

ORANGE COUNTY EMPLOYEES RETIREMENT SYSTEM
2223 E. WELLINGTON AVENUE, SUITE 100
SANTA ANA, CALIFORNIA 92701

GOVERNANCE COMMITTEE MEETING
September 5, 2017
9:30 a.m.

AGENDA

Committee: Roger Hilton, Chair; Shawn Dewane, Vice Chair; David Ball; Chris Prevatt

This agenda contains a brief general description of each item to be considered. The Committee may take action on any item listed on this agenda; however, except as otherwise provided by law, no action shall be taken on any item not appearing on the agenda.

CLOSED SESSION

1. **CONFERENCE REGARDING SIGNIFICANT EXPOSURE TO LITIGATION (ONE MATTER)
(GOVERNMENT CODE SECTION 54956.9)
Adjourn pursuant to Government Code section 54956.9(d)(2)**

Recommendation: Take appropriate action.

OPEN SESSION

- A. **PROPOSED REVISIONS TO THE ADMINISTRATIVE HEARING PROCEDURES**
Presented by Gina M. Ratto, General Counsel and Lee K. Fink, Deputy General Counsel

Recommendation: Approve, and recommend that the Board of Retirement approve, changes to OCERS' processes and procedures relating to appeals of disability retirement and other benefit determinations.

- B. **PROPOSED REVISIONS TO OCERS' RULES OF PARLIAMENTARY PROCEDURE**
Presented by Gina M. Ratto, General Counsel

Recommendation: Approve, and recommend that the Board of Retirement approve, proposed revisions to the *OCERS Rules of Parliamentary Procedure*.

- C. **REGULAR REVIEW OF POLICIES**

Annual Disclosure Policy
Presented by Gina M. Ratto, General Counsel

Recommendation: Approve, and recommend that the Board of Retirement approve, proposed revisions to the Annual Disclosure Policy.

PUBLIC COMMENTS: At this time the members of the public may address the Committee regarding an item within the subject matter jurisdiction of the Committee, provided that no action may be taken on any item not appearing on this agenda unless authorized by law.

COMMITTEE MEMBER COMMENTS

CHIEF EXECUTIVE OFFICER/STAFF COMMENTS

COUNSEL COMMENTS

NOTICE OF NEXT MEETINGS

MANAGER MONITORING SUBCOMMITTEE MEETING
September 7, 2017
9:00 A.M.

ORANGE COUNTY EMPLOYEES RETIREMENT SYSTEM
2223 E. WELLINGTON AVENUE, SUITE 100
SANTA ANA, CA 92701

2-DAY STRATEGIC PLANNING WORKSHOP
September 13-14, 2017
8:00 A.M.

DOUBLETREE CLUB BY HILTON-ORANGE COUNTY AIRPORT
7 HUTTON CENTRE DRIVE
SANTA ANA, CA 92707

INVESTMENT COMMITTEE MEETING
SEPTEMBER 19, 2017

ORANGE COUNTY EMPLOYEES RETIREMENT SYSTEM
2223 E. WELLINGTON AVENUE, SUITE 100
SANTA ANA, CA 92701

All supporting documentation is available for public review in the retirement office during regular business hours, 8:00 a.m. – 5:00 p.m., Monday through Thursday and 8:00 a.m. – 4:30 p.m. on Friday.

It is OCERS' intention to comply with the Americans with Disabilities Act ("ADA") in all respects. If, as an attendee or participant at this meeting, you will need any special assistance beyond that

Governance Committee Meeting

September 5, 2017

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normally provided, OCERS will attempt to accommodate your needs in a reasonable manner. Please contact OCERS via email at adminsupport@ocers.org or call 714-558-6200 as soon as possible prior to the meeting to tell us about your needs and to determine if accommodation is feasible. We would appreciate at least 48 hours' notice, if possible. Please also advise us if you plan to attend meetings on a regular basis.

A

Memorandum

DATE: September 5, 2017
TO: Members of the Governance Committee
FROM: Gina M. Ratto, General Counsel; Lee K. Fink, Deputy General Counsel
SUBJECT: PROPOSED REVISIONS TO THE ADMINISTRATIVE HEARING PROCEDURES

Recommendation

Approve, and recommend that the Board of Retirement (Board) approve, changes to OCERS' processes and procedures relating to appeals of disability retirement and other benefit determinations.

Background/Discussion

The current OCERS Benefits and Disability Adjudication process is governed by a Board policy on Administrative Hearing Procedures (Procedures), most recently amended in December 2015 and an OCERS Administrative Procedure on the Administrative Appeal Process (OAP), adopted in January 2016. The current OCERS process for the Board to adjudicate disability and benefit applications presents numerous process inefficiencies, customer service shortcomings, and does not live up to the OCERS values. In addition, we have surveyed 13 other CERL systems on a number of issues, and OCERS is out of step with most systems in how it handles applications. We are therefore recommending a number of reforms to the process that address these shortcomings and put OCERS in line with most CERL systems.

PROBLEMS WITH THE CURRENT OCERS PROCESS

A. Privacy Protections for Members

Under the current process, Board members and staff often discuss a member's medical condition in full view of the audience and on recorded video that may be obtained by the public. Although the disability application includes a statement that a member's documents may become part of the public record, it is a generic statement that the member generally signs months before the matter comes before the Board. Although the Board agenda and the notice sent to members states that a member may request that his or her application be discussed in public, members may nonetheless be unaware of their rights to have the matter discussed in closed session, and in many cases the member is not present at the Board meeting to assert his or her rights.

OCERS takes great pains to protect its members' privacy. None of the supporting documents for the disability calendar is publicly available. Board members are typically cautious in discussing a member's condition during the open session, but that caution can create an incomplete or cryptic record, and does not lead to a full and complete discussion of the issues.

While the CERL does not require that disability hearings be held in closed session, the Attorney General has opined that the Board may meet in closed session to consider a member's application for a disability retirement consistent with the personnel exemption under the Brown Act. In addition, the Attorney General has opined that a Board may hear the matter in a closed hearing that includes the member, the member's counsel, and witnesses, all of whom would be attending in the role of an "advocate," "interested party," or someone with an "essential role to play in the closed session."

B. Unnecessary Delays for Members in the Determination and Appellate Process

The current process for the Board's decision on disability retirements and benefits decisions creates unnecessary delays. Members whose applications for disability retirement are denied have to wait for Board action just to have the right to pursue an appeal. Meanwhile, they may attend the Board meeting at which their case is on the agenda—including traveling and arranging for medical care—even though the Board adopts an alternative contrary to staff's recommendation in less than 4% of cases. Worse yet, in seeking to accommodate a member, by re-scheduling his or her matter before the Board or sending the case back for further staff review, the member's opportunity for a hearing is only further delayed.

The process for appealing benefit determinations unrelated to disability retirement is even more convoluted and time consuming. A member must first appeal the initial staff determination to the Director of Member Services and then to the CEO. If still unsatisfied after these two appeals, the member may only then appeal the matter to the Board. And it is not until the Board makes its determination—usually affirming the decision of its own Administrator—that the member can then seek a hearing.

The Administrative Hearing Process itself also creates significant potential delays. There are no firm deadlines by which members, OCERS, or the Hearing Officers must abide. The current system leaves it to the members and the OCERS attorneys to set the timelines in individual cases. The rules do not set timelines to which the parties have to adhere or for which the Hearing Officers are accountable. In a judicial proceeding, the court would be responsible for moving the case along towards conclusion, but the OCERS rules are silent on who bears this responsibility. Additionally, if new medical claims arise (as they often do) the hearing process is interrupted and the matter is referred back to the Board to make another determination before it can proceed.

C. Lack of Metrics for Timely Review and Accountability for Staff and Service Providers

The lack of firm timelines results in limited metrics by which the Board can ensure members' applications are being dealt with in a timely fashion. There are few clear standards for OCERS to hold its panel physicians and Hearing Officers accountable for timely performing their contractual duties. Additionally, there is a lack of transparency for members into how long the process will take for OCERS to complete.

D. Inefficient Use of the Board Members' Time and OCERS Staff Resources

The current system makes an inefficient use of Board members' valuable time. From 2012-2017, 360 disability applications came before the Board of Retirement, yet in only 13 cases (3.6%) did the Board adopt an alternative different than the staff's recommendation. In another 6% of the cases, the Board delayed the final adjudication by seeking more staff work or a second medical opinion, but in most instances the Board ultimately adopted the staff recommendation. Notwithstanding this, the Board has had to review a lengthy record with each application. In 2017, 70% of the Board agenda material (6,005 of 8,572 pages) was supporting material for the disability cases. And although 70% of the Board's reading material is dedicated to disability retirement applications, there are fewer than 100 disability applications each year—or just one-quarter of one percent of the 43,485 OCERS members.

In addition, for each case that goes to an Administrative Hearing, the Board must review the matter at least twice—once for the initial determination and once after receiving the recommendation from the Hearing Officer. These matters receive a third (and sometimes fourth and more) Board review if the member adds a new condition, about which the Board must make a determination before a hearing is held. Yet the time the Board spends on cases prior to an Administrative Hearing is the least effective because it occurs before a complete record has been developed for the Board to review.

The number of disability applications has gone up by 50% since 2009, increasing from 56 disability applications in 2009 to 84 in 2016. As OCERS grows, the number of disability applications will grow, leaving even less time for the Board to fulfil its other duties. Meanwhile, the Board's other duties will also grow as OCERS' membership increases and its investment fund, which has tripled from \$4.7 billion in 2003, grows to an expected \$30 billion by 2030.

