

Hearings Program Administration

Objective

To establish guidelines for the administration of the EDR Hearings Program and the appointment of hearing officers in accordance with Va. Code § 2.2-1202.1 and § 2.2-3005.

Background

The Office of Employment Dispute Resolution (EDR) at the Department of Human Resource Management (DHRM) selects hearing officers for state employee grievance hearings from two sources, in the following priority: (1) attorneys employed by EDR as classified state employees and (2) hearing officers who are attorneys on the list of EDR-eligible hearing officers maintained by the Supreme Court of Virginia, Office of the Executive Secretary (OES). *See* Va. Code § 2.2-3005(B). Hearing officers must also participate annually in at least one day (or its equivalent) of training in employment law or state personnel policies, and participate in a continuing program of training and orientation as determined by EDR.

Responsibility for Administration of EDR's Hearings Program

The EDR Hearings Program Director is responsible for the overall management of EDR's hearing services. In addition, the Hearings Program Director acts as EDR's chief liaison to the OES, administers the hearing appointment process, and collects and maintains data regarding the Hearings Program.

Organization of the EDR Active OES Hearing Officer List

For purposes of case assignment, EDR utilizes a list of active OES hearing officers, each of whom have been selected by EDR from the general list maintained by the OES after having been determined to be qualified to serve for EDR. A hearing officer's inclusion on EDR's active hearing officer list is dependent on a number of factors, including, but not limited to, his or her general qualification status as determined by the OES, completion of EDR training requirements, EDR's need for additional hearing officers, and those factors used to determine eligibility or ineligibility for selection.

OES hearing officers on EDR's active list are assigned by EDR to one of four geographic regions, based upon the location of the hearing officer's primary place of business. This geographic assignment is necessitated by the statutory mandate that grievance hearings be held in the locality in which the grievant is employed. Va. Code § 2.2-3004(F). The geographic regions are as follows: (1) Central Virginia; (2) Northern Virginia; (3) Eastern Virginia; and (4) Western Virginia. (See Attachment A.) EDR may adjust the regional lines and/or regional assignments of hearing officers as required by operational need.

Hearing Officer Appointments

State agency requests for the appointment of a hearing officer are submitted to EDR on a Grievance Form B (Appointment of Hearing Officer). Upon receipt of a Form B, the first assignment option is to determine if a hearing officer employed by EDR can conduct the hearing based on workload considerations.

If this assignment option is not available, an OES hearing officer is selected from the appropriate geographic region, using a system of rotation. If the next OES hearing officer in the rotation is not available, EDR will proceed to the next available OES hearing officer. An OES hearing officer is deemed unavailable by EDR if:

- the hearing officer has represented any party to an employee grievance in the preceding five years. The hearing officer must disclose any such representation to EDR each time he or she is contacted for a potential assignment. This restriction may be waived by EDR, if required by special or unusual operational need, and after full disclosure to each party.
- the hearing officer fails to respond to EDR's request within 24 hours;
- a conflict of interest exists or it is otherwise determined that the hearing officer must recuse himself/herself (*see Rules for Conducting Grievance Hearings* § III(G)); or,
- the hearing officer is unable to conduct the hearing and issue a written decision in compliance with EDR timeliness standards.

If there are no OES hearing officers available in the applicable geographic region, the Hearings Program Director may request an OES hearing officer from a different geographic region to hear the case.

The Hearings Program Director issues a letter of appointment on behalf of EDR to the hearing officer and the parties and/or their representatives. A hearing officer should be appointed within 10 workdays of EDR's receipt of a complete Form B with necessary documentation. The Hearings Program Director has the discretion to delay appointments in the interests of administrative efficiency, e.g., for the consolidation of multiple grievances or when a ruling involving the subject or a related grievance is pending with EDR.

Removal of OES Hearing Officers from EDR's List

EDR may determine that an OES hearing officer is not eligible for continued selection as a hearing officer for grievance hearings. *See Va. Code* § 2.2-1202.1(6). Factors that EDR may consider when assessing a hearing officer's eligibility for continued selection include, but are not limited to, the following: (1) the quality and timeliness of the hearing officer's work; (2) the fitness of the hearing officer from the standpoint of his or her professionalism, temperament, and/or demeanor; (3) failure to complete EDR's training requirements; (4) the hearing officer's compliance with the *Grievance Procedure Manual, Rules for Conducting Grievance Hearings*, EDR rulings, and general administrative and/or technical instructions from EDR; (5) reduced

workload; or (6) a pending recommendation from EDR to the OES to have the hearing officer removed from the OES list.

If a hearing officer is deemed ineligible for further selection by EDR, the hearing officer will be advised in writing by the Hearings Program Director the reason for the determination. The hearing officer may request reconsideration of the decision from the Director of DHRM. Such a request must be made in writing within 15 calendar days of receipt of the initial determination. The Director of DHRM and/or the EDR Office Director will meet with the hearing officer if requested. Through the written request for reconsideration and/or a meeting, the hearing officer may present additional facts, which may be considered in making a final decision regarding the hearing officer's eligibility for continued selection.

Additions to EDR Hearing Officer List

If EDR determines that additional OES hearing officers are needed for EDR's active hearing officer list, EDR will add hearing officer(s) in the appropriate geographic region. Hearing officers will be evaluated to fill openings with a preference given to hearing officers who have attended EDR's most recent annual hearing officer training. Additions to EDR's active hearing officer list will be made at EDR's discretion.

Evaluation

Hearing officer performance is evaluated by the Hearings Program Director in conjunction with the EDR Office Director on a continuing basis to determine the quality and timeliness of decisions, professional demeanor, ability to conduct orderly hearings, temperament, legal ability, and administrative ability.

Flat Rate Fee for Hearings

EDR is committed to assuring that hearing officer fees are reasonable and cost effective for agencies while fairly compensating hearing officers. Other important objectives include cost stability and budget predictability. To accomplish these objectives, a single fee schedule has been established. (See Attachment B.) EDR will make adjustments to the fee schedule as deemed necessary and appropriate.

Attachments

Attachment A: Hearing Officer Regions Map

Attachment B: Hearing Officer Fee Schedule

Related Policies and Procedures

Grievance Procedure Manual

Rules for Conducting Grievance Hearings

Attachment B: Fee Schedule¹

The established fee amount covers all services and disbursements incurred for the hearing officer to conduct an employee grievance hearing, including travel, trip, or office expenses. The fee is paid by the agency involved in a grievance hearing.

Flat Fee Effective October 1, 2021: \$2100

Consolidated hearings: \$3150 for two consolidated grievances, and an additional \$400 for each subsequent grievance consolidated into a single hearing.

If EDR determines that a case is so complex that it is the equivalent of multiple hearings, EDR may direct the agency to pay up to an additional \$2100 for the hearing.

Grievances that are settled or concluded prior to the hearing are billed on a prorated basis as a percentage of the unconsolidated hearing flat fee-

- 10% after the appointment and opening of a case file.
- 25 % after the prehearing conference is scheduled.
- 50 % after the prehearing conference is conducted.
- 100 % if the hearing officer travels to the hearing site.

Fees for EDR-employed hearing officers are paid to DHRM. Fees for OES hearing officers are paid directly to the hearing officer.

¹ Updated October 1, 2021