

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

**GOVERNANCE COMMITTEE MEETING
August 4, 2020
9:00 a.m.**

Members of the Committee

Shawn Dewane, Chair
Frank Eley, Vice Chair
Charles Packard
Roger Hilton

Pursuant to Executive Order N-29-20, certain provisions of the Brown Act are suspended due to a State of Emergency in response to the COVID-19 pandemic. Consistent with the Executive Order, this meeting will be conducted by video/teleconference only. None of the locations from which the Committee members will participate will be open to the public.

Members of the public who wish to observe and/or participate in the meeting may do so via the Zoom app or via telephone. Members of the public who wish to provide comment during the meeting may do so by “raising your hand” in the Zoom app, or if joining by telephone, by pressing * 9 on your telephone keypad.

OCERS Zoom Video/Teleconference information	
Join Using the Zoom App (Video & Audio) https://ocers.zoom.us/j/91455723392 Meeting ID: 914 5572 3392 Password: 370381 Go to https://www.zoom.us/download to download Zoom app before meeting Go to https://zoom.us to connect online using any browser.	Join by Telephone (Audio Only) Dial by your location +1 669 900 6833 US (San Jose) +1 253 215 8782 US (Tacoma) +1 346 248 7799 US (Houston) +1 312 626 6799 US (Chicago) +1 929 436 2866 US (New York) +1 301 715 8592 US (Germantown) Meeting ID: 914 5572 3392 Password: 370381

AGENDA

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. The Committee may consider matters included on the agenda in any order, and not necessarily in the order listed.

OPEN SESSION

CALL MEETING TO ORDER AND ROLL CALL

PUBLIC COMMENT

At this time, members of the public may comment on (1) matters not included on the agenda, provided that the matter is within the subject matter jurisdiction of the Committee; and (2) any matter appearing on the Consent Agenda. Members of the public who wish to provide comment at this time may do so by “raising your hand” in the Zoom app, or if joining by telephone, by pressing * 9 on your telephone keypad. When addressing the Committee, please state your name for the record prior to providing your comments. Speakers will be limited to three (3) minutes.

In addition, public comment on matters listed on this agenda will be taken at the time the item is addressed.

CONSENT AGENDA

C-1 APPROVE GOVERNANCE COMMITTEE MEETING MINUTES

Governance Committee Meeting Minutes

June 9, 2020

ACTION ITEMS

NOTE: Public comment on matters listed in this agenda will be taken at the time the item is addressed, prior to the Committee’s discussion of the item. **Members of the public who wish to provide comment in connection with any matter listed in this agenda may do so by “raising your hand” in the Zoom app, or if joining by telephone, by pressing *9, at the time the item is called.**

A-1 INDIVIDUAL ACTION ON ANY ITEM TRAILED FROM THE CONSENT AGENDA

A-2 TRIENNIAL REVIEW OF THE ACTUARIAL VALUATION POLICY

Presentation by Brenda Shott, Assistant CEO, Finance and Internal Operations

Recommendation: Approve and recommend the Board adopt the proposed revisions to the Actuarial Valuation Policy.

A-3 TRIENNIAL REVIEW OF THE SECURITIES LITIGATION POLICY

Presentation by Gina M. Ratto, General Counsel

Recommendation: Approve and recommend the Board adopt the proposed revisions to the Securities Litigation Policy.

A-4 BIENNIAL REVIEW OF OCERS’ CONFLICT OF INTEREST CODE

Presentation by Gina M. Ratto, General Counsel

Recommendation: Approve and recommend the Board adopt the proposed revisions to OCERS’ Conflict of Interest Code.

A-5 SECOND READING OF ADMINISTRATIVE REVIEW AND HEARING POLICY

Presentation by Gina M. Ratto, General Counsel

Recommendation: Staff recommends the Governance Committee:

- (1) Approve, on a second reading, the proposed revisions to the Adjudication Policy and Administrative Hearing Rules (including renaming the policy as the Administrative Review and Hearing Policy); and
- (2) Recommend the Board adopt the Administrative Review and Hearing Policy as revised and as approved by the Committee.

COMMITTEE MEMBER COMMENTS

CHIEF EXECUTIVE OFFICER/STAFF COMMENTS

COUNSEL COMMENTS

ADJOURNMENT

NOTICE OF NEXT MEETINGS

DISABILITY COMMITTEE MEETING

July 20, 2020

8:30 A.M.

ORANGE COUNTY EMPLOYEES RETIREMENT SYSTEM

2223 E. WELLINGTON AVENUE, SUITE 100

SANTA ANA, CA 92701

REGULAR BOARD MEETING

July 20, 2020

9:30 A.M.

ORANGE COUNTY EMPLOYEES RETIREMENT SYSTEM

2223 E. WELLINGTON AVENUE, SUITE 100

SANTA ANA, CA 92701

INVESTMENT COMMITTEE MEETING

July 29, 2020

9:30 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.

Governance Committee Meeting
June 9, 2020

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

**GOVERNANCE COMMITTEE MEETING
June 9, 2020
9:00 a.m.**

MINUTES

The Vice Chair called the meeting to order at 9:05 a.m.

Present via Zoom Video conference pursuant to Executive Order N-29-20 issued by Governor Newsom on March 17, 2020:

Shawn Dewane, Chair; Frank Eley, Vice Chair; Charles Packard, Roger Hilton

Also present via Zoom:

Steve Delaney, Chief Executive Officer; Gina Ratto, General Counsel; Suzanne Jenike, Assistant CEO, External Operations; Brenda Shott, Assistant CEO, Internal Operations; Sonal Sharma, Recording Secretary; Anthony Beltran, Audio Visual Technician

CONSENT AGENDA

C-1 APPROVE GOVERNANCE COMMITTEE MEETING MINUTES

Governance Committee Meeting Minutes March 13, 2020

MOTION by Packard, **seconded** by Hilton, to approve the Minutes.

The motion passed **unanimously**.

ACTION ITEMS

A-1 INDIVIDUAL ACTION ON ANY ITEM TRAILED FROM THE CONSENT AGENDA

No items were trailed from the Consent Agenda.

A-3 TRIENNIAL REVIEW OF THE MEMBERSHIP ELIGIBILITY REQUIREMENTS POLICY

Presentation by Suzanne Jenike, Assistant Chief Executive Officer, External Operations

Recommendation: Approve the Membership Eligibility Requirements Policy as presented.

MOTION by Packard, **seconded** by Hilton, to approve, and recommend that the Board approve, the Membership Eligibility Requirements Policy as presented.

The motion passed **unanimously**.

Governance Committee Meeting
June 9, 2020

A-2 REVIEW OF PROPOSED REVISIONS TO THE ADJUDICATION POLICY AND ADMINISTRATIVE HEARING RULES

Presentation by Gina M. Ratto, General Counsel

Recommendation: That the Governance Committee:

- (1) Consider on a first reading the proposed revisions to the Adjudication Policy and Administrative Hearing Rules (including renaming the policy as the Administrative Review and Hearing Policy); and
- (2) Direct staff to engage with stakeholders on the proposed revisions to the Policy and then return to the Committee with the results of that engagement for a second reading of the Policy.

Mr. Dewane joined the meeting at 9:21am.

Mr. Hilton suggested staff incorporate guidelines or considerations for the Board when determining whether to send a benefit appeal to a hearing or not.

MOTION by Eley, **seconded** by Packard, to approve both of staff's recommendations with the addition of Mr. Hilton's suggestion.

The motion passed **unanimously**.

COMMITTEE MEMBER COMMENTS

None.

CHIEF EXECUTIVE OFFICER/STAFF COMMENTS

None.

COUNSEL COMMENTS

Ms. Ratto thanked staff for their hard work on the policy.

ADJOURNMENT

The meeting adjourned at 10:47a.m.

Submitted by:

Approved by:

Steve Delaney
Secretary to the Board

Shawn Dewane, Chair



Memorandum

DATE: August 4, 2020
TO: Members of the Governance Committee
FROM: Brenda Shott, Assistant CEO Finance and Internal Operations
SUBJECT: **TRIENNIAL REVIEW OF THE ACTUARIAL VALUATION POLICY**

Recommendation

Approve, and recommend that the Board approve proposed revisions to the Actuarial Valuation Policy as presented.

Background/Discussion

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

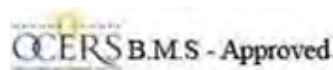
The Actuarial Valuation Policy (Policy) is scheduled for review and approval by the Board, after review by the Governance Committee, in 2020. The Policy sets forth guidelines for performing an annual actuarial valuation in compliance with Section 31453 of the California Employees Retirement Law of 1937. The previous review of this policy included significant changes to the Policy, whereby the objectives of the Policy were streamlined and the step by step procedures of the actuarial valuation processes were removed. The Policy's current form is consistent with both the CERL requirements and current staff practices.

Staff has reviewed the Policy and does not recommend any substantive changes at this time.

A copy of the Policy, with proposed non-substantive changes indicated in underlined/strikeout text, is attached.

Attachment

Submitted by:



Brenda Shott
Assistant CEO, Finance and Internal Operations



OCERS Board Policy Actuarial Valuation Policy

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.

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.
5. Definitions

Actuarial Extract: a set of computer generated files that 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.

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 participating employers/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). The salary, combined with pensionable pay items, that is used to calculate final average salary.

Gross Salary: the total payment made to a member within a reported bi-weekly pay period.

Pensionable Pay Items: the elements of compensation in addition to Pensionable Salary that OCERS members earned during each pay period, that is deemed pensionable and included in the calculation of contributions and final average salary.



OCERS Board Policy

Actuarial Valuation Policy

Pensionable Salary: the total salary an OCERS member actually earned during 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. The salary that is used to calculate contributions due-

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

Policy Guidelines

6. Annually, the OCERS team staff will work with the System's actuary to review and produce an Annual Actuarial Valuation.
7. Each year the OCERS' team staff will identify and confirm requested data elements from the actuary.
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 Participating Employers 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.
11. The accurate and complete reporting of member demographic, employment, payroll and contribution data is required from all Participating Employers 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.



OCERS Board Policy Actuarial Valuation Policy

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

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

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.

11/13/17

Steve Delaney
Secretary of the Board

Date



OCERS Board Policy Actuarial Valuation Policy

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.

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.
5. Definitions

Actuarial Extract: a set of computer generated files that 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.

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 participating employers, 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). The salary, combined with pensionable pay items, that is used to calculate final average salary.

Gross Salary: the total payment made to a member within a reported bi-weekly pay period.

Pensionable Pay Items: the elements of compensation in addition to Pensionable Salary that OCERS members earned during each pay period, that is deemed pensionable and included in the calculation of contributions and final average salary.

Pensionable Salary: the total salary an OCERS member actually earned during 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. The salary that is used to calculate contributions due



OCERS Board Policy

Actuarial Valuation Policy

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

Policy Guidelines

6. Annually, the OCERS team will work with the System's actuary to review and produce an Annual Actuarial Valuation.
7. Each year the OCERS' team will identify and confirm requested data elements from the actuary.
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 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 Participating Employers. 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.
11. The accurate and complete reporting of member demographic, employment, payroll and contribution data is required from all Participating Employers.
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.

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.



OCERS Board Policy Actuarial Valuation Policy

Policy History

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.

A handwritten signature in black ink that reads "Steve Delaney".

Steve Delaney
Secretary of the Board

11/13/17

Date



Memorandum

DATE: August 4, 2020
TO: Members of the Governance Committee
FROM: Gina M. Ratto, General Counsel
SUBJECT: TRIENNIAL REVIEW OF THE SECURITIES LITIGATION POLICY

Recommendation

Approve, and recommend that the Investment Committee adopt, revisions to the Securities Litigation Policy.

Background/Discussion

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

The Securities Litigation Policy was adopted on December 15, 2003 and was last reviewed and revised on November 13, 2017. It is scheduled for review and approval by the Investment Committee, after review by the Governance Committee, in 2020.

Proposed Revisions

The objectives of the proposed revisions to the Securities Litigation Policy are mainly to remove unnecessary verbiage and re-word and re-organize the material to enhance clarity and readability. The changes have reduced the document length from seven pages to five, while maintaining the substance of the provisions, expanding on the explanation of the goals of the policy, and updating and defining terms.

Revisions to the "Principles" section add more specific explanations of OCERS' motivations in securities litigation. For example, revisions to Section 6 expand on the current enumeration of the goals for participation in securities class action cases in a manner that captures the myriad reasons OCERS may act to protect its members' interests and comply with its fiduciary duties.

Also, the definitions of "active participation" contained in the policy have been consolidated and clarified in Section 8. Concomitantly, the factors for Board consideration of active participation set forth in current Section 16 have been refined and separated into those for domestic cases (Section 13) and those for foreign cases (Section 14). An additional factor has been added for domestic securities class actions (in Section 13): whether OCERS' active participation would be effective in deterring similar corporate misconduct in the future. In foreign cases, the role OCERS will play in decision-making in the litigation has been added as a factor in Section 14.

