Common Council File 141097

Review of the City of Milwaukee's Duty Disability Retirement Program

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COMMON COUNCIL FILE 141097
REVIEW OF DUTY DISABILITY RETIREMENT PROGRAM

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Transmittal Letter

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Office of the Comptroller

January 15, 2015

Honorable Tom Barrett, Mayor
The Members of the Common Council
City of Milwaukee
Milwaukee, WI 53202

Dear Mayor Barrett and Council Members:

In 2013, Internal Audit contracted with Segal Consulting to perform an independent review of the City of Milwaukee's Duty Disability Retirement Program. Initiated at the request of Common Council President Michael Murphy, the primary objective of the review was to determine the manner in which the operation of the program could be improved to control costs. The engagement included a review of the design, administration, and overall governance structure of the program, as well as the coordination with other leave programs, a benchmark analysis, and a review of the governing charter ordinance for opportunities to decrease the risk of misuse and abuse of the benefit.

The attached report details the results of the review. It outlines the current situation, followed by best practices, and opportunities for improvement for each segment of the program evaluated. Opportunities are not mandated recommendations, rather they provide suggestions for aligning the City's Duty Disability Retirement Program with the cited best practices. It should be noted, that many of the recommendations would require legislative changes to Chapter 36 of the Milwaukee City Charter and Code of Ordinances.

Appreciation is expressed to Segal Consulting, the Employes' Retirement System, the City Attorney's Office, and the Department of Employee Relations for their work and assistance with the project. If you have any questions, please contact me at 286-2347.

Sincerely,

Aycha Sirvanci

Aycha Sirvanci, CPA
Audit Manager

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MILWAUKEE

Section II

Consultant's Report

REVIEW OF DUTY DISABILITY RETIREMENT PROGRAM

November 2014

City of Milwaukee

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Founded in 1939

Segal Consulting

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November 13, 2014

Ms. Aycha Sirvanci, CPA
Audit Manager
City of Milwaukee - Comptroller's Office
200 E. Wells St. Room 404
Milwaukee, WI 53202-3515

Re: **Duty Disability Retirement Program Review**

Dear Ms. Sirvanci:

The City of Milwaukee engaged Segal Consulting (Segal) to conduct a review of its existing Duty Disability Retirement benefit for General City, Fire and Police employees. The objective of our review is to provide the City with an outline of opportunities for improvement associated with administrative processes and rules, application procedures and governing provisions, ultimately to control costs to the City. The review also includes a comparison of the City program to similar government and municipality programs.

Attached is our draft report for your review. We appreciate the opportunity to conduct this review on behalf of the City and look forward to discussing the results.

Sincerely,

Ruth Donahue
Vice President, Benefits Consultant

Penny Finch
Benefits Consultant

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Introduction

The main objective of the review of the City of Milwaukee's Duty Disability Retirement (DDR) Program, as outlined by the City's RFQ, was to review the design, administration, and the overall governance structure of the program, including regulation by the governing charter ordinance. The review also evaluates the City's DDR Program relative to best practices. The review did not include evaluation of any applications for benefits, or the adjudication of benefits.

Segal met onsite and conducted conference calls on a number of occasions with various staff members from the City of Milwaukee and the Employes' Retirement System (ERS), the office primarily responsible for administering the Duty Disability Program, to clarify the scope of the engagement and outline the review process. Information, including process charts and operational forms, provided during the course of those meetings has been used throughout the review. Segal then conducted in-person interviews of the following key stakeholders of the program:

Employes' Retirement System

- ERS Executive Director
- ERS Deputy Director
- Supervisor of the Disability Specialists
- Disability Coordinator
- Disability Specialist who processes applications
- Disability Specialist who processes applications
- ERS IT Representative

City of Milwaukee

- Employee Relations Director
- Management Services Adjuster
- Labor Negotiator
- Deputy City Attorneys
- Assistant City Attorney
- Milwaukee Common Council President

Medical Panel

- Physician
- Psychiatrist

Throughout the interviews, we discussed the program in general, processes, procedures, and interaction with other programs (such as Workers' Compensation and Pension benefits), while reviewing plan documentation, forms and other communications. We found the staff to be insightful, forthcoming and committed to improving the process.

Subsequent to our initial interviews with the Disability Specialists, we were notified of staffing changes and process revisions that have begun to address some of the issues uncovered. We reviewed the documentation of the changes provided by ERS and conducted follow-up interviews with ERS staff.

Finally, on August 15, we met with other representatives of the City, including the City's attorneys and auditor, to discuss the organizational changes as they related to the first draft of our report. Subsequently, we have incorporated feedback we received on the initial draft into this report.

Executive Summary

In reviewing the documented processes of the Duty Disability Program against what we learned in the interviews, we identified operational gaps and opportunities to improve the program and potentially reduce the City's financial liability through benefit modifications, adherence to consistent policy administration and enhanced, objective criteria for benefit awards and continuation.

It is important to note that Chapter 36 of the Milwaukee City Charter (MCC) controls the terms of the program. Based on Chapter 36, the Annuity and Pension Board (Board) can draft limited rules for the program. Many of the gaps or opportunities identified in this report, including those that are considered best practices from comparable public sector systems shown in Exhibit G, will not work with the City's current system because Chapter 36 would need to be amended to permit the adoption of the new process.

A model disability benefit process for a public sector entity, such as a city, incorporates the following general processes that recognize separate functions of various individuals and provide discretion to pursue outside independent review prior to the final determination on the claim:

MODEL WORKFLOW PROCESS

1. Employee experiences injury/illness
2. Employee submits WC claim through Employer
3. Employee notifies ERS of injury/illness
4. Employee completes application for Ordinary or Duty Disability
5. Employee's attending physician completes ERS form outlining injury (no assessment of eligibility or determination of an Ordinary or Duty Disability is stated).
6. ERS submits application and attending physician form to City appointed physician, who then performs a functional assessment of Employee
7. City appointed physician makes determination of disability based on:
    a. Employee application
    b. Attending physician form
    c. Functional assessment
8. ERS compiles all required documentation and makes determination on a "complete disability application file".
9. Once a complete disability application file is ready, ERS submits to the Board for review and approval/denial based on the provisions outlined in Chapter 36.
    a. Board has discretion to select an IME (independent medical examination) at this time
10. Notification of the Board's decision is sent to the Employee
    a. All existing appeals/review provisions apply for the Employee

To the extent that the City's program does not provide for or permit the processes described above, changes cannot be made to the City's program unless Chapter 36 is amended to permit the change in design. For example, in the above Model, there is no panel of physicians whose decision is binding and cannot be overruled by the board. In addition, the above Model provides discretion to the board to request review by an independent medical examiner.

In contrast, a July 28, 2003 legal opinion from the City's attorneys specifically states that, based on Chapter 36, the Board responsible for the City's program cannot go contrary to the Medical Panel. That opinion provides as follows:

"Section 36-05-3-c-1-a, MCC, which governs the processing of police and firefighter applications for duty disability retirement, states in relevant part as follows:

> Recommendations. Such member shall be examined by a medical panel and such medical panel shall make the examination, determination and certification required under this act in accordance with the form prescribed by the board. If the panel recommends that such person is entitled to duty disability retirement allowance provided for in this section, the board shall thereupon grant such allowance."

Chapter 36 is not consistent with many of the best practices maintained by other public sector entities as noted in Exhibit G to this report.

A summary of improvements to align the City's program with the aforementioned best practices includes:

- Preparation of a comprehensive employee-applicant guidebook that lays out a general description of the disability program, including definition of type of disability, eligibility and what paperwork/forms are required in order for an application to be considered "complete", and the review process in language that is easy for any employee to understand;

- Preparation of a comprehensive manual of rules, regulations, procedures and processes that encompasses all documentation for internal use, which can be updated with ease for the use of the disability program staff;

- Requirement for a member to apply for disability rather than applying for a type of disability (i.e., ordinary vs. duty disability) so that the process, and not the applicant, determines the type of disability;

- Redefine the role of the disability management staff to be more administrators of the process for applying for a disability benefit, primarily to ensure the rules and procedures associated with the application process are adhered to and maintained for consistency and efficiency;

- Adequately monitor the re-examinations for continuation of a disability benefit for an established, reasonable period of time following a benefit award;

- Appoint objective, professional Medical professionals who are not tied to the City or unions to review all types of disability applications (e.g., ordinary and duty disability) in order to avoid the perception of an adversarial review process;

- Between the application process and the review by the Medical Panel, there is nothing in the process to test the credibility of the application. One way to address this design gap would be to separate the entity responsible for determining the cause of disability from the entity responsible for determining credibility, as outlined in our Model Workflow. Based on best practices from comparable public sector systems shown in Exhibit G, physicians should not decide causation or credibility;

- Implement a functional assessment as part of the medical examination process that is separate from the attending physician's report; and

- Require physical examination and/or case review by a Physician certified in a specific medical specialty, based on the diagnosis, when appropriate.

In conclusion, the City should attempt to redefine the plan design, streamline the processes, clarify roles and expectations, and improve communication of the rules and review standards exist and will be highlighted in the following report. Consistently implementing and adhering to these revisions would address opportunities or gaps, and could result in improved outcomes.

The foregoing does not constitute legal advice. In view of developing law in many of these areas, Counsel should be consulted for authoritative advice with regard to the legal and potential tax implications of commentary contained in this review report.

[1] It should be noted, the opportunities for improvement outlined above are presented in a logical, sequential order, which is not intended to infer an order of importance.

Analysis of Process

Administration of the Disability Benefit

Current Situation

The City of Milwaukee's Retirement System was created by the Wisconsin Legislature under the Laws of 1937 and then codified in Chapter 36 of the City Charter. Chapter 36 established the Annuity and Pension Board ("Board") to administer ERS and authorizes the Board to adopt rules and regulations pertaining to the administration of the program under Chapter 36. The Employees' Retirement System (ERS) is responsible for the administration of the pension, disability, separation, death, retiree health and life insurance benefit for General City Employes', Fire Fighters, Police Officers and non-represented Fire and Police employees.

At the time of our initial onsite interviews with key staff responsible for processing disability benefit applications, it was noted that these individuals appeared to operate in a silo environment, developing their own procedures without the guidance or requirement of a governing process. The Disability Specialist's role is to counsel the applicant on the benefits available and support the applicant through the documentation process, including submittal of all required forms, in an effort to obtain a complete application file to be passed on to the reviewing entity (the Medical Panel). At that time, the written documentation requirements and process rules that are available to the disability specialists are not contained in one central manual or location, leading to differences in interpretation and administration of the rules and procedures.

ERS has since made process improvements that include a high-level procedure guide. Additionally, a Disability Benefit Coordinator has been appointed who has oversight over all applications, reviewing the data and information for accuracy and consistency, and participates in appointments where Disability Specialists counsel applicants.

Industry and Best Practices

An industry and best practice model includes a detailed procedure manual to provide continuity in the application process and a quality peer review between the disability specialists, with an escalation review process for unique or challenging applications. The escalation process would result in a review of the claim by the Executive Director or Deputy Director prior to releasing the application to the Medical Panel.

Opportunities

Most issues with the administration of a disability benefit arise from the lack of consistency in the application process by those processing applications, communication with the applicant, or quality control around the actual application process and associated rules. With that in mind, the following opportunities for improvement[1] are offered:

- Ensure the administrative rules and procedures clearly and accurately define what constitutes a complete application, document understandable instructions for completion of all forms included in the application, and clarify what is required for the Medical

Council, the Medical Panel and the Board. Compile all written documents into one central, comprehensive manual for internal use.

- Develop a separate guidebook for the employee (applicant), which will ensure a consistent message of the requirements for applying for a benefit. Such a guidebook would include the following:
    - Written in easy-to-understand language;
    - Clear definitions of the eligibility for each type of disability;
    - A check-list of documentation and forms required for filing an application;
    - The definition of a complete application; and,
    - An outline of the benefit process that will follow the determination of a complete application, along with their rights to appeal should that be necessary.

Definition of a Disability Benefit

Current Situation[1]

The standard requirement for a duty disability is that the employee must be totally and permanently incapacitated from their full job description and that the disability in question must be solely the natural and proximate result of a specific work related injury or illness, and nothing else. If the employee is able to demonstrate through the application process that they are unable to perform the duties as outlined in the job description without restrictions, and have this statement supported by reasonable medical certainty to be a permanent situation, then the employee meets the basic standard for a disability benefit. The disability cannot be temporary or partial, as in Workers' Compensation determinations, unless the applicant can be assigned to duty under the Police Department's Limited Duty Protocol (Police Officers enrolled in ERS after August 1, 1985).

There are two types of disability benefits provided under the administration of ERS: ordinary disability and duty disability. For the purpose of this review, we will focus solely on the duty disability program.

There are multiple types of a duty disability benefits available to employees:

- An injury disability based on a specific work related injury or illness contracted as a result of performing his or her occupation;
- An unusual stress disability based on a specific work related incident; and
- A disability for Fire Fighters based on heart, lung or cancer disease that meets the requirements of Wisconsin State statute 891.45 or 891.455

The benefit amount paid to a claimant is based on pay and varies based on type of employee and the presenting condition:

1. Fire Fighters and Police Officers on duty disability usually receive 75% of their current salary. Certain qualifying conditions provide a 90% benefit.

2. General City employees on duty disability receive 75% of their final average salary.

While this report focuses on duty disability, it should be noted that the benefit amount paid for an approved ordinary disability is significantly less than that for duty disability. This becomes an issue when considering that under current practice, an applicant may apply for both types of disability simultaneously, which leads to additional administration and potentially to moral hazard due to the financial differential between ordinary and duty disability benefits.

Claimants are able to engage in other employment to supplement their lost wages. The duty disability benefit is offset dollar for dollar once the total income replaced reaches 100% of the pre-disability income.

The definition of duty disability creates a perceived dilemma by the doctors in the application process. While the physician may recognize the ability for alternate light duty work or other opportunities within the City, they are unable to assign such a certification. As such, the physician is left with the option to either deny or approve a disability certification to ensure the employee receives some level of benefit.

[1]*Source: Employes' Retirement System Overview*

Best Practice

Legislation or charter drives the definition of a disability benefit. While there is no "best practice" for what this should be, industry standards for the legislative policy that governs such a benefit, include:

- Program objectives
- Feasibility of funding
- Administrative rules
- Forms (applicant and physician)
- Definition of a complete application
- Eligibility rules
- Review process

Best practice for private sector disability plans is to offset the benefit dollar for dollar for income that is not earned (e.g., Social Security, retirement, etc.) and use a residual benefit that replaces a percentage of the lost income, when income is earned. This approach provides an incentive to an

employee to continually to seek greater employment opportunities. See Exhibit G to this report for examples of other public sector entities that use this approach.

Opportunity

- Once clear definitions of the benefit, consistent with the City's objectives for the provision of the program, are established, an operational assessment of the existing policy and procedures, including legal opinions, would allow the City and ERS to identify gaps in the existing process. Such a review would consider the application process flow, system requirements, eligibility rules, internal review process, forms, communication with applicant and the definition of a complete application.

  Upon completion of the review, ERS could develop a comprehensive administrative rules and procedures manual for internal use and an employee handbook outlining the benefit, eligibility, timing and review process, and appeal rights for applicants' use.

- Establish a dollar for dollar offset for unearned income and a residual benefit for earned income. If income is earned through other employment, then the benefit should replace the portion of pay that is lost. For example, if an injured officer earns $100k, then the benefit would be $75k. If the officer earns $20k through other employment, then the duty disability benefit would be $60k (75% of the lost $80k). Any other pension or social security benefits would directly reduce the benefit. This allows people to always have an incentive to work more and never allows them to collect more than their original pay. See Exhibit G to this report for examples of other public sector entities that use this approach.

Application Process

Current Situation

The employee may simultaneously apply for an ordinary disability and duty disability benefit for the **same** or **different** condition and is entitled to have each application evaluated on its own merits. The employee may also apply for both an injury and stress related disability and have each application evaluated on its' own merits. The duty disability applicant must also apply for Workers' Compensation. However, the application does not require documentation that the injury was sustained on the job, nor that the applicant qualifies for Workers' Compensation.

During the interview process, we learned that it is not uncommon to suggest an employee apply for an ordinary disability while the duty disability application pends, therefore providing a potential benefit option in the event the duty disability is not approved or becomes untimely in its process. To determine an individual as permanently and totally disabled for an ordinary disability when/if it was in fact a duty related injury conflicts with the intent of the benefit itself.

The definition of a "complete application" is not memorialized in any source materials provided for the purpose of this review; however, each specialist provided a verbal explanation of their definition. Once an application is determined as "complete", the application is submitted to the Medical Panel for review.

Best Practice

It is industry standard practice for an individual to identify in their application if the disability they are applying for is, based on their injury or illness, a duty disability or ordinary disability. To provide an individual the opportunity to select the best disability benefit based on a benefit estimate creates a situation that is driven primarily on a financial incentive and removes the applicability of the actual disability itself.

Separating the assessment of the injury/illness from eligibility to the benefit itself is the most efficient way to administer the benefit. We have outlined a best practice for illustration as follows:

MODEL WORKFLOW PROCESS

1. Employee experiences injury/illness
2. Employee submits WC claim through Employer
3. Employee notifies ERS of injury/illness
4. Employee completes application for Ordinary or Duty Disability
5. Employee's attending physician completes ERS form outlining injury (no assessment of eligibility or determination of an Ordinary or Duty Disability is stated).
6. ERS submits application and attending physician form to City appointed physician, who then performs a functional assessment of Employee
7. City appointed physician makes determination of disability based on:
    a. Employee application
    b. Attending physician form
    c. Functional assessment
8. ERS compiles all required documentation and makes determination on a "complete application".
9. Once a complete application is ready, ERS submits to the Board for review and approval/denial based on the provisions outlined in Chapter 36.
    a. Board has discretion to select an IME (independent medical examination) at this time
10. Notification of the Board's decision is sent to the Employee
    a. All existing appeals/review provisions apply for the Employee

An emerging best practice is to focus the process on health improvement, including referrals to other resources that might be beneficial to the claimant in their efforts to improve their physical and emotional health in order to expedite the return to work process and improve outcomes, when appropriate.

Opportunity

The following revisions to the application process will support an efficient process and appropriate decision.

- Establish a single application process for the ordinary disability and duty disability benefits and base the determination of benefit type on the facts and circumstances submitted at the time of the claim. The application should include verification of the award and/or continuation of the Workers' Compensation claim.

- Insert a nurse into the application review process. Through case management, the entire medical background can be reviewed at this point in the process, enabling identification of conditions that, while not noted as causation, may inhibit the healing process.

- Establish the definition of a timely and complete application. This provides the ability to set controls around the expectations of the applicant and processing specialist and, if possible, allows the Board to deny a claim if untimely or incomplete. Chapter 36 should have time limits between the injury and the application. The Board should be able to deny an application if it is untimely or incomplete.

- The City-appointed physician should conduct the functional assessment. The Medical Panel currently is appointed to do the functional assessment. The Medical Council is better suited to do the functional assessment but not the best choice. Chapter 36 will need to be amended to permit the City to adopt this practice.

- Establish a quality review process similar in nature to that of the Medical Council, one that fosters collaborative discussion and in-depth review across multi-disciplined medical professionals. As compared to the Medical Panel, the Medical Council has the necessary attributes to function in this role (e.g., it is collaborative, faster in its determinations and has a better understanding of this standard). The Chapter 36 design is not compatible with this opportunity.

Process Flow

Current Situation

As exhibited in this report, ERS has created multiple documents outlining the process flow of a duty disability application. At issue is knowing which document is being utilized for any given application or as the governing document.

Opportunity

Compile a comprehensive operational manual that contains all policies, processes and forms that has been approved by the Board. The manual should be one that can be updated, as appropriate, and all updates should be cross-referenced to document Board approval of the update.

Enhancing the current workflow system utilized by ERS staff with systematic capabilities to review, monitor and report on the status of on any application by individual, type or department supports the overall objective to manage the benefit more efficiently. Establishing checkpoints in the workflow process pertaining to forms or timing will allow each application to flow in accordance with the administrative rules and thereby allowing the processor to focus on supporting the employee in obtaining a timely and complete application.

Coordination with Workers' Compensation

Current Situation

The ERS disability specialist discusses the requirement for a duty disability applicant to file a Workers' Compensation claim. However, the actual decision/award of the Workers' Compensation benefit is not considered when processing the disability benefit.

Best Practice

Applying for and being awarded a Workers' Compensation benefit is typically a requirement prior to applying for a duty disability benefit. It is often expected that in order for a determination to be made that one is eligible for a duty disability benefit, his or her Workers' Compensation claim must have been approved.

Opportunities

The following opportunities exist to better coordinate with workers' compensation.

- Require a first report of injury and workplace incident statement as a part of the duty disability application and decision process to provide documentation that the injury actually happened while on duty.
- Require award of Workers' Compensation benefit prior to approval of a duty disability benefit.
- Establish regular communication with the Workers' Compensation administrator to verify on-going eligibility for the benefit.

It is noted and recognized that, since our interview with staff associated to the processing of disability applications, ERS has implemented a procedure requiring all applications to submit a copy of their application for Workers' Compensation (form EB49) as part of the disability benefit application process.

Review Process

Current Situation

The current approach varies for the represented fire, police and non-represented groups. There are no clinical or duration guidelines employed during the process. The focus on the process appears to be verification that an injury/illness exists and not requiring verification that the injury occurred while on duty.

The **Medical Panel** consists of one doctor appointed by the City of Milwaukee Employee Benefits Administration, and one doctor appointed by the employee's union. The Panel is responsible for evaluating all duty disability applications for Fire Fighters and Police Officers who are part of a collectively bargained unit. Each doctor conducts an independent evaluation of

the employee and submits their certifications to the ERS. The certification is then prepared for submission to the Board.

In the event of divergent opinions by the first two appointed Medical Panel doctors, they must agree to appoint a third Medical Panel doctor within six months. If the initial two Medical Panel doctors do not agree on a third Medical Panel doctor within the six months, the City has 30 days to appoint another doctor. This procedure of removing the City physician in the event they can't come to agreement creates an incentive for a delay on the part of the union and makes the process vulnerable to bias in favor of the applicant.

As part of the interview process, Segal met with two city appointed doctors currently assigned to the Medical Panel. Both expressed challenges with the current process and a lack of professional control as it pertains to decisions/outcome for the benefit in question. See Exhibit E to this report regarding one physician's commentary to the process.

The **Medical Council** is a collection of three doctors, tasked to evaluate ordinary and duty disability applications from General City employees, duty death benefit applications, duty disability from non-represented Fire and Police and all ordinary disability applications from Fire Fighters and Police Officers. The Council meets on a monthly basis to review all applications. The applicant and ERS disability specialist are invited to participate in the meeting. If deemed necessary, based on the presented application, the Council may request a medical examination from an independent physician for further evaluation. The Council submits their collective certification to the Board.

Applications for disability benefits are presented to the **Board** with recommendation for either approval or denial based on certifications from the Medical Panel or Medical Council.

The applicant is notified of the decision pertaining to their application for disability benefit. If the decision is to deny the application for a disability or continuation of a disability benefit, the employee is notified of their rights for a review and then a hearing.

The Board employs Hearing Examiners to conduct both the review and subsequent hearing pertaining to all denied applications.

There was significant concern expressed regarding the existing review process for the duty disability benefit from both the Medical Panel and the ERS disability specialists. In particular, the feedback focused on the absence of collaboration and sufficient review. The more objective process applied by the Medical Council was noted consistently as one that should be considered to replace the Medical Panel process.

Once approved, all disabilities are subject to a periodic re-examination to determine eligibility for continuation of the disability benefit. This re-examination is a review of the permanency of the disability itself, to determine if the employee continues to be totally and permanently disabled solely as a result of the initial disability. During this time, the initial causation cannot be revisited or disputed.

It is important to recognize the limitations of Chapter 36. Included in these limitations, Chapter 36 requires the Board to adopt the certification of the Medical Panel. The 2003 legal opinion reiterates this requirement. The Board has no discretion to act contrary to the Medical Panel. The

lack of Board discretion is inconsistent with the Model noted above in the Executive Summary and the examples of other public sector entities noted in Exhibit G of this report.

Best Practice

The best practice model involves a claim review conducted by truly independent clinical resources with a knowledge of the job requirements and expertise in disability claim review.

Disability best practices utilize clinical and duration guidelines to confirm the reasonableness of the treatment protocol and requested duration. If the initial request is less than the duration guideline, then the disability is usually approved to the lesser of the requested time and the duration guideline. The duration guidelines help set the expectation for recovery or return to work for both the employee and manager.

A functional capacity evaluation (FCE) helps determine limitations and abilities to support identification of transitional work opportunities.

Job assessments and ergonomic reviews help identify workplace accommodation opportunities that might help expedite the return to work and help prevent a repeat claim. Industry best practice requires medical certification to support the continued disability if the employee is not able to return to work (RTW) within the stated duration guideline.

Opportunities

Consider adopting the process independent and objective as referenced earlier in the report "Model Workflow".

Include a clinical professional such as a registered nurse as part of the administrative team and application process at ERS. This will allow for qualified reviews of diagnosis and critical review of applications prior to determining as "complete" and ready for Board review. This would also allow ERS to submit a recommendation to the Board for IME if necessary.

Revamp the process for selecting an independent physician, reduce the time for coming to agreement to less than 1 month if possible and take away the incentive for the union to drag out the process to give them the advantage. Criteria should be established for acceptable independent evaluators and create a list of providers from each side that are not allowed to serve as an independent physician, which should streamline the process.

Leverage peer reviews, independent medical evaluations (IME) and functional capacity evaluations (FCE) more aggressively for requests that exceed the protocols. It is always possible to approve more duration days and nearly impossible to take back approved duration days.

Change the ultimate decision maker from the physician who considers just the physical limitations to a different professional resource that considers the physician statement, the functional capacity evaluation, job assessment and workplace statement so they can determine eligibility and opportunities for workplace accommodation, transitional duty and return to work.

In both the private and public sector, the medical process for determining disability claims looks different than that of the City. For one thing, the process is not limited by an entity such as the

Medical Panel. See Exhibit G to this report for examples of the medical process used by other public sector entities and Model in the Executive Summary above.

Additional Opportunities

Outsourcing

Current Situation

Currently, the disability program is totally managed internally within the ERS.

Best Practice

While a majority of employers continue to manage their leave programs internally, a substantial percentage outsource many aspects of the programs. According to the 2012 Employer Leave Management Survey conducted by the Disability Management Employer Coalition (DMEC), organizations with 1,000-4,999 employees, 5,000-9,999 employees and 10,000-19,999 employees outsource 35%, 26% and 31%, respectively, of their leave management programs. By contrast, organizations with more than 20,000 employees outsource nearly 4 in 10 (38%) of such initiatives. For those employers that outsource leave management, short-term disability and long-term disability continue to be the most common programs outsourced to the same vendor, the report notes.

When asked how satisfied they are with their outsourced vendor's ability to comply with regulations, 94% of respondents said they were "somewhat satisfied" "satisfied" or "extremely "satisfied." Respondents expressing satisfaction remained high in respect to other criteria, including the vendor's ability to: interact with departments, deliver effective customer service, provide sufficient resources, provide legislative updates, integrate with other vendors, provide data interfaces, identify improvement opportunities, and share reporting metrics.

Opportunities

Considering the high rates of satisfaction noted in the survey cited above, the City of Milwaukee may wish to outsource components of its disability program, particularly the review and case management aspects of the program, in an effort to enhance objectivity and provide a broader array of professional resources to utilize when appropriate. Additionally, outsourcing management of the program may offer greater opportunities to capture data in order to generate statistics consistent with industry standards for benchmarking purposes and to coordinate with other programs in place at the City (e.g., medical, performance management, EAP, wellness and other leave programs).

The following list of firms may be included in a competitive procurement process for an outsourced partner. This list has not been vetted to determine the degree to which these firms can customize their services to best meet the City's needs, nor is it intended to be an all-inclusive list.

- Aetna
- Broadspire
- Cigna
- Corvel
- Gallagher Basset
- Guardian Life Insurance Co.
- Liberty Mutual
- Lincoln Financial
- Prudential
- Sedgwick
- Standard
- Unum

Behavioral Health

Current Situation

The City does not incorporate a behavioral health assessment in the review process for applications. We understand that the request for this report was driven by an increase in applications related to depression, anxiety and post-traumatic stress disorder. However, psychiatric and psychological assessments by examining physicians are not a routine part of the medical assessment even in these cases, nor are these cases referred to mental health or addictions clinicians for review.

Best Practice

Many employers are integrating behavioral health services into their disability programs, as it is well-established that psychological barriers, such as depression, anxiety and substance use (including side effects of prescription drugs) can inhibit employees' healing process and ultimately keep them from returning to work after an illness or injury.

The DMEC has published data on the prevalence of combining behavioral health services with disability management programs. DMEC found, for example, that approximately 78% of the organizations surveyed had either a fully or a partially integrated/coordinated disability and absence management program. Additionally, 47% of the participants' employers include a behavioral component in their disability/absence management program. Similarly, 41% of the participants' employers screen for potential psychological problems.

Medical specialists, such as psychiatrists, psychologists and social workers, are needed for more complex cases. These specialists need to determine, for example, whether the diagnosis is accurate, whether an individual is permanently and totally disabled, and whether the injury is not healing because the person has another condition such as drug abuse or alcoholism.

Opportunities

Assuming substantive changes to Chapter 36, supportive resources are available to public sector entities such as the City. Many disability management firms have a subset of psychiatric professionals to address cases with a mental health and/or substance use component. Additionally, many specialty behavioral health firms that provide managed psychiatric services and Employee Assistance Programs also provide disability management, including assessment, case review and care management. The following list of firms may be included in a competitive procurement process for an outsourced partner. This list has not been vetted to determine the degree to which these firms can customize their services to best meet the City's needs, nor is it intended to be an all-inclusive list.

- Behavioral Medical Interventions
- ComPsych Corporation
- Disability Management Services, Inc.
- IMCS, Inc.
- Magellan Health Services, Inc.
- Managed Health Network, Inc. (MHN)
- Optum
- Value Options

Prevention

Current Situation

Prevention is a significant focus for the City not all of which are detailed here. The City's wellness initiatives include the programs at: (http://city.milwaukee.gov/der/WYCM). In addition, the Milwaukee Firefighter Academy appears to have a significant initiative led by Health and Safety Officer Jason Mims. The initiative appears to recognize that you need to be fit and able to perform the job and was featured on Fox 6 (http://fox6now.com/2013/03/13/firefighters-focus-on-health-wellness-nutrition-to-aid-in-fighting-fires/).

Best Practices

Industry best practices would establish an integrated approach to fitness for duty and creating a healthy culture. A healthy culture focuses on:

- *Organizational culture* to create a climate of trust and respect with a team-based, collaborative work environment and high expectations for ethics
- *Behaviors in the workplace* to align them with the City's values and to promote a productive and supportive workplace
- *Lifestyle behaviors* that are conducive to physical, intellectual, emotional, financial, social and spiritual wellbeing so that the individual can thrive and thus enable the City to thrive

Similar to the program in place for the firefighters, the Tulsa Police Department launched a wellness program (http://www.tulsaworld.com/news/crimewatch/tulsa-police-department-launches-wellness-program-for-officers/article_44494f3b-62ff-5c11-a523-f463f72b61fb.html) as a means to ensure the police officers are fit for duty.

Opportunities

- Extend a program like the firefighter health and safety program to all City employees.
- Develop a healthy workplace initiative that takes an integrated approach to all benefit to support the physical, emotional, social and financial well-being of its employees.
- Work with various stakeholder groups to establish a vision for a healthy and effective workplace along with key priorities for achieving the vision and metrics for measuring progress.
- Incorporate organizational support structures to ensure potential employees are screened, performance is evaluated and counseling provided when necessary to avoid a growing moral hazard that results in a culture of abuse.

Transitional Duty and Return to Work

Current Practice

General referral programs that exist across the board allow for partial return to work or transitional duty.

