

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

GOVERNANCE COMMITTEE MEETING

October 24, 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.

OPEN SESSION

A. [PROPOSED REVISIONS TO THE DISABILITY AND NON-DISABILITY BENEFITS ADJUDICATION POLICY AND ADMINISTRATIVE HEARING RULES AND 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 including specifically:

1. Create a Disability Committee;
2. Approve the Disability Committee Charter;
3. Approve the Disability and Benefit Adjudication Policy and Administrative Hearing Rules to replace the existing Administrative Hearing Procedure Policy and OCERS Administrative Procedure (OAP) on Appeals;
4. Approve amendments to the Hearing Officer Selection Policy; and
5. Direct staff to implement the new processes by promulgating the necessary OAPs, forms, contract amendments, communications materials, and internal process documents.

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 to include the voting protocols for the alternate seventh Board member.

C. [PROPOSED REVISIONS TO THE SECURITIES LITIGATION POLICY AND INVESTMENT COMMITTEE CHARTER](#)

Presented by Gina M. Ratto, General Counsel

Recommendation: Approve, and recommend that the Board of Retirement approve:

1. Revisions to the Securities Litigation Policy to clarify the loss thresholds for OCERS becoming involved in domestic and foreign securities actions and to clarify and update

the circumstances under which OCERS will take an active role in securities litigation cases; and

2. Revisions to the Investment Committee Charter to reflect that the Investment Committee (rather than the Board) is responsible for the oversight of OCERS participation in securities litigation matters.

D. ACTUARIAL VALUATION POLICY

Presentation by Jenny Sadoski, Director of Information Technology

Recommendation: Approve, and recommend that the Board of Retirement approve revisions to the Actuarial Valuation Policy (previously named the Actuarial Extract Policy and Process).

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

2018 BUDGET WORKSHOP

October 19, 2017

ORANGE COUNTY EMPLOYEES RETIREMENT SYSTEM

2223 E. WELLINGTON AVENUE, SUITE 100

SANTA ANA, CA 92701

INVESTMENT COMMITTEE MEETING

October 25, 2017

9:00 A.M.

ORANGE COUNTY EMPLOYEES RETIREMENT SYSTEM

2223 E. WELLINGTON AVENUE, SUITE 100

SANTA ANA, CA 92701

INVESTMENT MANAGER MONITORING SUBCOMMITTEE MEETING

November 2, 2017

9:00 A.M.

ORANGE COUNTY EMPLOYEES RETIREMENT SYSTEM

2223 E. WELLINGTON AVENUE, SUITE 100

SANTA ANA, CA 92701

REGULAR BOARD MEETING

November 13, 2017

9:00 A.M.

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 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: October 24, 2017
TO: Members of the Governance Committee
FROM: Gina M. Ratto, General Counsel; Lee K. Fink, Deputy General Counsel
SUBJECT: PROPOSED REVISIONS TO THE DISABILITY AND NON-DISABILITY BENEFITS ADJUDICATION POLICY AND ADMINISTRATIVE HEARING RULES AND 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, including specifically:

1. Create a Disability Committee;
2. Approve the Disability Committee Charter;
3. Approve the Disability and Benefit Adjudication Policy and Administrative Hearing Rules to replace the existing Administrative Hearing Procedure Policy and OCERS Administrative Procedure (OAP) on Appeals;
4. Approve amendments to the Hearing Officer Selection Policy; and
5. Direct staff to implement the new process by promulgating the necessary OAPs, forms, contract amendments, forms, communications materials, and internal processes documents.

Background/Discussion

At the September 5, 2017 Governance Committee meeting, staff presented recommendations to reform the OCERS administrative hearing procedures and the adjudication process for both disability and non-disability benefits. At the meeting, staff presented, and the Committee discussed, numerous opportunities for improving OCERS' current processes, including enhancing the privacy protection for members, reducing delays in the process, and reducing the burden on staff and board member time and resources.

Staff presented an outline of process improvements that would make the system simpler and create more accountability for outside contractors and OCERS staff and management. Key points of the recommendations were:

- **Streamline Appeals for Non-Disability Issues.** Currently, a member who disagrees with the staff determination of a non-disability benefit must appeal that determination to the Member Services Director and then to the CEO before the matter is presented to the Board, despite the fact that staff, the Member Services Director and the CEO should all be aligned, and the Member Services Director and CEO should be providing clear guidance to the staff when making benefit determinations. Then, after the Board makes its initial determination, the member can request an administrative hearing. Staff proposes a streamlined process whereby staff determinations on non-disability benefit matters can be directly appealed to a hearing officer at an administrative hearing.
- **Provide for Administrative Hearing Prior to Board Action.** Currently, a member's right to a hearing on disability and non-disability matters attaches only after the Board has made an initial determination.

Staff proposes a process consistent with how many other CERL systems operate by affording the hearing *before* the Board makes its determination.

- **Use Consent Agendas.** Currently, all disability matters are heard individually, whereas many other CERL systems use a consent calendar. Staff proposes implementing a consent agenda for uncontested disability matters.
- **Use Closed Sessions.** Currently, all disability and benefit applications are discussed in open session. Most CERL systems use closed sessions to afford greater protection of members' privacy. Staff proposes implementing closed session/closed hearings for these matters.
- **Amend and Update the Administrative Hearing Rules.** The current rules need updating in order to create a process that is quicker and more efficient. The proposal also includes adding an Expedited Administrative Review Process for a review and decision "on the papers."
- **Create Timelines, Metrics, and Accountability.** Current processes do not have publicly available timelines or metrics, and many of the Administrative Hearing Rules do not set deadlines for actions. Staff proposes the implementation of timelines and metrics in order to ensure cases are proceeding in a timely fashion and to create more accountability for OCERS staff (including the Disability and Legal departments) and OCERS contractors (including panel physicians, hearing officers, and court reporters).

During the meeting, the Committee asked for additional information on how many disability applications and denials are currently appealed, the ultimate result of those appeals, and whether other CERL systems that give members an administrative hearing before the matter goes before the full Board experienced an uptick in the number of appeals.

In addition, the Committee raised a number of questions, including:

- Whether to create a Disability Committee to review disability applications before they are placed on the Board's consent agenda;
- How the Board should handle matters that are pulled from the consent agenda;
- How to ensure that there is transparency in the hiring and assignment of hearing officers to ensure that OCERS members have confidence that hearing officers are unbiased;
- Whether the use of an Expedited Administrative Review Process would encourage more cases to be filed because it would be seen as a "cheap" method of appealing; and
- The value of using a medical advisor in disability matters.

This memorandum responds to the Committee's questions and forms the basis, in conjunction with the September 5, 2017 memorandum to the Committee (a copy of which is attached), for the recommended actions.

A. Data on Disability Adjudications and Hearing Results

Between 2012 and 2016, 299 disability retirement applications were presented to the Board as follows:

- The Board made the initial decision to deny 109 of those applications (36%).
- 57 of those denials were appealed and an administrative hearing was held (51%).
- Of those appeals, 28 matters (49%) were still pending as of September 18, 2017.¹

Of the 29 cases for which the administrative hearing process has been completed:

- One case was dismissed by the member;
- In nine cases (32%), the hearing officer recommended affirming the Board's initial denial; and

¹ There are an additional five cases that were filed in 2017 that are currently pending, for a total of 31 matters now pending in the Administrative Hearing process.

- In 19 cases (68%), the hearing officer recommended reversing the Board’s initial determination denying the disability application.

The chart below shows the results of the applications by year.

| Year | Denials/Total Applications (%) | Appeals (% of Denials) | Overtured by HO | Affirmed by HO | Pending Hearing ² | Affirm Percentage |
|--------------|--------------------------------|------------------------|-----------------|----------------|------------------------------|-------------------|
| 2012 | 27/65 (42%) | 16 ³ (59%) | 9 | 3 | 3 | 25% |
| 2013 | 25/64 (39%) | 9 (36%) | 3 | 3 | 3 | 50% |
| 2014 | 22/79 (28%) | 14 (64%) | 6 | 2 | 6 | 25% |
| 2015 | 18/91 (20%) | 8 (44%) | 0 | 1 | 7 | 100% |
| 2016 | 17/90 (19%) | 10 (59%) | 1 | 0 | 9 | 0% |
| Total | 109/299 (36%) | 57 (52%) | 19 | 9 | 28 | 32% |

B. Disability Committee

Staff recommends the Board create a Disability Committee. The Disability Committee would review applications for disability retirement after OCERS staff has completed the investigation and made a recommendation. The Disability Committee would provide a forum for members who disagree with the staff determination before having to “litigate” the case in administrative hearing setting. Recommendations from the committee, if not appealed by the member to an administrative hearing, would be presented to the Board as a consent agenda item with a short recommendation.

In addition, the Disability Committee would be responsible for the oversight of the disability process, from the initial handling of matters through administrative hearing.

Staff recommends that the Disability Committee be comprised of three members, two of whom would be elected members (which may include the alternate) and one of whom is either the ex-officio member or an appointed member, based on the following considerations:

- The membership should be three people so as to prevent a tie vote;
- The membership of the committee should be as small as possible so that when the matter is later presented to the full Board, there are the fewest number of Board members who have previously considered the case, thereby reducing concerns that Board members have already formed an opinion;
- The elected Board members should predominate because they work or have worked for the County, and therefore have the most familiarity with the types of jobs and disabilities that OCERS members face;
- There should be an appointed or ex-officio Board member on the committee to ensure that the membership of the committee is fully representative of the Board. This ensures that the committee is approaching its decisions in a well-rounded fashion with the outlook and approach to disability matters of all of the Board members represented on the committee. With sufficient “buy-in” to the process, the Board would be expected to adopt the majority of the committee’s recommendations on consent.

² Pending includes matters waiting for Final Board action and matters where the Member’s right to seek a Writ may not have expired.

³ Includes one voluntary dismissal.

- It is important to include both elected and appointed Board members on the committee so that as membership on committees rotates annually, the burden of the workload is not shifted disproportionately on to any one group of Board members.

Staff surveyed other CERL systems regarding use of a disability committee and found that both the Los Angeles County (LACERA) and the Sonoma County (SCERA) systems employ a disability committee. However each system uses its committee differently than this proposal. LACERA's disability committee is a committee of the whole, much like the OCERS Investment Committee. While this focuses the work of the committee, it does not preserve Board member resources. SCERA's disability committee reviews disability applications prior to the Board of Retirement reviewing them, and SCERA is one of the few systems that does not use a consent calendar for disability applications. Thus, while the review by SCERA's disability committee might serve as a screening process, it creates the potential for even more delays in the process and results in the member having to make his/her case before the disability committee and again before the full board.

While neither LACERA nor SCERA provides an ideal model for the OCERS Disability Committee, they do inform the staff recommendation. A Disability Committee can be a useful tool for the Board to screen and review applications, providing the appropriate level of review without consuming all of the time and resources of the full Board and staff (70% of the Board's regular materials during 2017 have been dedicated to disability applications). Use of a committee would remove the burden of reviewing voluminous disability applications and supporting records from most of the Board members in most cases. It would also give OCERS members an opportunity to appear before a subset of the Board before making the choice of "litigating" their claims before an "administrative judge" or dropping their claims. Finally, a disability committee creates a key oversight function for the Board. A small group of Board members will be dedicated to looking closely at the systemic issues within the disability application and hearing process, much like the Audit and Governance Committees do. Given the critical nature of these functions, it will enable the Board to better undertake its oversight role in the process.

C. Right to Administrative Hearing Prior to Board Action on Disability and Non-Disability Applications

The proposed new process provides the member with the right to an administrative hearing *prior to* the Board taking action on the member's application. This process has several advantages. It enables the member to have his or her appeal heard more expeditiously than waiting for Board action (which is then followed by an administrative hearing). It relieves the Board of the need to hear the same matter twice or more⁴ and ensures that contested matters come to the Board only after a record has been fully developed. The process would also serve to reassure members that the hearing officer is not influenced by the Board's initial decision against them; and for a member who "loses" before the hearing officer, reassures the member that the Board is hearing the issue anew rather than relying on opinions developed during the Board's initial determination.

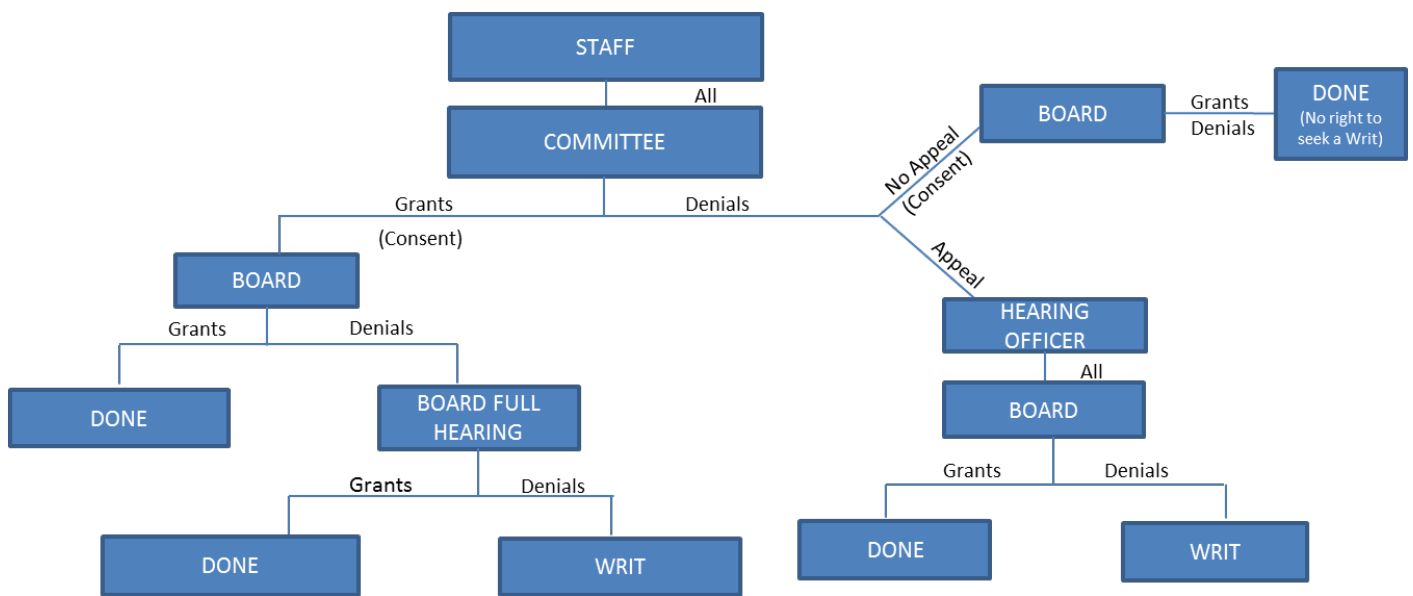
D. Use of Consent Agenda

Unless a member exercises his/her right to appeal the proposed determination to an administrative hearing, all recommendations of the Disability Committee would be presented to the Board on its consent agenda for final action. The Board members would retain the right to pull any case from the consent agenda and to reject the committee's recommendation. However, when the committee's recommendation is to grant the application, staff recommends that the Board itself hold a full hearing before overturning the committee's recommendation and denying the application. While staff anticipates this would be a very rare occurrence, it would protect the

⁴ Currently, the Board has to make both initial denial and the final decision after the Hearing Officer's recommendation, but it also may have the matter come back after directing the Disability Staff to undertake more investigation, or to make determinations on new conditions that are raised during the course of the hearing process.

member’s rights, since the member would not have had reason to appeal the committee’s recommendation to grant the application. This would also ensure the Board is making a decision based on a fully developed record. A full hearing before the Board would be more expeditious for the member than a hearing before a hearing officer, which would have to return to the Board at a later stage in any event. It would also militate against any argument that the hearing officer is biased to deny the application.

The flow chart below displays the disability adjudication process as proposed:



E. Transparency and Fairness in the Selection of Hearing Officers

Committee members also expressed a desire for transparency in the process of the selecting hearing officers and assurances that hearing officers are fair, impartial, and not biased in favor of OCERS.

The OCERS Hearing Officer Selection and Retention Policy establishes the process for OCERS’ hiring of hearing officers. The policy requires the solicitation of hearing officers through a Request for Proposal process; review and interviews of candidates by a selection committee consisting of the CEO, an Assistant CEO, and the General Counsel; an opportunity for input from OCERS member organizations (such as the OCEA and REAOC); and ultimate selection of hearing officers by the Board. To expand the Board’s visibility into the process, staff recommends that the Disability Committee Chair or Vice Chair also sit on the hearing officer selection panel.

In individual cases, the OCERS Administrative Hearing Rules allow any party one peremptory challenge to a hearing officer, similar to the right of litigants in Superior Court. If the member exercises this right, the case is automatically reassigned to a different hearing officer. Staff proposes to revise the OCERS Administrative Hearing Rules so that only the member, and not OCERS or the employer, has this right. This would further ensure OCERS is acting impartially.

F. Expedited Administrative Review Process

Staff also recommends the addition of an Expedited Administrative Review process. This would be an expedited process, completed within six months, where the appeal would be decided by a hearing officer “on the papers” without a formal hearing with witnesses and oral arguments. This type of review would be most appropriate for

matters where no facts are in dispute, such as benefit appeals or disputes regarding the effective date of a disability retirement.

Members of the Governance Committee expressed concern that the addition of an Expedited Administrative Review process might result in a greater number of member appeals because members might view this as a “free” appeal. In order to assuage this concern, staff recommends including the Expedited Administrative Review process in the Administrative Hearing Rules as a pilot project. In addition, under the staff proposal, the right to an Expedited Administrative Review would attach only in cases where OCERS offered the option to a member, and only after the member filed a request for administrative hearing. In addition, OCERS staff would review all cases and offer the Expedited Administrative Review option on only cases that appear well suited to an expedited process (for example, benefit appeals cases where there are no questions of fact). Staff and the Disability Committee could review and revisit the use of the pilot procedure in the future to see if it has resulted in an increase in the number of member appeals. However, given that approximately half of the Board’s denials are already appealed to an administrative hearing, staff believes it is unlikely that the availability of an expedited procedure will substantially increase the percentage of appeals.

G. Use of Medical Advisor

Staff has also considered the role of medical professionals advising and assisting OCERS in evaluating disability applications. OCERS currently retains a panel of physicians to whom all disability applicants are referred for professional evaluation. The assigned panel physician does both a review of the records submitted with the disability application and a physical examination of the member. The panel physician then submits a written report to OCERS Disability Staff that is used to make a recommendation to grant or deny the application. Included in the physician's report are recommended findings on the questions of incapacity and service-connection.

Staff has surveyed the other CERL agencies to determine what other methods are utilized to make the medical determinations on a disability application. Among the 17 other CERL agencies responding, there are two "schools of practice." One practice is to retain one or more physicians who serve as medical advisors and whose duty is to conduct a review of the medical records and reports submitted by the member in support of the application. The medical advisor makes no independent diagnosis of the member, but rather evaluates the adequacy of the medical evidence submitted. In most of these cases, the medical advisor has the discretion to send the member for an independent medical examination if the records are ambiguous or conflicting. The report of the medical advisor is then utilized by the system’s disability staff to develop a recommendation on the adequacy of the disability application. Some of the systems employ disability staff that is trained to do the initial review of the applicant's medical records and only refer the more complex or questionable cases to the medical advisor.

The other practice, followed by OCERS, is to send all applicants to a retained physician to conduct an independent medical examination (IME). The IME physician reviews the applicant's records/reports and also develops an independent diagnosis of disability. As with the medical advisor, the IME physician submits a written report that is utilized by disability staff.

Below is a table of the 18 systems surveyed. The systems are almost evenly divided between use of a medical advisor and IME. In addition, Fresno County is currently conducting an RFP to switch from the IME model to the medical advisor model for the express purpose of reducing the time it takes to process disability applications.

| Rank | County System | Medical Advisor | Panel Physician/IME |
|------|----------------|---------------------------|---------------------|
| 1 | Los Angeles | | X |
| 2 | Orange | | X |
| 3 | San Diego | | X |
| 4 | Alameda | X | |
| 5 | San Bernardino | | X |
| 6 | Sacramento | X # | |
| 7 | Contra Costa | X | |
| 8 | San Mateo | X | |
| 9 | Fresno | | X* |
| 10 | Ventura | | X |
| 11 | Kern | X | |
| 12 | San Joaquin | | X |
| 13 | Santa Barbara | | X |
| 14 | Marin | X | |
| 15 | Sonoma | X (county health officer) | |
| 16 | Stanislaus | | X |
| 17 | Imperial | | X |
| 18 | Mendocino | X | |

Sacramento recently outsourced medical advisor role to National Disability Evaluations (www.ndeval.com)

* Fresno currently conducting an RFP to shift to a medical advisor model.

Staff does not recommend changing OCERS' current practice of using panel physicians and IMEs. Staff believes there is value in the current system because it allows OCERS to rely on specialists in the appropriate fields (psychiatry, orthopedics, etc.) rather than a general practitioner who then often refers the matter to a specialist for an IME. However, there are several aspects of the other school of practice that can inform how OCERS approaches reviewing applications.

Currently, OCERS sends every applicant to a panel physician for a IME, regardless of the fact that, in most cases, the applicant has presented medical evidence from his/her treating physician.⁵ In many cases, the treating physician's report clearly demonstrates whether or not the member is permanently incapacitated and whether or not the disability (if present) is service connected. Staff should therefore be empowered by the Board to forego an IME and make a recommendation based on staff's own review of the medical records. Additionally, there are instances where staff might determine that there is a need for expert medical advice but that an examination of the member is not necessary, and staff should be empowered to forego an IME and seek a review of the medical records by an OCERS panel physician. If the Board were to empower the staff to make these decisions, there could be considerable savings of staff and Board time and resources and lower costs for medical examinations. In addition the time members wait for examinations would be reduced.

⁵ If a member has not presented medical evidence from the treating physician, staff should of course be empowered to recommend a denial because the member has simply not at all met his/her burden to demonstrate that s/he is entitled to the benefit.

Submitted by:



Gina M. Ratto
General Counsel

Submitted by:



Lee K. Fink
Deputy General Counsel

Attachments:

1. September 5, 2017 Memorandum to the Governance Committee
2. Proposed Disability Committee Charter
3. Proposed Disability and Benefit Adjudication Policy and Administrative Hearing Rules (which will supersede the existing Administrative Hearing Procedure Policy and OCERS Administrative Procedure (OAP) on Appeals) (marked and clean)
4. Proposed Amendments to the Hearing Officer Selection Policy (marked and clean)

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

Introduction

1. The Board of Retirement (Board) has established the Disability Committee to assist the Board in overseeing the review of disability retirement applications. The Disability Committee is an advisory committee to the Board, and its recommendations are subject to final approval by the Board.

Purpose

2. Under applicable law, the Board must act upon all applications for disability retirement filed by OCERS members. The purpose of the Disability Committee is to ensure diligent analysis of specialized medical records, careful evaluation of all applications for disability retirement, and an efficient process for applicants for disability retirement. The Disability Committee will review the administrative record relating to all applications for disability retirement, the recommendations of OCERS staff, and the findings and conclusions of the administrative hearing officer, where applicable and will thereafter make recommendations to the Board on approval or denial of applications. In most circumstances, recommendations from the Disability Committee will be placed on the Board's consent agenda for final action in accordance with the Board Policy on Disability and Non-Disability Adjudication.

Duties and Responsibilities

3. The Disability Committee shall:
 - a. Review applications for disability retirement and make recommendations to the Board to grant or deny said applications;
 - b. Periodically review the disability application and review process with OCERS staff and recommend any changes as necessary or advisable;
 - c. Provide oversight for searches for outside consultants and advisors including hearing officers and medical experts, and recommend the appointment of such parties to the Board;
 - d. With OCERS staff, coordinate continuing education for the members of the Board on disability-related topics as required; and
 - e. Perform any other duties that may be assigned to it by the Board or that are necessary to discharge the Committee's responsibilities with respect to the disability application process.

Membership

4. The Disability Committee shall be composed of three members of the Board. One member shall be chosen from amongst the first, fourth, fifth, sixth and ninth members of the Board, and two shall be chosen from amongst the second, third, seventh, alternate seventh, and eighth members of the Board. The Board Chair shall appoint members of the Disability Committee as provided in the OCERS By-Laws and designate one member to serve as the Committee Chair.

OCERS Board Charter

Disability Committee Charter

Meetings

5. The Disability Committee shall meet at least monthly and otherwise on an as needed basis as determined by the Committee Chair in consultation with the Board Chair. All Disability Committee members are expected to attend all meetings of the committee, but a quorum to conduct business shall consist of two members of the Disability Committee.
6. The Assistant CEO for External Relations (or his/her designee), the General Counsel (or his/her designee), and whatever staff deemed necessary shall attend all Disability Committee meetings. Meeting notices will be provided to interested parties in conformance with applicable laws, regulations, customs, and practices.
7. All meetings shall be conducted in accordance with the Brown Act. Meeting agendas will be prepared and provided in advance to members of the committee, along with appropriate briefing materials. Minutes of meetings will be prepared and will contain a record of persons present, decisions taken, and a high-level summary of the discussion.