While the bases for the recommended revisions are multiple, many of the changes only restate the current policy provisions in a more concise and organized manner. As an example, revised Section 25 consolidates the current Sections 28, 29 and 30 on the reporting that will be provided to the Investment Committee. The proposed revisions are set forth in underlined/strikeout text in the attached copy of the Securities Litigation

Policy. An unmarked version of the Securities Litigation Policy is also attached for the Committee's ease of review.

Attachments

Submitted by:



Gina M. Ratto
General Counsel



OCERS Board Policy

Securities Litigation Policy

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.~~ For purposes of this policy, a securities class action includes, but is not limited to, an action alleging claims under state or federal securities and antitrust laws, as well as similar claims arising under the laws of foreign jurisdictions. 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~~ corporate fraud and misconduct.
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 P~~ participation as lead plaintiff by large, sophisticated shareholders, ~~particularly public pension funds, such as OCERS~~ has resulted in larger recoveries and 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 such a result, investors no longer have the protection of U.S. securities laws for securities purchased on a foreign exchange. In many foreign jurisdictions, however, investors are required to join as a named plaintiff or otherwise join as an active litigant at the commencement of the case as a condition to sharing in any damages awarded or recovered. Such direct participation may be costly and, depending on the jurisdiction, may subject OCERS to the risk of liability for defendant's fees and costs if the claim is unsuccessful. Therefore, OCERS must weigh the potential benefits of action in a foreign jurisdiction carefully, 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 Board Policy

Securities Litigation Policy

~~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 the 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.~~ OCERS' goals for participation in securities class actions include:
 - Fulfilling OCERS' fiduciary duties by protecting trust assets and effectively managing claims as assets of the trust fund.
 - Maximizing claim recovery and reducing fees paid to obtain recoveries.
 - Deterring future fraud and corporate malfeasance to better protect fund assets.
 - Maintaining access to the courts through securities litigation in the best interest of OCERS' members and beneficiaries.

Monitoring of Securities Litigation ~~and OCERS Holdings~~

7. ~~Monitoring of Class Action Filings and Cases~~ Review of Class Action Filings. The Legal ~~Division~~ department will ~~identify and evaluate~~ monitor securities class actions filings, pending or proposed to be filed within the United States both domestic and in foreign jurisdictions, to identify cases wherein which OCERS is a potential class member may have recognized losses. Cases in which the applicable loss threshold (as defined in Section 10 below) is met or where special circumstances exist that justify OCERS' interest in the case will be monitored.
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.
14. ~~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 Active participation in a domestic case includes, but is not limited to, seeking lead plaintiff status, or opting out of the class action and filing pursuing an individual action, or intervening in the class 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



OCERS Board Policy

Securities Litigation Policy

~~Loss Threshold or Foreign Loss Threshold.~~ Active participation in a foreign case includes joining the case as a named plaintiff or take other affirmative action at the commencement of the case to participate in the litigation.

- ~~**15.9. Recommendation of the Legal Division 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. The Legal Division will recommend to the Investment Committee that OCERS take an active role in a securities class action when it has determined that the case is meritorious, the applicable Loss Threshold is met, and it is in OCERS' best interest to take such action. In addition, the Legal Division may also recommend active participation in a securities class action where the Loss Threshold is not met but either OCERS will join the case with one or more other institutional investors, OCERS cannot recover without active participation in the case, or OCERS' active participation may otherwise serve the goals of this policy.~~
- ~~**16.10. Foreign Loss Thresholds.** A case within the United States meets the Domestic Loss Threshold when OCERS' estimated loss is at least \$1 million. pending or proposed to be filed in a foreign jurisdiction will meet OCERS' The Foreign Loss Threshold, for a case filed in a foreign jurisdiction, is met with an where OCERS' estimated loss of is at least \$250,000.~~
- ~~**17. Losses Below Threshold.** If the Legal Division 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 shortly before or after the claims period, the Legal Division department will consider whether to seek an adjustment of the claims period. If warranted, the Legal Division 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.~~
- ~~**18.** 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.~~
- ~~**11.**~~
- ~~**12.** The Legal Division's recommendation on whether to take an active role in a domestic or foreign 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. In addition, the Chief Executive Officer ("CEO") is authorized to approve taking such action where, after consultation with the General Counsel, it is determined that immediate approval is required to preserve OCERS' rights and the matter cannot be timely presented to the Investment Committee. In the event the CEO exercises such authority, the CEO will simultaneously notify the Chair of the Investment Committee and then provide a full report of the action at the next regularly scheduled Investment Committee meeting, or meeting of the Board of Retirement, whichever is sooner.~~
- ~~**19.** 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~~



OCERS Board Policy Securities Litigation Policy

~~marketplace that would lead to an interest or need in OCERS participating in litigation regarding the market generally.~~

Active Participation: Domestic

~~20. 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.~~

~~21.13.~~ In deciding whether to pursue ~~take an~~ active participation ~~role~~ in a domestic securities litigation cases, the Investment Committee will consider the following factors:

a. The size of OCERS' loss;

b. The merits of the case;

~~b-c.~~ The identity of the lead plaintiff and other parties, if known;

~~c-d.~~ The identity of lead counsel, if known;

~~d. 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;~~

~~e. The merits of the case, both from a legal perspective and a business perspective;~~

e. The sources of recovery available to satisfy a judgment if plaintiffs prevail;

~~f. likely The availability of internal OCERS' resources to participate in the litigation and the potential burdens of discovery; 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;~~

~~g. g. Whether OCERS' active participation will increase the likely recovery or otherwise add significant value to the resolution of the case The effectiveness and availability of potential witnesses and ability of OCERS Investment department staff and fund managers to respond to requested discovery;~~

h. The potential impact on the OCERS portfolio from trading restrictions arising from the potential acquisition of inside information in litigation, if any; and

i. Whether OCERS' active participation would be effective in deterring similar corporate misconduct in the future.

Active Participation: Foreign

14. Notwithstanding the Foreign Loss Threshold having been met, active participation in foreign securities actions will be examined on a case-by-case basis to determine whether the potential benefits of active participation outweigh the potential costs. In deciding whether to pursue active participation in a foreign securities litigation case, the Investment Committee will consider the following factors:



OCERS Board Policy Securities Litigation Policy

- a. The size of the potential recovery;
 - b. OCERS' potential obligation to pay legal fees and costs;
 - c. OCERS' potential liability for the legal fees and costs of the opposing party;
 - d. The merits of the case in light of the law in that jurisdiction;
 - e. How the action is being funded, and which law will apply to the relationship between OCERS and any funders;
 - f. The identity of the foreign counsel and the method of their payment;
 - g. The potential burdens of discovery; and
 - h. The role OCERS will play in decision-making in the case.
- ~~h. — The potential impact on the portfolio from potential trading restrictions arising from acquisition of inside information in litigation, if any;~~
- ~~i. — The effectiveness of potential alternatives for recovering the losses, such as filing a claim or protective motion, and monitoring;~~
 - ~~j. — Whether active participation by OCERS would add value to the potential resolution or management of the case;~~
 - ~~k. — The forum and choice of law for the case; and~~
 - ~~l. — 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.~~
- ~~**22.** 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.~~
- ~~**23.** 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.~~



OCERS Board Policy

Securities Litigation Policy

Settlements

~~24.15.~~ When a settlement is ~~propose~~desented in a case in which OCERS has taken an active role, the Legal ~~department~~Division 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~~the settlement or delegate to the ~~Chief Executive Officer~~EO or the General Counsel authority to enter into a settlement on ~~whatever~~ terms it deems appropriate.

~~25.16.~~ If the ~~Chief Executive Officer~~EO determines that immediate approval of a response (including a counteroffer) to a settlement is required in order to preserve OCERS' rights ~~and/or interests~~, and the matter cannot be timely presented for approval ~~by the 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~~EO is authorized, after consultation with the General Counsel, Chief Investment Officer, and Chair of the Investment Committee, to approve a response to the settlement and notify the Investment Committee at its next regularly scheduled meeting.

Claims Filing and Audits

~~17.~~ OCERS' custodial bank ~~will~~shall be responsible for filing all claims ~~, including the necessary supporting documents and information,~~ necessary to recover assets in ~~every~~ securities class action ~~cases~~ in which OCERS has suffered losses, ~~and the 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 will setting forth formalized the~~ 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. If OCERS' custodial bank is not able to file the claim, then the Legal Division, in consultation with the Investment Division, will designate the entity that will be responsible for filing.~~

~~26.18.~~ The custodial bank will submit or make available to OCERS quarterly reports on the securities litigation proceeds recovered, ~~which information shall be shared and those reports will be provided to with~~ the Investment Committee.

~~27.19.~~ The Legal ~~Division~~department, in conjunction with the Investment ~~Division~~department, will, shall from time to time, audit the custodial bank's claims filing process to einsure that OCERS is maximizing recovery ~~ing all the amounts that OCERS is due~~ from securities litigation settlements and awards. The Legal ~~Division~~department, in conjunction with the Investment ~~Division~~department,



OCERS Board Policy

Securities Litigation Policy

may require that the custodial bank change its processes ~~for or implement an alternative plan for filing proofs of claim filings.~~

Retention of ~~Securities~~ Monitoring Firms and Litigation Counsel

~~28.20.~~ The General Counsel, with the approval of the ~~Chief Executive Officer~~EO, will engage ~~at least two and no more than~~to 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.~~

~~29.21.~~ ~~At a minimum, Securities Litigation~~The Monitoring Firms will:

- a. Obtain OCERS' securities trading and holdings information directly from OCERS' custodial bank;
- b. Identify and ~~monitor~~ domestic securities class actions ~~filed or proposed to be filed in the United States,~~ and analyze OCERS' estimated losses ~~es, if any,~~ in the affected ~~security or securities in each action;~~
- c. ~~PEvaluate and provide~~ timely notice and analysis of ~~potential or pending~~ securities class actions filed in the U ~~nited S tates~~ 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~~where other 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~~on at least a quarterly basis;
- 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, es~~ in the affected ~~security or securities in each action;~~
- f. ~~PEvaluate and provide~~ timely notice and analysis of those ~~foreign potential and pending non-U.S.~~ securities actions where ~~(i) OCERS has suffered losses that meet its Foreign Loss Threshold; or where (ii) if OCERS' losses are below its Foreign Loss Threshold, the Securities Litigation Monitoring Firm other believes~~ factors exist that justify OCERS' consideration of the case;
- g. Assist OCERS in joining and filing claims in ~~foreign 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.



OCERS Board Policy Securities Litigation Policy

~~30.22.~~ 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~~their designee will conduct a Request for Proposals (~~“RFP”~~).

~~31.23.~~ When the Investment Committee or the ~~Chief Executive Officer~~ approves OCERS taking an active role in litigation, ~~it or he or she~~they 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.

~~32.24.~~ 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 ~~Division~~department in carrying out ~~any of its other responsibilities under~~ this policy.

Reporting

~~33.25.~~ The Legal ~~Division~~department will ~~keep~~provide the Investment Committee ~~apprised of major developments on cases in which OCERS is actively participating and will provide with regular reports on its covering its responsibilities under this policy-related activities on at least , and in no event less than~~ a quarterly basis. The reports will include listings of new securities litigation case filings and new settlements or awards in which OCERS has identified losses. For matters where OCERS’ estimated losses exceed \$1 million, the report will include a brief analysis of the merits of the case.

~~34.~~ ~~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.~~

~~35.~~ 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

~~36.~~ 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 and _____.



OCERS Board Policy Securities Litigation Policy

Secretary's Certificate

Secretary's Certificate

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

A handwritten signature in blue ink that reads "Steve Delaney".

Steve Delaney
Secretary of the Board

11/13/2017

Date



OCERS Board Policy

Securities Litigation Policy

Purpose and Background

1. The Securities Litigation Policy is intended to establish procedures and guidelines for monitoring and participating in securities class actions in furtherance of the Board of Retirement's fiduciary duties. For purposes of this policy, a securities class action includes, but is not limited to, an action alleging claims under state or federal securities and antitrust laws, as well as similar claims arising under the laws of foreign jurisdictions. 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 corporate fraud and misconduct.
3. The Private Securities Litigation Reform Act, enacted in 1995, allows institutional investors 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. Participation as lead plaintiff by large, sophisticated shareholders such as OCERS has resulted in larger recoveries and lower attorneys' fees.
4. In 2010, the United States Supreme Court in *Morrison v. National Australia Bank* held that investors cannot bring or participate in a U.S. securities class action if their claims are based on securities purchased outside the U.S. As such, investors no longer have the protection of U.S. securities laws for securities purchased on a foreign exchange. In many foreign jurisdictions, however, investors are required to join as a named plaintiff or otherwise join as an active litigant at the commencement of the case as a condition to sharing in any damages awarded or recovered. Such direct participation may be costly and, depending on the jurisdiction, may subject OCERS to the risk of liability for defendant's fees and costs if the claim is unsuccessful. Therefore, OCERS must weigh the potential benefits of action in a foreign jurisdiction carefully.
5. In June 2017, the United States Supreme Court in *CalPERS v. ANZ Securities, Inc.* 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 the 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 and must exercise heightened diligence to protect potentially valuable claims from expiring under the statute of repose.
6. OCERS' goals for participation in securities class actions include:
 - Fulfilling OCERS' fiduciary duties by protecting trust assets and effectively managing claims as assets of the trust fund.
 - Maximizing claim recovery and reducing fees paid to obtain recoveries.
 - Deterring future fraud and corporate malfeasance to better protect fund assets.



