

# Title 415 WAC

## DEPARTMENT OF RETIREMENT SYSTEMS

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### Chapter 415-02 WAC GENERAL PROVISIONS

#### WAC

415-02-010	Identification.
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**WAC 415-02-010 Identification.** The department of retirement systems is a department of state government created by chapter 105, Laws of 1975-'76 2nd ex. sess. (1) The chief executive officer of the department of retirement systems is the director of retirement systems.

(2) The department of retirement systems is divided, structurally, into two divisions. Each division is headed by an assistant director answerable to the director. The two divisions are:

(a) The administrative services division which is headed by the assistant director for administrative services; and

(b) The program services management division which is headed by the assistant director for program services.

(3) Members of the public may obtain information, make submittals or requests, or obtain copies of agency decisions by addressing their requests or submittals to the director of the department of retirement systems at 1025 East Union, Olympia, Washington, 98504. Upon receipt of such a request or submittal, the director shall forward the same to the proper officer or employee of the department of retirement systems for an appropriate response.

(4) Members of the public who wish to inspect and/or copy public records maintained by the agency pursuant to chapter 42.17 RCW shall do so in accordance with the methods and procedures established in WAC 415-06-010 through WAC 415-06-110 of these rules. [Order 4, § 415-02-010, filed 7/27/77.]

**WAC 415-02-020 Authority.** (1) The department of retirement systems is vested with the authority to administer, in accordance with chapter 105, Laws of 1975-'76 2nd ex. sess., as now or hereafter amended, the Washington public employees' retirement system created by chapter 41.40 RCW, the Washington state teachers' retirement system created by chapter 41.32 RCW, the Washington law enforcement officers' and fire fighters'

retirement system, created by chapter 41.25 RCW, the Washington state patrol retirement system, created by chapter 43.43 RCW, the Washington judicial retirement system, created by chapter 2.10 RCW, and the judges retirement fund created by chapter 2.12 RCW.

(2) The director of retirement systems and the state finance committee are empowered to provide for the investment of all funds of the Washington public employees' retirement systems, the Washington teachers' retirement system, the Washington law enforcement officers' and fire fighters' retirement system, the Washington state patrol retirement system, the Washington judicial retirement system, and the judges retirement fund, pursuant to RCW 43.84.150, with the approval of the respective boards of the retirement systems and funds above listed. The state finance committee will execute all such transactions.

(3) The director is empowered to propose rules pursuant to RCW 2.10.050, 2.10.070, 41.26.060, 41.32.160, 41.40.020, and 43.43.140, with the approval of the appropriate retirement board.

(4) The director has no authority to perform functions vested in the various retirement boards by law with respect to applications for benefits paid upon either temporary or permanent disability, except to see that such staff assistance is provided by the department to the boards as may be required.

(5) The director is required to evaluate all proposed legislation to be submitted by a retirement board as a departmental request. When such legislation is submitted to the director, he will obtain an initial actuarial estimate of the cost of each system of the changes contained in the proposed legislation as if the legislation were applicable to each retirement system under his jurisdiction. The results of that estimate will then be transmitted to the retirement board which has requested the proposed legislation. That board may then modify its legislative proposal into final form for introduction as a bill on the basis of the estimate. The final form for the legislative proposal shall then be returned to the director who shall obtain a final actuarial estimate of the costs applied in the same manner as the initial estimate. On or before September 1, the director will transmit the final legislation proposal together with the actuarial estimates to the governor for consideration in his budget requests and shall also transmit the same to the chairman of the ways and means committees of the legislature. [Order 4, § 415-02-020, filed 7/27/77.]

**WAC 415-02-030 Definitions.** (1) Unless the context requires otherwise, the following terms shall have the meanings established below:

(1) "Department" means the department of retirement systems.

(2) "Director" means the director of retirement systems.

(3) "Clerk" means the director, any assistant director of the department of retirement systems, or the confidential secretary to the director of retirement systems, when used in reference to requests, submittals, papers or pleadings which must be filed with the clerk of one of the retirement boards established by chapters 2.10 RCW, 41.26 RCW, 41.32 RCW, 41.40 RCW, and 43.43 RCW or the director of the department of retirement systems.

(4) "Retirement board" means either the Washington judicial retirement board, the Washington law enforcement officers' and fire fighters' retirement board, the board of trustees of the Washington state teachers' retirement system, the Washington public employees retirement board, or the Washington state patrol retirement board.

(5) "Member" means a person who is entitled to membership in one of the retirement systems created by chapters 2.10 RCW, 2.12 RCW, 41.25 RCW, 41.32 RCW, 41.40 RCW, or 43.43 RCW.

(6) "Employer" means the employer of a particular member.

(7) "Hearings examiner" or "presiding officer" means a person or persons appointed by a retirement board or the director to preside at a contested case hearing and matters related thereto.

(8) "Appeal" means the method by which a party secures a contested case hearing before a retirement board or the director subsequent an initial determination by the board or director of the legal rights, duties or privileges of the specific party.

(9) "Petition" means the method by which a party secures a review of an administrative determination by an assistant director prior to an appeal to the director. [Order 4, § 415-02-030, filed 7/27/77.]

#### Chapter 415-04 WAC PROCEDURE

##### WAC

415-04-010 Petition—Procedure.  
415-04-020 Petition—Response—Decision—Appeal.

**WAC 415-04-010 Petition—Procedure.** All petitions concerning applications for service credits, service retirement benefits, membership and membership credits in the retirement systems, and for decisions relating to benefit increases provided by RCW 41.16.145 or 41.18.104 shall follow the procedure established in this chapter. [Order 4, § 415-04-010, filed 7/27/77.]

**WAC 415-04-020 Petition—Response—Decision—Appeal.** The initial application or petition shall contain the following: (1) A complete and detailed statement of the factual situation underlying the application or petition; which may include all relevant documents and sworn statements deemed appropriate by the petitioner.

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(2) A concise but detailed statement of the constitutional, statutory or common law provisions or precedents relied upon by the petitioner in support of his petition.

