

The Arizona Elected Officials' Retirement Plan

Administrative Hearing Procedures

A. Definitions

1. "Administrator" means the Administrator of the Public Safety Personnel Retirement System, including any persons authorized by the Administrator to act for the Administrator
2. "Assistant Administrator" means an Assistant Administrator of the Public Safety Personnel Retirement System, including any persons authorized by the Assistant Administrator to act for the Assistant Administrator
3. "Claimant" means a person who claims benefits under the Plan, and includes (a) active, inactive or retired members of the Plan; (b) persons receiving survivor benefits under the Plan; and (c) persons who claim to be eligible for membership in the Plan
4. "Claim" means all matters involving a Claimant's eligibility for benefits, membership or other rights under the Plan and includes a Mandatory Claim or a Permissive Claim
5. "Mandatory Claim" means a Claim that is required by law to be submitted to the Fund Manager, specifically, any Claim regarding the qualified governmental excess benefit arrangement permitted by Ariz.Rev.Stat. § 38-803.01
6. "Permissive Claim" means a Claim that is not required by law to be submitted to the Fund Manager, including, but not limited to, claims for service credits granted by the Plan, all denials of benefits by the Plan, and all claims regarding eligibility for membership.
7. "Decision" means (i) the Fund Manager's findings of fact, conclusions of law and orders on appeal from a Determination of the Administrator, (ii) the Fund Manager's findings of fact, conclusions of law and orders after Rehearing, or (iii) an order denying a request for Rehearing
8. "Determination" means any written evaluation of a claim issued by the Administrator or his/her designee, which resolves the legal rights or privileges of a Claimant and entitles the Claimant to request a Hearing before the Fund Manager
9. "Fund Manager" means the Fund Manager of the Public Safety Personnel Retirement System, including any persons authorized by the Fund Manager to act for the Fund Manager

Adopted by the Fund Manager on November 21, 2006, as amended, June 25, 2008.

10. “Hearing” means an initial proceeding before the Fund Manager after appeal of a Determination issued by the Administrator or his/her designee
11. “Plan” means the Arizona Elected Officials’ Retirement Plan
12. “Presiding Officer” means the Chair of the Fund Manager or his/her designee, who presides over any Hearings and Rehearings
13. “Rehearing” means a proceeding to reconsider and rehear issues raised in the Hearing
14. “Staff” means the persons employed by the Public Safety Personnel Retirement System

B. Purpose

Claimants must use these procedures for **Mandatory Claims**. Claimants are not required to use these procedures for Permissive Claims; thus, use of these rules for Permissive Claims does not toll any time limits provided in Ariz.Rev.Stat. §§ 12-821 and/or 12-821.01. These procedures are **not applicable** to any Permissive Claim for which the Claimant files a notice of claim pursuant to Ariz.Rev.Stat. § 12-821.01.

These procedures are effective for any claims brought and any Hearings and Rehearings held after the effective date of adoption of these procedures, and any amendments thereto, by the Fund Manager.

C. Determination by the Administrator

1. The Administrator is responsible for all initial Determinations brought by Claimants regarding all Claims.
2. The Administrator may delegate some or all of his or her duties under these procedures to one or more of the Assistant Administrators, the Plan’s legal counsel, and/or Staff.
3. A Claimant or a Claimant’s attorney must request that the Administrator make a Determination of a Claimant’s Claim by sending a written request addressed to:

Administrator
Elected Officials’ Retirement Plan
3010 E. Camelback Rd., Ste. 200
Phoenix, Arizona 85016

4. A Claimant or a Claimant’s attorney must request a Determination of a Claimant’s Claim within sixty (60) days of the date the Claim accrued. A Claim accrues when the claimant realizes he or she has been damaged and knows or reasonably should know the cause, source, act, event, instrumentality or condition

which caused or contributed to the damage. Case law interpreting Ariz.Rev.Stat. § 12-821.01(B) will be applied by the Administrator to decide a Claim's accrual date.

5. The Administrator will notify a Claimant or the Claimant's attorney of the Determination in writing, sent by United States mail. It is the duty of the Claimant to insure that the Administrator has the Claimant's (or his/her attorney's) current address. A Determination will be deemed received five days after mailing.
6. Any Claimant adversely affected by a Determination of the Administrator may request a Hearing before the Fund Manager, as set forth in Section D herein.

D. Hearings before the Fund Manager

1. A Claimant may request a Hearing before the Fund Manager for review of a Determination of the Administrator. The Request for Hearing must be in writing and delivered within 30 days of the date the Claimant receives the Determination from which the Claimant seeks review. A request for Hearing must be delivered to:

The Fund Manager
Elected Officials' Retirement Plan
3010 E. Camelback Rd., Ste. 200
Phoenix, Arizona 85016

Failure to deliver a request for Hearing within the prescribed time renders the Administrator's Determination final. Final Determinations of the Administrator may be appealed to the Superior Court of the State of Arizona within the periods specified in, and in the manner provided by, the Arizona Revised Statutes and/or rules adopted for use in the Superior and Appellate Courts of the State of Arizona.