OCERS Board Policy

Securities Litigation Policy

- Maintaining access to the courts through securities litigation in the best interest of OCERS' members and beneficiaries.

Monitoring of Securities Litigation

- 7. Monitoring of Class Action Filings and Cases.** The Legal Division will monitor securities class actions filings, both domestic and foreign, to identify cases where OCERS is a potential class member. Cases in which the applicable loss threshold (as defined in Section 10 below) is met or where special circumstances exist that justify OCERS' interest in the case will be monitored.
- 8. Active Participation.** Active participation in a domestic case includes seeking lead plaintiff status, opting out of the class action and filing an individual action, or intervening in the class action. Active participation in a foreign case includes joining the case as a named plaintiff or take other affirmative action at the commencement of the case to participate in the litigation.
- 9. Recommendation of the Legal Division.** The Legal Division will recommend to the Investment Committee that OCERS take an active role in a securities class action when it has determined that the case is meritorious, the applicable Loss Threshold is met, and it is in OCERS' best interest to take such action. In addition, the Legal Division may also recommend active participation in a securities class action where the Loss Threshold is not met but either OCERS will join the case with one or more other institutional investors, OCERS cannot recover without active participation in the case, or OCERS' active participation may otherwise serve the goals of this policy.
- 10. Loss Thresholds.** A case within the United States meets the Domestic Loss Threshold when OCERS' estimated loss is at least \$1 million. The Foreign Loss Threshold, for a case filed in a foreign jurisdiction, is met with an OCERS' estimated loss of at least \$250,000.
- 11. Losses Below Threshold.** If the Legal Division 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 shortly before or after the claims period, the Legal Division will consider whether to seek an adjustment of the claims period. If warranted, the Legal Division will actively monitor the case and participate in a motion to adjust the claims period.
- 12.** The Legal Division's recommendation on whether to take an active role in a domestic or foreign 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. In addition, the Chief Executive Officer ("CEO") is authorized to approve taking such action where, after consultation with the General Counsel, it is determined that immediate approval is required to preserve OCERS' rights and the matter cannot be timely presented to the Investment Committee. In the event the CEO exercises such authority, the CEO will simultaneously notify the Chair of the Investment Committee and then provide a full report of the action at the next regularly scheduled Investment Committee meeting, or meeting of the Board of Retirement, whichever is sooner.

Active Participation: Domestic

- 13.** In deciding whether to pursue active participation in a domestic securities litigation cases, the Investment Committee will consider the following factors:
 - a. The size of OCERS' loss;



OCERS Board Policy Securities Litigation Policy

- b. The merits of the case;
- c. The identity of the lead plaintiff and other parties, if known;
- d. The identity of lead counsel, if known;
- e. The sources of recovery available to satisfy a judgment if plaintiffs prevail;
- f. The availability of internal OCERS' resources to participate in the litigation and the potential burdens of discovery;
- g. Whether OCERS' active participation will increase the likely recovery or otherwise add significant value to the resolution of the case;
- h. The potential impact on the OCERS portfolio from trading restrictions arising from the potential acquisition of inside information in litigation, if any; and
- i. Whether OCERS' active participation would be effective in deterring similar corporate misconduct in the future.

Active Participation: Foreign

14. Notwithstanding the Foreign Loss Threshold having been met, active participation in foreign securities actions will be examined on a case-by-case basis to determine whether the potential benefits of active participation outweigh the potential costs. In deciding whether to pursue active participation in a foreign securities litigation case, the Investment Committee will consider the following factors:

- a. The size of the potential recovery;
- b. OCERS' potential obligation to pay legal fees and costs;
- c. OCERS' potential liability for the legal fees and costs of the opposing party;
- d. The merits of the case in light of the law in that jurisdiction;
- e. How the action is being funded, and which law will apply to the relationship between OCERS and any funders;
- f. The identity of the foreign counsel and the method of their payment;
- g. The potential burdens of discovery; and
- h. The role OCERS will play in decision-making in the case.

Settlements

15. When a settlement is proposed in a case in which OCERS has taken an active role, the Legal Division will provide the Investment Committee with an analysis of the settlement terms. The Investment Committee may approve the settlement or delegate to the CEO or the General Counsel authority to enter into a settlement on terms it deems appropriate.

16. If the CEO determines that immediate approval of a response (including a counteroffer) to a settlement is required in order to preserve OCERS' rights, and the matter cannot be timely



OCERS Board Policy

Securities Litigation Policy

presented for approval by the Investment Committee, the CEO is authorized, after consultation with the General Counsel, Chief Investment Officer, and Chair of the Investment Committee, to approve a response to the settlement and notify the Investment Committee at its next regularly scheduled meeting.

Claims Filing and Audits

17. OCERS' custodial bank will be responsible for filing all claims necessary to recover assets in securities class action cases in which OCERS has suffered losses, and the statement of work in the custodial agreement will set forth the claims filing procedures for the custodial bank to follow. If OCERS' custodial bank is not able to file the claim, then the Legal Division, in consultation with the Investment Division, will designate the entity that will be responsible for filing.
18. The custodial bank will submit or make available to OCERS quarterly reports on the securities litigation proceeds recovered and those reports will be provided to the Investment Committee.
19. The Legal Division, in conjunction with the Investment Division, will, from time to time, audit the custodial bank's claims filing process to ensure that OCERS is maximizing recovery from securities litigation settlements and awards. The Legal Division, in conjunction with the Investment Division, may require that the custodial bank change its processes for claim filings.

Retention of Monitoring Firms and Litigation Counsel

20. The General Counsel, with the approval of the CEO, will engage two to five firms with demonstrated expertise in securities class actions (the "Monitoring Firms") to advise or represent OCERS in monitoring securities class action filings and settlements that affect the OCERS investment portfolio.
21. The Monitoring Firms will:
 - a. Obtain OCERS' securities trading and holdings information directly from OCERS' custodial bank;
 - b. Identify and monitor domestic securities class actions and analyze OCERS' estimated losses in the affected securities;
 - c. Provide timely notice and analysis of securities class actions filed in the U.S. where OCERS has suffered losses that meet its Loss Threshold and active participation may be warranted; or where other factors exist that justify OCERS' consideration of the case;
 - d. Provide reports of newly-filed domestic securities class actions and OCERS' estimated losses on at least a quarterly basis;
 - e. Identify and monitor securities actions in foreign jurisdictions, and provide an analysis of OCERS' estimated losses in the affected securities;
 - f. Provide timely notice and analysis of those foreign securities actions where OCERS has suffered losses that meet its Foreign Loss Threshold or where other factors exist that justify OCERS' consideration of the case;



OCERS Board Policy Securities Litigation Policy

- g. Assist OCERS in joining and filing claims in foreign securities actions in which the Investment Committee approves active participation; 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, and evaluating whether to file a protective claim or motion before a significant repose period expires.
- 22.** Retainer Agreements with Monitoring Firms will be for terms not exceeding six years. Prior to the expiration of the six-year term, the General Counsel or their designee will conduct a Request for Proposals.
- 23.** When the Investment Committee or the CEO approves OCERS taking an active role in litigation, they will direct the General Counsel to retain litigation counsel or delegate to the General Counsel the authority to retain litigation counsel for the matter.
- 24.** The General Counsel may rely on Monitoring Firms for preparation of in-depth damages analyses and representation in litigation. 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 Division in carrying out this policy.

Reporting

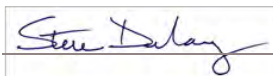
- 25.** The Legal Division will keep the Investment Committee apprised of major developments on cases in which OCERS is actively participating and will provide reports on its policy-related activities on at least a quarterly basis. The reports will include listings of new securities litigation case filings and new settlements or awards in which OCERS has identified losses. For matters where OCERS' estimated losses exceed \$1 million, the report will include a brief analysis of the merits of the case.

Policy History

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, November 13, 2017 and _____.

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



Memorandum

DATE: August 4, 2020
TO: Members of the Governance Committee
FROM: Gina M. Ratto, General Counsel
SUBJECT: **BIENNIAL REVIEW OF OCERS' CONFLICT OF INTEREST CODE**

Recommendation

Approve and recommend the Board adopt the proposed revisions to OCERS' Conflict of Interest Code

Background

The Political Reform Act of 1974, Government Code sections 81000, *et. seq.* (the "Act"), requires certain local public agencies, including OCERS, to adopt conflict of interest codes that identify the officials of the agency who must file financial disclosures. The Act is enforced by the Fair Political Practices Commission (the "FPPC").

The requirements of a conflict of interest code are set out in FPPC Regulation 18730, which contains the elements of a standard model code. Section 18730 may be adopted by reference, and supplemented by a listing of the designated agency officials who are subject to the code and the categories of economic interests that the officials must disclose. In addition, section 87200 of the Act contains special disclosure requirements for officials who manage public investments. Officials subject to section 87200 are not technically subject to OCERS' Conflict of Interest Code ("OCERS' Code"), but agency codes typically identify those officials for informational purposes.

According to Section 82011(b) of the Act, the Orange County Board of Supervisors serves as the code reviewing body for OCERS; and the County has established certain disclosure categories for the agencies whose codes the Board of Supervisors reviews and approves. The Act requires an agency's conflict of interest code to be reviewed by the agency biennially and updated when titles and positions of the agency are added or changed. OCERS' Code was last reviewed and updated by the OCERS Board in 2018.

Since 2018, one position title has changed (Director of Investment Operations is now Director of Investments), and three new titles (Director of Information Security, Senior Investment Officer, and Senior Investment Analyst) have been added. In addition, the code has been edited to clarify that the Clerk of the Orange County Board of Supervisors is the filing officer for OCERS. Staff also conducted a comprehensive review of OCERS' Code for compliance with the Act, FPPC regulations, and various FPPC advice letter rulings, and based on that review, now recommends the following revisions.

Proposed Revisions

Staff recommends that:

(1) The following position be renamed in OCERS' Code as "Officials Who Manage Public Investments":

- Director of Investments (previously Director of Investment Operations)

and

(2) The following positions be added to OCERS' Code as "Designated Filers":

- Director of Information Security
- Senior Investment Officer
- Senior Investment Analyst

A copy of OCERS' Code, with the proposed revisions indicated in underlined/strikeout text, is attached; and the bases for the staff's recommendations are more fully set forth below.

Designated Filer Positions

The Act requires that every position within OCERS that makes, participates in making, or influences, governmental decisions be designated in OCERS' Code. Persons holding the positions designated in the code ("Designated Filers") are required to disclose their financial interests. Guidance from the FPPC for developing a list of Designated Filers indicates that an agency should include in the code the broad policy/decision makers and eliminate positions whose duties are clerical, secretarial, ministerial, or manual. Then the agency should review the duty statements of everyone between these two levels, looking closely at how many levels of substantive review these positions have.

Section 18700 of the FPPC regulations set forth the basic rule on conflict of interest as follows:

A public official at any level of state or local government has a prohibited conflict of interest and may not make, participate in making, or in any way use or attempt to use his or her official position to influence a governmental decision when he or she knows or has reason to know he or she has a disqualifying financial interest. A public official has a disqualifying financial interest if the decision will have a reasonably foreseeable material financial effect, distinguishable from the effect on the public generally, directly on the official, or his or her immediate family, or on any financial interest described in subdivision (c)(6)(A-F) herein.

Section 18704 defines making and participating in making a governmental decision as follows:

(a) Making a Decision. A public official makes a governmental decision if the official authorizes or directs any action, votes, appoints a person, obligates or commits his or her agency to any course of action, or enters into any contractual agreement on behalf of his or her agency.

(b) Participating in a Decision. A public official participates in a governmental decision if the official provides information, an opinion, or a recommendation for the purpose of affecting the decision without significant intervening substantive review.