(3) An identification of the individual or individuals filing the petition, as well as an identification of legal counsel if such persons are represented by the same.

(4) The address to which the petitioner wishes further correspondence from the department to be sent.

(5) Upon receipt of the petition, the director will assign the same to the assistant director for program services. The assistant director will, within seven days, notify the employer(s) if the petitioner is a member(s) or the affected member(s) if the applicant or petitioner is an employer(s). Said notification shall request the employer(s) or member(s) to submit any written response to the petition no later than 20 days from the date of receipt of the notice, except upon an extension being granted by the assistant director upon good cause shown. The response shall generally take the form of and contain information required of the original petition as described in this section.

(6) Upon receipt of the response, the assistant director shall forward a copy of the response to the original petitioner who shall have ten days in which to reply to the same.

(7) Within 20 days of the expiration of the 10 day period for reply, the assistant director shall enter a written decision containing such findings of fact and conclusions of law as he deems necessary to dispose of the matter.

(8) The decision of the assistant director may be appealed to the director in accordance of the procedures established by WAC 415-08-010 through 415-08-480. An appeal of the assistant director's decision to the director shall be a necessary prerequisite to appeal to the superior court of the state of Washington. [Order 4, § 415-04-020, filed 7/27/77.]

#### Chapter 415-06 WAC PUBLIC RECORDS

##### WAC

415-06-010 Purpose.  
415-06-020 Definitions.  
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415-06-040 Office hours.  
415-06-050 Requests for public records.  
415-06-060 Copying.  
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415-06-080 Review of denials of public records requests.  
415-06-090 Records index.  
415-06-100 Request for records by mail—Address.  
415-06-110 Adoption of form.

**WAC 415-06-010 Purpose.** The purpose of this chapter shall be to ensure compliance by the department of retirement systems with the provisions of chapter 1, Laws of 1973, (Initiative 276), Disclosure—Campaign—Finances—Lobbying—Records; now codified as chapter 42.17 RCW. [Order 4, § 415-06-010, filed 7/27/77.]

**WAC 415-06-020 Definitions.** (1) **PUBLIC RECORDS.** "Public record" includes any writing containing information relating to the conduct of governmental or the performance of any governmental or proprietary function prepared, owned, used or retained by any state or local agency regardless of physical form or characteristics.

(2) **WRITING.** "Writing" means handwriting, typewriting, printing, photostating, photographing, and every other means of recording any form of communication or representation, including letters, words, pictures, sounds; or symbols, or combination thereof, and all papers, maps, magnetic or paper tapes, photographic films and prints, magnetic or punched cards, discs, drums and other documents.

(3) "Department" means the department of retirement systems.

(4) "Director" means the director of retirement systems. [Order 4, § 415-06-020, filed 7/27/77.]

**WAC 415-06-030 Public records officer.** The department's records shall be in the charge of the Public Records Officer designated by the department. The person so designated shall be located in the Administrative Office of the Department. The Public Records Officer shall be responsible for the following: The implementation of the department's rules and regulation regarding release of public records, coordinating the staff of the department in this regard, and generally insuring compliance by the staff with the public records disclosure requirements of chapter 1, Laws of 1973. [Order 4, § 415-06-030, filed 7/27/77.]

**WAC 415-06-040 Office Hours.** Public records shall be available for inspection and copying during the customary office hours of the department. For the purposes of this chapter, the customary office hours shall be from 9:00 a.m. to noon and from 1:00 p.m. to 4:00 p.m., Monday through Friday, excluding legal holidays. [Order 4, § 415-06-040, filed 7/27/77.]

**WAC 415-06-050 Requests for public records.** In accordance with requirements of chapter 1, Laws of 1973 that agencies prevent unreasonable invasions of privacy, protect public records from damage or disorganization, and prevent excessive interference with essential functions of the agency, public records may be inspected or copied or copies of such records may be obtained, by members of the public, upon compliance with the following procedures:

(1) A request shall be made in writing upon a form prescribed by the department which shall be available at its administrative office. The form shall be presented to the public records officer; or to any member of the department's staff, if the public records office is not available, at the administrative office of the department during customary office hours. The request shall include the following information:

- (a) The name of the person requesting the records;
- (b) The time of day and calendar date on which the request was made;
- (c) The nature of the request;

(d) If the matter requested is referenced within the current index maintained by the records officer, a reference to the requested record as it is described in such current index;

(e) If the requested matter is not identifiable by reference to the department's current index, an appropriate description of the record requested.

(2) In all cases in which a member of the public is making a request, it shall be the obligation of the public records officer or staff member to whom the request is made, to assist the member of the public in appropriately identifying the public record requested. [Order 4, § 415-060-050, filed 7/27/77.]

**WAC 415-06-060 Copying.** No fee shall be charged for the inspection of public records. The department shall charge a fee equal to the amount necessary to reimburse the department for its actual costs incident to any copying. [Order 4, § 415-06-060, filed 7/27/77.]

**WAC 415-06-070 Exemptions.** (1) The department reserves the right to determine that a public record requested in accordance with the procedures outlined in WAC 415-06-050 is exempt under the provisions of § 31, chapter 1, Laws of 1973.

(2) In addition, pursuant to § 26, chapter 1, Laws of 1973, the department reserves the right to delete identifying details when it makes available or publishes any public record, in any cases when there is reason to believe that disclosure of such details would be an invasion of personal privacy protected by chapter 1, Laws of 1973. The public records officer will fully justify such deletion in writing.

(3) All denials of requests for public records must be accompanied by a written statement specifying the reason for the denial, including a statement of the specific exemption authorizing the withholding of the record and a brief explanation of how the exemption applies to the record withheld. [Order 4, § 415-06-070, filed 7/27/77.]

**WAC 415-06-080 Review of denials of public records requests.** (1) Any person who objects to the denial of a request for a public record may petition for prompt review of such decision by tendering a written request for review. The written request shall specifically refer to the written statement by the public records officer or other staff member which constituted or accompanied the denial.