Best Practice

The goal of a return to work program is to get employees back to productive work as efficiently (quickly) and successfully (appropriate placement) as possible. The period of re-employment can be therapeutic and help reduce the progression of the disability mindset. The City can require exhaustion of FML in order to qualify for the rehabilitative work program. The same process should apply regardless of the type of leave or nature of disability (occupational or non-occupational). The program can require shaping the position with the assistance of a vocational rehabilitation counselor. There does not need to be a commitment to a full-time position at the end of the rehabilitative work program. Support can be provided to the claimant with a goal of return to work at a position within the City or at another employer.

Opportunity

The City may want to consider replacing the current “light duty” program with a transitional duty program that shifts focus from “limited duty” to more of a rehabilitative work program with a maximum duration (the earlier of achieving maximum medical improvement or 60 to 90 days). Allowing for a transitional duty program as part of a broader return to work program may allow employees to come back to work in some capacity until they return to full capacity, when appropriate.

Exhibits

Exhibit A: Process flow created by Disability Specialist

Exhibit B: Process flow created by ERS leadership

Exhibit C: Process flow created by Segal, based on interviews and documentation provided as part of the review

Exhibit D: Duty Disability Application

Exhibit E: Commentary from Dr. Seter

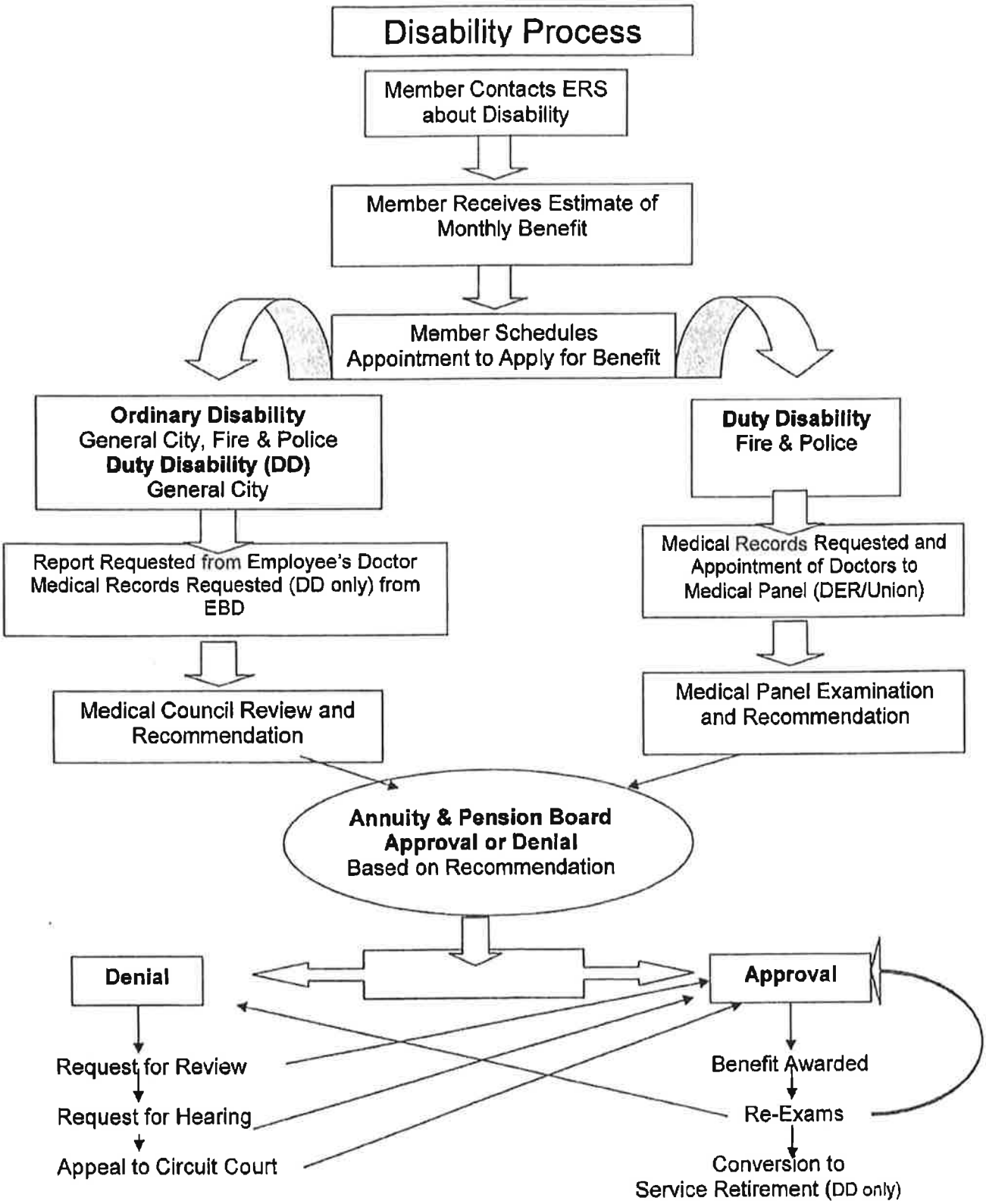
Exhibit F: Example of timeline associated with process when requiring a 3rd Physician

Exhibit G: Benchmark Comparison Chart

EXHIBIT

A

EXHIBIT A


Disability Process
Member Contacts ERS about Disability
Member Receives Estimate of Monthly Benefit
Member Schedules Appointment to Apply for Benefit
Ordinary Disability
General City, Fire & Police
Duty Disability (DD)
General City
Duty Disability
Fire & Police
Report Requested from Employee's Doctor
Medical Records Requested (DD only) from EBD
Medical Records Requested and Appointment of Doctors to Medical Panel (DER/Union)
Medical Council Review and Recommendation
Medical Panel Examination and Recommendation
Annuity & Pension Board
Approval or Denial
Based on Recommendation
Denial
Approval
Request for Review
Request for Hearing
Appeal to Circuit Court
Benefit Awarded
Re-Exams
Conversion to Service Retirement (DD only)

Duty Disability Process Fire & Police

Request an Estimate
The duty disability process begins with a phone call from the member requesting information about the disability process.

If the member indicates that they believe they are disabled and unable to perform their job description, an estimate is requested. The estimate will give the member information about how much their monthly benefit will be and the amount of any lump sum bonus, if any, the member may qualify for.

Schedule an Appointment
Once the member receives the estimate of their monthly benefit, the member should then contact the Employes' Retirement System City of Milwaukee to schedule an appointment to apply for the benefit. **The member should discuss applying for disability with their doctor prior to filing an application.** **The member must also file a claim with the Department of Employee Relation's Workers Compensation Section (DER) for any claimed disabling injury prior to applying.**

Applying for Duty Disability
Completing the paperwork to apply for the benefit takes between 1 ½ to 2 hours.

During the application process, the member will be required to fill out a **Statement of Disability** which states why the member believes they are no longer capable of performing their job duties (Police hired after 02/02/1987 are subject to the Police Department's Limited Duty Protocol and are considered disabled only if they are not capable of working in a limited duty capacity)[1]. The **Application for Duty Disability** requires the member to list the date, location, and a brief description of the accident which occurred during the performance of their job duties and caused their disability. The resulting injury or medical condition which disables them is also listed on the application form.

Medical Records and Medical Panel
After the application process is completed, a request is sent to the Department of Employee Relation's Workers Compensation Section (DER) requesting all medical records associated with the member's claimed disability as listed on the *Application for Duty Disability* and *Statement of Disability*. DER is also asked to appoint a doctor to the Medical Panel to evaluate the member based on the claimed disability. A request is also sent to the member's union (MPA only) asking that they also appoint a doctor to the Medical Panel to evaluate the member based on the claimed disability. The doctors appointed by DER and the member's union become the **Medical Panel**.

Examination and Recommendation
The *Medical Panel* performs the medical examination and makes the recommendation to approve or deny the member's application for duty disability. **If these two doctors cannot agree on whether or not the member is disabled, they will have to choose a third tie-breaking doctor to serve as a member of the Medical Panel**.

The recommendation of the Medical Panel for approval or denial is then given to the Annuity & Pension Board (Board) and the Board will accept the Medical's Panel's recommendation.

Approval or Denial of Application
If the recommendation is for approval, the member is retired on duty disability and has to be **reexamined** every year until they reach either their conversion age or age 57 whichever comes first. Duty disability retirees remain on duty disability until they reach their *conversion age*[2]. Based on the member's hire date, the minimum conversion age is age 52 with 25 years of creditable service. There is also an income limit if the member chooses to work at some other occupation until their conversion age or age 60 if the conversion age is 63 or the member is receiving a lifetime disability (Fire and Police may receive a lifetime benefit based on their hire date[3] or if they receive a 90% duty disability benefit).[4]

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[1] The medical panel doctors will determine whether the member is capable or incapable of working limited duty.
[2] The conversion age is the age the member must stop receiving duty disability and go on a regular or *extended* duty disability retirement.
[3] Police hired before 11/1/1976 and Fire Fighters hired before 10/1/1977 may be eligible for lifetime duty disability benefits.
[4] Fire Fighters and Police Officers who qualify for a 90% duty disability receive duty disability benefits for life.

If the recommendation is for denial, the member may appeal the denial. If the member successfully appeals the denial, the member will be retired on duty disability.

City of Milwaukee - Employes' Retirement System

Fire and Police Ordinary Disability - Overview

- **Member** should discuss their intention of applying for disability with treating physician.
- **Normal time frame** for the application process is between 60 to 90 days:
  - Failure to discuss with treating physician may extend the processing time
- **Medical Council** consists of 3 doctors:
  - Reviews treating physician's report
  - May request Independent Medical Examination
  - Makes recommendation to Approve/Deny application
- **Approval/Denial** is official once Annuity & Pension Board accepts Medical Council recommendation.
- **If disability application is denied** the member has the right to the Appeal Process:
  - Review
  - Hearing
  - Circuit Court
  -
- **Ordinary Disability benefit** is based on the Final Average Salary (FAS):
  - 25% for the first five years of service credit
  - Thereafter, 2% for every year of service credit up to the maximum of 50% of the FAS
- **Lifetime benefit**, member must meet 5 years of creditable service:
  - Qualifying time may be used to qualify for benefit
- **Survivorship Options**:
  - Permanent reduction of maximum allowance
  - Survivorship Option selected can never be changed, regardless of circumstances
- **Health Insurance** member must pay 75% of the total cost of the plan:
  - Member cannot have coverage under the City and an outside health insurance plan
- **Life Insurance**:
  - Lifetime coverage if service credit is equal to 20 or more years
  - **Limited coverage for two years, If service credit is less than 20 years**
  - Premium is $.53 per thousand dollars of coverage
- **Cost of Living Adjustment (COLA):**
  - Begins on 1st anniversary of retirement and each subsequent anniversary
  - Percentage increases are based on the Consumer Price Index (CPI) for previous year with a maximum of 3%
- **Benefit is subject to Federal and State taxes**.
- **Outside earnings** are reportable until age 60.
- **Re-exams**:
  - Every year until age 57
- **Global Pension Settlement** consenters are eligible for the 5% Lump Sum Bonus (LSB):
  - Benefit is taxable unless rolled over to IRA or other qualified plan.
  - Payable the last business day of the month following the first disability benefit /unless receiving limited Ordinary benefit.
  -
- First disability benefit is payable the end of the month following approval by the Annuity & Pension Board.

Rev: 5/7/2010

EXHIBIT

B

EXHIBIT B

SUMMARY OF CHANGES TO DISABILITY RETIREMENT APPLICATION PROCESS

(post 11/22/13 Legal Opinion)

I. Updated Member Handbook and Brochures

a. Cmers.com website "Disability Benefits" process.

b. Member handbook and the various disability retirement brochures.

II. Member's initial Contact with the ERS

a. When member contacts the ERS to inquiry about disability retirement, he/she speaks with a Disability Specialist, and is informed about how the process works, what documents the member needs to provide the ERS (in addition to the member's/survivor's personal certified documents, a copy of the department-signed EB-49 form, and a written statement from his/her department advising whether they will be able to accommodate the member's permanent work restrictions as set forth in writing from the member's treating physician), etc...

b. Creation of a new cover letter specific to the Disability Estimate of Benefits sent to the member, outlining required documentation needed from the member before he/she is allowed to apply for disability retirement.

c. When the member calls the ERS after receiving the Estimate of Benefits and cover letter, a Disability Specialist will, again inform the member that he/she must have all required documentation (see § II.a) at the time of the appointment with the ERS. If he/she does not have proof of filing for a Worker's Compensation determination (EB-49 form) and the written statement ("accommodation" letter) from the employer notifying the member whether his/her permanent work restrictions can/cannot be accommodated, the member is advised that he/she will not be able to sign the disability retirement paperwork and must reschedule the appointment with the ERS until such time as he/she can provide the required documents.

d. If the member is a protective service employee, his/her department will be advised by the ERS of the potential disability filing. This will give the department a "heads-up" that they will be contacted by the member requesting an accommodation letter and copy of the EB-49 form.

III. Disability Application Process

a. Creation of a new position - "Disability Benefits Coordinator," which ensures additional oversight to the application process. In particular, this assignment will include, but is not limited to, the following:

- Oversight of the disability process on behalf of the ERS/Annuity and Pension Board to ensure completion of the applicant's file;
- Review applications for compliance with § II.a above;
- Review all medical records received from Worker's Compensation Office, and obtain any additional medical records from applicant's healthcare providers that may be relevant to the applicant's application for disability;

- Coordinate communications between Worker's Compensation section and the applicant's employing department;
- Draft the appropriate letter to Medical Panel (or Medical Council), including a synopsis of pertinent work history information, if necessary;
- Review the Medical Panel's/Medical Council's determination, communicate with the applicant's employing department regarding any necessary follow-up communications;
- Provide guidance to the ERS staff, City departments/agencies, Medical Panel and Medical Council, as needed.

b. Modify existing/creating new letters to the Medical Panel/Medical Council that are customized for each applicant and his/her injury, includes a synopsis of detailed work history, injury, and work restriction/accommodation information received from the applicants employing department. Additional, these letters have been modified to include additional information regarding an applicant's due process in the event a claim is denied, as well as clearer guidelines related to the standards the physicians are required to apply in their determinations.

c. Modified the Board-approved application, as recommended in the 11/22/13 Legal Opinion.

d. Require applicant to sign an additional medical release (both for initial disability application process, as well as the re-exam process) specific to ERS ability to obtain any additional medical records from applicant's healthcare providers that may be relevant to the applicant's application for disability;

e. Increased communication with legal counsel regarding the modification of letters, contact with members, and application filings.

f. Precluding an applicant's hired consultant from interfering with the disability process.

g. Prohibiting the applicant from supplementing their disability application with pre-typed statements that contain misleading and/or inaccurate information.

IV. Weekly Disability staff meetings

V. Case Management Reports

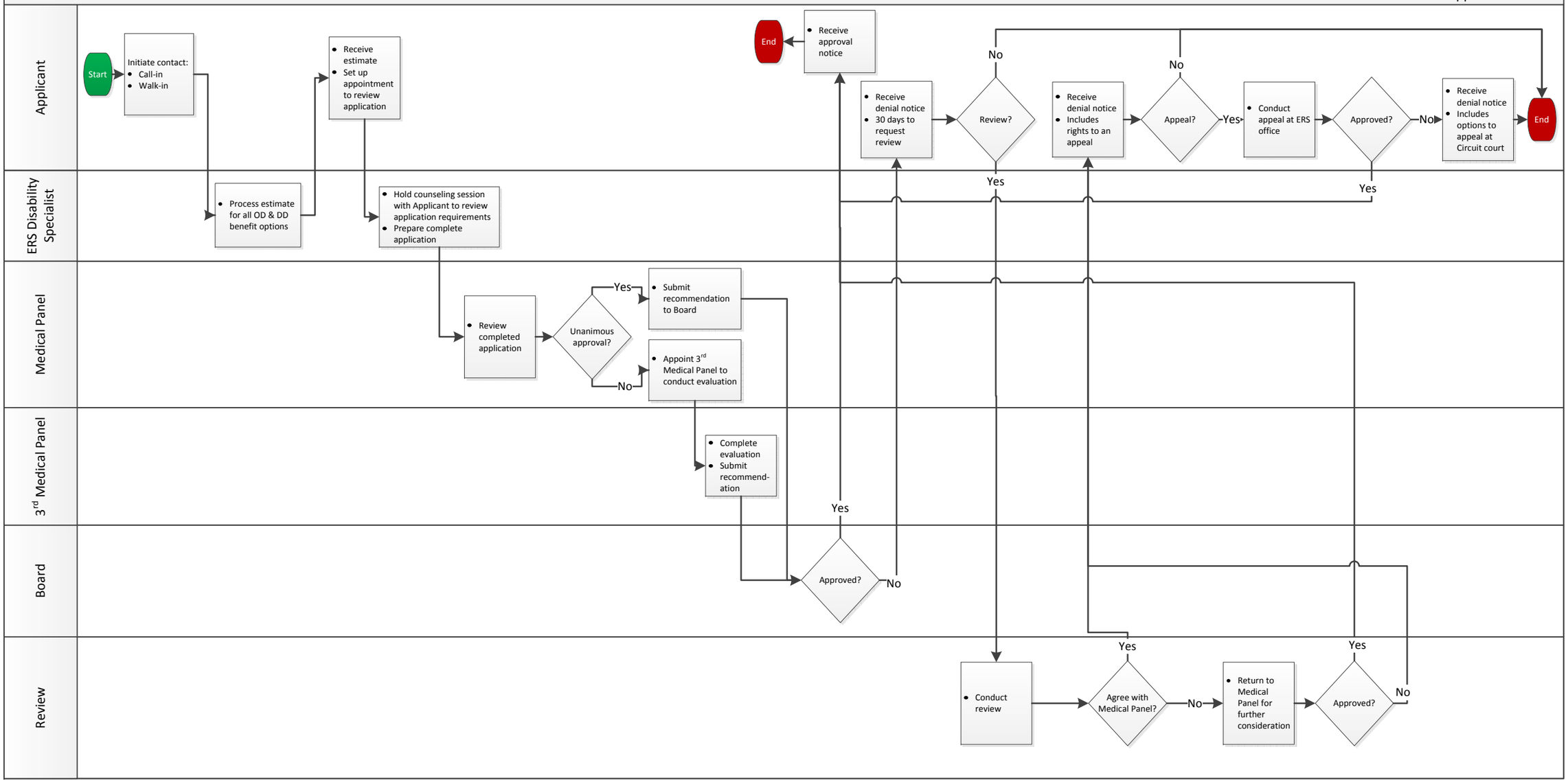
The use of case management reports to track status of current applications and re-examinations.

EXHIBIT

C

City of Milwaukee – Duty Disability

Application Process



EXHIBIT

D

Employes' Retirement System
City of Milwaukee
789 North Water Street, Suite 300
Milwaukee, WI 53202
1-800-815-8418 or 414-286-3557

EXHIBIT D

APPLICATION FOR DUTY-DISABILITY RETIREMENT
FIRE AND POLICE

CASE NUMBER: <<Case_No>>

MEMBER INFORMATION

PERSON ID: <<PersonID>>		DATE OF BIRTH: <<DateOfBirth>>	DATE: <<Current_Date>>
NAME:	FIRST: <<FirstName>>	MI: <<MiddleInitial>>	LAST: <<LastName>>
ADDRESS:	<<AddrLine1>> <<AddrLine2>>		
ADDRESS:	<<AddrLine3>>		
CITY:	<<City>>	STATE: <<State>>	ZIP: <<Zip5>><<Zip4>>
PROVINCE: <<Province>>		POSTAL CODE: <<PostalCode>>	COUNTRY: <<Country>>
DEPARTMENT: <<Department>>		POSITION TITLE: <<Title>>	

TO THE ANNUITY AND PENSION BOARD

In accordance with the provisions of the law governing the operation of the Employes' Retirement System of the City of Milwaukee, I, the undersigned, a member of the System, hereby make application for retirement from active service effective <<Retirement_Projection_Date>>, on account of disability which incapacitates me for duty and which is the natural and proximate result of an accident which occurred in the actual performance of duty and not as a result of negligence on my part. The accident causing my disability occurred as follows:

Date: _____ Place: _____

Describe Accident: _____

_____

Injury Resulting from Accident: _____

_____

Witnesses: _____

I attach a statement as to my physical condition, together with an authorization to my physician, to report directly on my condition to the Medical Panel of the System.

MEMBER CERTIFICATION

Signature of Member:	Signature of Witness:
_____	_____
<<NameAndSuffix>>	

NOTARIZATION OF MEMBER'S OR AUTHORIZED REPRESENTATIVE'S SIGNATURE

State of _____ County of _____

<<NameAndSuffix>> being first duly sworn under oath/affirmation states that he/she has read the foregoing application and knows the contents thereof; the same is true of his/her own personal knowledge, except as to those matters stated on information and belief, and as to those matters stated on information and belief, he/she verily believes them to be true.

Subscribed and sworn to (or affirmed) before me on this _____ day of _____, _____

(SEAL)

_____
Notary Public

_____
Date of Commission Expiration

DATE	PLACE	DESCRIBE ACCIDENT	INJURY SUSTAINED

Signature of Member: _____ Date: _____

Employes' Retirement System
City of Milwaukee
789 North Water Street, Suite 300
Milwaukee, WI 53202
1-800-815-8418 or 414-286-3557

STATEMENT OF DISABILITY

DUTY DISABILITY - FIRE & POLICE

Statement to be returned with Application

CASE NUMBER: <<Case_No>>

MEMBER INFORMATION

PERSON ID: <<PersonID>>	DATE OF BIRTH: <<DateOfBirth>>		DATE: <<Current_Date>>
NAME:	FIRST: <<FirstName>>	MI: <<MiddleInitial>>	LAST: <<LastName>>
ADDRESS:	<<AddrLine1>>		
ADDRESS:	<<AddrLine2>>		
CITY:	<<City>>	STATE <<State>>	ZIP <<Zip5>><<Zip4>>
DEPARTMENT: <<Department>>		POSITION TITLE: <<Title>>	

TO THE ANNUITY AND PENSION BOARD

I hereby state that I believe I am incapacitated for further service for the City of Milwaukee in the position mentioned above due to on-the-job injury(s) on the following dates:

_____

The reason(s) I cannot perform the duties of my job are:

_____
_____
_____
_____
_____
_____
_____

and that I have been so certified by my physician, DR. <<PR_FirstName>> <<PR_LastName>>. I further authorize my physician to make a full report regarding my condition to the Medical Panel of Physicians of the Annuity and Pension Board, for its determination of my eligibility for disability retirement and its report to the Board. I agree to appear before the physician or physicians designated in accordance with Sec. 36.02 of the Milwaukee City Charter (Pension Law).

MEMBER CERTIFICATION

Signature of Member:

_____

<<NameAndSuffix>>

EXHIBIT

E

SETER MEDICAL S.C.

April 1, 2014

Alderman Mike Murphy
City Hall
Room 205
200 E. Wells St.
Milwaukee, WI 53202

Dear Alderman Murphy,

By way of introduction, my name is Andrew J. Seter, M.D. I am a physician Board Certified in Internal and Occupational Medicine. I have been conducting Duty Disability Evaluations on the behalf of the City of Milwaukee since 1997. The majority of cases that I see are orthopedic in nature. I do not evaluate psychiatric or stress cases.

From 1995 until 2012, I owned and operated Sensia Healthcare which was an independent provider of Occupational Medicine services to numerous employers throughout the Metro-Milwaukee area. The primary services offered involved the evaluation and treatment of work related injuries, pre-placement examinations and drug and alcohol testing. I subsequently sold the business during 2012. I continue to conduct Duty Disability Evaluations and Independent Medical Examinations.

During my years of practice, I have become very familiar with the worker's compensation system and the Duty Disability process. I believe that I have been utilized by the City of Milwaukee to provide independent medical opinions due to the objectivity that I bring to each case. My reports are thorough and document the rationale for the decisions that I render. I do not view myself as a bought opinion. I have approved many Duty Disability applications without contest. Others that I have questioned have been referred to a third "tie breaker" physician for evaluation. Several cases have resulted in litigation.

I am aware that the City of Milwaukee is conducting an independent review of the Duty Disability process. The intent of my letter is to offer my observations on the process along with making specific recommendations for improvement. I present this information to you for your consideration.

To begin with, the basic tenet of the process is that if a police officer or fire fighter sustains an injury in the line of duty that prevents return to work performing the full duties of their position, then Duty Disability is indicated. The employee receives the majority of their salary tax free along with benefits until reaching retirement age at which time they are converted to a different benefits structure. The bottom line is that once on Duty Disability, the employee receives what can be a lengthy and extended benefit for the rest of their life without having to provide any further service to the citizens of the City of Milwaukee. The police department offers modified duty which reduces the number of applicants receiving Duty Disability. The fire department does not.

In essence, the City has created a process whereby different standards are applied to different departments. A police officer needs to be permanently disabled from ALL work whereas a firefighter needs to be permanently disabled from the full duties of only one position, that being a firefighter, in order to receive Duty Disability. The exception to this rule is that police officers hired prior to 1987 are NOT eligible for modified duty work.

My first recommendation is for the fire department to offer modified duty work. I trust that there are a number of support positions even in the firehouse that are not as physically demanding as being a fire fighter. Other administrative and technical positions also exist.

In conducting my Duty Disability Evaluations, I have attempted to abide by the rules as currently defined. I estimate that I have evaluated about 100 police officers and firefighters for the City of Milwaukee. Some have sustained serious injuries for which they will always struggle. I believe that Duty Disability was intended for these individuals.

In the vast majority of cases, most employees receiving Duty Disability are capable of performing some other type of work. In fact, many have other jobs. Some even run their own companies. One fire fighter is completing his Orthopedic Surgery residency while on Duty Disability. A police officer (hired before 1987) competes in triathlons. Each of these individuals cannot perform the full duties of their prior position yet remain very functional. I do not believe the intent of the program was to be applied in this manner.

Within the worker's compensation system, if an employee sustains an injury that prevents return to their prior employment, they are eligible for retraining to enter the work force in a different capacity. I suggest that the same standard be applied to police officers and fire fighters. I am not aware of any other job category in which an employee is guaranteed compensation for life in spite of being fully employable. I suggest that addressing this issue be a primary focus of your attention.

Unfortunately, I have also come across cases that are very questionable in nature. In certain cases, I have doubted the seriousness of the alleged injury. Others were due to non-work related conditions that made it into the worker's compensation system and eventually onto Duty Disability. Frankly, others have flat out lied to me about their conditions. Others had issues with drugs and alcohol. Bear in mind a good number of these employees are being treated by physicians who are sympathetic to their cause. Many doctors also do not fully understand the worker's compensation system or the tenets of Duty Disability.

I need to stress that the most important information that I receive regarding a Duty Disability case is the medical records from the treating physician(s). I have said that oftentimes the employee will tell me one thing but the medical records will tell me the truth. In fact consistency or inconsistency between an employee's statements and the information provided in the medical records is telling regarding an employee's honesty.

Unfortunately, in many cases, the medical records I receive are incomplete. Surgical or treatment records are missing. I rarely ever receive medical records dated prior to the injury. In order to determine whether Duty Disability is indicated also requires determination as to whether the condition is work related or not. I know of applicants who were able to get non-work related conditions accepted as work related and then onto Duty Disability.

The medical records that I receive from the City of Milwaukee come in a large stack. My first task is to organize the records and remove the multiple duplicates that are invariably included. The process of organizing the medical records in a complicated case can literally take hours.

As a condition of applying for Duty Disability, I recommend that the applicant be required to sign a release granting access to all pertinent records, work and non-work related, regarding their case. Also,

staff within the City needs to organize the records in a chronological manner removing all duplicates. The evaluating physicians will have an easier time offering an informed judgment.

In those cases in which I feel that Duty Disability is not indicated, my obligation is to contact the treating physician to select a third or "tie breaker" physician whose opinion ultimately stands. My struggle is settling on a third physician who is objective AND understands the Duty Disability process. Not many of these doctors exist. In some cases, the treating doctor and I were unable to settle on a third doctor. The cases were subsequently "dead locked" and the evaluation process reinitiated. In certain cases those denied Duty Disability pursued legal avenues and were granted disability status by the courts. Removing someone from Duty Disability once granted is very difficult.

In cases where a third doctor is required, I suggest referral to an established panel of physicians who can meet as a group, interview and examine the applicant, write independent and/or joint opinions, and vote on the appropriateness of Duty Disability. The treating physician would be removed from the process. The recommendations can be independently reviewed by legal counsel if needed. The opinions offered are subsequently provided by physicians who understand the worker's compensation system and the Duty Disability process.

In closing, I want to stress one observation in particular. The vast majority of the police officers and firefighters that I have evaluated have been honest, ethical and cooperative. They had sustained significant work related injuries which lead to chronic disability and pursued a benefit which is currently available to them. In the majority of the cases, I have sided with the applicant and granted Duty Disability. Whether the current rules and process regarding Duty Disability are appropriate or not needs to be addressed.

I thank you for your consideration. I would be happy to meet if you wish.

Respectfully submitted,

Andrew J. Seter, M.D.
Seter Medical, S.C.

EXHIBIT

F

EXHIBIT F

Case Management Timeline

07/24/2012: Brad DeBraska came into offices of the ERS and scheduled disability retirement appointment on behalf of the member.

07/27/2012: Member applied for Duty and Ordinary disability retirement. Letter to MPA to appoint the union doctor, and letter to DER to appoint the City doctor sent.

08/24/2012: ERS receives letter from MPA appointing Dr. [redacted] ("Union-appointed Dr.") as union doctor to Medical Panel.

09/21/2012: ERS receives letter from DER appointing Dr. [redacted] ("City-appointed Dr.") as City doctor to Medical Panel, worker's comp file, and notice of 5% permanent partial disability payment award.

10/02/2012: ERS received Medical Examination by Personal Physician as it relates to member's Ordinary Disability Application (approved).

10/03/2012: ERS receives copy of MPD letter to Michael Brady (DER) advising that department has limited duty assignments available to accommodate member's restrictions.

10/03/2012: ERS sends worker's comp file to Medical Systems for sorting.

10/10/2012: ERS receives sorted worker's comp file from Medical Systems, and invoice for sorting services.

10/15/2012: Letter with worker's comp medical file and copy of duty disability application mailed to Union and City-appointed doctors to complete Certification.

10/22/2013: ERS receives Medical Examination form from Union-appointed Dr. for member's Ordinary Disability application. ERS staff left voicemail message for member to advise ERS whether he wants to proceed with his Ordinary Disability or wait for a determination on his Duty Disability application. **NOTE: ERS has never received a response from member regarding this matter.**

10/29/2012: Member's appointment with City-appointed doctor.

10/30/2012: ERS receives Appointment Date Notification form from member.

12/17/2012: City-appointed Dr. calls ERS and advises staff that he has tried contacting Union-appointed Dr. three times regarding the appointment of the third doctor, and has not received a response. He states he will continue calling Union-appointed Dr.

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01/18/2013: ERS receives City-appointed Dr.'s written report (denied).

01/24/2013: ERS receives City-appointed Dr.'s faxed copy of the Certification form and note regarding the appointment of a third physician to Medical Panel (written note states that City-

Case Management Timeline

appointed Dr. has made several calls to Union-appointed Dr. to discuss appointment of third doctor, but he has not received a return call from Union-appointed Dr.).

04/11/2013: ERS receives copy of letter dated 03/10/203 from Union-appointed Dr. and written report that was directed to "COM Disability Board, Employee Relations".

05/07/2013: Member brought in to the ERS a copy of a Memorandum dated 05/02/2013 he wrote to MPD as it relates to a request to have his unpaid medical leave extended, and the effects of returning to work in a limited duty capacity on his DDR application.

05/07/2013: ERS receives updated Certification form and written report from Union-appointed Dr.

05/17/2013: ERS receives email from DER/WC with copy of administrative law judge decision dated 12/19/2011 determining that member's February 14, 2008 [redacted] condition is not work-related.