Examples of making a decision include:

- Voting on a matter
- Approving the budget
- Adopting policy
- Making purchasing decisions
- Entering into contracts

Examples of participating in a decision include:

- Negotiating the terms of a contract
- Writing the specifications of a bid
- Advising or making recommendations to the decision-maker or governing body without significant intervening substantive review

OCERS' Code currently designates the following positions as Designated Filers because they make, participate in making, or influence governmental decisions and who are therefore required to disclose their financial interests:

- Assistant Chief Executive Officer, External Operations
- Assistant Chief Executive Officer, Internal Operations
- General Counsel
- Deputy General Counsel
- Director of Internal Audit
- Director of Finance
- Director of Administrative Services
- Director of Information Technology
- Contracts, Risk & Performance Manager
- Investment Officer
- Investment Analyst
- Consultant

Staff has conducted a review of OCERS' titles and duty statements, and recommends that the following OCERS-direct employees be added to the list of Designated Filers in OCERS' Code:

- Director of Information Security
- Senior Investment Officer
- Senior Investment Analyst

According to the job descriptions of each of these positions, the person either has delegated decision-making authority or participates in negotiating the terms of a contract, writing the specifications of a bid, or advising or making recommendations to the decision-maker or governing body without significant intervening substantive review.

Officials Who Manage Public Investments

Finally, the positions identified for informational purposes in OCERS' Code as officials who manage public investments and who are therefore subject to section 87200 include:

- Board Members/Alternate Board Members
- Chief Executive Officer
- Chief Investment Officer
- Managing Director of Investments
- Director of Investments
- Consultants Who Manage Public Investments

Conclusion

If the Board adopts the recommended amendments to OCERS' Code, the amendments will be forwarded to the County Board of Supervisors, and once approved by the Board of Supervisors, the amendments will become part of OCERS' Code, effective with the disclosures required on April 1, 2021.

Attachments

Submitted by:



Gina M. Ratto
General Counsel

Approved by:



Steve Delaney
CEO

CONFLICT OF INTEREST CODE FOR THE ORANGE COUNTY EMPLOYEES RETIREMENT SYSTEM

The Political Reform Act, Government Code Sections 81000, et seq. (the "Act"), requires state and local government agencies to adopt and promulgate Conflict of Interest Codes. The Fair Political Practices Commission ("FPPC") has adopted a regulation (2 Cal. Code of Regs. Section 18730; "Section 18730") that contains the terms of a standard Conflict of Interest Code, which may be incorporated by reference in an agency's code. After public notice and hearing, the FPPC may amend Section 18730 to conform to amendments in the Act. Therefore, the terms of Section 18730 and any amendments thereto, along with the attached Exhibits A and B designating positions and establishing disclosure categories, are hereby incorporated by reference, and shall constitute the Conflict of Interest Code of the Orange County Employees Retirement System ("OCERS").

DESIGNATED POSITIONS

OCERS employees and consultants whose positions are listed in Exhibit A hereto shall file statements of economic interests with the office of the Clerk of the Orange County Board of Supervisors, which will make the statements available for public inspection and reproduction (Gov. Code Sec. 81008). All statements will be retained by the Clerk of the Orange County Board of Supervisors. ~~OCERS Chief Executive Officer, who serves as the OCERS Board Secretary and as the OCERS Filing Officer, and who will make the statements available for public inspection and reproduction (Government Code Section 82008).~~ The applicable Disclosure Category for each Designated Position is set forth in Exhibit A; and the Disclosure Categories are described in Exhibit B.

OFFICIALS WHO MANAGE PUBLIC INVESTMENTS

Officials who manage public investments, as defined by 2 Cal. Code of Regs. §18701 (b), are not subject to OCERS' Conflict of Interest Code but are listed here for informational purposes. Unlike the Designated Positions, the reporting obligations of these officials are not limited by reference to a disclosure category. It has been determined that the positions listed below are the OCERS officials who manage public investments:

Members of the Board of Retirement including the Alternate Member
Chief Executive Officer
Chief Investment Officer
~~Director of Investment Operations~~
Managing Director of Investments
Director of Investments
Consultants Who Manage Public Investments

Officials who manage public investments shall ~~forward~~file statements of economic interests ~~to with~~ the OCERS Chief Executive Officer, who serves as the OCERS Board Secretary ~~and Filing Officer~~. Upon receipt of these statements, the ~~OCERS Filing Officer~~ Chief Executive Officer shall make and retain a copy and forward the original of these statements to the Clerk of the Orange County Board of Supervisors ~~who is~~as the filing officer for these positions.

The disclosure categories and requirements for these positions are set forth in Article 2 of Chapter 7 of the Political Reform Act, Government Code Section 87200 et seq. They generally require the disclosure of interests in real property in the agency's jurisdiction, as well as investments, business positions, and sources of income (including gifts, loans, and travel payments).

EXHIBIT A

ORANGE COUNTY EMPLOYEES RETIREMENT SYSTEM LIST OF DESIGNATED POSITIONS

Position	Disclosure Category
Assistant Chief Executive Officer, External Operations	OC-01
Assistant Chief Executive Officer, Internal Operations	OC-01
General Counsel	OC-01
Director of Internal Audit	OC-01
Director of Finance	OC-01
Director of Administrative Services	OC-11
Director of Information Technology	OC-08
<u>Director of Information Security</u>	<u>OC-08</u>
Deputy General Counsel	OC-01
Investment Officer/ <u>Senior Investment Officer</u>	OC-01
Contracts, Risk & Performance Manager	OC-06
Investment Analyst/ <u>Senior Investment Analyst</u>	OC-01
Consultant	OC-30

OFFICIALS WHO MANAGE PUBLIC INVESTMENTS

Officials who manage public investments, as defined by 2 Cal. Code of Regs. §18701(b), are NOT subject to the System's code, but are subject to the disclosure requirements of the Act (Government Code Section 87200 et seq.). [Regs. §18730(b)(3)]. These positions are listed here for informational purposes only.

Position	Disclosure Category
Board Member/Alternate Board Member	87200 Filer
Chief Executive Officer	87200 Filer
Chief Investment Officer	87200 Filer

Managing Director of Investment Operations	87200 Filer
Managing Director of Investments	87200 Filer
Consultants Who Manage Public Investments	87200 Filer

EXHIBIT B

**ORANGE COUNTY EMPLOYEES RETIREMENT SYSTEM
DISCLOSURE CATEGORIES/DESCRIPTIONS**

Disclosure Category	Disclosure Description
OC-01	All interests in real property in Orange County, as well as investments, business positions and sources of income (including gifts, loans and travel payments).
OC-06	All investments in, business positions with and income (including gifts, loans and travel payments) from sources that provide leased facilities and goods, supplies, equipment, vehicles, machinery or services (including training and consulting services) of the types used by OCERS.
OC-08	All investments in, business positions with and income (including gifts, loans and travel payments) from sources that develop or provide computer hardware/software, voice data communications, or data processing goods, supplies, equipment, or services (including training and consulting services) used by OCERS.
OC-11	All interests in real property in Orange County, as well as investments in, business positions with and income (including gifts, loans and travel payments) from sources that are engaged in the supply of equipment or services related to recruitment, employment search & marketing, classification, training, or negotiation with personnel; employee benefits, and health and welfare benefits.
OC-30	Consultants shall be included in the list of designated employees and shall disclose pursuant to the broadest category in the code subject to the following limitation: The CEO may determine that a particular consultant, although a "designated position," is hired to perform a range of duties that is limited in scope and thus is not required to fully comply with the disclosure requirements in this section. Such written determination shall include a description of the consultant's duties and, based upon that description, a statement of the extent of disclosure required. The determination of disclosure is a public record and shall be filed with the Form 700 and retained by the Filing Officer for public inspection.

**CONFLICT OF INTEREST CODE FOR THE
ORANGE COUNTY EMPLOYEES RETIREMENT SYSTEM**

The Political Reform Act, Government Code Sections 81000, et seq. (the "Act"), requires state and local government agencies to adopt and promulgate Conflict of Interest Codes. The Fair Political Practices Commission ("FPPC") has adopted a regulation (2 Cal. Code of Regs. Section 18730; "Section 18730") that contains the terms of a standard Conflict of Interest Code, which may be incorporated by reference in an agency's code. After public notice and hearing, the FPPC may amend Section 18730 to conform to amendments in the Act. Therefore, the terms of Section 18730 and any amendments thereto, along with the attached Exhibits A and B designating positions and establishing disclosure categories, are hereby incorporated by reference, and shall constitute the Conflict of Interest Code of the Orange County Employees Retirement System ("OCERS").

DESIGNATED POSITIONS

OCERS employees and consultants whose positions are listed in Exhibit A hereto shall file statements of economic interests with the office of the Clerk of the Orange County Board of Supervisors, which will make the statements available for public inspection and reproduction (Gov. Code Sec. 81008). All statements will be retained by the Clerk of the Orange County Board of Supervisors. The applicable Disclosure Category for each Designated Position is set forth in Exhibit A; and the Disclosure Categories are described in Exhibit B.

OFFICIALS WHO MANAGE PUBLIC INVESTMENTS

Officials who manage public investments, as defined by 2 Cal. Code of Regs. §18701 (b), are not subject to OCERS' Conflict of Interest Code but are listed here for informational purposes. Unlike the Designated Positions, the reporting obligations of these officials are not limited by reference to a disclosure category. It has been determined that the positions listed below are the OCERS officials who manage public investments:

- Members of the Board of Retirement including the Alternate Member
- Chief Executive Officer
- Chief Investment Officer
- Managing Director of Investments
- Director of Investments
- Consultants Who Manage Public Investments

Officials who manage public investments shall forward statements of economic interests to the OCERS Chief Executive Officer, who serves as the OCERS Board Secretary. Upon receipt of these statements, the Chief Executive Officer shall make and retain a copy and forward the original of these statements to the Clerk of the Orange County Board of Supervisors who is the filing officer for these positions.

The disclosure categories and requirements for these positions are set forth in Article 2 of Chapter 7 of the Political Reform Act, Government Code Section 87200 et seq. They generally require the disclosure of interests in real property in the agency's jurisdiction, as well as investments, business positions, and sources of income (including gifts, loans, and travel payments).

EXHIBIT A**ORANGE COUNTY EMPLOYEES RETIREMENT SYSTEM
LIST OF DESIGNATED POSITIONS**

Position	Disclosure Category
Assistant Chief Executive Officer, External Operations	OC-01
Assistant Chief Executive Officer, Internal Operations	OC-01
General Counsel	OC-01
Director of Internal Audit	OC-01
Director of Finance	OC-01
Director of Administrative Services	OC-11
Director of Information Technology	OC-08
Director of Information Security	OC-08
Deputy General Counsel	OC-01
Investment Officer/Senior Investment Officer	OC-01
Contracts, Risk & Performance Manager	OC-06
Investment Analyst/Senior Investment Analyst	OC-01
Consultant	OC-30

OFFICIALS WHO MANAGE PUBLIC INVESTMENTS

Officials who manage public investments, as defined by 2 Cal. Code of Regs. §18701(b), are NOT subject to the System's code, but are subject to the disclosure requirements of the Act (Government Code Section 87200 et seq.). [Regs. §18730(b)(3)]. These positions are listed here for informational purposes only.

Position	Disclosure Category
Board Member/Alternate Board Member	87200 Filer
Chief Executive Officer	87200 Filer
Chief Investment Officer	87200 Filer
Managing Director of Investments	87200 Filer
Director of Investments	87200 Filer
Consultants Who Manage Public Investments	87200 Filer

EXHIBIT B

**ORANGE COUNTY EMPLOYEES RETIREMENT SYSTEM
DISCLOSURE CATEGORIES/DESCRIPTIONS**

Disclosure Category	Disclosure Description
OC-01	All interests in real property in Orange County, as well as investments, business positions and sources of income (including gifts, loans and travel payments).
OC-06	All investments in, business positions with and income (including gifts, loans and travel payments) from sources that provide leased facilities and goods, supplies, equipment, vehicles, machinery or services (including training and consulting services) of the types used by OCERS.
OC-08	All investments in, business positions with and income (including gifts, loans and travel payments) from sources that develop or provide computer hardware/software, voice data communications, or data processing goods, supplies, equipment, or services (including training and consulting services) used by OCERS.
OC-11	All interests in real property in Orange County, as well as investments in, business positions with and income (including gifts, loans and travel payments) from sources that are engaged in the supply of equipment or services related to recruitment, employment search & marketing, classification, training, or negotiation with personnel; employee benefits, and health and welfare benefits.
OC-30	Consultants shall be included in the list of designated employees and shall disclose pursuant to the broadest category in the code subject to the following limitation: The CEO may determine that a particular consultant, although a "designated position," is hired to perform a range of duties that is limited in scope and thus is not required to fully comply with the disclosure requirements in this section. Such written determination shall include a description of the consultant's duties and, based upon that description, a statement of the extent of disclosure required. The determination of disclosure is a public record and shall be filed with the Form 700 and retained by the Filing Officer for public inspection.



Memorandum

DATE: August 4, 2020
TO: Members of the Governance Committee
FROM: Gina M. Ratto, General Counsel
SUBJECT: **SECOND READING OF ADMINISTRATIVE REVIEW AND HEARING POLICY**

Recommendation

Staff recommends the Governance Committee:

- (1) Approve, on a second reading, the proposed revisions to the Adjudication Policy and Administrative Hearing Rules (including renaming the policy as the Administrative Review and Hearing Policy); and
- (2) Recommend the Board adopt the Administrative Review and Hearing Policy as revised and as approved by the Committee.