(2) Immediately after receiving a written request for review of a decision denying a public record, the public records officer or other staff member denying the request shall refer it to the director or an assistant director of the department. The director or assistant shall immediately consider the matter and either affirm or reverse such denial as soon as legally possible. In any case, the request shall be returned with a final decision, within two business days following the original denial.

(3) Administrative remedies shall not be considered exhausted until the director has returned the petition with a decision or until the close of the second business

day following denial of inspection, whichever occurs first. [Order 4, § 415-06-080, filed 7/27/77.]

WAC 415-06-090 Records index. (1) INDEX. The director has available to all persons a current index which provides identifying information as to the following records issued, adopted or promulgated since June 30, 1972:

- "(a) final opinions, including concurring and dissenting opinions, as well as orders, made in the adjudication of cases;
"(b) those statements of policy and interpretations of policy, statute and the constitution which have been adopted by the agency;
"(c) administrative staff manuals and instructions to staff that affect a member of the public;
"(d) planning policies and goals, and interim and final planning decisions;
"(e) factual staff reports and studies, factual consultant's reports and studies, scientific reports and studies, and any other factual information derived from tests, studies, reports or surveys, whether conducted by public employees or others; and
"(f) correspondence, and materials referred to therein, by and with the agency relating to any regulatory, supervisory or enforcement responsibilities of the agency, whereby the agency determines, or opines upon, or is asked to determine or opine upon, the rights of the state, the public, a subdivision of state government, or of any private party."

(2) AVAILABILITY. The current index promulgated by the director shall be available to all persons under the same rules and on the same conditions as are applied to public records available for inspection. [Order 4, § 415-06-090, filed 7/27/77.]

WAC 415-06-100 Request for records by mail—Address. All communications with the director including but not limited to the submission of materials pertaining to its operations and/or the administration or enforcement of chapter 1, Laws of 1973 and these rules; requests for copies of the director's or board's decisions and other matters, shall be addressed as follows: Director of Retirement Systems, Department of Retirement Systems, 1025 East Union, Olympia, Washington 98504. [Order 4, § 415-06-100, filed 7/27/77.]

WAC 415-06-110 Adoption of form. The director hereby adopts for use by all persons requesting inspection and/or copying of copies of the department records, the form attached hereto as Appendix A, entitled "Request for Public Record."

APPENDIX A

REQUEST FOR PUBLIC RECORDS

Name of Requestor:
Address: Phone:
Date of Request: Time of Request:
Nature of Request:

1. Index Reference -----

2. If not identifiable by reference to the index, then describe the document(s) in detail -----

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Signature -----

For Office Use Only:

- (1) Request Granted [ ] Record Withheld [ ] Record Record In part [ ]
(2) If withheld, name the exemption contained in § 31, chapter 1, Laws of 1973, which authorizes the withholding of the record or part or record: Subsection (1) ( ).
(3) If withheld, briefly explain how the exemption applies to the record withheld.
(4) If request granted, time -----, day -----

[Order 4, § 415-06-110, filed 7/27/77.]

Chapter 415-08 WAC
APPEALS

- WAC
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**WAC 415-08-010 Scope.** These rules shall govern all hearings before the retirement boards (where those boards' rules so provide) created by chapters 2.10, 41.26, 41.32, 41.40, 43.43 RCW and before the Director of Retirement Systems. These rules shall also govern requests for declaratory rulings pursuant to RCW 34.04-.080 and requests for the promulgation, amendment or repeal of any rule of such boards or the director. Where the context requires, reference to a board shall be construed to include the director of retirement systems. [Order 4, § 415-08-010, filed 7/27/77.]

**WAC 415-08-020 Filing appeals.** Any person aggrieved by any final decision of the board or the director must, before he appeals to the superior court invoke the jurisdiction of the board or director by filing with the director personally or by mail, within sixty days from the date such decision was communicated to such person, a notice of appeal before the board or director. The notice of appeal must contain:

(1) The name and mailing address of the member of beneficiary, and the employer of the member;

(2) The name and legal residence of the appealing party, together with the mailing address of his representative, if any;

(3) The date and nature of the accident, injury or disease, the place it occurred and location of the employer, in the case of disability claims;

(4) If the injury or disease did not occur in the county where the member or beneficiary resides, the name of the county in which the appealing party desires to have the hearing held and a city or town most convenient within the county where hearing is to be held;

(5) A statement identifying the decision or award appealed from and that portion of the decision or award considered to be unjust or unlawful;

(6) A clear and concise statement of facts in support of the grounds stated including, where applicable, a description of the physical facts constituting the claimant's present disability and how it is manifested;

(7) The type of relief sought, including specific dates at which time the appealing party believes the benefit accrued;

(8) A statement that the appealing party has read the notice of appeal and believes the contents to be true, followed by his signature and the signature of his representative, if any;

(9) The appealing parties shall file with the clerk by mail or otherwise, the original and two copies of the notice of appeal and the clerk shall forthwith acknowledge receipt of the copies filed with him and his stamp placed upon such copies shall be prima facie evidence of the date of receipt. The board may thereafter require additional copies to be filed if necessary. [Order 4, § 415-08-020, filed 7/27/77.]

**WAC 415-08-030 Parties.** The parties to an appeal shall be the appealing party, the board or director, all persons who have filed a notice of appearance after the receipt of a copy of the notice of appeal under WAC 415-08-020, and all persons who have otherwise filed a notice of appearance and made a proper showing of interest in the appeal. The board or director may exclude from the appeal any party who has unreasonably delayed the filing of a notice of appearance. Upon determination that a person has made a proper showing of interest the director or clerk will forthwith mail him a copy of the notice of appeal. There shall be no obligation to serve notices, pleadings or correspondence upon any person who has not entered an appearance as provided herein. Service upon the representative of a party shall constitute service upon such party. [Order 4, § 415-08-030, filed 7/27/77.]

**WAC 415-08-040 Appearance and practice before the board—Who may appear.** No person may appear in a representative capacity before the board or director or his or its designated hearings examiner other than the following:

(1) Attorneys-at-law duly qualified and entitled to practice before the supreme court of the state of Washington.