05/22/2013: ERS receives letter from member's attorney advising of his representation of member as it relates to his DDR application.

05/23/2013: ERS sends letter to Medical Panel physicians (City and union-appointed Drs.) with copy of administrative law judge decision, and Appointment of Third Doctor to Medical Panel form.

07/01/2013: ERS receives Appointment of Third Doctor to Medical Panel form from City-appointed Dr., appointing Dr. [redacted] ("Dr. X").

07/17/2013: Letter to Union-appointed Dr. requesting that he confirm his agreement to the appointment of Dr. X to the Medical Panel.

07/26/2013: ERS receives Appointment of Third Doctor to the Medical Panel form from Union-appointed Dr. confirming the appointment of Dr. X.

07/30/2013: ERS sends letter w/ WC file and all relevant documents to Dr. X.

08/12/2013: ERS receives Appointment Date Notification form from member advising of his appointment with Dr. X on September 18, 2013.

09/24/2013: ERS receives letter from Dr. X recusing himself from Medical Panel due to having personally treated the member in the past.

09/24/2013: ERS sends letter to the City and Union-appointed Drs. advising that Dr. X has recused himself from Medical Panel and that they must again agree on the appointment of another third doctor to the Medical Panel.

Case Management Timeline

11/14/2013: ERS receives telephone call from City-appointed Dr. stating that he left three messages for Union-appointed Dr. and has not received a return call/response. City-appointed Dr. wanted to know what he should do next. Staff advised City-appointed Dr. that a legal opinion was issued stating that if the Union-appointed Dr. fails to cooperate, the City-appointed Dr. will need to be replaced. ERS staff called member and City-appointed Dr. [note: it's believed that this entered note was a typo and should have said stated: "ERS staff called Union-appointed Dr."] and advised of legal opinion and board rule.

11/19/2013: ERS receives email communication from member that he spoke with Union-appointed Dr.'s office and he was informed that City-appointed Dr. is not returning their calls and refuses to agree on a third doctor. ERS staff advises member she will contact City-appointed Dr. Staff also advising member to call Union-appointed Dr.'s office and have them to document all contacts with City-appointed Dr.'s office to prove they have been cooperating with their role in the process of trying to appoint a third doctor.

11/19/2013: ERS receives email communication from City-appointed Dr. that his has made several attempts to contact Union-appointed Dr. to discuss the appointing of a third doctor, and Union-appointed Dr. has failed to call him back.

12/06/2013: ERS receives Appointment of Third Doctor to the Medical Panel form signed by Union-appointed Dr. appointing Dr. [redacted] ("Dr. Y") to the Medical Panel.

12/11/2013: ERS staff called City-appointed Dr.'s office regarding third doctor appointment.

12/12/2013: City-appointed Dr. called ERS and advised staff that he would never agree to Dr. Y and he will contact the Union-appointed Dr.

03/25/2014: ERS sends letter to DER to appoint a new City doctor to the Medical Panel in accordance with Board Rule III.F.2.[1]

03/25/2014: ERS receives copy of email communication between City Attorney's Office and member's Attorney regarding status of third doctor appointment. City Attorney advised that ERS has made a request to DER/WC to appoint a new City doctor, (per Board Rule III.F.2.).

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[1] Per Board Rule III.F.2:

"III. MEDICAL COUNCIL AND MEDICAL PANEL

...

F. 2. If the first two doctors appointed to the Medical Panel, as provided in Section 36-02-20 of the Milwaukee City Charter, cannot agree and fail to appoint a third doctor within six (6) months, the Executive Director will notify the City that it has 30 days to appoint another doctor and report this action to the Board."

EXHIBIT

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City of Milwaukee
Duty Disability Benchmark Comparison Chart

Duty Disability	California (CalPERS)	City of Grand Rapids Police and Fire Retirement System	Indiana Public Retirement System	
Benefit Information			**1977 Benefit**	**1990 Benefit**
Benefit Amount	Based on years of service, benefit factor and final compensation	72% of salary	Pre-1990 Based on salary and years of service	Post-1990 Based of class of impairment. Each class is based on the injury/illness and provides a forula that is based on years of service, base salary and severity of impairment
Maximum Time Period	Lifetime or until recovery	None	Lifetime of until recovery	Lifetime or until recoverage (for class 2&3 benefit ends at age 52)
Vesting Requirements	Tiered benefit - 5 yrs and 10yrs of service to determine applicable benefit factor	No minimum for a duty disability	No minimum for a duty disability	No minimum for a duty disability
Eligiblity for Application	While employed or withing four (4) months post separation from employment provided the separation was related to disability	Not less than 30 days nor more than 90 days in advance of retirement date	Active employee AND there is no confirmed "light duty" position availalbe3 within the employees department	Active employee AND there is no confirmed "light duty" position availalbe within the employees department
Application Process				
Functional Requirements of Position Report	Required	Not noted	Not noted	Not noted
Attending Physician Report	Required	Required	Not noted	Not noted
Independent Physician Review	As requested	Required	Annual requirement until active duty and disability leave equals twenty (20) years	As requested
Workers Compenstation				
Award required as part of disability application	Yes	Yes	Not noted	Not noted
Contination of Benefit				
Medical re-evaluation/examination	As requested	Not noted	Annual requirement until active duty and disability leave equals twenty (20) years	Not noted
Employment Evaluation: non-employer	Subject to earnings offset calculation	Not noted	Not noted	Not noted
Employment Evaluation: same employer	Limited to 960 hours per fiscal year	Not noted	Not noted	Not noted
Rehabilitation Program	Not noted	Not noted	Not noted	Not noted

City of Milwaukee
Duty Disability Benchmark Comparison Chart

Duty Disability	Municipal Fire & Police Retirement System of Iowa	Kentucky (KRS)		Michigan Office of Retirement Services
Benefit Information		**Non-Hazardous Members**	**Hazardous Members**	
Benefit Amount	60% of average final compensation	Higher of 20% of final pay rate, normal early retiree benefits, or retirement allowance based on current compensation	Higher of 25% of final pay rate, normal early retiree benefits, or retirement allowance based on current compensation	Based on years of service, benefit factor and final compensation
Maximum Time Period	Lifetime of until recovery	Lifetime of until recovery	Lifetime of until recovery	Lifetime of until recovery
Vesting Requirements	No age or service requirements	No minimum for a duty disability	No minimum for a duty disability	None
Eligiblity for Applcation	Disability must be considered to be one that will last one year or longer	Application must be on file within 24 months of last date of paid employment	Application must be on file within 24 months of last date of paid employment	Disability must be certified by an independent medical advisor (IMA) AND be filed within 12 months of injury/illness
Application Process				
Functional Requirements of Position Report	Required	Required	Required	Required
Attending Physician Report	Required	Required	Required	Employee must authorize all documents be released to IMA
Independent Physician Review	Required	Required	Required	Required
Workers Compenstation				
Award required as part of disability application	Not noted	Application considered void if Employer is non-responsive after 180 of application	Not noted	Not noted
Contination of Benefit				
Medical re-evaluation/examination	Not noted	Annual requirement up until the age of normal retirement	Annual requirement up until the age of normal retirement	Employee is required to complete and Annual Disability Certification and be subject to medical reexaminiations upon request of Board
Employment Evaluation: non-employer	Not noted	Subject to earnings offset calculation	Subject to earnings offset calculation	Subject to earnings offset calculation
Employment Evaluation: same employer	Not noted	Subject to earnings offset calculation	Subject to earnings offset calculation	Benefit is suspended
Rehabilitation Program	Not noted	Not noted	Not noted	Not noted

City of Milwaukee
Duty Disability Benchmark Comparison Chart

Duty Disability	Minnesota State Retirement System	Ohio Public Employees Retirement System	University of California (UCRS)	Washington State Law Enforcement Officers' and Fire Fighters' Retirement System
Benefit Information				
Benefit Amount	50% of average final compensation	30-70% of average salary	50% of highest average compensation	One-time payment equal to 150% of eligible retirement contributions OR Minimum montly benefit of at least 10% of final average salary
Maximum Time Period	Up to age 65 or five years, which ever is later; then converted to standard retirement	Lifetime of until recovery	Lifetime of until recovery	-
Vesting Requirements	None	60 calendar months of contributing service (law enforcement excluded from this provision)	None	None
Eligiblity for Applcation	Application must be on file within 18 months after employement ends AND must be considered to be a disability that will last one year or longer	Application must have at least 60 calendar months of contributing service (law enforcement is excluded from this provision). All disabilities must be considered permenant.	Disability must be considered to be one that will last one year or longer	-
Application Process				
Functional Requirements of Position Report	Not noted	Required	Not noted	Required
Attending Physician Report	Required	Required	Not noted	Required
Independent Physician Review	May be requested	Required	Not noted	Required
Workers Compenetation				
Award required as part of disability application	Not noted	Required	Not noted	Required
Contination of Benefit				
Medical re-evaluation/examination	Employee is subject to medical reexaminiations up until age of normal retirement	Annual requirement up until the age of normal retirement	Not noted	May be requested
Employment Evaluation: non-employer	No suspension of benefit if with another Public pension plan	Subject to earnings offset calculation	Not noted	Not noted
Employment Evaluation: same employer	Benefit is suspended	Benefit is terminated	Not noted	Subject to earnings offset calculation and possible suspension of benefit
Rehabilitation Program	Not noted	Optional	Not noted	Not noted

Section III

The Employes' Retirement System Written Response

ERS Response to Segal's Duty Disability Program Review

As stated in the Review's introduction, the main objective was to review the design, administration and the overall governance structure of the program, including regulation by the governing charter ordinance. Additionally, the Review evaluated the City's DDR Program relative to best practice. The following is ERS' response to the Review, which will be divided into the following sections:

I) what the ERS believes to be inaccuracies (either in perception or fact) of this Review;

II) an overview of several changes the ERS made in administering the program (*e.g.*, staffing/internal ERS re-organization, coordination, quality assurance and overall oversight) as a result of ERS' own review of the program. ERS' review occurred concurrently to Segal's review, largely in part due to much consultation with counsel as a result of a significant legal opinion received November 22, 2013—which addressed issues relating to the integrity of the application process, particular to certain practices concerning certain protective service applications[1]; and

III) ERS' limited role (as the administrator of the program and the benefit) to effectuate (many, if not all) any of Segal's suggested opportunities for change based on industry best practice because these opportunities or changes would require design changes to Chapter 36 of the Milwaukee City Charter.

<u>Section I</u>: What the ERS believes to be inaccuracies (either in perception or fact) of this Review.

The following responses will generally address the following process areas reviewed and addressed by Segal's Review: Administration of the Disability Benefit, Definition of a Disability Benefit, and the Application Process.

One of Segal's possible areas for improvement in its Executive Summary of its Review includes: "Preparation of a comprehensive employee-applicant guidebook that lays out a general description of the disability program, including definition of type of disability, eligibility and what paperwork/forms are

[1] Segal briefly acknowledges these changes in its Review as follows: "Subsequent to our initial interviews [which occurred December 9 – 11, 2013], we were notified of staffing changes and process revisions that have begun to address some of the issues uncovered. We reviewed the documentation of the changes provided by ERS and conducted follow-up interviews with ERS staff," (see page 2) and: "ERS has since made process improvements that include a high-level procedure guide. Additionally a Disability Benefit Coordinator has been appointed who has oversight over all applications, reviewing the data and information for accuracy and consistency, and participates in appointments where Disability Specialists counsel applicants." (see page 8). However, it is important to note that Segal's does not include an overview of these changes, which will be addressed in this ERS response.

required in order for an application to be considered "complete", and the review process in language that is easy for any employee to understand" (see p. 4 of Segal Review)

ERS Response: The ERS currently has a Member Handbook (visit http://www.cmers.com/Library/Member-Handbook.htm), which is the "easy-to-understand" version of Ch. 36 rules and guidelines for the employees. The ERS also has several brochures that define the disability application process for each type of disability and employee group, including the various appeals and review processes as they pertain to the overall disability processes (see Exhibit 1). Additionally, Disability Specialists are available via phone, email or face-to-face for counseling sessions to inform the members of the various details of the application process and provide any additional information.

The report suggests an opportunity to create a definition of "what constitutes a complete application." The ERS has developed a process flow that includes a listing of all documents and supporting materials required for a "complete application," which the ERS refers to as the complete disability claims file (i.e., all medical records relevant to the applicant's disability application, employee's job description, department's response to application, worker's compensation medical file, and employee's application/statement for disability) for a duty disability benefit.

On page 6, Segal presents its understanding of the Current Situation regarding "Administration of the Disability Benefits."

*ERS Response: The report concludes that the disability staff operates in "silo environments." We disagree. This conclusion is perhaps a misperception of how the ERS is organized. In the interviews with ERS staff, Segal may have perceived that staff operates differently, or in 'silo environments'; however, this is true to some extent because (a) there are two different Disability processes required by law (Ch. 36): generally, the Medical Panel process for processing duty disability applications filed by fire and police, and the Medical Council process s for all other types of disabilities and groups, (*i.e., *all ordinary disability applications and duty disability applications filed by General City employees and a small number of duty disability applications filed by certain protective service employees those protective service employees who are not members of certified bargaining units or protective service employees who enrolled in 2005 or later and claim to be duty-disabled on the basis of mental stress), and (b) each of the Disability Specialist's work assignment focuses on a different employment population subject to these different processes. Interviews were conducted separately amongst the two Disability Specialists – thus likely giving the impression that each specialist had her own process.*

The report also states that the disability staff "develop[e] their own procedures without the guidance or requirement of a governing process." We disagree with this statement—there is a required governing process (Ch. 36), which is incorporated and generally controlled by the ERS' IT system (MERITS) that enforces certain rules and workflow for administering disability benefits, as

*defined by Ch. 36, ERS' governing document, as interpreted by numerous (approximately 1800) legal opinions and court cases. The MERITS application enforces these rules (*e.g.*, eligibility for benefits, re-examination dates, enforcing that required documents for the completion of the process are present,* etc.*). In addition, the workflow process also drives and routes the "work" associated with processing retirement applications between the Disability Specialists (the Counselor), Accounting staff, and Payroll personnel to ensure that the overall controls and segregation of duties are maintained. MERITS also has reports that are produced that provide reminders to the users about steps that need to be undertaken for various members (e.g. upcoming re-examinations, pending applications,* etc.*). Additional reports are being developed for managerial oversight. Second, the ERS uses internal documents that outline the process with sufficient detail to aide Disability Specialists in proper counsel to the members. These documents can also serve as a checklist to validate that key required components in the disability application process are executed correctly. Third, Standard Practice Instructions (SPIs) exist as guidance for staff in providing a user guide when managing the disability claim via the interfacing with the MERITS application. These SPIs are more procedural in nature and delve into the details of how to navigate the screens, rather than going into the law and the underlying rules that were used to develop the processes. Fourth, ERS routing sheets are used that serve as checklists when processing a retirement and ultimately adding a person to the ERS payroll. Fifth, there are instructions and detailed documents that are provided to the doctors as part of the review process that serve as training documents for the doctors. While the Disability Specialists have some leeway in how they operate, the overall processes are both uniform and documented.*

One of Segal's possible areas for improvement in its Executive Summary of its Review includes: "Preparation of a comprehensive manual of rules, regulations, procedures and processes that encompasses all documentation for internal use, which can be updated with ease for the use of the disability program staff." (see p. 4 of Segal Review)

ERS Response*: We disagree. We have these pieces documented relative to the disability program and administration of its benefits; however we do not feel that compiling this information in one comprehensive 'manual' is necessary or practical, given the following. In general, the rules, regulations, procedures and processes' (which are mainly documented in Chapter 36 (our plan document) and Board Rules and Regulation) are already reflected in the rules of our MERITS IT application, which enforces these rules (*e.g.*, eligibility for benefits, re-examination dates, enforcing that documents that are required for the completion of the process are present,* etc.*). Additionally, several brochures (that define the disability application process for each type of disability and employee group, including the various appeals and review processes as they pertain to the overall disability processes) are provided to the applicants when they contact our office. In addition to these documents, Standard Practice Instructions (SPIs) exist for the MERITS application, which are used by the staff for reference and training. Periodic reviews and updates to each of these sources of information and documents are made by ERS staff (e.g. rules and regulations are periodically reviewed (*i.e.*, based on legislative amendments to Chapter 36 or legal*

interpretations of Chapter 36 provisions as a result of Legal opinions) and subsequently updated within MERITS; similarly, brochures are reviewed and updated, as are SPIs.

One of Segal's possible areas for improvement in its Executive Summary of its Review includes: "Redefine the role of the disability management staff to be more administrators of the process for applying for a disability benefit, primarily to ensure the rules and procedures associated with the application process are adhered to and maintained for consistency and efficiency;" (see p. 4 of Segal Review)

ERS Response: Due to a significant staff re-organization, subsequent to the November 22, 2013 legal opinion (see Exhibit 2), which addressed several issues related to administering the Duty Disability benefit, the ERS has redefined the role of the disability management staff, specifically addressing administrative oversight and quality assurance of the disability program. In particular, the ERS has created a new position, "Disability Benefit Coordinator" who reviews all applications for duty disability to ensure consistency and adherence to rules and procedures. Additionally, the ERS has increased communication amongst staff via a detailed ERS-internal disability application process work flow. Changes based upon this new work-flow process are being incorporated into the ERS' IT system (MERITS). This topic will be further addressed in Section II of our response, below. Also, at about the time the Segal Review started, and around the time when the legal opinion clarifying the ERS' role and documentation requirements was issued, the ERS started conducting regular disability staff meetings to ensure that all cases are processed in a timely manner, including a review of pending applications, and upcoming re-examinations.

Section II: an overview of several changes the ERS made in administering the program (*e.g.*, staffing/internal ERS re-organization, coordination, quality assurance and overall oversight) as a result of ERS' own review of the program. ERS' review occurred concurrently to Segal's review, largely in part due to much consultation with counsel as a result of a significant legal opinion received November 22, 2013—which addressed issues relating to the integrity of the application process, particular to certain practices concerning certain protective service applications

On November 1, 2013, shortly prior to the initiation of Segal's initial interview with ERS staff (initial Segal interviews with ERS staff began early December, 2013), the ERS requested legal advice via a formal legal opinion regarding several issues[2] relating to the

[2] Specifically the applications and practices in question involved the submission of prepared, typewritten, supplemental statements (typically authored by the same 'consultant') to the applicant's disability statement (*see* Exhibit 3), which contained similar boilerplate language making assertions regarding the application of certain rules and standards to the applicant's job duties—assertions that counsel was concerned "may have misled the doctors regarding the requirements of limited duty assignments within the police department, which in turn may have impacted the medical panel doctors' opinions and certifications" (see p. 4 of November 22, 2013 Legal Opinion). The opinion also addressed that all documentation forward to the medical panel

integrity of the application process that had arisen relating to the processing of duty disability applications for certain protective service employees and specifically inquired about changes that could be made to the disability application process, within the constraints of the current law, to better serve the interests of the member and the retirement system. The City Attorney (ERS' statutory legal counsel), issued its November 22, 2013 legal opinion (*see* Exhibit 2) in response, which contained guidance and advice, including general improvement suggestions. The ERS has been striving to improve the processes and communications since the legal opinion was issued in November of 2013.

One particular process and quality assurance control that the ERS implemented shortly after this opinion was the addition of a Disability Benefits Coordinator. The roles and responsibilities of the Disability Benefits Coordinator include: ensuring additional oversight to the disability application process (*e.g.*, review applications for compliance, review all medical records received from Worker's Compensation, and obtain any additional medical records from applicant's healthcare providers (pursuant to an applicant's signed medical releases) that may be relevant to the applicant's application for disability, coordinate communications between Worker's Compensation section and the applicant's employing department, draft customized disability claim file transmittal letters to Medical Panel or Medical Council physicians), provide guidance to the ERS staff, City departments/agencies, Medical Panel and Medical Council, as needed, facilitate weekly disability staff meetings, which include the review of Case Management reports used to track status of current applications and re-examinations. Subsequent to the implementation of additional process and quality assurance controls to the disability program, the ERS has learned of a particular, additional concern in the application process, involving applicants bypassing the ERS—which is the official record keeper of the disability claims file that is submitted to Medical Panel physicians for review and consideration—and selectively submitting written materials containing advice (as provided by the applicants' consultants) specifically to their union-appointed Medical Panel physicians about the application process and how best to navigate it (*see* Exhibit 4).

Immediately following and per the advice of the November 22, 2013 opinion, the ERS began implementing enhanced administrative efforts and processing guidelines, along with the guidance of counsel, including: increased communication amongst staff via a detailed ERS-internal disability application process flow, the existence of regular disability staff meetings, and an overall increase of quality assurance via the role, responsibilities and efforts of the Disability Benefits Coordinator. Subsequently, the ERS has developed and honed consistent messaging and communication regarding the necessary steps to applying for a disability application, clarified what constitutes a

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must be provided only by the ERS, in other words, no documentation should be unilaterally provided to the medical panel doctors.

complete disability claims file (or "complete disability application"), analyzed and improved several communication pieces (including brochures, ERS handbook language, letters and forms) and significantly enhanced its quality assurance and controls around the disability application process.

<u>Section III</u>: ERS' limited role (as the administrator of the program and the benefit) to effectuate (many, if not all) any of Segal's suggested opportunities for change based on industry best practice because these opportunities or changes would require design changes to Chapter 36. Chapter 36 can only be amended by a super majority of the City Council and may not be amended to diminish benefits of current members pursuant to state law.

Many of Segal's suggested opportunities and improvements would require program design changes (*e.g.,* "Appoint objective, professional Medical professionals who are not tied to the City or unions to review all types of disability applications (e.g., ordinary and duty disability) in order to avoid the perception of an adversarial review process"; ". . . separate the entity responsible for determining the cause of disability from the entity responsible for determining credibility, as outlined in our Model Workflow"; "Based on best practices from comparable public sector systems shown in Exhibit G, physicians should not decide causation or credibility"; the "Implement a functional assessment as part of the medical examination process that is separate from the attending physician's report"; and "Require physical examination and/or case review by a Physician certified in a specific medical specialty, based on the diagnosis, when appropriate") would require changes to the City Charter (Ch. 36), as a result of either collective bargaining amongst the City and the police and fire unions (*i.e.*, the only remaining unions representing ERS members that currently have the ability to collective bargain pension benefits, as a result of WI Act 10) and/or the legislative process (NOTE: the ERS is not a party to either process). As the formal administrator (on behalf of the Annuity and Pension Board) of the Disability program and benefits, the ERS will, of course, implement and administer any resulting program design changes that may occur as a result of this Review; however, as many of these design changes and suggestions are subject to legislative amendment and collective bargaining, the ERS would have no way of effectuating many of these suggestions or opportunities.

Section IV

Exhibits to the ERS's Written Response

Exhibits Related to ERS' Response

Exhibit 1

Brochures

#2 Duty Disability Benefits For General City Employees

What Are Duty Disability Benefits?

If you become totally and permanently incapacitated as a direct result of an injury you suffered on the job and cannot perform your job-related duties, you may be eligible for Duty Disability monthly benefits. You can find more detailed information in the Employes' Retirement System (ERS) Member Handbook.

Checklist

What should you do if you become permanently incapacitated and cannot perform your duties? Work through this checklist and know your rights.

- ☑ Read through this pamphlet to see if you qualify for a duty disability benefit.
- ☑ Get more details on duty disability benefits in the ERS Member Handbook ("General City Employees" section of the handbook).
- ☑ Contact the Department of Employee Relations or your union representative to determine the spectrum of benefits available to injured workers including injury pay, sick leave, worker's compensation, long-term disability and finally duty disability.
- ☑ Prior to applying for duty disability, make sure you also apply through workers' compensation for determination of disability (EB-49 form).
- ☑ Provide your department with written documentation from your treating physician setting forth your permanent work restrictions. Your department will provide a written response on whether they will be able to accommodate the permanent restrictions.
- ☑ Request an estimate of benefits from ERS.
- ☑ Understand how the ability to earn other income may offset your duty disability allowance.
- ☑ Understand how to apply for disability benefits.
- ☑ Know your continuing responsibility to undergo regular medical examinations while claiming duty disability.
- ☑ Know how disability benefits affect your tax status.

Duty Disability

Am I eligible for duty disability?

You may be eligible for duty disability if you:

- Cannot perform your duties because of a specific, documented injury sustained while performing your job;
- Have already applied through Workers' Compensation for determination of permanent disability or partial disability for the same injury; and
- Your department cannot accommodate your treating physician's permanent work restrictions.

What is the duty disability allowance?

The monthly duty disability allowance is 75% of your final average salary at the time you became disabled. Please be advised that if you also receive payments under the Wisconsin Worker's Compensation Act, the value of those payments will be deducted from your duty disability allowance. Future Cost of Living Adjustments

(COLAs) will increase your benefit, provided you are a member of the Combined Fund and enrolled into the Employes' Retirement System prior to January 1, 2014. [1]

Are other earnings taken into account in determining my benefit?

If you are able to engage in other employment, the potential for other earnings (not including any income you may get through Social Security) may also be taken into account when determining your disability allowance. ERS will need to see signed copies of your federal tax forms to verify outside earnings, if any, after you start receiving Duty Disability benefits on an annual basis until age 60.

What if I return to my original (or similar) job?

If you no longer meet the requirements for duty disability benefits, you may be returned to active service and your benefit will be discontinued. There is no guarantee that the employer you worked for will return you to your prior position. You must contact the employer to determine your status. If you voluntarily return to a City (or City Agency) job, your disability benefit will stop.

The time you spent on duty disability may count towards your total creditable service for the purpose of calculating your future service retirement allowance.

How will retirement affect my disability benefit?

If you are approved for duty disability prior to age 60, your benefit will convert to a service retirement allowance at age 65. If you retire on duty disability on or after age 60, you will convert to a service retirement five years later.

Applying for Duty Disability Benefits

There are three key steps in applying for duty disability.

Step One – Qualifying For Duty Disability Benefits

Do I qualify for duty disability benefits?

If you are permanently incapacitated as a result of an injury at work, then you may qualify for disability benefit.

What should I do first?

Read the "Duty Disability Benefits" section of the ERS Member Handbook to ensure you understand potential entitlements. Then, telephone the ERS office and speak with a Disability Specialist to request a disability benefit estimate and get answers to any questions you may have about the process. You can contact the ERS at **(414) 286-3557** or (**800) 815-8418** from outside Milwaukee.
An estimate will be sent to you through the mail.

[1] Members who consented to the Global Pension Settlement or joined ERS after June 28, 2000 are eligible for a COLA. Members enrolled into the ERS after January 1, 2014 are not eligible for a COLA.

Step Two – Arranging a Counseling Appointment

What do I do if I qualify for duty disability and wish to file an application?

Prior to completing your application for disability, you must (1) apply for a worker's compensation determination for each injury you are listing on your disability application. Please contact the Department of Employee Relation Worker's Compensation Section at 414-286-2020; and (2) provide your department with a written statement from your physician outlining your permanent work restrictions. Your department will advise you in writing, whether they can or cannot accommodate the permanent work restrictions. If your physician has released you to return to work with restrictions, and your department can accommodate those restrictions, you are not eligible to apply for duty disability retirement. If your department has advised you in writing, they are unable to accommodate the permanent work restrictions; you should contact the ERS to schedule an appointment with a Disability Specialist. At the application appointment, you will be required to furnish the ERS with your doctor's statement regarding the permanent work restrictions and the written response from your department. If you do not have the required documentation or the information on the EB-49 form (worker's comp) does not match your application statement, you will need to speak with your department to correct the information on the EB-49 form. The Disability Specialist will explain the benefit application process and help you complete the necessary paperwork to apply for duty disability benefit.

Will I need to arrange a medical examination?

Yes. In order to qualify for duty disability you need certification from your primary treating physician that you meet the criteria. This means you need to arrange for a medical examination, at your own expense. The Disability Specialist will talk you through this process during your appointment.

Step Three – Making a Decision On Your Application

Who makes the decision whether I am eligible for duty disability benefits?

The City's Annuity and Pension Board makes the final decision, but the first step is a review by the ERS Medical Council, who will review medical records and ask you questions about your medical condition. The Medical Council will either:

- Recommend to the Annuity and Pension Board that you be approved for benefits;
- Request further medical testing, at ERS expense; or
- Recommend to the Annuity and Pension Board that you be denied disability benefits. This recommendation may be appealed.

The Board will notify you, in writing, of the decision at the conclusion of the process.

When The Application for Duty Disability is Approved

Will I have to submit to medical re-examinations once I've been approved for duty disability benefits?

Until age 60, you will be asked to undergo annual re-examinations for the first five years you claim disability, and every third year after that, if your disability continues.

How does duty disability affect my taxes?

Duty disability benefits are tax-exempt. However, you should contact your tax advisor, state department of revenue or Internal Revenue Service for further information on the tax implications of being placed on duty disability.

What if the Application for Duty Disability is not Approved

What happens if the Medical Council recommends that I do not received duty disability benefits and the Annuity and Pension Board concurs?

If the Medical Council recommends denial of a duty disability benefit, you may request a review as provided under the Wisconsin State Statutes. See Brochure #5, *"ERS Review and Appeals Procedures"* for additional information regarding your rights to a review and appeal of any pension benefit determination.

#4 Ordinary Disability Benefits for City of Milwaukee Employees

What Are Ordinary Disability Benefits?

If you become totally and permanently incapacitated and cannot perform your job-related duties, you may be eligible for ordinary (non-duty) disability benefits. This brochure provides an overview of Ordinary Disability for City of Milwaukee employees; you can find more detailed information in the Employes' Retirement System (ERS) Member Handbook.

Checklist

What should you do if you become permanently incapacitated and cannot perform your duties? Work through this checklist and know your rights.

- ☑ Read through this pamphlet to see if you qualify for an ordinary disability benefit.
- ☑ Get more details on ordinary disability benefits in the ERS Member Handbook (depending on your employee group, consult either the "General City Employees" or "Firefighters and Police Officers" section of the handbook).
- ☑ Meet with the Department of Employee Relations or your union representative to determine the benefits available to you, including sick leave, long term disability insurance and finally, ordinary disability.
- ☑ Understand how the ability to earn other income may offset your ordinary disability allowance.
- ☑ Understand how to apply for disability benefits.
- ☑ Know your ongoing responsibility to undergo regular medical examinations while claiming ordinary disability.
- ☑ Know how disability benefits affect your tax status.

Ordinary Disability

Am I eligible for ordinary disability?

You may be eligible for ordinary disability if you cannot perform your duties because of a non-duty-related injury or medical condition. *Note: Firefighters and Police Officers are eligible for ordinary disability benefits only if they have at least five years of service as a protective service employee.*

What is the ordinary disability allowance?

For General City Employees, the monthly ordinary disability allowance is 90% of what your monthly service retirement allowance would be if you were eligible to retire at the time you became disabled.

If you consented to the Global Pension Settlement or joined ERS on or after June 28, 2000, future Cost of Living Adjustments (COLAs) will increase your benefit.

For Firefighters and Police Officers, the monthly ordinary disability allowance depends on how many years of service you had at the time you became disabled. With five years of service, your monthly benefit equals 25% of your final average salary at the time you became disabled. This benefit increases by 2% for each additional year of creditable service – up to a maximum benefit of 50% of your final average salary.

How long can I receive this benefit?

Ordinary disability generally continues for as long as you are disabled. However, General City employees with *less than ten years of service credit* will receive ordinary disability benefits for a period equal to one quarter of their actual creditable service.

Are other earnings taken into account in determining my benefit?

If you are able to engage in other employment while receiving a disability allowance from the City, a portion of your potential earnings may be offset from your disability allowance. Social Security benefits are not considered outside earnings. ERS will need to see signed copies of your federal tax forms on an annual basis to verify outside earnings, if any, after you start receiving ordinary disability benefits until you reach age 60.

What if I return to my original (or similar) job?

You must contact your employer about your job status. Firefighters and Police Officers must comply with the Fire and Police Commission rules regarding returning to your job.