Monitoring and Reporting

8. The Disability Committee shall:
 - a. Make its minutes available to all Members of the Board;
 - b. Periodically report to the Board on its activities;
 - c. Monitor compliance with and the effectiveness of the disability application process, and report to the Board on the committee's findings, as appropriate; and
 - d. Periodically review and, when necessary, amend standardized materials used in the disability application process, as recommended by OCERS staff.

Charter Review

9. The Disability Committee shall review this charter at least once every three (3) years and recommend any amendments to the Board for approval as necessary to ensure that the charter remains relevant and appropriate.

Charter History

10. This charter was adopted by the Board of Retirement on MONTH, DATE, YEAR.

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

Date



OCERS Board Charter

Disability Committee Charter

| CHANGE LOG EDITOR | CHANGES FROM PREVIOUS VERSION | DATE |
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OCERS Board Policy

Disability and Non-Disability Benefits Adjudication Policy and Administrative Hearing ProceduresRules

1. Intent

The Board of Retirement (“Board”) of the Orange County Employees Retirement System (“OCERS”) specifically intends that this Disability and Non-Disability Benefits Adjudication Policy and Administrative Hearing Rules (“policy”) shall apply to and ~~shall govern in each~~ the process by which the Board:

- a. Makes determinations on disability retirement applications (including, but not limited to determinations of permanent incapacity, whether the incapacity arose out of and in the course of employment, and the effective date);
- b. Resolves disputes over retirement benefits (including but not limited to disputes regarding final compensation); and
- ~~a.c.~~ Makes any final administrative review procedure regarding a order or decision made by the Board of Retirement pursuant to the County Employees Retirement Law of 1937, as amended (“CERL”); the result of a proceeding in which by law a hearing is required to be given. See Cal. Civ. Proc. Code § 1094.5. Any person who is entitled to an administrative hearing who does not request one under this policy shall be deemed to have waived his/her right to a hearing. See Cal. Civ. Proc. Code § 1094.5.

2. Definitions

The following terms shall have the meanings set out in this section. ~~All~~

Administrative Hearing: The process described in this policy (including an Expedited Administrative Review), which is the exclusive means by which a Party may seek an administrative review of a determination on a disability retirement application, a resolution of a dispute over retirement benefits, or any final administrative order or decision made as the result of a proceeding in which by law a hearing is required to be given. An Administrative Hearing shall be a hearing de novo, conducted as if the original recommendation or determination had not taken place. This means the Hearing Officer or other ~~words~~ shall have their common meanings fact finding body will consider anew all of the evidence submitted without relying on the past findings of a court, the Committee, the Board or other fact finding body. A Party is entitled to request an Administrative Hearing within the time periods set forth in this policy, and failure to make a timely request shall result in a waiver of the Party’s rights to contest the final determination by OCERS. See Cal. Civ. Proc. Code § 1094.5.

Administrative Record: ~~The~~ For purposes of an Administrative Hearing, the Administrative Record includes any documents submitted by an Applicant or on behalf of an Applicant, documents prepared by OCERS or by independent sources that are received by OCERS, or any other documents that are relevant to deciding the issue of an Applicant’s request to receive or modify a benefit ~~and that are admitted. A Party may object to the admission of items~~ into evidence by or seek to admit additional information into evidence as set forth in these Rules, and the Hearing Officer after the Parties have had an opportunity to object shall decide the admissibility of all evidence.

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~~The~~For purposes of any proceeding following an Administrative Hearing, the Administrative Record also includes written correspondence, Party Pre-Hearing Statements, ~~Party Briefs,~~the Hearing Officer's ~~Proposed~~ Findings of Fact and ~~recommendations~~Recommended Decision, Party objections ~~and requests for clarification, rulings on objections and requests for clarification, Hearing, hearing~~ transcripts, and other documents that are relevant to deciding the issue of an Applicant's request to receive or modify a benefit.

Applicant: Any member of OCERS, or a person or other entity on behalf of a member of OCERS (including but not limited to the member's surviving spouse), or any person who claims an interest in the pension or allowance of an OCERS member, who files an application with OCERS to request or modify a benefit that ~~the Board of Retirement~~OCERS may grant pursuant to ~~its authority set forth in~~ the CERL.

Application: The paper(s) initially filed with OCERS by or on behalf of an Applicant, and/or any amended paper(s) filed with OCERS by or on behalf of an Applicant after the initial filing, to request or modify a benefit provided by OCERS.

Board: The Board of Retirement of OCERS.

Clerk, Clerk to the Hearing Officers. A person or persons designated by the OCERS General Counsel or his/her designee to fulfill the duties of providing administrative assistance to the Hearing Officers appointed by OCERS under this policy.

Days: All days are calendar days.

~~Effective Date:~~ The effective date~~Disability Committee, Committee:~~ A committee of any the Board, chartered by the Board to review Applications for disability retirement ~~benefits shall be governed by Government Code §31724.~~

Expedited Administrative Review: An alternative administrative review process, set forth in Rule 6 of the Hearing Rules, under which an Applicant may obtain a more speedy resolution of his/her Administrative Hearing.

Hearing: Presentation of sworn testimony, other evidence, and legal argument before a Hearing Officer on the merits of an Application or benefit determination.

~~Hearing de novo:~~ A new Hearing of a matter, conducted as if the original Hearing or Board determination had not taken place. This means the court or other fact finding body will consider anew all of the evidence submitted without relying on the past findings of a court, the Board or other fact finding body.

Hearing Officer: ~~Pursuant~~ A referee appointed pursuant to Government Code §31533, that is either (i) a current member of the California State Bar on the approved OCERS' Hearing Officer panel or, as selected under the OCERS Hearing Officer Selection and Retention Policy, or (ii) a member of the Board of Retirement.

Hearing Rules, Rules: The "Orange County Employees Retirement System Administrative Hearing Procedures"Rules," attached as an appendix to and made part of this policy.

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Medical Witness: A person who by profession is a physician, surgeon, psychologist, optometrist, dentist, podiatrist, or chiropractic practitioner licensed by the State of California or by such other jurisdiction of the United States in which such person maintains his or her regular practice in good standing.

Member Services Director: The Party or Parties: OCERS, any Applicant who seeks an Administrative Director in charge of the Member Services Department Hearing under this policy, the member's employer/plan sponsor, and any other person who may be affected by the Board's decision and participates in the Administrative Hearing.

Petitioner: The Party filing a Request for Administrative Hearing. (In most instances, the Applicant is also the Petitioner.)

Plan Sponsor: The employer who employed the member whose benefits are at issue in any given matter. The Plan Sponsor is a Party to an Administrative Hearing but does not need to participate in an Administrative Hearing.

Pre-Hearing Statements: Statements filed by the Parties pursuant to Rule 8 of the Hearing Rules.

Proposed Findings of OCERS Fact and Recommended Decision: The recommendation of the Hearing Officer to the Board, as set forth in Rule 12 of the Hearing Rules.

Request for Administrative Hearing: The document filed by the Petitioner to appeal a decision of the Committee or OCERS Staff and initiate the Administrative Hearing.

Respondent: OCERS, provided that the Plan Sponsor or the Applicant may join as the Respondent, as appropriate.

Rule: A hearing rule included in the Hearing Rules.

3. Disability Determination Process

For determinations on Applications for disability retirement:

- A. OCERS staff will investigate all disability retirement Applications to determine whether the Applicant is permanently incapacitated from the performance of his or her usual duties, whether the incapacity arose out of and in the course of employment, and the appropriate effective date of any disability retirement allowance. In undertaking this investigation, staff will have discretion, based on staff's review of the Application including the Applicant's treating physicians' medical reports, to determine whether or not to seek further medical examination of the Applicant, expert medical advice or expert review of Applicant's medical records. Upon completion of the investigation, OCERS staff will make a recommendation to the Committee regarding permanent incapacity, service connection, and effective date.
- B. The Committee will review the disability Application at a duly-noticed meeting of the Committee. OCERS staff will give Applicant (or his or her attorney) notice of the date of the Committee meeting and the Applicant (or his or her attorney) will have the opportunity to be heard by the Committee.

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- C. After the Committee makes a recommendation, OCERS staff will notify the Applicant (and his or her attorney) of the Committee's recommendation and provide the Applicant with instructions regarding how the Applicant can appeal the determination by filing a Request for Administrative Hearing.
- D. In the event that the Committee recommends that any part of the Application be denied, the Applicant will have 90 days from the date of the notice required by 3.C., above, to file a Request for Administrative Hearing with the Clerk, as set forth in the Hearing Rules. In the event that the Committee recommends the Application be granted in full, any person aggrieved by the recommendation, including the Plan Sponsor, will have 10 days from the date of the notice required by 3.C., above, to make a written Request for Administrative Hearing as set forth in the Hearing Rules.
- E. If no Request for Administrative Hearing is filed within the time limits set forth in 3.D., above, the matter shall be placed on the consent agenda at the next regularly scheduled meeting of the Board.

4. Non-Disability Benefit Determination Process

For all other benefit determinations:

- A. OCERS' staff will provide an initial benefit determination (e.g., determinations regarding amount of the benefit, effective date, reciprocity determinations) in writing at the request of the Applicant. The initial determination shall include citation of any authority relied upon by staff in making its determination. At the time OCERS issues its initial determination, OCERS staff will also provide the Applicant with instructions regarding how the Applicant can appeal the determination by filing a Request for Administrative Hearing.
- B. The Applicant will have 90 days from the date of the notice provided in 4.A., above, to file a Request for Administrative Hearing. If no Request for Administrative Hearing is filed within 90 days, OCERS staff's initial determination shall be final and deemed the decision of the Board.

5. Appeals of Disability and Non-Disability Benefit Determinations

A Party has a right to an Administrative Hearing only if the Party files a request for Administrative Hearing within the time frames set forth in Sections 3 or 4, above. An Administrative Hearing shall proceed according to the Hearing Rules.

6. Board Determination of Disability and Non-Disability Benefits

- A. **Consent Agenda.** When no appeal has been timely filed on an Application for a disability retirement, the Board shall consider the Committee's recommendation on a consent agenda. Any member of the Board may object to an Application on the consent agenda except that the alternate seventh member (and not the seventh member) of the Board may object to any item relating to a member of the same service as the alternate seventh member. In addition, if the alternate seventh

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member is present, he or she shall be considered to have voted to approve any item adopted on the consent agenda relating to a member of the same service.

B. Absence of Unanimous Consent for Disability Applications Recommended for Approval By the Committee; Administrative Hearing Before the Board. If any Board member objects to the approval of an Application for disability retirement that has been placed on the consent agenda, and the matter has not been the subject of an Administrative Hearing, the Board shall either (i) adopt the recommendation of the Committee; or (ii) conduct its own Administrative Hearing on the matter. The Board's Administrative Hearing shall follow the Hearing Rules, as closely as practicable, with the Board itself acting as the Hearing Officer.

C. Matters Referred to the Board After an Administrative Hearing. Following an Administrative Hearing and the Board's receipt of the Hearing Officer's Proposed Findings of Fact and Recommended Decision, the Board shall hear the matter at a duly-noticed meeting of the Board as set forth in the Hearing Rules. The Parties and their attorneys will be given notice of the date the Board will consider the Hearing Officer's recommendation and will be given the opportunity to be heard by the Board. Upon action by the Board, the Administrative Hearing process will be final for all purposes, and any party aggrieved by the Board's decision may petition the Superior Court for review as provided by law.

7. Closed Sessions for Board Determination of Disability and Non-Disability Benefits

Except for matters on the Board's consent agenda, the Board shall adjourn to a closed session, Cal. Gov't Code § 54957(b), to discuss the Application of any member for disability or other benefit.

A. Closed Session With the Parties Present. The Board shall conduct any discussion of an Application, including instances where the Board convenes an Administrative Hearing before itself, as a closed session. Attendance at the closed session will be limited to 1) the Parties; 2) counsel for the Parties; 3) any OCERS disability staff members and/or attorneys acting as advocates for the staff initial determination or Committee recommendation; 4) any witnesses called to present testimony before the Board; 5) OCERS staff necessary to facilitate the hearing (including the Clerk of the Board and IT Staff); 6) the CEO; and 7) the OCERS General Counsel (or his/her designee) to provide legal advice to the Board.

B. Closed Session Without Parties. Following the Board's hearing of a matter in a closed session with the Parties present, the Board may adjourn to a closed session including only the CEO and the OCERS General Counsel (or his/her designee) to provide legal advice to the Board in order to consider the merits of the case and the Board's legal obligations.

8. Policy Review

The Board will review this policy at least every three (3) years to ensure that it remains relevant and appropriate.

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9. Policy History

This policy was adopted by the Board of Retirement on February 19, 2002. It was amended most recently on _____.

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

Date

~~**Party or Parties:** OCERS and / or any Applicant who sought administrative review of a decision by the Board.~~

~~**Pre-Hearing Conference:** A Pre-Hearing Conference is a conference between the Applicant(s) and OCERS conducted by the assigned Hearing Officer to discuss preliminary matters related to the Hearing process.~~

~~**Respondent:** OCERS and / or Board.~~

~~**Rule:** A Hearing Rule including all subparagraphs or subdivisions as contained in this policy.~~

3. Appendix - Administrative Hearing Rules

Rule 1. Definitions

All capitalized terms contained within these Hearing Rules shall have the meaning set forth in Section 2 of the OCERS Disability and Non-Disability Benefits Adjudication Policy and Administrative Hearing Rules.

Rule 2. Filing of Documents

A. Administrative Hearing Filing Procedures

1. OCERS staff shall promulgate, and may from time to time amend, the "Administrative Hearing Filing Procedures" to set forth the procedures by which the Clerk to the Hearing Officers shall accept filing of documents in Administrative Hearings and service of documents on Parties.
- 1-2. The Administrative Hearing De-Novo Filing Procedures may include forms that parties may be permitted or required to use during the course of an Administrative Hearing.
3. A-The Clerk shall provide the Petitioner with a copy of the Administrative Hearing Filing Procedures upon Petitioner's filing of a Request for Administrative Hearing.

B. Filing of Documents

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1. All documents required or permitted to be filed by any Party during the course of the Administrative Hearing shall be filed with the Clerk.
2. An Applicant may file documents in person, by US Mail, or electronically, in conformance with the Administrative Hearing Filing Procedures. Any other Party and the Hearing Officer, shall file all documents electronically, in conformance with the Administrative Hearing Filing Procedures.
3. Documents filed by US Mail shall be considered filed on the following dates:
 - i. If mailed from within Orange County, on the date post-marked on the envelope containing the documents;
 - ii. If mailed within the State of California, five (5) days prior to the date post-marked on the envelope containing the documents;
 - iii. If mailed outside of the State of California, ten (10) days prior to the date post-marked on the envelope containing the documents.
4. Documents filed in person shall be considered filed on the day received by OCERS.
5. Documents filed electronically shall be considered filed on the date electronically sent.

C. Service of Documents

1. Within one (1) business day of any document being filed, the Clerk shall serve all documents that have been filed in any Administrative Hearing on all Parties and the Hearing Officer.
2. The Clerk shall serve an Applicant by US Mail, unless the Applicant consents to be served electronically, in conformance with the Administrative Filing Procedures. The Clerk shall serve any other Party and the Hearing Officer electronically, in conformance with the Administrative Hearing Filing Procedures.

Rule 3. Request for a Hearing

- A. Request for Hearing.** A written request for Administrative Hearing must be received by filed with the Board, or its designee, Clerk within ninety (90) days after the initial Board determination time frame set forth in Sections 3 and 4 of the initial application. OCERS Disability and Non-Disability Benefits Adjudication Policy. The Request for Administrative Hearing de novo shall be scheduled before shall include a short and plain statement of the grounds for the appeal of the recommendation of the Committee or the OCERS staff.
- B. Referral from the Board.** In the event that the Board refers a matter to a Hearing Officer. For disability retirement Hearings, the Board on its own for an Administrative Hearing, the Applicant shall be considered the Petitioner and the referral may limit from the issues to Board shall be

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~~presented to disability, service connection, or effective date only. If not so limited, considered the Request for Administrative Hearing.~~

~~C. **Burden of Proof.** The Applicant will have the burden of proof to establish his/her right to the benefit sought.~~

~~A-D. **Scope of Hearing.** A disability retirement Administrative Hearing will address the issues of disability, service connection, and effective date. Except as set forth in these Rules, ~~for disability retirement Hearings and all other administrative Hearings,~~ the Hearing Officer shall not make a finding or recommendation on any issue that was not raised ~~before the Board. These Hearing Rules will apply to disability retirement Hearings and all other administrative Hearings.~~ in the Applicant's original application to OCERS (either for disability or non-disability benefits). If the Applicant seeks to raise new issues, s/he will be required to file a new application.~~

~~2. Notification of Request for, or Referral to, a Hearing~~

~~Within fourteen (14) days after OCERS receives a request for Hearing or referral to a Hearing, OCERS will notify the Applicant in writing of the name and address of the Hearing Officer to whom the matter has been assigned.~~

~~Rule 4. Assignment of Hearing Officers~~

~~A. **Assignment of Hearing Officer.** Hearing Officers are selected and placed on the panel pursuant to OCERS' Hearing Officer Selection and Retention Policy. As Administrative Hearings are requested, the ~~Member Services Director assigns~~ Clerk shall randomly assign the next Hearing Officer ~~on the list in alphabetical order,~~ subject to the procedures for challenge under Rule ~~34.C,~~ below.~~

~~3. Petition to Reassign a Hearing Officer~~

~~B. **Each Notice to Parties of Hearing Officer Assignment.** Within fourteen (14) days after the Petitioner files a Request for Administrative Hearing, the Clerk will file a notice indicating the name and address of the Hearing Officer to whom the matter has been assigned.~~

~~B-C. **Removal of Hearing Officer.** A Party shall be entitled to have a Hearing Officer replaced by another Hearing Officer in accordance with the provisions of this Rule.~~

- ~~1. **Peremptory: Each Party** An Applicant is entitled to one automatic challenge to the assignment of the Hearing Officer in accordance with the provisions of this section. ~~That~~ The challenge must be submitted in writing, directed to filed with the ~~Member Services Director,~~ Clerk within fourteen (14) days after the date of the ~~letter~~ notice assigning the Hearing Officer. ~~Thereafter, any challenge to~~ The Clerk shall then re-assign the assigned case to another Hearing Officer ~~shall only be for cause.~~~~

~~At any time before the date of the Hearing if an Applicant obtains new counsel of record, or if OCERS replaces its counsel of record, each new counsel shall be entitled to a peremptory challenge.~~

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~~The challenge must be submitted in writing, directed to the Member Services Director, within fourteen (14) days after the date counsel commences representation.~~

2. Removal for Cause: ~~Each~~Any Party ~~is entitled to~~may challenge a Hearing Officer for cause by ~~submitting a written filing a~~ request, with supporting declarations made under penalty of perjury under the laws of the State of California and any other evidence the Party is relying on, ~~to the Member Services Director, who shall then place the matter on the agenda for the next regularly scheduled Board meeting. Any opposing Party will have fourteen (14) days to file a response. The Clerk shall then randomly assign the request to another Hearing Officer, who must decide the issue within thirty (30) days. If the Hearing Officer grants the request, the Clerk shall re-assign the case to a Hearing Officer other than the Hearing Officer who heard the request for re-assignment. Cause for removal shall be limited to bias against a Party or counsel based on a personal or financial relationship (other than the Hearing Officer's contract with OCERS) that would make a reasonable person doubt the Hearing Officer's ability to render an impartial decision.~~
3. Removal Due to Unforeseen Circumstances: If the service of a Hearing Officer is discontinued due to unforeseen circumstances, including but not limited to death, ~~or illness, or~~ termination with or without cause, ~~or for medical restrictions, each Party~~the Applicant is entitled to a peremptory challenge to the new Hearing Officer in accordance with subsection (1) of this Rule.

4. Appointment Notice of the Assignment to Hearing Officer

~~C.D. On.~~ After the expiration of the time period in Rule 3(a), 4.C, above, the Member Services Director/Clerk shall contact the Hearing Officer by letter notifying file a Notice to the Hearing Officer of his/her assignment, providing the name, address and phone number of the Applicant, Applicant's counsel, if any, and counsel representing OCERS.

E. Recusal of Hearing Officer. If at any time the Hearing Officer determines that there is cause to remove him/her, s/he shall immediately file with the Clerk a statement of recusal, and the Clerk shall reassign the case pursuant to Rule 4.A.

Rule 5. Preparation of Administrative Record

~~Following receipt~~Within 45 days of the request filing of a Request for a Administrative Hearing, OCERS shall assemble and file the initial Administrative Record. A Party may object to the admission of items into evidence or seek to admit additional information into evidence as set forth in these Rules, and the Hearing Officer shall decide the admissibility of all evidence.

Rule 6. Alternative Expedited Administrative Review

A. Provisions for Alternative Expedited Administrative Review. Expedited Administrative Review is an irrevocable waiver of the Applicant's right to the process described in Rules 7 through 11. The goal of the Alternative Expedited Administrative Review process is to complete the Administrative

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Hearing in less than six months and based only on the Administrative Record and written arguments, without in-person testimony or argument.

B. Availability of Expedited Administrative Review. An Expedited Administrative Review shall only be available in those cases that OCERS determines are appropriate for an Expedited Administrative Review. If OCERS determines that the matter is appropriate for Expedited Administrative Review, the Applicant will have the choice of whether or not to opt for the Expedited Administrative Review.

C. Waiver and Election. In the event that OCERS determines that a matter is appropriate for Administrative Review, OCERS shall file a Notice of Right to Expedited Administrative Review which provides the Applicant notice of his or her rights and provides a Waiver of Rights and Election for Expedited Administrative Review (the "Waiver and Election"). The Applicant may file its Waiver and Election any time prior to or at the Pre-Hearing Scheduling Conference.

D. Timeline. The Expedited Administrative Review shall be conducted according to the following timeline.

1. Within 30 days from the date the Applicant files the Waiver and Election (or within 30 days after the Administrative Record is filed, whichever is later), each party shall file any written evidence that it seeks to rely on in addition to the Administrative Record.
2. Within 30 days from the date the Applicant files the Waiver and Election (or within 30 days after the Administrative Record is filed, whichever is later), each Party shall file a Statement of Issues of not more than five-pages which shall set forth the Party's contentions.
3. Within 90 days from the date the Applicant files the Waiver and Election (or within 30 days after the Administrative Record is filed, whichever is later), the Hearing Officer shall file its Proposed Findings of Fact and Recommended Decision, which shall conform to Rule 12.

Rule 7. Pre-Hearing Scheduling Conference

A. The Clerk shall schedule a Pre-Hearing Scheduling Conference to be held within 30 days of the filing of the Administrative Record. The Clerk shall undertake its best efforts to schedule the Pre-Hearing Scheduling Conference at a time convenient to all Parties.

B. The Pre-Hearing Scheduling Conference may be held telephonically. The Pre-Hearing Scheduling Conference will not be transcribed unless a Party files a request for a court reporter at least seven (7) days before the Pre-Hearing Scheduling Conference. If any Party requests a transcription, the Clerk shall arrange for a court reporter, but the requesting Party shall be liable for reimbursing OCERS for the costs.

C. At the Pre-Hearing Scheduling Conference, the Hearing Officer shall advise the Applicant (whether or not the Applicant is the Petitioner) of the following:

1. The Applicant has the right to be represented by counsel;

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2. Any financial or personal interest that the Hearing Officer has in the case, other than the Hearing Officer's contract with OCERS;
3. The Hearing will be a hearing *de novo*, conducted as if the original recommendation or determination had not taken place. This means the Hearing Officer or other fact finding body will consider anew all of the evidence submitted, without relying on the past findings of a court, the Committee, the Board, OCERS staff, or other fact finding body;
- 4.4. The Hearing Officer's purpose in the process is to find the facts relevant to the Applicant's request and provide it to the Applicant or his or her attorney, if any, OCERS' counsel and the Hearing Officer, an impartial recommendation to the Board;

6. Applicant's Pre-Hearing Statement

5. The Applicant shall serve a Pre-Hearing Statement on The Applicant has the burden of proof in establishing his or her right to the benefit s/he seeks;
6. The Applicant must identify witnesses and other evidence when filing his/her Pre-Hearing Statement, and that failure to include in the Pre-Hearing Statement the witnesses and other evidence s/he intends to rely on could mean that evidence will be excluded unless the Applicant shows that s/he could not have discovered the information earlier through the exercise of reasonable diligence;
7. The timelines required under these rules for filing documents and for the Administrative Hearing, and the result of a failure to meet those deadlines, including that the Applicant's case can be dismissed.