In addition, the increase in disability applications will tax the staff's time. Preparing and participating in Board meetings for contested matters and undertaking Administrative Hearings in contested matters tax the time of the Legal Department and the Disability Staff. This will become more challenging as the number of applications (and the number of related hearings and petitions for Writs of Mandate) increase.

E. OCERS is Out of Step With Other CERL Systems

OCERS staff and consultants have surveyed 13 other CERL systems to see how they handle their disability processes. Five CERL Systems (including ACERA and Contra Costa County) afford members the right to an administrative hearing after the staff has made a recommendation and before the system's board takes action on the application. Eight CERL systems (including LACERA, SDCERA, and ACERA) make use of a consent calendar for granting disability applications. 12 of the 13 CERL systems surveyed regularly use closed session to hear member applications or appeals, and the 13th (SDCERA) will close the hearing at the request of the member.

RECOMMENDED PROCESS IMPROVEMENTS

A. Guiding Principles

Staff recommends several revisions to OCERS' processes and procedures relating to the administrative appeal of disability retirement and other benefit determinations, including implementation of a consent calendar for uncontested disability applications; direct referral of contested staff determinations to hearing officers; implementation of closed sessions/hearings for consideration of disability retirement applications; and other revisions to the Board's policy on Administrative Hearing Procedures. In developing these recommendations, staff was guided by OCERS' Values:

- Open and Transparent
- Commitment to Superior Service
- Engaged and Dedicated Workforce
- Reliable and Accurate
- Secure and Sustainable

Staff believes the recommended revisions to OCERS' processes and procedures for administrative appeals reflect these values by improving service to OCERS members, reducing efficiencies, and improving the use of OCERS resources.

B. Staff Review and Determination

The first step in the process is staff's review of disability retirement applications and benefit determinations. The processes for members to appeal these determinations are set forth in the OAP, and staff recommends several new metrics to be included in the OAP. For disability retirement applications, OCERS will commit to rendering a decision within one year of the date the application was accepted by OCERS, provided that the member complied with the OCERS' investigation. For all other benefit determinations, OCERS will commit to rendering a decision within 90 days of the date the benefit determination request was received.

For disability retirement applications, staff recommends the following additional metrics to be included in the OAP and in OCERS' contracts with Panel Physicians:

- Notice of Accepted Application. OCERS will issue either a Notice of Accepted Application or Notice of Incomplete Application within 30 days of the filing of the first application.
- Referral to a Panel Physician. The Disability Staff will refer the member to an OCERS Panel Physician within 180 days of the Notice of Acceptance of Application.
- Examination with an OCERS Panel Physician. The Panel Physician will examine the member within 90 days of the referral.
- Physician Report. The Panel Physician will issue his or her report within 45 days of the examination.
- Notification of Preliminary Determination. The member will be notified of the staff determination within 60 days of Panel Physician report (or referred for a second opinion).

C. Member Appeal of Determination

A member will have the right to file an appeal of staff's determination within 90 days of the Notice of Preliminary Determination, for both disability retirement and benefit determinations.¹ The member will no longer be required to appeal benefit determinations to the Member Services Director and then to the CEO. Instead, staff will be expected to issue reliable and accurate decisions, and to consult with management and the Legal Department on any benefit requests that raise unique questions. For benefits determinations, if no appeal is filed, the staff determination becomes final. For disability determinations, if no objection or appeal is filed, the matter will be placed on the Board's consent calendar at its next regular meeting.

If the member files an appeal, staff will have 30 days to either modify or reverse its determination or "docket" it for an Administrative Hearing. The member will be given the option to elect a full Administrative Hearing or an Expedited Administrative Review.²

D. Proceedings Before a Hearing Officer

Once a member appeals a determination by staff, the management of the hearing process will be transferred to the Legal Department, and administrative staff in the Legal Department will serve as the clerk to the hearing officers (Clerk). The Hearing Officer will be responsible for setting and enforcing dates including the dates briefs are due, resolving disputes, conducting the hearing, and completing his/her recommendation to the Board, all within one year of the appeal being docketed.

1. Administrative Hearing

Timelines will be instituted for Administrative Hearings. Staff recommends the following:

- Upon docketing the case, the Clerk will randomly assign a Hearing Officer to the case.
- OCERS will prepare and serve the Administrative Record within 45 days of the matter being docketed.
- The Clerk will schedule a telephonic scheduling conference for the parties and the Hearing Officer within 30 days of the Administrative Record being served.
- At the telephonic scheduling conference, the Hearing Officer will set a date for the Administrative Hearing that is within six months of the scheduling conference.
- A transcript of the hearing must be prepared and filed within 30 days of the last day of the hearing.
- The member's closing brief must be served within 30 days after the transcript is filed.
- OCERS' closing brief must be served within 30 days after the member's closing brief is served.
- The Hearing Officer will issue a Proposed Findings of Fact and Conclusions of Law within 60 days of OCERS' closing brief.

¹ In instances where the staff recommendation is to grant the member's application or request in full, the notice period will be only 10 days.

² If the staff believes that there are no factual disputes, staff will suggest the option of an Expedited Administrative review. This would be most common in benefits determinations.

- The Hearing Officer may, upon either a stipulation of the parties or for good cause shown, continue the dates set forth in the original scheduling order, provided that the hearing shall not be delayed beyond a date one year from the date that the matter was docketed without the member's consent.

If as a result of a member's failure to comply with any of the rules or requests from OCERS staff, the matter is not heard within a year, the Hearing Officer shall dismiss the case with prejudice.

2. Expedited Administrative Review

A member may waive his or her right to a full hearing and elect to have an Expedited Administrative Review. This process would be modeled on the process employed by the San Bernardino County Employees' Retirement Association (SBCERA). The Expedited Administrative Review would allow for speedier resolution of the issues by having the Hearing Officer issue his or her decision after a thorough review of the administrative record and short briefing, with no administrative hearing.

A member may elect the Expedited Administrative Review up until the date of the Scheduling Conference. Each party would have 30 days from the date of the election (or the date the Administrative Record was completed, whichever is later) to submit any evidence and a short, five-page Statement of Issues. The Hearing Officer would have 60 days from the date of the election (or from the date the Administrative Record is complete, whichever is later) to issue Proposed Findings of Fact and Conclusions of Law.

E. Board of Retirement Action

Following receipt of the Hearing Officer's Proposed Findings of Fact and Conclusions of Law, the matter will be placed on the Board's agenda, with notice to the member. The OCERS Legal Department will submit its written argument to the Board not later than ten days before the Board meeting at which the matter is to be heard. The member may, but is not required to, submit his or her written argument to the Board not later than ten days before the Board meeting.

At the Board meeting, the Board will adjourn to a closed hearing to decide the matter. All the parties and their counsel will be permitted to attend and have the opportunity to be heard. The Board could also adjourn to a closed session excluding the parties to consult with the General Counsel before rendering a decision.

ADVANTAGES OF THE PROPOSED PROCESS

The new process outlined above presents several advantages to OCERS, resolves the problems in the current system, and lives up to OCERS' values.

First, referring member appeals directly to a Hearing Officer, without first presenting staff's denial to the Board, streamlines decision making, promotes a speedy hearing, and provides an opportunity for the member to challenge the decision quickly. Including the metrics and timelines in the Procedures and OAP will significantly reduce potential delays by instituting clear and firm deadlines by which the members, OCERS, physicians, court reports, and Hearing Officers must abide.

Second, instituting these metrics will increase transparency for members to estimate how long it will take for OCERS to act on their applications and appeals; provide management with the ability to evaluate staff and hold them accountable for timely processing matters; and allow OCERS to hold its panel physicians and hearing officers accountable for timely performing their contractual duties.

Third, placing the Board's determinations in closed session allows for a more robust discussion of the member's medical condition while affording the member greater protection to his or her privacy.

Finally, these changes will align OCERS with many of the other CERL systems.

Submitted by:



Gina M. Ratto
General Counsel

Submitted by:



Lee K. Fink
Deputy General Counsel

**SUMMARY OF NEW PROCESS AND DEADLINES FOR
BENEFIT AND DISABILITY ADJUDICATIONS**

Initial Benefit Determinations By OCERS Staff

(To be incorporated into OCERS Administrative Procedure (OAP))

- Initial Determination – Within 90 days request is received.

Disability Determination/Recommendation By OCERS Staff

(To be incorporated into OCERS Administrative Procedure (OAP) and contracts with Panel Physicians)

- Determination/Recommendation By OCERS Staff – Within one year application is accepted by OCERS.
- Notice of Accepted Application – Within 30 days application is filed (or Notice of Incomplete Application).
- Referral to OCERS Panel Physician – Within 180 days of the Notice of Acceptance of Application.
- Examination by an OCERS Panel Physician – Within 90 days of referral.
- Physician Report – Within 45 days of the examination.
- Determination/Recommendation By OCERS Staff – Within 60 days of Physician Report

These timelines will serve as guidelines and may be extended by the disability staff for good cause. Good cause for extending the timeline will specifically include the determination by OCERS Staff to seek a second opinion from a Panel Physician, the Member adding a new condition, or the member's delay in cooperating with staff. If the Member does not cooperate with Staff, staff will give a 30-day notice to the Member, and after such time will recommend to the Board that the Member's claim be denied.

Appeal of Determination

(To be incorporated into an OCERS Board Policy: Administrative Hearing Procedures)

Time for Filing Appeal

- 90 days after Notice of Preliminary Determination by OCERS Staff if the Determination is for anything other than the member's request.
- 10 days after Notice of Preliminary Determination by OCERS Staff if the determination is to grant member's request.

If No Appeal is received:

- For Benefits issues, the determination is final.
- For Disability Retirements, the matter is placed on Consent Calendar at the next Board Meeting.

If Member Appeals:

- 30 days for Staff to either modify the determination or docket the appeal.