Applying for Ordinary Disability Benefits

There are three key steps in applying for ordinary disability.

Step One – Qualifying For Ordinary Disability Benefits

Do I qualify for ordinary disability benefits?

If you are permanently incapacitated as a result of an injury, incident or an illness that is not job related, then you may qualify for ordinary disability benefits.

What should I do first?

Read the "Ordinary Disability Benefits" section of the ERS Member Handbook to ensure you understand potential entitlements. Then, telephone the ERS office and speak with a Disability Specialist to request a disability benefit estimate and get answers to any questions you may have about the process.

You can contact the ERS at **(414) 286-3557** or **1-800-815-8418** from outside Milwaukee. An estimate will be sent to you through the mail.

Step Two – Arranging a Counseling Appointment

What do I do to apply for ordinary disability?

You need to schedule a counseling appointment with a Disability Specialist. At the counseling appointment, the Disability Specialist will explain the benefit application process, talk you through the benefit application process, and help you complete the necessary paperwork to apply for ordinary disability benefit.

Will I need to arrange a medical examination?

Yes. In order to qualify for ordinary disability you must obtain a medical examination, at your expense, and a doctor's recommendation for disability benefits. The Disability Specialist will talk you through this process during your appointment.

Step Three – Making a Decision on Your Application

Who decides whether I am eligible for ordinary disability benefits?

The final decision lies with the City's Annuity and Pension Board, but the first step is a review of your doctor's recommendation by the ERS Medical Council. The Council (made up of three doctors appointed by the Board) meets once a month to interview applicants and make recommendations. They will review medical records, consider your doctor's recommendation and ask you questions about your medical condition. You do not need to obtain an attorney, nor would one be allowed to present your views at the session. The Medical Council will either:

- Recommend to the Annuity and Pension Board that you be approved for benefits;
- Request further medical testing, at ERS expense; or
- Recommend to the Annuity and Pension Board that you be denied disability benefits. This recommendation may be appealed.

The Board will notify you, in writing, of the decision at the conclusion of the process.

Once Your Application Is Approved

Will I have to submit to medical examinations once I've been approved for ordinary disability benefits?

Until age 60, you will be asked to undergo annual medical examinations by the ERS Medical Council for the first five years you receive benefits, and every third year after that, if your disability continues.

How does ordinary disability affect my taxes?

Ordinary disability benefits are generally taxable, however, you will need to contact your tax advisor, state department of revenue or Internal Revenue Service for further information on the tax implications of being placed on ordinary disability.

If Your Application Is Not Approved

What happens if the ERS Medical Council recommends that I do not receive ordinary disability benefits and the Annuity and Pension Board concurs?

If the ERS Medical Council recommends denial of an ordinary disability benefit you may request a review as provided under the Wisconsin State Statutes. See Brochure #5 – "*ERS Review and Appeals Procedures*" for additional information regarding your rights to a review and appeal of any disability benefit determination.

#3 Duty Disability Benefits For Firefighters and Police Officers

What Are Duty Disability Benefits?

If you become totally and permanently incapacitated as a direct result of an injury you suffered on the job and cannot perform your job-related duties, you may be eligible for monthly benefits that replace a portion of your City paycheck. You can find more detailed information in the Employes' Retirement System (ERS) Member Handbook.

Checklist

What should you do if you become permanently incapacitated and cannot perform your duties? Work through this checklist and know your rights.

- ☑ Read through this pamphlet to see if you qualify for a duty disability benefit.
- ☑ Get more details on duty disability benefits in the ERS Member Handbook ("Firefighters and Police Officers" section of the Handbook).
- ☑ Contact the Department of Employee Relations or your union representative to determine the spectrum of benefits available to injured workers including injury pay, sick leave, worker's compensation and finally, duty disability.
- ☑ Prior to applying for duty disability, make sure you also apply through workers' compensation for a determination of disability (EB-49 form).
- ☑ Provide your department with written documentation from your treating physician setting forth your permanent work restrictions. Your department will provide a written response on whether they will be able to accommodate the permanent restrictions.
- ☑ Request an estimate of benefits from ERS.
- ☑ Understand how the ability to earn other income may offset your duty disability allowance.
- ☑ Understand how to apply for disability benefits.
- ☑ Know your continuing responsibility to undergo regular medical examinations while claiming duty disability.
- ☑ Know how disability benefits affect your tax status.

Duty Disability

Am I eligible for duty disability?

- You may be eligible for duty disability if you cannot perform your duties because of a specific, documented injury sustained while performing your job.
- Have already applied through Workers' Compensation for determination of permanent disability or partial disability for the same injury; and
- Your department cannot accommodate your treating physician's permanent work restrictions.

Will I be eligible for benefits while I'm in training?

You will <u>not</u> be eligible for duty disability benefits during recruit training at the Fire and Police Academy or the Medical College of Wisconsin.

What is the duty disability allowance?

In most cases, the monthly duty disability allowance is 75% of the current salary for the position you held at the time you became disabled (minus the value of any payments you receive under the Wisconsin Worker's Compensation Act). The amount of your allowance will change whenever your union's bargaining agreements lead to a change in the annual salary for your position. In addition, you will receive an allotment of $40 per month for each child under age 18.

For severe disabilities (as defined by Chapter 36 of the Milwaukee Charter), you will receive a lifetime monthly allowance equal to 90% of your position's salary at the time you became disabled (reduced by the value of any worker's compensation payments you receive for the same disabilities).

Are other earnings taken into account in determining my benefit?

If you are able to engage in other employment, a portion of your potential for other earnings may be offset from your disability allowance. ERS will need to see signed copies of your federal tax forms on an annual basis to verify outside earnings, if any, after you start receiving duty disability benefits and until you reach age 60 or you convert to a service retirement.

What if I return to my original (or similar) job?

If you no longer meet the requirements for duty disability benefits, you will be returned to active service according to the rules determined by the Fire and Police Commission. At that time, your benefit will be discontinued. If you voluntarily return to a different City (or City Agency) job, your disability benefit will stop.

The time you spent on duty disability will count towards your total creditable service for the purpose of calculating your future service retirement allowance.

How will retirement affect my disability benefit?

If you are still on 75% duty disability when you reach the first of age 57 or age 52 with 25 years of creditable Fire and Police service (various other conversion ages are also used that are a basis of past labor contracts), you will need to convert your benefit to either a service retirement allowance or an irrevocable extended life duty disability allowance. If you are on 90% duty disability, you will not convert to a service retirement allowance. Please see your ERS Member Handbook for more detailed information on these two options.

Applying for Duty Disability Benefits

There are three key steps in applying for duty disability.

Step One – Qualifying For Duty Disability Benefits

Do I qualify for duty disability benefits?

If you are permanently incapacitated as a result of an injury at work, then you may qualify for disability benefits.

What should I do first?

Read the "Duty Disability Benefits" section of the ERS Member Handbook to ensure you understand potential entitlements. Then, telephone the ERS office and speak with a Disability Specialist to request a disability benefit estimate and get answers to any questions you may have about the process.

You can contact the ERS at **(414) 286-3557** or **(800) 815-8418** from outside Milwaukee.

An estimate will be sent to you through the mail.

Step Two – Arranging a Counseling Appointment

What do I do if I qualify for duty disability and wish to file an application for duty disability?

Prior to completing your application for disability, you must (1) apply for a worker's compensation determination for each injury you are listing on your disability application. Please contact the Department of Employee Relation Worker's Compensation Section at 414-286-2020; and (2) provide your department with a written statement from your physician outlining your permanent work restrictions. Your department will advise you in writing, whether they can or cannot accommodate the permanent work restrictions. If your physician has released you to return to work with restrictions, and your department can accommodate those restrictions, you are not eligible to apply for duty disability retirement. If your department has advised you in writing, they are unable to accommodate the permanent work restrictions; you should contact the ERS to schedule an appointment with a Disability Specialist. At the application appointment, you will be required to furnish the ERS with your doctor's statement regarding the permanent work restrictions and the written response from your department. If you do not have the required documentation or the information on the EB-49 form (worker's comp) does not match your application statement, you will need to speak with your department to correct the information on the EB-49 form. The Disability Specialist will explain the benefit application process and help you complete the necessary paperwork to apply for a duty disability benefit.

Will I need to arrange a medical examination?

Yes. In order to qualify for duty disability you must have a medical examination and certification from the ERS Medical Panel (certain protective service employees must obtain certification from the ERS Medical Council). The Panel consists of a doctor appointed by your bargaining unit (generally your personal physician) and a doctor appointed by the City. If the two physicians cannot agree on a recommendation (to approve or deny), a third independent doctor is selected. The City pays for the cost of the medical examination, but not for related incidental costs. The Disability Specialist will talk you through this process during your appointment.

Step Three – Making a Decision on Your Application

Who makes the decision whether I am eligible for duty disability benefits?

The first step is an examination by the ERS Medical Panel, who will also review your medical records and ask you questions about your medical condition. The Medical Panel will then:

- Recommend to the Annuity and Pension Board that you be approved for benefits;
- Recommend to the Annuity and Pension Board that you be denied benefits. This recommendation may be appealed.

The Board will notify you, in writing, of the decision at the conclusion of the process.

When the Application for Duty Disability is Approved

Will I have to submit to medical re-examinations once I've been approved for duty disability benefits?

You will be asked to undergo annual re-examinations by the ERS Medical Panel (or Medical Council) until you reach the minimum service retirement age of 57 years, or convert to a service retirement.

How does duty disability affect my taxes?

Duty disability benefits are generally tax-exempt. However, you will need to contact your tax advisor, state department of revenue or Internal Revenue Service for further information on the tax implications of being placed on duty disability.

What if the Application for Duty Disability is not Approved?

What happens if the Medical Panel (or Medical Council) recommends that I do not receive duty disability benefits and the Annuity and Pension Board concurs?

If the Medical Panel (or Medical Council) recommends denial of a duty disability benefit you may request a review as provided under the Wisconsin State Statutes. See Brochure #5, "*ERS Review and Appeals Process*" for additional information regarding your rights to a review and appeal of any pension benefit determination.

#5 Review and Appeals Procedures

What is the Review and Appeal Process?

With the exception of issues that involve the interpretation of the law, an ERS member has the right to request that an ERS decision, such as determination of a benefit amount, be reviewed for modification or reversal. This brochure explains the steps you need to take, as determined by Rules and Regulations (which are based on Wisconsin statutes), to complete the review process and, if necessary, the appeal process.

Checklist

What if you feel that an ERS decision should be modified? Work through this checklist and know your rights in the review and appeal process.

- ☑ Read through this pamphlet to understand the steps needed to initiate a review.
- ☑ Get more details on the review and appeal process in the ERS Member Handbook.
- ☑ Read the full text of the review and appeal process at www.cmers.com. Click on *"Library,"* and then select the *"Rules and Regulations"* link.
- ☑ Submit your written request for review within 30 days after receiving the original decision from the ERS.
- ☑ Make sure you have documentation that supports your position.
- ☑ If you disagree with the review decision, file a written notice of appeal within 30 days after you receive the review decision.
- ☑ Understand that you may be represented by counsel in the appeal process and at your appeal hearing.
- ☑ Be aware that Sec. 68.13 of the Wisconsin Statutes provides that you may have the Board's final decision reviewed by the Circuit Court.

Step One - Request a Review

How do I start the review process?

If you feel the original decision regarding your benefit assessment was made in error, you may submit a written request to modify or reverse the decision within 30 days after you are notified of the decision. Your request should be sent to the ERS office indicating that you request a review of the determination (a review of facts only). The review and appeal process are under Sections 68.08-68.13, Wisconsin Statutes.

What should my request include?

Your request must include the reason you think the ERS decision should be changed as well as any evidence that supports your position (for example, a copy of a birth certificate to prove a disputed birth date, or medical records to confirm a diagnosis).

What happens to my review request?

The Annuity and Pension Board will select an independent committee or person to review your request. Unless you agree to an extension, your request will be reviewed within 15 days of receipt. You'll be notified of the

results of the review and an explanation of the review decision. You will also be notified of your right to appeal the review decision.

If you agree with the review decision, you don't need to proceed to Step Two.

Step Two - Request an Appeal

What if I don't agree with the review decision?

You must file a written notice of appeal within 30 days after receiving the review decision. *Your request should be sent to the ERS office.*

How does the appeal procedure work?

Within 15 days of receiving your notice of appeal, the Board shall provide for a hearing to be conducted by either an impartial third-party person or committee. You will be notified of this hearing at least ten days prior to the hearing date.

What happens at the hearing?

Both you and the review decision-maker will present your positions. You may both be represented by counsel and you both may call, examine and cross-examine witnesses of each party. The rules of the Annuity and Pension Board, including use of supporting materials, will govern the meeting.

How long does it take for a decision after the hearing?

Within 30 days of the hearing, the person or committee that conducted the meeting will provide to all parties a report stating the proposed appeal decision and the reasons for the decision.

What are my options if I don't agree with this decision?

Within 45 days of the appeal decision report, you and the other involved parties may file written briefs with the Board. The brief should set forth your position regarding the appeal. Based on the recommendation of the Hearing Examiner, the Board will make its final decision. Within 10 days of its final decision, the Board will send you its written determination, along with reasons for its determination. This determination will be final.

Do I have any other options?

Under Sec. 68.13, Wis. Stats., you may ask that this final determination be reviewed by the Circuit Court. This request must be made within 30 days of receipt of the final determination and filed with the Milwaukee County Circuit Court.

Review and Appeal Deadline Summary

This chart provides an overview of the key steps and deadlines in the Review and Appeal process.

If you need to:	You Must:	When:	Result:
Request a review of fact only.	Submit written request to the ERS office.	Within 30 days after the original decision.	Your request is reviewed within 15 days of receipt.
Appeal a review decision.	File written notice with the review decision-maker.	Within 30 days after receiving the review decision.	The Board will hold a hearing on your appeal within 15 days of receiving the notice.
You will receive an appeal decision report within 30 days of the appeal hearing.			
Review your position on the appeal decision with the Board.	File written briefs.	Within 45 days of the appeal decision report.	The Board will review the written briefs. Within ten (10) days of its final decision, the Board shall mail or deliver to the appellant its written determination stating the reasons therefore.
The Board's decision is final. However, you may ask that the Board's final decision be reviewed in accordance with the procedures established under Sec. 68.13, Wis. Stats.			

Review the full text of the review and appeal process at www.cmers.com. Click on "Library" then select "Rules and Regulations."

Revised March 13, 2012

Exhibits Related to ERS' Response

Exhibit 2

November 22, 2013 Legal Opinion

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November 22, 2013

Bernard Allen, Executive Director
Employes' Retirement System
789 North Water Street, Suite 300
Milwaukee, WI 53202

Re: Duty Disability Application Process

Dear Mr. Allen:

By letter dated November 1, 2013, you requested our advice regarding several issues that have arisen relating to the processing of duty disability applications for police officers.

As background for these questions, you explain that over a period of some time there have been a number of police duty disability applicants who have appeared at their counseling sessions accompanied by the same retired police detective. These applicants come to the counseling session with a prepared typewritten statement, ranging in length from 5 to 15 pages; most of these statements note that the statement was written with the assistance of a retired police detective. You advise that these statements contain similar or the same boilerplate language that make assertions regarding the application of certain rules and standards to the applicant's job duties. The applicants have requested that these statements be attached to and made a part of their application, which ERS has done. However, by letter dated October 15, 2013, the police department advised you that the rule cited in these statements, Rule 4, § 025.00, has not been in existence since February 1, 2011. Moreover, the October 15, 2013 letter correctly points out that the cited references to Law Enforcement Standards (LES) apply to recruitment qualifications and not existing certified law enforcement officers. We would add

to this that even when Rule 4, § 025.00 was in existence, its application to police officers subject to the limited duty protocol would be limited. Our understanding is that all these applicants were hired after February 2, 1987 and are subject to the limited duty protocol (as explained below). Therefore, citations to LES and Rule 4, § 025.00 could have misled the medical panel doctors into believing that these applicants were required to perform full duty, when that was not the case.

1. Should ERS be allowing persons other than applicants to attend counseling sessions?

Yes, but the Executive Director has the discretionary authority to prohibit a disruptive individual from attending future counseling sessions.

You note that ERS has in the past allowed a union representative, attorney, or family member to attend a counseling session. We do not recommend changing this policy since it may be beneficial to members who are applying for benefits. However, allowing a person to attend a counseling session is not permission to disrupt or impede the counseling session. The purpose of the counseling session relating to duty disability is for the counselor to explain the duty disability process, answer any questions the applicant may have, and oversee the applicant's completion of the duty disability application, statement of disability and other ERS-required documents. If any individual accompanying any applicant interferes with the interview or the completion of the required documents, it is certainly reasonable and within the authority of the Executive Director, or the person conducting the session, to direct the person accompanying the applicant to leave the session. If the applicant wants to proceed without the individual present, then the application process can be completed. If not, then the counseling session should be terminated and the applicant advised that if he or she wants to apply for a duty disability retirement, he or she must schedule another appointment and appear without the individual who impeded the process.

Since your request, you have verbally advised that recently there was an incident in which the retired police employee attempted to interrogate an ERS supervisor (this is how the encounter has been characterized to us) who was attending the counseling session about a matter completely unrelated to the counseling session. Because this retired police employee has repeatedly accompanied police officers (according to your letter on 18 occasions) to counseling sessions, you have a concern about future counseling sessions in which this person may appear. Specifically, your concern centers on your employees being able to perform their responsibilities in an expeditious manner and that they will not feel intimidated

when performing these duties. Therefore, we supplement your question above with the following question: Can the ERS prohibit an individual from accompanying a disability or other benefit applicant to a counseling session if the individual has previously disrupted a counseling session? In our judgment, the ERS can prohibit such a person from attending future counseling sessions. As Executive Director, your duties are to manage the ERS staff and administer the daily operation of the ERS. *see* Board Rule II.C.4. a. 6 and 13. Consistent with these duties, you have the discretionary authority to prohibit an individual who previously disrupted a counseling session from attending future counseling sessions.

2. Should ERS allow applicants to supplement the ERS application form and ERS statement on disability form?

No, allowing the type of supplementation you have identified is contrary to § 36-05-3-c-1 and usurps the Board's authority.

Section 36-05-3-c-1 of the Milwaukee City Charter requires that police officers applying for a duty disability retirement must file a request "with the board on a form provided by it for that purpose...." The Board has approved the duty disability application and statement of disability forms utilized by the ERS. To allow supplementation of these forms contradicts the above-cited language and infringes on the Board's authority over these documents.

Moreover, the Board-approved application requires that the applicant swear under oath that the information provided is based on his or her personal knowledge and is true. This requirement safeguards against inaccurate statements by the applicant and is consistent with § 36-11-1, entitled "Protection Against Fraud and Elimination of Errors," which provides that anyone who makes a false statement on an ERS record in an attempt to defraud the system is guilty of a misdemeanor. Allowing pre-written statements that are not authored by the applicant could diminish this safeguard. Prohibiting this type of supplementation would also include prohibiting a person from coming to the counseling session with a prepared statement and merely copying the prepared statement onto the application. The applicant must complete only the forms provided by the Board himself or herself in front of the counselor and swear to the truthfulness of the statements therein in order to ensure the integrity of the process.

We also reiterate previous advice that we have given – all documentation forwarded to the medical panel must be provided only by the ERS. The applicants

should not unilaterally provide supplementary statements to the medical panel doctors. The doctors should be advised of this requirement and instructed to advise your staff if they are ever provided with any information other than what was sent by your staff.

It is our understanding that some of these applications with the prepared typewritten statements have already been processed. We are concerned that the extensive citations to LES and Rule 4, as well as some other assertions contained in these statements, may have misled the doctors regarding the requirements of limited duty assignments within the police department, which in turn may have impacted the medical panel doctors' opinions and certifications. The doctors may have based their certifications for eligibility for duty disability retirement on an incorrect understanding of the police department's limited duty policy and limited duty assignments.[1] Police officers hired after February 2, 1987 who can perform limited duty are not permanently and totally disabled and therefore are not eligible for duty disability retirement. Because of this concern, we recommend that the ERS undertake a review of these duty disability retirees to determine if any of the medical panel doctors based their opinions or certifications as to whether or not the applicant could perform limited duty on information that was inaccurate. A review of this type is authorized by the charter. See § 36-05-3-c-1-b ("The board may at any time request information concerning such person or investigate his status or request a medical examination of such person."). We can assist your staff in how to implement such a review, but minimally you should contact the medical panel doctors, advise them that some of the information provided was inaccurate and ask them whether the incorrect information impacted their certification. If so, the doctors should issue a new certification; any revised decision of the medical panel would be presented to the Board.

3. How should the ERS respond to statements from the applicant that he or she does not authorize the release of his/her application "to any person outside the ERS?"

In such circumstances, the applicant should be told he or she will not be allowed to submit an application for duty disability benefits.

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[1] Since February 2, 1987, the Milwaukee Police Department has had a Limited Duty Policy. See Standard Operating Procedure 040. The Limited Duty Policy provides that an officer may be placed in an assignment consistent with his or her restrictions. The City of Milwaukee and the ERS were involved in much litigation when the Limited Duty Policy was implemented, however, we have advised that a duty disability retirement can be denied to a police officer hired after February 2, 1987, who can perform limited duty.

The ERS processes all duty disability applications by forwarding a copy of the application and statement of disability to the City of Milwaukee Employee Benefits section along with a release for the applicant's worker's compensation file. Also as part of the process, ERS sends an applicant's application and statement of disability to the doctors on the medical council and doctors on the medical panel. (The doctors on the medical council and the medical panel are asked to consider the application and statement of disability in making their determination regarding duty disability.) A general city duty disability applicant's treating physician is also sent the application and statement on disability along with a request that he or she complete the ERS Personal Physician form. Finally, in an opinion from our office date July 24, 2012, we advised that the ERS could furnish the application and statement of disability to the employing department without undertaking a public records analysis. In our opinion of July 24, 2012 we advised that providing a copy of the duty disability application to the employing department so that it can provide relevant information is part of ERS's responsibility in overseeing the processing of duty disability applications. Forwarding the application to appropriate personnel outside the ERS is necessary for the ERS to process a duty disability application. An applicant who refuses to comply with the ERS's procedure should not be allowed to file a duty disability application until such time as the applicant is willing to comply with the procedure.

4. What are the ERS's administrative responsibilities when the information on the application conflicts with information from the employing department regarding the nature of the alleged injury and causation?

We think that prohibiting additional statements should assist in minimizing the conflicts. However, the duty disability process is based on an applicant being truthful. The Board requires, at least on the application, that the statements be made under oath to assure honesty in the process. We recommend that the statement of disability also be included in the oath taken by the applicant to assure that the statements on that document are also true and based on personal knowledge. The oath should also include language to the effect that the applicant understands that providing false information will result in a dismissal of the application. In our judgment, a dismissal of the application if a statement on the application or statement of disability is determined to be false is implicit in the requirement that the forms be executed under oath and the prohibition against knowingly making a false statement contained in § 36-11-1. We have modified the current language of the oath to include the statement of disability and deleted

some language that diminishes the purpose of the oath. We have also modified the language on the application relating to the legal standard applicable to duty disability retirement so that the applicant will only swear to the factual elements of the duty disability requirements. A copy of an application with the proposed modifications is attached for your consideration and approval.

The application and statement of disability should be limited to factual information known by the applicant, rather than assertions. Currently, however, there is not a process available to resolve conflicting evidence regarding the extent and nature of the claimed work injury and the claimed disability resulting from the work injury. We have on several occasions advised both the City and the Board that the processing of a properly accepted duty disability application filed by a police officer requires referral to a medical panel.[2] As noted in our July 28, 2003 opinion to several Common Council members, this opinion is based on the language of § 36-05-3-c-1-a, which is in part the result of the 1983-84 collective bargaining agreement between the City and the Milwaukee Police Association in which the City and the MPA agreed to the medical panel. In that opinion we stated that a change to the medical panel would need to be done through the collective bargaining process. At this time, we do not see any legal basis to alter that opinion absent a change in the collective bargaining law.

Based on conversations we have had with you, we are concerned that police officers are being allowed to file applications for duty disability retirement even though they are working (both full and limited duty) and the police department has not been presented with any medical evidence that the officer needs permanent restrictions or that additional permanent restrictions have been placed on the officer, if he or she is employed in a limited duty assignment. Section 36-05-3-a allows a member in active service who becomes permanently and totally disabled to apply for a duty disability retirement. For most members applying for duty disability retirement, the applicant is usually not working because of permanent restrictions placed on the member by his or her treating physician as a result of a work injury *and* the employee's department's inability to accommodate those permanent restrictions. Thus, the incapacitation is based on the employing department's determination that the employee can no longer perform his or her job because of the employee's work related restrictions. In our opinion, before a member may apply for duty disability retirement, he or she must establish that the department will no longer employ him or her in their position based on permanent

[2] For police officers hired after June 28, 2005, who file a duty disability based on a mental injury, the application is referred to the medical council.

restrictions placed upon the employee by the employee's treating physician because of a claimed work injury. In our judgment, this is implicit in the language of the charter. By allowing police officers to apply for duty disability retirement merely because they are in active service, without consideration of whether or not the department has any work available for the officer, is in contravention to a duty disability retirement.

As noted above, the police department has had a limited duty program since February, 1987. When the program was implemented, there was litigation regarding whether a police officer could be denied duty disability retirement on the basis that the officer could perform limited duty, but not full duty. *Pikalek v. City of Milwaukee* (October 3, 1995 Ct. App.) (unpublished). In *Pikalek*, the court of appeals held that the term "permanently and totally incapacitated" used in § 36-05-3-a means the inability to perform full duty assignments for those officers hired prior to February 2, 1987. For officers hired after February 2, 1987, "permanently and totally incapacitated" means the inability to perform limited duty assignments.

It is the Chief of Police who makes assignments in his department pursuant to the limited duty protocol. If a police applicant is allowed to apply for duty disability retirement without presenting his or her permanent restrictions to the department in order for it to determine whether or not the department can place the person in a limited duty assignment, then the ERS is allowing members to apply for duty disability retirement who may not be eligible for the benefit because they are not disabled from their job. It is our recommendation that before you allow a police officer to apply for a duty disability retirement, he or she must establish that the department does not have any employment for the individual based on his or her doctor's permanent restrictions. This requires that the police officer present his or her restrictions to the police department and the police department advise the officer that it cannot accommodate the restrictions.[3] It is only at this point that the police officer can state on his or her statement of disability that he or she is disabled, which the ERS form requires the applicant to do.

---

[3] This requirement applies to all members who apply for duty disability retirement; however, it is our experience that a general city employee who applies for duty disability retirement has received documentation from their department advising the member that the department can no longer employ the member in his or her position based on permanent limitations. Firemen currently do not have permanent limited duty assignments within their department, but nevertheless they also must document that their treating physician has placed permanent restrictions on them that prevents them from performing their job.

If an officer wants to apply for a duty disability retirement, it is our recommendation that your office advise the officer that he or she will need to furnish documentation that the police department has determined that it cannot employ him or her before the officer will be allowed to apply for duty disability retirement. Requiring a police officer to establish that he or she has requested an assignment within his or her permanent restrictions and the department cannot assign the officer any work before they apply for a duty disability retirement is consistent with the language of the charter and is not a diminishment in any benefit because duty disability retirement is only available for members who can no longer perform their job.

You currently have a couple of applications from police officers who have not documented their inability to work and their applications have not proceeded to the medical panel. We recommend that you notify these applicants of the requirement outlined above and advise them that their applications will not be forwarded to the medical panel until the requisite documentation is completed.

Finally, you ask us generally for suggestions regarding how to improve administration of this benefit. Since there is an audit of fire and police disability underway, we deem it appropriate to await the outcome of the audit. We anticipate that we will review the audit with you and recommend any appropriate suggestions at that time.

Very truly yours,

GRANT P. KANGLEY
City Attorney

MAURITA HOUREN
Assistant City Attorney

MH:wt:197815
1054-2013-2784

Replace language after typewritten portion of application with this:

In accordance with the provisions of the law governing the operation of the Employes' Retirement System of the City of Milwaukee, I, a member of the System, apply for retirement from active service effective INSERT DATE. I am applying based on a disability that incapacitates me for duty; the injury that I specify on this form, and claim incapacitates me from duty, occurred while in the actual performance of duty on the date[s] stated below. The incident that caused my disability occurred as follows:

Insert "Statement of Disability" for "statement"

Oath Change to:

_____being first duly sworn under oath/affirmation states that he/she has read the foregoing application and statement of disability and knows the contents on both documents is true and based on personal knowledge. I understand that providing false information on either the application or statement of disability will result in a dismissal of my application.

Employes' Retirement System
City of Milwaukee
789 North Water Street, Suite 300
Milwaukee, WI 53202
1-800-815-8418 or 414-286-3557

APPLICATION FOR DUTY-DISABILITY RETIREMENT

FIRE AND POLICE

CASE NUMBER: <<Case_No>>

MEMBER INFORMATION

PERSON ID: <<PersonID>>		DATE OF BIRTH: <<DateOfBirth>>	DATE: <<Current_Date>>
NAME:	FIRST: <<FirstName>>	MI: <<MiddleInitial>>	LAST: <<LastName>>
ADDRESS:	<<AddrLine1>> <<AddrLine2>>		
ADDRESS:	<<AddrLine3>>		
CITY:	<<City>>	STATE: <<State>>	ZIP: <<Zip5>><<Zip4>>
PROVINCE: <<Province>>		POSTAL CODE: <<PostalCode>>	COUNTRY: <<Country>>
DEPARTMENT: <<Department>>		POSITION TITLE: <<Title>>	

TO THE ANNUITY AND PENSION BOARD

In accordance with the provisions of the law governing the operation of the Employes' Retirement System of the City of Milwaukee, I, a member ~~the undersigned, a member~~ of the System, apply ~~hereby make application~~ for retirement from active service, effective <<Retirement_Projection_Date>>. I am applying based on a disability that incapacitates me for duty; the injury that I specify on this form, and claim incapacitates me from duty, occurred while in the actual performance of duty on the date(s) stated below. The incident that caused my disability occurred as follows: ~~, on account of disability which incapacitates me for duty and is the natural and proximate result of an accident which occurred in the actual performance of duty, and not as a result of negligence on my part. The accident causing my disability occurred as follows:~~

Date: _____ Place: _____

Describe Accident:

_____

_____

Injury Resulting from Accident: _____

_____

Witnesses: _____

I attach a statement as to my physical condition, together with an authorization to my physician, to report directly on my condition to the Medical Panel of the System.

MEMBER CERTIFICATION

Signature of Member:	Signature of Witness:
_____	_____
<<NameAndSuffix>>	

NOTARIZATION OF MEMBER'S OR AUTHORIZED REPRESENTATIVE'S SIGNATURE

State of _____ County of _____

<<NameAndSuffix>> being first duly sworn under oath/affirmation states that he/she has read the foregoing application and statement of disability and knows the contents on both documents is true and based on personal knowledge. I understand that providing false information on either the application or statement of disability will result in a dismissal of my application. ~~knows the contents thereof; the same is true of his/her own personal knowledge, except as to those matters stated on information and belief, and as to those matters stated on information and belief, he/she verily believes them to be true.~~

Subscribed and sworn to before me on this _____day of _____, _____

(SEAL)

_____
Notary Public

_____
Date of Commission Expiration

DATE	PLACE	DESCRIBE ACCIDENT	INJURY SUSTAINED

Signature of Member:_____ Date: _____

City of Milwaukee
Employes' Retirement System

Bernard J. Allen
Executive Director

David M. Silber, CFA, CAIA
Chief Investment Officer

Beth Conradson Cleary
Deputy Director

November 1, 2013

Grant F. Langley, City Attorney
200 E Wells St, Rm 800
Milwaukee, WI 53202

Attn.: Rudolph M. Konrad, Deputy City Attorney

RE: Duty Disability Application Process

Dear Mr. Konrad:

We are seeking advice regarding a variety of issues that have arisen relating to the processing of disability applications filed by police officers.