D. At the Pre-Hearing Scheduling Conference, each Party shall:

1. Make a good faith effort to identify the witnesses, both expert and non-expert, that it intends to call;
2. Ensure that that the witnesses it intends to call either speak and understand English or that the Party calling the witness is responsible for obtaining a translator for the witnesses;
3. Indicate whether it will require an opposing party's Medical Witness to appear in person to be cross-examined at the Hearing;
4. If possible, set mutually convenient dates for any depositions.

B.E. At the Pre-Hearing Scheduling Conference, the Hearing Officer and OCERS' counsel no later than sixty (60) days before shall set the date on which for the Hearing is to be held.

1. The Pre-hearing Statement shall include the following: The Hearing Officer shall confer with the Parties to determine a mutually agreeable date for the hearing ("Hearing Date"), but in all cases the Hearing Date shall be set for no later than six (6) months after the date of the Pre-Hearing Scheduling Conference. The hearing will be held within the time frame

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provided by Rule 15. OCERS, at its expense, shall arrange for a court reporter and a room for the Hearing.

2. Each Party shall provide a good faith estimate of the amount of time it anticipates the Hearing will last. As much as practicable, the Hearing shall continue from day-to-day until complete, and the Hearing Officer shall schedule all dates to which s/he anticipates the Hearing will be continued until complete.

F. After the Pre-Hearing Scheduling Conference, the Hearing Officer may continue the Hearing Date only upon a showing of good cause as set forth in Rule 14, below.

Rule 8. Pre-Hearing Statements

A. The Petitioner shall file a Pre-Hearing Statement no later than sixty (60) days prior to the Hearing Date.

B. Respondent shall file a Pre-Hearing Statement no later than thirty (30) days prior to the Hearing Date.

C. Any Party may file supplemental Pre-Hearing Statements no later than fourteen (14) days prior to the Hearing Date.

A-D. The Pre-hearing Statements shall include the following:

1. A statement of the issues and contentions of the ApplicantParty, and a brief summary of the evidence to be presented;
2. A list and copies of any expert's reports, depositions of any witnesses, and any other documentary evidence on which the ApplicantParty will rely, if not already in the Administrative Record;
3. The names, addresses and telephone numbers of any non-expert witnesses whose testimony the ApplicantParty intends to present at the Hearing and a brief description of the content of that testimony.
4. The names, addresses and phone numbers of any expert witnesses whom the ApplicantParty intends to call for oral testimony at the Hearing and a synopsis of the expected testimony.

~~A. If at any time during the Hearing process the Applicant either (i) alleges an injury or disease not listed on the disability retirement application or (ii) raises an issue that was not previously presented to the Board, the Hearing process shall be suspended by OCERS and the Application shall be treated as an amended Application. The amended Application shall be referred back to the Member Services Director to be processed. If the Board denies the amended Application or refers it for Hearing, the Hearing Officer who is presiding at that time will hear all allegations at the same time. A new Hearing date will be set in accordance with Rule 9 and all Pre-Hearing Statements not already served will be due in accordance with the new Hearing date.~~

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~~B.E. If an Applicant a Petitioner disputes the Effective Date established by the Board, or the Board in its initial decision found that an Applicant asserts that the proper Effective Date for the retirement allowance is a date other than the effective date of the Application, that Applicant disability retirement, the Petitioner shall raise the Effective Date effective date as an issue and shall state that Applicant's Petitioner's contention in his/her Pre-Hearing Statement.-~~

7. Respondent's If a Petitioner fails to timely file a Pre-Hearing Statement

~~OCERS, the Clerk shall serve a Pre-Hearing Statement on the Hearing Officer and file an Order to Show Cause why the Applicant or Applicant's attorney no later than thirty (30) days before the date on which the Hearing is to be held. The Pre-Hearing Statement shall include the following:-~~

- ~~A. A statement of the issues and the contentions of OCERS;~~
- ~~B. A list and copies of any experts' reports, depositions of any witnesses, and other documentary evidence on which OCERS will rely, if case should not already in the administrative record;~~
- ~~C. The names and addresses of any non-expert witnesses whose testimony OCERS intends to present at the Hearing, and a brief description of the content of that testimony;~~
- ~~D. The names and addresses of any expert witnesses whom OCERS intends be dismissed, and give the Petitioner five (5) days to call respond. Unless the Petitioner shows good cause for oral testimony at the Hearing and a synopsis of the expected testimony.~~

8. Supplemental Pre-Hearing Statements

~~Any Party may submit supplemental Pre-Hearing Statements no later than fourteen (14) days prior failure to the Hearing date.~~

9. Applicant's Non-Compliance in Submitting timely file its Pre-Hearing Statement

~~If an Applicant does not comply with the requirements of Rule 6, the Hearing, the Hearing Officer shall be taken off calendar and the administrative proceeding dismiss the Administrative Hearing and the initial determination or Committee recommendation shall be suspended until the Pre-proceed as if no Request for Administrative Hearing Statement has had been filed unless otherwise agreed to by the Parties. Subject to Rule 23, "Dismissal," once the Pre-Hearing Statement has been filed, the Hearing will be reset in the same manner as set forth in Rule 10, below. OCERS' Pre-Hearing Statement will be due thirty (30) days before the new Hearing date.~~

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10. Establishing a Hearing Date

~~The Hearing. If the Petitioner shows good cause, the Hearing Officer will confer with may allow the Parties Respondent additional time to set a mutually agreeable file its Pre-Hearing date. The Statement or may re-schedule the Hearing will be held within the time frame provided by requirements of Rule 23. OCERS, at its expense, shall arrange for a court reporter¹⁵ and a Hearing room.~~

- ~~A. The Hearing Officer may continue any Hearing on stipulation of the Parties or Petitioner shall be liable to OCERS for good cause shown, on receipt of a written request by either Party.~~
- ~~B. With the exception of an emergency continuance request, all requests for a continuance as set forth herein shall be made at least thirty (30) days in advance of the Hearing date. If not made thirty (30) days before the Hearing, the Hearing Officer or the Board shall not be obligated to honor the request. Nevertheless, the Hearing Officer is authorized to grant an emergency continuance to the next agreeable Hearing date because of the illness or disability of any Party, witness, attorney, or the Hearing Officer himself or herself, or any family emergency or matter of a similar nature of any Party, witness, attorney, or the Hearing Officer.~~
- ~~C.F. If an Applicant cancels a Hearing less than thirty (30) days prior to the scheduled Hearing date, the Board is authorized to seek reimbursement from the Applicant for any actual costs incurred as a result of the cancellation delay.~~

Rule 9. Depositions and Subpoenas

- A. **Depositions:** Witness depositions may be taken by either Party before a certified Court Reporter and shall be taken under oath or affirmation. The Party taking the deposition shall pay all associated costs. If any Party offers any portion of any deposition testimony into evidence at the Hearing, that Party shall provide a full copy of the deposition transcript to each adverse Party and the Hearing Officer free of charge.

- A. **Subpoenas and Related Fees/Costs:**
 - 1. OCERS shall issue a subpoena for the personal appearance of a witness at the Hearing or at a deposition, or for the production of documents (subpoena *duces tecum*), in conformance with California Government Code Section 31535, upon the request of any Party filed at least seven (7) days before the date the subpoena is to be issued. The requesting Party shall be obligated to serve the subpoena and pay all associated witness fees and costs of service and production. The Party requesting oral testimony of an expert witness shall in all cases be responsible for any expert witness fees.
 - 2. Any fee disputes between a witness and the requesting Party is independent from any proceeding between the Petitioner and OCERS. Those fee disputes shall be resolved by the requesting Party and the witness in the California courts, not in this forum. The Hearing Officer has no authority or jurisdiction to hear evidence about, or decide any such dispute.

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- C. ~~The Applicant or OCERS may request, or the Hearing Officer on his/her own motion may schedule a Pre-hearing Conference; provided, however, in all cases where the Applicant is pro per, the Hearing Officer shall schedule a Pre Hearing Conference.~~

11. Time and Place **Rule 10. Conduct of Hearings**

~~All Hearings on the merits shall be held at OCERS' offices; Pre-Hearing Conferences shall be held at the OCERS offices and may be held telephonically on the agreement of the Parties and the Hearing Officer. Hearings that are not concluded within the original time set shall be continued to the next agreeable Hearing date.~~

12. Documentary Evidence

- A. **Statement of Policy:** ~~Documentary evidence shall be produced in the form of written medical reports or other documentary evidence attached to the Parties' Pre Hearing Statements or included in the Administrative Record. All Hearings shall be held at the OCERS office, 2223 East Wellington Avenue, Santa Ana, California.~~
- B. ~~The Clerk shall arrange for a court reporter to be paid at OCERS's expense. Oral evidence shall be taken only on oath or affirmation administered by the Hearing Officer or the court reporter.~~
- A.C. ~~A written medical report bearing the signature of the Medical Witness shall be admissible in evidence as the author's direct testimony, provided that the adverse Party has had the opportunity to cross-examine the witness, or to depose the witness and have the deposition transcript admitted into evidence.~~
- D. ~~Each Party shall have the rights to call and examine witnesses; to introduce exhibits, including reports and depositions of medical witnesses; to cross-examine opposing witnesses on any matter relevant to the issues even though that matter was not covered in the direct examination; to impeach any witness regardless of which Party first called the witness to testify; and to rebut adverse evidence. If an Applicant does not testify by direct examination, OCERS may call and examine the Applicant under cross-examination.~~
- E. ~~The Hearing need not be conducted according to technical rules relating to evidence and witnesses. Any relevant evidence shall be admitted if it is the sort of evidence on which reasonable persons are accustomed to rely in the conduct of serious affairs regardless of the existence of any common law or statutory rule which might make improper the admission of such evidence over objection in civil actions. The rules of privilege shall be effective to the extent that they are otherwise required by statute to be recognized at the Hearing. Irrelevant and unduly repetitious evidence shall be excluded.~~
- F. ~~Hearsay evidence may be used for the express purpose of supplementing or explaining other evidence but shall not be sufficient by itself to support a finding unless it would be admissible over objection in civil actions. This section shall not be applicable to written medical reports received into evidence pursuant to Rule 10.C. Every Hearing shall proceed as though each Party had made a standing objection to all inadmissible hearsay at the commencement of the Hearing.~~

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G. The record shall be closed to new evidence at the conclusion of the final day of Hearing. However, if subsequent to the close of the Hearing, a Party discovers or obtains new evidence that is relevant and not repetitive, that Party may file that evidence and request that the Hearing Officer include it in the Administrative Record. The Hearing Officer may require the Parties to provide declarations and argument about inclusion of the new evidence. If, after showing of good cause as defined under Rule 10.I, the Hearing Officer allows inclusion of the new evidence, the opposing Party will be provided an opportunity to submit rebuttal evidence in accordance with Rule 10.I.

H. The court reporter shall file the transcript of the Hearing within 30 days of the final day of the Hearing.

B.I. Late Submission of Documentary Evidence: ~~Submission of.~~ No party may submit a medical report or other documentary evidence ~~after a Party files his, her or,~~ nor shall any Party call a witness not listed in its Pre-Hearing Statement ~~shall be allowed only on a showing of Good Cause except for purposes of impeachment, unless it demonstrates good cause.~~ For purposes of this Rule, “~~Good Cause~~good cause” means relevant evidence that, in the exercise of reasonable diligence, could not have been previously produced. The Party requesting submission of such evidence shall ~~address~~file a written request prior to the Hearing Officer, or if unable to do so in the exercise of reasonable diligence, shall make an oral request at the Haring. The ~~written~~ request shall state the reason the evidence was not timely produced. After providing a reasonable opportunity for each adverse ~~party~~Party to be heard, the Hearing Officer shall rule on such a request. If the evidence is allowed to be admitted into evidence, the Parties shall have the right to a continuance to engage in further discovery, obtain rebuttal medical evidence, or depose or cross-examine the Medical Witness.

J. Use of Interpreter Services.

1. If an Applicant or witness does not speak or understand English sufficiently to participate in the proceedings or provide testimony, an interpreter certified to provide interpretation services in administrative hearings shall be provided to that Applicant or witness at OCERS’s expense. Notice that an Applicant or witness requires interpreting services shall be given to OCERS at the Pre-Hearing Scheduling Conference or be included in the Party’s Pre-Hearing Statement. If a Party fails to provide such notice, then the witness may not be called unless good cause is shown, as set forth Rule 10.I.
2. All interpreters must be certified to provide interpreting services in administrative hearings pursuant to Government Code Section 11435.30. The interpreter may not have had any involvement in the issues of the case prior to the Administrative Hearing.

If an Applicant objects to the interpreter provided by OCERS, the Applicant may supply her/her own interpreter, provided that the interpreter is certified under Government Code Section 11435.30. However, time for an Applicant to find and hire an interpreter shall not be considered good cause to continue the Hearing. OCERS will pay the chosen interpreter the same

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amount OCERS would have paid an interpreter hired directly by OCERS. 13-
Oral Testimony of Expert and Non-Expert Witnesses

- ~~A. **Hearings:** Oral testimony shall be taken as prescribed under Rule 15(a).~~
- ~~B. **Depositions:** Witness depositions may be taken by either Party before a certified shorthand reporter and shall be taken under oath or affirmation. The Party taking the deposition shall pay all associated costs. If any Party offers any portion of any deposition testimony into evidence at the Hearing, that Party shall provide a full copy of the deposition transcript to each adverse Party and the Hearing Officer free of charge.~~
- ~~A. **Subpoenas and Related Fees/Costs:**~~
 - ~~1. Any Party may request a subpoena for the personal appearance of a witness at the time of the Hearing or at a deposition. The request must be in writing and addressed to the Member Services Director. OCERS will prepare the subpoena, but the requesting Party shall be obligated to serve the subpoena and pay all associated witness fees and costs of service. The Party requesting oral testimony of an expert witness shall in all cases be responsible for any expert witness fees.~~
 - ~~2. Any Party may request a subpoena for the production of documents. The request must be in writing and addressed to the Member Services Director. OCERS will prepare the subpoena, but the requesting party shall be obligated to serve the subpoena and pay all associated costs of service and production.~~
 - ~~3.1. Any fee disputes between a witness and the requesting Party is independent from any proceeding between the Applicant and OCERS. Those fee disputes shall be resolved by the requesting Party and the witness in the California courts, not in this forum. The Hearing Officer has no authority or jurisdiction to hear evidence about, or decide any such dispute.~~
 - 3. **14**The Applicant shall be responsible for any amounts charged by the interpreter that are over the amount OCERS would have paid to an interpreter hired directly by OCERS. Fee disputes between the interpreter and the Applicant shall not be resolved in this forum, and the Hearing Officer shall not have authority to resolve any fee disputes between interpreters and the Parties.

Rule 11. Resolution of Disputes about Depositions and Conduct of Hearings

The Hearing Officer shall resolve disputes about depositions and conduct of the Hearing. ~~If not made at a Hearing, a~~ request for resolution of a dispute shall be made in writing ~~person~~ at a Pre-Hearing Scheduling Conference, at the Hearing, or may be filed and may be supported by declarations, a ~~copy of the deposition or Hearing transcript,~~ a memorandum of points and authorities and a proposed resolution. The adverse Party ~~involved~~ shall have ten file its response within (10) days ~~after receipt of such a request in which to respond.~~ Declarations, a copy of the deposition or Hearing transcript, a memorandum of points and authorities and a proposed resolution may also accompany the response. The Hearing Officer may convene a conference (in person or by telephone) to hear the dispute and shall ~~notify the Parties and the witness(es)~~

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involved of the Hearing Officer's file its resolution of the dispute within thirty (30) days of the Hearing Officer's receipt of the adverse Party's response to the request for resolution.

15. Conduct of Hearings

~~C. Oral evidence shall be taken only on oath or affirmation administered by the Hearing Officer or the shorthand reporter.~~

- ~~1. If an Applicant or witness does not speak or understand English sufficiently to participate in the proceedings or provide testimony, an interpreter certified to provide interpretation services in administrative hearings shall be provided to that Applicant or witness at OCERS' expense. An Applicant or witness who requires interpreting services shall provide OCERS with reasonable notice of the need for an interpreter and the language the Applicant or witness will use during the proceedings so that OCERS has sufficient time to locate and contract with an interpreter.~~
- ~~2. The Hearing Officer may continue or reschedule a Hearing so that the Applicant or witness requesting an interpreter can be accommodated.~~
- ~~3. All interpreters in OCERS' Hearings shall be certified to provide interpreting services in administrative hearings pursuant to Gov. Code § 11435.30. The interpreter shall not have had any involvement in the issues of the case prior to the Hearing.~~
- ~~4. If an Applicant or witness objects to the interpreter provided by OCERS and wishes to locate his or her own interpreter certified under Gov. Code § 11435.30, the Applicant or witness shall provide OCERS with contact information for his or her chosen interpreter. OCERS will pay the chosen interpreter the same amount OCERS would have paid an interpreter hired directly by OCERS. The Applicant or witness shall be responsible for any amounts charged by the interpreter that are over the amount OCERS would have paid to an interpreter hired directly by OCERS. Fee disputes between the interpreter and the Applicant or witness shall not be resolved in this forum, and the Hearing Officer shall have not authority to resolve any fee disputes between interpreters and the Parties.~~

~~D. Each Party shall have these rights:~~

~~E.A. Subject to paragraph (2) of this subsection (B) of this Rule, to call and examine witnesses; to introduce exhibits, including reports and depositions of medical witnesses; to cross-examine opposing witnesses on any matter relevant to the issues even though that matter was not covered in the direct examination; to impeach any witness regardless of which Party first called the witness to testify; and to rebut adverse evidence. If an Applicant does not testify by direct examination, OCERS may call and examine the Applicant under cross-examination.~~

- ~~1. Any witness a Party did not list in his/her Pre-Hearing Statement shall not be called to testify unless each adverse Party has the right to a continuance to obtain rebuttal evidence and/or to cross-examine the unlisted witness. The Party who originally called the unlisted witness to~~

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testify shall bear the responsibility of ensuring the unlisted witness's attendance at each further hearing set for that witness's cross-examination.

- ~~F. The Hearing need not be conducted according to technical rules relating to evidence and witnesses. Any relevant evidence shall be admitted if it is the sort of evidence on which responsible persons are accustomed to rely in the conduct of serious affairs regardless of the existence of any common law or statutory rule which might make improper the admission of such evidence over objection in civil actions. The rules of privilege shall be effective to the extent that they are otherwise required by statute to be recognized at the Hearing. Irrelevant and unduly repetitious evidence shall be excluded.~~
- ~~G. Hearsay evidence may be used for the express purpose of supplementing or explaining other evidence but shall not be sufficient by itself to support a finding unless it would be admissible over objection in civil actions. Every Hearing shall proceed as though each Party had made a standing objection to all inadmissible hearsay at the commencement of the Hearing. This section shall not be applicable to written medical reports received into evidence pursuant to Rule 12.~~
- ~~H. Each Party shall have the right to submit oral or written argument, as determined by the Hearing Officer. A waiver of argument at the administrative Hearing shall not constitute a waiver of argument on appeal before the Board.~~
- ~~I. The record shall be closed to new evidence at the conclusion of the final day of Hearing unless each Party stipulates to leave the record open. However, if subsequent to the close of the Hearing, a Party discovers or obtains new evidence that is relevant and not repetitive, that Party may submit that evidence to the Hearing Officer to be considered for inclusion in the Administrative Record. The Hearing Officer may require the Parties to provide declarations and argument about inclusion of the new evidence. If, after showing of Good Cause under Rule 12(b), the Hearing Officer allows inclusion of the new evidence, the opposing Party will be provided an opportunity to submit rebuttal evidence in accordance with Rule 12(b).~~

16. Findings of Fact, Conclusions of Law, and the Hearing Officer's Recommended Decision

The Hearing Officer shall serve Rule 12. Hearing Officer's Findings of Fact and Recommended Decision

- A. **Time for Filing.** The Hearing Officer shall file his/her Proposed Findings of Fact, ~~Conclusions of Law,~~ and Recommended Decision ~~on all Parties or their counsel. Service shall be made within sixty (60) days of either (i) the date the Hearing Officer receives the last that the Petitioner's reply brief or (ii) the is due or, if the Parties waived closing briefs, within 60 days of the date the transcript of the Hearing Officer deems the matter closed is filed.~~

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17. Objections to, and Responses to Objections to, the Hearing Officer's Content of Proposed Findings of Fact, Conclusions of Law, and Recommended Decision

Any Party shall have thirty (30) days after service of the Proposed Findings of Fact, Conclusions of Law, and Recommended Decision, to submit written objections and/or written requests for clarification to the Hearing Officer and serve such objections and/or requests for clarification on each other Party. Each adverse Party shall then have twenty (20) days after service of the written objections and/or written requests for clarification to serve a response to them. The objections and/or requests for clarification and any response to those objections and/or requests for clarification shall be added to the Administrative Record to be considered by the Board. Within thirty (30) days after the later of the date that Hearing Officer receives the objections and/or requests for clarification or an adverse party's response to such objections and/or requests for clarification, the Hearing Officer may:

- A. Affirm the findings, conclusions, and recommendations as originally submitted, or
- B. Make such changes the Hearing Officer deems appropriate in light of the evidence, the objections or requests for clarification submitted by the Parties, and the responses.

18. Content of, The Hearing Officer's Proposed Findings of Fact and Recommended Decision

- B. The Hearing Officer's Proposed Findings of Fact, Conclusions of Law and Recommended Decision shall include a summary of the following: (1) issues raised by the parties; (2) the testimony; (3) the exhibits offered by the parties, both those received into evidence and those not received; (4) a factual discussion of matters on which the Hearing Officer relied; (5) conclusions of law with citations to legal authority; and (6) recommended action. The summary of the testimony, plus all other evidence received, shall be sufficient to satisfy the requirements of Government Code Section 31534(b).
- C. 19-Objections. Any Party may file objections to the Hearing Officer's Proposed Findings of Fact and Recommended Decision within 20 days from the date that the Hearing Officer files his/her Proposed Findings of Fact and Recommended Decision.

Rule 13. Hearing and Action by the Board

- A. The Board's staff Clerk shall refer to the Board for its consideration the Hearing Officer's Proposed Findings of Fact, Conclusions of Law and Recommended Decision, and any related objections.
- B. The Clerk shall provide written notice of the time and date of the regular meeting where the matter will be placed on the Board's agenda for action. The Parties will have the opportunity to be heard at the Board meeting subject to appropriate time limitations.

~~and/or requests for clarification and any responses to those objections and/or requests for clarification.~~

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~~A.C.~~ After reviewing the foregoing documents, pursuant to Government Code ~~§Section~~ 31534, the Board may:

1. Approve and adopt the proposed findings, ~~conclusions~~ and ~~recommendation~~the recommendations of the Hearing Officer; or
2. Require a transcript or summary of all ~~Hearing~~ testimony, plus all other evidence received by the Hearing Officer. On receipt thereof, the Board shall take such action as in its opinion is indicated by such evidence; or
3. Refer the matter back, with or without instructions, to the Hearing Officer for further proceedings; or
4. Set the matter for hearing before itself. At such hearing, the Board shall hear and decide the matter *de novo*.

~~**20. Oral Argument Before the Board Regarding Objections to a The Hearing Officer's Proposed Findings of Fact and Recommended Decision**~~

~~B.A.~~ The Parties shall be provided written notice of the time and date of the regular meeting where the matter will be placed on the Board's agenda for action. The Parties will have the opportunity to be heard at the Board meeting subject to appropriate time limitations.

~~**21. Board's Decision After its Review of the Record**~~

~~C.D.~~ sufficient to satisfy the requirements of Government Code Section 31534(b) and Rule 13.C.2. In any case where the Board makes a decision based on a transcript or summary of all ~~Hearing~~ testimony, plus other evidence received by the Hearing Officer, or where the Board sets the matter for Hearing before itself, the Board may approve and adopt the Proposed Findings, ~~Conclusions~~ of ~~Law~~Fact and Recommended Decision of the Hearing Officer; otherwise, the Board shall ~~direct the prevailing Party to prepare Proposed~~its Findings of Fact, ~~Conclusions of Law~~ and ~~Recommended Decision consistent, either itself or through direction to staff~~ with its ~~tentative decision. The Proposed Findings shall then be served on the unsuccessful Party who shall have ten (10) days after such service to serve and file written objections to the Board. The Board shall then consider such written objections, if any, and then adopt its final decision as it deems appropriate~~approval.

~~**22**~~**Rule 14. Alteration of Time Requirements**

- A. ~~Nothing~~The Hearing Officer may amend or continue the time periods set forth in these rules only for good cause shown.
- B. Good cause for continuing a time period set forth in these Rules or established by the Hearing Officer shall be ~~construed~~only:

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1. the discovery of relevant evidence that, in the exercise of reasonable diligence, could not have been previously produced and the need to prevent the Parties from stipulating/engage in further discovery, obtain rebuttal medical evidence, or depose or cross-examine the Medical Witness, as set forth under Rule 10.I; or
2. the illness or disability of an Applicant, witness, attorney, or the Hearing Officer which was unknown to different intervals than those prescribed in these Rules. The Hearing Officer may, for good cause shown after giving both parties an opportunity the person at the time of the Pre-Hearing Scheduling Conference (or other time at which the deadline was set) which makes it impossible for the person to be heard, shorten or lengthen the times specified above as he/she deems participate in the Administrative Hearing process. Relief shall be granted only if the person raises the request as soon as practicable, and the Hearing Officer shall consider a failure to timely seek relief a waiver by the person.