Background/Discussion

At its June 9, 2020 meeting, the Governance Committee (Committee) considered, on a first reading, proposed revisions to the the Adjudication Policy and Administrative Hearing Rules, including a revision to rename the policy the Administrative Review and Hearing Policy (Policy). The substantive revisions proposed to the Committee in June were summarized in a memorandum to the Committee. A copy of the memorandum is attached for the Committee's ease in reference.

On June 9, 2020, the Committee approved the revisions proposed by staff with one additional revision as requested by the Committee, and directed staff to release the proposed revisions to the Policy to OCERS' employers, labor representatives, hearing officers and the attorneys who regularly represent OCERS members, for their review and comment. After adding the revision requested by the Committee, the proposed revisions to the Policy were distributed to OCERS' stakeholders on June 23, 2020, with a letter inviting them to submit comments in writing or to contact us by July 23, 2020 by email or telephone to discuss. One response was received, and the revision that was suggested has been incorporated into the Policy that is presented to the Committee herewith.

Revisions Added After the Committee Meeting on June 9, 2020

1. Committee Request

At the June meeting, the Committee asked staff to add the criteria the Board should consider when determining whether to hear and review a CEO Determination on a benefit matter itself or to refer the matter to a Hearing Officer for a Hearing. The following revision to Section 8.B. of the Policy (page 6 of 22) is recommended:

8. Board Action on CEO Determination.

A. . .

B. **Board's Options.** At the meeting, the Board may choose to hear and conduct the review at that meeting, continue it to a later meeting, or refer the matter to a Hearing Officer for a Hearing to be conducted pursuant to the Rules. If the Board chooses to hear and determine the matter, the Board's decision will be final. If the Board chooses to refer the matter to a Hearing, the Board will identify the factual and legal issues to be considered by the Hearing Officer.

In determining whether to hear and determine the matter or refer the matter to a Hearing Officer, the Board will consider all relevant factors, including, but not limited to, the following:

- i. whether the disputed issues are legal, not factual, in nature;
- ii. relevant judicial authority on the disputed legal issue(s);
- iii. whether the Board and/or a Hearing Officer has previously ruled on substantively similar issue(s);
- iv. whether the Applicant is represented by an attorney;
- v. the efficient use of OCERS resources; and
- vi. the interests of the Applicant in receiving a timely decision.

C. . . .

2. Request from Stakeholder

The following revisions to Rule 8.I. (page 15 of 22) are recommended to respond to the suggestion received from an attorney who represents multiple public agencies that submit applications for disability retirement on behalf of their employees:

Rule 8. Pre-Hearing Conference

- I. If ~~neither the~~ Applicant nor the Employer, where the Employer has filed an Application on behalf of the Member (and is therefore also treated as an Applicant under these Rules), fails to participate in the Pre-Hearing Conference, the Clerk will file and serve on all Parties and the Hearing Officer an Order to Show Cause why the matter should not be dismissed, and give ~~all the~~ Applicants (including the Employer where the Employer has filed an Application on behalf of the Member) five (5) days to respond to the Hearing Officer. Other Parties are permitted, but not required to submit responses. Unless at least one of the Applicants shows good cause why the matter should not be dismissed for the failure to participate in the Pre-Hearing Conference, the Hearing Officer will dismiss the Hearing, and the matter will proceed as if no Request for Administrative Hearing had been filed in accordance with Section 5 of the Policy.

If the Hearing Officer determines ~~that an~~ Applicant has shown good cause, the Hearing Officer will direct the Clerk to reschedule the Pre-Hearing Conference and the Applicant will be liable to OCERS for any actual costs incurred by OCERS as a result of the delay.

3. Request from Disability Staff

The Disability Unit staff requested the following revisions:

Revise the definition of Medical Witness on page 2 of 22 as follows:

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

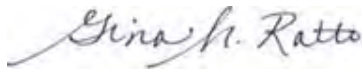
Revise Section 3.C of the Policy (page 3 of 22) and Rule 16.G (page 22 of 22) to reflect that Disability Committee determinations and notices of the Board's action on Hearing Officer recommendations are sent to the Applicant, the Applicant's attorney and the Employer by email, not by regular mail.

All of the foregoing revisions are set forth in marked text in the attached Policy.

Staff submits the proposed revisions to the Policy are ready for the Committee's approval and for presentation to the Board for its adoption on recommendation by the Committee.

Attachments

Submitted by:



Gina M. Ratto
General Counsel



OCERS Board Policy Administrative Review and Hearing Policy (Disability and Non-Disability Benefits)

1. Intent

The Board of Retirement (“Board”) of the Orange County Employees Retirement System (“OCERS”) intends that this Administrative Review and Hearing Policy (“Policy”) will apply to and govern OCERS’ Administrative Review and Administrative Hearing processes for Disability Determinations, Benefit Determinations and other final administrative orders or decisions of the Board. Any person who is entitled to a hearing and who does not request one under this Policy will be deemed to have waived the right to a hearing.

Nothing in this Policy will be deemed an acknowledgement by OCERS that any procedure set forth herein, including an administrative hearing, is required by law. The Board retains the right to amend this Policy or vary the process set forth in this Policy in any manner consistent with the law.

2. Definitions

The following terms will have the meanings set forth below.

Administrative Hearing; Hearing: The proceedings before a Hearing Officer or the Board on the merits of a particular Request for Administrative Hearing and related Application.

Administrative Record: The documents and other records relied upon by Staff or a fact-finding body in an Administrative Review or Hearing conducted pursuant to this Policy, including any documents submitted on behalf of an Applicant, documents prepared by OCERS or by independent sources that are received by OCERS, any transcripts or recordings of testimony, or any other documents relevant to an Application.

For purposes of any proceeding following an Administrative Review or 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 relevant to an Application.

Administrative Review: The process described in this Policy (including the Rules) by which a Party may seek an administrative review of a Benefit Determination, CEO Determination or Disability Determination or any other final administrative order or decision of the Board.

Applicant; Member: A 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 or who seeks Administrative Review of a Benefit Determination.

Application: The submittal, including any amendments thereto, filed with OCERS by or on behalf of an Applicant for either: (i) a disability retirement; or (ii) a service retirement.

Benefit Determination: A determination made by Staff in connection with (i) a service retirement Application; (ii) a disability retirement Application with the exception of a Disability Determination; or (iii) an Applicant’s benefit (e.g., calculation of the amount of the benefit, benefit effective date, reciprocity determinations).



OCERS Board Policy Administrative Review and Hearing Policy (Disability and Non-Disability Benefits)

CEO Determination: A Benefit Determination made by the CEO or the CEO's designee.

Clerk, Clerk to the Hearing Officers. A person or persons designated by the OCERS General Counsel or their designee to fulfill the duties of providing administrative assistance to the Hearing Officers appointed by OCERS.

Consolidation/Consolidated Review or Hearings. Where two or more Requests for Administrative Review or Hearing that have common issues of fact or law are consolidated for Administrative Review or Hearing pursuant to Section 8 of this Policy or Rule 7 of the Rules.

Days: All days are calendar days, unless otherwise provided herein.

Disability Committee, Committee: A committee of the Board, chartered by the Board to review Applications for disability retirement and make recommendations to the Board with respect to Disability Determinations.

Disability Determination: The action taken by the Board in response to a disability retirement Application pursuant to Government Code Section 31724, limited to the following findings: (1) whether the Applicant is permanently incapacitated for performance of their duties in the service; (2) whether the disability was service-connected; and (3) the effective date of the disability retirement. Any other determinations affecting a disability retirement Application, including, but not limited to, timeliness of the Application, ineligibility due to termination for cause, and applicability of a disability offset, are Benefit Determinations pursuant to this Policy and subject to a CEO Determination.

Employer: The public agency who employed the OCERS member whose benefits are at issue in any given matter. The Employer is a Party to an Administrative Review but does not need to participate in an Administrative Review or Hearing. If the Employer initiates an Administrative Review or Hearing, it will act in the role of the Applicant with the corresponding burden of proof.

Expedited Administrative Hearing: An alternative administrative Hearing process, set forth in Rule 6 of the Rules.

Hearing Officer: A referee appointed pursuant to Government Code section 31533 who is either a member of the State Bar selected under the OCERS Hearing Officer Selection and Retention Policy, or a member of the Board.

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

Party or Parties: OCERS, an Applicant who seeks an Administrative Review or Hearing under this Policy, the Employer, and any other person who may be affected by the Board's decision and who participates in the Administrative Review or Hearing.

Pre-Hearing Statements: Statements filed by the Parties pursuant to Rule 9 of the Rules.

Proposed Findings of Fact and Recommended Decision: The recommendation of the Hearing Officer to the Board, as set forth in Rule 14 of the Rules.



OCERS Board Policy

Administrative Review and Hearing Policy (Disability and Non-Disability Benefits)

Request for Administrative Review or Request for Administrative Hearing: The document filed by the Applicant (or in limited cases, the Employer) to seek a review of a decision of the Committee or Staff and initiate the Administrative Review or Administrative Hearing process. Where the Applicant requests a Hearing or the Board refers the matter to a Hearing, the document will be referred to as a Request for Administrative Hearing. Where the Applicant seeks review of a Benefit Determination or CEO Determination, the document will be referred to as a Request for Administrative Review.

Respondent: OCERS will always be the primary Respondent. The Employer may, but is not required to respond to the request for Administrative Review or Hearing. Where the Employer initiates a review or hearing, the Applicant may join as a Respondent.

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

Staff: OCERS staff members other than the CEO and the CEO's designee.

3. Disability Determination Process

For Disability Determinations:

- A. Staff will investigate all disability retirement Applications to determine (i) whether the Applicant is permanently incapacitated from the performance of their usual duties; (ii) whether the incapacity arose out of and in the course of employment, and (iii) the appropriate effective date of any disability retirement allowance. In undertaking this investigation, Staff will have the 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, Staff will make a recommendation to the Committee regarding permanent incapacity, service connection, and effective date.
- B. The Committee will review the disability retirement Application and the Staff recommendation under subsection A, above, at a duly-noticed meeting of the Committee. Staff will give Applicant (and the Applicant's attorney, if any) and the Employer notice of the date and time of the Committee meeting at which they will have the opportunity to be heard by the Committee.
- C. After the Committee reviews the disability retirement Application, the Committee will determine whether to recommend that the Board grant or deny the Application, in full or in part. Staff will notify the Applicant (and Applicant's attorney), and the Employer ~~by email via First-Class Mail to the address set out in the Application (in the case of the Applicant),~~ of the Committee's recommendation. They will also be provided with instructions on how to request an Administrative Hearing to challenge any part of the Committee's recommendation. Notice will be effective ~~upon deposit in the US Mail~~ when the email is sent.
- D. In the event the Committee recommends that the Application be denied in full or in part, 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 Rules. In the event the Committee



OCERS Board Policy

Administrative Review and Hearing Policy (Disability and Non-Disability Benefits)

recommends the Application be granted in full, any other Party including the Employer aggrieved by the recommendation will have ten days from the date of the notice required by 3.C., above, to file a written Request for Administrative Hearing as set forth in the Rules.

- E. Where the Committee recommends (i) a grant of a non-service connected disability retirement, but denial of a service-connected disability retirement; or (ii) a grant of a either a service-connected or non-service connected disability retirement and the Applicant disputes the Committee's recommendation regarding the effective date of disability, the Applicant may request a Hearing on the denial of a service-connected disability or the effective date of disability. In such cases, the issues not disputed will not be at issue in the Hearing. Staff will forward those non-disputed issues to the Board for final action.
- F. If no Request for Administrative Hearing is filed within the time limit set forth in 3.D., above, the Committee's recommendation will be placed on the consent agenda at the next regularly scheduled meeting of the Board for action in accordance with Section 5, below.

4. Benefit Determination Review Process

For Benefit Determinations:

- A. Staff will notify the Member of the Benefit Determination, and the Member may request a CEO Determination within 90 days of the date of the notice of the Benefit Determination. The CEO Determination will be in the form of a written review completed and returned to the Member within 90 days of receipt of the request for a CEO Determination, and will include a synopsis of the Member's request and citation to any authority relied upon by the CEO in making the CEO Determination. In addition, the written review will include instructions regarding how the Member may request review of the CEO Determination by the Board.
- B. The Member will have 90 days from the date of the notice of the CEO Determination provided in 4.A., above, to file a Request for Administrative Review. If no timely Request for Administrative Review is filed, the CEO Determination will be final.