Generally, the process for applying for a disability retirement is as follows. When a person wants to apply for a disability retirement, he or she makes an appointment with a disability counselor. The member meets with the counselor and at the meeting is provided with a Board approved application for disability and statement of disability. (Section 36-05-3-a of the Milwaukee City Charter requires that an individual apply for a disability benefit: "on a form provided by the board for that purpose.") The member completes the application and statement of disability in the presence of the counselor. The counselor explains the application process to the member, provides information regarding the disability benefit, and answers any questions the member may pose. Sometimes, the member is accompanied to the counseling session by a union representative, attorney or family member. Please advise whether or not the ERS should be allowing persons other than applicants to attend counseling sessions.

We have become aware that over a period of time the normal processing of a disability application has been altered in situations involving police applicants. In at least 18 disability counseling sessions with police applicants, the same retired police detective has attended the counseling sessions (as evidenced by his signing the witness block on the application). Many of these police applicants come to the counseling session with a previously prepared type written document, ranging in length from 5 to 15 pages, that the applicants request to be submitted as part of the application for disability retirement. These prepared statements most often note that the statements were prepared with the assistance of the same retired police detective who accompanies the applicants to ERS offices.

Not only do these prepared typewritten statements contain lengthy extraneous information that is not requested in the Board approved forms, but the statements have similar or the exact same boilerplate language that make assertions regarding the application of rules and standards to the police department, which according to the attached letter from the police department is incorrect. Given that these typewritten statements are not being prepared solely by the applicant, that we have been advised that the information in these statements is

incorrect, and that the statements alter the application forms approved by the Board, please advise whether the ERS should be sending supplemental statements to the medical panel or medical council?

Additionally, we have recently received a few duty disability applications with such typewritten statements that have also included the same boilerplate language stating that the applicant does not authorize the release of his/her application "to any person outside the ERS," and specifically denies access to the application by the Milwaukee Police Department and the Workers Compensation Section of the City's Employees Benefit Division, asserting that the information stated in the application contains protected sensitive medical information. Please advise as to how we should regard such a request.

We are also seeking your advice regarding the ERS' administrative duties in the event we are presented with conflicting information when comparing the alleged facts and circumstances stated in the applicant's statement of disability as compared to the information presented by the applicant's employing department. Recently the ERS and DER received correspondence from the Milwaukee Police Department submitted in response to one of the applications it reviewed that contained conflicting information as opposed to the perspective shared by the applicant of the claimed accident and injury (and surrounding events). Please advise on the ERS' administrative duties and role when a situation like this occurs which presents conflicting information resulting in questions about the eligibility to apply for the benefit (*e.g.*, both the claimed accident and resulting injury, or causation questions regarding a member claiming to be "permanently and totally incapacitated for duty as the natural and proximate result of an injury occurring at some definite time and place while in the actual performance of duty" (as is the standard per Ch. 36)).

In responding to this request we invite your input with any practical suggestions for resolving the issues posed above, if necessary, with respect to modification of ERS statutes, ordinance, customs, information or formal policies, or rules that would enable us to better serve our members and fairly administrate the benefits of this plan.

Thank you for your assistance in this matter.

Sincerely,

Bernard J. Allen
Executive Director

BJA:bcc

BE A FORCE

Milwaukee Police Department
Police Administration Building
749 West State Street
Milwaukee, Wisconsin 53233
http://www.milwaukee.gov/police

Edward A. Flynn
Chief of Police

(414) 935-7200

October 15, 2013

Jerry Allen
Executive Director
Employees' Retirement System
789 N. Water Street, Suite 300
Milwaukee, WI 53202

Re: DISABILITY APPLICATIONS

Dear Director Allen,

Recent disability applications, filed by or on behalf of Milwaukee Police Department employees, have included inaccurate information that may have a material impact on decisions to approve or deny disability benefits. I ask that the Employees' Retirement System ("ERS") consider the following information when processing disability applications.

Several applications reference Rule 4, Section 025.00 as a condition of employment that the Milwaukee Police Department currently enforces. The rule reads as follows:

> *"Members of the police force shall, be always subject to duty although periodically relieved from the routine performance of it. They are always subject to orders from proper authority and to calls from citizens. The fact they may be technically "off-duty" shall not be held as relieving them from the responsibility of taking required police action in any matter coming to their attention at any time."*

It appears that the rule is included within disability applications as way to express an absolute or imperative condition of employment as a law enforcement officer for the City of Milwaukee. These applications also assert that the department has not or will not exempt its law enforcement employees from the rule; the implication being that a disabled employee must be awarded retirement benefits due to the imposition of unreasonable employment conditions that are impossible for the employee to comply with.

It should be noted that on July 29, 2010, Police Chief Edward Flynn promulgated General Order 2010-20, which went into effect on August 1, 2010 (copy enclosed for reference). The General Order set into motion the adoption of a Code of Conduct (copy enclosed for reference) and the rescission of Rules and Regulations. The specific rule cited within disability applications was rescinded in its entirety on February 1, 2011. Nowhere in the Code of Conduct is there a requirement even remotely similar to Rule 4, Section 025.00. In fact, the Preamble to the Code of Conduct states in part:

> *"Department members shall at all times conduct themselves – to the extent their position requires – in accordance with the provisions of this Code."*

The Code of Conduct is issued to every employee, and each is required to be familiar with the content therein. An applicant who uses Rule 4 after February 1, 2011, as an enforced condition of employment, knows or should know that the rule has been rescinded and no longer applies.

As further evidence that the department accommodates its disabled law enforcement employees, I have enclosed for your reference Standard Operating Procedure 220 – Arrest Authority. The procedure outlines arrest authority limitations for both on-duty and off-duty "members". The term "members", for purposes of the procedure, is defined consistently with WI Statute §165.85(2)(c), which reads in part:

> *"...[A]ny person employed by the state or any political subdivision of the state, for the purpose of detecting and preventing crime and enforcing laws or ordinances and who is authorized to make arrests for violations of the laws or ordinances that the person is **employed** to enforce."*

The procedure clearly states that on-duty and off-duty members "may" make an arrest under certain circumstances. The procedure actually discourages off-duty members from taking law enforcement action. Additionally, the statutory definition used within the procedure contains qualifying language. A member must be authorized to make arrests, and the member's employer can prescribe the types of arrests that can be made, if at all.

I have also enclosed for your reference Standard Operating Procedure 040 – Limited Duty Status. The procedure clearly outlines the department's willingness and ability to accommodate injured, ill, or disabled employees on a temporary or permanent basis.

Lastly, in certain circumstances the department has suspended its members' police powers. These suspensions can be temporary or indefinite, and they have come about due to allegations of misconduct or a member's inability to perform essential law enforcement functions whether such inability is the result of an injury, illness, or mental affliction. It should be noted that the suspension of one's police powers is an administrative procedure that is not disciplinary in nature, and does not result in a reduction in one's pay or benefits.

In summary to the Rule 4 issue, ERS should consider whether to process a disability application that contains a reference to the rule, or any general reference that the department requires its law enforcement employees to take law enforcement action. Rule 4 does not exist, and has not since February 1, 2011. There is no condition of employment that requires an existing disabled law enforcement employee to take law enforcement action, whether on-duty or off-duty. Department policies and procedures limit or altogether suspend an employee's responsibility to take law enforcement action while on-duty or off-duty, and either on a temporary or indefinite basis. The department can also accommodate most law enforcement employees who suffer from an illness, injury, or mental affliction with an assignment that takes into consideration the employees' limitation or disability.

I have also taken note of disability applications that include references to the Law Enforcement Training and Standards Board ("LESB") and the City of Milwaukee Fire and Police Commission ("FPC"). These references also assert the existence of a condition of employment that prevents or precludes disabled law enforcement employees from continuing to serve the department in a limited capacity. I request that the ERS look further into these assertions. It appears that the LESB references, specifically LES 2-2.01 1.g and LES 2-2.01(4), relate to recruitment qualifications and not to existing certified law enforcement officers. I am unaware of the LESB decertifying an existing law enforcement employee solely because the employee suffers from an illness, injury, or mental affliction. Along the same lines, it appears that the FPC references relate to pre-hire qualifications, but the disability applications do not provide the exact FPC source. I am unaware of the FPC disciplining or discharging an existing law enforcement employee solely because the employee suffers from an illness, injury, or mental affliction.

If I can be of further assistance, please do not hesitate to ask. My staff and I are willing to assist in whatever way we can to resolve the aforementioned issues.

Sincerely,

Edward A. Flynn
Chief of Police

Gary J. Gacek
Captain of Police
Internal Affairs Division

Enclosures

CC: Chief of Staff Joel Plant
Inspector William Jessup
Pers. Admin. Valarie Williams
Asst. City Attorney Heidi Wick
Asst. City Attorney Maurita Houren

Wisconsin Law Enforcement Standards Board

Policy & Procedures Manual

September 4, 2013

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Certification and Decertification of Officers

References: §§ 165.85(3)(c) and (cm), Wis. Stats.
Wis. Admin. Code chs. LES 4 and 6

POLICY

The Law Enforcement Standards Board certifies law enforcement, tribal law enforcement, jail and secure juvenile detention officers.

Qualifications for Certification

To qualify for certification, an individual must:

- Meet minimum employment standards set by the Board.
- Be employed as an officer with an agency. Employing agencies submit form DJ-LE-303, *the Verification of Employment Standards and Application for Certification* form, electronically to the Bureau along with applicant fingerprints immediately upon hiring a new officer, and prior to that officer's first date of employment.
- Successfully complete the required preparatory training for each applicable certification.

Decertification

A certified officer may be decertified by order of the Board for failure to comply with a rule or order of the Board related to curriculum or training. The Board decertifies law enforcement, tribal law enforcement, jail and secure juvenile detention officers for failure to complete annual recertification training. The Board also decertifies law enforcement and tribal law enforcement officers for failure to achieve an associate degree or 60 accredited credits within their first five (5) years of law enforcement or tribal law enforcement employment.

PROCEDURE

1. Employers submit form DJ-LE-303 electronically to the Bureau along with applicant fingerprints immediately upon hiring a new officer, and prior to that officer's first date of employment.
2. The Bureau reviews form DJ-LE-303. Fingerprints are submitted to the Crime Information Bureau for a criminal history records check.
3. The Bureau informs the Board of officers who have met employment standards and gained law enforcement, tribal law enforcement, jail or secure juvenile detention officer employment, as well as completed preparatory training, at the quarterly Board meetings held in March, June, September and December. The Board grants certification to eligible officers at its quarterly meetings.

4. After the Board grants an officer certification at one of its quarterly meetings, the Bureau sends a certificate to the officer acknowledging his or her status as a certified officer in Wisconsin. The certificate is sent to the officer at his or her primary employing agency (primary employer).

5. For decertification, the Bureau sends a notice of intent to decertify to the officer and to his or her primary employer as the first step in due process procedures.

6. Decertification by order of the Board proceeds following the requirements set forth in ch. 227, Wis. Stats.

CERTIFICATION AND DECERTIFICATION OF OFFICERS:
FREQUENTLY-ASKED QUESTIONS AND ANSWERS

Q. **What are the requirements for officer certification in Wisconsin?**

A. The requirements are:
1. Meeting the minimum recruitment standards required by the Board.
2. Employment in the area of certification.
3. Electronic submission of form DJ-LE-303 along with applicant fingerprints.
4. Successful completion of preparatory training for the specific area of certification.

Q. **If an individual has completed preparatory training as a pre-service student or college certification track student, but is not yet employed, is that person certified?**

A. No. An individual must be employed as an officer and meet the Board's recruitment standards to be eligible for certification. However, the individual is "certifiable," meaning that he or she is eligible for certification upon meeting the Board's recruitment standards and upon employment. See Time Frames to Gain and Re-Gain Officer Employment.

Q. **Can an officer be certified in more than one category?**

A. Yes. An officer can be certified in any, or all of the three (3) basic categories: law enforcement/tribal law enforcement officer, jail officer and secure juvenile detention officer.

Q. **For what reason(s) can an officer be decertified?**

A. The Board decertifies law enforcement, tribal law enforcement, jail and secure juvenile detention officers for failure to complete annual recertification training. The Board also decertifies law enforcement and tribal law enforcement officers for failure to achieve 60 accredited credits within their first five (5) years of law enforcement or tribal law enforcement employment.

Q. **What is the process for decertification of an officer?**

A. Decertification by order of the Board proceeds following the requirements set forth in ch. 227, Wis. Stats. In any potential decertification action, the Bureau conducts an investigation and makes recommendations to the Board. Written notices of all possible actions are sent to officers and to their employers, and there are opportunities for responses.

Q. **What is the consequence of decertification?**

A. A decertified officer will be released from employment. A decertified officer is ineligible for re-employment and recertification for six (6) months from the date of decertification, and if an officer is decertified for failure to complete annual recertification training, the training that was missed must be made-up before returning to employment as a law enforcement, jail and/or secure juvenile detention officer. If an officer is decertified for failure to achieve an associate degree or 60 accredited credits within his or her first five (5) years of law enforcement/tribal law enforcement officer employment, the officer must meet the college credit requirement before returning to law enforcement or tribal law enforcement employment.

Chapter LES 2

RECRUITMENT QUALIFICATIONS

LES 2.01 Minimum qualifications for recruitment. LES 2.02 Pre-employment drug testing.

LES 2.01 Minimum qualifications for recruitment. (1) Before an individual may commence employment on a probationary, temporary, part-time or full-time basis as a law enforcement, tribal law enforcement, jail or secure detention officer, that individual must have met recruit qualifications established by the board. The minimum qualifications for recruitment shall be:

(a) The applicant shall possess a valid Wisconsin driver's license or such other valid operator's permit recognized by the Wisconsin department of transportation as authorizing operation of a motor vehicle in Wisconsin prior to completion of the preparatory training course. The results of a check of the issuing agency's motor vehicle files shall constitute evidence of driver's status.

(b) The applicant shall have attained a minimum age of 18 years. A birth or naturalization certificate shall serve as evidence of applicant's date of birth.

(c) The applicant shall not have been convicted of any federal felony or of any offense which if committed in Wisconsin could be punished as a felony unless the applicant has been granted an absolute and unconditional pardon.

(d) The applicant shall possess a Wisconsin high school diploma or a diploma issued by an out of state high school accredited by an appropriate agency of the state or shall have passed the general education development diploma test or any other test recommended by the Wisconsin department of public instruction as indicating high school diploma level.

(e) An applicant for employment as a law enforcement or tribal law enforcement officer shall possess either a 2 year associate degree from a Wisconsin technical college system district or its accredited equivalent from another state or a minimum of 60 fully accredited college level credits. An applicant who has not met this standard at the time of employment shall meet this standard as a requirement of recertification by the board at the end of his or her fifth year of employment as a law enforcement or tribal law enforcement officer. At the request of an applicant and upon documentation of experiences that have enhanced his or her writing, problem solving and other communication skills, the board may waive a maximum of 30 college level credits. This educational standard shall apply to applicants first employed as law enforcement or tribal law enforcement officers on or after February 1, 1993.

(f) The applicant shall be of good character as determined from a written report containing the results of the following:

1. The fingerprinting of the applicant and with a search of local, state and national fingerprint records.

2. A background investigation conducted by or on behalf of an employer. The employer shall certify in a document subscribed and sworn to by the affiant that a reasonably appropriate background investigation has been conducted, what persons or agency conducted the investigation and where written results of the investigation are maintained on file.

3. Such other investigation as may be deemed necessary to provide a basis of judgment on the applicant's loyalty to the United States or to detect conditions which adversely affect performance of one's duty as a law enforcement, tribal law enforcement, jail or secure detention officer.

(g) The applicant shall be free from any physical, emotional or mental condition which might adversely affect performance of duties as a law enforcement, tribal law enforcement, jail or secure detention officer.

1. The applicant shall complete a personal medical history, a copy of which is to be submitted to the examining physician.

2. The examination shall be by a Wisconsin licensed physician who shall provide a written report on the results of the examination.

(h) The applicant shall submit to and complete with satisfactory results, an oral interview to be conducted by the employing authority or its representative or representatives."Satisfactory results" shall be determined from the contents of a written rating by the interviewer expressing an opinion concerning the applicant's appearance, personality, and ability to communicate as observed during the interview.

(2) The employing authority shall supply the training and standards bureau with copies of the documentation and reports concerning the above listed qualifications. Personal history, rating and report forms currently used by the employing authority are acceptable for this purpose. If such forms are not available, the bureau will supply forms for this purpose upon request.

(3) If the applicant is employed on a probationary or temporary basis, the bureau shall be immediately informed. The bureau shall maintain a permanent file on each applicant.

(4) The foregoing are minimum qualifications. Higher qualifications are strongly recommended where the employing authority is in a position to require them.

History: Cr. Register, September, 1970, No. 177, eff. 10-1-70; am. (1) (c), Register, April, 1973, No. 208, eff. 5-1-73; am. (f) 1. f., Register, January, 1974, No. 217, eff. 2-1-74; am. (1) (intro. par.) and (1) (b), Register, October, 1974, No. 226, eff. 11-1-74; am. (1) (d), Register, January, 1975, No. 229, eff. 2-1-75; r. (1) (a), Register, April, 1975, No. 232, eff. 5-1-75; am. (1) (intro.), renum. (1) (b) to (h) to be (1) (a) to (g) and am. (1) (a), (b), (d) to (g), Register, October, 1984, No. 346, eff. 11-1-84; correction in (1) (f) made under s. 13.93 (2m) (b) 5., Stats., Register, October, 1984, No. 346; renum. (1) (c) to (g) to be (1) (f) to (h), cr. (1) (c), Register, January, 1993, No. 445, eff. 2-1-93; am. (1) (d), Register, August, 1993, No. 452, eff. 11-29-93; am. (1) (intro.), (e) and (g) (intro.); r. and recr. (1) (f); Register, November, 1997, No. 503, eff. 12-1-97.

LES 2.02 Pre-employment drug testing. (1) TESTING REQUIREMENT. (a) The applicant shall submit to a drug test for the presence of the following controlled substances or classes of controlled substances or their metabolites:

1. Amphetamines
2. Cannabis or cannabinoids
3. Opiates
4. Cocaine
5. Phencyclidine (PCP)

(b) The drug test shall be accomplished through analysis of a urine specimen from the applicant. Other specimens of blood, breath, saliva or hair may be used when minimum standards equivalent with those for urine specimens have been established by the United States department of health and human services, substance abuse and mental health services administration. The specimen collected may only be used for either of the following:

1. Test required under par. (a).

2. Tests for other controlled substances as determined by the prospective employing agency.

(c) The costs of the urine sample collection and analysis shall be borne by the prospective employing agency.

(2) NOTICE OF TESTING REQUIREMENT. Notice of the date, time, and place of the drug test sample collection shall be given to the applicant no more than 3 days prior to the date of the scheduled collection. The notice shall inform the applicant that appearance for the drug test specimen collection at the stated date, time, and place is mandatory and that failure to appear without just cause to the satisfaction of the prospective employing agency or refusal to provide the specimen shall result in denial of certification by the board. The notice shall inform the applicant that a positive test result for which the applicant cannot provide a legitimate explanation to the satisfaction of the board shall result in the applicant being denied employment and being denied certification by the board. The notice shall state that the test results may be disclosed only:

(a) To the board.

(b) To the prospective employing agency or any other prospective employing agency.

(c) To the applicant or applicant's designee.

(d) To the prospective employer's designee or the board's designee, if disclosed for a purpose related to or in conjunction with an applicant's challenge to a positive test result, or an administrative action, court proceeding, or other proceeding in which the applicant challenges a denial of employment or certification.

(e) By lawful order of a court.

(f) As otherwise required by law.

(3) SPECIMEN COLLECTION. The urine specimen shall be collected at a collection site designated by the approved laboratory specified by the prospective employing agency for the drug testing.

(a) The applicant providing the specimen shall be positively identified by the collection site person by use of a valid photo driver's license, valid passport, or valid military identification card. If proper identification is not available, the specimen shall not be collected without contacting the prospective employing agency to make other arrangements for positive identification.

(b) The specimen shall be obtained from the applicant in a manner that complies with laboratory and collection site specifications adopted by the board and published in the policy and procedures manual of the board.

(4) CONSEQUENCES OF POSITIVE TEST RESULT, FAILURE TO APPEAR OR REFUSAL. A positive test result for which the applicant cannot provide an explanation to the satisfaction of the board, refusal to provide the urine specimen for the drug test, or failure to appear to provide the urine specimen at the scheduled date, time, and place without just cause to the satisfaction of the prospective employing agency shall result in the applicant being denied certification by the board.

(5) TESTING PROCEDURE. The drug test required by sub. (1) shall be performed by an approved laboratory chosen by the prospective employing agency. Specifications for approved laboratories shall be published in the policy and procedures manual of the board.

(a) Tests to be performed. The testing procedure shall consist of:

1. An initial screening test

2. A confirmatory test when there is a positive initial test result.

(b) *Controlled substances.* The initial screening test shall be done for the presence of amphetamines, cannabis or cannabinoids, opiates, cocaine and phencyclidine (PCP) or their metabolites in tested urine in levels at or above threshold detection levels established by the United States Department of Health and Human Services, Substance Abuse and Mental Health Services Administration.

(c) *Confirmation tests.* The confirmation test shall be done for the presence of amphetamines, cannabis or cannabinoids (Delta–9–tetrahydrocannabinol–9–carboxylic acid), opiates (morphine, codeine), cocaine (Benz–oylecgonine) and phencyclidine (PCP) in tested urine in levels at or above threshold detection levels established by the United States department of health and human services, substance abuse and mental health services administration. Each applicant who receives a positive confirmation test shall be allowed to submit information in explanation of test results.

(6) NOTICE OF TEST RESULTS; APPLICANT RIGHTS. The testing laboratory shall forward any positive test results to the board as well as to the prospective employing agency.

(a) Within 10 working days after receipt of the test result report from the testing laboratory, the prospective employing agency shall inform the applicant in writing of a positive test result.

(b) If an applicant wishes to challenge a positive test result, the applicant shall, within 5 working days after receiving notice of a positive test result, submit in writing to the prospective employing agency and to the board information that the applicant believes provides a legitimate explanation for the positive test result. The applicant shall provide to the board written waivers of confidentiality for information the board believes is necessary for it to determine if there is a legitimate explanation for the positive test result.

(c) 1. Within 20 working days after receipt of the information in par. (b), the board shall determine if there is an acceptable legitimate explanation for the applicant's positive test result.

2. The applicant, at the applicant's expense, may select from a list of physicians approved by the board, a physician who is not the applicant's personal physician, to review the test documentation and applicant's explanatory information. The physician shall provide a written report to the board rendering an opinion and supporting rationale as to whether or not there is a legitimate explanation for the positive test result. The board shall consider this report in making its final determination.

3. The applicant shall cooperate in any investigation by the board or the selected physician needed to reach their respective determinations. Failure to cooperate shall be deemed a withdrawal of the applicant's challenge to the positive test result.

4. The board shall immediately forward a written report of its findings and determination to the applicant and to the prospective employing agency.

5. The board shall approve a list of physicians qualified and acceptable to review drug analysis results. The list shall be published in the policy and procedures manual of the board and updated as required.

(d) The board may approve alternative procedures by prospective employing agencies to assure applicant rights.

(7) DRUG TEST RESULTS; CONFIDENTIALITY. (a) The prospective employing agency shall ensure that only personnel necessary to the employment decision have access to drug test records.

(b) All records pertaining to drug tests performed pursuant to sub. (1) shall remain confidential, except that the records may be released to:

1. To the board.

2. To the prospective employing agency or any other prospective employing agency.

3. To the applicant or applicant's designee.

4. To the prospective employing agency's designee, or the board's designee for a purpose related to or in conjunction with an applicant's challenge to a positive test result or an administrative action, court proceeding, or other proceeding in which the applicant challenges a denial of employment or board certification.

5. By lawful order of a court.

6. As otherwise required by law.

(c) An applicant may provide written permission for any other release of records pertaining to the drug tests.

(d) The prospective employing agency shall provide copies of all necessary documentation and reports under this section to the board.

History: Cr. Register, August, 1993, No. 452, eff. 11-29-93.

The Wisconsin Administrative Code on this web site is updated on the 1st day of each month, current as of that date. See also Are the Codes on this Website Official?

1. The individual was arrested, or the juvenile was taken into custody, under a warrant.

2. The court has made a finding that there is probable cause that the individual committed a felony or that the juvenile committed an offense that would be a felony if committed by an adult in this state.

3. The individual fails to appear at the initial appearance or preliminary examination or the person waives the preliminary examination.

4. The individual fails to appear for a delinquency proceeding under ch. 938.

(b) Biological samples required under par. (a) shall be obtained and, if par. (am) requires, submitted as specified in rules promulgated by the department of justice under s. 165.76 (4).

(bm) 1. Unless par. (am) 1. applies to the individual, the court shall notify the agency if par. (am) 2., 3., or 4. applies to an individual the law enforcement or tribal law enforcement agency arrested.

2. Unless par. (am) 1. applies to the individual, if, one year after the date the biological sample was obtained under par. (a), the court has not notified under subd. 1. the law enforcement or tribal law enforcement agency that par. (am) 2., 3., or 4. applies to the individual, the law enforcement or tribal law enforcement agency shall destroy the biological sample.

(c) 1. No biological specimen obtained under par. (a) may be subject to analysis except by the crime laboratories as provided under s. 165.77.

2. Biological specimens obtained under this section may be used only as provided under s. 165.77.

NOTE: Sub. (7) is created eff. 4–1–15 by 2013 Wis. Act 20.

History: 1977 c. 305 s. 64; 1985 a. 29; 1993 a. 407; 1997 a. 283; 2013 a. 20.

165.845 Collect crime data. (1) The department of justice shall:

(a) Collect information concerning the number and nature of offenses known to have been committed in this state and such other information as may be useful in the study of crime and the administration of justice. The department of justice may determine any other information to be obtained regarding crime and justice system statistics. The information shall include data requested by the federal bureau of investigation under its system of uniform crime reports for the United States.

(b) Furnish all reporting officials with forms or instructions or both that specify the nature of the information required under par. (a), the time it is to be forwarded, the method of classifying and any other matters that facilitate collection and compilation.

(c) Maintain a statistical analysis center to serve as a clearing house of justice system data and information and conduct justice system research and data analysis under this section.

(2) All persons in charge of law enforcement agencies and other criminal and juvenile justice system agencies shall supply the department of justice with the information described in sub. (1) (a) on the basis of the forms or instructions or both to be supplied by the department under sub. (1) (a). The department may conduct an audit to determine the accuracy of the data and other information it receives from law enforcement agencies and other criminal and juvenile justice system agencies.

History: 2013 a. 20 ss. 168 to 170, 172, 1938, 1939.

165.85 Law enforcement standards board. (1) FINDINGS AND POLICY. The legislature finds that the administration of criminal justice is of statewide concern, and that law enforcement work is of vital importance to the health, safety, and welfare of the people of this state and is of such a nature as to require training, education, and the establishment of standards of a proper professional character. The public interest requires that these standards be established and that this training and education be made available to persons who seek to become law enforcement, tribal law enforcement, jail or juvenile detention officers, persons who are serving as these officers in a temporary or probationary capacity, and persons already in regular service.

(2) DEFINITIONS. In this section and in s. 165.86:

(ac) "Alzheimer's disease" has the meaning given in s. 46.87 (1) (a).

(ah) "Board" means the law enforcement standards board.

(bc) "Fiscal year" has the meaning given in s. 20.902.

(bg) "Jail" means a county jail, rehabilitation facility established by s. 59.53 (8) or county house of correction under s. 303.16.

(bn) "Jail officer" means any person employed by any political subdivision of the state for the purpose of supervising, controlling or maintaining a jail or the persons confined in a jail. "Jail officer" includes officers regardless of whether they have been sworn regarding their duties or whether they serve on a full–time basis.

(br) "Juvenile detention facility" has the meaning given in s. 48.02 (10r).

(bt) "Juvenile detention officer" means any person employed by any political subdivision of the state or by any private entity contracting under s. 938.222 to supervise, control, or maintain a juvenile detention facility or the persons confined in a juvenile detention facility. "Juvenile detention officer" includes officers regardless of whether they have been sworn regarding their duties or whether they serve on a full–time basis.

(c) "Law enforcement officer" means any person employed by the state or any political subdivision of the state, for the purpose of detecting and preventing crime and enforcing laws or ordinances and who is authorized to make arrests for violations of the laws or ordinances that the person is employed to enforce.

(d) "Political subdivision" means counties, cities, villages, towns, town sanitary districts and public inland lake protection and rehabilitation districts.

(g) "Tribal law enforcement officer" means any of the following:

1. A person who is employed by a tribe for the purpose of detecting and preventing crime and enforcing the tribe's laws or ordinances, who is authorized by the tribe to make arrests of Indian persons for violations of the tribe's laws or ordinances, and who agrees to accept the duties of law enforcement officers under the laws of this state.

2. A conservation warden employed by the Great Lakes Indian Fish and Wildlife Commission who agrees to accept the duties of law enforcement officers under the laws of this state.

(3) POWERS. The board may:

(a) Promulgate rules for the administration of this section including the authority to require the submission of reports and information pertaining to the administration of this section by law enforcement and tribal law enforcement agencies in this state.

(b) Establish minimum educational and training standards for admission to employment as a law enforcement or tribal law enforcement officer in permanent positions and in temporary, probationary or part–time status. Educational and training standards for tribal law enforcement officers under this paragraph shall be identical to standards for other law enforcement officers.

(c) Except as provided under sub. (3m) (a), certify persons as being qualified under this section to be law enforcement, tribal law enforcement, jail or juvenile detention officers. Prior to being certified under this paragraph, a tribal law enforcement officer shall agree to accept the duties of law enforcement officers under the laws of this state.

(cm) Decertify law enforcement, tribal law enforcement, jail or juvenile detention officers who terminate employment or are terminated, who violate or fail to comply with a rule or order of the board relating to curriculum or training, who fail to pay court–ordered payments of child or family support, maintenance, birth expenses, medical expenses, or other expenses related to the support of a child or former spouse, or who fail to comply, after appropriate notice, with a subpoena or warrant issued by the department

of children and families or a county child support agency under s. 59.53 (5) and related to paternity or child support proceedings. The board shall establish procedures for decertification in compliance with ch. 227, except that decertification for failure to pay court–ordered payments of child or family support, maintenance, birth expenses, medical expenses, or other expenses related to the support of a child or former spouse or for failure to comply, after appropriate notice, with a subpoena or warrant issued by the department of children and families or a county child support agency under s. 59.53 (5) and related to paternity or child support proceedings shall be done as provided under sub. (3m) (a).

(d) Establish minimum curriculum requirements for preparatory courses and programs, and recommend minimum curriculum requirements for recertification and advanced courses and programs, in schools operated by or for this state or any political subdivision of the state for the specific purpose of training law enforcement recruits, law enforcement officers, tribal law enforcement recruits, tribal law enforcement officers, jail officer recruits, jail officers, juvenile detention officer recruits, or juvenile detention officers in areas of knowledge and ability necessary to the attainment of effective performance as an officer, and ranging from subjects such as first aid, patrolling, statutory authority, techniques of arrest, protocols for official action by off–duty officers, firearms, and recording custodial interrogations to subjects designed to provide a better understanding of ever–increasing complex problems in law enforcement such as human relations, civil rights, constitutional law, and supervision, control, and maintenance of a jail or juvenile detention facility. The board shall appoint a 13–member advisory curriculum committee consisting of 6 chiefs of police and 6 sheriffs to be appointed on a geographic basis of not more than one chief of police and one sheriff from any one of the 8 state administrative districts together with the director of training of the Wisconsin state patrol. This committee shall advise the board in the establishment of the curriculum requirements.

(e) Consult and cooperate with counties, municipalities, agencies of this state, other governmental agencies and with universities, colleges, the technical college system board and other institutions concerning the development of law enforcement training schools, degree programs or specialized courses of instruction.