A-C. Any continuance granted under this Rule shall be for as short a period as necessary to allow the person to participate in the process.

D. 23 If an illness or disability affects an attorney who will not be able to participate in the process within a reasonably short period of time, then the continuance shall only be for such time as is necessary to secure substitute counsel.

E. If the illness or disability affects the Hearing Officer, and the Hearing Officer cannot proceed within the time period set forth in Rule 15, below, the Hearing Officer shall recuse him/herself and a new Hearing Officer shall be appointed.

F. If good cause exists, the Hearing Officer may order a Scheduling Conference in order to re-set the Hearing Date.

Rule 15. Dismissal Without Prejudice for Failure to Pursue the Administrative Hearing

Except as otherwise provided, if, as a result of an Applicant's failure to comply with any of these Rules ~~and/or with any request made by either the OCERS' Disability Section or Member Services staff,~~ the Applicant's ~~request~~Request for an Administrative Hearing (or Board referral) is not heard within one year after ~~receipt of the Applicant's request~~Applicant files a Request for Administrative Hearing, ~~(or the Board's referral of a case to a Hearing Officer, the case shall be dismissed without prejudice by the Board.~~

24. Service of Documents

~~Unless otherwise agreed to by the Hearing Officer and Parties in writing, service of documents provided for in these Rules may be made by first class mail, postage pre-paid, or by personal delivery. If documents are sent by first class mail, the postmark date shall be deemed the date of service. If the Hearing Officer and Parties do agree in writing to service by facsimile transmission and/or electronic mail, the service date for any documents so delivered will be the date shown in a delivery receipt generated by the facsimile machine or electronic mail program.~~



OCERS Board Policy
Disability and Non-Disability Benefits
Adjudication Policy and
Administrative Hearing Procedures**Rules**

4. Policy Review

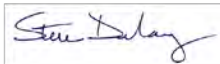
~~The Board will review this policy at least every three (3) years to ensure that it remains relevant and appropriate.~~

5. Policy History

~~This policy was adopted by the Board of Retirement on February 19, 2002. It was amended on August 30, 2004, June 18, 2007, May 19, 2008, June 18, 2012 and December 14, 2015.~~

Secretary's Certificate

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



12/14/15

~~), the Hearing Officer shall dismiss the Administrative Hearing and the initial determination or Committee recommendation shall become final as if no Request for Administrative Hearing had been filed. Steve Delaney Secretary of the Board~~

Date



OCERS Board Policy Disability and Non-Disability Benefits Adjudication Policy and Administrative Hearing Rules

1. Intent

The Board of Retirement (“Board”) of the Orange County Employees Retirement System (“OCERS”) intends that this Disability and Non-Disability Benefits Adjudication Policy and Administrative Hearing Rules (“policy”) shall apply to and govern the process by which the Board:

- a. Makes determinations on disability retirement applications (including, but not limited to determinations of permanent incapacity, whether the incapacity arose out of and in the course of employment, and the effective date);
- b. Resolves disputes over retirement benefits (including but not limited to disputes regarding final compensation); and
- c. Makes any final administrative order or decision made as the result of a proceeding in which by law a hearing is required to be given. *See* Cal. Civ Proc. Code § 1094.5. Any person who is entitled to an administrative hearing who does not request one under this policy shall be deemed to have waived his/her right to a hearing. *See* Cal. Civ Proc. Code § 1094.5.

2. Definitions

The following terms shall have the meanings set out in this section.

Administrative Hearing: The process described in this policy (including an Expedited Administrative Review), which is the exclusive means by which a Party may seek an administrative review of a determination on a disability retirement application, a resolution of a dispute over retirement benefits, or any final administrative order or decision made as the result of a proceeding in which by law a hearing is required to be given. An Administrative Hearing shall be a hearing de novo, conducted as if the original recommendation or determination had not taken place. This means the Hearing Officer or other fact finding body will consider anew all of the evidence submitted without relying on the past findings of a court, the Committee, the Board or other fact finding body. A Party is entitled to request an Administrative Hearing within the time periods set forth in this policy, and failure to make a timely request shall result in a waiver of the Party’s rights to contest the final determination by OCERS. *See* Cal. Civ. Proc. Code § 1094.5.

Administrative Record: For purposes of an Administrative Hearing, the Administrative Record includes any documents submitted by an Applicant or on behalf of an Applicant, documents prepared by OCERS or by independent sources that are received by OCERS, or any other documents that are relevant to deciding the issue of an Applicant’s request to receive or modify a benefit. A Party may object to the admission of items into evidence or seek to admit additional information into evidence as set forth in these Rules, and the Hearing Officer shall decide the admissibility of all evidence.

For purposes of any proceeding following an Administrative Hearing, the Administrative Record also includes written correspondence, Party Pre-Hearing Statements, the Hearing Officer’s Proposed Findings of Fact and Recommended Decision, Party objections, hearing transcripts, and other documents that are relevant to deciding the issue of an Applicant’s request to receive or modify a benefit.



OCERS Board Policy Disability and Non-Disability Benefits Adjudication Policy and Administrative Hearing Rules

Applicant: Any member of OCERS, or a person or other entity on behalf of a member of OCERS (including but not limited to the member’s surviving spouse), or any person who claims an interest in the pension or allowance of an OCERS member, who files an application with OCERS to request or modify a benefit that OCERS may grant pursuant to the CERL.

Application: The paper(s) initially filed with OCERS by or on behalf of an Applicant, and/or any amended paper(s) filed with OCERS by or on behalf of an Applicant after the initial filing, to request or modify a benefit provided by OCERS.

Board: The Board of Retirement of OCERS.

Clerk, Clerk to the Hearing Officers. A person or persons designated by the OCERS General Counsel or his/her designee to fulfill the duties of providing administrative assistance to the Hearing Officers appointed by OCERS under this policy.

Days: All days are calendar days.

Disability Committee, Committee: A committee of the Board, chartered by the Board to review Applications for disability retirement.

Expedited Administrative Review: An alternative administrative review process, set forth in Rule 6 of the Hearing Rules, under which an Applicant may obtain a more speedy resolution of his/her Administrative Hearing.

Hearing: Presentation of sworn testimony, other evidence, and legal argument before a Hearing Officer on the merits of an Application or benefit determination.

Hearing Officer: A referee appointed pursuant to Government Code §31533, that is either (i) a current member of the California State Bar on the approved OCERS’ Hearing Officer panel, as selected under the OCERS Hearing Officer Selection and Retention Policy, or (ii) a member of the Board.

Hearing Rules, Rules: The “Orange County Employees Retirement System Administrative Hearing Rules,” attached as an appendix to and made part of this policy.

Medical Witness: A person who by profession is a physician, surgeon, psychologist, optometrist, dentist, podiatrist, or chiropractic practitioner licensed by the State of California or by such other jurisdiction of the United States in which such person maintains his or her regular practice in good standing.

Party or Parties: OCERS, any Applicant who seeks an Administrative Hearing under this policy, the member’s employer/plan sponsor, and any other person who may be affected by the Board’s decision and participates in the Administrative Hearing.

Petitioner: The Party filing a Request for Administrative Hearing. (In most instances, the Applicant is also the Petitioner.)

Plan Sponsor: The employer who employed the member whose benefits are at issue in any given matter. The Plan Sponsor is a Party to an Administrative Hearing but does not need to participate in an Administrative Hearing.

Pre-Hearing Statements: Statements filed by the Parties pursuant to Rule 8 of the Hearing Rules.

OCERS Board Policy Disability and Non-Disability Benefits Adjudication Policy and Administrative Hearing Rules

Proposed Findings of Fact and Recommended Decision: The recommendation of the Hearing Officer to the Board, as set forth in Rule 12 of the Hearing Rules.

Request for Administrative Hearing: The document filed by the Petitioner to appeal a decision of the Committee or OCERS Staff and initiate the Administrative Hearing.

Respondent: OCERS, provided that the Plan Sponsor or the Applicant may join as the Respondent, as appropriate.

Rule: A hearing rule included in the Hearing Rules.

3. Disability Determination Process

For determinations on Applications for disability retirement:

- A. OCERS staff will investigate all disability retirement Applications to determine whether the Applicant is permanently incapacitated from the performance of his or her usual duties, whether the incapacity arose out of and in the course of employment, and the appropriate effective date of any disability retirement allowance. In undertaking this investigation, staff will have discretion, based on staff's review of the Application including the Applicant's treating physicians' medical reports, to determine whether or not to seek further medical examination of the Applicant, expert medical advice or expert review of Applicant's medical records. Upon completion of the investigation, OCERS staff will make a recommendation to the Committee regarding permanent incapacity, service connection, and effective date.
- B. The Committee will review the disability Application at a duly-noticed meeting of the Committee. OCERS staff will give Applicant (or his or her attorney) notice of the date of the Committee meeting and the Applicant (or his or her attorney) will have the opportunity to be heard by the Committee.
- C. After the Committee makes a recommendation, OCERS staff will notify the Applicant (and his or her attorney) of the Committee's recommendation and provide the Applicant with instructions regarding how the Applicant can appeal the determination by filing a Request for Administrative Hearing.
- D. In the event that the Committee recommends that any part of the Application be denied, the Applicant will have 90 days from the date of the notice required by 3.C., above, to file a Request for Administrative Hearing with the Clerk, as set forth in the Hearing Rules. In the event that the Committee recommends the Application be granted in full, any person aggrieved by the recommendation, including the Plan Sponsor, will have 10 days from the date of the notice required by 3.C., above, to make a written Request for Administrative Hearing as set forth in the Hearing Rules.
- E. If no Request for Administrative Hearing is filed within the time limits set forth in 3.D., above, the matter shall be placed on the consent agenda at the next regularly scheduled meeting of the Board.

OCERS Board Policy Disability and Non-Disability Benefits Adjudication Policy and Administrative Hearing Rules

4. Non-Disability Benefit Determination Process

For all other benefit determinations:

- A. OCERS' staff will provide an initial benefit determination (e.g., determinations regarding amount of the benefit, effective date, reciprocity determinations) in writing at the request of the Applicant. The initial determination shall include citation of any authority relied upon by staff in making its determination. At the time OCERS issues its initial determination, OCERS staff will also provide the Applicant with instructions regarding how the Applicant can appeal the determination by filing a Request for Administrative Hearing.
- B. The Applicant will have 90 days from the date of the notice provided in 4.A., above, to file a Request for Administrative Hearing. If no Request for Administrative Hearing is filed within 90 days, OCERS staff's initial determination shall be final and deemed the decision of the Board.

5. Appeals of Disability and Non-Disability Benefit Determinations

A Party has a right to an Administrative Hearing only if the Party files a request for Administrative Hearing within the time frames set forth in Sections 3 or 4, above. An Administrative Hearing shall proceed according to the Hearing Rules.

6. Board Determination of Disability and Non-Disability Benefits

- A. **Consent Agenda.** When no appeal has been timely filed on an Application for a disability retirement, the Board shall consider the Committee's recommendation on a consent agenda. Any member of the Board may object to an Application on the consent agenda except that the alternate seventh member (and not the seventh member) of the Board may object to any item relating to a member of the same service as the alternate seventh member. In addition, if the alternate seventh member is present, he or she shall be considered to have voted to approve any item adopted on the consent agenda relating to a member of the same service.
- B. **Absence of Unanimous Consent for Disability Applications Recommended for Approval By the Committee; Administrative Hearing Before the Board.** If any Board member objects to the approval of an Application for disability retirement that has been placed on the consent agenda, and the matter has not been the subject of an Administrative Hearing, the Board shall either (i) adopt the recommendation of the Committee; or (ii) conduct its own Administrative Hearing on the matter. The Board's Administrative Hearing shall follow the Hearing Rules, as closely as practicable, with the Board itself acting as the Hearing Officer.
- C. **Matters Referred to the Board After an Administrative Hearing.** Following an Administrative Hearing and the Board's receipt of the Hearing Officer's Proposed Findings of Fact and Recommended Decision, the Board shall hear the matter at a duly-noticed meeting of the Board as set forth in the Hearing Rules. The Parties and their attorneys will be given notice of the date the Board will consider the Hearing Officer's recommendation and will be given the opportunity to be



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heard by the Board. Upon action by the Board, the Administrative Hearing process will be final for all purposes, and any party aggrieved by the Board’s decision may petition the Superior Court for review as provided by law.

7. Closed Sessions for Board Determination of Disability and Non-Disability Benefits

Except for matters on the Board’s consent agenda, the Board shall adjourn to a closed session, Cal. Gov’t Code § 54957(b), to discuss the Application of any member for disability or other benefit.

- A. **Closed Session With the Parties Present.** The Board shall conduct any discussion of an Application, including instances where the Board convenes an Administrative Hearing before itself, as a closed session. Attendance at the closed session will be limited to 1) the Parties; 2) counsel for the Parties; 3) any OCERS disability staff members and/or attorneys acting as advocates for the staff initial determination or Committee recommendation; 4) any witnesses called to present testimony before the Board; 5) OCERS staff necessary to facilitate the hearing (including the Clerk of the Board and IT Staff); 6) the CEO; and 7) the OCERS General Counsel (or his/her designee) to provide legal advice to the Board.
- B. **Closed Session Without Parties.** Following the Board’s hearing of a matter in a closed session with the Parties present, the Board may adjourn to a closed session including only the CEO and the OCERS General Counsel (or his/her designee) to provide legal advice to the Board in order to consider the merits of the case and the Board’s legal obligations.

8. Policy Review

The Board will review this policy at least every three (3) years to ensure that it remains relevant and appropriate.

9. Policy History

This policy was adopted by the Board of Retirement on February 19, 2002. It was amended most recently on _____.

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 Date
Secretary of the Board

**OCERS Board Policy
Disability and Non-Disability Benefits
Adjudication Policy and
Administrative Hearing Rules**

Appendix - Administrative Hearing Rules

Rule 1. Definitions

All capitalized terms contained within these Hearing Rules shall have the meaning set forth in Section 2 of the OCERS Disability and Non-Disability Benefits Adjudication Policy and Administrative Hearing Rules.

Rule 2. Filing of Documents

A. Administrative Hearing Filing Procedures

1. OCERS staff shall promulgate, and may from time to time amend, the “Administrative Hearing Filing Procedures” to set forth the procedures by which the Clerk to the Hearing Officers shall accept filing of documents in Administrative Hearings and service of documents on Parties.
2. The Administrative Hearing Filing Procedures may include forms that parties may be permitted or required to use during the course of an Administrative Hearing.
3. The Clerk shall provide the Petitioner with a copy of the Administrative Hearing Filing Procedures upon Petitioner’s filing of a Request for Administrative Hearing.

B. Filing of Documents

1. All documents required or permitted to be filed by any Party during the course of the Administrative Hearing shall be filed with the Clerk.
2. An Applicant may file documents in person, by US Mail, or electronically, in conformance the Administrative Hearing Filing Procedures. Any other Party and the Hearing Officer, shall file all documents electronically, in conformance with the Administrative Hearing Filing Procedures.
3. Documents filed by US Mail shall be considered filed on the following dates:
 - i. If mailed from within Orange County, on the date post-marked on the envelope containing the documents;
 - ii. If mailed within the State of California, five (5) days prior to the date post-marked on the envelope containing the documents;
 - iii. If mailed outside of the State of California, ten (10) days prior to the date post-marked on the envelope containing the documents.
4. Documents filed in person shall be considered filed on the day received by OCERS.
5. Documents filed electronically shall be considered filed on the date electronically sent.

OCERS Board Policy Disability and Non-Disability Benefits Adjudication Policy and Administrative Hearing Rules

C. Service of Documents

1. Within one (1) business day of any document being filed, the Clerk shall serve all documents that have been filed in any Administrative Hearing on all Parties and the Hearing Officer.
2. The Clerk shall serve an Applicant by US Mail, unless the Applicant consents to be served electronically, in conformance with the Administrative Filing Procedures. The Clerk shall serve any other Party and the Hearing Officer electronically, in conformance with the Administrative Hearing Filing Procedures.

Rule 3. Request for a Hearing

- A. **Request for Hearing.** A written Request for Administrative Hearing must be filed with the Clerk within the time frame set forth in Sections 3 and 4 of the OCERS Disability and Non-Disability Benefits Adjudication Policy. The Request for Administrative Hearing shall include a short and plain statement of the grounds for the appeal of the recommendation of the Committee or the OCERS staff.
- B. **Referral from the Board.** In the event that the Board refers a matter to a Hearing Officer for an Administrative Hearing, the Applicant shall be considered the Petitioner and the referral from the Board shall be considered the Request for Administrative Hearing.
- C. **Burden of Proof.** The Applicant will have the burden of proof to establish his/her right to the benefit sought.
- D. **Scope of Hearing.** A disability retirement Administrative Hearing will address the issues of disability, service connection, and effective date. Except as set forth in these Rules, the Hearing Officer shall not make a finding or recommendation on any issue that was not raised in the Applicant's original application to OCERS (either for disability or non-disability benefits). If the Applicant seeks to raise new issues, s/he will be required to file a new application.

Rule 4. Assignment of Hearing Officers

- A. **Assignment of Hearing Officer.** Hearing Officers are selected and placed on the panel pursuant to OCERS' Hearing Officer Selection and Retention Policy. As Administrative Hearings are requested, the Clerk shall randomly assign the Hearing Officer, subject to the procedures for challenge under Rule 4.C, below.
- B. **Notice to Parties of Hearing Officer Assignment.** Within fourteen (14) days after the Petitioner files a Request for Administrative Hearing, the Clerk will file a notice indicating the name and address of the Hearing Officer to whom the matter has been assigned.
- C. **Removal of Hearing Officer.** A Party shall be entitled to have a Hearing Officer replaced by another Hearing Officer in accordance with the provisions of this Rule.
 1. An Applicant is entitled to one automatic challenge to the assignment of the Hearing Officer in accordance with the provisions of this section. The challenge must be filed with

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the Clerk within fourteen (14) days after the date of the notice assigning the Hearing Officer. The Clerk shall then re-assign the case to another Hearing Officer.

2. **Removal for Cause:** Any Party may challenge a Hearing Officer for cause by filing a request, with supporting declarations made under penalty of perjury under the laws of the State of California and any other evidence the Party is relying on. Any opposing Party will have fourteen (14) days to file a response. The Clerk shall then randomly assign the request to another Hearing Officer, who must decide the issue within thirty (30) days. If the Hearing Officer grants the request, the Clerk shall re-assign the case to a Hearing Officer other than the Hearing Officer who heard the request for re-assignment. Cause for removal shall be limited to bias against a Party or counsel based on a personal or financial relationship (other than the Hearing Officer's contract with OCERS) that would make a reasonable person doubt the Hearing Officer's ability to render an impartial decision.
 3. **Removal Due to Unforeseen Circumstances:** If the service of a Hearing Officer is discontinued due to unforeseen circumstances, including but not limited to death or illness, or termination with or without cause, the Applicant is entitled to a peremptory challenge to the new Hearing Officer in accordance with subsection (1) of this Rule.
- D. **Notice of Assignment to Hearing Officer.** After the expiration of the time period in Rule 4.C, above, the Clerk shall file a Notice to the Hearing Officer of his/her assignment, providing the name, address and phone number of the Applicant, Applicant's counsel if any, and counsel representing OCERS.
- E. **Recusal of Hearing Officer.** If at any time the Hearing Officer determines that there is cause to remove him/her, s/he shall immediately file with the Clerk a statement of recusal, and the Clerk shall reassign the case pursuant to Rule 4.A.

Rule 5. Preparation of Administrative Record

Within 45 days of the filing of a Request for Administrative Hearing, OCERS shall assemble and file the initial Administrative Record. A Party may object to the admission of items into evidence or seek to admit additional information into evidence as set forth in these Rules, and the Hearing Officer shall decide the admissibility of all evidence.

Rule 6. Alternative Expedited Administrative Review

- A. **Provisions for Alternative Expedited Administrative Review.** Expedited Administrative Review is an irrevocable waiver of the Applicant's right to the process described in Rules 7 through 11. The goal of the Alternative Expedited Administrative Review process is to complete the Administrative Hearing in less than six months and based only on the Administrative Record and written arguments, without in-person testimony or argument.
- B. **Availability of Expedited Administrative Review.** An Expedited Administrative Review shall only be available in those cases that OCERS determines are appropriate for an Expedited Administrative Review. If OCERS determines that the matter is appropriate for Expedited Administrative Review,

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the Applicant will have the choice of whether or not to opt for the Expedited Administrative Review.

- C. **Waiver and Election.** In the event that OCERS determines that a matter is appropriate for Administrative Review, OCERS shall file a Notice of Right to Expedited Administrative Review which provides the Applicant notice of his or her rights and provides a Waiver of Rights and Election for Expedited Administrative Review (the “Waiver and Election”). The Applicant may file its Waiver and Election any time prior to or at the Pre-Hearing Scheduling Conference.
- D. **Timeline.** The Expedited Administrative Review shall be conducted according to the following timeline.
1. Within 30 days from the date the Applicant files the Waiver and Election (or within 30 days after the Administrative Record is filed, whichever is later), each party shall file any written evidence that it seeks to rely on in addition to the Administrative Record.
 2. Within 30 days from the date the Applicant files the Waiver and Election (or within 30 days after the Administrative Record is filed, whichever is later), each Party shall file a Statement of Issues of not more than five-pages which shall set forth the Party’s contentions.
 3. Within 90 days from the date the Applicant files the Waiver and Election (or within 30 days after the Administrative Record is filed, whichever is later), the Hearing Officer shall file its Proposed Findings of Fact and Recommended Decision, which shall conform to Rule 12.

Rule 7. Pre-Hearing Scheduling Conference

- A. The Clerk shall schedule a Pre-Hearing Scheduling Conference to be held within 30 days of the filing of the Administrative Record. The Clerk shall undertake its best efforts to schedule the Pre-Hearing Scheduling Conference at a time convenient to all Parties.
- B. The Pre-Hearing Scheduling Conference may be held telephonically. The Pre-Hearing Scheduling Conference will not be transcribed unless a Party files a request for a court reporter at least seven (7) days before the Pre-Hearing Scheduling Conference. If any Party requests a transcription, the Clerk shall arrange for a court reporter, but the requesting Party shall be liable for reimbursing OCERS for the costs.
- C. At the Pre-Hearing Scheduling Conference, the Hearing Officer shall advise the Applicant (whether or not the Applicant is the Petitioner) of the following:
1. The Applicant has the right to be represented by counsel;
 2. Any financial or personal interest that the Hearing Officer has in the case, other than the Hearing Officer’s contract with OCERS;
 3. The Hearing will be a hearing *de novo*, conducted as if the original recommendation or determination had not taken place. This means the Hearing Officer or other fact finding body will consider anew all of the evidence submitted, without relying on the past findings of a court, the Committee, the Board, OCERS staff, or other fact finding body;

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4. The Hearing Officer's purpose in the process is to find the facts relevant to the Applicant's request and provide an impartial recommendation to the Board;
 5. The Applicant has the burden of proof in establishing his or her right to the benefit s/he seeks;
 6. The Applicant must identify witnesses and other evidence when filing his/her Pre-Hearing Statement, and that failure to include in the Pre-Hearing Statement the witnesses and other evidence s/he intends to rely on could mean that evidence will be excluded unless the Applicant shows that s/he could not have discovered the information earlier through the exercise of reasonable diligence;
 7. The timelines required under these rules for filing documents and for the Administrative Hearing, and the result of a failure to meet those deadlines, including that the Applicant's case can be dismissed.
- D. At the Pre-Hearing Scheduling Conference, each Party shall:
1. Make a good faith effort to identify the witnesses, both expert and non-expert, that it intends to call;
 2. Ensure that that the witnesses it intends to call either speak and understand English or that the Party calling the witness is responsible for obtaining a translator for the witnesses;
 3. Indicate whether it will require an opposing party's Medical Witness to appear in person to be cross-examined at the Hearing;
 4. If possible, set mutually convenient dates for any depositions.
- E. At the Pre-Hearing Scheduling Conference, the Hearing Officer shall set the date for the Hearing.
1. The Hearing Officer shall confer with the Parties to determine a mutually agreeable date for the hearing ("Hearing Date"), but in all cases the Hearing Date shall be set for no later than six (6) months after the date of the Pre-Hearing Scheduling Conference. The hearing will be held within the time frame provided by Rule 15. OCERS, at its expense, shall arrange for a court reporter and a room for the Hearing.
 2. Each Party shall provide a good faith estimate of the amount of time it anticipates the Hearing will last. As much as practicable, the Hearing shall continue from day-to-day until complete, and the Hearing Officer shall schedule all dates to which s/he anticipates the Hearing will be continued until complete.
- F. After the Pre-Hearing Scheduling Conference, the Hearing Officer may continue the Hearing Date only upon a showing of good cause as set forth in Rule 14, below.