5. Board Action on Disability Determination Upon Recommendation from the Disability Committee

- A. **Consent Agenda.** When there has been no timely Request for an Administrative Hearing of the Disability Committee's recommendation under Section 3, above, the Board will consider the Committee's recommendation on the Board's consent agenda.
- B. **Removing Items from Consent Agenda/Action.** Any member of the Board may remove an item from the consent agenda to be discussed and voted on separately. If any Board member removes a Disability Determination from the consent agenda, the item will be considered by the Board in closed session as set forth in Section 7, below.
- C. **Action on Recommendations from the Disability Committee.** After consideration by the Board, the Board will either (i) adopt the recommendation of the Disability Committee; or (ii) refer the



OCERS Board Policy Administrative Review and Hearing Policy (Disability and Non-Disability Benefits)

matter to a Hearing Officer for a Hearing (unless a Hearing is waived by the Applicant, in which case the Committee recommendation will be adopted).

6. Board Action on Disability Determinations After Hearing.

Following an administrative Hearing and the Board's receipt of the Hearing Officer's Proposed Findings of Fact and Recommended Decision, the Board will consider the matter at a duly-noticed meeting of the Board and take action in accordance with Rule 16 of the Rules.

7. Closed Sessions for Disability Determinations

Except for matters on the Disability Committee's or Board's consent agenda, the Disability Committee or Board will adjourn to a closed session, pursuant to Cal. Gov't Code § 54957(b), to discuss a recommended Disability Determination in connection with an Application for disability retirement, or a Hearing Officer's Proposed Findings of Fact and Recommended Decision in connection with a Disability Determination, unless the Applicant requests the matter be heard in open session.

- A. Closed Session With the Parties Present.** The Committee or the Board will conduct any discussion of an Application, including instances where the Board convenes and conducts its own Hearing, in closed session. Attendance at the closed session will be limited to 1) the Applicant; 2) counsel for the Applicant as well as any individual deemed by the Board Chair to be essential to the Applicant in the matter; 3) any OCERS disability Staff members and/or attorneys acting as advocates for the Staff recommendation or Committee recommendation; 4) Staff necessary to facilitate the Hearing (including the Clerk of the Board and IT Staff to provide technical support); 5) the CEO; 6) the OCERS General Counsel (or their designee); and 7) outside counsel to the Board. Additionally, in the event the Board conducts its own hearing, witnesses called to present testimony may be permitted to attend the closed session to do so.

- B. Closed Session Without Parties.** Before or after the Committee's or Board's consideration of a matter in a closed session under A, above, the Committee or the Board may adjourn to a closed session with only the CEO and the OCERS General Counsel (or their designee) to provide legal advice to the Committee or the Board in connection with the merits of the case and the Board's legal obligations.

8. Board Action on CEO Determination.

- A. Board Review of CEO Determinations.** In the case of a timely Request for Administrative Review of a CEO Determination, the Board will consider the matter at a duly noticed regular meeting of the Board. Staff will make a recommendation to the Board regarding the issues raised in the CEO Determination and the Applicant (or the Applicant's attorney) will have the opportunity to be heard.

- B. Board's Options.** At the meeting, the Board may choose to hear and conduct the review at that meeting, continue it to a later meeting, or refer the matter to a Hearing Officer for a Hearing to be conducted pursuant to the Rules. If the Board chooses to hear and determine the matter, the



OCERS Board Policy

Administrative Review and Hearing Policy (Disability and Non-Disability Benefits)

Board's decision will be final. If the Board chooses to refer the matter to a Hearing, the Board will identify the factual and legal issues to be considered by the Hearing Officer.

In determining whether to hear and determine the matter or refer the matter to a Hearing Officer, the Board will consider all relevant factors, including, but not limited to, the following:

- i. whether the disputed issues are legal, not factual, in nature;
- ii. relevant judicial authority on the disputed legal issue(s);
- iii. whether the Board and/or a Hearing Officer has previously ruled on substantively similar issue(s);
- iv. whether the Applicant is represented by an attorney;
- v. the efficient use of OCERS resources; and
- vi. the interests of the Applicant in receiving a timely decision.

- C. **Consolidation of Reviews.** When review by the Board of two or more CEO Determinations involves common questions of law or fact, the Board may order a Consolidated Review or Consolidated Hearing of the matters. Consolidation may be ordered for limited purposes or for all purposes.

In determining whether to order a Consolidation of the CEO Determinations, the Board will consider all relevant factors, including, but not limited to, the following:

- i. the complexity of the issues involved;
- ii. the potential prejudice to any party, including whether a Consolidation would result in undue delay;
- iii. the avoidance of duplicate or inconsistent orders; and
- iv. the efficient utilization of OCERS resources.

9. Board Action on CEO Determination After a Hearing.

In the case of a CEO Determination referred by the Board to a Hearing, the Board will consider the Hearing Officer's Proposed Findings of Fact and Recommended Decision at a duly-noticed meeting of the Board in accordance with Rule 16 of the Rules. The Board may adopt the Hearing Officer's recommendations or make its own determination based on the Administrative Record and the Board's decision will be final.

10. Policy Review

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

11. Policy History

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



OCERS Board Policy
Administrative Review and Hearing Policy
(Disability and Non-Disability Benefits)

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 Policy Administrative Review and Hearing Policy (Disability and Non-Disability Benefits)

Appendix - Administrative Rules

Rule 1. Definitions

All capitalized terms contained within these Rules will have the meaning set forth in Section 2 of the OCERS Administrative Review and Hearing Policy.

Rule 2. Filing of Documents

A. Administrative Review and Hearing Filing Procedures

1. The "Administrative Hearing Filing Procedures" sets forth the procedures by which the Parties and Hearing Officer will file documents, the Clerk will accept filing of documents, and the Clerk will serve documents on the Parties and the Hearing Officer.
2. The Administrative Hearing Filing Procedures may include forms that the Parties are permitted or required to use in connection with a Hearing.
3. The Clerk will provide the Applicant with a copy of the Administrative Hearing Filing Procedures upon the filing of a Request for Administrative Hearing.

B. Filing of Documents

1. All documents required or permitted to be filed by any Party in connection with a Hearing will be filed with the Clerk.
2. Filing of documents will be done electronically in conformance with the Administrative Hearing Filing Procedures, except that an Applicant (and only the Applicant) may opt to file documents in person, by US Mail or electronically. Applicants that opt for filing documents by US Mail, must inform the Clerk of this in writing. The Clerk will then inform all other Parties and the Hearing Officer that the Applicant has opted to file documents by US Mail.
 - i. Documents filed in person will be deemed filed on the day received by OCERS.
 - ii. Documents filed by US Mail will be deemed filed on the date post-marked on the envelope containing the documents.
 - iii. Documents filed electronically will be deemed filed on the date electronically received by the Clerk.

C. Service of Documents

1. The Clerk will serve on all Parties and the Hearing Officer any documents filed by a Party or the Hearing Officer within one (1) business day of receipt of the documents by the Clerk.
2. Service by the Clerk will be electronic, in conformance with the Administrative Hearing Filing Procedures, except where the Applicant has opted to file by US Mail pursuant to B.2., above, in



OCERS Board Policy Administrative Review and Hearing Policy (Disability and Non-Disability Benefits)

which case the Clerk will serve documents on the Applicant by US Mail. In that case, the Applicant will be deemed to have received service three (3) days after the date the Clerk deposits the document in the US Mail. Electronic service will be deemed served upon electronic transmission by the Clerk.

Rule 3. Administrative Hearing Request, Scope, and Settlement

- A. **Request for Administrative 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 Policy. The Request should include a short and plain statement of the grounds for the request.
- B. **Referral from the Board.** In the event the Board refers a matter to a Hearing Officer for a Hearing (pursuant to Sections 5.C. or 8 of the Policy), the referral from the Board will be considered the Request for Administrative Hearing, but for all procedural purposes under these Rules, the request will be deemed to have been filed by the Applicant.
- C. **Permitted Representatives, Attorneys.** Any Party is entitled, at the Party's expense, to be represented by an attorney at any stage of the proceedings. Such attorney must be a current, active member of the California State Bar in good standing. A Party must file with the Clerk a written notice of the hiring, changing, or dismissal of an attorney. Absent such written designation, OCERS is not obligated to recognize any attorney or other individual claiming to represent a Party.
- D. **Burden of Proof.** The Applicant will have the burden of proof by a preponderance of the evidence to establish the right to the benefit sought. Where the Employer filed the Request for Administrative Hearing under Section 3.D. of the Policy, the Employer will have the burden of proof by a preponderance of the evidence to demonstrate that the Committee's recommendation should be overturned, and the Employer will be bound by all of the procedural rules applicable to the Applicant under these Rules.
- E. **Scope of Hearing.**
 - 1. The Hearing on a Disability Determination will only address the issues of permanent incapacity, service connection, and effective date. All other issues related to a disability retirement Application are subject to the Benefit Determination process under Sections 4 or 8 of the Policy.
 - 2. In accordance with Section 8 of the Policy, the Hearing on a CEO Determination will only address the factual and legal issues that are identified by the Board for consideration by the Hearing Officer.
 - 3. Except as set forth in these Rules, the Hearing Officer will not make a finding or recommendation on any issue that was not raised in the Applicant's Request for Administrative Hearing or included in the Board's referral of the matter to a Hearing. Likewise, the Hearing Officer will not consider any evidence or make a finding or recommendation on any medical condition not included in the disability retirement Application or that was not previously evaluated by Staff, except as provided in subsection 4, below.



OCERS Board Policy

Administrative Review and Hearing Policy (Disability and Non-Disability Benefits)

4. If at any time during the Hearing process the Applicant either (i) alleges an injury or disease not listed in the disability retirement Application or (ii) raises an issue that was not previously presented to the Committee, the Hearing process will be suspended by the Hearing Officer and the Application will be treated as an amended Application. The amended Application will be referred back to Staff to be processed. If the Committee subsequently recommends a denial of the amended Application, the matter will be returned to the Hearing Officer who will consider all the medical conditions (those raised in the Application and the amended Application). A new Hearing Date, Pre-Hearing Conference and deadlines for Pre-Hearing Statements will be set in accordance with Rule 8.
- F. **Settlement.** If at any time during the Hearing process it becomes apparent to Staff that a different result is appropriate, Staff may suspend the Hearing and refer a settlement to the Board. If the Board approves a settlement with the Applicant, the Hearing will be dismissed.

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 matters are referred to a Hearing, the Clerk will assign the Hearing Officer on a rotational basis, while ensuring that, to the extent possible, each Hearing Officer on the panel is assigned an equal number of cases. Within fourteen (14) days after the Applicant files a Request for Administrative Hearing, the Clerk will serve notice to all Parties, including the Hearing Officer, indicating the name and address of the Hearing Officer to whom the matter is assigned, which notice will include information regarding the ability to challenge a Hearing Officer as set forth below.
- B. **Challenge/Removal of Hearing Officer.** A Party may object to a Hearing Officer in accordance with the following procedures.
 1. **Peremptory Challenge:** Any Party other than OCERS is entitled to one peremptory (without cause) challenge to the assignment of the Hearing Officer. The challenge must be filed with the Clerk within fourteen (14) days of the date of the notice assigning the Hearing Officer. If the Applicant opts for service by US Mail, the time period for filing a challenge will be extended by three (3) days. In the event of a peremptory challenge, the Clerk will re-assign the case to another Hearing Officer selected in the same manner as the first Hearing Officer. In the event no challenge is made to a proposed Hearing Officer, or after the exhaustion of all challenges, the Clerk will notify the Parties that the matter will proceed with the assigned Hearing Officer.
 2. **Removal for Cause:** Any Party, including OCERS, may challenge a Hearing Officer for cause by filing a request at any time, with supporting declarations made under penalty of perjury and any other evidence upon which the Party is relying. Any opposing Party will have fourteen (14) days from the Clerk's service of the challenge for cause on all Parties to file a response to the request to remove for cause. The Clerk will then randomly assign the removal request to another Hearing Officer, who will consider all evidence and arguments for and against removal of the Hearing Officer and file a ruling with the Clerk within thirty (30) days from assignment.



OCERS Board Policy Administrative Review and Hearing Policy (Disability and Non-Disability Benefits)

Cause for removal will be limited to demonstrated bias against a Party or counsel based on a personal or financial relationship (other than the Hearing Officer's contract with OCERS) that would cause a reasonable person to doubt the Hearing Officer's ability to render an impartial decision. If the request for removal is granted, the Clerk will re-assign the case to another Hearing Officer (other than the Hearing Officer who heard the challenge) in the same fashion as selection of the first Hearing Officer.

3. **Removal Due to Unforeseen Circumstances:** If the service of a Hearing Officer is discontinued due to unforeseen circumstances, such as death, illness, or termination with or without cause, the Parties other than OCERS are entitled to a preemptory challenge to the new Hearing Officer in accordance with subsection B.1 of this Rule.
 4. **Assignment After Removal Due to Unforeseen Circumstances.** If the service of a Hearing Officer is discontinued due to unforeseen circumstances, such as death, illness, or termination with or without cause, any hearing date will be vacated and the Clerk will assign a new Hearing Officer pursuant to Rule 4.A above and schedule a new Pre-Hearing Conference pursuant to Rule 7, below.
- C. **Recusal of Hearing Officer.** If at any time the Hearing Officer determines that there is cause for their recusal, the Hearing Officer will immediately file with the Clerk a statement of recusal, and the Clerk will reassign the case pursuant to Rule 4.A.