(g) Conduct and stimulate research which is designed to improve law enforcement administration and performance.

(h) Make recommendations concerning any matter within its purview.

(i) Make such evaluations as are necessary to determine if participating governmental units are complying with this section.

(j) Adopt rules under ch. 227 for its internal management, control and administration.

(3m) DUTIES RELATING TO SUPPORT ENFORCEMENT. The board shall do all of the following:

(a) As provided in a memorandum of understanding entered into with the department of children and families under s. 49.857, refuse certification to an individual who applies for certification under this section, refuse recertification to an individual certified under this section or decertify an individual certified under this section if the individual fails to pay court–ordered payments of child or family support, maintenance, birth expenses, medical expenses or other expenses related to the support of a child or former spouse or if the individual fails to comply, after appropriate notice, with a subpoena or warrant issued by the department of children and families or a county child support agency under s. 59.53 (5) and related to paternity or child support proceedings.

(b) 1. Request that an individual provide the board with his or her social security number when he or she applies for certification or recertification under this section. Except as provided in subd. 2., if an individual who is requested by the board to provide his or her social security number under this paragraph does not comply with the board's request, the board shall deny the individual's application for certification or recertification. The board may disclose a social security number provided by an individual under this paragraph only to the department of children and families as provided in a memorandum of understanding entered into with the department of children and families under s. 49.857.

2. As a condition of applying for certification or recertification, an individual who does not have a social security number shall submit a statement made or subscribed under oath or affirmation to the board that he or she does not have a social security number. The form of the statement shall be prescribed by the department of children and families. A certification or recertification issued in reliance on a false statement submitted under this subdivision is invalid.

(4) REQUIRED STANDARDS. (a) The following law enforcement and tribal law enforcement officers are not required to meet any requirement of pars. (b) 1. and (c) as a condition of tenure or continued employment. The failure of any such law enforcement or tribal law enforcement officer to fulfill those requirements does not make that officer ineligible for any promotional examination for which he or she is otherwise eligible. Those law enforcement and tribal law enforcement officers may voluntarily participate in this program.

1. Law enforcement and tribal law enforcement officers serving under permanent appointment prior to January 1, 1974.

2. Law enforcement and tribal law enforcement officers who are elected by popular vote.

(an) Except as provided in pars. (ap) and (ar), jail officers are required to meet the requirements of pars. (b) 2., (bn) 2. and (c) as a condition of tenure or continued employment regardless of the date of their appointment.

(ap) Jail officers serving under permanent appointment prior to July 2, 1983, are not required to meet any requirement of pars. (b) and (c) as a condition of tenure or continued employment as either a jail officer or a juvenile detention officer. The failure of any such officer to fulfill those requirements does not make that officer ineligible for any promotional examination for which he or she is otherwise eligible. Any such officer may voluntarily participate in programs to fulfill those requirements.

(ar) 1. A jail officer permanently appointed after July 1, 1983, and prior to July 1, 1988, including an officer who after July 1, 1983, and prior to July 1, 1988, completed a program of at least 80 hours of training that met the requirements of s. 165.85 (4) (b) 2., 1985 stats., shall meet the requirements under par. (b) 2. by June 30, 1993.

2. A jail officer who has completed at least 80 hours of preparatory training which met the requirements of s. 165.85 (4) (b) 2., 1985 stats., may meet the requirements of subd. 1. by completing a program of training approved by the board. The program shall devote at least 16 hours to methods of supervision of special needs inmates, including inmates who may be emotionally distressed, mentally ill, suicidal, developmentally disabled or alcohol or drug abusers.

(at) Any person certified as a jail officer on July 1, 1994, is certified as a juvenile detention officer and remains certified as a juvenile detention officer subject to annual recertification requirements under par. (bn) 3. and the board's decertification authority under sub. (3) (cm).

(b) 1. No person may be appointed as a law enforcement or tribal law enforcement officer, except on a temporary or probationary basis, unless the person has satisfactorily completed a preparatory program of law enforcement training approved by the board and has been certified by the board as being qualified to be a law enforcement or tribal law enforcement officer. The program shall include 400 hours of training, except the program for law enforcement officers who serve as rangers for the department of natural resources includes 240 hours of training. The board shall promulgate a rule under ch. 227 providing a specific curriculum for a 400–hour conventional program and a 240–hour ranger program. The period of temporary or probationary employment established at the time of initial employment shall not be extended

by more than one year for an officer lacking the training qualifications required by the board. The total period during which a person may serve as a law enforcement and tribal law enforcement officer on a temporary or probationary basis without completing a preparatory program of law enforcement training approved by the board shall not exceed 2 years, except that the board shall permit part–time law enforcement and tribal law enforcement officers to serve on a temporary or probationary basis without completing a program of law enforcement training approved by the board to a period not exceeding 3 years. For purposes of this section, a part–time law enforcement or tribal law enforcement officer is a law enforcement or tribal law enforcement officer who routinely works not more than one–half the normal annual work hours of a full–time employee of the employing agency or unit of government. Law enforcement training programs including municipal, county and state programs meeting standards of the board are acceptable as meeting these training requirements.

1d. Any training program developed under subd. 1. shall include all of the following:

a. An adequate amount of training to enable the person being trained to deal effectively with domestic abuse incidents, including training that addresses the emotional and psychological effect that domestic abuse has on victims.

b. Training on emergency detention standards and procedures under s. 51.15, emergency protective placement standards and procedures under s. 55.135, and information on mental health and developmental disabilities agencies and other resources that may be available to assist the officer in interpreting the emergency detention and emergency protective placement standards, making emergency detentions and emergency protective placements, and locating appropriate facilities for the emergency detentions and emergency protective placements of persons.

c. At least one hour of instruction on recognizing the symptoms of Alzheimer's disease or other related dementias and interacting with and assisting persons who have Alzheimer's disease or other related dementias.

d. Training on police pursuit standards, guidelines, and driving techniques established under par. (cm) 2. b.

e. Training on responding to an act of terrorism, as defined in s. 256.15 (1) (ag).

2. No person may be appointed as a jail officer, except on a temporary or probationary basis, unless the person has satisfactorily completed a preparatory program of jail officer training approved by the board and has been certified by the board as being qualified to be a jail officer. The program shall include at least 120 hours of training. The training program shall devote at least 16 hours to methods of supervision of special needs inmates, including inmates who may be emotionally distressed, mentally ill, suicidal, developmentally disabled or alcohol or drug abusers. The period of temporary or probationary employment established at the time of initial employment shall not be extended by more than one year for an officer lacking the training qualifications required by the board. Jail officer training programs including municipal, county and state programs meeting standards of the board shall be acceptable as meeting these training requirements.

3. No person may be appointed as a juvenile detention officer, except on a temporary or probationary basis, unless the person has satisfactorily completed a preparatory program of juvenile detention officer training approved by the board and has been certified by the board as being qualified to be a juvenile detention officer. The program shall include at least 120 hours of training. The training program shall devote at least 16 hours to methods of supervision of special needs inmates, including inmates who may be emotionally distressed, mentally ill, suicidal, developmentally disabled, or alcohol or drug abusers. The period of temporary or probationary employment established at the time of initial employment shall not be extended by more than one year for an officer lacking the training qualifications required by the board. Juvenile detention officer training programs including municipal, county, and state programs meeting standards of the board shall be acceptable as meeting these training requirements.

(bn) 1. No person other than an officer elected by popular vote may continue as a law enforcement or tribal law enforcement officer, except on a temporary or probationary basis, unless that person completes annual recertification training. Any officer elected by popular vote who is also a certified officer must complete annual recertification training to maintain certification. Any officer who is subject to this subdivision shall complete at least 24 hours each fiscal year beginning in the fiscal year following the fiscal year in which he or she complies with par. (b) 1.

1m. Each officer who is subject to subd. 1. shall biennially complete at least 4 hours of training from curricula based upon model standards promulgated by the board under par. (cm) 2. b. Hours of training completed under this subdivision shall count toward the hours of training required under subd. 1.

2. No person may continue as a jail officer, except on a temporary or probationary basis, unless that person completes annual recertification training. The officer shall complete at least 24 hours each fiscal year beginning in the later of the following:

a. Fiscal year 1990–91.

b. The fiscal year following the fiscal year in which he or she complies with par. (b) 2.

3. No person may continue as a juvenile detention officer, except on a temporary or probationary basis, unless that person completes annual recertification training. The officer shall complete at least 24 hours each fiscal year beginning in the later of the following:

a. Fiscal year 1993–94.

b. The fiscal year following the fiscal year in which he or she complies with par. (b) 3.

(c) In addition to the requirements of pars. (b) and (bn), the board may, by rule, fix such other minimum qualifications for the employment of law enforcement, tribal law enforcement, jail or juvenile detention officers as relate to the competence and reliability of persons to assume and discharge the responsibilities of law enforcement, tribal law enforcement, jail or juvenile detention officers, and the board shall prescribe the means for presenting evidence of fulfillment of these requirements.

(cm) 1. In this paragraph, "police pursuit" has the meaning given in s. 85.07 (8) (a).

2. The board shall promulgate rules that do all of the following:

a. Establish model standards that could be used by any law enforcement agency to determine whether to initiate or continue police pursuit, to establish police pursuit driving techniques employed by that agency and to inform its officers of its written guidelines provided under s. 346.03 (6). The board shall review and, if considered appropriate by the board, revise the model standards established under this subd. 2. a. not later than June 30 of each even–numbered year thereafter. The rules promulgated under this subd. 2. a. are advisory only, are not required to be included as a law enforcement training standard under this subsection and are inadmissible as evidence, except to show compliance with this subd. 2. a.

b. Establish the preparatory program and annual recertification training curricula required under pars. (b) 1. and (bn) 1m., respectively, relating to police pursuit standards, guidelines and driving techniques.

(d) Except as provided under sub. (3m) (a), the board shall issue a certificate evidencing satisfaction of the requirements of pars. (b), (bn) and (c) to any applicant who presents such evidence, as is required by its rules, of satisfactory completion of requirements equivalent in content and quality to those fixed by the board under the board's authority as set out in pars. (b), (bn) and (c).

(dm) The board may provide, by rule, that parts of the jail officer preparatory training and the juvenile detention officer prepara-

tory training are identical and count toward either training requirement.

(e) This section does not preclude any law enforcement or tribal law enforcement agency or sheriff from setting recruit training and employment standards which are higher than the minimum standards set by the board.

(f) Except as provided under sub. (3m) (a), and in addition to certification procedures under pars. (a) to (d), the board may certify any person as being a tribal law enforcement officer on the basis of the person's completion of the training requirements for law enforcement officer certification prior to May 6, 1994. The officer must also meet the agreement requirements under sub. (3) (e) prior to certification as a tribal law enforcement officer.

(4m) TRAINING FOR CONSTABLES. The board shall establish a separate training program for those constables who are not required to complete training under sub. (4). Except as provided in s. 60.22 (4), a constable may voluntarily participate in the program under this subsection. Expenses incurred for this program are subject to reimbursement under sub. (5).

(5) SCHOOLS AND PROGRAMS; GRANTS. (a) The board may authorize and approve law enforcement, jail or juvenile detention officer training programs conducted by an agency of a political subdivision or an agency of the state when their programs meet the standards required by the board. No authority granted in this paragraph extends to the board selecting a site for a state police, jail or juvenile detention officer academy and expending funds thereon without further legislation.

(b) The board shall authorize the reimbursement to each political subdivision of approved expenses incurred by officers who satisfactorily complete training at schools certified by the board. Reimbursement of these expenses for law enforcement officer, jail officer and juvenile detention officer preparatory training shall be for approved tuition, living, and travel expenses for the first 400 hours of law enforcement preparatory training and for the first 120 hours of jail or juvenile detention officer preparatory training. Reimbursement of approved expenses for completion of annual recertification training under sub. (4) (bn) shall include at least $160 per officer thereafter. Funds may also be distributed for attendance at other training programs and courses or for training services on a priority basis to be decided by the department of justice.

(c) The board may provide grants as a reimbursement for actual expenses incurred by state agencies or political subdivisions for providing training programs to officers from other jurisdictions within the state.

(d) Any state agency which receives reimbursement for salary and fringe benefit costs under this subsection shall treat the reimbursement as revenue and deposit any such reimbursement in the appropriate program revenue account or segregated fund. If there is no such appropriate account or fund, the reimbursement shall be deposited as general purpose revenue — earned.

(5x) Notwithstanding sub. (5), in each fiscal year, the department of justice shall determine the amount of additional costs, including but not limited to tuition, lodging, travel, meals, salaries and fringe benefits, to each political subdivision as a result of the enactment of 1993 Wisconsin Act 460. In each fiscal year, the department shall pay each political subdivision the amount determined under this subsection for that political subdivision from the appropriation under s. 20.455 (2) (am), subject to the limitations under s. 20.455 (2) (am).

(6) FINANCES. The board may accept for any of its purposes and functions under this section any and all donations, both real and personal, and grants of money from any governmental unit or public agency, or from any institution or person, and may receive and utilize the same. Any arrangements pursuant to this subsection shall be detailed in any report of the board submitted under s. 15.07 (6), which shall include the identity of the donor, the nature of the transaction, and the conditions, if any.

History: 1973 c. 90, 333; 1975 c. 94 s. 91 (11); 1977 c. 29, 418; 1979 c. 111; 1981 c. 20; 1983 a. 27; 1985 a. 29, 260; 1987 a. 237, 366, 394; 1989 a. 31, 291; 1991 a. 39; 1993 a. 16, 167, 213, 399, 407, 460, 482, 491; 1995 a. 201, 225, 349; 1997 a. 27, 88, 191; 1999 a. 9; 2001 a. 16, 109; 2005 a. 60, 264, 344, 414; 2007 a. 20, 27, 97, 130; 2009 a. 28, 180; 2011 a. 29.

NOTE: 1993 Wis. Act 407, which creates subs. (2) (e) and (4) (f) and amends subs. (1), (3) and (4), contains extensive explanatory notes.

Cross-reference: See also ch. LES 1, Wis. adm. code.

A rule adopted under this section properly barred a nonpardoned felon from holding a police job. Law Enforcement Standards Board v. Lyndon Station, 101 Wis. 2d 472, 305 N.W.2d 89 (1981).

Sub. (4) (b) governs the terms of employment of a probationary sheriff's deputy so that the discipline procedures under s. 59.21 (8) (b) (now s. 59.28 (8) (b)) do not apply and an applicable collective bargaining agreement controls. Hussey v. Outagamie County, 201 Wis. 2d 14, 548 N.W.2d 848 (Ct. App. 1996), 95-2948.

A police officer promoted to sergeant, subject to a one-year period of probation, could not be demoted without a just cause hearing under s. 62.13 (5) (em). An original appointment is on a probationary basis under sub. (4) (b). Once that period has passed, no promotion can be taken away without a hearing under s. 62.13 (5) (em). Antisdel v. City of Oak Creek Police and Fire Commission, 2000 WI 35, 234 Wis. 2d 154, 609 N.W.2d 464, 97-3818.

Sub. (4) (b) 2. does not preclude temporary assignment of uncertified persons to fill in as jail officers when necessary as a result of sickness, vacations, or scheduling conflicts. 78 Atty. Gen. 146.

Chief of police was entitled to hearing meeting due process requirements prior to discharge from office. Jensen v. Village of Lyndon Station, 519 F. Supp. 1183 (1981).

A probationary police officer had no protected property interest in his job. Ratliff v. City of Milwaukee, 608 F. Supp. 1109 (1985).

165.86 Law enforcement training. The department shall:

(1) (a) Supply the staffing needs of the law enforcement standards board.

(b) Identify state agencies and political subdivisions that employ law enforcement officers in the state, notify the appropriate officials of the standards of employment and preparatory and recertification training established by the board, and develop appropriate procedures whereby acceptable evidence of compliance with the board's employment and preparatory and recertification training standards may be submitted.

(c) Identify state agencies and political subdivisions that employ law enforcement officers in the state and notify the appropriate officials of the model law enforcement pursuit standards established by the board under s. 165.85 (4) (cm) 2. a.

(2) (a) Identify and coordinate all preparatory and recertification training activities in law enforcement in the state, and expand the coordinated program to the extent necessary to supply the training required for all recruits in the state under the preparatory training standards and time limits set by the board and for law enforcement officers, jail officers and juvenile detention officers in this state.

(b) Organize a program of training, which shall encourage utilization of existing facilities and programs through cooperation with federal, state, and local agencies and institutions presently active in this field. Priority shall be given to the establishment of the statewide preparatory and recertification training programs described in sub. (1), but the department shall cooperate in the creation and operation of other advanced and special courses, including courses relating to emergency detention of persons under s. 51.15 and emergency protective placement under s. 55.135, that meet the curriculum standards recommended by the board. The department may satisfy the requirement for cooperating in the development of special courses relating to emergency detention and emergency protective placement by cooperating with county departments of community programs in the development of these courses under s. 51.42 (3) (ar) 4. d. The department shall keep appropriate records of all such training courses given in the state and the results thereof in terms of persons attending, agencies represented, and, where applicable, individual grades given.

History: 1985 a. 29; 1987 a. 366; 1989 a. 31; 1993 a. 460; 1997 a. 88; 2005 a. 264; 2007 a. 97.

MILWAUKEE POLICE DEPARTMENT

CODE OF CONDUCT

GENERAL ORDER: 2010-20	ISSUED: July 29, 2010	EFFECTIVE: August 1, 2010

ACTION: ADOPTION OF THE CODE OF CONDUCT	ROLL CALL INFORMATION

The Milwaukee Police Department is in the process of implementing a values-based Code of Conduct to replace current Rules, Regulations, and Position Responsibilities. The transition will occur over the next six (6) months. Rules 3 and 5 through 9 have already been rescinded and their contents incorporated into Standard Operating Procedures; only Rules 1 (Administration – Chief of Police) and 4 (General Rules and Regulations) remain. Rule 4 and Position Responsibilities will remain in effect for six months after the publication of the Code of Conduct. This will allow members to familiarize themselves with the Code of Conduct while still abiding by Rule 4 and applicable Position Responsibilities. During this transition period, substantiated violations of Rule 4, Position Responsibilities, and Standard Operating Procedures will continue to be addressed as they normally have. However, each charge of misconduct will also reference the applicable section(s) of the Code of Conduct. This reference is meant to assist everyone in identifying how misconduct under the current system can and will be applied to the Code of Conduct in the future. Any reference to the Code of Conduct within a charge specification during this transition period will not have any impact on disciplinary decisions. While members are expected to abide by the Code of Conduct, members will not receive any more or any less discipline as a result of the Code of Conduct reference. Their disciplinary history will reflect only the violation of Department Rules, Position Responsibilities or Standard Operating Procedures applicable to their case. After six months have passed, the transition period will conclude and Rule 4 and Position Responsibilities will be rescinded in its entirety.

All Department members will be issued a Code of Conduct handbook. The handbook is Department issued equipment and members are responsible for its safekeeping as with all other Department issued equipment.

The Code of Conduct of the Milwaukee Police Department is as follows:

Preamble

The Milwaukee Police Department hereby establishes a Code of Conduct comprised of our Vision Statement, Mission Statement, Core Values and Guiding Principles, and Standard Operating Procedures. This Code establishes fundamental standards of conduct and performance consistent with the highest professional standards of policing.

Our vision statement describes what we as a police department seek to achieve. Our mission statement describes how we as department members will achieve that vision. Our core values and guiding principles shape our conduct and performance both on and off duty. Our policies and procedures guide our standards of practice for situations most likely to be encountered in the course of our duties.

The Milwaukee Police Department recognizes the inherent complexity of policing and the use of legitimate discretion by members to confront that complexity. Discretion is, however, limited. Discretion cannot be arbitrary nor used as an excuse for personal inclination when members fail to perform properly. When members confront situations that are so unique that no policy or procedure can guide them, their decisions and interventions must always be consistent with our core values and guiding principles.

Department members shall at all times conduct themselves – to the extent their position requires – in accordance with the provisions of this Code. Any conduct, whether on or off duty, which brings or is likely to bring discredit upon the Milwaukee Police Department may be investigated in order to establish whether or not a breach of the Code has occurred. A breach of the Code may result, in appropriate circumstances, in a criminal or disciplinary investigation, either as directed by the Chief of Police or the Fire and Police Commission.

When department members are investigated for a breach of this Code, whether directed by the Chief of Police or the Fire and Police Commission, the investigation will be conducted promptly, thoroughly, and impartially. This Code shall be applied in any investigation, hearing or decision relating to misconduct in a reasonable and objective manner. Due regard shall be given to the degree of negligence or deliberate fault of a member and the nature and circumstances of the member's misconduct. The Chief of Police or the Fire and Police Commission reserves the right to impose discipline up to and including discharge from the department if, after a prompt, thorough, and impartial investigation has been conducted, it is determined that a breach of the Code has occurred.

VISION

A Milwaukee where all can live safely and without fear, protected by a police department with the highest ethical and professional standards.

MISSION

In partnership with the community, we will create and maintain neighborhoods capable of sustaining civic life. We commit to reducing the levels of crime, fear, and disorder through community-based, problem-oriented, and data-driven policing.

CORE VALUES

1.00 – Competence

We are prudent stewards of the public's grant of authority and resources. We are accountable for the quality of our performance and the standards of our conduct. We are exemplary leaders and exemplary followers.

1.01 All members within their probationary period shall be evaluated on their conduct and fitness for the performance of their duties. If a member's conduct or performance of duties is not satisfactory for continued service to the department, the member shall be discharged, with no right of appeal to the Board of Fire and Police Commissioners.

1.02 We cooperate with our colleagues, other agencies and citizens to ensure public safety, improve the quality of urban life, protect those who cannot protect themselves and enforce the law.

1.03 All department members shall render service to the community promptly and efficiently. When not answering a call for service, members shall use their time to accomplish the mission of the department.

1.04 Police investigations shall at a minimum be based upon reasonable suspicion or an actual or possible offense or crime. Investigations shall be conducted and reports shall be prepared in a prompt, thorough, impartial and careful manner so as to ensure accountability and responsibility in accordance with the law.

1.05 All department members shall be familiar with department policy, procedures and training and shall conduct themselves accordingly.

1.06 All department members shall report for duty at the time designated by their supervisors.

1.07 All department members shall report to court at the time designated by their subpoena.

1.08 All department members shall report fit for duty, and not be impaired as a result of drinking alcohol, using a drug for non-medical purposes, intentionally misusing a prescription drug or substance abuse.

1.09 No department member shall consume, purchase or possess any intoxicating liquor and/or fermented malt beverage while on duty or in uniform except with the approval of the Chief of Police or designee.

1.10 All department members are responsible for the condition and safeguarding of their personal and department issued equipment. Department members shall not deface, damage, destroy, modify, or carelessly or inappropriately use any department property without permission to do so.

2.00 – Courage

We place the safety of others before our own and accept our moral responsibility to take action against injustice and wrongdoing. Police members are expected to take prudent risks on behalf of the public.

2.01 Police members are required to discharge their duties with composure and determination and in time of danger or adversity shall act together and assist each other in the restoration of peace and order.

2.02 Members shall oppose and, if possible, prevent any violation of the Code of Conduct and report violations if they occur. Members will not be punished, but will be protected and supported for reporting a violation of the Code of Conduct, unless the report is shown to be malicious or ill founded.

2.03 Failure to intervene when a violation of the Code of Conduct occurs, or is about to occur, shall be treated the same as if the member committed the violation.

3.00 – Integrity

We recognize the complexity of police work and exercise discretion in ways that are beyond reproach and worthy of public trust. Honesty and truthfulness are fundamental elements of integrity. It is our duty to earn public trust through consistent words and actions. We are honest in word and deed.

3.01 Our behavior shall inspire and sustain the confidence of our community. Whether on or off duty, department members shall not behave in such a way that a reasonable person would expect that discredit could be brought upon the department, or that it would create the appearance of impropriety or corruptive behavior.

3.02 Members shall avoid regular or continuous associations with persons or groups they reasonably believe, know or should know are planning to, or are engaged in, criminal behavior, or who advocate the overthrow of government, such that the association would undermine the public trust or affect the member's credibility or integrity. The exceptions are associations that are necessary in the performance of duty or familial relationships of which the Chief of Police or designee is cognizant.

3.03 Police members shall exercise powers of arrest, search, seizure and surveillance only when it is lawful, necessary and proportionate to do so.

3.04 Department members shall treat the official business of the department as confidential, not imparting it to anyone, either orally, electronically or in writing, except those for whom it is intended or under due process of law.

3.05 Department members shall obey local ordinances and state and federal laws, whether on or off-duty. Any violation of ordinances or laws in any jurisdiction shall be reported to the member's supervisor as soon as practical.

3.06 Department members shall not use their official position or membership in the Milwaukee Police Department to unnecessarily interfere with the personal affairs or professional responsibilities of any person or agency.

3.07 Members shall not suggest or recommend a specific attorney to anyone who has been arrested or to someone on their behalf nor become involved in the employment of an attorney for any victim of a crime or accident.

3.08 Department members shall not accept nor solicit, either directly or indirectly, anything of value, including a gratuity, money, reward, gift, fee, loan or special consideration as a consequence of their office. Members are not precluded from receiving very minor courtesies and gratuities (i.e., small amounts of food or non-alcoholic drink) provided that it is not sought nor in exchange or expectation of official favor.

3.09 All department members are bound by City of Milwaukee Charter Ordinance provisions regarding residency and are required to establish and maintain their actual and bona fide residence within the boundaries of the city throughout their period of employment with the department.

3.10 All department members shall be forthright and candid, orally or in writing, in connection with any administrative inquiry or report.

3.11 Department members are required to be complete, honest and accurate with respect to all relevant facts and information pertaining to any criminal or civil investigation, report or inquiry. No department member shall knowingly or with reckless disregard for the truth sign or make any false official statement.

Note: The provisions of this guiding principle do not apply to a member's questioning or interrogation of a person involved in a criminal investigation or where the member is engaged in an approved undercover role where such representation is not inconsistent with law or is accepted professional practice.

4.00 – Leadership

We seek to influence human behavior to achieve organizational goals that serve the public while developing individuals, teams and the organization for future service. We accept our responsibility to be leaders, both within the community and among our peers, and for the actions of our colleagues and ourselves. We are all responsible for the performance, reputation and morale of the department.

4.01 We will work together and set an example that embodies respect, compassion, integrity and efficiency.

4.02 Leadership is not solely positional and no rank has unique privileges. The only privilege of rank is increased responsibility.

4.03 Personal failure to intervene to prevent or stop misconduct, when there is an opportunity to do so, demonstrates not only a lack of courage, but also a failure of leadership.

4.04 Supervisors shall be role models for delivering truly professional, impartial and effective police service. Supervisors shall ensure that the individuals for whom they are responsible carry out their professional duties correctly. Supervisors must put the department's mission first, in both word and action, and do nothing to interfere with its accomplishment.

4.05 Supervisors shall ensure the individuals for whom they are responsible are supported, guided on the professional performance of their duties and encouraged to further their professional development. Supervisors have a particular responsibility to secure, promote, improve and maintain professional standards and integrity through the provision of advice and guidance. Supervisors have an obligation to commend exemplary behavior, a responsibility to correct substandard behavior and a requirement to discipline when needed.

5.00 – Respect

We hold life in the highest regard. We treat all citizens and colleagues with dignity and respect, and are fair and impartial as we perform our duties.

5.01 Department members shall treat the public and each other with courtesy and professionalism. Civility and patience are valued attributes, while profane or insolent language or actions undermine the public's confidence.

5.02 Members shall act with fairness, self-control, tolerance and impartiality when carrying out their duties.

5.03 Members shall promptly obey any proper or lawful order emanating from any officer of higher rank. Any improper or unlawful order should be reported to a supervisor of higher rank.

5.04 A conflicting order shall be brought to the attention of the member giving the order. If this member does not change the order, the order shall stand and this member shall bear full responsibility.

6.00 – Restraint

We use the minimum force and authority necessary to accomplish a proper police purpose. We demonstrate self-discipline, even when no one is listening or watching.

6.01 Police members shall exercise restraint in the use of force and act in proportion to the seriousness of the offense and the legitimate law enforcement objective to be achieved.

6.02 Members shall not subject any person to torture or cruel, inhumane or degrading treatment or punishment. No circumstances whatsoever may be invoked as a justification for torture or other cruel, inhumane or degrading treatment or punishment.

Appendix – Disciplinary Decision Process

Purpose

This appendix identifies factors that will be considered in the disciplinary decision process for alleged breaches of the Code of Conduct. It is critical that a system of discipline be established that contributes to minimizing abuse of police authority and promotes the department's reputation for professionalism. Each department member must understand and be guided by the standards that have been established in this Code.

It is recognized and understood that department members will make judgmental errors from time to time in carrying out their responsibilities. While each error in judgment offers an opportunity for the department and the member to learn, it is also understood some errors will have greater consequences than others for the public, the department and the member.

The department has an obligation to make its expectations as clear as possible to its members. The department has an equal obligation to make the consequences for failing to meet those expectations clear. There are often circumstances that may have contributed to errors of judgment or poor decisions that need to be considered when determining the appropriate consequences for conduct found to be improper.

Disciplinary action must be imposed in a consistent and fair manner. **Consistency** is defined as holding everyone equally accountable for unacceptable conduct. **Fairness** is defined as understanding the circumstances that contributed to the conduct while applying the consequences in a way that reflects this understanding. In order to ensure that members are treated in a consistent and fair manner, the application of consequences for conduct that is not in keeping with the department's expectations will be based upon a balanced consideration of factors. Following the careful consideration of all applicable factors in any disciplinary review, every effort will be made to determine the consequences that consistently and fairly fit each specific incident.

Discipline Factors

Employee Motivation: The department exists to serve the public. One factor in examining a member's conduct will be whether or not the member was acting in the public's interest. A member who violates a policy or procedure in an effort to accomplish a legitimate police purpose, and who demonstrates an understanding of the broader public interest inherent in the situation, will be given more positive consideration in the determination of consequences than one who was motivated by personal interest. From time to time it may be difficult to distinguish between public and personal interest. As an example, arresting a dangerous criminal is in the public's interest. However, violating the criminal's Constitutional rights in order to do so is not in the public's interest. The greater public interest is for the police to carry out its responsibilities while protecting the public's Constitutional guarantees. But if a member attempts to devise an innovative, nontraditional solution for a persistent crime or service problem and unintentionally runs afoul of minor procedures, the desire to encourage creativity may carry significant weight in determining any discipline that might result.

Degree of Harm: The degree of harm that an error causes is also an important aspect in deciding the consequences of a member's conduct. Harm can be measured in a variety of ways. It can be measured in terms of the monetary cost to the department and community. For example, an error that causes significant damage to a vehicle could be examined in light of the repair costs. Harm can also be measured in terms of the personal injury the error causes, such as the consequences of an unnecessary use of force. Another way in which harm can be measured is the impact of the error on public confidence. An employee who engages in criminal conduct could affect the public confidence in the department if the consequences do not send a clear, compelling message that the conduct will not be tolerated.

Employee Experience: The level of experience of department members is a discipline factor. A relatively new member (or an experienced member in an unfamiliar assignment) will be given greater consideration when judgment errors are made. Conversely, a member who makes a judgment error that would not be expected of one who has a significant amount of experience may expect more serious sanctions.

Intentional and Unintentional Errors: Errors can be classified as intentional or unintentional. An **unintentional** error is an action or decision that turns out to be wrong, but based upon the information available at the time it was taken, seemed to be in compliance with policy and the most appropriate course. Unintentional errors also include those momentary lapses of judgment or acts of carelessness that result in minimal harm. Department members will be held accountable for these errors but the consequences will be more corrective than punitive unless the same errors persist.