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Rule 8. Pre-Hearing Statements

- A. The Petitioner shall file a Pre-Hearing Statement no later than sixty (60) days prior to the Hearing Date.
- B. Respondent shall file a Pre-Hearing Statement no later than thirty (30) days prior to the Hearing Date.
- C. Any Party may file supplemental Pre-Hearing Statements no later than fourteen (14) days prior to the Hearing Date.
- D. The Pre-hearing Statements shall include the following:
 - 1. A statement of the issues and contentions of the Party, and a brief summary of the evidence to be presented;
 - 2. A list and copies of any expert's reports, depositions of any witnesses, and any other documentary evidence on which the Party will rely, if not already in the Administrative Record;
 - 3. The names, addresses and telephone numbers of any non-expert witnesses whose testimony the Party intends to present at the Hearing and a brief description of the content of that testimony.
 - 4. The names, addresses and phone numbers of any expert witnesses whom the Party intends to call for oral testimony at the Hearing and a synopsis of the expected testimony.
- E. If a Petitioner disputes the effective date of the disability retirement, the Petitioner shall raise the effective date as an issue and shall state Petitioner's contention in his/her Pre-Hearing Statement.
- F. If a Petitioner fails to timely file a Pre-Hearing Statement, the Clerk shall file an Order to Show Cause why the case should not be dismissed, and give the Petitioner five (5) days to respond. Unless the Petitioner shows good cause for the failure to timely file its Pre-Hearing Statement, the Hearing Officer shall dismiss the Administrative Hearing and the initial determination or Committee recommendation shall proceed as if no Request for Administrative Hearing had been filed. If the Petitioner shows good cause, the Hearing Officer may allow the Respondent additional time to file its Pre-Hearing Statement or may re-schedule the Hearing within the time requirements of Rule 15 and the Petitioner shall be liable to OCERS for any actual costs incurred as a result of the delay.

Rule 9. Depositions and Subpoenas

- A. **Depositions:** Witness depositions may be taken by either Party before a certified Court Reporter and shall be taken under oath or affirmation. The Party taking the deposition shall pay all associated costs. If any Party offers any portion of any deposition testimony into evidence at the Hearing, that Party shall provide a full copy of the deposition transcript to each adverse Party and the Hearing Officer free of charge.

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A. Subpoenas and Related Fees/Costs:

1. OCERS shall issue a subpoena for the personal appearance of a witness at the Hearing or at a deposition, or for the production of documents (subpoena *duces tecum*), in conformance with California Government Code Section 31535, upon the request of any Party filed at least seven (7) days before the date the subpoena is to be issued. The requesting Party shall be obligated to serve the subpoena and pay all associated witness fees and costs of service and production. The Party requesting oral testimony of an expert witness shall in all cases be responsible for any expert witness fees.
2. Any fee disputes between a witness and the requesting Party is independent from any proceeding between the Petitioner and OCERS. Those fee disputes shall be resolved by the requesting Party and the witness in the California courts, not in this forum. The Hearing Officer has no authority or jurisdiction to hear evidence about, or decide any such dispute.

Rule 10. Conduct of Hearings

- A. All Hearings shall be held at the OCERS office, 2223 East Wellington Avenue, Santa Ana, California.
- B. The Clerk shall arrange for a court reporter to be paid at OCERS's expense. Oral evidence shall be taken only on oath or affirmation administered by the Hearing Officer or the court reporter.
- C. A written medical report bearing the signature of the Medical Witness shall be admissible in evidence as the author's direct testimony, provided that the adverse Party has had the opportunity to cross-examine the witness, or to depose the witness and have the deposition transcript admitted into evidence.
- D. Each Party shall have the rights to call and examine witnesses; to introduce exhibits, including reports and depositions of medical witnesses; to cross-examine opposing witnesses on any matter relevant to the issues even though that matter was not covered in the direct examination; to impeach any witness regardless of which Party first called the witness to testify; and to rebut adverse evidence. If an Applicant does not testify by direct examination, OCERS may call and examine the Applicant under cross-examination.
- E. The Hearing need not be conducted according to technical rules relating to evidence and witnesses. Any relevant evidence shall be admitted if it is the sort of evidence on which reasonable persons are accustomed to rely in the conduct of serious affairs regardless of the existence of any common law or statutory rule which might make improper the admission of such evidence over objection in civil actions. The rules of privilege shall be effective to the extent that they are otherwise required by statute to be recognized at the Hearing. Irrelevant and unduly repetitious evidence shall be excluded.
- F. Hearsay evidence may be used for the express purpose of supplementing or explaining other evidence but shall not be sufficient by itself to support a finding unless it would be admissible over objection in civil actions. This section shall not be applicable to written medical reports received into evidence pursuant to Rule 10.C. Every Hearing shall proceed as though each Party had made a standing objection to all inadmissible hearsay at the commencement of the Hearing.

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- G. The record shall be closed to new evidence at the conclusion of the final day of Hearing. However, if subsequent to the close of the Hearing, a Party discovers or obtains new evidence that is relevant and not repetitive, that Party may file that evidence and request that the Hearing Officer include it in the Administrative Record. The Hearing Officer may require the Parties to provide declarations and argument about inclusion of the new evidence. If, after showing of good cause as defined under Rule 10.I, the Hearing Officer allows inclusion of the new evidence, the opposing Party will be provided an opportunity to submit rebuttal evidence in accordance with Rule 10.I.
- H. The court reporter shall file the transcript of the Hearing within 30 days of the final day of the Hearing.
- I. **Late Submission of Evidence.** No party may submit a medical report or other documentary evidence, nor shall any Party call a witness not listed in its Pre-Hearing Statement except for purposes of impeachment, unless it demonstrates good cause. For purposes of this Rule, “good cause” means relevant evidence that, in the exercise of reasonable diligence, could not have been previously produced. The Party requesting submission of such evidence shall file a written request prior to the Hearing, or if unable to do so in the exercise of reasonable diligence, shall make an oral request at the Hearing. The request shall state the reason the evidence was not timely produced. After providing a reasonable opportunity for each adverse Party to be heard, the Hearing Officer shall rule on such a request. If the evidence is allowed to be admitted into evidence, the Parties shall have the right to a continuance to engage in further discovery, obtain rebuttal medical evidence, or depose or cross-examine the Medical Witness.
- J. **Use of Interpreter Services.**
1. If an Applicant or witness does not speak or understand English sufficiently to participate in the proceedings or provide testimony, an interpreter certified to provide interpretation services in administrative hearings shall be provided to that Applicant or witness at OCERS’s expense. Notice that an Applicant or witness requires interpreting services shall be given to OCERS at the Pre-Hearing Scheduling Conference or be included in the Party’s Pre-Hearing Statement. If a Party fails to provide such notice, then the witness may not be called unless good cause is shown, as set forth Rule 10.I.
 2. All interpreters must be certified to provide interpreting services in administrative hearings pursuant to Government Code Section 11435.30. The interpreter may not have had any involvement in the issues of the case prior to the Administrative Hearing.
 3. If an Applicant objects to the interpreter provided by OCERS, the Applicant may supply her/her own interpreter, provided that the interpreter is certified under Government Code Section 11435.30. However, time for an Applicant to find and hire an interpreter shall not be considered good cause to continue the Hearing. OCERS will pay the chosen interpreter the same amount OCERS would have paid an interpreter hired directly by OCERS. The Applicant shall be responsible for any amounts charged by the interpreter that are over the amount OCERS would have paid to an interpreter hired directly by OCERS. Fee disputes between the interpreter and the Applicant shall not be resolved in this forum, and the

OCERS Board Policy Disability and Non-Disability Benefits Adjudication Policy and Administrative Hearing Rules

Hearing Officer shall not have authority to resolve any fee disputes between interpreters and the Parties.

Rule 11. Resolution of Disputes about Depositions and Conduct of Hearings

The Hearing Officer shall resolve disputes about depositions and conduct of the Hearing. A request for resolution of a dispute shall be made in person at a Pre-Hearing Scheduling Conference, at the Hearing, or may be filed and may be supported by declarations, a memorandum of points and authorities and a proposed resolution. The adverse Party shall file its response within (10) days. Declarations, a copy of the deposition or Hearing transcript, a memorandum of points and authorities and a proposed resolution may also accompany the response. The Hearing Officer may convene a conference (in person or by telephone) to hear the dispute and shall file its resolution of the dispute within thirty (30) days.

Rule 12. Hearing Officer's Findings of Fact and Recommended Decision

- A. **Time for Filing.** The Hearing Officer shall file his/her Proposed Findings of Fact and Recommended Decision within sixty (60) days of the date that the Petitioner's reply brief is due or, if the Parties waived closing briefs, within 60 days of the date the transcript of the Hearing is filed.
- B. **Content of Proposed Findings of Fact and Recommended Decision.** The Hearing Officer's Proposed Findings of Fact and Recommended Decision shall include a summary of the following: (1) issues raised by the parties; (2) the testimony; (3) the exhibits offered by the parties, both those received into evidence and those not received; (4) a factual discussion of matters on which the Hearing Officer relied; (5) conclusions of law with citations to legal authority; and (6) recommended action. The summary of the testimony, plus all other evidence received, shall be sufficient to satisfy the requirements of Government Code Section 31534(b).
- C. **Objections.** Any Party may file objections to the Hearing Officer's Proposed Findings of Fact and Recommended Decision within 20 days from the date that the Hearing Officer files his/her Proposed Findings of Fact and Recommended Decision.

Rule 13. Hearing and Action by the Board

- A. The Clerk shall refer to the Board for its consideration the Hearing Officer's Proposed Findings of Fact and Recommended Decision and any related objections.
- B. The Clerk shall provide written notice of the time and date of the regular meeting where the matter will be placed on the Board's agenda for action. The Parties will have the opportunity to be heard at the Board meeting subject to appropriate time limitations.

OCERS Board Policy Disability and Non-Disability Benefits Adjudication Policy and Administrative Hearing Rules

- C. After reviewing the foregoing documents, pursuant to Government Code Section 31534, the Board may:
1. Approve and adopt the proposed findings and the recommendations of the Hearing Officer; or
 2. Require a transcript or summary of all testimony, plus all other evidence received by the Hearing Officer. On receipt thereof, the Board shall take such action as in its opinion is indicated by such evidence; or
 3. Refer the matter back with or without instructions to the Hearing Officer for further proceedings; or
 4. Set the matter for hearing before itself. At such hearing, the Board shall hear and decide the matter *de novo*.
- D. The Hearing Officer's Proposed Findings of Fact and Recommended Decision shall be sufficient to satisfy the requirements of Government Code Section 31534(b) and Rule 13.C.2. In any case where the Board makes a decision based on a transcript or summary of all testimony, plus other evidence received by the Hearing Officer, or where the Board sets the matter for Hearing before itself, the Board may approve and adopt the Proposed Findings of Fact and Recommended Decision of the Hearing Officer; otherwise, the Board shall prepare its Findings of Fact and Decision, either itself or through direction to staff with its approval.

Rule 14. Alteration of Time Requirements

- A. The Hearing Officer may amend or continue the time periods set forth in these rules only for good cause shown.
- B. Good cause for continuing a time period set forth in these Rules or established by the Hearing Officer shall be only:
1. the discovery of relevant evidence that, in the exercise of reasonable diligence, could not have been previously produced and the need to engage in further discovery, obtain rebuttal medical evidence, or depose or cross-examine the Medical Witness, as set forth under Rule 10.I; or
 2. the illness or disability of an Applicant, witness, attorney, or the Hearing Officer which was unknown to the person at the time of the Pre-Hearing Scheduling Conference (or other time at which the deadline was set) which makes it impossible for the person to participate in the Administrative Hearing process. Relief shall be granted only if the person raises the request as soon as practicable, and the Hearing Officer shall consider a failure to timely seek relief a waiver by the person.
- C. Any continuance granted under this Rule shall be for as short a period as necessary to allow the person to participate in the process.

OCERS Board Policy
Disability and Non-Disability Benefits
Adjudication Policy and
Administrative Hearing Rules

- D. If an illness or disability affects an attorney who will not be able to participate in the process within a reasonably short period of time, then the continuance shall only be for such time as is necessary to secure substitute counsel.
- E. If the illness or disability affects the Hearing Officer, and the Hearing Officer cannot proceed within the time period set forth in Rule 15, below, the Hearing Officer shall recuse him/herself and a new Hearing Officer shall be appointed.
- F. If good cause exists, the Hearing Officer may order a Scheduling Conference in order to re-set the Hearing Date.

Rule 15. Dismissal for Failure to Pursue the Administrative Hearing

Except as otherwise provided, if as a result of an Applicant's failure to comply with any of these Rules, the Applicant's Request for Administrative Hearing (or Board referral) is not heard within one year after the Applicant files a Request for Administrative Hearing (or the Board's referral of a case to a Hearing Officer), the Hearing Officer shall dismiss the Administrative Hearing and the initial determination or Committee recommendation shall become final as if no Request for Administrative Hearing had been filed.

Hearing Officer Selection and Retention Policy

Purpose and Background

1. The purpose of the Hearing Officer Selection and Retention Policy is to provide OCERS with a framework for selection and retention of Hearing Officers for administrative hearings. The Board of Retirement is charged with the responsibility of administering the System in a manner to assure prompt delivery of benefits and related services to plan participants and their beneficiaries. Selection of competent Hearing Officers must be made in a manner that assures the due process rights of plan participants and their beneficiaries are met.
2. Pursuant to Government Code Section 31533, the Board of Retirement has the right to appoint one of its own members to serve as a Hearing Officer in an administrative hearing. The procedures delineated in this policy apply only to external third party Hearing Officers.

Policy Objectives

- 2.3. The objectives of the Hearing Officer Selection and Retention Policy are to:
- a. Establish a procedure for the selection of Hearing Officers that complies with the due process rights of plan participants and their beneficiaries;
 - b. Establish a procedure for selection of Hearing Officers that assures only qualified ~~and~~ competent and impartial Hearing Officers are appointed;
 - c. Establish a procedure for monitoring and evaluating Hearing Officers' performance to assure that only qualified and competent Hearing Officers are retained after they have been appointed; and
 - d. Establish a procedure for assignment of Hearing Officers to individual cases that complies with the due process rights of plan participants and their beneficiaries.

Roles and Responsibilities

- 3.4. The role of the Board of Retirement with respect to the selection of Hearing Officers is to:
- a. Establish appropriate policies with respect to the selection and evaluation of Hearing Officers; and
 - ~~b. Monitor compliance with such policies.~~
 - e.b. Approve, upon the recommendation of the Hearing Officer Selection Panel, the appointment of Hearing Officers where it is determined that such Hearing Officers are qualified.
5. The role of the Disability Committee with respect to the selection of Hearing Officers is to:
- a. Monitor compliance with Board of Retirement policies.
- 4.6. A Hearing Officer Selection Panel consisting of (i) the Chief Executive Officer, (ii) the ~~Chief Legal Officer~~ and General Counsel (iii) either the Assistant CEO for External Operations or the Director of Member Services; and (iv) either the Chair or Vice Chair of the Disability Committee shall be responsible for:
- a. ~~Interviewing and recommending to the Board of Retirement for its approval competent and qualified Hearing Officers in conformity with the Selection Process set forth in this Policy;~~

Hearing Officer Selection and Retention Policy

- b. Evaluating the performance of Hearing Officers in accordance with the process for Hearing Officer Performance Evaluations set forth in this Policy;
- c. Maintaining a list of Hearing Officers sufficient in number to meet OCERS' needs as set forth in this Policy.

~~Hearing Officer Selection and Retention Procedure~~

~~The Selection Process~~

~~5.1 Request for Proposals~~

- ~~a. In order to generate a list of Hearing Officers, a Request for Proposals shall be prepared.~~
- ~~b. At the discretion of the Chief Executive Officer, the Request for Proposals may be run in all major legal periodicals, journals, and/or bar association magazines. The Request for Proposals may also be posted at OCERS' web site as well as other job related web sites. Further, the Request may be sent to potential candidates that are brought to the Chief Executive Officer's attention.~~

Hearing Officer Qualifications

- ~~6.7.1. The All Hearing Officer candidate Officers must be a member members of the State Bar of California (Government Code Section 31533).~~
- ~~7.8.2. Additional factors for consideration when selecting Hearing Officers shall include the following:~~
 - ~~a. Past experience as an adjudicator (e.g. judge, judge pro-tem, arbitrator etc.); and~~
 - ~~b. Past experience in disability retirement or workers' compensation law.~~

Hearing Officer Selection and Retention Procedure

The Selection Process

9. Request for Proposals

- a. Whenever the General Counsel determines that it is necessary in order to maintain a sufficient number of Hearing Officers, the Hearing Officer Selection Panel shall initiate a Request for Proposals (RFP).
- b. At the discretion of the Chief Executive Officer, the RFP may be published in major legal periodicals, journals, and/or bar association magazines. The RFP may also be posted at OCERS' web site as well as other job related web sites. Further, the RFP may be sent to potential candidates that are brought to the attention of the Chief Executive Officer.

8.10. Selection Process

- a. 1. The Hearing Officer Selection Panel shall review the responses to the Request for Proposals RFP and select qualified candidates for formal interviews.

Hearing Officer Selection and Retention Policy

- b. ~~2.~~—The Hearing Officer Selection Panel shall conduct formal interviews of qualified candidates. At the Hearing Officer Selection Panel’s discretion, writing samples, references, or other materials that would reflect on the candidate’s ability to competently perform the duties of a Hearing Officer may be required. Based on these interviews and review of materials, the Hearing Officer Selection Panel shall compile a list of candidates that it recommends to the Board of Retirement for appointment as Hearing Officers.
- c. ~~3.~~—Prior to submitting the list of recommended candidates to the Board of Retirement, the list shall be submitted to plan sponsors of OCERS, employee representation units of these plan sponsors, and attorneys who regularly represent OCERS members in administrative hearings. These entities and individuals shall be allowed a reasonable amount of time in which to comment on the list of proposed Hearing Officers.
- d. ~~4.~~—Plan sponsors, employee representation units, attorneys or other interested individuals may provide additional comments with respect to the proposed list of candidates at the time that the Board of Retirement is to vote on the list of proposed Hearing Officers.
- e. ~~5.~~—These selection procedures shall apply to all external third party Hearing Officers.

Hearing Officer Contracts

~~9.11.~~ Term of Appointment

- a. Subsequent to ~~approval for~~ appointment by the Board of Retirement, each Hearing Officer shall execute an independent contractor agreement (contract) to provide services as a Hearing Officer for OCERS. Among other terms, the contract shall allow for the termination of services by either party with cause.
- b. The contract shall provide for a term of seven years.

~~10.12.~~ Expiration of Contract

The contract shall terminate at the end of its seven year term, provided however, that the term may be extended by the Chief Executive Officer in order for the Hearing Officer to complete any appeals that are not yet final (as defined by the OCERS Administrative Hearing Rules) as of the end of the seven year term. Upon expiration of the contract, the Hearing Officer ~~shall be required to participate in the Hearing Officer selection process again as a condition to being awarded a new contract. In addition, the Hearing Officer~~ cannot reapply to serve as a Hearing Officer until two years after the expiration of the previous contract, and must participate in the Hearing Officer Selection Process again as a condition to being awarded a new contract.

~~A.~~—Income

- ~~1.—Each contract shall contain a provision whereby the Hearing Officer is required to provide yearly written certification that the annual income that the Hearing Officer derives from OCERS shall not exceed 33% of the Hearing Officer’s annual earned income from all other sources in that same year. Such certification shall be due at each anniversary of the date the contract was executed.~~

13. Compliance with OCERS Rules

Hearing Officer Selection and Retention Policy

- a. Each contract shall contain a provision whereby the Hearing Officer agrees that s/he will be bound by the OCERS Administrative Hearing Rules, which may be amended by OCERS from time to time, and that his or her duties shall be performed in a timely and efficient manner, including within the time frames set forth in the OCERS Administrative Hearing Rules.

11.14. Code of Judicial Ethics

- a. Each contract shall contain a provision whereby the Hearing Officer agrees that he or she is subject to and bound by the provisions of subdivision D of Canon 6 of the Code of Judicial Ethics.

Hearing Officer Performance Evaluations

12.15. Evaluation Criteria

- a. Quality of opinions
 - i. a.—A record shall be maintained of the number of times that a Hearing Officer's recommendation is overturned by the Superior Court on a writ.
 - ii. b.—Recommendations of the Hearing Officer shall be reviewed by the Chief Legal OfficerGeneral Counsel or his or her designee to determine whether they are well reasoned and logically apply the law to the facts of a given case.
- b. Timeliness of opinions
 - i. A record shall be maintained of the number of times that a Hearing Officer's recommendation is issued beyond the requiredafter its due date during the contract term.
 - ii. The record shall also include the number of opinionsrecommendations issued by the Hearing Officer during the contract term.

13.16. Evaluation Process

- a. The Hearing Officer Selection Panel will evaluate alleach Hearing OfficersOfficer based on the criteria listed in Section A15, above, within four years of theirhis or her appointment.
- b. In addition, the Hearing Officer Selection Panel shall at any time during the term of the contract performevaluate Hearing Officer evaluations for determination ofOfficers to determine whether cause exists to terminate the contract with the Hearing Officer. Cause for termination includes, but is not limited to, a finding by the Hearing Officer Selection Panel that the Hearing Officer has repeatedly failed to submit Findings, Conclusions of Law and Recommendations in a timely manner, has engaged in fraudulent billing practices, or has been publicly disciplined by the State Bar of California.
- c. Based on the above referenced evaluations with respect to a particular Hearing Officer, the Chief Executive Officer or Chief Legal OfficerGeneral Counsel may recommend to the Board of Retirement that it terminate the contract prior to its normal expiration date or take other appropriate action as necessary.

Hearing Officer Selection and Retention Policy

Miscellaneous

Assignment of Cases

~~14.17.~~ OCERS staff shall review, maintain, and formalize a system that ensures that Hearing Officers are assigned cases on a random basis. The ~~Chief Executive Officer~~General Counsel or his or her designee shall oversee this process.

Number of Hearing Officers

~~15.18.~~ At all times, the Hearing Officer Selection Panel shall make all reasonable efforts to maintain a list of Hearing Officers sufficient in number to meet the needs of OCERS. The ~~Chief Legal Officer~~General Counsel will determine the number of Hearing Officers necessary to meet those needs based upon the following factors:

- a. The average number of hearings per month during the calendar year;
- b. The number of hearings per month assigned to each Hearing Officer;

~~→ Whether there are a sufficient number of Hearing Officers on the panel to ensure that no Hearing Officer is assigned cases which will cause his or her income from OCERS to exceed 33% of his or her annual compensation from all other sources~~

~~The Hearing Officer Selection Panel shall initiate a Request for Proposals whenever the Chief Legal Officer determines that this action is necessary in order to maintain the appropriate number of Hearing Officers.~~

Right to Appoint Board Members

~~Pursuant to Government Code Section 31533, the Board of Retirement has the right to appoint one of its own members to serve as a Hearing Officer in an administrative hearing. The procedures delineated in this policy apply to external third party Hearing Officers only.~~

Remuneration

~~16.19. A.~~ In order to help attract and retain the most qualified Hearing Officers possible, the ~~Chief Legal Officer~~General Counsel shall review, ~~on an annual basis from time to time and before the issuance of any RFP,~~ the contracted rate of pay for OCERS' Hearing Officers. The purpose of the review shall be to determine whether OCERS' rate of pay is competitive with current market ~~rates paid~~rates paid for Hearing Officer services by other public retirement systems similarly situated to OCERS.

~~17.20. B.~~ Based on this review, the ~~Chief Legal Officer~~General Counsel may recommend that the Board of Retirement consider modifications to the Hearing Officers' contracted rate of pay.

Document Terms

~~18.21.~~ For purposes of this policy, the term Hearing Officer shall have the same meaning as the term referee, as that term is used in the relevant sections of the California Government Code.

Hearing Officer Selection and Retention Policy

Policy Review

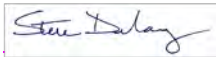
19-22. The Board of Retirement will review this policy at least every three (3) years to ensure that it remains relevant and appropriate.

Policy History

20-23. The Hearing Officer Selection and Retention Policy was originally approved and adopted by the Board of Retirement on April 17, 2000. It was amended on February 22, 2005 and May 16, 2005; reviewed on June 18, 2007 with no changes; and amended on August 23, 2010, January 21, 2014 and 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

Hearing Officer Selection and Retention Policy

Purpose and Background

1. The purpose of the Hearing Officer Selection and Retention Policy is to provide OCERS with a framework for selection and retention of Hearing Officers for administrative hearings. The Board of Retirement is charged with the responsibility of administering the System in a manner to assure prompt delivery of benefits and related services to plan participants and their beneficiaries. Selection of competent Hearing Officers must be made in a manner that assures the due process rights of plan participants and their beneficiaries are met.
2. Pursuant to Government Code Section 31533, the Board of Retirement has the right to appoint one of its own members to serve as a Hearing Officer in an administrative hearing. The procedures delineated in this policy apply only to external third party Hearing Officers.