Proceedings Before a Hearing Officer

(To be incorporated into an OCERS Board Policy: Administrative Hearing Procedures, contracts with Hearing Officers, and contracts with court reporters).

- Upon docketing the case, Hearing Officers will be randomly assigned.
- Legal Department prepares and serves the Administrative Record within 45 days of the appeal being docketed.
- Telephonic Scheduling Conference conducted within 30 days of the Administrative Record being served.
- Not later than the Scheduling Conference, Member may elect an Administrative Hearing or an Alternative Expedited Administrative Review.

Administrative Hearing

- Hearing scheduled within 6 months of Scheduling Conference
- Member's Pre-Hearing Statement due 60 days before Hearing
- OCERS Pre-Hearing Statement due 30 days before Hearing
- Any Rebuttal Statements due 15 days before Hearing
- Transcripts completed within 30 days of the end of the Hearing
- Member's Closing Brief due 30 days after transcript is filed
- OCERS's Closing Brief due 30 days after Member's Closing Brief
- Member's Reply due 15 days after OCERS's Closing Brief
- Hearing Officer's Proposed Findings of Fact and Conclusions of Law due 60 days after Member's Reply Brief

Upon the request of the Member or good cause, the date may be continued so long as the date of the Hearing is not extended past one year from the date on which the appeal was docketed. If as a result of a member's failure to comply with any of the rules or request from OCERS staff, the matter is not heard within a year, the Hearing Officer shall dismiss the case with prejudice.

Expedited Administrative Review

- 30 days from the date of the Election (or the date the Administrative Record was completed, whichever is later) to submit any evidence
- 30 days from the date of the Election (or the date the Administrative Record was completed, whichever is later) to a short, five-page Statement of Issues.
- 60 days from the date of the Election (or the date the Administrative Record was completed, whichever is later) for the Hearing Officer to submit its Proposed Findings of Fact and Conclusions of Law.

Board of Retirement Action

- Parties may submit written arguments to Board not later than 10 days before Board of Retirement Hearing. Parties will have the opportunity to be heard at the Board Meeting.

Disability & Benefit Adjudication Reform

Gina M. Ratto, General Counsel

Lee Fink, Deputy General Counsel

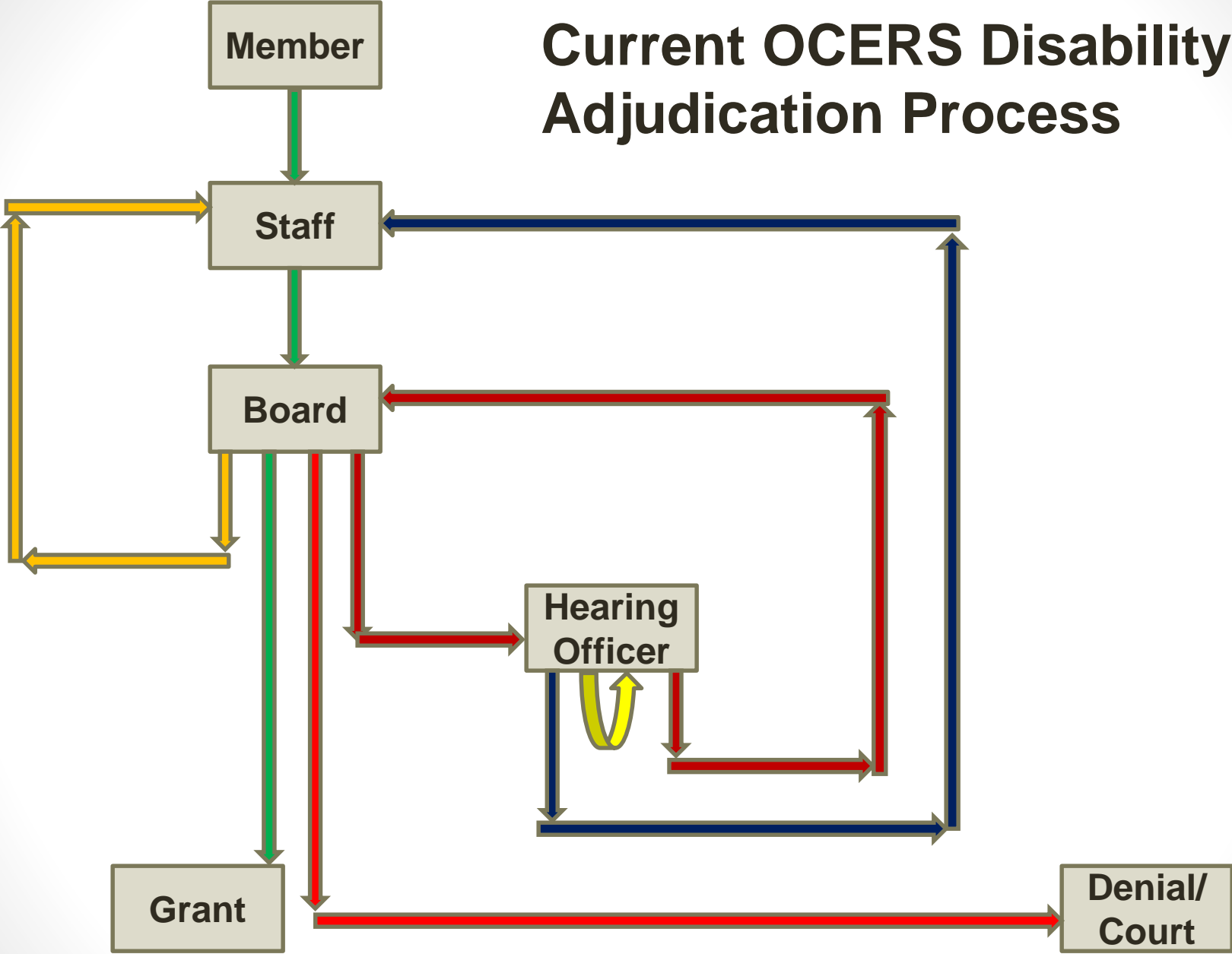
OCERS Values: Guiding the Adjudication Process

- Open and Transparent
- Commitment to Superior Service
- Engaged and Dedicated Workforce
- Reliable and Accurate
- Secure and Sustainable

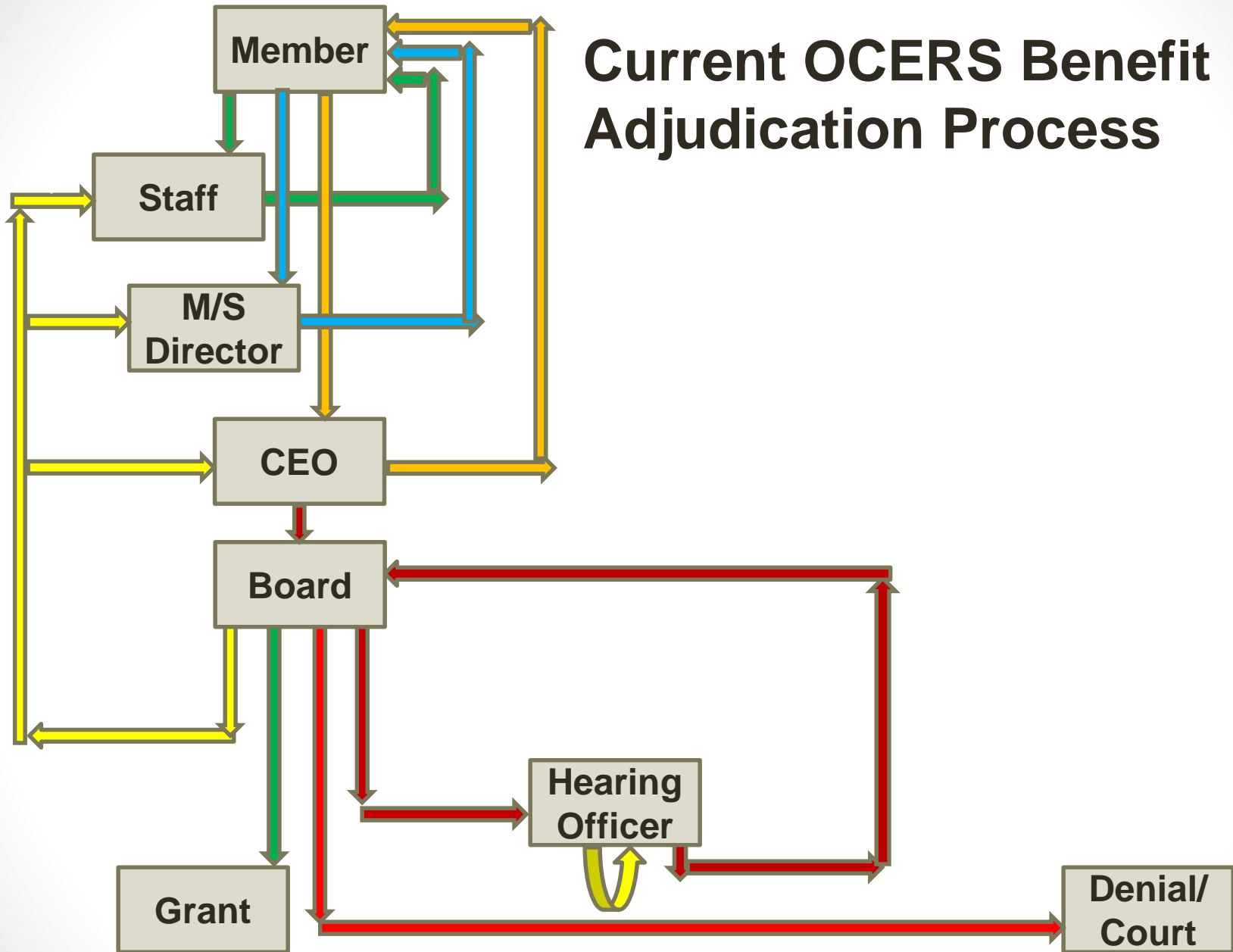
Hallmarks of a Good Process

- Protect Member's Rights
 - *Superior Service; Reliable and Accurate; Secure and Sustainable*
- Accurate Adjudication on Member's Application
 - *Reliable and Accurate*
- Serve Member Through Clear and Transparent Rules
 - Member should know what the steps in the process are
 - Member should know long the adjudication process will take
 - *Superior Service*
- Timely Adjudication of Member's Application
 - The process should be quick and allow the member to challenge OCERS in court if the member chooses
 - *Superior Service; Reliable and Accurate*
- Effective Use of OCERS Board and Staff Resources
 - Process must be value added and have achievable benchmarks
 - *Engaged Workforce; Sustainable*