An **intentional** error is an action or a decision that an employee makes that is known (or should be known) to be in conflict with law, established training or procedures or this Code of Conduct. Generally, intentional errors will be treated more seriously and carry greater consequences than unintentional errors. Within the framework of intentional errors there are certain behaviors that are entirely inconsistent with the responsibilities of the police profession. These include lying, theft, physical abuse of citizens, and other equally serious breaches of the trust placed in members of the police profession. The nature of the police responsibility requires that police officers be truthful. It is recognized, however, that it is sometimes difficult to determine if one is being untruthful. A member will face discharge from the department when it is clear that the member is intentionally engaging in an effort to be untruthful. It is also a serious breach to have engaged in theft, physical abuse of citizens and other criminal behavior.

Employee's Past Record: To the extent allowed by law and policy, a member's past record will be taken into consideration in determining the consequences of a failure to meet the department's expectations. A member that repeatedly makes errors can expect the consequences of this behavior to become progressively more punitive. A member whose past record reflects hard work and dedication to the community and department will be given every consideration in the determination of any disciplinary action.

Responsibility

The Milwaukee Police Department has a well-established tradition of serving the community with integrity and professionalism. It is among the finest police organizations in this nation. To maintain our proud tradition and continue improving the quality of service the department provides to the community, each and every department member must accept their responsibility for maintaining the high professional standards of this Code.

EDWARD A FLYNN
CHIEF OF POLICE

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Milwaukee Police Department Code of Conduct

Preamble

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Milwaukee Police Department Code of Conduct

Vision, Mission, Core Values and Guiding Principles

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Milwaukee Police Department Code of Conduct

Core Values and Guiding Principles

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Milwaukee Police Department Code of Conduct

Core Values and Guiding Principles

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Note:
The provisions of this guiding principle do not apply to a member's questioning or interrogation of a person involved in a criminal investigation or where the member is engaged in an approved undercover role where such representation is not inconsistent with law or is accepted professional practice.

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Milwaukee Police Department Code of Conduct

Core Values and Guiding Principles

4.04
Supervisors shall be role models for delivering truly professional, impartial and effective police service. Supervisors shall ensure that the individuals for whom they are responsible carry out their professional duties correctly. Supervisors must put the department's mission first, in both word and action, and do nothing to interfere with its accomplishment.

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Supervisors shall ensure the individuals for whom they are responsible are supported, guided on the professional performance of their duties and encouraged to further their professional development. Supervisors have a particular responsibility to secure, promote, improve and maintain professional standards and integrity through the provision of advice and guidance. Supervisors have an obligation to commend exemplary behavior, a responsibility to correct substandard behavior and a requirement to discipline when needed.

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A conflicting order shall be brought to the attention of the member giving the order. If this member does not change the order, the order shall stand and this member shall bear full responsibility.

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Police members shall exercise restraint in the use of force and act in proportion to the seriousness of the offense and the legitimate law enforcement objective to be achieved.

6.02
Members shall not subject any person to torture or cruel, inhumane or degrading treatment or punishment. No circumstances whatsoever may be invoked as a justification for torture or other cruel, inhumane or degrading treatment or punishment.

Milwaukee Police Department Code of Conduct

Appendix - Disciplinary Decision Process

Purpose

This appendix identifies factors that will be considered in the disciplinary decision process for alleged breaches of the Code of Conduct. It is critical that a system of discipline be established that contributes to minimizing abuse of police authority and promotes the department's reputation for professionalism. Each department member must understand and be guided by the standards that have been established in this Code.

It is recognized and understood that department members will make judgmental errors from time to time in carrying out their responsibilities. While each error in judgment offers an opportunity for the department and the member to learn, it is also understood some errors will have greater consequences than others for the public, the department and the member.

The department has an obligation to make its expectations as clear as possible to its members. The department has an equal obligation to make the consequences for failing to meet those expectations clear. There are often circumstances that may have contributed to errors of judgment or poor decisions that need to be considered when determining the appropriate consequences for conduct found to be improper.

Disciplinary action must be imposed in a consistent and fair manner. Consistency is defined as holding everyone equally accountable for unacceptable conduct. Fairness is defined as understanding the circumstances that contributed to the conduct while applying the consequences in a way that reflects this understanding. In order to ensure that members are treated in a consistent and fair manner, the application of consequences for conduct that is not in keeping with the department's expectations will be based upon a balanced consideration of factors. Following the careful consideration of all applicable factors in any disciplinary review, every effort will be made to determine the consequences that consistently and fairly fit each specific incident.

Discipline Factors

Employee Motivation: The department exists to serve the public. One factor in examining a member's conduct will be whether or not the member was acting in the public's interest. A member who violates a policy or procedure in an effort to accomplish a legitimate police purpose, and who demonstrates an understanding of the broader public interest inherent in the situation, will be given more positive consideration in the determination of consequences than one who was motivated by personal interest. From time to time it may be difficult to distinguish between public and personal interest. As an example, arresting a dangerous criminal is in the public's interest. However, violating the criminal's Constitutional rights in order to do so is not in the public's interest. The greater public interest is for the police to carry out its responsibilities while protecting the public's Constitutional guarantees. But if a member attempts to devise an innovative, nontraditional solution for a persistent crime or service problem and unintentionally runs afoul of minor procedures, the desire to encourage creativity may carry significant weight in determining any discipline that might result.

Appendix - Disciplinary Decision Process

Degree of Harm: The degree of harm that an error causes is also an important aspect in deciding the consequences of a member's conduct. Harm can be measured in a variety of ways. It can be measured in terms of the monetary cost to the department and community. For example, an error that causes significant damage to a vehicle could be examined in light of the repair costs. Harm can also be measured in terms of the personal injury the error causes, such as the consequences of an unnecessary use of force. Another way in which harm can be measured is the impact of the error on public confidence. An employee who engages in criminal conduct could affect the public confidence in the department if the consequences do not send a clear, compelling message that the conduct will not be tolerated.

Employee Experience: The level of experience of department members is a discipline factor. A relatively new member (or an experienced member in an unfamiliar assignment) will be given greater consideration when judgment errors are made. Conversely, a member who makes a judgment error that would not be expected of one who has a significant amount of experience may expect more serious sanctions.

Intentional and Unintentional Errors: Errors can be classified as intentional or unintentional. An unintentional error is an action or decision that turns out to be wrong, but based upon the information available at the time it was taken, seemed to be in compliance with policy and the most appropriate course. Unintentional errors also include those momentary lapses of judgment or acts of carelessness that result in minimal harm. Department members will be held accountable for these errors but the consequences will be more corrective than punitive unless the same errors persist.

An intentional error is an action or a decision that an employee makes that is known (or should be known) to be in conflict with law, established training or procedures or this Code of Conduct. Generally, intentional errors will be treated more seriously and carry greater consequences than unintentional errors. Within the framework of intentional errors there are certain behaviors that are entirely inconsistent with the responsibilities of the police profession. These include lying, theft, physical abuse of citizens, and other equally serious breaches of the trust placed in members of the police profession. The nature of the police responsibility requires that police officers be truthful. It is recognized, however, that it is sometimes difficult to determine if one is being untruthful. A member will face discharge from the department when it is clear that the member is intentionally engaging in an effort to be untruthful. It is also a serious breach to have engaged in theft, physical abuse of citizens and other criminal behavior.

Appendix - Disciplinary Decision Process

Employee's Past Record: To the extent allowed by law and policy, a member's past record will be taken into consideration in determining the consequences of a failure to meet the department's expectations. A member that repeatedly makes errors can expect the consequences of this behavior to become progressively more punitive. A member whose past record reflects hard work and dedication to the community and department will be given every consideration in the determination of any disciplinary action.

Responsibility

The Milwaukee Police Department has a well-established tradition of serving the community with integrity and professionalism. It is among the finest police organizations in this nation. To maintain our proud tradition and continue improving the quality of service the department provides to the community, each and every department member must accept their responsibility for maintaining the high professional standards of this Code.

MILWAUKEE POLICE DEPARTMENT

STANDARD OPERATING PROCEDURE

040 – LIMITED DUTY STATUS

GENERAL ORDER:	ISSUED:	EFFECTIVE:
ACTION:		

040.00 LIMITED DUTY POLICY STATEMENT

The objective of the Milwaukee Police Department's limited duty program is to provide officers incapable of unrestricted duty an opportunity to continue making a positive contribution to Department operations, thereby enabling the Department to better manage its human resources. The Department recognizes that some officers due to illness, injury, pregnancy, or other health related problems may be either temporarily or permanently rendered incapable of performing the full spectrum of law enforcement activities. In such instances, these officers shall be placed on limited duty status and transferred to limited duty assignments. Administrative and support positions (in such areas as the Communications, Identification, and Central Records Divisions, etc.) will be designated as limited duty assignments. Assignments in these areas place reduced physical demands upon the incumbent and are isolated from the hazards normally associated with police work. In some cases, these positions have been staffed by officers capable of unrestricted duty. The placement of limited duty officers in these positions, in lieu of full duty officers, represents a better utilization of human resources and aids the Department's efforts to provide the best possible police service to the community.

A major consideration of the limited duty program is the officer's welfare. Hence, all limited duty assignments will be structured to be consistent with the officer's medical restrictions.

040.05 RESPONSE PROTOCOL FOR OFFICERS IN A LIMITED DUTY STATUS

Members of the police force on limited duty status are not expected to exhibit full response capability. Police officers on limited duty status are expected to respond to a situation requiring police action with a response consistent with their medical limitations. A minimally appropriate response would include surveillance, summoning of other officers, and completion of necessary reports.

Exhibits Related to ERS' Response

Exhibit 3

Examples of Supplemental Duty Disability Retirement Application Statements

DUTY DISABILTY STATEMENT
FOR
POLICE OFFICER [redacted]

I was hired as a Milwaukee Police Officer on [redacted] Becoming a Police Officer was a life-long goal that I pursued relentlessly. Once attaining my goal of a City of Milwaukee Police Officer I attempted to make every moment count. Trying to make life a little better for the citizens I was charged with protecting was a dream come true. During my career I had the honor of being assigned to some of the most dangerous jobs in the Milwaukee Police Department. My supervisory officers decided that my high ethical standards with a genuine desire to help the community, my time would be best served performing undercover narcotics investigations and infiltrating illegal drug enterprises. Assignment working undercover narcotics investigations necessitates walking into a life style with the most undesirable element in our City while not partaking in the actual illegal enterprise itself. This undercover work came with extraordinary day to day stress and risk to my own health. Infiltrating illicit drug trade and the prosecution of those preying on our children likewise exposed my family to unwarranted retaliation for doing my job in an effective manner.

In the Milwaukee Police Department the culture and environment is one of machoism and strength. From the Chief of Police doing push-ups on public TV to demonstrate how masculine he is to expressing to a citizen through stature and intimidation that the Police are the dominant party. This culture is exacerbated in the undercover narcotics investigations. No weakness can be expressed either explicitly or implied or you become an outcast and distrusted by your peers and in the drug business you become prey. There is no room for physical or mental defect or intimating weakness. Many variables exist for this institutional culture and environment however, in my case the culture clearly worked against my physical and psychological health. Rather than treat my injuries with an appropriate healing time, therapy and medication, I was back to work short of complete recovery demonstrating to my bosses and co-workers how tough I was to maintain my status within the Police Department and continue ongoing investigations. Unfortunately, the cumulative effect of the accidents at work, the subsequent surgeries, the lack of appropriate care in a timely fashion and the attendant regiment of prescribed medications in an attempt to mask symptoms, has left me totally and permanently disabled. I am now unable to perform the essential functions of a Police Officer or a limited duty officer. I gave my job everything I had and the work that I love has now left me a weak and fragile person.

On [redacted] while in my official capacity as a City of Milwaukee Police Officer at the intersection of South Layton Bpoulevard and West Mitchell Street and driving a City of Milwaukee police vehicle, a citizen driver disregarded a red light. The police vehicle t-boned the citizen driver's vehicle resulting in extensive damage. The impact was so violent my chest hit the steering wheel and my head snapped over the steering wheel striking the windshield. The accident resulted in deep pain in my neck and lower back pain. In addition, I had a deep pain in my right shoulder that radiated down into my right forearm.

On [redacted] while in my official capacity as a City of Milwaukee Police Officer during patrol operations I was sent to [redacted] to investigate a Domestic Disturbance. Upon arriving at the address I was dispatched to preliminary investigation revealed that the male subject involved in the domestic disturbance met the criteria as the initial aggressor under the domestic violence statutes and was to be arrested. As I attempted to take physical custody of the male subject he became violent and combative and had to be physically restrained. As we fought to physically restrain the subject he had to be decentralized and taken to the ground in order to place handcuffs on him. As we fell to the ground my body was severely twisted and I felt a sharp pain in my lower back that radiated down my right leg.

On [redacted] while in my official capacity as a City of Milwaukee Police Officer during patrol operations I had occasion to stop what appeared to be an intoxicated driver at [redacted] Upon removing the intoxicated driver from her vehicle and performing field sobriety tests it was determined that the intoxicated driver was to be placed under arrest. When my partner and I went to place the intoxicated driver under arrest and place the handcuffs on her, she became violent and attempted to resist arrest. We had to decentralize this suspect and take her to the ground where she remained combative and resisted until placed in a conveying vehicle. As my partner and I fell to the ground fighting with the suspect I felt sharp pain in my lower back that radiated into my upper back and neck.

On [redacted] while in my official capacity as a City of Milwaukee Police Officer in the [redacted] and as a passenger in a City of Milwaukee police vehicle, my squad partner drove over a patch of black ice, lost control of the police vehicle and slammed into a tree on the passenger side. The impact from the tree was so forceful that the damage to our vehicle rendered it completely totaled. The impact threw my head into the windshield and the dashboard and twisted my torso into the passenger side well. As I fell out of the police vehicle on the driver's side I realized that my arms and legs were numb and the pain in my neck and back was debilitating.

On [redacted] while in my official capacity as a City of Milwaukee Police Officer at 2700 North 35th, Street and driving a City of Milwaukee police vehicle, I was stopping in traffic for a red light at West Center Street. An inattentive citizen driver was following to close and rear ended the police vehicle and fled. The impact caused excruciating pain in my lower back which radiated down both legs. The pain was so significant I couldn't stand on my right leg. I continue to suffer intermittent tingling and pain that radiates from my back down both legs and causes tingling and loss of feeling in my feet and toes. Also, in my ankles I experienced then as I do now dull throbbing pain that on occasion becomes unbearable. This accident created a reoccurrence of pain that is now more persistent.

On [redacted] while in my official capacity as a City of Milwaukee Police Officer at the intersection of South 16th Street and West National Avenue and driving a City of Milwaukee police vehicle, I was stopped in traffic for an official traffic signal. A citizen driving in an inattentive manner disregarded the official traffic signal and rear ended the police vehicle without braking. The impact threw my torso into the steering wheel and my head just over the steering wheel after bouncing off the headrest. I felt a snap in my neck and a popping feeling in my lower back that generated significant pain throughout my back that radiated down both legs. Later examination revealed [redacted] and on [redacted] I had surgery. [redacted] were repaired and temporarily immobilized. The surgery significantly decreased my mobility and strength and, left me with constant pain requiring prescribed medication.

On [redacted] while in my official capacity as a City of Milwaukee Police Officer at the intersection of East Locust Street and North Weil Street and driving a City of Milwaukee police vehicle, I was stopped in traffic. An inattentive citizen driver rear ended the police vehicle and pushed us into a third vehicle legally stopped in front of the police vehicle. The initial impact caused my torso to be compressed into the driver's seat. I felt a grinding sensation and then popping in my neck upon the impact. The second collision drove my torso into the steering wheel and whipped my neck back and forth. The accident caused deep back and neck pain that radiated down both arms and both legs with numbness afterwards. It also generated a substantial amount of fear for my long term well-being.

On [redacted] while assigned to the Vice Control Division and in my official capacity of a City of Milwaukee Undercover Police Officer, I had occasion to serve a search warrant on a suspected drug house

located at [redacted] A home based upon information and belief was being used as a fortified residence to distribute illegal drugs in a high crime area of the City. It is also believed that the residence may have harbored weapons. Upon forcible entry into the fortified home our initial objective is to clear the home of all potential suspects that could cause harm or death to the police officers. Once cleared of potential suspects I retrieved evidence bags from a department vehicle. I descended into the dimly lit basement to obtain evidence for proper custodial transportation. On the third from last basement steps I slipped and tumbled onto the cement basement floor. With evidence bags in one hand and a flashlight in the other, the fall to the cement was with the full weight of my body and nothing to break my fall. The weight of my body fell on my right elbow and my back. I felt a snap in my neck as my head bounced off of the cement basement floor. Subsequent examination revealed the fall caused me to break my neck and right elbow and pain to my right shoulder. Surgery on my elbow was performed on [redacted]. The elbow was drained and a number of cortisone shots were injected into the elbow. On [redacted] I underwent a second surgery to fix my [redacted] that was in constant pain and causing tingling and numbness to my fingers and right wrist. In addition, the pain that radiated down my right forearm and hand resulted in reduced grip strength in my right hand which persists today. On [redacted] I underwent [redacted] surgery to fix [redacted] were fused together. In addition, on [redacted] I underwent [redacted] surgery. [redacted] and to alleviate some of the constant pain. As a result of all the accidents while performing my job as a City of Milwaukee Police Officer, the pain in my back, neck, legs, right shoulder, right forearm, right wrist, right hand and feet was constant and simply would not cease and I thought I was losing my mind having to deal with the disintegration of my life.

On [redacted] I had additional surgeries performed on my back. On [redacted] the surgeons went in from my [redacted] On the [redacted] the surgeons entered my [redacted] my [redacted] As a result of this two day surgery, I've lost significant mobility in my back and neck. I cannot bend over nor twist from side to side.

Since my first accident on [redacted] to the present I have gone through countless physical therapy sessions, multiple injections in my [redacted] have gone through five (5) invasive surgeries and have been placed on 19 different prescribed medications to deal with the pain and reduced quality of life. [redacted] to deal with [redacted]. My dream job has come to an end and it hurts deeply.

I can no longer perform the essential functions or duties required of a Police Officer or that of a Police Officer in a limited-duty position. I do not want to place myself in a position where I can't assist my fellow officers nor be in a position where I cannot assist a citizen that needs immediate help. Not assisting those that need help at a time of extreme peril will result in a label of a coward and can result in criminal exposure. An officer getting maimed or killed because I could not intercede and sat idly by would be an unforgivable event. My 'Oath of Office' that I swore I would uphold regardless of peril to myself, requires that I provide assistance and protect the civil rights of third parties. The State of Wisconsin provides me with no exemption in protecting, as a matter of law, Constitutional Rights of all citizens while in a full duty or limited duty capacity.

The State of Wisconsin has an administrative regulatory agency within the Wisconsin Department of Justice to administer the physical and mental standards required of a police officer in the City of Milwaukee. The statutorily mandated agency is named the 'Law Enforcement Standards Board' (LESB). The LESB is charged with adopting and publishing the minimal standards for all Police Officer's conduct and responses. The Executive Board of LESB has adopted the following two relevant provisions;

LESB 2. 2.01 (1) g. **"The applicant shall be free from any physical, emotional or mental condition which might adversely affect performance of duties of a law enforcement...officer".**

LESB 2. 2.01 (4) **"The following are minimum qualifications. Higher qualifications are strongly recommended where the employing authority is in a position to require them".**

No consideration by State Statute or LESB Administrative Code has been provided to lesser qualifications in a limited duty position or capacity.

Also, the City of Milwaukee has a civilian oversight body created by Wisconsin Statute called the 'Board of Fire and Police Commission' (FPC). The FPC has adopted and published 12 minimal physical and mental requirements not inconsistent with the LESB, for Police Officers in the employment of the Milwaukee Police Department. The 12 essential functions and duties as the FPC has adopted and published are as follows;

1) **The ability to enforce criminal laws, identify, detain and process wanted individuals.**
   Due to my surgeries I cannot enforce the criminal laws, pursue, run after, fight, or struggle with criminals, without extraordinary pain or the threat of paralysis. Any significant trauma to my back or neck can cause the cage around my spine or the plates holding the cage or bones together to rupture and cause internal damage or bleeding. Further, the criminal laws also apply to Police Officers in certain situations. A number of State Statutes require specific action to be taken by law enforcement personnel. Providing medical care or CPR is one of just many mandates under the threat of criminal sanction. I cannot do chest compressions or bend over to give air to a dying person. In addition, I'm obligated under criminal sanction to arrest, investigate and detain a suspected child abuser, which I physically can't.
2) **Respond to calls for service.**
   I cannot respond to calls for service from a citizen or a fellow Police Officer. In Exigent circumstances time of response or immediate response can be the difference between life and serious harm or death. When a citizen needs help the police need to respond in a timely fashion. I can no longer respond based not just on citizen expectations because of my injuries but emergency responses would not be timely based on circumstances that require immediate response. I can't drive for an extended period of time due to the pain escalation for sitting in the same position with the weight of a utility/gun belt around my back. I can't walk more than a block without having to rest due to pain in my back and neck. Walking with a gun/utility belt strapped around my waist the distance would be shorter. Responding to calls for service during a time of peril shapes how the community views law enforcement services. Trying to carry a person from a building that's on fire would be an effort in futility because I can't lift over ten pounds.

3) **Conduct investigations of suspicious persons or situations and preliminary investigations of major crimes and criminal activity.**
Any major crime requires immediate investigatory action or the prosecution suffers degradation of evidence and contamination. I cannot arrest suspicious persons, protect crime scenes or investigate crimes. I have constant pain in my neck and back that renders any focused attention on detail extremely limited if not impossible. Evidence of a major crime is rarely eye level. The recovery of physical evidence normally involves bending, digging, climbing, reaching and extending into areas that requires physical dexterity. Dexterity that I lost due to the accidents and subsequent surgeries. My balance is weak and I suffer from intermittent vertigo. I get dizzy and disoriented when under pressure to perform a task requiring constant bending or intense questioning. The logistics involved in protecting a crime scene and securing witnesses, evidence and suspects is now beyond my physical capabilities.
4) **Interview suspects and witnesses and prepare necessary investigative reports.**
More often than not suspects and victims of crimes are hostile and agitated due to grief. This volatile state of mind creates an environment where more often than not a reasonable amount of force needs to be applied to gain control of a scene. Due to the constant pain radiating down my arms, tingling and numbness in my hands, I am unable control suspects and witnesses or reduce to writing critical evidence that a crime was committed. Evidence that would be used in the prosecution of a violent criminal and provide justice to a victim/witness. Exposing myself to possible violent criminals and agitated victim/witnesses would subject me to permanent paralyzing injury.
5) **Prepare and testify in court as to the facts surrounding any criminal, departmental or civil action.**
Because I cannot properly investigate crime scenes or claims made against the Milwaukee Police Department or the City of Milwaukee I am unable to testify in court. Further, if the defense attorney's or litigants were to discover the prescribed medication I am taking, my credibility would be in jeopardy and I would be subject to impeachment. Finally, because of my limited back and neck mobility, testifying in court in a seated position would virtually be impossible for the required period of time.
6) **Patrol the City of Milwaukee in a police vehicle, motorcycle, bicycle and/or on foot.**
Imperative in patrol operations within the City is to universally observe events transpiring within a minimum 180 degree vantage from inside the police vehicle. Visual observation of criminal activity and the ability to react quickly and decisively is one of the primary purposes for patrol duties. Because of my neck and back surgery that has limited my peripheral vision I would not be able to observe important events from a vehicle, motorcycle, bicycle or on foot. Exposing myself to another accident, whether it's in a vehicle, on a bike or on foot could be a paralyzing event. Further, additional purpose of patrolling is crime prevention and suppression. Because of my reduced grip strength in my right hand I fear that if I had to utilize deadly to protect a citizen or a fellow Police Officer my grip strength to fire my duty weapon wouldn't be strong enough to discharge my duty.
7) **Operate a police vehicle in emergency situations involving speeds in excess of posted limits in congested traffic and in unsafe road conditions.**
Due to the operations on my back and neck I no longer have the mobility to react

decisively and fast enough to operate a police vehicle in pursuit of a criminal at a high rate of speed. Like the use of deadly force, the use of engaging an emergency vehicle in a high speed pursuit is highly regulated by the State of Wisconsin statutes and department policy. The pursuit of a suspect at a high rate of speed normally does not turn out good. Vehicular accidents during high speed pursuits are the norm along with life altering injuries. If I were to engage in a high speed pursuit and was involved in a sudden stop or collision, I risk the real possibility of permanent paralysis or worse yet; permanently injuring or killing an innocent bystander. Further, under LESB Section 3.07 I am unable to perform the annual recertification training that is required for high speed vehicle pursuits.

8) **Prepare accurate and complete reports of daily activities.**
Preparing accurate reports for investigation, prosecution and to avoid civil exposure is important for the City of Milwaukee citizens. I cannot reduce to writing that which I cannot obtain. The numbness and pain in my hands prevent me from writing reports and gathering information requires physical stamina that I no longer possess.

9) **Provide assistance to the community in the areas of crime prevention.**
Crime prevention is an extremely broad term that encompasses many duties. All of the duties require interaction with persons wanted for criminal acts. Exposing myself to potential combative suspects that need to be arrested to protect the community in the name of crime prevention, would subject me to breaking my neck, or jarring the cage or plates in my back loose. This could cause permanent paralysis, internal bleeding or ultimate death.

10) **Enforce motor vehicle laws to promote safety and reduce accidents, expedite traffic flow, and enforce criminal statutes.**
To enforce traffic laws, reduce accidents and enforce criminal statutes requires patrol duties I cannot perform.

11) **Attend in-service training as mandated by the State of Wisconsin or as directed.**
The State of Wisconsin LESB requires by virtue of administrative code annual recertification in firearms training, high speed vehicular pursuits, defensive and arrest techniques. Also, the use of deadly force with law and ordinance updates. I cannot perform these annual recertification requirements due to the physical nature of the training and the required sitting necessary for instructional classes. Anytime I'm placed under stress to perform mental tasks I start having headaches which in turn crates pain in my neck and back.

12) **Perform duties in a special assignment capacity such as Fugitive Apprehension Unit, Community Services or the Neighborhood Task Force.**
These duties are some of the most high risk duties that result in injuries in the Milwaukee Police Department. Aggressively pursuing wanted suspects normally ends in the capture of violent persons. By statutory mandate the arresting officer is responsible for the protection of the in custody suspect. Because physically I can no longer pursue these persons or protect them from injury once arrested I am unable to perform these duties.

No consideration has been given by the Board of Fire and Police Commissioners for a limited duty officer performing these essential functions/duties of a Police Officer in the City of Milwaukee.

My 'Oath of Office' and 'Code of Ethics' that I swore to reads as follows:

"As a **Law Enforcement Officer**, my fundamental duty is to serve mankind; to safeguard lives and property; to protect the innocent against deception, the weak against oppression and intimidation, and the peaceful against violence and disorder; and respect the Constitutional rights of all persons to liberty, equality and justice.

I will keep my private life unsullied as an example to all; maintain courageous calm in the of danger, scorn or ridicule; develop self-restraint; and be constantly mindful of the welfare of others. Honest in thought and deed in both my personal and official life, I will be exemplary in obeying the laws of the land and the regulations of my Department. Whatever I see or hear of a confidential nature or that is confided to me in my official capacity will be kept ever secret unless revelation is necessary in the performance of duty.

I will never act officiously or permit personal feelings, prejudices, animosities or friendships influence my decisions. With no compromise for crime and with relentless prosecution of criminals, I will enforce the law courteously and appropriately without fear or favor, malice or ill will, never employing unnecessary force or violence and never accepting gratuities.

I recognize the badge of my office as a symbol of public faith, and I accept it as public trust to be held so long as I am true to the ethics of the police service. I will constantly strive to achieve these objectives and ideals, dedicating myself to my chose profession, law enforcement.

When I swore to these ethical standards I meant it and have lived by them my entire career. For me to engage in this profession when I physically cannot maintain my oath would be unethical. The Wisconsin Administrative Code that requires this oath of every Police Officer in the State of Wisconsin. The Administrative Code provides no new ethical standards or a watered down version for a limited duty position in the Milwaukee Police Department. The limited duty program is a construct without due regard for the safety of the officers and the community. Setting aside the legal requirements to respond consistent with my oath, a matter exists that no one wants to speak to. Training for a Police Officer is training an instinctual response. A response is required of Police Officers in chaotic situations often required in a split second. For approximately 20 years I've been trained that if a person needs help my response is systematic and without forethought of the danger to myself. I gave that response to the City of Milwaukee citizens and I can no longer pick up my grandchildren for a hug and many other quality of life issues. If I were to respond even in a limited duty position in a manner I've been trained my fear is being bed ridden until my passing. I can't do that to my family.

This statement I prepared was with the help of a retired Detective from the Milwaukee Police Department. Because of my depression and my inability to write I requested help.

[redacted] 07/27/12

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Statement of Disability
By
Sergeant of Police [redacted]

I was hired as a Milwaukee Police Officer on [redacted]. Becoming a law enforcement officer was my life's pursuit and a tribute to my Uncle's legacy, who retired as an Inspector of Police for the Milwaukee Police Department. While maintaining a high ethical standard for myself I continued to seek the most dangerous of assignments with additional responsibility within the Police Department. Charged with the responsibility to assist people that are otherwise unable to help themselves, while preserving their dignity, defined my role as a Police Officer. On [redacted] I was privileged to be promoted to the rank of Sergeant of Police and assigned forthwith to the Tactical Enforcement Unit. A unit responsible for sniper situations, barricaded suspects, drug interdiction as an entry team, hostage situations, large disturbances and high risk interventions. With this elevation in Rank and Supervisory responsibility I was to ensure my subordinate Police Officers were performing their duties safely with the maximum amount of contribution to the community while never abridging the civil liberties we all cherish. Throughout my career and including my last day of limited duty work I gave everything to the job, physically, emotionally and intellectually while leaving no detail to chance.

The long established institutional culture of the Milwaukee Police Department is one of machoism, strength and stature to enforce the laws. This persona is not created for image, the position of strength is out of necessity to maintain civility and order within the City of Milwaukee. Any physical or psychological weakness either expressed or intimated creates situations of advantage for the criminal element and lack of respect from subordinate officers. Once respect is lost on the street or in a supervisory capacity orders are not followed with the degree of necessity which can result in catastrophic injury to citizens or Police Officers.

On [redacted] while in my official capacity as a Police Officer for the City of Milwaukee I was involved in a traffic accident that severely injured my back. As a driver in a uniformed patrol vehicle while Eastbound on West Capitol Drive and approaching North 26th Street we began to slow down for a vehicle stopped in traffic when an inattentive driver struck the rear end of our vehicle without braking prior to impact. The initial impact was severe causing a substantial amount of property damage to the rear end of the squad car pushing the squad car forward approximately 20 feet eventually coming to rest. When the inattentive driver struck the rear of the squad car it pushed my body violently into the driver's seat crushing my torso in a downward fashion when I felt a snapping and sharp pain in my back. As the squad car came to an abrupt stop I was thrust forward with my legs being crushed underneath the steering wheel compartment area with my torso striking the steering wheel causing a secondary popping in my back which caused a substantial amount of pain. Immediately unable to move after securing the driver of the vehicle which struck the squad car, my hips, lower back and legs began to throb with accompanying pain which completely disabled me from further movement. Due to my physical condition I could not move with pain radiating from my back down both legs requiring an ambulance for conveyance to [redacted] where emergency care was provided with a referral to [redacted] for therapy. For the following two months of I received therapy three (3) times a week with minimal positive results. It was at this time I began a regiment of medications and returned to work in a full duty capacity. In [redacted] the effect of the medication that was prescribed had diminishing effect and the pain was elevating to the point of creating immobility. I was prescribed an MRI which revealed I had two severely herniated discs from the squad accident. On [redacted] I underwent invasive back surgery in an attempt to relieve the almost constant daily and debilitating pain, a [redacted]

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[redacted] Subsequent to the post-operative rehabilitation from the trauma caused by the surgery I reentered therapy every day for three (3) hours per day until [redacted] when I attempted to return to full street duty. Post two months of surgery and therapy with the assistance of an increased amount of medication I was able to maintain a semblance of minimal efficiency at work on the street.