2. A request for Hearing shall set forth the name and address of the Claimant; the name and address of the Claimant's attorney, if applicable; a brief statement of the facts forming the basis of the claim(s), which must include any new or additional evidence; and the relief sought.
3. A Claimant shall be afforded an opportunity for a Hearing after being given at least 20 days' notice of the Hearing by United States mail. The Notice of Hearing shall include (a) a statement of the time, place and nature of the Hearing; (b) the legal authority and/or jurisdiction under which the Hearing is to be held; (c) a reference to the statute, Plan provision or rule involved; and (d) a short general statement of the matter(s) to be heard. Unless otherwise provided by law, a Hearing may be held at any place designated by the Fund Manager. The Fund

Manager may continue a scheduled Hearing date on its own accord, or upon written request of the Claimant.

4. The Hearing shall be limited to matters referenced in the Claimant's request for Hearing and any written response thereto submitted by the Administrator. The Administrator shall not be required to file a written response to a Claimant's request for Hearing. The Administrator's decision not to file a written response to a request for Hearing shall not be construed as an admission by the Administrator that the Claimant's demands have merit, and the Administrator shall be free to voice his/her opposition to such demands at the Hearing. Unless otherwise precluded by law, informal disposition of any matter brought before the Fund Manager may be made by stipulation, agreed settlement, consent order or default.
5. All Hearings before the Fund Manager shall be recorded by electronic means. The Claimant and Administrator shall be afforded equal time to state their positions at the Hearing. A copy of the recorded Hearing will be provided to the Claimant upon request. In lieu of requesting a copy of the recording, a Claimant may have a Hearing transcribed by a certified court reporter at the Claimant's sole expense.
6. The Presiding Officer at the Hearing shall rule on all evidentiary or procedural objections. In connection with any such ruling, the Presiding Officer may consult on the record with the other members of the Fund Manager. The Presiding Officer and/or the Fund Manager may consult in executive session with the Fund Manager's legal counsel. The Fund Manager may also go into executive session should such a session be required for any lawful reason, including the need to preserve the confidentiality of medical information, as provided in Fund Manager Legal Opinion 1998-2, a copy of which is attached and incorporated herein by this reference.
7. All Hearings before the Fund Manager shall be conducted in an informal manner and without adherence to the rules of procedure or evidence required in judicial proceedings. The manner of conducting the Hearing, rulings on evidentiary or procedural objections, and the failure to adhere to rules of procedure or evidence required in judicial proceedings shall not be grounds for reversing any order or Decision issued by the Fund Manager, providing the evidence supporting such order or Decision is substantial, reliable and probative.
9. The Presiding Officer may cause subpoenas for the attendance of witnesses and for the production of books, records, documents and other evidence to be issued. Such subpoenas may be issued upon application by a party to the Presiding Officer filed with the Executive Assistant of the Fund Manager, or upon the Presiding Officer's own order. The party seeking such discovery must demonstrate to the Presiding Officer that the party has reasonable need of the testimony or materials being sought. Unless otherwise provided by law, subpoenas so issued shall be served, and, upon application to the superior court or other court of competent jurisdiction by a party or the Presiding Officer, enforced

in the manner provided by law for the service and enforcement of subpoenas in a civil action.

10. Every person who is a party to a Hearing before the Fund Manager shall have the right to be represented by counsel, submit evidence, offer arguments, and cross examine witnesses. The Presiding Officer shall have the power to administer oaths to witnesses.
12. The Presiding Officer shall have discretion to limit (i) the length of the Hearing, (ii) any examination or (iii) the introduction of evidence, if the Presiding Officer reasonably believes such limitation is necessary to prevent the presentation of irrelevant or duplicative evidence. The Presiding Officer is empowered to bifurcate issues presented to the Fund Manager for resolution or set multiple Hearings in a single case. Any party may request bifurcation or multiple Hearings by filing a motion addressed to the Presiding Officer, filed with the Executive Assistant of the Fund Manager.
13. Whenever possible, documents and exhibits shall be introduced by stipulation of the parties. Originals of documents shall be introduced into evidence with leave of the Presiding Officer to substitute the originals with copies. Whenever possible, the parties shall exchange copies of exhibits or other pertinent material before the Hearing or Rehearing at which they are to be offered.
14. Parties may agree upon any facts involved in the proceeding by written stipulation. Stipulated facts shall be considered as evidence in the proceeding.
15. The Presiding Officer may take notice of judicially cognizable facts. In addition, notice may be taken of generally recognized technical, statistical, actuarial or scientific facts within the Fund Manager's specialized knowledge. Parties shall be notified either before or during the Hearing or Rehearing, or by reference in preliminary reports, or otherwise, of the material noticed, including any staff memoranda or data. Parties shall be afforded an opportunity to contest the material so noticed. The Fund Manager's experience, technical competence and specialized knowledge may be utilized in its evaluation of all evidence.
16. The Presiding Officer may permit a deposition to be taken, in the manner and upon the terms designated by him, of a witness who cannot be subpoenaed or is unable to attend the Hearing or Rehearing. Such depositions may be ordered on application of a party filed with the Executive Assistant of the Fund Manager, or upon the Presiding Officer's own motion. The party seeking a deposition must demonstrate to the Presiding Officer that the party has reasonable need of the testimony being sought. All provisions of law compelling a person under subpoena to testify are applicable. Fees for attendance as a witness shall be the same as for a witness in the Superior Courts of the State of Arizona, unless otherwise provided by law or Fund Manager rule.
17. Following the Hearing and receipt of any supplemental material requested by the