(2) Attorneys-at-law duly qualified and entitled to practice before the highest court of record of any other state, if the attorneys-at-law of the state of Washington are permitted to appear in a representative capacity before administrative agencies of such other state, and if not otherwise prohibited by our state law.

(3) A legal intern authorized to practice law pursuant to admission to Practice Rule (APR) 9 of the state supreme court and subject to the limitations contained in said rule. A legal intern shall not appear before the board or its designated examiner without the presence of the supervising attorney except in *ex parte* matters and noncontested cases.

(4) A bona fide officer, partner, or full time employee of an individual firm, association, partnership, or corporation who appears for such individual firm, association,

partnership, or corporation. [Order 4, § 415-08-040, filed 7/27/77.]

**WAC 415-08-050 Appearance and practice before the board—Appearance in certain proceedings may be limited to attorneys.** In all hearings involving the taking of testimony and the formulation of a record subject to review by the courts, where the board or its examiner determines that representation in such hearing requires a high degree of legal training, experience, and skill, the board or its examiner may limit those who may appear in a representative capacity to attorneys-at-law. [Order 4, § 415-08-050, filed 7/27/77.]

**WAC 415-08-060 Appearance and practice before the board—Solicitation of business unethical.** It shall be unethical for persons acting in a representative capacity before the board to solicit business by circulars, advertisements or by personal communication or interviews not warranted by personal relations, provided that such representatives may publish or circulate business cards. It is equally unethical to procure business indirectly by solicitors of any kind. [Order 4, § 415-08-060, filed 7/27/77.]

**WAC 415-08-080 Appearance and practice before the board—Withdrawal or substitution of representatives.** An attorney or other representative withdrawing from a case shall immediately so notify the clerk of the Board and all parties of record in writing, or shall state such withdrawal for the record at a conference or hearing. Any substitution of an attorney or representative shall be accomplished by written notification to the clerk of the Board and to all parties of record, together with the written consent of the prior attorney or representative, and if such consent cannot be obtained, a written statement of the reason therefor shall be supplied. [Order 4, § 415-08-080, filed 7/27/77.]

**WAC 415-08-090 Appearance and practice before the board—Conduct.** All persons appearing in a representative capacity in proceedings before the Board shall conform to the standards of ethical conduct required of attorneys before the courts of Washington. If any such person does not conform to such standards, the examiner may, in his/her discretion and depending on all the circumstances, admonish or reprimand such person, or exclude such person from further participation in the proceedings and adjourn the same, or report the matter to the Board which may, in its discretion, after notice and hearing, take appropriate disciplinary action including, but not limited to, a letter of reprimand, and refusal to permit such person to appear in a representative capacity in any proceeding before the Board. [Order 4, § 415-08-090, filed 7/27/77.]

**WAC 415-08-100 Appearance and practice before the board—Appearance by former employee of agency or former member of attorney general's staff.** No former employee of the board, system or member of the attorney general's staff may at any time after severing

his/her employment with the board or the attorney general appear, except with the written permission of the board in compliance with RCW 42.22.040, in a representative capacity on behalf of other parties in a formal proceeding wherein he previously took an active part as a representative of the board. No such former employee shall appear where to do would violate RCW 42.18.220. [Order 4, § 415-08-100, filed 7/27/77.]

**WAC 415-08-110 Appearance and practice before the board—Examiner duties and powers.** The board or the director may appoint a hearing examiner to act as presiding officer. It shall be the duty of the presiding officer to conduct conferences or hearings in cases assigned to him/her in an impartial and orderly manner, and he/she shall have the authority, subject to the other provisions of these rules:

- (1) To administer oaths and affirmations.
- (2) To issue subpoenas as provided in RCW 34.04.105. A subpoena may also be issued by the attorney of record, or any person making an appearance as authorized by these rules as provided in RCW 34.04.105(2)(a).
- (3) To rule on all procedural matters, objections and motions.
- (4) To rule on all offers of proof and receive relevant evidence.
- (5) To interrogate witnesses called by the parties in an impartial manner to develop any facts deemed necessary to fairly and adequately decide the matter.
- (6) To secure and present in an impartial manner such evidence, in addition to that presented by the parties, as he/she deems necessary to fairly and equitably decide the matter.
- (7) To take appropriate disciplinary action with respect to representatives of parties appearing before the Board.
- (8) To issue orders joining other parties, on motion of any party, or on his/her own motion when it appears that such other parties may have an interest in, or may be affected by, the proceedings.
- (9) To consolidate matters for hearing when such consolidation will expedite disposition of the matters and avoid duplication of testimony and when the rights of the parties will not be prejudiced thereby. [Order 4, § 415-08-110, filed 7/27/77.]

**WAC 415-08-120 Informal conference—Purpose.** The purpose of an informal conference shall be to determine the feasibility of a settlement of the contested matter. The presiding officer shall be present at the opening and closing of a scheduled informal conference, but since the absence of the presiding officer may facilitate, on occasion, the achievement of an agreement or a settlement, he/she may, on the request of either party, or his/her own volition, absent himself/herself from the conference from time to time. [Order 4, § 415-08-120, filed 7/27/77.]

**WAC 415-08-130 Informal conference—When held.** At any time prior to the formal hearing, any party thereto may file a written application with the clerk of the Board, requesting an informal conference. The

Board may thereupon, at its discretion or any time on its own motion, order an informal conference on not less than seven days' notice mailed to each party to the request, at a time and place fixed by the Board. At any time prior to hearing, the presiding officer to whom the case is assigned, may, pursuant to agreement of all parties, convene and preside at an informal conference at a time and place agreed upon. [Order 4, § 415-08-130, filed 7/27/77.]

**WAC 415-08-140 Informal conference—Agreements at informal conferences.** (1) All agreements reached at informal conferences shall be set forth in the record by the presiding officer in writing.

(2) If an agreement concerning final disposition of the matter is reached by all the parties present or represented at a conference, an order may be issued in conformity therewith, providing the Board finds said agreement is in accordance with the law.