Rule 5. Preparation and Service of Administrative Record

Within sixty (60) days of the filing of a Request for Administrative Hearing, the Clerk will assemble and serve on the Hearing Officer and each Party the initial Administrative Record. Except as provided in Rule 6, 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 will decide the admissibility of all evidence.

Rule 6. Expedited Administrative Hearing

- A. **Provisions for Expedited Administrative Hearing.** Expedited Administrative Hearing is an irrevocable waiver of the Applicant's right to the process described in Rules 7 through 12. The goal of the Expedited Administrative Hearing process is to complete the Hearing in less than six months. The Hearing Officer's Proposed Findings of Fact and Recommended Decision will be based only on the Administrative Record and written arguments without in-person testimony or argument.
- B. **Availability of Expedited Administrative Hearing.**
1. An Expedited Administrative Hearing is only available for those cases that OCERS General Counsel determines the process is appropriate.
 2. The determination as to whether Expedited Administrative Hearing is appropriate will be made in the sole discretion of the OCERS General Counsel, on a case-by-case basis. In doing so, the General Counsel will consider whether: there are any material facts in dispute; whether the introduction of testamentary evidence is likely to clarify the issues; whether there is controlling



OCERS Board Policy

Administrative Review and Hearing Policy

(Disability and Non-Disability Benefits)

legal authority; and whether the Applicant's condition is such that time is of the essence in completing the Hearing process.

3. In the event the General Counsel determines that a matter is appropriate for Expedited Administrative Hearing, the Clerk will notify the Applicant of this determination and the Applicant's right to accept or reject the Expedited Administrative Hearing along with a form in which to do so. The Applicant may file the acceptance or rejection any time prior to the Clerk's service of the Administrative Record on the Parties.
- C. **Timeline.** The Expedited Administrative Hearing will be conducted according to the following timeline.
1. Within fourteen (14) days of the date the Clerk serves the Administrative Record in accordance with Rule 5, each party may lodge with the Clerk any additional written evidence that it seeks to rely on in addition to the Administrative Record.
 2. Within thirty (30) days of the date the Clerk serves the Administrative Record, the Applicant will file a Statement of Issues of not more than five (5) pages setting forth the Applicant's contentions.
 3. Within fourteen (14) days after the Clerk serves Appellant's Statement of Issues on Respondent, Respondent will file a Statement of Issues of not more than five (5) pages setting forth its contentions.
 4. Within sixty (60) days from the date Respondent files its Statement of Issues, the Hearing Officer will file the Proposed Findings of Fact and Recommended Decision in conformance with Rule 14. Notwithstanding the timeframes for objections set out in Rule 14C, objections will be filed within 10 days rather than 20 days, and responses thereto likewise will be filed within 10 days rather than 20 days.

Rule 7. Consolidation of Hearings

In addition to Consolidation by the Board of two or more cases pursuant to Section 8.C. of the Policy, cases may be Consolidated in accordance with this Rule 7, and this Rule 7 will apply to all such Consolidations.

- A. When two or more pending Requests for an Administrative Hearing involve common questions of law or fact, a Hearing Officer, upon request by OCERS or the Applicant, may order the Hearings Consolidated. Consolidation may be ordered for limited purposes or for all purposes.

In determining whether to order Consolidated Hearings, the Hearing Officer will consider all relevant factors, including but not limited to the following:

1. the complexity of the issues involved;
2. the potential prejudice to any Party, including whether granting Consolidation would unduly delay the resolution of any of the matters involved;
3. the avoidance of duplicate or inconsistent orders; and



OCERS Board Policy Administrative Review and Hearing Policy (Disability and Non-Disability Benefits)

4. the efficient utilization of OCERS' resources.
- B. Any Party may file a request with the Clerk to Consolidate two or more pending Hearings irrespective of the procedural stages of the affected Hearings, which request will be served by the Clerk on all Parties and the Hearing Officers.
- C. In all cases, the request for Consolidation will be referred to the Hearing Officer first assigned to any of the Hearings. The Hearing Officer may decide the matter on written submittals, or may convene the Parties, either in-person or electronically, to hear further argument on the request for Consolidation. Failure to timely oppose Consolidation will constitute a waiver of objection to an order of Consolidation.
- D. If the Hearing Officer orders the Consolidation, all affected Hearings will be transferred to that Hearing Officer.
- E. Upon Consolidation, all hearing dates will be vacated and the Clerk will schedule a new Pre-Hearing Conference for the Consolidated Hearings. Following the Hearing, the Hearing Officer will have the option of preparing separate Proposed Findings of Fact and Recommended Decisions for each matter that was Consolidated or a single Proposed Findings of Fact and Recommended Decision.
- F. Nothing contained herein will prohibit the Parties from stipulating to Consolidated Hearings. In the event a stipulation is reached, the Parties will file a written stipulation with Clerk, signed by all Parties. The Clerk will then assign the Consolidated Hearings to the first assigned Hearing Officer.

Rule 8. Pre-Hearing Conference

- A. The Clerk will schedule a Pre-Hearing Conference to be held within thirty (30) days of the service of the Administrative Record on the Parties. The Clerk will use best efforts to schedule the Pre-Hearing Conference at a time convenient to all Parties.
- B. The Pre-Hearing Conference will be held telephonically or electronically. The Clerk will arrange for a court reporter to transcribe the conference at OCERS' expense.
- C. At the Pre-Hearing Conference, the Hearing Officer will advise the Applicant (whether or not the Applicant has initiated the matter) of the following:
 1. The Applicant has the right to be represented by an attorney;
 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 scope of the Hearing and the issues to be decided consistent with the constraints of Rule 3.E., above;
 4. The Hearing will be conducted as if the Disability Determination or CEO Determination had not taken place. This means the Hearing Officer will consider anew all of the evidence submitted and defenses asserted, without relying on the past findings of the Committee, the Board or the CEO;



OCERS Board Policy Administrative Review and Hearing Policy (Disability and Non-Disability Benefits)

5. 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;
 6. The Applicant has the burden of proof in establishing by a preponderance of the evidence the right to the benefit sought;
 7. The Applicant must identify witnesses and other evidence when filing the Pre-Hearing Statement, and that failure to include in the Pre-Hearing Statement the witnesses and other evidence they intend to rely on could mean that evidence will be excluded unless the Applicant shows that they could not have discovered the information earlier through the exercise of reasonable diligence;
 8. The timelines required under these Rules for filing documents and for the Hearing, and the consequences of a failure to meet those deadlines, including that the Applicant's case can be dismissed; and
 9. Upon the completion of the Hearing, the matter will be referred to the Board pursuant to these Rules. Upon action by the Board, the decision will be final for all purposes. There will be no requirement for a further written decision from the Board or opportunity for the Board to reconsider its decision. Any Party aggrieved by the Board's decision may petition the Superior Court for judicial review as provided by law. The time for any Party to seek judicial review will be governed by the California Code of Civil Procedure Section 1094.6.
- D. At the Pre-Hearing Conference, each Party will:
1. Make a good faith effort to identify the witnesses, both expert and non-expert, that it intends to call;
 2. Identify any witnesses it intends to call who cannot either speak or understand English to permit OCERS to arrange a translator for the witnesses in accordance with Rule 10.K.;
 3. Indicate whether it will require an opposing Party's Medical Witness to appear in person at the Hearing;
 4. Identify any witnesses the Party seeks to depose and, if possible, set mutually convenient dates for any depositions.
- E. No later than the Pre-Hearing Conference, OCERS, through its counsel, will identify any issues related to eligibility of the Applicant such as timeliness of the Application or ineligibility due to termination for cause, which, if correct would moot the Hearing. The Hearing Officer will give the other Parties an opportunity to respond, and may continue the Pre-Hearing Conference to do so. If the Hearing Officer finds in favor of OCERS on the issue of eligibility, the Hearing process will be



OCERS Board Policy

Administrative Review and Hearing Policy (Disability and Non-Disability Benefits)

suspended and the issue of eligibility will be referred to the Board in accordance with Section 8 of the Policy and handled as if it were a CEO Determination.

- F. At the Pre-Hearing Conference, the Hearing Officer will set the date for the Hearing.
 - 1. The Hearing Officer will confer with the Parties to determine a mutually agreeable date for the Hearing ("Hearing Date"), as soon as reasonably practicable, but in all cases the first Hearing Date will be set no later than six (6) months after the date of the Pre-Hearing Conference.
 - 2. Each Party will provide a good faith estimate of the amount of time it anticipates the Hearing will last. As much as practicable, the Hearing will continue from day-to-day until complete, and the Hearing Officer will schedule all Hearing Dates to which the Hearing Officer anticipates the Hearing will be continued until complete.
- G. Within five (5) days of the Pre-Hearing Conference, the Clerk will issue a Scheduling Order, which will include the Hearing Date(s) and the dates that each Party's Pre-Hearing Statements are due.
- H. After the Pre-Hearing Conference, the Hearing Officer may continue the Hearing Date only upon a showing of good cause, as set forth in Rule 15 below.
- I. If ~~neither the~~ Applicant nor the Employer, where the Employer has filed an Application on behalf of the Member (and is therefore also treated as an Applicant under these Rules), fails to participate in the Pre-Hearing Conference, the Clerk will file and serve on all Parties and the Hearing Officer an Order to Show Cause why the matter should not be dismissed, and give ~~all the~~ Applicants (including the Employer where the Employer has filed an Application on behalf of the Member) five (5) days to respond to the Hearing Officer. Other Parties are permitted, but not required to submit responses. Unless at least one of the Applicants shows good cause why the matter should not be dismissed~~for the failure to participate in the Pre-Hearing Conference~~, the Hearing Officer will dismiss the Hearing, and the matter will proceed as if no Request for Administrative Hearing had been filed in accordance with Section 5 of the Policy.

If the Hearing Officer determines ~~that an~~ Applicant has shown good cause, the Hearing Officer will direct the Clerk to reschedule the Pre-Hearing Conference and the Applicant will be liable to OCERS for any actual costs incurred by OCERS as a result of the delay.

Rule 9. Pre-Hearing Statements

- A. The Applicant will file a Pre-Hearing Statement of up to ten (10) pages no later than sixty (60) days prior to the first Hearing Date.
- B. Respondent will file a Pre-Hearing Statement of up to ten (10) pages no later than thirty (30) days prior to the first Hearing Date.
- C. Any Party may file supplemental Pre-Hearing Statements of up to five (5) pages no later than fourteen (14) days prior to the first Hearing Date.
- D. The Pre-Hearing Statements will include the following:



OCERS Board Policy

Administrative Review and Hearing Policy (Disability and Non-Disability Benefits)

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, transcripts of 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 call for oral testimony at the Hearing and a brief description of the content of that testimony; and
 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 brief description of the content of that testimony.
- E. If the Applicant disputes the effective date of the disability retirement, the Applicant will raise the effective date as an issue and will state Applicant's contention in the Pre-Hearing Statement.
- F. If the Applicant fails to timely file a Pre-Hearing Statement, the Clerk will file and serve on all Parties and the Hearing Officer an Order to Show Cause why the case should not be dismissed, and give the Applicant five (5) days to respond to the Hearing Officer. Other Parties are permitted, but not required to submit responses. Unless the Applicant shows good cause for the failure to timely file its Pre-Hearing Statement, the Hearing Officer will dismiss Hearing, and the matter will proceed as if no Request for Administrative Hearing had been filed in accordance with Section 5 of the Policy.

If the Hearing Officer determines that the Applicant has shown 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. The Applicant will be liable to OCERS for any actual costs incurred by OCERS as a result of the delay.

Rule 10. Depositions and Subpoenas

- A. **Depositions:** Witness depositions may be taken by either Party in the presence of a certified court reporter and will be taken under oath or affirmation. The Party taking the deposition will pay all associated costs. If any Party offers any portion of any deposition testimony into evidence at the Hearing, that Party will provide a full copy of the deposition transcript to each adverse Party and the Hearing Officer free of charge.
- B. **Subpoenas and Related Fees/Costs:**
1. OCERS will 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. Each request will state the witness's full name and the complete address of the witness's place of employment or residence. OCERS will issue the subpoena; however, the requesting Party will 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 will in all cases be responsible for any expert witness fees.



OCERS Board Policy Administrative Review and Hearing Policy (Disability and Non-Disability Benefits)

2. Any fee disputes between a witness and the requesting Party is independent of any proceeding between the Applicant and OCERS. Those fee disputes will be resolved by the requesting Party and the witness in the California courts, not in this forum. The Hearing Officer has no authority to decide any such dispute.