Policy Objectives

3. The objectives of the Hearing Officer Selection and Retention Policy are to:
 - a. Establish a procedure for the selection of Hearing Officers that complies with the due process rights of plan participants and their beneficiaries;
 - b. Establish a procedure for selection of Hearing Officers that assures only qualified, competent and impartial Hearing Officers are appointed;
 - c. Establish a procedure for monitoring and evaluating Hearing Officers' performance to assure that only qualified and competent Hearing Officers are retained after they have been appointed; and
 - d. Establish a procedure for assignment of Hearing Officers to individual cases that complies with the due process rights of plan participants and their beneficiaries.

Roles and Responsibilities

4. The role of the Board of Retirement with respect to the selection of Hearing Officers is to:
 - a. Establish appropriate policies with respect to the selection and evaluation of Hearing Officers; and
 - b. Approve, upon the recommendation of the Hearing Officer Selection Panel, the appointment of Hearing Officers where it is determined that such Hearing Officers are qualified.
5. The role of the Disability Committee with respect to the selection of Hearing Officers is to:
 - a. Monitor compliance with Board of Retirement policies.
6. A Hearing Officer Selection Panel consisting of (i) the Chief Executive Officer, (ii) the General Counsel (iii) either the Assistant CEO for External Operations or the Director of Member Services; and (iv) either the Chair or Vice Chair of the Disability Committee shall be responsible for:
 - a. Interviewing and recommending to the Board of Retirement for its approval competent and qualified Hearing Officers in conformity with the Selection Process set forth in this Policy;
 - b. Evaluating the performance of Hearing Officers in accordance with the process for Hearing Officer Performance Evaluations set forth in this Policy;

Hearing Officer Selection and Retention Policy

- c. Maintaining a list of Hearing Officers sufficient in number to meet OCERS' needs as set forth in this Policy.

Hearing Officer Qualifications

7. All Hearing Officers must be members of the State Bar of California (Government Code Section 31533).
8. Additional factors for consideration when selecting Hearing Officers shall include the following:
 - a. Past experience as an adjudicator (e.g. judge, judge pro-tem, arbitrator etc.); and
 - b. Past experience in disability retirement or workers' compensation law.

Hearing Officer Selection and Retention Procedure

The Selection Process

9. Request for Proposals
 - a. Whenever the General Counsel determines that it is necessary in order to maintain a sufficient number of Hearing Officers, the Hearing Officer Selection Panel shall initiate a Request for Proposals (RFP).
 - b. At the discretion of the Chief Executive Officer, the RFP may be published in major legal periodicals, journals, and/or bar association magazines. The RFP may also be posted at OCERS' web site as well as other job related web sites. Further, the RFP may be sent to potential candidates that are brought to the attention of the Chief Executive Officer.
10. Selection Process
 - a. The Hearing Officer Selection Panel shall review the responses to the RFP and select qualified candidates for formal interviews.
 - b. The Hearing Officer Selection Panel shall conduct formal interviews of qualified candidates. At the Hearing Officer Selection Panel's discretion, writing samples, references, or other materials that would reflect on the candidate's ability to competently perform the duties of a Hearing Officer may be required. Based on these interviews and review of materials, the Hearing Officer Selection Panel shall compile a list of candidates that it recommends to the Board of Retirement for appointment as Hearing Officers.
 - c. Prior to submitting the list of recommended candidates to the Board of Retirement, the list shall be submitted to plan sponsors of OCERS, employee representation units of these plan sponsors, and attorneys who regularly represent OCERS members in administrative hearings. These entities and individuals shall be allowed a reasonable amount of time in which to comment on the list of proposed Hearing Officers.
 - d. Plan sponsors, employee representation units, attorneys or other interested individuals may provide additional comments with respect to the proposed list of candidates at the time that the Board of Retirement is to vote on the list of proposed Hearing Officers.
 - e. These selection procedures shall apply to all external third party Hearing Officers.

Hearing Officer Selection and Retention Policy

Hearing Officer Contracts

11. Term of Appointment

- a. Subsequent to appointment by the Board of Retirement, each Hearing Officer shall execute an independent contractor agreement (contract) to provide services as a Hearing Officer for OCERS. Among other terms, the contract shall allow for the termination of services by either party with cause.
- b. The contract shall provide for a term of seven years.

12. Expiration of Contract

The contract shall terminate at the end of its seven year term, provided however, that the term may be extended by the Chief Executive Officer in order for the Hearing Officer to complete any appeals that are not yet final (as defined by the OCERS Administrative Hearing Rules) as of the end of the seven year term. Upon expiration of the contract, the Hearing Officer cannot reapply to serve as a Hearing Officer until two years after the expiration of the previous contract, and must participate in the Hearing Officer Selection Process again as a condition to being awarded a new contract.

13. Compliance with OCERS Rules

- a. Each contract shall contain a provision whereby the Hearing Officer agrees that s/he will be bound by the OCERS Administrative Hearing Rules, which may be amended by OCERS from time to time, and that his or her duties shall be performed in a timely and efficient manner, including within the time frames set forth in the OCERS Administrative Hearing Rules.

14. Code of Judicial Ethics

- a. Each contract shall contain a provision whereby the Hearing Officer agrees that he or she is subject to and bound by the provisions of subdivision D of Canon 6 of the Code of Judicial Ethics.

Hearing Officer Performance Evaluations

15. Evaluation Criteria

- a. Quality of opinions
 - i. A record shall be maintained of the number of times that a Hearing Officer's recommendation is overturned by the Superior Court on a writ.
 - ii. Recommendations of the Hearing Officer shall be reviewed by the General Counsel or his or her designee to determine whether they are well reasoned and logically apply the law to the facts of a given case.
- b. Timeliness of opinions
 - i. A record shall be maintained of the number of times that a Hearing Officer's recommendation is issued after its due date.
 - ii. The record shall also include the number of recommendations issued by the Hearing Officer during the contract term.

16. Evaluation Process

Hearing Officer Selection and Retention Policy

- a. The Hearing Officer Selection Panel will evaluate each Hearing Officer based on the criteria listed in Section 15, above, within four years of his or her appointment.
- b. In addition, the Hearing Officer Selection Panel shall at any time during the term of the contract evaluate Hearing Officers to determine whether cause exists to terminate the contract with the Hearing Officer. Cause for termination includes, but is not limited to, a finding by the Hearing Officer Selection Panel that the Hearing Officer has repeatedly failed to submit Findings, Conclusions of Law and Recommendations in a timely manner, has engaged in fraudulent billing practices, or has been publicly disciplined by the State Bar of California.
- c. Based on the above referenced evaluations with respect to a particular Hearing Officer, the Chief Executive Officer or General Counsel may recommend to the Board of Retirement that it terminate the contract prior to its normal expiration date or take other appropriate action as necessary.

Miscellaneous

Assignment of Cases

17. OCERS staff shall review, maintain, and formalize a system that ensures that Hearing Officers are assigned cases on a random basis. The General Counsel or his or her designee shall oversee this process.

Number of Hearing Officers

18. At all times, the Hearing Officer Selection Panel shall make all reasonable efforts to maintain a list of Hearing Officers sufficient in number to meet the needs of OCERS. The General Counsel will determine the number of Hearing Officers necessary to meet those needs based upon the following factors:
 - a. The average number of hearings per month during the calendar year;
 - b. The number of hearings per month assigned to each Hearing Officer;

Remuneration

19. In order to help attract and retain the most qualified Hearing Officers possible, the General Counsel shall review, from time to time and before the issuance of any RFP, the contracted rate of pay for OCERS' Hearing Officers. The purpose of the review shall be to determine whether OCERS' rate of pay is competitive with current market rates paid for Hearing Officer services by other public retirement systems similarly situated to OCERS.
20. Based on this review, the General Counsel may recommend that the Board of Retirement consider modifications to the Hearing Officers' contracted rate of pay.

Document Terms

21. For purposes of this policy, the term Hearing Officer shall have the same meaning as the term referee, as that term is used in the relevant sections of the California Government Code.

Hearing Officer Selection and Retention Policy

Policy Review

22. The Board of Retirement will review this policy at least every three (3) years to ensure that it remains relevant and appropriate.

Policy History

23. The Hearing Officer Selection and Retention Policy was originally approved and adopted by the Board of Retirement on April 17, 2000. It was amended on February 22, 2005 and May 16, 2005; reviewed on June 18, 2007 with no changes; and amended on August 23, 2010, January 21, 2014 and 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.

Steve Delaney
Secretary of the Board

Date

B

Memorandum

DATE: October 24, 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 to include the voting protocols for the alternate seventh Board member.

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.

At the September 2017 meeting of the Governance Committee, the Committee approved revisions to the Rules to (i) clarify the timing of public comment and (ii) set forth protocols for the adjournment of meetings, the use of consent agendas and receipt of informational reports. The Board is expected to approve these revisions at its meeting on October 16, 2017.

At the September 2017 meeting, staff also proposed revising the Rules to include the voting protocols applicable to the alternate seventh member of the Board. The Committee did not approve those revisions in September, but instead directed staff to survey other CERL systems to see how they interpret the voting rules applicable to the alternate seventh member.

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(b) specifies the circumstances in which the alternate seventh member will vote. It states as follows:

(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 qualified. 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 a determination of his or her retirement.

The above quoted section of the CERL is ambiguous with respect to voting when the alternate seventh member is sitting on the board in place of an absent or vacant elected member of the board, and a retirement determination for an OCERS member of the same service as the alternate seventh member is presented to the board. The section can be interpreted in any of three ways.

1. Does the alternate seventh member continue to vote in place of the absent/vacant board member, and neither the seventh nor the alternate seventh member votes on the determination for the OCERS member of the same service as the alternate seventh member?

This interpretation results in only eight board members voting (only three of them elected board members) and gives no meaning to the second sentence of 31520.1(b).

2. Does the alternate seventh member vote as the safety member of the same service as the OCERS member before the board, and no one votes in place of the absent/vacant board member?

This interpretation results in only eight board members voting (only three of them elected board members); and gives no meaning to the first sentence of 31520.1(b).

3. Does the alternate seventh member vote as the absent/vacant board member, and the seventh member votes as the safety member, even though the OCERS member before the board is of a different service than the seventh member?

This interpretation results in nine board members voting; all four elected board members voting; and gives no meaning to the second sentence of 31520.1(b).

A survey of legal counsel for the CERL systems resulted in eight responses from systems that have an alternate seventh member. Four responded that their systems handle, or would handle, the situation in accordance with #2, above. Four responded that their systems handle, or would handle, the situation in accordance with #3, above. No one responded that his or her system would handle in accordance with #1.

Acknowledging that there is no way in this situation to give meaning to both sentences of 31520.1(b), staff is persuaded that #3 best preserves the Legislature's intent to create a balance on the retirement board of elected and appointed members (four each) voting on OCERS member determinations, and results in voting by all board members present at the meeting. Staff therefore recommends the OCERS Board handle the situation in accordance with #3. That is, when the alternate seventh member is sitting on the Board in place of an absent or vacant elected member of the Board, and a retirement determination for an OCERS member of the same service as the alternate seventh member is presented to the Board, the alternate seventh member will nonetheless vote as the absent/vacant Board member, and the seventh member will vote as the safety member, even though the OCERS member before the Board is of a different service than the seventh member.

In conclusion, staff recommends adding a section to the Rules to explain the voting protocols for the alternate seventh member as follows:

Voting Protocols for the Alternate Seventh Member of the Board

17. The alternate seventh member of the Board 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 the alternate seventh member will vote in place of the absent Board member;
 - b. When there is a vacancy with respect to any of the OCERS membership-elected Board members the alternate seventh member will fill the vacancy and vote in place of the vacant Board position;
 - 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, the alternate seventh member will vote in place of the seventh member and the seventh member will not vote on that determination, unless one of the OCERS membership-elected Board members is absent or there is a vacancy with respect to any of the OCERS membership-elected Board members, in which case, both the seventh member and the alternate seventh member will vote on that determination, with the alternate seventh member voting for the absent or vacant Board member.

(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, the 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) 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.
 - 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."

OCERS Rules of Parliamentary Procedure

- 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.
 - 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

OCERS Rules of Parliamentary Procedure

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.
 - viii. 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.

OCERS Rules of Parliamentary Procedure

Voting Protocols for the Alternate Seventh Member of the Board

17. The alternate seventh member of the Board² 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 the alternate seventh member will vote in place of the absent Board member;
- b. When there is a vacancy with respect to any of the OCERS membership-elected Board members the alternate seventh member will fill the vacancy and vote in place of the vacant Board position;
- a-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, the alternate seventh member will vote in place of the seventh member and the seventh member will not vote, unless one of the OCERS membership-elected Board members is absent or there is a vacancy with respect to any of the OCERS membership-elected Board members, in which case, both the seventh member and the alternate seventh member will vote on that determination, with the alternate seventh member voting for 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.

²The 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).)

OCERS Rules of Parliamentary Procedure

Rules Review

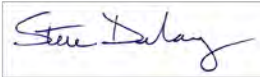
20-21. The Board of Retirement shall review these rules at least every three (3) years to ensure that they remain relevant and appropriate.

Policy History

21-22. 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 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.



10/16/17

Steve Delaney
Secretary of the Board

Date

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:
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 - 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, the 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) 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.
 - 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.
 - 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.
 - viii. 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 Board² 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 the alternate seventh member will vote in place of the absent Board member;
 - b. When there is a vacancy with respect to any of the OCERS membership-elected Board members the alternate seventh member will fill the vacancy and vote in place of the vacant Board position;
 - 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, the alternate seventh member will vote in place of the seventh member and the seventh member will not vote, unless one of the OCERS membership-elected Board members is absent or there is a vacancy with respect to any of the OCERS membership-elected Board members, in which case, both the seventh member and the alternate seventh member will vote on that determination, with the alternate seventh member voting for the absent or vacant Board member.

Scope of Rules and Disputes

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.
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.
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

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

²The 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).)

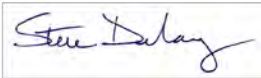
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Policy History

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 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.



10/16/17

Steve Delaney
Secretary of the Board

Date

C



Memorandum

DATE: October 24, 2017
TO: Members of the Governance Committee
FROM: Gina M. Ratto, General Counsel
SUBJECT: **PROPOSED REVISIONS TO THE SECURITIES LITIGATION POLICY AND INVESTMENT COMMITTEE CHARTER**

Recommendation

Approve, and recommend that the Board of Retirement (Board) approve:

1. Revisions to the Securities Litigation Policy to clarify the loss thresholds for OCERS becoming involved in domestic and foreign securities actions and to clarify and update the circumstances under which OCERS will take an active role in securities litigation cases; and
2. Revisions to the Investment Committee Charter to reflect that the Investment Committee (rather than the Board) is responsible for the oversight of OCERS participation in securities litigation matters.

Background

When it passed the Private Securities Litigation Reform Act of 1995 (PSLRA), Congress determined that the court must “appoint as lead plaintiff the member or members of the purported plaintiff class that the court determines to be most capable of adequately representing the interests of the class,” and there is a presumption that the lead plaintiff will be the entity with the largest financial loss. Congress also expressed a clear preference that institutional investors lead securities class action lawsuits.

Since the enactment of the PSLRA, the establishment of a securities litigation monitoring policy has constituted an important exercise of a public pension fund’s fiduciary duties. Indeed, the Government Finance Officers Association recommends that public pension plans monitor losses due to fraud in both new and settled cases.

OCERS adopted a Securities Litigation Policy (Policy) in December 2003, and has regularly updated the Policy since it was adopted. However, numerous events have caused the Legal department to review the Policy and seek to update it again now, including:

- The Supreme Court’s decisions in *Morrison v. National Australia Bank (Morrison)* and *CalPERS v. ANZ Securities, Inc. (ANZ Securities)*. These cases have significantly affected how plaintiffs litigate securities cases. *Morrison* prevents plaintiffs from pursuing claims based on securities purchased outside the United States in federal court. *ANZ Securities* requires putative class members to exercise heightened diligence to protect potentially valuable claims from expiring under the statute of repose, rather than relying on a class action claim filed by another party to toll the time period for filing an individual action.

- OCERS completed an RFP process for securities litigation monitoring services in 2017 and entered into contracts with four firms. Through this solicitation process, the Legal department gained significant new information about the state of the securities litigation industry and effective monitoring practices.
- The desire to strengthen the collaboration between the staff of the OCERS Legal and Investment departments on securities litigation matters.

Proposed Revisions to the Securities Litigation Policy

Staff's proposed revisions to the Policy are based on staff's review of the securities litigation policies of peer public pension funds including other CERL systems such as LACERA and funds from outside California, such as the Iowa Public Employees Retirement System (IPERS). Staff also sought and received significant input from the four firms recently retained for securities litigation monitoring services.

The proposed revisions to the Policy (1) clarify the roles and responsibilities of OCERS staff; (2) set forth the critical issues for the staff and ultimately the Investment Committee to consider when deciding whether to take active participation in a case; and (3) set loss thresholds for both domestic and foreign cases.

Loss Thresholds

In recommending the loss thresholds under which OCERS will not take an active role in securities litigation cases, staff relied on an analysis of claims filed between January 1, 2009 and August 4, 2017. During that period, there were 394 filed cases that affected OCERS' portfolio holdings, but only 28 (7%) of those cases met OCERS' current loss threshold of \$1 million. Additionally, the number of large dollar cases during this time was likely inflated because of the cases that stemmed from losses suffered during the financial crisis of 2008.

Staff is therefore recommending revisions to the Policy to state that the \$1 million loss threshold for domestic securities litigation matters is a "soft" threshold; and that OCERS will consider cases where its losses are less than \$1 million under certain circumstances. For example, under the proposed revisions to the Policy, OCERS will consider participating in cases where OCERS losses are less than \$1 million if (1) OCERS will be joined in the action by another institutional investor; (2) OCERS would otherwise make no recovery of its losses (for example because no other investors will bring the case); or (3) OCERS' involvement could lead to significant governance reforms, which in turn would create better future returns for OCERS and similarly situated investors.

In addition, staff is proposing a lower loss threshold of \$250,000 for foreign securities cases. Many foreign jurisdictions do not allow for class actions in the way that U.S. law does, so OCERS has to be more vigilant to collect losses suffered in foreign securities markets. Unfortunately there is no comprehensive collection of information about foreign securities litigation cases; and therefore, a quantitative analysis of the threshold is not feasible. The proposed \$250,000 loss threshold is, however, based on consistent recommendations received from the securities monitoring firms; and in any event, the proposed revisions to the Policy contemplate that foreign securities cases will be carefully evaluated on a case-by-case basis.

Proposed Revisions to the Investment Committee Charter

In addition, staff believes that it is appropriate for the Investment Committee to have the primary responsibility for oversight of securities litigation. Securities litigation can have significant impact on the OCERS investment portfolio, and placing responsibility with the Investment Committee will foster collaboration between the staff of the Legal and Investment departments, something that is critical in analyzing and participating in securities litigation cases. Staff therefore recommends a revision to the Investment Committee Charter to reflect this new role for the committee.

The Policy and Investment Committee Charter, with the proposed revisions in redlined text, are attached.

Submitted by:



Gina M. Ratto
General Counsel

Approved by:

Steve Delaney
Chief Executive Officer

Purpose and Background

- ~~1. The Securities Litigation Policy was implemented to assist the Board of Retirement and OCERS staff in identifying and tracking securities litigation cases in which OCERS may have an interest. The Legal department will track and analyze litigation and advise the Board regarding direct involvement by OCERS and inform the Board of recovered funds. The Securities Litigation Policy assists the Board in its duty to protect trust funds and benefits to participants in the pension or retirement system and their beneficiaries and defraying reasonable expenses of administering the system (Cal. Const. Art. XVI, § 17).~~
1. The Securities Litigation Policy is intended to establish procedures and guidelines for monitoring and, when appropriate, participating in securities class actions in furtherance of the Board of Retirement's fiduciary duty to protect the assets of the trust. See Cal. Const. Art. XVI, § 17. The responsibility for overseeing securities litigation is delegated to the Investment Committee.

Principles

2. As a large institutional shareholder, OCERS is frequently a class member in securities class actions that seek to recover damages resulting from alleged wrongful acts or omissions of others.
3. The Private Securities Litigation Reform Act ("PSLRA") enacted in 1995 allows institutional investors and other large shareholders to seek lead plaintiff status in securities class actions pending within the United States under U.S. federal securities laws. The lead plaintiff attains the right to supervise and control the prosecution of such cases. Since enactment of the PSLRA, it has been demonstrated that participation as lead plaintiff by large, sophisticated shareholders, particularly public pension funds, has resulted in lower attorney's fees and significantly larger recoveries on behalf of shareholders. The United States Securities and Exchange Commission and leaders in the legal community have commented that the governing board of a public pension system has a fiduciary duty to monitor securities class actions in which the system has an interest, and to participate as lead plaintiff where such participation is likely to enhance the recovery by members of the class.
4. In 2010, the United States Supreme Court in *Morrison v. National Australia Bank* ("*Morrison*") held that certain investor losses stemming from corporate wrongdoing cannot be pursued under federal securities laws. Specifically, the Supreme Court held that investors cannot bring or participate in a U.S. securities class action if their claims are based on securities they purchased outside the United States. As a result, investors must now identify and evaluate foreign securities actions in order to fully protect their interests, including the right to participate in such actions and share in any recovery. Unlike the United States, most countries do not have a class action procedure for the adjudication of securities claims. Instead, many other countries have some form of collective litigation that requires investors to affirmatively join the action to seek a recovery on a securities claim. Because there is no possibility of recovery as a passive member of the class in those cases, OCERS must give special consideration to whether the potential benefits of actively participating in such cases outweighs the potential risks.

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5. In June 2017, the United States Supreme Court in *CalPERS v. ANZ Securities, Inc.* (“ANZ Securities”) held that the filing of a securities class action does not “toll” or satisfy the three-year time period (called the statute of repose) for putative class members to assert individual claims for recovery under Sections 11 and 12 of the Securities Act of 1933. The Supreme Court's decision has been extended by lower federal courts to apply to claims brought under Securities Exchange Act of 1934. As a result, investors can no longer rely on the filing of a securities class action case to preserve the timeliness of their individual claims for recovery of damages under the federal securities laws, and must exercise heightened diligence to protect potentially valuable claims from expiring under the statute of repose.
6. Because OCERS exists to provide retirement income to its members, the goal of this policy is the preservation of trust assets to meet the needs of OCERS members. OCERS will prudently select the best means to preserve those assets.

Monitoring of Securities Litigation and OCERS Holdings and Reporting

7. **Review of Class Action Filings.** The Legal department will identify and evaluate securities class actions, pending or proposed to be filed within the United States and in foreign jurisdictions, in which OCERS may have recognized losses.
8. **Active Case Monitoring.** The Legal department will actively monitor each case in which it has determined the case has merit and either OCERS’ estimated loss meets the Loss Threshold or there are special circumstances that justify OCERS actively monitoring the case. Active monitoring may include participation by the Legal department in significant motions and in settlement discussions when permitted by the parties or the court.
9. **Active Participation.** The Legal Office will recommend to the Investment Committee whether OCERS should take an active role in a securities class action (which may include, but is not limited to, seeking lead plaintiff status, or opting out of the class action and pursuing an individual action) in any case where the Legal department, after consulting with outside counsel, has determined the case has merit, the best interests of OCERS will be served by taking such action, and the case meets the Domestic Loss Threshold or Foreign Loss Threshold.
10. **Domestic Loss Threshold.** A case pending or proposed to be filed within the United States will meet OCERS’ Domestic Loss Threshold if (a) OCERS’ estimated loss is at least \$1 million; (b) OCERS has substantial losses that are less than \$1 million but OCERS will join the case with one or more other institutional investors; (c) OCERS cannot recover without active participation in the case; or (d) OCERS’ active participation in the case may lead to meaningful corporate governance reforms.
11. **Foreign Loss Threshold.** A case pending or proposed to be filed in a foreign jurisdiction will meet OCERS’ Foreign Loss Threshold where OCERS’ estimated loss is at least \$250,000.
12. **Losses Below Threshold.** If the Legal department identifies a case where OCERS’ losses during the alleged claims period is less than the Loss Threshold, but OCERS suffered a loss in excess of the Loss Threshold during a period of time closely preceding or following the claims period, the Legal department will consider whether to seek an adjustment of the claims period. If warranted, the

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Legal department will actively monitor the case and participate in a motion to adjust the claims period or seek approval of the Investment Committee to actively participate in the case.

