpoena may petition the superior court for an order requiring compliance.