Immediately after going back to work in a full duty capacity I began experiencing constant and chronic pain in my back, buttocks, legs and feet. To deal with the pain doing the job that meant so much to me I sought prescribed medication in amounts that mitigated the pain and left me psychologically less than 100%. In [redacted] I underwent a series of epidural steroid injections in an attempt to alleviate some pain which resulted increased radiating pain I could not accept the third injection. Numerous MRI's from went I went back to work through [redacted] revealed a [redacted] from the accident on [redacted]. From exiting therapy in [redacted] I did everything medically possible to remain at work.

Then on [redacted] while in my official capacity of a City of Milwaukee Sergeant of Police for the City of Milwaukee at 2800 N. 27th Street, the non- uniformed police vehicle I was a driver in was struck from the rear by an inattentive driver. The initial impact caused a substantial amount of property damage to the squad car causing my body to be forced back into the seat contorting my back and hips resulting in excruciating pain from my previous surgery area. The squad car was pushed approximately ten (10) feet forward where it came to an abrupt stop which caused a whiplash to my back when I felt a crack and heard a popping emanating from my hips. As I hit the steering wheel with my chest it caused a downward push on my torso into my legs causing a grinding sensation in my neck that elevated the pain leaving me out of breath. The following day I reentered therapy to reduce the pain radiating from my back through my buttocks to both legs to my right foot. With therapy and medications I was able to return to almost a full duty capacity on the street. It was common for my fellow officers to assist in any lifting or high risk situation to reduce my exposure to further injury. This situation persisted until [redacted] when I could no longer perform the essential functions of a full duty officer due to the constant pain and loss of mobility. I became more of a liability to my fellow officers and citizens than an asset. On [redacted] I was placed in a limited duty administrative assignment.

Every day I worked administrative and sedentary duties I would suffer excruciating pain and spasms from my back to my hips through my buttocks which radiated down both legs after either sitting or standing in excess of fifteen (15) minutes. If I didn't lay down to relieve the pressure off my back, my legs would start throbbing and eventually go numb and I would fall and suffer from [redacted] This series of events would occur for the entire work day. Further, my current regiment of [redacted] to mitigate the pain, spasms, throbbing and numbness had been decreasing in its effectiveness while working this limited duty position. While working this administrative limited duty assignment and consuming my current drug regiment, I would easily get confused, feel exhausted on a regular basis, any physical exertion or sudden movement would cause lightheadedness and while attempting to focus on detail I would suffer painful headaches. On [redacted] after working limited duty for approximately two (2) months I could no longer physically or psychologically perform the administrative or sedentary duties.

On [redacted] I underwent a second and third invasive [redacted] surgery. On [redacted] the surgical team went through [redacted]

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[redacted] On [redacted] the [redacted]

In addition, since [redacted] the day of my first on duty squad car accident to my current regiment of prescribed medication I have been prescribed the following [redacted] As a causality of the injuries, surgeries and medications I now suffer from [redacted] resulting in constant and periodic, numbness, tingling, sharp stabbing sensations and stiffness in my back, hips, thighs, legs and feet.

As a result of my duty related injuries on [redacted] I can no longer perform the essential functions of a Sergeant of Police, a Police Officer or any position in a limited-duty-capacity. Being in a position where my fellow Police Officers may be in a grave situation and I am unable to assist them, serious injury or death may be the result. Further, Police Officers are trained to react in a particular fashion of assisting during a time of peril. Knowing I cannot physically or mentally perform required duties, I would react as a matter of impulsive training which in all probability would cause permanent paralysis from the waist down. In the law enforcement community when a Police Officer is in a high risk or threatening situation the expectation by citizens and fellow Police Officers is to mitigate or eliminate the threat. If I were to sit idly by while my fellow officers or citizens were severely injured or killed, I would immediately be labeled as a coward without being trusted for the balance of your career without considering the personal psychological effects. Numerous Wisconsin State Statutes guiding specific, exacting and mandatory responses, such as providing first aid to a person in terminal distress, are required. Non-compliance with these laws because I am physically and mentally unable to, would leave me with exposure to criminal charges. Additionally, the Milwaukee Police Departments Rules and Regulations, Code of Conduct and Standard Operating Procedures adopt the Statutory Laws mandating a specific response to citizens in need of help. Noncompliance with these administrative subordinate mandates would in all likelihood result in discipline including and up to discharge. I fear the day that a suspect is wanted for Homicide and I am unable to take this person into custody because of his combativeness and he escapes and harms or kills an innocent citizen or fellow officer. Further, of grave concern is the two (2) Police Officers that were recently recommended by an Inquest Jury to be criminally charged for not providing first aid to a terminally distressed citizen. I cannot provide the first aid required to keep a citizen alive and would be subjected to criminal charges no differently than the 2 officers.

The State of Wisconsin administrative regulatory agency within the Wisconsin Department of Justice referred to as the Law Enforcement Training and Standards Bureau (LESB) sets forth mandates for all law enforcement agencies within Wisconsin. One of the primary responsibilities the LESB is statutorily charged with is establishing, publishing and enforcing minimal physical and psychological standards for all law enforcement personnel in Wisconsin. Two pertinent administrative regulatory laws adopted and published by the LESB is as follows;

LES 2-2.01 1.g. "The applicant shall be free from any physical, emotional or mental condition which might adversely affect performance of duties of a law enforcement…officer". and,

LES 2-2.01 (4) "The following are minimal qualifications. Higher qualifications are recommended where the employing authority is in a position to require them.

No consideration or exemption has been provided by the LESB or State Statute for lesser qualifications either off-duty or on-duty in a limited duty position.

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In addition, the City of Milwaukee Board of Fire and Police Commissioners, the civilian oversight body for the Milwaukee Police Department has established and adopted minimal duties required of a Police Officer which require minimal physical standards in the Milwaukee Police Department consistent with LESB which read in total as follows;

1) The ability to enforce criminal laws, identify, detain and process wanted individuals.
2) Respond to calls for service.
3) Conduct investigations of suspicious persons or situations and preliminary investigations of major crimes and criminal activity.
4) Interview suspects and witnesses and prepare necessary investigative reports.
5) Prepare and testify in court as to the facts surrounding any criminal, departmental or civil action.
6) Patrol the City of Milwaukee in a police vehicle, motorcycle, bicycle and/or on foot.
7) Operate a police vehicle in emergency situations involving speeds in excess of posted limits in congested traffic and in unsafe road conditions.
8) Prepare accurate and complete reports of daily activities.
9) Provide assistance to the community in the areas of crime prevention.
10) Enforce motor vehicle laws to promote safety and reduce accidents, expedite traffic flow and enforce criminal statutes.
11) Attend in service training as mandated by the State of Wisconsin or as directed, and
12) Perform duties in a special assignment capacity such as Fugitive Apprehension Unit, Community Services or the Neighborhood Task Force as needed.

No consideration or exemption has been provided by the Board of Fire and Police Commissioners in meeting these minimal duties requiring physical standards consistent with LESB either on-duty or off-duty in a limited duty capacity.

Further the Milwaukee Police Department under the authority granted by the Board of Fire and Police Commissioners adopted, established, published and enforces the following Rule;

Rule 4 Section 025.00 "Members of the police force shall, be always subject to duty although periodically relieved from the routine performance of it. They are always subject to orders from proper authority and to call from citizens. The fact that they may be technically "off-duty" shall not be held as relieving them from the responsibility of taking required police action in any manner coming to their attention at any time".

No consideration or exemption has been provided by the Milwaukee Police Department for a limited duty Sergeant of Police or Police Officer, either expressed or implied in fulfilling lawful orders or Statutory mandates to take appropriate law enforcement action, on-duty or off-duty.

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Lastly, the Board of Fire and Police Commissioners in conjunction with the Milwaukee Police Department have established, published and enforces the essential duties of a Sergeant of Police as follows;

1) Have knowledge of laws and ordinances, rules and regulations, standard operating procedures and other department procedures, supervisory principles and practices, effective law enforcement practices and legal guidelines, and the ability to apply this knowledge to practical situations, and
2) The ability to read and understand job related materials, prepare effective written communications, analyze, solve problems, make decisions and exercise judgment effectively, supervise police officers and other personnel and direct and coordinate their work using effective techniques and by providing ethical role models, interact with others in an effective manner, communicate clearly and effectively, maintain effective performance under stress and perform all essential functions of a Sergeant.

No consideration or exemption has been provided by the Board of Fire and Police Commissioners or the Milwaukee Police Department for executing the duties of a Sergeant of Police in a limited duty position, either on-duty or off-duty.

As a direct result of the duty related injuries I have suffered on [redacted] and the subsequent surgeries as a result of the injuries I am totally and permanently disabled from performing the essential duties of a Sergeant of Police or a Police Officer, either in a full duty capacity or a limited duty capacity. Due to my severely injured back and subsequent surgeries I can no longer bend over to provide chest compressions or mouth to mouth resuscitation to a citizen or prisoner that is in terminal distress and needs medical attention. I cannot pursue, apprehend, fight with or protect the detention of suspects wanted for criminal conduct. To do so would subject myself to a high probability of permanent paralysis. Nor can I determine whether subordinates within my span of control have subjected suspects of criminal conduct to excessive force or violated their constitutional rights. I cannot investigate major/violent crimes nor assist my subordinates investigating due to my inability to bend over to lift evidence, secure hostile or combative witnesses or kneel to examine forensic evidence for prosecutorial purposes. I cannot operate a department vehicle in any high speed pursuit or exceed the speed limit because to do so would subject myself to an impact of such severity which would cause permanent paralysis. To not operate a department vehicle in a pursuit situation would permit violent suspects to escape and place innocent persons at risk. I cannot supervise subordinates in an administrative position due to the constant pain in my back, hips, and legs requiring constant movement or lying down. The regiment of pain medications to reduce the pain on a temporary basis produces mental acuity less than desirable to write reports, make detailed observations and creates anxiety.

Off duty I have extremely erratic sleep patterns without sleeping in excess of 4-5 hours at any time, constant pain in my back, legs and feet, have repeated bouts of constipation, an inability to perform household tasks like cutting grass which my spouse and son now have to perform, cannot lift items normally retrieved like the Christmas lights from the attic, am unable to pick up my children for a hug, have a reduced level of intimacy with my spouse as a result of the injuries and the medication and have difficulty practicing my religion. My quality of life has deteriorated to a mere existence riddled with pain and an inability to perform ten (10) percent of my previous life.

[redacted] 3-14-13

Exhibits Related to ERS' Response

Exhibit 4

Memorandum from "Consultant" to Disability Applicant

MEMO
To
OFFICER [redacted]

Re: Duty Disability Application
From: Bradley
Date: Sunday, October 27th, 2013

1. Please call me anytime for any question at [redacted] I may not have an immediate answer but I will attempt to find one that's reasonable and accurate. You don't want to make a fatal mistake in what is an extremely complex process. You're pension counselor is the best one the ERS has for Police Officers and she is quite gracious. She will help you all she can without becoming biased on your behalf. Counselor [redacted] can be reached at 286-3557 from 10:00am to 4:30pm Monday thru Friday. Remember, the HIPPA laws and Federal Administrative Code prohibits her from talking directly to me regarding you're file contents due to the medical information contained therein and most of the time it's beneficial to call her directly with a process question and then call me for an unvarnished answer.

2. On Monday, October 28th, 2013 at 2:30pm you will apply for Duty Disability Retirement at 789 North Water Street, Room 300. I will be present through the entire process as your witness. Please wear modest clothes with minimal jewelry. Please arrive at 2:15pm and I will meet you in the lobby on the first floor for any last minute questions you may have. Although the spouse is not required for the actual application submission I recommend to all applicants to bring the spouse if available, of course this is subject to your considerations. The actual application process normally consumes approximately one hour if the counselor permits you to attach the pre-typed disability statement I've prepared for you. In the event you have to write the complete disability statement on the application, expect to spend two hours at the ERS office. The ERS policy as to whether you will be able to attach the prepared Disability Statement changes from day to day.

3. The Duty Disability Retirement process was negotiated and subsequently arbitrated back in 1969 thru 1986. Since 1986 minor changes have occurred but the guts of the benefits and processes as a result of negotiations and arbitration are still in place today.

After you actually file the application on Monday, the ERS will send within the following week, notification to the MPA that you have applied for Duty Disability Retirement. The purpose of this notification is required under Chapter 36 of the City of Milwaukee Charter Ordinances. The law requires the applicants certified collective bargaining union to select the first physician in the tri-partite Medical Panel of physicians. The MPA has always deferred the selection to the applicant therefore, the MPA will contact you via US Mail for a doctor's name, which of course will be Dr. [redacted] Recently, there have been a few incidents of miscommunications between the applicant and the MPA as to the exact date the physician had been appointed to the tri-partite panel. Normally this is accomplished by the MPA notifying the ERS after you notify the MPA of the selection of Dr. [redacted] To expedite and ensure the selection of Dr. [redacted] by the MPA I recommend that when you receive the letter from the MPA to notify them with the name of your 'selection of physician', please take the MPA letter and drive to the MPA offices @ 6310 West Bluemound Road and orally provide the name of Dr. [redacted] and professionally request the MPA to notify the ERS immediately. This should rectify any potential communications problems and expedite notification to the ERS by the MPA.

4. Immediately after the submission of your application to the ERS will send a copy of your DDR application to the City of Milwaukee Workers Compensation Section (W/C Section) that you have applied for Duty Disability Retirement and request the W/C Section to select a second physician in the tri-partite Medical Panel of doctors. The W/C Section normally conducts a complete review of your medical files and is permitted to investigate any medical issue they desire. Because your files are relatively old and closed, meaning they have fully adjusted the W/C Section should select their Medical Panel physician in short order. The W/C Section is likewise required to send your medical records to the ERS for distribution to the Medical Panel of physicians. Because you have previously been subjected to a psychological IME the W/C Section will definitely put the IME Report front and center in an attempt to deny you DDR a second time. This gives more significance to having Dr. [redacted] administer the two tests prior to seeing the W/C Section selected Medical Panel physician.

5. The W/C Section will in turn notify and send a copy of your DDR to [redacted] in the MPD Medical Section. This will obviously place [redacted] in a box considering the Fitness for Duty examination coming up on Thursday. She will realize that if Dr. [redacted] determines you are unfit for duty it will significantly enhance the probability for Duty Disability Retirement i.e. having your employer determining your unfit. In

addition [redacted] is used for all stress Disability applications and if [redacted] sends you and he determines your unfit he will have to step aside from reviewing your DDR application as a Medical Panel physician. In addition the Memo requesting Injury Pay for the first time since the shooting will give her great pause on the potential outcome of the Fitness For Duty examination given her job is to reduce the eligibility and costs associated with Injury Pay usage. [redacted] will definitely give her order for Thursday some quality thought and don't be surprised if it changes.

6. The W/C Section will likewise immediately send a copy of your DDR application to [redacted] in the Internal Affairs Division for review and to obtain all pending or closed internal and criminal investigations. Although the IAD documents are privileged documents and not subject to disclosure without your consent, with the exception of the previously exposed criminal investigatory files, recently an entire IAD file found its way in the medical files passed along to the three doctors in the tri-partite Medical Panel. In addition, in a recent application I handled; through an open records request I discovered the W/C Section hired a Private Investigation by the name of "Genesis Group" located on the Northwest side of Milwaukee, to covertly videotape the DDR applicant. The videotapes likewise ended up with the Medical Pan physicians. The officer has notified the City of intent on suing for the invasion of privacy however, this will not prevent the City from further surveillance. Once the W/C Section completes its investigation and has selected the second doctor in the tri-partite Medical Panel they will notify the ERS of the selection of the second doctor. This notification normally takes two to three months and in your case I would expect no less than three months, not because it's you, rather the psychological DDR applications have been taking in excess of three months for the WC Section to complete the investigation and get the name of the second doctor over to the ERS. Once the 2nd doctor has been selected by the W/C Section and sent to the ERS, the ERS will simultaneously send out notification to Dr. [redacted] that he has been selected by you as the first physician in the tri-partite Medical Panel and to the second doctor who was selected by the W/C Section. You will also be notified by the ERS to contact both doctors to make an appointment for the DDR application medical review. Please do this immediately to cause a timely response by Dr. [redacted] and the City (WC Section) doctor. Also, Dr. [redacted] the second doctor and third if needed, will be paid directly by the ERS for the appointments and the DDR application completion. Always permit Dr. [redacted] to make as much money as is reasonable ,you have pretty good health insurance. Hopefully, immediately after you complete the appointment with Dr [redacted] he is required to notify the ERS within 30 days as to whether you are totally and permanently disabled. This process will repeat itself with the second or City doctor. If the second doctor selected by the City agrees

with Dr. [redacted] that you are disabled you will be placed on Duty Disability Retirement retroactive to ninety days after the date of application or if you are still on limited duty to a date established by Pension Board approval which is typically a smooth transition from the Department. The Pension Board meets monthly and the date you would leave the Department would be established by the Pension Board meeting next following the receipt by your pension counselor of the first two doctor's opinions that you are permanently disabled. If the second doctor disagrees with Dr. [redacted] that you are not totally and permanently disabled (almost universally the case) a third and final tie breaking doctor will be selected by Dr. [redacted] and the second doctor of the tri-partite Medical Panel through mutual agreement. **This is a critical juncture in your application process and the importance cannot be overstated.**

7. The selection of the third doctor has to be made by mutual agreement (under current Charter law) by Dr. [redacted] and the second doctor in the tri-partite Medical Panel. It is imperative that when you get notified that the second doctor has been selected and you have to make an appointment with this doctor you do the following. In addition to making an appointment with the second doctor you make an appointment with Dr. [redacted] prior to attending the second doctor's office. At this appointment [redacted] for your own health and that of your spouse, with Dr. [redacted] that in the event the second doctor does not agree with his medical opinion that you are totally and permanently disabled, that Dr. [redacted] takes the initiative to contact the City selected doctor with the name of a third tie breaking doctor. We don't want the reverse, which is the second doctor sending Dr. [redacted] the name of a doctor for the third tie-breaking physician in the tri-partite Medical Panel. You want Dr. [redacted] picking the third doctor with the second doctor's mutual agreement. Physicians are fraternal no differently than policemen but for substantially different reasons. Their medical practices rely upon groups of physicians under contractual agreement with multiple corporations, hospitals, clinics and non-profits with similar patient bases. We want Dr. [redacted] to select the third doctor that he is comfortable with, respects and is professionally related to. The third doctor selection and who initiates the offer will in large respect dictate whether you receive Duty Disability Retirement.

8. At the October 2012 meeting of the Annuity & Pension Board, the Board voted to send all DDR Applications back to the Milwaukee Police Department for investigation reversing a 35 year old policy of maintaining the applications as privileged and confidential documents. Regardless of the pros and cons and my disagreement with this

policy, it is what it is. What this means for you is that all the physician reports and the statements you supply or make to the City selected second doctor in the tri-partite Medical Panel may be bled back to the Department. Please stay factual, honest and pleasant with the second doctor, once again the opinion of the second doctor is predictable as to your disability recommendation and this must be a consideration.

9. Finally, Chapter 36 of the pension laws requires you to reimburse the City of Milwaukee for all Workers Compensation permanency awards you receive for the work related injuries you are claiming in the MEMO. The courts have determined that receiving a permanency award for your injuries is equivalent to double dipping if you go on Duty Disability Retirement Allowance which is a work related injury retirement allowance. Because you have not received a permanency award as of the time of actual DDR application there is nothing to be concerned about at this time. If in the eventual future you become eligible and receive a permanency award please call me for your options which options and the implications will not be provided by the City causing the City and the ERS to inure all the benefits.

10. Please notify all your **medical treatment facilities and in particular your general practitioner to ensure no release of you or your spouses medical information is released without** your consent. The W/C Section, if they already don't have the medical records will make every effort to obtain them and selectively cherry pick the documents the want to send to the Medical Panel physicians. Ask each institution to flag your medical files with your request not to release without your consent. It's been a pleasure working with you and I pray for the best for you and your wife, do not hesitate to call if I can be of any assistance.

11. I recommend providing a copy of this Memo and the Duty Disability Statement to Dr. [redacted]

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MEMO
To
POLICE OFFICER [redacted]

Re: Duty Disability Application Process
From: Bradley
Date: Sunday, 11-16-2013 Will Be Updated Prior to Actual DDR Application Submission Based Upon Ever Evolving Disability Process Modifications By The City and When I Receive A Date For Actual Application

1. Please call me anytime for any question at [redacted]. I may not have an immediate answer but I will attempt to find one that's reasonable and accurate. You don't want to make a fatal mistake in what is an extremely complex process. You're pension counselor is the best one the ERS has for Police Officers and she is quite gracious. She will help you all she can without becoming biased on your behalf. Counselor [redacted], can be reached at [illegible] from 10:00am to 5:30pm Monday thru Friday. Remember, the HIPPA laws and Federal Administrative Code prohibits her from talking directly to me regarding you're file contents due to the medical information contained therein and most of the time it's beneficial to call her directly with a process question and then call me for an unvarnished answer.

2. On **DATE TBD** you will apply for Duty Disability Retirement at 789 North Water Street, Room 300. I will be present through the entire process as your witness. Please wear modest clothes with minimal jewelry. Please arrive at **TIME TBD** and I will meet you in the lobby on the first floor for any last minute questions you may have. Although the spouse (if married) is not required for the actual application submission I recommend to all applicants to bring the spouse if available, of course this is subject to your considerations and circumstances. The actual application process normally consumes approximately one hour to an hour and a half if the counselor permits you to attach the pre-typed Disability Statement I've prepared, with your assistance, for you to attach to the application. In the event you have to write the complete Disability Statement on the application, expect to spend minimally two hours at the ERS office. The ERS policy as to whether you will be able to attach the prepared Disability Statement changes from day to day.

3. The Duty Disability Retirement application process was negotiated and subsequently arbitrated back in 1969 thru and on many occasions to include 1986. Since 1986 minor

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changes have occurred but the guts of the benefits and processes as a result of negotiations and arbitration are still in place today. After you actually file the application on **TBD**, the ERS will send within the following work week, notification to the MPA that you have applied for Duty Disability Retirement. The purpose of this notification is required under Chapter 36 of the City of Milwaukee Charter Ordinances. The law requires the applicants certified collective bargaining union to select the first physician in the tri-partite Medical Panel of physicians. The MPA has always deferred this selection to the Disability applicant therefore, the MPA will contact you via US Mail for a doctor's name by requesting you to call the MPA with a physician's name, which of course will be Dr[redacted]. To expedite and ensure the selection of Dr.[redacted] by the MPA I recommend that when you receive the letter from the MPA to notify them with the name of your 'selection of physician', please take the MPA letter and drive to the MPA offices @ 6310 West Bluemound Road and orally provide the name of Dr.[redacted] and professionally request the MPA to notify the ERS immediately. This should eliminate any potential communications problems and expedite notification to the ERS by the MPA.

4. At the same time the Pension office sends notice to the MPA for the selection of a doctor the ERS will simultaneously send notification and a copy of your DDR application, to the City of Milwaukee Workers Compensation Section (W/C Section) that you have applied for Duty Disability Retirement and your Pension Counselor will request the W/C Section to select a second physician in the tri-partite Medical Panel of doctors. Prior to the W/C Section notifying the ERS of their selection of a second doctor they normally conduct a complete review of your medical files and is permitted to investigate any medical issue they desire under §102. WI Stats. In your case, because you have already submitted a claim for psychological stress on October 4th, 2013 denied your claim on October 31st, 2013 they claims adjuster ultimately assigned to your Duty Disability Retirement application will quickly realize the denial of 10-4-13 was based upon a legal opinion and not a medical opinion. Therefore, the claims adjuster will immediately dispatch a letter to you either demand you appear for an Independent Medical Examination (IME) before a psychiatrist of their choice. If you have not retained legal counsel to appeal the W/C Section denial of 10-4-13 to the State of Wisconsin Department of Workforce Development, the claims adjuster has legal right to demand you attend the IME and will make it appear as a demand but will actually be a request to attend an IME. I would strongly recommend that you do not attend the IME if you have not filed an appeal of the denial, you are then in the best position possible for the DDR application process. I have yet to read an IME favorable to a Police Officer.

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5. In addition, once the W/C Section receives notification you have applied for Duty Disability Retirement from your Pension Counselor the W/C claims adjuster will in turn send a copy of the DDR application to [redacted] in the MPD Medical Section and [redacted] in the Internal Affairs Division for all pending or closed internal and criminal investigations. Although the IAD documents are privileged documents and not subject to disclosure without your consent, with the exception of previously completed and closed criminal investigatory files, recently entire IAD files have appeared in the medical files passed along to the three doctors in the tri-partite Medical Panel by the W/C Section. Based upon the information you have provided to me this exchange should not create any problems for you as an applicant.

6. In a recent application I handled I discovered through an open records request the City of Milwaukee hired a Private Investigation Corporation by the name of "Genesis Group" which you can research on-line, to videotape the Duty Disability Retirement applicant for the W/C Section file. The videotaped surveillance appeared in the applicants Duty Disability application medical file before the tri-partite Medical Panel of physicians. You should expect that after application you will be covertly and secretly surveilled by the Genesis Group. You can enhance this probability of surveillance if you acquiesce to the W/C Section that you attend an IME. Currently you have no W/C claim pending and if you attend the IME you will open up the file permitting your surveillance to legally occur.

7. Once the W/C Section completes its investigation and has selected the second doctor in the tri-partite Medical Panel they will notify the ERS of the selection of the second doctor. This notification normally takes two to three months and in your case I would expect no less than three months, not because it's you, rather because the psychological applications have been taking in excess of three months for the WC Section to complete the investigation and get the name of the second doctor over to the ERS. In your case the W/C Section screwed up by not demanding you attend an IME when you originally filed your MEMO with the MPD on 10-4-2013 and they will attempt to slow down the Duty Disability Retirement application process to get you to an IME. Once the 2nd doctor has been selected by the W/C Section and sent to the ERS, the ERS will simultaneously send out notification to Dr. [redacted], Dr. [redacted] attendant psychiatrist, that he has been selected by you as the first physician in the tri-partite Medical Panel and to the second doctor who was selected by the W/C Section. You will also be notified by the ERS to contact both doctors to make an appointment for the DDR application Medical Panel review. Please do this immediately to cause an expeditious response by Dr. [redacted] and the City (WC Section) doctor. Also, Dr. [redacted], the second doctor and third if needed,

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will be paid directly by the ERS for the appointments and the DDR application completion. Always permit Dr. [redacted] to make as much money as is reasonable for your health ,you have pretty good health insurance. Hopefully, immediately after you complete the appointment with Dr. [redacted] for the DDR application he will notify the ERS within 30 calendar days as to whether you are totally and permanently disabled. This process will repeat itself with the second (City doctor). If the second doctor selected by the City simultaneously agrees with Dr. [redacted] that you are permanently disabled you will be placed on Duty Disability Retirement Allowance retroactive to ninety days after the date of application submission. In your case I want to submit the application prior to you going off the payroll to avoid a lot of potential legal arguments related to entitlements. If your approved by the first two doctors it is typically a smooth transition from the Department to Duty Disability Retirement. The Pension Board meets monthly and the date you would leave the Department would be established by the Pension Board meeting next following the receipt by your pension counselor of the first two doctor's

opinions that you are permanently disabled. If the City selected second doctor disagrees with Dr. [redacted], that you are not totally and permanently disabled and can work limited duty (almost universally the case) a third and final tie breaking doctor will be selected by Dr. [redacted] and the second doctor of the tri-partite Medical Panel through mutual agreement. **This is a critical juncture in your application process and the importance cannot be overstated.**

8. The selection of the third doctor has to be made by mutual agreement (under current Charter law created through negotiations) by Dr. [redacted] and the second doctor in the tri-partite Medical Panel. It is imperative that when you get notified that the second doctor has been selected and you have to make an appointment with this doctor you do the following. In addition to making an appointment with the second doctor you make an appointment with Dr. [redacted] prior to attending the second doctor's office. At this appointment with Dr. [redacted] you beg and plead, professionally of course for your own health, that in the event the second doctor does not agree with his medical opinion that you are totally and permanently disabled, that Dr. [redacted] takes the initiative to contact the City selected doctor with the name of a third tie breaking doctor. We don't want the reverse, which is the City doctor sending Dr. [redacted] the name of a doctor for the third tie-breaking physician in the tri-partite Medical Panel. You want Dr. [redacted] picking the third doctor with the second doctor's consideration for mutual agreement. Physicians are fraternal no differently than policemen but for substantially different reasons. Their medical practices first rely upon quality care, groups of physicians under contractual agreement with multiple corporations, hospitals, clinics and non-profits with similar patient bases. We want Dr. [redacted] to select the third doctor that he is comfortable with, respects and is professionally related to. The third doctor selection

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and who initiates the offer will in large respect dictate whether you receive Duty Disability Retirement.

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9. At the October 2012 meeting of the Annuity & Pension Board, the Board voted to send all DDR Applications back to the Milwaukee Police Department for investigation reversing a 35 year old policy of maintaining the applications replete with sensitive medical information as privileged and confidential documents. Regardless of the pros and cons and my disagreement with this new policy, it is what it is. What this means for you is that all the physician reports and the statements you supply or make to the City selected second doctor in the tri-partite Medical Panel may be bled back to the Department. Please stay factual, honest and pleasant with the second doctor, once again the opinion of the second doctor is highly predictable as to your disability recommendation and this must be a consideration. In addition, I'm sure you're acutely aware of the intentional release of Duty Disability applications to the media outlets. The rat who is releasing these documents has an agenda to discredit the applicants with a level of immaturity I have not experienced in the City of Milwaukee. You should expect, and I pray not, that your application will be released to the media even though you are not under criminal investigation.

10. Finally, Chapter 36 of the pension laws requires you to reimburse the City of Milwaukee for all Workers Compensation permanency awards you receive or may have received for the work related injuries you are claiming in the Duty Disability Statement. The courts have determined that receiving a permanency award for your injuries is equivalent to double dipping if you go on Duty Disability Retirement Allowance which is a work related injury retirement allowance. Repayment is not required in a lump sum all this is an option available. The ERS when and if you go on Duty Disability Retirement will actuarially determine the total permanency award paid to you and will spread out repayment for your life expectancy on Duty Disability Retirement and a monthly deduction will be made from your monthly retirement allowance. In your case because the W/C Section has already denied your claim and you have not appealed this decision no permanency awards exist. If and when you go on Duty Disability Retirement I would recommend you appeal the denial under a few circumstances we can look at down the road.

11. Please notify all your **medical treatment facilities and in particular your general practitioner to ensure no release of your medical information or your families medical records are released without** your specific consent. Ask each institution to flag your medical files that if any requests come in for your medical records that the custodian calls you for your specific approval prior to the release. It's been a pleasure working with you and I pray for the best for you and your daughter, do not hesitate to call if I can be of any assistance.

12. Based upon a City of Milwaukee City Attorney legal opinion that I learned of on Friday, November 15th, 2013 all the people that have assisted you in preparing the Statement of

DRC MKE SCANNED 6/16/2014

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MEMO

To [redacted]
Re: Duty Disability Application & Process

The tri-partite Medical Panel of physicians, particularly the City Physician selected by the Workers Compensation Section and the third tie-breaking physician if needed, will look for the your psychiatrist, Dr. [redacted] records to determine if the below identified tests were administered to you. If they were not the Workers Compensation Section psychiatrist in the Medical Panel will administer the tests and interpret the results in a manner which will result in your denial of Duty Disability Retirement. In order to prevent this outcome and preempt the physicians that may have the City's interests in mind and not yours please have Dr. [redacted] administer the following tests for your overall health if he has not already done so. I've been advised that a treating physician who administers these tests, may preclude an Independent Medical Examiner and/or a Duty Disability Medical Panel physician from duplicating the tests and coming up with a different result. Dr. [redacted] is a busy man helping a lot of good Police Officers recover and I pray you do not miss this opportunity.

1. MMPI – 2
2. SCID – 2

Please provide this MEMO, the Statement of Disability and the MEMO regarding the DDR process to Dr. [redacted]

Brad

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