13. OCERS will take an active role in a securities class action only after approval by the Investment Committee or the Chief Executive Officer, as set forth in Sections 15 through 18, below.
14. The Legal department will collaborate with the Investment department in monitoring securities class action filings and settlements that affect the OCERS investment portfolio, identifying instances where OCERS may have suffered losses due to securities fraud, and identifying developments in the marketplace that would lead to an interest or need in OCERS participating in litigation regarding the market generally.

Active Participation

15. Recommendations on whether to take an active role in a securities litigation case will be presented to the Investment Committee at a regularly scheduled meeting or, where immediate approval is necessary, at a special meeting.
16. In deciding whether to take an active role in securities litigation cases, the Investment Committee will consider:
 2. ~~The Legal department will monitor and prepare reports listing new securities litigation case filings in which OCERS has identified losses and case settlements on a monthly basis. OCERS will engage two to five firms specializing in securities litigation monitoring to assist the Legal department with these responsibilities.~~
 3. ~~The reports will identify the name of the security, the class period, OCERS' identified losses, and the claims filing deadlines.~~

~~Information on case filings and settlements will be obtained from:~~

- a. ~~Internet sites;~~
- b. ~~Print and electronic publications;~~
- c. ~~Firms specializing in securities litigation monitoring;~~
- d. ~~Custodian Bank;~~
- e. ~~Any other reliable source of information.~~
4. ~~The Legal department will provide the reports to the Investment division staff at the beginning of each month.~~
5. ~~The reports will also include a list of new cases in which OCERS' estimated losses exceed \$1,000,000.00 as identified by OCERS' securities litigation monitoring firms. This list will include a brief analysis of the merits of the litigation.~~
6. ~~The contracts with securities monitoring firms will be for terms not exceeding six years. Prior to the expiration of the six year term, the Chief Executive Officer or his or her designee will conduct an RFP.~~

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Staff Analysis Regarding OCERS' Direct Participation

7. ~~For claims under \$1,000,000.00, OCERS will not consider taking an active role in the litigation unless OCERS cannot recover without active participation. The factors used in determining whether OCERS should take an active role in securities litigation cases are listed below under subsection A. If a loss over \$1,000,000.00 is incurred closely preceding or closely following the published claims period, staff will proceed as set forth below under subsection B. If the Legal Department determines that direct participation is warranted under subsection A or a request should be made to revise the claims period under subsection B, the Legal department will prepare an appropriate analysis of the case for presentation to the Board. Other cases will be monitored under subsection C.~~

~~A. Factors to consider for losses incurred during the claims period:~~

- ~~i. The size of OCERS'the loss;~~
- ~~ii. The identity of the lead plaintiff and other parties, if known;~~
- ~~iii. The identity of lead counsel, if known;~~
- ~~iv. Whether OCERS has, or had, substantial losses or significant holdings in the company or security during the most plausible class period and sustained damages surpassing its threshold for considering action;~~
- ~~v. The merits of the case, both from a legal perspective and a business perspective;~~
- ~~vi. The likely degree of recovery, including the probability of a defendant's insurer being able to fund an award, balanced againstversus the time and costs involved in taking an active role in the casepursuing the matter actively;~~
- ~~vii. The effectiveness and availability of potential witnesses and ability of OCERS Investment department staff and fund managers to respond to requested discovery;~~
- ~~viii. The potential impact on the portfolio from potential trading restrictions arising from acquisition of inside information in litigation, if any;~~
- ~~ix. The effectiveness of potential alternatives for recovering the lossesvalue of the claim, such as filing a claim or protective motion, and monitoring;~~
- ~~ix. The effectiveness and availability of potential witnesses and ability for the investment staff and fund managers to respond to requested discovery;~~
- ~~x. Whether active participation by involvement of OCERS would add value to the potential resolution or management of the case.~~
- ~~xi. The forum and choice of law for the case. Active participation in foreign securities actions will be examined on a case-by-case basis, and the Legal department will present meritorious foreign cases to the Board to determine whether the potential recovery in such cases is sufficient to warrant participation and whether the funding arrangement is sufficient to protect OCERS from adverse cost claims.~~

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xii. Notwithstanding the Loss Threshold for active participation, active participation in foreign securities actions will be examined on a case-by-case basis. The Legal department will present meritorious foreign securities cases to the Investment Committee to determine whether the potential benefits of active participation outweigh the potential risks and costs. In making such determination, the Investment Committee will consider, among other factors, the size of the potential recovery, OCERS' potential obligation to pay legal fees and costs, the potential liability for an adverse cost award, and whether the funding arrangement, other participation agreements, or applicable local laws are sufficient to protect OCERS from an adverse cost award or other potential liability.

16.17. If the Chief Executive Officer determines that immediate approval is required in order to preserve OCERS' rights and/or interests by taking an active role in a securities litigation case, and the matter cannot be timely presented for approval at a regularly scheduled or special meeting of the Investment Committee, or where a quorum cannot be reached at such meeting, the Chief Executive Officer is authorized, after consultation with the General Counsel, Chief Investment Officer, and Chair of the Investment Committee, to make the decision and shall notify the Investment Committee at its next regularly scheduled meeting.

17.18. For purposes of this policy, a foreign securities action is defined as a lawsuit pending or proposed to be filed outside the United States involving securities purchased on a foreign securities exchange or other non-domestic transaction by OCERS or on its behalf. Participation as a class member in a foreign securities action, if participation in such foreign action requires registration or other affirmative action by OCERS, shall be considered "active participation" and shall be submitted to the Investment Committee for approval.

- ~~B. If a loss in excess of \$1,000,000.00 is identified closely preceding or following the claims period at issue in a case, the Legal department will seek advice regarding adjustment of the claims period from retained securities litigation firms. If warranted, the Legal department will prepare a recommendation to the Board to request that the claims period be expanded to include OCERS' loss, based upon the length of time preceding or following the claims period and the size of the loss. The Legal department will contact the plaintiffs if a decision is made to request an expansion of the claims period.~~
- ~~C. If a loss is suffered by OCERS, but the claim does not warrant active participation in the litigation, as determined pursuant to subsection 7 A or B above, the Legal department will monitor the case and coordinate with the Custodian Bank to ensure that a claim is filed on any settlement within the necessary claims period. The Legal department will track claims filed by the Custodian Bank and provide a summary report of claims filed and funds recovered to the Board semi-annually.~~

OCERS Direct Participation

- ~~8. If further action is required as a result of the analysis performed pursuant to paragraph 7 A or B above, the Chief Legal Officer and the Chief Investment Officer shall inform the Chief Executive Officer of their analysis. The Chief Legal Officer, Chief Investment Officer and Chief Executive Officer will jointly determine what recommendation to present to the Board of Retirement. If necessary, a~~

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~~Special Board meeting may be scheduled to discuss whether and to what extent OCERS will actively participate in litigation.~~

- ~~9. Securities Litigation law firms on OCERS' pre-approved panel are to be used for preparation of in-depth damages analyses and/or for representation in litigation. Other firms may be used for representation in litigation when firms on the OCERS' pre-approved panel are not involved in the litigation. Final approval of firms will rest with the Board of Retirement. The determination of which cases warrant an in-depth damages analysis will be made by the Legal department in accordance with this policy. The determination of which cases will proceed to litigation on OCERS' behalf will be made by the Board in accordance with this policy.~~
- ~~10. In cases where a filing deadline will pass prior to the date of the next available Board meeting, the Legal department may, upon approval by the Chief Executive Officer, authorize filing of a case or lead plaintiff petition. Such filing shall be provisional and subject to ratification by the Board at the next available Board meeting.~~

Settlements

~~18.19.~~ When a settlement is presented in a case in which OCERS has taken an active ~~a direct~~ role, the Legal department will provide the Investment Committee ~~Chief Executive Officer and the Chief Investment Officer~~ with an analysis of the settlement terms, including the total amount of the proposed recovery, proposed costs and fees paid to attorneys, the best estimate of the percentage of recovery of OCERS' identified losses, analysis from the firm representing OCERS in the case, and any other relevant information pertaining to the settlement. The Investment Committee may approve a proposed settlement or delegate to the Chief Executive Officer or the General Counsel authority to enter into a settlement on whatever terms it deems appropriate.

~~19.20.~~ The proposed settlement and the Legal department's analysis will be presented to the Board at its next regular meeting for consideration and action. In the event a decision on the part of the Chief Executive Officer determines that immediate approval of a settlement is required from OCERS before the Board's next regular in order to preserve OCERS' rights and/or interests, and the matter cannot be timely presented for approval at a regularly scheduled or special meeting of the Investment Committee, or where a quorum cannot be reached at such meeting, the Chief Executive Officer will consult with the Board Chair and Vice Chair regarding the merits of the settlement, and based on input received from them, the Chief Executive Officer is authorized, after consultation with the General Counsel, Chief Investment Officer and Chair of the Investment Committee, to approve the settlement and notify the Investment Committee. ~~may authorize the settlement without action by the Board. Settlements authorized by the Chief Executive Officer in accordance with this paragraph will be reported to the Board at its next regularly scheduled meeting.~~

Claims Filing and Audits

~~20.21.~~ OCERS' custodial bank shall be responsible for filing all claims, including the necessary supporting documents and information, necessary to recover assets in every securities class action in which OCERS has suffered losses which has been brought or is pending within the United States. If OCERS' custodial bank is not able to file all claims and necessary supporting documents and information, necessary to recover assets in every securities class action in which OCERS has

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suffered losses which has been brought or is pending in a foreign jurisdiction, then the Legal department, in consultation with the Investment department, shall designate the entity that will be responsible for filing those claims. The Legal department shall prepare, and revise as necessary, a statement of work to be included in the custodial agreement setting forth formalized claims filing procedures for the custodial bank to follow, which shall include identifying and reviewing all class action settlements, providing timely notice of each settlement to OCERS, filing claims correctly and timely on OCERS' behalf, and providing quarterly reports regarding its efforts. The Legal department, in consultation with the Investment department, shall monitor the performance of the custodial bank in these matters. The custodial bank will submit quarterly reports on the securities litigation proceeds recovered, which information shall be shared with the Investment Committee.

21-22. The Legal department, in conjunction with the Investment department, shall from time to time audit the custodial bank's claims filing process to insure that OCERS is recovering all the amounts that OCERS is due from securities litigation settlements and awards. The Legal department, in conjunction with the Investment department, may require that the custodial bank change its processes or implement an alternative plan for filing proofs of claim.

Retention of Securities Monitoring Firms and Litigation Counsel

22-23. The General Counsel, with the approval of the Chief Executive Officer, will engage at least two and no more than five firms with demonstrated expertise and experience in prosecuting and/or monitoring securities class actions (the "Securities Litigation Monitoring Firms") to advise and/or represent OCERS in monitoring securities class action filings and settlements that affect the OCERS investment portfolio and identifying new instances where OCERS may have suffered losses due to securities fraud or related misconduct.

23-24. At a minimum, Securities Litigation Monitoring Firms will:

- a. Obtain OCERS' securities trading and holdings information directly from OCERS' custodial bank;
- b. Identify and monitor securities class actions filed or proposed to be filed in the United States, and analyze OCERS' estimated loss, if any, in the affected security or securities in each action;
- c. Evaluate and provide timely notice and analysis of potential or pending securities class actions filed in the United States where (i) OCERS has suffered losses that meet its Loss Threshold and where active participation may be necessary and warranted; or (ii) if OCERS' losses are below its Loss Threshold, the Securities Litigation Monitoring Firm believes factors exist that justify OCERS' consideration of the case;
- d. Provide reports (at least quarterly) of newly-filed domestic securities class actions and OCERS' estimated losses or online access to pending securities class actions filed in the United States and OCERS' estimated losses;
- e. Identify and monitor securities actions that are filed or may be filed outside the United States in foreign jurisdictions, and provide an analysis of OCERS' estimated loss, if any, in the affected security or securities in each action;

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- f. Evaluate and provide timely notice and analysis of those potential and pending non-U.S. securities actions where (i) OCERS has suffered losses that meet its Foreign Loss Threshold; or (ii) if OCERS' losses are below its Foreign Loss Threshold, the Securities Litigation Monitoring Firm believes factors exist that justify OCERS' consideration of the case;
- g. Assist OCERS in joining and filing claims in non-U.S securities actions in which the Investment Committee approves active participation, including obtaining, assisting in the review and negotiation, and submission of engagement agreements, third-party funder agreements, and insurance agreements; and
- h. Assist OCERS in identifying meritorious U.S. securities class actions in which OCERS has substantial losses or significant holdings, determining the relevant statutes of repose, monitoring the progress of the litigation (including class certification), and evaluating whether to file a protective claim or motion before a significant repose period expires.

24.25. Retainer Agreements with Securities Litigation Monitoring Firms will be for terms not exceeding six years. Prior to the expiration of the six year term, the General Counsel or his or her designee will conduct a Request for Proposals ("RFP").

25.26. When the Investment Committee or the Chief Executive Officer approves OCERS taking an active role in litigation, it or he or she will also direct the General Counsel to retain litigation counsel under specific terms, issue an RFP for litigation counsel, or delegate to the General Counsel the authority to retain litigation counsel for the matter.

26.27. The General Counsel may rely on Securities Litigation Monitoring Firms for preparation of in-depth damages analyses and/or for representation in litigation which OCERS is actively monitoring. However, the General Counsel may, with the approval of the Chief Executive Officer, retain outside counsel on behalf of OCERS to undertake these matters or to assist the Legal department in carrying out any of its other responsibilities under this policy.

Reporting

27.28. The Legal department will provide the Investment Committee with regular reports covering its responsibilities under this policy, and in no event less than quarterly.

28.29. The reports will include listings of new securities litigation case filings and new settlements or awards in which OCERS has identified losses. The General Counsel will define the scope of other information that should be contained in the reports, and may include information such as the name of the security, the class period, OCERS' identified losses, and the claims filing deadlines. For any matters where OCERS' estimated losses exceed \$1 million, the report will include a brief analysis of the merits of the litigation.

29.30. Legal department will provide the Investment Committee with status reports as needed to keep the Investment Committee apprised of major developments in cases in which OCERS is a party.

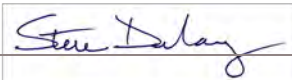
OCERS Board Policy Securities Litigation Policy

Policy History

30-31. The Board adopted this policy on December 15, 2003. The Board amended this policy on December 20, 2004; reviewed this policy with no changes on March 24, 2008; and amended this policy on August 24, 2009, May 20, 2013, ~~and~~ March 20, 2017 and November 13, 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

3/20/2017

Date

Purpose and Background

1. The Securities Litigation Policy is intended to establish procedures and guidelines for monitoring and, when appropriate, participating in securities class actions in furtherance of the Board of Retirement's fiduciary duty to protect the assets of the trust. See Cal. Const. Art. XVI, § 17. The responsibility for overseeing securities litigation is delegated to the Investment Committee.

Principles

2. As a large institutional shareholder, OCERS is frequently a class member in securities class actions that seek to recover damages resulting from alleged wrongful acts or omissions of others.
3. The Private Securities Litigation Reform Act ("PSLRA") enacted in 1995 allows institutional investors and other large shareholders to seek lead plaintiff status in securities class actions pending within the United States under U.S. federal securities laws. The lead plaintiff attains the right to supervise and control the prosecution of such cases. Since enactment of the PSLRA, it has been demonstrated that participation as lead plaintiff by large, sophisticated shareholders, particularly public pension funds, has resulted in lower attorney's fees and significantly larger recoveries on behalf of shareholders. The United States Securities and Exchange Commission and leaders in the legal community have commented that the governing board of a public pension system has a fiduciary duty to monitor securities class actions in which the system has an interest, and to participate as lead plaintiff where such participation is likely to enhance the recovery by members of the class.
4. In 2010, the United States Supreme Court in *Morrison v. National Australia Bank* ("*Morrison*") held that certain investor losses stemming from corporate wrongdoing cannot be pursued under federal securities laws. Specifically, the Supreme Court held that investors cannot bring or participate in a U.S. securities class action if their claims are based on securities they purchased outside the United States. As a result, investors must now identify and evaluate foreign securities actions in order to fully protect their interests, including the right to participate in such actions and share in any recovery. Unlike the United States, most countries do not have a class action procedure for the adjudication of securities claims. Instead, many other countries have some form of collective litigation that requires investors to affirmatively join the action to seek a recovery on a securities claim. Because there is no possibility of recovery as a passive member of the class in those cases, OCERS must give special consideration to whether the potential benefits of actively participating in such cases outweighs the potential risks.
5. In June 2017, the United States Supreme Court in *CalPERS v. ANZ Securities, Inc.* ("*ANZ Securities*") held that the filing of a securities class action does not "toll" or satisfy the three-year time period (called the statute of repose) for putative class members to assert individual claims for recovery under Sections 11 and 12 of the Securities Act of 1933. The Supreme Court's decision has been extended by lower federal courts to apply to claims brought under Securities Exchange Act of 1934. As a result, investors can no longer rely on the filing of a securities class action case to preserve the timeliness of their individual claims for recovery of damages under the federal securities laws, and must exercise heightened diligence to protect potentially valuable claims from expiring under the statute of repose.

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6. Because OCERS exists to provide retirement income to its members, the goal of this policy is the preservation of trust assets to meet the needs of OCERS members. OCERS will prudently select the best means to preserve those assets.

Monitoring of Securities Litigation and OCERS Holdings

7. **Review of Class Action Filings.** The Legal department will identify and evaluate securities class actions, pending or proposed to be filed within the United States and in foreign jurisdictions, in which OCERS may have recognized losses.
8. **Active Case Monitoring.** The Legal department will actively monitor each case in which it has determined the case has merit and either OCERS' estimated loss meets the Loss Threshold or there are special circumstances that justify OCERS actively monitoring the case. Active monitoring may include participation by the Legal department in significant motions and in settlement discussions when permitted by the parties or the court.
9. **Active Participation.** The Legal Office will recommend to the Investment Committee whether OCERS should take an active role in a securities class action (which may include, but is not limited to, seeking lead plaintiff status, or opting out of the class action and pursuing an individual action) in any case where the Legal department, after consulting with outside counsel, has determined the case has merit, the best interests of OCERS will be served by taking such action, and the case meets the Domestic Loss Threshold or Foreign Loss Threshold.
10. **Domestic Loss Threshold.** A case pending or proposed to be filed within the United States will meet OCERS' Domestic Loss Threshold if (a) OCERS' estimated loss is at least \$1 million; (b) OCERS has substantial losses that are less than \$1 million but OCERS will join the case with one or more other institutional investors; (c) OCERS cannot recover without active participation in the case; or (d) OCERS' active participation in the case may lead to meaningful corporate governance reforms.
11. **Foreign Loss Threshold.** A case pending or proposed to be filed in a foreign jurisdiction will meet OCERS' Foreign Loss Threshold where OCERS' estimated loss is at least \$250,000.
12. **Losses Below Threshold.** If the Legal department identifies a case where OCERS' losses during the alleged claims period is less than the Loss Threshold, but OCERS suffered a loss in excess of the Loss Threshold during a period of time closely preceding or following the claims period, the Legal department will consider whether to seek an adjustment of the claims period. If warranted, the Legal department will actively monitor the case and participate in a motion to adjust the claims period or seek approval of the Investment Committee to actively participate in the case.
13. OCERS will take an active role in a securities class action only after approval by the Investment Committee or the Chief Executive Officer, as set forth in Sections 15 through 18, below.
14. The Legal department will collaborate with the Investment department in monitoring securities class action filings and settlements that affect the OCERS investment portfolio, identifying instances where OCERS may have suffered losses due to securities fraud, and identifying developments in the marketplace that would lead to an interest or need in OCERS participating in litigation regarding the market generally.

Active Participation

15. Recommendations on whether to take an active role in a securities litigation case will be presented to the Investment Committee at a regularly scheduled meeting or, where immediate approval is necessary, at a special meeting.
16. In deciding whether to take an active role in securities litigation cases, the Investment Committee will consider:
 - i. The size of OCERS' loss;
 - ii. The identity of the lead plaintiff and other parties, if known;
 - iii. The identity of lead counsel, if known;
 - iv. Whether OCERS has, or had, substantial losses or significant holdings in the company or security during the most plausible class period and sustained damages surpassing its threshold for considering action;
 - v. The merits of the case, both from a legal perspective and a business perspective;
 - vi. The likely degree of recovery, including the probability of a defendant's insurer being able to fund an award, balanced against the time and costs involved in taking an active role in the case;
 - vii. The effectiveness and availability of potential witnesses and ability of OCERS Investment department staff and fund managers to respond to requested discovery;
 - viii. The potential impact on the portfolio from potential trading restrictions arising from acquisition of inside information in litigation, if any;
 - ix. The effectiveness of potential alternatives for recovering the losses, such as filing a claim or protective motion, and monitoring;
 - ix. Whether active participation by OCERS would add value to the potential resolution or management of the case.
 - x. The forum and choice of law for the case.
 - xi. Notwithstanding the Loss Threshold for active participation, active participation in foreign securities actions will be examined on a case-by-case basis. The Legal department will present meritorious foreign securities cases to the Investment Committee to determine whether the potential benefits of active participation outweigh the potential risks and costs. In making such determination, the Investment Committee will consider, among other factors, the size of the potential recovery, OCERS' potential obligation to pay legal fees and costs, the potential liability for an adverse cost award, and whether the funding arrangement, other participation agreements, or applicable local laws are sufficient to protect OCERS from an adverse cost award or other potential liability.

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17. If the Chief Executive Officer determines that immediate approval is required in order to preserve OCERS' rights and/or interests by taking an active role in a securities litigation case, and the matter cannot be timely presented for approval at a regularly scheduled or special meeting of the Investment Committee, or where a quorum cannot be reached at such meeting, the Chief Executive Officer is authorized, after consultation with the General Counsel, Chief Investment Officer, and Chair of the Investment Committee, to make the decision and shall notify the Investment Committee at its next regularly scheduled meeting.
18. For purposes of this policy, a foreign securities action is defined as a lawsuit pending or proposed to be filed outside the United States involving securities purchased on a foreign securities exchange or other non-domestic transaction by OCERS or on its behalf. Participation as a class member in a foreign securities action, if participation in such foreign action requires registration or other affirmative action by OCERS, shall be considered "active participation" and shall be submitted to the Investment Committee for approval.

Settlements

19. When a settlement is presented in a case in which OCERS has taken an active role, the Legal department will provide the Investment Committee with an analysis of the settlement terms, including the total amount of the proposed recovery, proposed costs and fees paid to attorneys, the best estimate of the percentage of recovery of OCERS' identified losses, analysis from the firm representing OCERS in the case, and any other relevant information pertaining to the settlement. The Investment Committee may approve a proposed settlement or delegate to the Chief Executive Officer or the General Counsel authority to enter into a settlement on whatever terms it deems appropriate.
20. If the Chief Executive Officer determines that immediate approval of a settlement is required in order to preserve OCERS' rights and/or interests, and the matter cannot be timely presented for approval at a regularly scheduled or special meeting of the Investment Committee, or where a quorum cannot be reached at such meeting, the Chief Executive Officer is authorized, after consultation with the General Counsel, Chief Investment Officer and Chair of the Investment Committee, to approve the settlement and notify the Investment Committee at its next regularly scheduled meeting.

Claims Filing and Audits

21. OCERS' custodial bank shall be responsible for filing all claims, including the necessary supporting documents and information, necessary to recover assets in every securities class action in which OCERS has suffered losses which has been brought or is pending within the United States. If OCERS' custodial bank is not able to file all claims and necessary supporting documents and information, necessary to recover assets in every securities class action in which OCERS has suffered losses which has been brought or is pending in a foreign jurisdiction, then the Legal department, in consultation with the Investment department, shall designate the entity that will be responsible for filing those claims. The Legal department shall prepare, and revise as necessary, a statement of work to be included in the custodial agreement setting forth formalized claims filing procedures for the custodial bank to follow, which shall include identifying and reviewing all class action

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settlements, providing timely notice of each settlement to OCERS, filing claims correctly and timely on OCERS' behalf, and providing quarterly reports regarding its efforts. The Legal department, in consultation with the Investment department, shall monitor the performance of the custodial bank in these matters. The custodial bank will submit quarterly reports on the securities litigation proceeds recovered, which information shall be shared with the Investment Committee.

- 22.** The Legal department, in conjunction with the Investment department, shall from time to time audit the custodial bank's claims filing process to insure that OCERS is recovering all the amounts that OCERS is due from securities litigation settlements and awards. The Legal department, in conjunction with the Investment department, may require that the custodial bank change its processes or implement an alternative plan for filing proofs of claim.

Retention of Securities Monitoring Firms and Litigation Counsel

- 23.** The General Counsel, with the approval of the Chief Executive Officer, will engage at least two and no more than five firms with demonstrated expertise and experience in prosecuting and/or monitoring securities class actions (the "Securities Litigation Monitoring Firms") to advise and/or represent OCERS in monitoring securities class action filings and settlements that affect the OCERS investment portfolio and identifying new instances where OCERS may have suffered losses due to securities fraud or related misconduct.