(3) If the Board decides that the agreement is not in accordance with the law, it may schedule another informal conference, or direct that a pre-hearing conference be held.

(4) If no agreement is reached by the parties as to final disposition of a request, a pre-hearing conference may thereafter be held. [Order 4, § 415-08-140, filed 7/27/77.]

**WAC 415-08-150 Prehearing conference—Purpose.** The purpose of a prehearing conference shall be to obtain a stipulation of facts to show the Board's jurisdiction in the matter; to obtain agreement as to the issues of law and fact presented and the simplification or limitation thereof; to determine the necessity of amendments to the notice for hearing or other pleadings; to determine the possibility of obtaining admissions of facts and authenticity of documents which will avoid unnecessary proof; to determine the admissibility of exhibits; to obtain stipulation as to all or part of the facts in the case; to determine the limitation of the number of witnesses; to obtain information as to the number of expert and lay witnesses expected to be called by the parties and their names when possible; to determine the approximate time necessary for the presentation of the evidence of the respective parties; and to obtain all other information which may aid in the prompt disposition of the cases. [Order 4, § 415-08-150, filed 7/27/77.]

**WAC 415-08-160 Prehearing conference—When held.** A prehearing conference shall be held in every case pending before the Board or director unless otherwise ordered by the board chairman or the director. Such prehearing conference shall be held at such time as ordered by the chairman or director on not less than seven days' notice to each party. Such prehearing conference may also be held immediately at the conclusion of an informal conference if time permits. [Order 4, § 415-08-160, filed 7/27/77.]

**WAC 415-08-170 Computation of time.** In computing any period of time prescribed or allowed by the board rules, by order of the board or by any applicable

statute, the day of the act, event, or default after which the designated period of time begins to run is not to be included. The last day of the period so computed is to be included, unless it is a Saturday, Sunday or a legal holiday, in which event the period runs until the end of the next day which is neither a Saturday, Sunday, nor a holiday. When the period of time prescribed or allowed is less than seven days, intermediate Saturdays, Sundays and holidays shall be excluded in the computation. [Order 4, § 415-08-170, filed 7/27/77.]

**WAC 415-08-180 Computation of time—Notice of hearing.** (1) **Time.** If the Board or director orders a hearing, he or it shall mail a written notice thereof to all parties not less than twenty days prior to the hearing date.

(2) **Contents.** The notice shall identify the cases to be heard, the names of the parties and the representatives, if any, and shall specify the time and place of hearing, and that the hearing is to be held pursuant to these rules. [Order 4, § 415-08-180, filed 7/27/77.]

**WAC 415-08-190 Computation of time—Upon whom served.** All papers served by either the board, or director or any party shall be served upon all counsel of record at the time of such filing and upon parties not represented by counsel or upon their agents designated by them or by law. [Order 4, § 415-08-190, filed 7/27/77.]

**WAC 415-08-200 Computation of time—Service upon parties.** The final order, and any other paper required to be served by the board or director upon a party, shall be served upon such party or upon the agent designated by him/her or by law to receive service of such papers, and a copy shall be furnished to counsel of record. [Order 4, § 415-08-200, filed 7/27/77.]

**WAC 415-08-210 Computation of time—Method of service.** Service of papers shall be made personally, or, unless otherwise provided by law, by first-class, registered, or certified mail. [Order 4, § 415-08-210, filed 7/27/77.]

**WAC 415-08-220 Computation of time—When service complete.** Service upon parties shall be regarded as complete when personal service has been accomplished; or by mail, upon deposit in the United States mail properly stamped and addressed. [Order 4, § 415-08-220, filed 7/27/77.]

**WAC 415-08-230 Computation of time—Filing with board.** Papers required to be filed with the board or director shall not be deemed filed until actual receipt of the papers by the board or director at his or its headquarters, Capitol Plaza Building, 1025 East Union, Olympia, Washington. [Order 4, § 415-08-230, filed 7/27/77.]

**WAC 415-08-240 Computation of time—Fees.** Witnesses summoned before the board shall be paid by the party at whose instance they appear the same fees



and allowances as are authorized by RCW 34.04.105(4). [Order 4, § 415-08-240, filed 7/27/77.]

**WAC 415-08-250 Computation of time—Proof of service.** The person serving the subpoena shall make proof of service by filing the subpoena and the required return, affidavit, or acknowledgment of service with the board or the officer before whom the witness is required to testify or produce evidence. If service is made by a person other than a representative of the board, and such service has not been acknowledged by the witness, such person shall make an affidavit of service. Failure to make proof of service does not affect the validity of the service. [Order 4, § 415-08-250, filed 7/27/77.]

**WAC 415-08-260 Computation of time—Quashing.** Upon motion made promptly, and in any event at least 3 days before the time specified in the subpoena for compliance, by the person to whom the subpoena is directed (and upon notice to the party to whom the subpoena was issued) the board or its designated examiner may (1) quash or modify the subpoena if it is unreasonable or requires evidence not relevant to any matter in issue, or (2) condition denial of the motion upon just and reasonable conditions. [Order 4, § 415-08-260, filed 7/27/77.]

**WAC 415-08-270 Computation of time—Enforcement.** Upon application and for good cause shown, the board will seek judicial enforcement of subpoenas which have not been quashed. [Order 4, § 415-08-270, filed 7/27/77.]

**WAC 415-08-280 Computation of time—Discovery.** Except as may be otherwise provided, any party may obtain discovery in the manners specified in Superior Court Civil Rule 26(a). The attendance of witnesses may be compelled by the use of a subpoena. Such discovery shall be governed generally by the procedures established by Superior Court Civil Rules 26-37, inclusive. [Order 4, § 415-08-280, filed 7/27/77.]

**WAC 415-08-290 Computation of time—Documentary evidence.** (1) The Board or its presiding officer may require:

(a) That all documentary evidence which is to be offered during the taking of evidence be submitted prior to or at any prehearing conference. The evidence shall be submitted sufficiently in advance of the prehearing conference to permit study and preparation for the conference.