Current OCERS Disability Adjudication Process



Current OCERS Benefit Adjudication Process



Service Quality

- Current process delays a member's ability to get a determination and the right to appeal
 - Recent case took more than 5 years for OCERS to make final determination
 - Too many time-consuming processes
- Current process does not create clear timelines and benchmarks for members
 - Contracts with Panel Physicians, Hearing Officers, and Court Reporters do not contain time deadlines
 - Administrative Hearing Procedures do not contain deadlines

Drain on OCERS Resources

- Disability Applications in Each Year < 100
 - Less than ¼% of all OCERS members
- Disability Agenda in 2017 = 5483 pages
 - 70% of OCERS Board Agenda Pages
- Board has to review every disability case that goes to hearing at least twice, and often three or more times
- No benchmarks means no accountability

2017	Regular Calendar Pages	Disability Calendar Pages
January	228	567
February	274	900
March	212	1283
April	227	322
May	317	409
June	707	544
July	202	811
August	400	1169
Totals	2567(30%)	6005 (70%)

Drain on OCERS Resources (cont.)

- OCERS Investment Fund has tripled since 2003
 - \$4.7 Billion at the end of 2003
 - \$14.5 Billion today
 - Expected to reach \$30 Billion by 2030.
- Number of retired members and beneficiaries has nearly doubled since 2003
 - 9,079 retired members and beneficiaries in 2003
 - 16,369 retired members and beneficiaries at the end of 2016
- Disability applications increased 50% since 2009
 - 56 disability applications in 2009
 - 84 disability applications in 2016
- Current process not sustainable with continued growth

Drain on OCERS Resources (cont.)

- Board Rejects Staff Recommendation Less than 4% of the time

Board Action on Disability Applications, 2012-August 2017							
	2012- Present	2017*	2016	2015	2014	2013	2012
Return to Staff/Other	13 (3.6%)	2	5	1	1	3	1
Second Medical Opinion	10 (2.8%)	0	4	3	0	2	1
Alternate Recommendation	13 (3.6%)	2	5	2	0	3	1
Accept Staff Recommendation	324 (90%)	57	76	85	78	56	62
Total Cases	360	61	90	91	79	64	65

* through August 2017

Drain on OCERS Resources (cont.)

- Board and staff time is focused on individual adjudications rather than oversight.
- Freeing up Board and staff time would allow consideration of systemic issues:
 - Does OCERS have a sufficient stable of Panel Physicians?
 - Should staff use a Permanent Medical Advisor?
 - Is staff applying good process for determinations?
 - Are OCERS Hearing Officers providing quality service?
 - Is OCERS Legal Department handling cases well?

Resource Use in CERL Systems

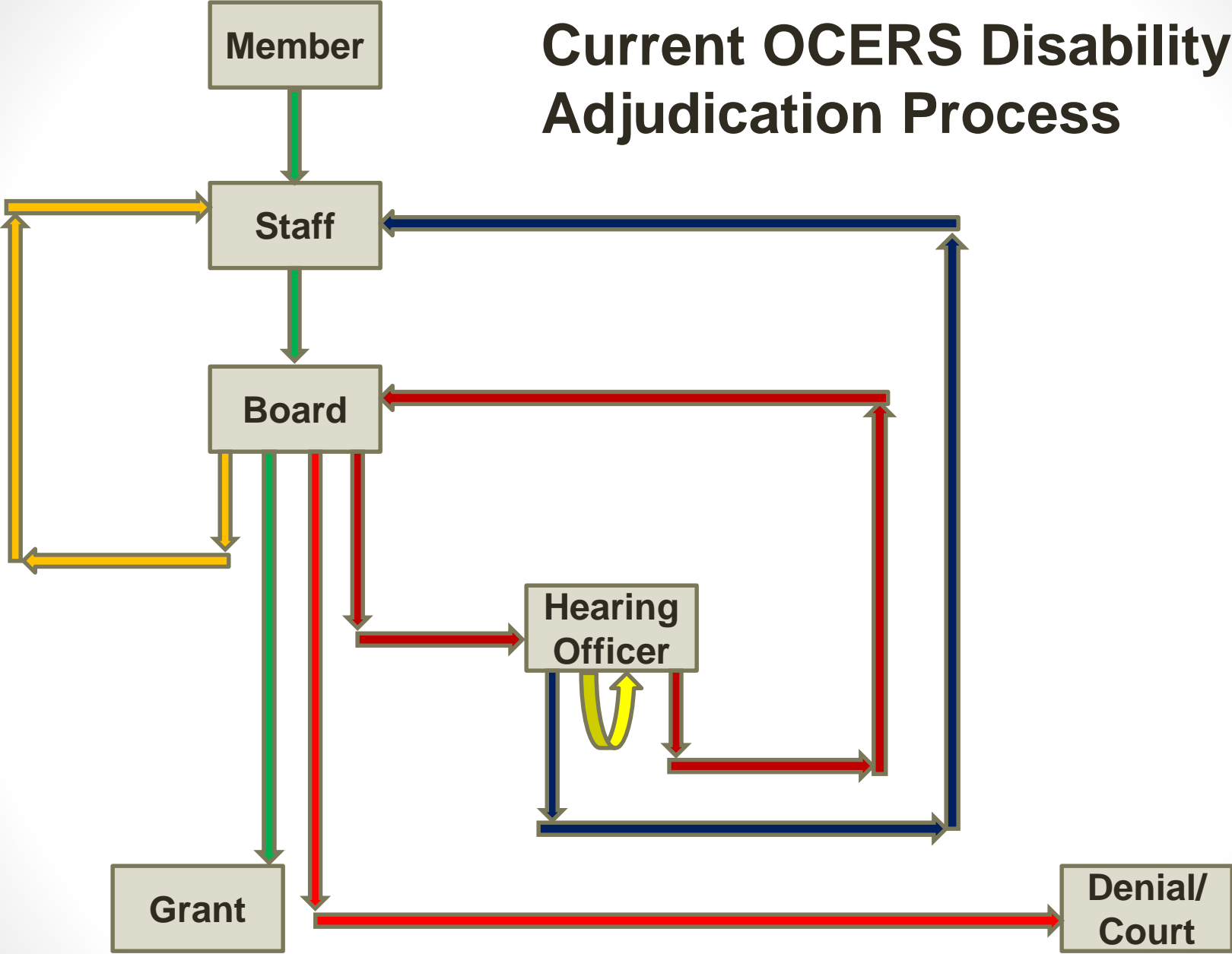
- Eight of 13 CERL Systems surveyed use a Consent Calendar for uncontested Disability Applications