- 24.** At a minimum, Securities Litigation Monitoring Firms will:

- a. Obtain OCERS' securities trading and holdings information directly from OCERS' custodial bank;
- b. Identify and monitor securities class actions filed or proposed to be filed in the United States, and analyze OCERS' estimated loss, if any, in the affected security or securities in each action;
- c. Evaluate and provide timely notice and analysis of potential or pending securities class actions filed in the United States where (i) OCERS has suffered losses that meet its Loss Threshold and where active participation may be necessary and warranted; or (ii) if OCERS' losses are below its Loss Threshold, the Securities Litigation Monitoring Firm believes factors exist that justify OCERS' consideration of the case;
- d. Provide reports (at least quarterly) of newly-filed domestic securities class actions and OCERS' estimated losses or online access to pending securities class actions filed in the United States and OCERS' estimated losses;
- e. Identify and monitor securities actions that are filed or may be filed outside the United States in foreign jurisdictions, and provide an analysis of OCERS' estimated loss, if any, in the affected security or securities in each action;
- f. Evaluate and provide timely notice and analysis of those potential and pending non-U.S. securities actions where (i) OCERS has suffered losses that meet its Foreign Loss Threshold; or (ii) if OCERS' losses are below its Foreign Loss Threshold, the Securities Litigation Monitoring Firm believes factors exist that justify OCERS' consideration of the case;

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- g. Assist OCERS in joining and filing claims in non-U.S securities actions in which the Investment Committee approves active participation, including obtaining, assisting in the review and negotiation, and submission of engagement agreements, third-party funder agreements, and insurance agreements; and
 - h. Assist OCERS in identifying meritorious U.S. securities class actions in which OCERS has substantial losses or significant holdings, determining the relevant statutes of repose, monitoring the progress of the litigation (including class certification), and evaluating whether to file a protective claim or motion before a significant repose period expires.
- 25.** Retainer Agreements with Securities Litigation Monitoring Firms will be for terms not exceeding six years. Prior to the expiration of the six year term, the General Counsel or his or her designee will conduct a Request for Proposals (“RFP”).
- 26.** When the Investment Committee or the Chief Executive Officer approves OCERS taking an active role in litigation, it or he or she will also direct the General Counsel to retain litigation counsel under specific terms, issue an RFP for litigation counsel, or delegate to the General Counsel the authority to retain litigation counsel for the matter.
- 27.** The General Counsel may rely on Securities Litigation Monitoring Firms for preparation of in-depth damages analyses and/or for representation in litigation which OCERS is actively monitoring. However, the General Counsel may, with the approval of the Chief Executive Officer, retain outside counsel on behalf of OCERS to undertake these matters or to assist the Legal department in carrying out any of its other responsibilities under this policy.

Reporting

- 28.** The Legal department will provide the Investment Committee with regular reports covering its responsibilities under this policy, and in no event less than quarterly.
- 29.** The reports will include listings of new securities litigation case filings and new settlements or awards in which OCERS has identified losses. The General Counsel will define the scope of other information that should be contained in the reports, and may include information such as the name of the security, the class period, OCERS’ identified losses, and the claims filing deadlines. For any matters where OCERS’ estimated losses exceed \$1 million, the report will include a brief analysis of the merits of the litigation.
- 30.** Legal department will provide the Investment Committee with status reports as needed to keep the Investment Committee apprised of major developments in cases in which OCERS is a party.

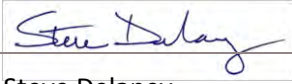
Policy History

- 31.** The Board adopted this policy on December 15, 2003. The Board amended this policy on December 20, 2004; reviewed this policy with no changes on March 24, 2008; and amended this policy on August 24, 2009, May 20, 2013, March 20, 2017, and November 13, 2017.

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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

_____ Date

Introduction

1. The Investment Committee (Committee) has been established by the OCERS Board to administer all matters relating to the investment of the Fund's assets and investment management. The Committee is charged with investing the assets of the system solely for the benefit of plan participants and beneficiaries while attempting to minimize employer contributions and investment and administration costs. The Committee will carry out its duties with the care, skill, prudence, and diligence under the circumstances then prevailing that a prudent person acting in a like capacity and familiar with these matters would use in the conduct of an enterprise of a like character and with like aims.
2. The Committee's core objective is to ensure that the investment program aims to achieve and maintain a fully funded status with regard to the actuarial liability of the system.
3. The Committee shall be comprised of all Board members. The Retirement Board Chair will appoint the Chair and Vice Chair for the Committee.
4. The Investment Committee has final authority on the duties, responsibilities and other matters described in this Charter and on OCERS investment-related matters generally. Notwithstanding the preceding sentence, with respect to the this *Investment Committee Charter*, the Investment Committee is an advisory committee to the Board of Retirement and the Investment Committee's recommendations regarding the *Investment Committee Charter* are subject to final approval by the Board.

Duties and Responsibilities

5. Responsible for the oversight of OCERS investments.
- 5-6. Responsible for the oversight of OCERS' monitoring of and participation in securities litigation cases.
- 6-7. Conduct a study of the relationship between the assets and liabilities of OCERS not less than every three years.
- 7-8. Set the Fund's overall investment objectives, risk tolerance and performance standards.
- 8-9. Approve an Investment Policy Statement including investment objectives, review and confirm or amend such policy on an as needed basis.
- 9-10. Approve the hiring of investment consultants.
- 10-11. Approve the hiring of investment managers.
- 11-12. Review and approve the *Chief Investment Officer Charter* and all of the policies assigned to Investment Committee (*i.e.*, all investment policies and investment strategic plans) at least once every three years in accordance with the schedule set forth in the *OCERS Charters and Policies Review Schedule*.

Investment Committee Charter

Meetings

~~12:13.~~ The Committee will meet once a month and otherwise on an as needed basis as determined by the Committee Chair in consultation with the Board Chair.

Monitoring and Reporting

~~13:14.~~ Ensure that investments are made in conformance with the applicable investment policies.

~~14:15.~~ Review the investment performance of the portfolio as a whole, the asset classes and the individual investment managers retained by OCERS.

~~15:16.~~ Monitor the investment consultants retained to advise the Committee.

~~16:17.~~ Review investments related costs.

~~17:18.~~ Perform any other duties assigned by the Retirement Board Chair.

Manager Monitoring Subcommittee

~~18:19.~~ The Manager Monitoring Subcommittee has been established to perform the Investment Committee's oversight responsibilities of incumbent investment advisor and managers. The Manager Monitoring Subcommittee is an advisory subcommittee to the Investment Committee. The subcommittee shall consist of four members of the Investment Committee to be appointed by the Board chair and serving a one-year term. The subcommittee chair and vice-chair shall also be appointed by the Board chair. The subcommittee shall generally meet monthly with such frequency as necessary to assure that all investment managers are reviewed by the subcommittee every three years three years unless waived by the Subcommittee for consistent satisfactory performance or other good cause, and that underperforming managers are reviewed more frequently if deemed necessary by the CIO, the staff coordinator, the subcommittee or the Investment Committee.

~~19:20.~~ The Subcommittee shall have the following responsibilities and powers:

- a. To receive and review investment manager presentations, consultant due diligence reports, performance histories and reports, and staff reports concerning specific managers invited to present before the subcommittee.
- b. To review investment managers' performance on an absolute and relative basis, and their fees.
- c. To make recommendations or provide guidance to the CIO regarding the managers' mandates.
- d. To have minutes of the meeting be reported to the full Investment Committee as a Consent agenda item the following month.
- e. To make oral reports to the full Investment Committee as requested by the Committee chair.
- f. To recommend to the Investment Committee that an individual investment manager be placed on watch or removed from watch status, or terminated for good reason.

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- g. To recommend that the Investment Committee review an individual manager with exceptional performance, either above or below its peer group.

Review and Amendment of Charter

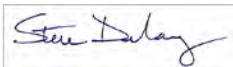
20-21. The Investment Committee will review this *Investment Committee Charter* at least once every three (3) years and recommend any amendments to the Board for approval as necessary to ensure that the Charter remains relevant and appropriate.

Charter History

21-22. This Charter was adopted by the Board of Retirement on November 18, 2002, and amended ~~by the Board on May 21, 2012. The Investment Committee approved further revisions on~~ October 29, 2014, ~~This Charter was further amended by the Board of Retirement on~~ July 20, 2015, ~~The Investment Committee approved further revisions on~~ April 27, 2016 and November 13, 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

4/27/16

Date

Introduction

1. The Investment Committee (Committee) has been established by the OCERS Board to administer all matters relating to the investment of the Fund's assets and investment management. The Committee is charged with investing the assets of the system solely for the benefit of plan participants and beneficiaries while attempting to minimize employer contributions and investment and administration costs. The Committee will carry out its duties with the care, skill, prudence, and diligence under the circumstances then prevailing that a prudent person acting in a like capacity and familiar with these matters would use in the conduct of an enterprise of a like character and with like aims.
2. The Committee's core objective is to ensure that the investment program aims to achieve and maintain a fully funded status with regard to the actuarial liability of the system.
3. The Committee shall be comprised of all Board members. The Retirement Board Chair will appoint the Chair and Vice Chair for the Committee.
4. The Investment Committee has final authority on the duties, responsibilities and other matters described in this Charter and on OCERS investment-related matters generally. Notwithstanding the preceding sentence, with respect to the this *Investment Committee Charter*, the Investment Committee is an advisory committee to the Board of Retirement and the Investment Committee's recommendations regarding the *Investment Committee Charter* are subject to final approval by the Board.

Duties and Responsibilities

5. Responsible for the oversight of OCERS investments.
6. Responsible for the oversight of OCERS' monitoring of and participation in securities litigation cases.
7. Conduct a study of the relationship between the assets and liabilities of OCERS not less than every three years.
8. Set the Fund's overall investment objectives, risk tolerance and performance standards.
9. Approve an Investment Policy Statement including investment objectives, review and confirm or amend such policy on an as needed basis.
10. Approve the hiring of investment consultants.
11. Approve the hiring of investment managers.
12. Review and approve the *Chief Investment Officer Charter* and all of the policies assigned to Investment Committee (*i.e.*, all investment policies and investment strategic plans) at least once every three years in accordance with the schedule set forth in the *OCERS Charters and Policies Review Schedule*.

Investment Committee Charter

Meetings

13. The Committee will meet once a month and otherwise on an as needed basis as determined by the Committee Chair in consultation with the Board Chair.

Monitoring and Reporting

14. Ensure that investments are made in conformance with the applicable investment policies.
15. Review the investment performance of the portfolio as a whole, the asset classes and the individual investment managers retained by OCERS.
16. Monitor the investment consultants retained to advise the Committee.
17. Review investments related costs.
18. Perform any other duties assigned by the Retirement Board Chair.

Manager Monitoring Subcommittee

19. The Manager Monitoring Subcommittee has been established to perform the Investment Committee's oversight responsibilities of incumbent investment advisor and managers. The Manager Monitoring Subcommittee is an advisory subcommittee to the Investment Committee. The subcommittee shall consist of four members of the Investment Committee to be appointed by the Board chair and serving a one-year term. The subcommittee chair and vice-chair shall also be appointed by the Board chair. The subcommittee shall generally meet monthly with such frequency as necessary to assure that all investment managers are reviewed by the subcommittee every three years three years unless waived by the Subcommittee for consistent satisfactory performance or other good cause, and that underperforming managers are reviewed more frequently if deemed necessary by the CIO, the staff coordinator, the subcommittee or the Investment Committee.
20. The Subcommittee shall have the following responsibilities and powers:
 - a. To receive and review investment manager presentations, consultant due diligence reports, performance histories and reports, and staff reports concerning specific managers invited to present before the subcommittee.
 - b. To review investment managers' performance on an absolute and relative basis, and their fees.
 - c. To make recommendations or provide guidance to the CIO regarding the managers' mandates.
 - d. To have minutes of the meeting be reported to the full Investment Committee as a Consent agenda item the following month.
 - e. To make oral reports to the full Investment Committee as requested by the Committee chair.
 - f. To recommend to the Investment Committee that an individual investment manager be placed on watch or removed from watch status, or terminated for good reason.

Investment Committee Charter

- g. To recommend that the Investment Committee review an individual manager with exceptional performance, either above or below its peer group.

Review and Amendment of Charter

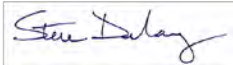
21. The Investment Committee will review this *Investment Committee Charter* at least once every three (3) years and recommend any amendments to the Board for approval as necessary to ensure that the Charter remains relevant and appropriate.

Charter History

22. This Charter was adopted by the Board of Retirement on November 18, 2002, and amended on May 21, 2012, October 29, 2014, July 20, 2015, April 27, 2016 and November 13, 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

_____ Date

D

Memorandum

DATE: October 11, 2017
TO: Members of the Governance Committee
FROM: Brenda Shott, Assistant CEO Finance and Internal Operations and Jenny Sadoski, Director of IT
SUBJECT: **ACTUARIAL VALUATION POLICY**

Recommendation

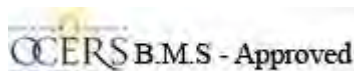
Approve, and recommend that the Board of Retirement approve revisions to the Actuarial Valuation Policy (previously named the Actuarial Extract Policy and Process).

Background/Discussion

In June 2012, the Board approved the Actuarial Extract Policy and Process as part of the response to a recommendation from Clifton Gunderson, a third party consultant that was hired to review OCERS' internal controls. Since that time, OCERS has implemented the new Pension Administration System: V3 and many of the detailed procedures involved with preparing the Actuarial Extract have changed. During the review of the Actuarial Extract Policy and Process document, the Ad Hoc Actuarial Extract Review Committee noted that the document had been written as a step by step procedure document instead of a policy document. The proposed revised document includes significant changes which are aimed at creating a governing policy for the preparation of an annual Actuarial Valuation. The step by step instructions on how the actuarial extract process works have also been updated, but have been done so in department level procedure documents, which staff deemed to be the appropriate place for this level of detail processes. The proposed change in approach of separating the policy from the procedures allows for procedures to be updated in a more expedient manner and keeps the Board governance at the policy level rather than the detail daily operations level.

Staff is requesting that the Governance Committee recommend adoption of the revised policy, including a change in the title of the policy, to the full Board of Retirement.

Submitted by:



Brenda Shott
Assistant CEO, Finance and Internal Operations

Actuarial ~~Extract Valuation~~ Policy ~~and Process~~

Purpose

1. In compliance with Section 31453 of the California Employees Retirement Law of 1937 ("CERL"), OCERS (the "System") shall conduct an annual actuarial valuation to determine the value of assets and liabilities and the funding requirements of the System. The valuation shall be conducted under the supervision of an actuary and shall cover the mortality, service and compensation experience of the System's members and beneficiaries. Each year OCERS' staff extracts system data to transmit to the actuary consisting of individual member and payee records, and asset and financial information for participating plan sponsors. This is referred to as an Actuarial Extract. The actuary utilizes this data in preparation of the Annual Valuation. It is imperative that the actuary receive accurate and complete system data in order to properly calculate assets and liabilities. This Actuarial Extract Policy identifies the process OCERS' staff and the actuary follow to ensure the Actuarial Extract contains accurate and complete system data, and defines the roles and responsibilities of each.

Policy Objectives

2. To ensure compliance with the CERL with regards to conducting annual actuarial valuations that determine the value of assets and liabilities and the funding requirements of the system.;
3. Define roles and responsibilities of staff, actuary and Board of Retirement in preparing an annual actuarial valuation.
4. Support the general public policy goals of accountability and transparency by being clear as to the annual valuation process that includes the use of complete and accurate data.
2. Each year when the actuarial extract is processed, OCERS' staff will identify and confirm requested data elements from the actuary. Data will be extracted from the Pension Administration System (the "PAS") as well as ad hoc supplemental reports as required to create one extract file for active and deferred members and one extract file for retired members and other payees. Once the extract files is are generated, OCERS' staff will create and review the results and correct information in the PAS as needed to ensure accuracy and consistency with the data received from Plan Sponsors queries listing data elements that may need correction in the PAS. The extract is rerun as needed. Once the files have been delivered to the actuary, OCERS staff will work in conjunction with the actuary to ensure that the data is complete and as accurate as possible. Communication between the actuary and OCERS confirms the data in the final extract used for the annual valuation is accurate. All staff involved in the extract process will be copied on all written communication and emails to ensure understanding and compliance. The actuary will provide draft valuation results to the Board of Retirement for review and to solicit questions from Board members and Plan Sponsors. The Board of Retirement will provide final approval of the valuation and contribution rates.

3-5 Definitions

Actuarial Extract: a reset of computer generated files that is-are compiled by OCERS from its Pension Administration System. It captures individual member data including Gross Salary, Pensionable Salary, Earnable Salary, Pensionable Pay Items, accumulated service, demographic data and contribution data.

Actuarial ~~Extract Valuation~~ Policy ~~and Process~~

Ad Hoc Actuarial Extract Review Committee: an internal OCERS' committee consisting of management and line staff ~~with which has~~ the primary purpose of reviewing the data used in the final Actuarial Extract submitted to the actuary.

Annual Actuarial Valuation: a report generated by OCERS' retained actuary as of December 31st of each year, setting forth plan membership demographics, rate group structure, contributions on deposit, funding obligations of members and plan sponsors, contribution rates and funding progress.

~~Exceptions: computer generated validations triggered by OCERS' Pension Administration System during the processing of payroll data from Plan Sponsors. The exceptions do not prevent data from being submitted to OCERS, but still need to be reviewed and corrected, if warranted, before the payroll data is posted to member or employer records. Exceptions regarding contributions create a discrepancy which is not cleared until it is resolved.~~

Earnable Salary: the total salary an OCERS' member could have earned for working their regular schedule each pay period during a bi-weekly pay period. This is calculated by multiplying the member's hourly rate by the number of hours the member could have worked in a reported pay period based on their work schedule (full time or eligible part time).

Gross Salary: the total payment made to a member within a reported bi-weekly pay period salary an OCERS' member was actually paid during each pay period.

Pensionable Pay Items: the elements of compensation in addition to Pensionable Salary that OCERS' members earned during each pay period.

Pensionable Salary: the total salary an OCERS' member actually earned during each pay period a bi-weekly pay period, excluding Pensionable Pay Items. This is calculated by multiplying the member's hourly rate by the number of hours the member actually worked in a reported pay period.

Pension Administration System (PAS): the software program OCERS uses to store member and plan sponsor data, calculate pensions, receive payroll transmittals, calculate benefits, run queries and reports containing contribution and membership demographic data, and communicate with members, plan sponsors and stakeholders.

~~Trial Actuarial Extract: a trial report run by OCERS' staff prior to submission of the Actuarial Extract to the actuary. It is used for review purposes by staff to ensure that the data being captured is complete and accurate. It can be run as many times as necessary before submitting the Actuarial Extract to the actuary.~~

Process Policy Guidelines

~~4.6. Annually, OCERS staff will work with the System's actuary to review and produce an Annual Actuarial Valuation. Each December, the actuary sends OCERS a written request to the Assistant CEO of Finance/Internal Operations listing specific required data the actuary needs from OCERS to perform the Annual Valuation. The requested information is pulled from the OCERS PAS via the Actuarial Extract file.~~

7. Each year OCERS' staff will identify and confirm requested data elements from the actuary.

Actuarial ~~Extract Valuation~~ Policy ~~and Process~~

8. The Ad Hoc Actuarial Extract Review Committee will prepare an Actuarial Extract from the Pension Administration System as well as additional ad hoc supplemental reports as required to provide requested data for active, deferred, and retired members as well as for and other payees such as beneficiaries and domestic relation orders. The data will be collected as of calendar year end.
9. Once the data is generated, the Ad Hoc Actuarial Extract Review Committee will review and analyze the results and correct information in the Pension Administration System as needed to ensure accuracy and consistency with the data received from Plan Sponsors. Elements of data to be reviewed and analyzed will include Gross Salary, Earnable Salary, Pensionable Salary and Pensionable Pay Items.
10. The Ad Hoc Actuarial Extract Review Committee will deliver the Actuarial Extract, ad hoc supplemental reports and any other requested information to the actuary in accordance with the agreed upon schedule. OCERS staff will work in conjunction with the actuary to ensure that the data is complete and as accurate as possible. This will entail additional analysis of the data submitted by the actuary and research and response to questions by the Ad Hoc Actuarial Extract Review Committee.
- ~~5-11. The accurate and complete reporting of member demographic, employment, payroll and contribution data is required from all Plan Sponsors. OCERS' Member Services staff works with the Plan Sponsors to clear and post all pending transmittal exceptions no later than the end of January.~~
- ~~6. Every three to five years an external third-party actuary will conduct an audit of the annual valuation. In February the IT Programming staff runs the Actuarial Extract file. They create queries to identify data anomalies in member status, service hours, salary, contributions, and payments. Data clean-up reports are provided to Member Services and Finance staff to review and correct data prior to the submission of the first Actuarial Extract file sent to the actuary.~~
- ~~7-12. Under the guidelines of the Actuarial Funding Policy, the actuary will use data provided by OCERS to produce the annual valuation. The data will be collected as of calendar year end. The data provided will be consistent with the data received from Plan Sponsors and contained in the PAS. Annual valuation data and results are the source information for OCERS triennial study. After initial data clean up is complete, the extract is rerun by IT Programming staff and data is validated by staff in IT Programming, Finance, Member Services and the Ad Hoc Actuarial Extract Review Committee.~~
- ~~8-13. The actuary will present draft annual actuarial valuations to the Board of Retirement in or around May of each year. IT programming staff imports the Actuarial Extract file data into an Access database to enable staff Member Services and Finance staff to confirm data accuracy and create a test sample including records from each plan sponsor, plan, rate group and Tier. A reasonableness test is done to ensure the file contains accurate and complete data for use by the actuary in the Annual Valuation.~~
14. The Board of Retirement will give final approval of the valuation and contribution rates each year. The Assistant CEO of Finance/Internal Operations sends initial summary data to each plan sponsor consisting of that plan sponsor's member data and contribution records for review and feedback.

Actuarial ~~Extract-Valuation~~ Policy ~~and Process~~

~~15. Every three to five years an external third-party actuary will conduct an audit of the annual valuation.~~

~~9. The first Actuarial Extract file is sent to the actuary for review. The actuary may request clarification or additional information. If further data clean-up is required in PAS, IT Programming provides reports to Member Services and Finance staff and the data is corrected by the appropriate division.~~

~~10. The Actuarial Extract file is regenerated and sent to the actuary. The actuary analyzes the data and informs OCERS if any data elements have been revised by them so we can review and approve the revisions.~~

~~11. No later than May of each year, the final Actuarial Extract file is audited by Finance staff and reviewed by the Ad Hoc Actuarial Oversight Committee. The Committee will authorize the submission of the final file to the actuary, which will be used for the Annual Valuation.~~

Policy Review

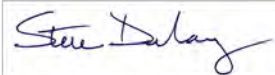
~~12.16.~~ The Board of Retirement will review this Policy at least once every three years to ensure that it remains relevant and appropriate.

Policy History

~~13.17.~~ The Board of Retirement adopted this policy on June 18, 2012.

Secretary's Certificate

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



6/18/12

Steve Delaney
Secretary of the Board

Date

Purpose

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3. Define roles and responsibilities of staff, actuary and Board of Retirement in preparing an annual actuarial valuation.
4. Support the general public policy goals of accountability and transparency by being clear as to the annual valuation process that includes the use of complete and accurate data.
5. Definitions

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Ad Hoc Actuarial Extract Review Committee: an internal OCERS committee consisting of management and line staff which has the primary purpose of reviewing the data used in the final Actuarial Extract submitted to the actuary.

Annual Actuarial Valuation: a report generated by OCERS retained actuary as of December 31st of each year, setting forth plan membership demographics, rate group structure, contributions on deposit, funding obligations of members and plan sponsors, contribution rates and funding progress.

Earnable Salary: the total salary an OCERS member could have earned during a bi-weekly pay period. This is calculated by multiplying the member’s hourly rate by the number of hours the member could have worked in a reported pay period based on their work schedule (full time or eligible part time).

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OCERS Board Policy

Actuarial Valuation Policy

Pension Administration System: the software program OCERS uses to store member and plan sponsor data, calculate pensions, receive payroll transmittals, calculate benefits, run queries and reports containing contribution and membership demographic data, and communicate with members, plan sponsors and stakeholders.

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11. The accurate and complete reporting of member demographic, employment, payroll and contribution data is required from all Plan Sponsors.
12. Under the guidelines of the Actuarial Funding Policy, the actuary will use data provided by OCERS to produce the annual valuation. Annual valuation data and results are the source information for OCERS triennial study.
13. The actuary will present draft annual actuarial valuations to the Board of Retirement in or around May of each year.
14. The Board of Retirement will give final approval of the valuation and contribution rates each year.
15. Every three to five years an external third-party actuary will conduct an audit of the annual valuation.

OCERS Board Policy
Actuarial Valuation Policy

Policy Review

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

Policy History

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