(b) That documentary evidence not submitted in advance, as may be required by subsection (1)(a), be not received in evidence in the absence of a clear showing that the offering party had good cause for his/her failure to produce the evidence sooner.

(c) That the authenticity of all documents submitted in advance in a proceeding in which such submission is required, be deemed admitted unless written objection thereto is filed prior to the hearing except that a party

will be permitted to challenge such authenticity at a later time upon a clear showing of good cause for failure to have filed such written objection.

(2) The presiding officer may, upon findings made on the record, limit the documentary evidence to that presented at any prehearing conference. For good cause shown any party may submit additional documentary evidence at the time of hearing. [Order 4, § 415-08-290, filed 7/27/77.]

**WAC 415-08-300 Computation of time—Excerpts from documents.** When portions only of a document are to be relied upon the offering party shall prepare the pertinent excerpts, all identified, and shall supply copies of such excerpts to the presiding officer and to the other parties. Only the excerpts, prepared and submitted, shall be received in the record. How the whole of the original document shall be made available for examination and for use by all parties to the proceeding. [Order 4, § 415-08-300, filed 7/27/77.]

**WAC 415-08-310 Computation of time—Failure to supply prehearing information.** If any party fails to supply the presiding officer at a prehearing conference the information reasonably necessary to aid the Board in properly scheduling hearings, the Board or the presiding officer may suspend setting a hearing pending receipt of the required information, or may refuse to grant such party a continuance of the original hearing, or may otherwise restrict the time or location of hearing for receipt of such party's evidence. [Order 4, § 415-08-310, filed 7/27/77.]

**WAC 415-08-320 Computation of time—Agreements at prehearing conference.** At the conclusion of a prehearing conference, the presiding officer conducting the same shall state for the record the result thereof. The statement shall include the agreements of the parties concerning issues, admissions, witnesses, time and location of hearings, the issues remaining to be determined and other matters that may expedite the subsequent hearing. The statement of agreement and issues, and rulings of the presiding officer, shall control the subsequent course of the proceedings unless modified for good cause by subsequent order. [Order 4, § 415-08-320, filed 7/27/77.]

**WAC 415-08-330 Rules of evidence—Admissibility criteria.** Subject to the other provisions of these rules, all relevant evidence is admissible which, in the opinion of the officer conducting the hearing, is the best evidence reasonably obtainable, having due regard for its necessity, availability and trustworthiness. In passing upon the admissibility of evidence, the officer conducting the hearing shall give consideration to, but shall not be bound to follow, the rules of evidence governing civil proceedings in matters not involving trial by jury in the superior courts of the state of Washington. [Order 4, § 415-08-330, filed 7/27/77.]

**WAC 415-08-340 Rules of evidence—Official notice—Matters of law.** The Board and its hearing



officers, upon request made before or during a hearing, will officially notice:

(1) **Federal law.** The constitution; congressional acts, resolutions, records, journals and committee reports; decisions of federal courts and administrative agencies; executive orders and proclamations; and all rules, orders and notices published in the Federal Register.

(2) **State law.** The constitution of the state of Washington, acts of the legislature, resolutions, records, journals and committee reports; decision of administrative agencies of the state of Washington, executive orders and proclamations by the governor; and all rules, orders and notices filed with the code reviser.

(3) **Governmental organization.** Organization, territorial limitations, officers, departments, and general administration of the government of the state of Washington, the United States, the several states and foreign nations.

(4) **Agency organization.** The department, commission or board organization, administration, officers, personnel, official publications, and practitioners before its bar. [Order 4, § 415-08-340, filed 7/27/77.]

**WAC 415-08-350 Rules of evidence—Official notice—Material facts.** In the absence of controverting evidence, the Board and its hearing officers, upon request made before or during a hearing may officially notice:

(1) **Board proceedings.** The pendency of, the issues and position of the parties therein, and the disposition of any proceeding then pending before or theretofore concluded by the Board.

(2) **Business customs.** General customs and practices followed in the transaction of business;

(3) **Notorious facts.** Facts so generally and widely known to all well-informed persons as not to be subject to reasonable dispute, or specific facts which are capable of immediate and accurate demonstration by resort to accessible sources of generally accepted authority, including but not exclusively, facts stated in any publication authorized or permitted by law to be made by any federal or state officer, department, or agency;

(4) **Technical knowledge.** Matters within the technical knowledge of the Board as a body of experts, within the scope or pertaining to the subject matter of its statutory duties, responsibilities or jurisdiction;

(5) **Request or suggestion.** Any party may request, or the presiding officer may suggest, that official notice be taken of a material fact, which shall be clearly and precisely stated, orally on the record, at any prehearing conference or oral hearing or argument, or may make such request or suggestion by written notice, any pleading, motion, memoranda, or brief served upon all parties, at any time prior to a final decision;

(6) **Statement.** Where an initial or final decision of the Board rests in whole or in part upon official notice of a material fact, such fact shall be clearly and precisely stated in such decision. In determining whether to take official notice of material facts, the hearing officer may consult any source of pertinent information, whether or not furnished as it may be, by any party and whether or not admissible under the rules of evidence;

(7) **Controversion.** Any party may controvert a request or a suggestion that official notice of a material fact be taken at the time the same is made if it be made orally, or by a pleading, reply or brief in response to the pleading or brief or notice in which the same is made or suggested. If any decision is stated to rest in whole or in part upon official notice of a material fact which the parties have not had a prior opportunity to controvert, any party may controvert such fact by appropriate exceptions if such notice be taken in an initial or intermediate decision or by a petition for reconsideration if notice of such fact be taken in a final report. Such controversion shall concisely and clearly set forth the sources, authority and other data relied upon to show the existence or nonexistence of the material fact assumed or denied in the decision;

(8) **Evaluation of evidence.** Nothing herein shall be construed to preclude the Board or its authorized agents from utilizing their experience, technical competence, and specialized knowledge in the evaluation of the evidence presented to them. [Order 4, § 415-08-350, filed 7/27/77.]