Summary of CERL Systems Surveyed

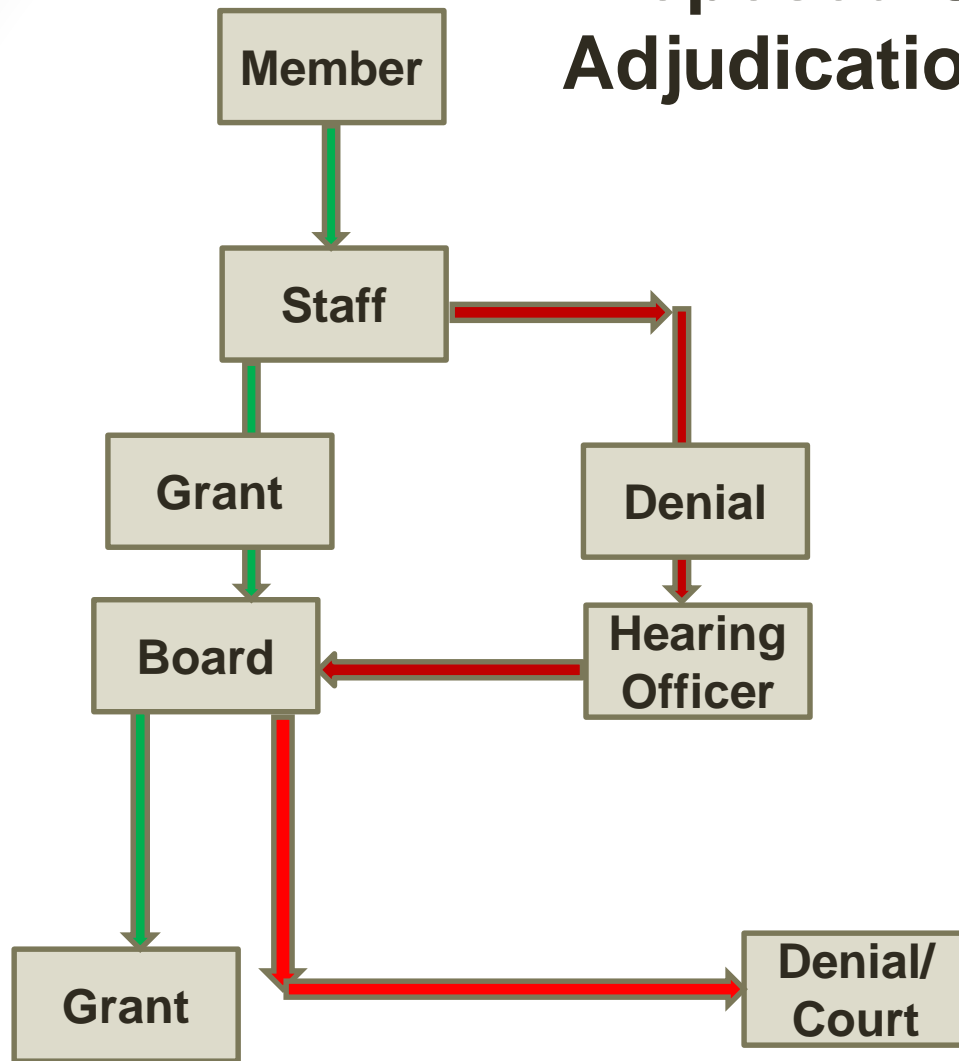
County	Administrative Hearing	Open/Closed	Agenda
OCERS	Board Denial	Open Session (or Closed by Request of Member*)	Regular
Alameda	Staff Denial	Closed Session	Consent
Contra Costa	Staff Denial	Closed Session	Consent
Fresno	Board Denial	Closed Session	Regular
Imperial	Board Denial	Closed Session	Regular
Kern	Staff Denial	Closed Session	Consent
Los Angeles	Board Denial	Closed Hearing	Consent
Mendocino	Board Denial	Closed Session	Regular
San Bernardino	Board Denial	Closed Hearing	Consent
San Diego	Staff Denial or Board Denial	Open (or Closed by Request of Member)	Consent
San Joaquin	Staff Denial	Closed Session	Consent
Sonoma	Board Denial	Closed Session	Regular
Stanislaus	Board Denial	Closed Session	Consent
Tulare	Board Denial	Closed Session	Regular

* Members rarely request closed session

Current OCERS Disability Adjudication Process



Proposed OCERS Disability Adjudication Process



Initial Review By Disability Staff

- Member application reviewed by staff
- New metrics built into OCERS Internal OCERS Administrative Process (OAP) and contracts with panel physicians to give timeline for initial decision.
- Staff determination/recommendation sent to Member

Disability Appeal By Member

- Member has 90 days after initial staff denial to request Administrative Hearing
- If no objection, application placed on Board Consent Calendar
- If a member appeals, staff will review the appeal and either docket the Administrative Hearing or reverse the initial determination and place it on Consent Calendar.
- Member may elect Full Hearing or Expedited Administrative Review

Administrative Hearing

- Schedule for Administrative Hearing set at Scheduling Conference, Hearing Officer can continue the dates for good cause
- Set timelines for pre-hearing statements and post-hearing closing briefs
- Set timeline for Hearing Officer's Findings of Fact and Conclusions of Law
- Hearing Officer can only continue the dates for good cause
- No Post-Hearing Objections/Clarifications
- Member/OCERS file any briefs with Board 10 days before Board Hearing

Alternative: Expedited Administrative Review

- No witnesses or testimony, just review of the record
- Each side may submit additional evidence within 30 days
- Each side may submit short (5-page) Statement of Issues
- Hearing Officer has 60 days to issue Proposed Findings of Fact and Conclusions of Law
- No Objections/Clarifications filed with Hearing Officer
- No Post-Hearing Objections/Clarifications
- Member/OCERS file any briefs with Board 10 days before Board Hearing

Board Action On Disability Applications

- Consent Calendar for matters where member does not appeal staff determination (Approve and Denial)
- For initial applications on Consent Calendar, staff summary of records provided to Board
- After Administrative Hearing, staff can place grants on Consent Calendar
- Other Matters Conducted in Closed Session/Closed Hearing
- Closed Hearing includes:
 - Board and staff (clerk, AV support, etc.)
 - Disability Staff
 - OCERS Legal Staff as Advocate for Staff Position
 - Member and Counsel
 - Employer and Counsel (if any)
 - OCERS General Counsel or Legal Staff designated as advisor to the Board
- Board can adjourn to Closed Session with only General Counsel to seek legal advice

Hallmarks of a Good Process

- Protect Member's Rights
 - *Superior Service; Reliable and Accurate; Secure and Sustainable*
- Accurate Adjudication on Member's Application
 - *Reliable and Accurate*
- Serve Member Through Clear and Transparent Rules
 - Member should know what the steps in the process are
 - Member should know long the adjudication process will take
 - *Superior Service*
- Timely Adjudication of Member's Application
 - The process should be quick and allow the member to challenge OCERS in court if the member chooses
 - *Superior Service; Reliable and Accurate*
- Effective Use of OCERS Board and Staff Resources
 - Process must be value added and have achievable benchmarks
 - *Engaged Workforce; Sustainable*

Advantages of New Process

- Members' rights are protected
- Adjudications made accurately
- Creates standards for accountability
- Creates clear timelines for the process
- Speeds the adjudication process by creating timelines and removing unnecessary steps
- Reduces burden on OCERS Board and staff resources

Implementation

- Board direction to implement new process
- Board adopts changes to Administrative Hearing Procedures
- Staff issues new OAPs
- Staff amends contracts with Panel Physicians, Hearing Officers, and Court Reporters
- Staff implements new and improved process

B

Memorandum

DATE: September 5, 2017
TO: Members of the Governance Committee
FROM: Gina M. Ratto, General Counsel
SUBJECT: PROPOSED REVISIONS TO OCERS' RULES OF PARLIAMENTARY PROCEDURE

Recommendation

Approve, and recommend that the Board of Retirement (Board) approve, proposed revisions to the *OCERS Rules of Parliamentary Procedure*.

Background/Discussion

In February 2015, the Board adopted Rules of Parliamentary Procedure (the Rules) to establish rules for the conduct of meetings of the Board and its committees in order to insure orderly meetings and to protect the rights of the Board, Board members, OCERS members, plan sponsors and members of the public. The Rules were amended in December 2016 to clarify protocols regarding receipt and handling of public comment.

Staff now recommends additional revisions to the Rules to (i) clarify the timing of public comment; (ii) set forth protocols for the adjournment of meetings, the use of consent agendas and receipt of informational reports; and (iii) include the voting protocols applicable to the alternate seventh member of the Board.

Public Comment

The Brown Act (Act) requires every agenda for a regular meeting of the Board and its committees to include an opportunity for members of the public to address the Board or committee on any item that is under the subject matter jurisdiction of the Board or committee. OCERS has complied with this requirement by including, at the end of every Board and committee agenda, a specific item for receipt of public comment. In addition, the Act requires that the public be given the opportunity to directly address the Board or committee on any item on the agenda "before or during" the Board or committee's consideration of the item. OCERS has also complied with this requirement – by calling for comments from the public during the Board or committee's discussion of each motion, usually after the presiding officer has heard from the other Board or committee members on the item, but before the Board or committee has taken action on the item.

In order to expressly communicate how OCERS has complied and will continue to comply with these requirements of the Act, staff recommends:

- A revision to paragraph 3.e. of the Rules to state that it is the prerogative of the presiding officer to determine the timing of public comment on any motion – that is, whether it is taken before or during the Board members' discussion of the motion – provided that public comment is taken prior to action on the motion.

- A revision to paragraph 3.h. of the Rules to expressly state that public comment is and will be permitted at every meeting of the Board and its committees.

Adjournment of Meetings

Members of the Board have asked whether a motion to adjourn a meeting is required. *Robert’s Rules of Order* states that “in ordinary practice a meeting is closed by adopting a motion ... ‘to adjourn’; or under certain conditions the chair can declare the adjournment without a motion.” (*Robert’s Rules of Order Newly Revised* (11th ed.), p. 86, ll. 12-16.) One such condition is when there is no further business on the agenda, in which case, the chair can suggest unanimous consent by stating, “If there is no objection, the meeting will now adjourn’ [pause] ‘Since there is no objection, the meeting is adjourned.’” (*Id*, p. 242, ll. 8-14.)

In order to have consistency in the way meetings of the Board and its committees are adjourned, Staff recommends adding to the list of the responsibilities of the presiding officer in conducting meetings, the responsibility to adjourn each meeting by unanimous consent. (See paragraph 3. l., and footnote 1, of the Rules.)

“Receive and File” Items

It has been OCERS’ practice to include on the Board’s agendas informational items and reports with a recommendation that the Board “receive and file” these items; and it has been the practice of the Board to take formal action on these items by motion. Formal action to receive and file these items is not necessary. Staff recommends that the Board and its committees make use of consent agendas whenever feasible to group items that do not require discussion or debate into a single voting package in order to expedite approval of routine matters. In addition, staff recommends that informational reports that have been requested by the Board or a committee be included on the agenda and presented as “information items” (as distinguished from “action items”) which may be accepted without action by the Board or committee. (See proposed revisions to paragraph 5 of the Rules.)