Fund Manager, the Fund Manager shall communicate its Decision in writing to the Claimant, or to Claimant's counsel, if applicable. Such Decision shall contain a short statement of the facts, appropriate findings of fact and conclusions of law, and a paragraph or paragraphs containing the Fund Manager's Decision. Notice of the Decision shall be made by U.S. mail, to the Claimant's (or his/her attorney's) last known address. It is the duty of the Claimant to insure that the Fund Manager has the Claimant's (or his/her attorney's) current address. A Decision will be deemed received by the Claimant five days after mailing.

18. In the event that a Claimant fails to appear at a duly noticed Hearing, the Fund Manager may enter a Decision by default.
19. Any Claimant adversely affected by a Decision of the Fund Manager may request a Rehearing by the Fund Manager, as set forth in Subsection E herein.

E. Rehearing

1. A party may request Rehearing of a Decision within 30 days of the date a Claimant or the Claimant's attorney receives the Decision, by filing a request with the Executive Assistant of the Fund Manager. **Failure to file a request for Rehearing within the prescribed time renders the Fund Manger's Decision final.** A final Decision of the Fund Manager may be appealed to the Superior Court of the State of Arizona within the periods specified in, and in the manner provided by, the Arizona Revised Statutes and/or rules adopted for use in the Superior and Appellate Courts of the State of Arizona.
2. A request for Rehearing shall state the basis for such request, and shall be limited to which among other things, may include the following:
 - a. Irregularity in the proceedings of the Fund Manager or allegations that the Fund Manager and/or its Presiding Officer abused their discretion and thereby deprived the moving party of a fair Hearing;
 - b. Misconduct of the Fund Manager or any adverse party;
 - c. Accident or surprise, which could not have been prevented by ordinary prudence;
 - d. Material evidence, newly-discovered, which with reasonable diligence, could not have been discovered and produced at the Hearing;
 - e. Excessive or insufficient awards;
 - f. Error in the administration or rejection of evidence or other errors of law occurring at the Hearing or during the progress of the case leading up to the Hearing;

- g. That the Decision is the result of passion or prejudice; or
- h. That the Decision, including any findings of fact or law or order, is not justified by the evidence or is contrary to law.

A request for Rehearing may be summarily denied if it merely reiterates matters set forth in the Claimant's request for Hearing.

- 3. Any request for Rehearing shall be granted or denied in writing, in the discretion of the Fund Manager. Any such order granting or denying a request for Rehearing shall be sent by U.S. mail to the Claimant's (or his/her attorney's) last known address. It is presumed that such orders mailed to the last known address of the Claimant or Claimant's attorney are received. It is the duty of the Claimant to insure that the Fund Manager has the Claimant's (or his/her attorney's) current address.
- 4. An order denying a request for Rehearing is a final Decision which may be appealed to the Superior Court of the State of Arizona within the periods specified in, and in the manner provided by, the Arizona Revised Statutes and/or rules adopted for use in the Superior and Appellate Courts of the State of Arizona.
- 5. An order granting a request for Rehearing, which notices a Rehearing, and any Rehearing held, shall comply with the procedures set forth in Section D of these procedures.
- 6. In the event that a Claimant fails to appear at a duly noticed Rehearing, the Fund Manager may enter a Decision by default.
- 7. Unless otherwise allowed by the Fund Manager, only one Rehearing is available to any Claimant. Unless otherwise ordered by the Fund Manager, upon issuance of a Decision after a Rehearing, the Decision is final. A final Decision of the Fund Manager may be appealed to the Superior Court of the State of Arizona within the periods specified in, and in the manner provided by, the Arizona Revised Statutes and/or rules adopted for use in the Superior and Appellate Courts of the State of Arizona.