**WAC 415-08-360 Rules of evidence—Tentative admission—Exclusion—Discontinuance—Objections.** When objection is made to the admissibility of evidence, such evidence may be received subject to a later ruling. The officer conducting the hearing may, in his/her discretion, either with or without objection, exclude inadmissible evidence or order cumulative evidence discontinued. Parties objecting to the introduction of evidence shall state the precise grounds of such objection at the time such evidence is offered. [Order 4, § 415-08-360, filed 7/27/77.]

**WAC 415-08-370 Presumptions.** Upon proof of the predicate facts specified in the following six subdivisions hereof without substantial dispute and by direct, clear, and convincing evidence, the board, with or without prior request or notice, may make the following presumptions, where consistent with all surrounding facts and circumstances:

(1) **Continuity.** That a fact of a continuous nature, proved to exist at a particular time, continues to exist as of the date of the presumption, if the fact is one which usually exists for at least that period of time;

(2) **Identity.** That persons and objects of the same name and description are identical;

(3) **Delivery.** Except in a proceeding where the liability of the carrier for nondelivery is involved, that mail matter, communications, express or freight, properly addressed, marked, billed and delivered respectively to the post office, telegraph, cable or radio company, or authorized common carrier of property with all postage tolls and charges properly prepaid, is or has been delivered to the addressee or consignee in the ordinary course of business;

(4) **Ordinary course.** That a fact exists or does not exist, upon proof of the existence of nonexistence of another fact which in the ordinary and usual course of affairs, usually and regularly co-exists with the fact presumed;

(5) **Acceptance of benefit.** That a person for whom an act is done or to whom a transfer is made has, does or will accept same where it is clearly in his/her own self-interest so to do;

(6) **Interference with remedy.** That evidence, with respect to a material fact which in bad faith is destroyed, suppressed or withheld by a party in control thereof, would if produced, corroborate the evidence of the adversary party with respect to such fact. [Order 4, § 415-08-370, filed 7/27/77.]

**WAC 415-08-380 Presumptions—Additional evidence by presiding officer.** The presiding officer may, when all parties have rested, present such evidence, in addition to that presented by the parties, as deemed necessary to decide the appeal fairly and equitably. Any such evidence secured and presented by the presiding officer shall be presented in an impartial manner, and shall be received subject to full opportunity for cross-examination by all parties. If a party desires to present rebuttal evidence to any evidence so presented by the presiding officer, he/she shall make application therefor immediately following the conclusion of such evidence. Such application shall be granted by assignment of a time and place for presentation of such rebuttal evidence. [Order 4, § 415-08-380, filed 7/27/77.]

**WAC 415-08-390 Stipulations and admissions of record.** The existence or nonexistence of a material fact, as made or agreed in a stipulation or in an admission of record, will be conclusively presumed against any party bound thereby, and no other evidence with respect thereto will be received upon behalf of such party, provided:

(1) **Upon whom binding.** Such a stipulation or admission is binding upon the parties by whom it is made, their privies and upon all other parties to the proceeding who do not expressly and unequivocally deny the existence or nonexistence of the material fact so admitted or stipulated, upon the making thereof, if made on the record at a prehearing conference, oral hearing, oral argument or by a writing filed and served upon all parties within five days after a copy of such stipulation or admission has been served upon them;

(2) **Withdrawal.** Any party bound by a stipulation or admission of record at any time prior to final decision may be permitted to withdraw the same in whole or in part by showing to the satisfaction of the board or its designated representative, that such stipulation or admission was made inadvertently or under a bona fide mistake or fact contrary to the true fact and that its withdrawal at the time proposed will not unjustly prejudice the rights of other parties to the proceeding. [Order 4, § 415-08-390, filed 7/27/77.]

**WAC 415-08-400 Expert or opinion testimony number and qualifications of witnesses.** The board or its designated representative in all classes of cases should, where practicable, make an effort to have the interested parties agree upon the witness or witnesses who are to give expert or opinion testimony, either by selecting one

or more to speak for all parties or by limiting the number for each party; and, if the interested parties cannot agree, require them to submit to him and to the other parties written statements containing the names, addresses and qualifications of their respective opinion or expert witnesses, by a date determined by him and fixed sufficiently in advance of the hearing to permit the other interested parties to investigate such qualifications. [Order 4, § 415-08-400, filed 7/27/77.]

**WAC 415-08-410 Expert or opinion testimony number and qualifications of witnesses—Written sworn statements.** The board or its designated representative, shall in all classes, of cases where it is practicable and permissible, require, and when not so permissible, make every effort to bring about by voluntary submission, that all direct opinion or expert testimony and all direct testimony be reduced to written sworn statements, and, together with the exhibits upon which based, be submitted to him/her and to the other parties to the proceeding by a date determined by the presiding officer and fixed a reasonable time in advance of the hearing; and that such sworn statements be acceptable as evidence upon formal offer at the hearing, subject to objection on any ground except that such sworn statements shall not be subject to challenge because the testimony is not presented orally, and provided that witnesses making such statements shall not be subject to cross-examination unless a request is made sufficiently in advance of the hearing to insure the presence of the witnesses. [Order 4, § 415-08-410, filed 7/27/77.]

**WAC 415-08-420 Expert or opinion testimony number and qualifications of witnesses—Procedures at hearings.** (1) **Presiding Officer.** All hearings shall be conducted by a presiding officer who shall conduct the hearing in an orderly manner and rule on all procedural matters, objections and motions.

(2) **Order of presentation of evidence.** The presiding officer shall determine the proper order of presentation of evidence. As a general rule, the appealing party shall initially introduce all evidence in his/her case-in-chief. The adverse parties may then introduce the evidence necessary to their cases-in-chief. Rebuttal evidence will then be received.

Witnesses may be called out of turn in contravention of this rule only by agreement of all parties.

(3) **Opening statements.** Unless the presiding officer rules otherwise, all parties shall present an oral opening statement setting out briefly a statement of the basic facts, disputes, and issues of the case.