Voting Protocols for Alternate Seventh Member of the Board

By statute (the CERL), the Board consists of nine members and one “alternate” member. The seventh member of the Board is a safety member of the association elected by the safety members. The “alternate” member is the candidate from the group under Government Code §31470.2 (sheriffs, etc.) or §31470.4 (firefighters, etc.) that is not represented by the seventh member, and that received the highest number of votes of all candidates in that group. Government Code §31520.1 specifies the circumstances in which the alternate seventh member will vote, as follows:

1. When one of the OCERS membership-elected Board members is absent from a board meeting for any cause;
2. When there is a vacancy with respect to any of the OCERS membership-elected Board members;
3. When a member of the same service (i.e., sheriffs or fire) as the alternate seventh member is before the Board for determination of his or her retirement, in which case the alternate seventh member votes in place of the seventh member and the seventh member does not vote; and

4. In the event one of the OCERS membership-elected Board members is absent or there is a vacancy in that position, and a member of the same service as the alternate seventh member is before the Board for determination of his or her retirement, the alternate seventh member votes in place of the seventh member on that determination, and no one votes in place of the absent or vacant Board member.

Staff recommends adding a section to the Rules to specify when the alternate seventh member of the Board votes. (See proposed new paragraph 17 in the Rules.)

The Rules, with proposed revisions in redlined and strikeout text, are attached.

Attachments

Submitted by:



Gina M. Ratto
General Counsel

OCERS Rules of Parliamentary Procedure

Purpose and Background

1. The Orange County Employees Retirement System Board of Retirement is committed to the principals of open and efficient government. The Board conducts regular meetings of the full board and various committees. The Board wishes to establish rules for conduct of those meetings that are consistent with the Ralph M. Brown Act ("Brown Act") in order to insure orderly meetings and to protect the rights of the Board, its individual members, OCERS members and plan sponsors, and members of the public.

Basic Rules

2. All meetings of the Board and its committees shall adhere to the following basic rules of conduct:
 - a. The collective fiduciary interests of the Board and its committees supersede the rights of individual members of the Board. All members of the Board must adhere to the rules established by the Board. If there is a conflict between the rights of a member and the interests of the Board to conduct its business, the interests of the Board prevail.
 - b. All members of the Board are equal. All members of the Board have the following rights:
 - i. To hold office.
 - ii. To attend meetings.
 - iii. To make motions and speak in Board or committee deliberations.
 - iv. To nominate.
 - v. To vote.
 - c. A quorum must be present to conduct business. The By-Laws specify that a quorum for conduct of a meeting of the full Board shall be five members present; a quorum for a meeting of the Investment Committee shall be five members present; and a quorum for a meeting of a standing committee of the Board, other than the Investment Committee, shall be two members present.
 - d. The majority rules. The minority has the right to be heard on issues up for deliberation before the Board or a committee. Once a decision has been made by the majority of Board members present and voting, the minority must respect and abide by the decision.
 - e. The Brown Act requires OCERS to publicly report the vote or abstention of each Board or committee member present. (Gov. Code § 54953 (c)) Therefore, each Board or committee member present shall vote or abstain in each vote of the Board or committee. Silence on a vote is not authorized under the Brown Act.
 - f. One question will be addressed at a time, and one speaker will speak at a time. A motion will be out of order if it does not directly relate to the question under consideration. Once a speaker has been recognized, he or she has the floor and should not be interrupted except in rare circumstances, such as by the Chair to maintain order or decorum.

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- g. Members of the Board or committee shall have the opportunity to fully debate all debatable motions. A debatable motion may not be put to a vote as long as members of the Board or committee wish to continue the debate unless debate is suspended by majority vote of the Board or committee.
- h. Once a motion has been decided at a Board or committee meeting, it is out of order to bring up the same motion or a motion that is essentially the same at the same meeting unless it is brought through a Motion for Reconsideration.
- i. Remarks directed at another Board or committee member personally and not relating to the business of the Board or committee are out of order in a debate. Debate shall be limited to motions and not motives, principles, or personalities. The Chair may request that the speaker cease his or her out of order remarks.
- j. Board and standing committee meetings shall be conducted in accordance with the Brown Act (Gov. Code § 54950, et. seq.).
- k. The Board and its committees shall not conduct any business that has not been properly placed on the agenda and noticed to the public unless authorized by the Brown Act.

Roles and Responsibilities in the Conduct of Meetings

- 3. The Chair of the Board or committee shall be the presiding officer of the meeting. If the Chair of the Board or committee is absent, the Vice Chair shall serve as the presiding officer. In the event that both the Chair and the Vice Chair are absent from the meeting, the Chair shall appoint a presiding officer of the meeting from among the remaining members of the Board or committee who are entitled to vote during the meeting. The general responsibilities of the presiding officer are:
 - a. To ensure that the meeting starts on time and moves through the agenda in an expeditious manner. The presiding officer may take steps to prevent dissenting Board or committee members and members of the public from employing dilatory tactics to delay a meeting.
 - b. To ensure that Board and committee members and members of the public adhere to the published agenda, except as otherwise permitted by law.
 - c. To be familiar with these rules, OCERS' By-Laws, charters, and policies, and the customary practices of the Board and its committees.
 - d. To direct the orderly conduct of the meeting by recognizing speakers and reminding others that interruption of speakers who have the floor is out of order.
 - e. To impartially recognize members of the Board or committee and members of the public to speak during discussion of a motion. It shall be the presiding officer's prerogative to determine the timing of public comment; that is, whether public comment is taken before or during the Board members' discussion on each matter. In any event, tThe presiding officer should provide opportunity for Board and committee members and members of the public on all sides of a discussion to speak before the Board's action on the motion.

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- f. To restate a motion before a vote is taken and to announce the results of the vote. The presiding officer may require a vote by roll call, show of hands, or any other means in order to clarify the results of the vote and permit the vote to be recorded accurately in the minutes of the meeting.
 - g. To ensure that discussion is relevant and focused on the issue at hand. The presiding officer may request a Board or committee member or member of the public to confine his or her remarks to the motion under consideration.
 - h. To ensure that public comment (1) ~~is limited to matters on any matter~~ within the jurisdiction of the Board or committee is permitted at each meeting of the Board or committee; (2) is limited to three minutes per speaker and to a total of 20 minutes per issue (with the exception of appearances on disability matters; see OCERS By-Laws); and (3) does not interfere with the orderly conduct of the meeting.
 - i. To ensure that public comment is directed to the presiding officer, and not to staff, vendors or consultants.
 - j. To ensure that any requests made of staff, vendors or consultants to report back to the Board or committee, to place a matter of business on a future agenda of the Board or committee, or to otherwise commit staff time and OCERS resources are (1) made at the direction of the presiding officer; (2) with consensus of the Board or committee members; and (3) with due consideration of the burdens such requests will place on staff, consultants and OCERS resources and any other relevant concerns staff or consultants may identify.
 - k. To ensure, before staff, a vendor or a consultant is directed by the presiding officer to respond to questions from, or to report or release additional information requested by, a member of the public during a meeting of the Board or committee, that the information is (1) relevant and appropriate to the subject matter of the meeting; and (2) public in nature.
 - ~~k.~~ l. To adjourn each meeting of the Board or committee at the conclusion of the business set forth on the agenda by unanimous consent.¹
4. The OCERS CEO or his or her designee shall be the secretary of the Board or committee meeting. The duties of the secretary of the meeting are:
- a. To prepare or cause to be prepared concise minutes of all meetings of the Board and its committees for approval by the Board at a subsequent meeting.
 - b. At a minimum, the secretary shall record the following in the minutes:

¹ The presiding officer may state (for example), "If there is no objection, this meeting will be adjourned;" and after a pause for objection, if there is no objection, "The meeting is adjourned."

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- i. All members of the Board or committee present at the meeting.
 - ii. All adopted and defeated motions.
 - iii. The name of the maker and seconder of each motion and amendment.
 - iv. Names of all persons reporting or presenting to the Board or committee.
 - v. The identity and vote of each Board or committee member voting or abstaining from a vote.
- c. The secretary need not record the following in the minutes:
- i. Detailed discussion or personal opinions of members of the Board or committee or members of the public.
 - ii. Motions that have been withdrawn.
 - iii. Full reports of committees.

Agendizing Matters for Board or Committee Consideration

5. In general, matters for Board or committee discussion may be placed on a meeting agenda by staff in the reasonable discretion of the CEO or by a Board or committee member by request to the Chair of the Board or committee.

a. The Board and its committees will make use of consent agendas whenever feasible to group items that do not require discussion or debate into a single voting package in order to expedite approval of routine matters.

5-b. Informational reports that have been requested by the Board or a committee will be agendized and presented as information items and may be accepted without action by the Board or committee.

6. In the event that the Chair of the Board or committee refuses to place an item on the agenda, the Board or committee member making the request may appeal the decision to the full Board or committee at the next duly noticed meeting during the Board or committee member comments section of the meeting. The motion must receive a second to move forward. The Board or committee will then vote on the question of whether to place the requested matter on the agenda of the next available duly noticed Board or committee meeting.
- a. If the Board or committee votes to place the item on the next available agenda, the matter shall be placed on that agenda and discussed by the Board or committee at the time noticed in the agenda.
 - b. If the Board or committee votes not to place the item on the next available agenda, the matter will be tabled.
 - c. In either case, no action will be taken on the matter after the vote so that any action item can be properly placed on an agenda pursuant to the Brown Act.
7. In the event that a Board or committee member proposes placing a matter on a future agenda during the Board or committee member comments section of the meeting, the presiding

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officer of the Board or committee may rule on the proposal prior to the end of the meeting. If the presiding officer does so rule at that meeting and refuses to place the proposed matter on a future agenda, the Board or committee member making the proposal may immediately exercise his or her appeal rights as described in number 6 above.

Types of Motions and Their Uses

Main Motions

8. The motions are:
 - a. The main motion is the means by which the Board and committee proposes action and does business. It is a proposal that a certain action be taken by the Board or committee whether that action be to express an opinion, adopt a policy, make an expenditure of funds, enter into a contractual obligation, or to take any other action that is within the power of the Board or committee.
 - b. A main motion may be made by any qualified member of the Board or Committee; however, a motion can only be made concerning business that has been placed on the published agenda unless otherwise authorized by law.
 - c. To introduce a main motion, a Board or committee member who has the floor should state, “**I move that...**”
 - d. The presiding officer of the meeting may assist the Board or committee member in clarifying the motion.
 - e. A main motion must be seconded unless the motion comes to the Board from a committee recommendation since any motion coming from a committee already has more than two Board members in favor of considering the motion.
 - f. Debate is held on the main motion when the presiding officer states, “**Is there any discussion.**” The presiding officer shall provide all Board or committee members the opportunity to speak during discussion of a main motion.
 - g. A main motion may be amended.
 - h. Passage of a main motion requires simple majority vote.
 - i. The presiding officer may require that lengthy motions be made in writing.
 - j. The maker of the main motion has the right to speak first in support of the motion.
 - k. A member may amend his or her own motion before it is restated by the presiding officer immediately preceding the vote on the motion. To be effective, the amendment must be agreed to by the seconder. Such an amendment by the maker of the motion shall not be considered a Motion to Amend or Substitute Motion.
 - l. A member may withdraw his or her motion up until the time it is stated by the presiding officer immediately preceding the vote.

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Motions that are not in Order

9. The motions are:
 - a. Motions that conflict with the By-Laws of OCERS.
 - b. Motions that repeat an issue that the Board or committee has already dealt with on the day of the meeting unless made through a Motion for Reconsideration.
 - c. Motions that do not comply with the Brown Act, the County Employees Retirement Law of 1937, or other applicable law governing OCERS.
 - d. Motions that appear to the presiding officer to be dilatory, unintelligible, frivolous, or rude.
 - e. The presiding officer shall make rulings on whether a motion is out of order. The member making the motion has the right of appeal as under section 11 b.

Subsidiary Motions

10. The following motions are ranked lowest to highest in precedence:
 - a. Motion to Amend (Substitute Motion):
 - i. Motion to Amend changes the wording of a main motion and may be made at any time after the main motion has been seconded.
 - ii. A motion may be amended by:
 1. Adding words or phrases;
 2. Striking out words or phrases;
 3. Substituting by striking out and inserting new words; or
 4. Substituting an entire motion or paragraph
 - iii. An amendment to a motion must relate to the pending motion. No new business may be introduced under pretext of an amendment.
 - iv. Adoption of an amendment changes the motion. If the motion to amend is successful, the Board or committee must vote to adopt the motion as amended.
 - v. If the amendment is not successful, the original motion is on the floor as originally stated.
 - vi. An amendment may be amended one time so there may be a main motion, a primary amendment, and secondary amendment. A third amendment is not in order.
 - vii. Voting shall be in reverse order of how the motions were offered. Therefore, voting will be on the secondary amendment, if any, first, the primary amendment second, and the main motion third. Voting on the main motion and all amendments must be completed before a new main motion or any amendments may be offered.
 - viii. A Board or committee member must have the floor to offer an amendment.

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- ix. An amendment must be seconded.
 - x. An amendment is debatable if it is made to a debatable motion.
 - xi. The presiding officer shall provide all Board or committee members the opportunity to speak during debate or discussion of a motion to amend.
 - xii. A Motion to Amend requires a majority vote.
- b. Motion to Commit or Refer:
- i. Motion to Commit or Refer sends the question on the floor to a committee or OCERS' staff so it can be more carefully studied and prepared for discussion by the Board.
 - ii. The Motion to Commit or Refer should include specific direction as to which committee or staff shall study the question, whether the committee or staff will have authority to act, and when the committee or staff should report back to the Board.
 - iii. A Motion to Commit or Refer can be applied to any main motion and any amendments pending on the main motion go with the motion to committee.
 - iv. A Motion to Commit or Refer must be seconded.
 - v. A Motion to Commit or Refer may be debated, but debate must be limited to the merits of sending the issue to a committee or staff.
 - vi. A Motion to Commit or Refer can be amended as to the committee or staff assigned to study the issue and instructions to the committee or staff.
 - vii. A Motion to Commit or Refer requires a majority vote.
- c. Motion to Postpone
- i. A Motion to Postpone delays action on a question until later in the same meeting or until a subsequent meeting.
 - ii. A Motion to Postpone may be applied to any main motion.
 - iii. A Motion to Postpone must be seconded.
 - iv. A Motion to Postpone may not interrupt a speaker who has the floor.
 - v. A Motion to Postpone may be debated; however, debate must be limited to the merits of postponing consideration of the question.
 - vi. A Motion to Postpone may be amended to change the time or length of postponement.
 - vii. The Motion to Postpone requires a majority vote.
 - viii. The postponed motion should be placed on a subsequent meeting agenda as appropriate.
- d. Motion to Limit Debate:
- i. The Board or committee may use a Motion to Limit Debate to exercise control over debate by reducing the number and length of comments allowed or by requiring that debate stop at a time certain.

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- ii. A Motion to Limit Debate may be used with any motion.
 - iii. A Motion to Limit Debate must be seconded.
 - iv. A Motion to Limit Debate is not debatable.
 - v. A Motion to Limit Debate may be amended only as to the length of comments allowed or when the vote will be taken.
 - vi. A Motion to Limit Debate requires a majority vote.
 - vii. When a Motion to Limit Debate that imposes time limits is successful, the presiding officer will appoint a timekeeper and will inform speakers of when their time is up.
- e. Move the Previous Question:
- i. Move the Previous Question is the motion used to end debate on a question in order to bring the Board or committee to an immediate vote.
 - ii. Move the Previous Question requires a second.
 - iii. The Previous Question motion is out of order if the main motion is debatable and has not received any debate.
 - iv. Previous Question may be applied to any question or motion that is before the Board or committee.
 - v. Previous Question may not be used to interrupt a speaker who has the floor.
 - vi. Previous Question may not be debated.
 - vii. Previous Question requires a majority vote.

Incidental Motions or Procedures

11. The motions are:

- a. Point of Order
 - i. A Point of Order is used by a member of the Board or committee when that member feels the presiding officer is failing to operate within the Board or committee rules.
 - ii. Point of Order may be brought during discussion of any motion and may interrupt a speaker who has the floor.
 - iii. A Point of Order is not debatable.
 - iv. The presiding officer rules on the Point of Order motion.
 - v. The Point of Order cannot be amended.
- b. Appeal
 - i. Appeal allows any two members of the Board or committee to challenge what they feel is an incorrect or unfair ruling by the presiding officer.

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- ii. The question of Appeal is stated in the affirmative so that a majority vote sustains the ruling of the presiding officer.
 - iii. Appeal requires a second.
 - iv. If seconded, the Appeal requires the presiding officer to put his or her ruling to a vote of the Board or committee.
 - v. The Appeal is debatable.
 - vi. A majority vote in the negative is required to reverse the ruling of the presiding officer. Therefore, the question to be posed is, for example, "If you believe the presiding officer's ruling is correct, please vote 'yes;' and if you believe the presiding officer's ruling is incorrect, please vote 'no.'"
- c. Point of Information
- i. Point of Information is used by a Board or committee member to obtain additional information regarding the subject being considered.
 - ii. Point of Information does not require a second or a vote.
 - iii. The presiding officer will ask the requesting Board or committee member what the Point is.
 - iv. Additional information will be provided by staff or the speaker.
- d. Parliamentary Inquiry
- i. Parliamentary Inquiry allows the Board or committee members to get parliamentary help.
 - ii. Parliamentary Inquiry does not require a second or a vote.
 - iii. The presiding officer will ask the requesting Board or committee member what the Inquiry is.
 - iv. The presiding officer will rule on the Inquiry after consultation with the secretary, counsel, or others who are familiar with parliamentary procedure.

Restorative Motions

12. The motions are:

- a. Motion to Rescind
 - i. This motion is used to quash or nullify a previously adopted motion. It may be used to strike out an entire motion.
 - ii. A Motion to Rescind is not in order when any action has already been taken as a result of a previous vote (i.e. a contract has been executed with a vendor as a result of the previous vote).

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- iii. A Motion to Rescind must be placed on the meeting agenda in order for the Board or committee to take action on it.
- iv. It must be seconded.
- v. It requires a majority vote.
- b. Motion to Reconsider
 - i. A Motion to Reconsider allows the Board or committee to reconsider the vote on a previous motion voted on at that meeting.
 - ii. A Motion to Reconsider can only be made by a member of the Board or committee who voted on the prevailing side of the previous vote.
 - iii. It must be seconded, but the seconder does not have to have been on the prevailing side of the previous vote.
 - iv. It may be debated and it opens up the motion to which it applies to debate.
 - v. It requires a majority vote.
 - vi. A Motion to Reconsider may be made and seconded while other business is pending, but debate and vote will not occur until the business on the floor has been completed.
 - vii. All actions that came out of the original motion must be stayed immediately at the time the Motion to Reconsider is made and seconded.

Voting Methods and Procedures

- 13. All votes shall comply with the Brown Act (Gov. Code § 54953).
- 14. The electronic voting system shall be the preferred means of voting for the Board because it allows for accurate recording of each vote.
- 15. The Board and committees may use voice votes for the convenience of the Board or committee in order to promote efficiency. When using voice votes, any member of the Board or committee may request a roll-call vote or show-of-hands vote in order to accurately record each Board or committee member's vote.
- 16. All votes shall be recorded in the meeting minutes.