(4) **Written statement of qualifications of expert witnesses.** Any party who plans to introduce the testimony of any expert witness at the hearing shall submit to the Board and all parties at the outset of the hearing a written statement of the qualifications, experience, and expertise of each such expert witness.

(5) **Former employee as an expert witness.** No former employee of the Department or the Board or the attorney general shall, at any time after severing his/her employment with the Department, appear, except when permitted by RCW 42.18.220, as an expert witness on

behalf of other parties in a formal proceeding wherein he/she previously took an active part in the investigation as a representative of the Department or Board.

(6) **Objections and motion to strike.** Objections to the admission or exclusion of evidence shall be in short form, stating the legal grounds of objection relied upon, and the transcript shall not include extended argument or debate.

(7) **Rulings.** The presiding officer on objection or on his own motion, shall exclude all irrelevant or unduly repetitious evidence and all rulings upon objections to the admissibility of evidence shall be made in accordance with the rules of evidence established by these rules.

(8) Person appealing or requesting a hearings shall have the burden of proof in the matter. [Order 4, § 415-08-420, filed 7/27/77.]

**WAC 415-08-430 Petitions for rule making, amendment or repeal—Who may petition.** Any interested person may petition the director or board requesting the promulgation, amendment, or repeal of any rule. [Order 4, § 415-08-430, filed 7/27/77.]

**WAC 415-08-440 Petitions for rule making, amendment or repeal—Requisites.** Where the petition requests the promulgation of a rule, the requested or proposed rule must be set out in full. The petition must also include all the reasons for the requested rule, together with briefs of any applicable law. Where the petition requests the amendment or repeal of a rule presently in effect, the rule or portion of the rule in question must be set out as well as a suggested amended form, if any. The petition must include all reasons for the requested amendment or repeal of the rule. [Order 4, § 415-08-440, filed 7/27/77.]

**WAC 415-08-450 Petitions for rule making, amendment or repeal—Agency must consider.** All petitions shall be considered by the board or director and the board or director may, in its, or his/her, discretion, order a hearing for the further consideration and discussion of the requested promulgation, amendment, repeal, or modification of any rule. [Order 4, § 415-08-450, filed 7/27/77.]

**WAC 415-08-460 Petitions for rule making, amendment or repeal—Notice of disposition.** The board shall notify the petitioning party within a reasonable time of the disposition, if any of the petition. [Order 4, § 415-08-460, filed 7/27/77.]

**WAC 415-08-470 Declaratory rulings.** As prescribed by RCW 34.04.080, any interested person may petition the board or director for a declaratory ruling. The board or director shall consider the petition and within a reasonable time it shall:

- (1) Issue a nonbinding declaratory ruling; or
- (2) Notify the person that no declaratory ruling is to be issued; or
- (3) Set a reasonable time and place for a hearing, or submission of written evidence upon the matter, and give

reasonable notification to the person of the time and place for such hearing or submission of written evidence upon the issues involved.

(4) If a hearing is held or evidence submitted, the board shall within a reasonable time;

- (a) Issue a binding declaratory rule; or
- (b) Issue a nonbinding declaratory ruling; or
- (c) Notify the person that no declaratory ruling is to be issued. [Order 4, § 415-08-470, filed 7/27/77.]

**WAC 415-08-480 Declaratory rulings—Forms.** Any interested person petitioning the board or director for a declaratory ruling pursuant to RCW 43.04.080, shall generally adhere to the following form for such purpose.

(1) At the top of the page shall appear the wording "BEFORE THE ----- RETIREMENT BOARD," or "BEFORE THE DIRECTOR OF RETIREMENT SYSTEMS." On the left side of the name below the foregoing the following caption shall be set out: "In the matter of the petition of (name of petitioning party) for a declaratory ruling." Opposite the foregoing caption shall appear the word "Petition."

(2) The body of the petition shall be set out in numbered paragraphs. The first paragraph shall state the name and address of the petitioning party. The second paragraph shall state all rules or statutes that may be brought into issue by the petition. Succeeding paragraphs shall set out the statement of facts relied upon in form similar to that applicable to complaints in civil actions before the superior courts of this state. The concluding paragraphs shall contain the prayer of the petitioner. The petition shall be subscribed and verified in the manner prescribed for verification of complaints in the superior courts of this state.

(3) The original and two legible copies shall be filed with the board. Petitions shall be on white paper, either 8 1/2" x 11" or 8 1/2" x 13" in size.

(4) Any interested person petitioning the board requesting the promulgation, amendment or repeal of any rules shall generally adhere to the following form for such purpose.

(5) At the top of the page shall appear the wording "BEFORE THE ----- RETIREMENT BOARD," or "BEFORE THE DIRECTOR OF RETIREMENT SYSTEMS." On the left side of the page below the foregoing the following caption shall be set out: "In the matter of the petition of (name of petitioning party) for (state whether promulgation, amendment or repeal) of rule (or rules)." Opposite the foregoing caption shall appear the word "petition."

(6) The body of the petition shall be set out in numbered paragraphs. The first paragraph shall state the names and address of the petitioning party and whether petitioner seeks the promulgation of new rule or rules, or amendment or repeal of existing rule or rules. The second paragraph, in case of a proposed new rule or amendment of an existing rule, shall set forth the desired rule in its entirety. Where the petition is for amendment, the new matter shall be underscored and the matter proposed to be deleted shall appear in double parentheses. Where the petition is for repeal of an existing rule,

such shall be stated and the rule proposed to be repealed shall either be set forth in full or shall be referred to by the board rule number. The third paragraph shall set forth concisely the reasons for the proposal of the petitioner and shall contain a statement as to the interest of the petitioner in the subject matter of the rule. Additional numbered paragraphs may be used to give full explanation of petitioner's reason for the action sought.

(7) Petitions shall be dated and signed by the person or entity named in the first paragraph or by his attorney. The original and two legible copies of the petition shall be filed with the agency. Petitions shall be on white paper, either 8 1/2" x 11" or 8 1/2" x 13" in size. [Order 4, § 451-08-480, filed 7/27/77.]