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Voting Protocols for the Alternate Seventh Member of the Board

17. The alternate seventh member of the Board¹ will vote as a member of the Board under the following circumstances:
- a. When one of the OCERS membership-elected Board members is absent from a board meeting for any cause;
 - b. When there is a vacancy with respect to any of the OCERS membership-elected Board members;
 - c. When a member of the same service (i.e., sheriffs or fire) as the alternate seventh member is before the Board for determination of his or her retirement, in which case the alternate seventh member votes in place of the seventh member and the seventh member does not vote; and
 - d. In the event one of the OCERS membership-elected Board members is absent or there is a vacancy in that position, and a member of the same service as the alternate seventh member is before the Board for determination of his or her retirement, the alternate seventh member nonetheless votes in place of the seventh member on that determination, and no one votes in place of the absent or vacant Board member.

Scope of Rules and Disputes

17-18. These rules should be used by the presiding officer, staff, and members of the Board or committee as guidelines for the conduct of meetings unless it is prudent to utilize a different procedure under the circumstances.

18-19. The presiding officer of the Board or committee meeting is responsible for the orderly conduct of the meeting. The presiding officer may call upon other Board or committee members, the secretary of the Board or committee, or counsel for assistance in resolving disputes.

19-20. Rulings by the presiding officer should be respected by all Board and committee members, but such rulings may be challenged in accordance with these rules.

Rules Review

20-21. The Board of Retirement shall review these rules at least every three (3) years to ensure that they remain relevant and appropriate.

¹ The seventh member of the Board is a safety member elected by the safety members of the system. The alternate seventh member of the Board is the candidate from the group under Government Code §31470.2 (sheriffs, etc.) or 31470.4 (firefighters, etc.) that is not represented by the seventh member, and who received the highest number of votes of all candidates in that group. (See Government Code §31520.11(a).)

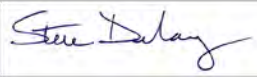
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Policy History

~~21-22.~~ 22. The Orange County Employees Retirement System Rules of Parliamentary Procedure were originally approved and adopted by the Board of Retirement on February 16, 2015, and were revised on December 19, 2016.

Secretary's Certificate

I, the undersigned, the duly appointed Secretary of the Orange County Employees Retirement System, hereby certify the adoption of this policy.



12/19/16

Steve Delaney
Secretary of the Board

Date

Government Code §31470.2

(a) All sheriffs, undersheriffs, chief deputies sheriff, jailers, turnkeys, deputies sheriff, bailiffs, constables, deputies constable, motorcycle officers, aircraft pilots, heads and assistant heads of all divisions of the office of the sheriff, detectives and investigators in the office of the district attorney, marshals, court service officers only in a county of the third class, as defined in Sections 28020 and 28024, and all regularly appointed deputy marshals are eligible.

(b) In a county of the eighth class, as defined in Sections 28020 and 28029, both as amended by Chapter 1204 of the Statutes of 1971, all peace officers in the Park Ranger class series in the Department of Regional Parks, Recreation, and Open Space are eligible. This subdivision shall not be operative until such time as the county board of supervisors shall, by resolution adopted by a majority vote, make this subdivision applicable in the county.

(c) Local prosecutors, local public defenders, and local public defender investigators are eligible if the county board of supervisors adopts a resolution by a majority vote making this subdivision and Section 31470.14 applicable in the county.

Government Code §31470.4

All county foresters, county firewardens, deputies or assistant county foresters, deputies or assistant county firewardens, firefighters, fire apparatus engineers, fire prevention inspectors, forest firemen, fire patrolmen, aircraft pilots, and foremen assigned to fire suppression crews, all other personnel assigned to active fire suppression in any county forester's or county firewarden's department and all officers, engineers, and firemen of any county fire protection district, and all other personnel assigned to active fire suppression in any county fire protection district are eligible.

Government Code §31520.1

(a) In any county subject to Articles 6.8 (commencing with Section 31639) and 7.5 (commencing with Section 31662.2), the board of retirement shall consist of nine members and one alternate, one of whom shall be the county treasurer. The second and third members of the board shall be members of the association, other than safety members, elected by those members within 30 days after the retirement system becomes operative in a manner determined by the board of supervisors. The fourth, fifth, sixth, and ninth members shall be qualified electors of the county who are not connected with the county government in any capacity, except one may be a supervisor, and shall be appointed by the board of supervisors. A supervisor appointed as a member of the retirement board may not serve beyond his or her term of office as supervisor. The seventh member shall be a safety member of the association elected by the safety members. The eighth member shall be a retired member elected by the retired members of the association in a manner to be determined by the board of supervisors. The alternate member shall be that candidate, if any, for the seventh member from the group under Section 31470.2 or 31470.4, or any other eligible safety member in a county if there is no eligible candidate from the groups under Sections 31470.2 and 31470.4, which is not represented by a board member who received the highest number of votes of all candidates in

that group, and shall be referred to as the alternate seventh member. If there is no eligible candidate there may not be an alternate seventh member. The first person chosen as the second and fourth members shall serve for a term of two years beginning with the date the system becomes operative, the third and fifth members shall serve for a term of three years beginning with that date, and the sixth, seventh and alternate seventh members shall serve for a term of two years beginning on the date on which a retirement system established by this chapter becomes operative. The eighth and ninth members shall take office as soon as practicable for an initial term to expire concurrent with the expiration of the longest remaining term of an elected member. Thereafter, the terms of office of the elected, appointed, and alternate seventh members are three years, except as provided in Section 31523.

(b) The alternate seventh member provided for by this section shall vote as a member of the board only if the second, third, seventh, or eighth member is absent from a board meeting for any cause, or if there is a vacancy with respect to the second, third, seventh, or eighth member, the alternate seventh member shall fill the vacancy until a successor qualifies. The alternate seventh member shall sit on the board in place of the seventh member if a member of the same service is before the board for determination of his or her retirement.

(c) The alternate seventh member shall be entitled to both of the following:

(1) The alternate seventh member shall have the same rights, privileges, responsibilities, and access to closed sessions as the second, third, seventh, and eighth member.

(2) The alternate seventh member may hold positions on committees of the board independent of the second, third, seventh, or eighth member and may participate in the deliberations of the board or any of its committees to which the alternate seventh member has been appointed whether or not the second, third, seventh, or eighth member is present.

C

Memorandum

DATE: September 5, 2017
TO: Members of the Governance Committee
FROM: Gina M. Ratto, General Counsel
SUBJECT: REGULAR REVIEW OF POLICIES

Recommendation

Approve, and recommend that the Board of Retirement approve, proposed revisions to the ***Annual Disclosure Policy***.

Background/Discussion

The Board of Retirement (including the Investment Committee) has formally adopted over 40 charters and policies and has established a review schedule that requires review of every charter and policy every three years. At its February and June 2015 meetings, on recommendation of the Governance Committee, the Board approved a streamlined procedure to more efficiently manage the scheduled review of the charters and policies. Pursuant to this process, certain of the charters and policies are to be first reviewed by the Governance Committee before presentation to the Board for approval.

The ***Annual Disclosure Policy*** is scheduled for review and approval by the Board, after review by the Governance Committee, in 2017.

Annual Disclosure Policy

Staff has reviewed the ***Annual Disclosure Policy*** and recommends one revision to update the title of the General Counsel. The revision is set forth in underlined/strikeout text in the attached copy of the policy.

Attachment

Annual Disclosure Policy Proposed Revisions – September 2017

Submitted by:



Gina M. Ratto
General Counsel

Purpose

1. The Board of Retirement adopts this Annual Disclosure Policy to assure the independence of the Board's deliberations and votes on matters of fiduciary responsibility, free from undisclosed interests and influences; to inform the Board and staff of all potential conflicts of interest that may arise in the course of the Board's activities so that appropriate action may be taken in a timely fashion; and to assure the members, plan sponsors and the public that OCERS' processes are free from inappropriate influence.

Principles

2. In order to achieve the Purpose of this Policy, OCERS' Board members and executive staff shall publicly disclose, annually and prior to the time that a related Board or System action item arises, any and all financial interests they or their immediate family members may have that may affect the Board's deliberations and votes, OCERS' operations and other matters affecting OCERS' interests.

Board members and executive staff are encouraged to err on the side of over-disclosure of matters that might be called for by this Policy.

Roles

3. The ~~Assistant CEO, External & Legal Operations, General Counsel~~ shall be responsible for implementing and monitoring compliance with this Policy, ~~and The Assistant CEO, External & Legal Operations~~ shall report to the Board, as requested, on the status of disclosures under this Policy.

Policy Guidelines

4. Board members and executive staff shall disclose in writing to the Board, by April 1st of each year, the following matters on an annual basis, and more frequently as changes occur:
 - a. All matters required to be disclosed on FPPC Form 700.
 - b. All family and business relationships with, and value received from, any investment manager, placement agent, registered lobbyist, vendor, consultant, actuary, counsel or other persons (i) providing or actively seeking to provide services or products to, or (ii) seeking to influence the deliberations of, OCERS' Board of Retirement.
 - c. Any other matters required to be disclosed under California law.
 - d. All matters required to be disclosed under OCERS' Conflict of Interest Code.
5. OCERS shall maintain all disclosures and writings made pursuant to this Policy as public records subject to disclosure under the provisions of the Public Records Act, Government Code sections 6250, et seq.

OCERS Board Policy Annual Disclosure Policy

Policy Review

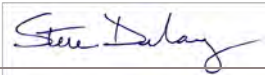
6. The Board of Retirement will review this Policy at least once every three years to ensure that it remains relevant and appropriate.

Policy History

7. The Board of Retirement adopted this policy on June 21, 2010. This policy was revised on February 21, 2012, ~~and~~ March 17, 2014, and October 16, 2017.

Secretary's Certificate

I, the undersigned, the duly appointed Secretary of the Orange County Employees Retirement System, hereby certify the adoption of this policy.



Steve Delaney
Secretary of the Board

3/17/14

Date