Rule 11. Conduct of Hearings

- A. All Hearings will be held at the OCERS' office located at 2223 East Wellington Avenue, Santa Ana, California 92701.
- B. The Clerk will arrange for a court reporter to be present. Oral evidence will be taken only on oath or affirmation administered by the Hearing Officer or the court reporter.
- C. A written medical report bearing the signature (including a digital signature) of the Medical Witness will be admissible in evidence as the author's direct testimony, on the express condition that the adverse Party has had the opportunity to require the Medical Witness to be present and to cross-examine the witness at the Hearing, or to depose the witness and have the deposition transcript admitted into evidence.
- D. Each Party will have the right 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.
- E. The Hearing need not be conducted according to technical rules relating to evidence and witnesses. Any relevant evidence will 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 will be effective to the extent that they are otherwise required by statute to be recognized at the Hearing. Irrelevant and unduly repetitious evidence will be excluded.
- F. Hearsay evidence may be used for the express purpose of supplementing or explaining other evidence but will not be sufficient by itself to support a finding unless it would be admissible over objection in civil actions. This section will not be applicable to written medical reports received into evidence pursuant to Rule 10.C. Every Hearing will proceed as though each Party had made a standing objection to all inadmissible hearsay at the commencement of the Hearing.
- G. The court reporter will lodge with the Clerk the transcript of the Hearing within thirty (30) days of the final Hearing Date.
- H. The record will be closed to new evidence at the conclusion of the final Hearing Date. However, if subsequent to the final Hearing Date, a Party discovers or obtains new evidence that is relevant and not repetitive of other evidence already admitted, that Party may lodge the new evidence with the Clerk and request that the Hearing Officer include it in the Administrative Record. The Hearing



OCERS Board Policy Administrative Review and Hearing Policy (Disability and Non-Disability Benefits)

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. No rebuttals of the rebuttal will be permitted.

- I. No Party may submit a medical report or other documentary evidence not included in the Administrative Record or listed in its Pre-Hearing Statement except for purposes of impeachment, unless the Party demonstrates good cause. Likewise, no Party will be permitted to call a witness not listed in its Pre-Hearing Statement, except for purposes of impeachment, unless the Party demonstrates good cause. For purposes of this Rule, "good cause" means that the relevant evidence or witness could not have been previously produced or identified even with the exercise of reasonable diligence. The Party requesting submission of such evidence or witness will file a written request prior to the Hearing, or if unable to do so in the exercise of reasonable diligence, will make an oral request at the Hearing. The request will state the reason the evidence or witness was not timely produced or identified. After providing a reasonable opportunity for each adverse Party to be heard, the Hearing Officer will rule on such a request. If the evidence is allowed to be admitted into evidence, or the witness is allowed to testify, the Parties will have the right to a continuance to engage in further discovery, obtain rebuttal medical evidence, or depose or cross-examine the Medical Witness in order to comply with Rule 10.C. In no event, will good cause permit admission of medical reports or other documentary evidence relating to a new medical condition covered by Rule 3.E.
- J. Each Party will have the right to submit a closing oral argument at the conclusion of the Hearing.
- K. Use of Interpreter Services.
 - 1. If an Applicant or a 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 will be provided to that Applicant or witness at OCERS's expense. Notice that an Applicant or witness requires interpreting services will be given to OCERS at the Pre-Hearing 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 must 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 their 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 will 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 will 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



OCERS Board Policy Administrative Review and Hearing Policy (Disability and Non-Disability Benefits)

the Applicant will not be resolved in this forum, and the Hearing Officer will not have authority to resolve any fee disputes between interpreters and the Parties.

Rule 12. Resolution of Disputes about Depositions and Conduct of Hearings

The Hearing Officer will resolve disputes about depositions and the conduct of the Hearing. A request for resolution of a dispute may be made verbally at a Pre-Hearing Conference, at the Hearing, or by written motion filed with the Clerk at any time prior to the Hearing. The Hearing Officer, in the exercise of sound discretion, may permit written argument or briefs.

Rule 13. Closing Briefs

- A. Each Party will have the right to submit a written closing brief. Unless the Parties waive closing briefs, the Parties will adhere to the following schedule for filing closing briefs:
 - 1. The Applicant's closing brief will be filed within thirty days (30) of the date the transcript of the Hearing is lodged with the Clerk.
 - 2. Respondents' closing briefs will be filed within thirty days (30) days of the date the Clerk serves the Applicant's closing brief on the other Parties.
 - 3. Applicant's reply brief will be filed within fifteen (15) days of the date that the Clerk serves Respondents' closing briefs on the Applicant.
- B. Each Party's closing brief may be supported by facts in the record and citation to law. The Applicant's and Respondents' closing briefs may not exceed fifteen (15) pages and the reply brief may not exceed ten (10) pages unless the Hearing Officer, in the proper exercise of discretion, determines that a longer limit is appropriate under the circumstances. The Hearing Officer may reject briefs exceeding the foregoing limits.

Rule 14. Hearing Officer's Findings of Fact and Recommended Decision

- A. **Time for Filing.** The Hearing Officer will file the Proposed Findings of Fact and Recommended Decision with the Clerk within sixty (60) days of the date that the Applicant's reply brief is due or, if the Parties waived closing briefs, within sixty (60) days of the date the transcript of the Hearing is due (i.e., within 30 days of the final Hearing Date) or actually lodged (if earlier than 30 days after the final Hearing Date).
- B. **Content of Proposed Findings of Fact and Recommended Decision.** The Hearing Officer's Proposed Findings of Fact and Recommended Decision will include a summary of the following: (1) issues raised by the parties; (2) the testimony; (3) all other evidence received by the Hearing Officer; (4) a factual discussion of matters on which the Hearing Officer relied; (5) conclusions of law with citations to legal authority; and (6) recommended decision. The summary of the testimony, plus all other evidence received, will be sufficient to satisfy the requirements of Government Code Section 31534(b).



OCERS Board Policy

Administrative Review and Hearing Policy (Disability and Non-Disability Benefits)

- C. **Objections/Requests for Clarification.** Within twenty (20) days from the date that the Hearing Officer files the Proposed Findings of Fact and Recommended Decision with the Clerk, any Party may file with the Clerk objections or written requests for clarification to the Hearing Officer's Proposed Findings of Fact and Recommended Decision. The Clerk will serve such objections or written requests for clarification on the Hearing Officer as well as the other Parties. The other Parties will then have twenty (20) days after service to file a response with the Clerk. Within thirty (30) days after the later of: (a) the date that Hearing Officer receives the objections or requests for clarification or (b) an adverse party's response to such objections or requests for clarification, the Hearing Officer will:
1. Affirm the Proposed Findings of Fact and Recommended Decision findings, conclusions, and recommendations as originally submitted without change, or
 2. Make such changes to the Proposed Findings of Fact and Recommended Decision as the Hearing Officer deems appropriate in light of the evidence, the objections or requests for clarification submitted by the Parties, and the responses thereto.

The objections and/or requests for clarification and the response thereto and the Hearing Officer's final Proposed Findings of Fact and Recommended Decision following any objections, will be added to the Administrative Record and submitted for consideration by the Board.

Rule 15. Continuances and Relief from Orders

- A. The deadlines and timelines established in these Rules are for the purpose of expediting the Hearing process as quickly as reasonably possible in order to give certainty to the Applicant in the retirement process. Therefore, delays, continuances, or relief should be granted for documented good cause (as defined hereafter) and any delay should be the absolute shortest necessary under the circumstances. If the Hearing Officer believes the request is primarily for the purpose of delay or caused by inattention or lack of preparation of a Party, the request should be denied.
- B. Upon the request of a Party, the Hearing Officer may amend or continue the time periods set forth in these rules, but only for good cause shown by the Party seeking the delay.
- C. Good cause for purposes of this Rule will be only for the following reasons:
 1. The discovery of relevant evidence that, in the exercise of reasonable diligence, could not have been previously produced (in which case there will only be one continuance permitted for each request);
 2. The need to engage in further discovery, obtain rebuttal medical evidence, or depose or cross-examine a Medical Witness (in which case there will only be one continuance permitted for each request), as set forth under Rule 10.1; or
 3. The illness or disability of the Applicant, witness, attorney, or the Hearing Officer which was unknown to the person at the time of the Pre-Hearing 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 in these instances will be granted only if the person raises the request



OCERS Board Policy Administrative Review and Hearing Policy (Disability and Non-Disability Benefits)

as soon as practicable. The Hearing Officer will consider a failure to timely seek relief a waiver by the person.

- D. If a continuance is sought due to an illness or disability affecting an attorney who will not be able to participate in the process within a reasonably short period of time, then the continuance will be for a maximum of sixty (60) days to secure substitute counsel, and the Clerk will schedule a Pre-Hearing Conference pursuant to Rule 7.
- E. If a continuance is sought due to an illness or disability affecting the Hearing Officer, and the Hearing Officer cannot proceed within the time period set forth in Rule 17, below, the Hearing Officer will be recused and the Clerk will appoint a new Hearing Officer pursuant to Rule 4 and schedule a new Pre-Hearing Conference pursuant to Rule 7.
- F. If good cause is found to exist to reschedule a Hearing, the Hearing Officer will order that the Clerk schedule a Pre-Hearing Conference no more than seven (7) days from the date of the Hearing Officer's order and the Hearing Date will be reset no more than ninety (90) days from the date of the Pre-Hearing Conference.
- G. Until such time as the matter has been referred to the Board, the Hearing Officer may, upon any terms as may be just, relieve a party from an order, or other action taken against that Party through mistake, inadvertence, surprise, or excusable neglect on the part of the Party. Application for this relief will be made within a reasonable time. Once the matter has been placed on the Board agenda, the Hearing Officer will no longer have jurisdiction.

Rule 16. Hearing and Action by the Board

- A. The Clerk will refer to the Board for its consideration the Hearing Officer's Proposed Findings of Fact and Recommended Decision as well as any related objections/requests for clarification, responses thereto, and the Hearing Officer's final Proposed Findings of Fact and Recommended Decision following any objections.
- B. The Clerk will place the matter on the agenda of a regular meeting of the Board which will be no later than two (2) calendar months after the later of the date the Clerk receives the Hearing Officer's Proposed Findings of Fact and Recommended Decision; or the date the Clerk receives the Hearing Officer's final Proposed Findings of Fact and Recommended Decision following any objections or requests for clarification from the Parties.
- C. The Clerk will provide written notice to the Parties and the Hearing Officer 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 as set out in the OCERS By-laws.
- D. Pursuant to Government Code Section 31534, after reviewing the Hearing Officer's Proposed Findings of Fact and Recommended Decision and any related objections/requests for clarification, the Board may:



OCERS Board Policy

Administrative Review and Hearing Policy (Disability and Non-Disability Benefits)

1. Approve and adopt the Proposed Findings of Fact and Recommended Decision of the Hearing Officer; or
 2. Require a transcript or summary of all testimony, plus all other evidence received by the Hearing Officer; and upon receipt thereof, take such action as the Board 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 will hear and decide the matter.
- E. The Hearing Officer's Proposed Findings of Fact and Recommended Decision (and responses to objections/requests for clarification) will be sufficient to satisfy the requirements of Government Code Section 31534(b) and Rule 15.D.2, above.
- F. In any case where the Board makes a decision under Rule 15.D.2 or 15.D.3, above, the Board may approve and adopt the Proposed Findings of Fact and Recommended Decision of the Hearing Officer or prepare its own Findings of Fact and Decision, either itself or through direction to Staff with its approval.
- G. Upon action by the Board, the decision will be final for all purposes. There will be no requirement for a further written decision from the Board or opportunity for the Board to reconsider its decision. Any Party aggrieved by the Board's decision may petition the Superior Court for judicial review as provided by law. The time for any party to seek judicial review will be governed by the California Code of Civil Procedure Section 1094.6. The Clerk will notify the Applicant (and attorney), and the Employer ~~via First Class Mail to the address set out in the Application, by email~~ of the Board's final action. Notice will be effective ~~upon deposit in the US Mail when the email is sent.~~

Rule 17. Dismissal for Failure to Pursue the Administrative Review and Hearing

Except as otherwise provided, if as a result of an Applicant's failure to pursue the case or to comply with any of these Rules, a Hearing is not conducted within one year after the filing of a Request for Administrative Hearing (or the Board's referral of a case to a Hearing Officer), the Hearing Officer will dismiss the Hearing and the matter will proceed as if no Request for Administrative Review or Hearing had been filed in accordance with Section 5 of the Policy.



Memorandum

DATE: June 9, 2020
TO: Members of the Governance Committee
FROM: Gina M. Ratto, General Counsel
SUBJECT: **REVIEW OF PROPOSED REVISIONS TO THE ADJUDICATION POLICY AND ADMINISTRATIVE HEARING RULES**

Recommendation

That the Governance Committee:

- (1) Consider on a first reading the proposed revisions to the Adjudication Policy and Administrative Hearing Rules (including renaming the policy as the Administrative Review and Hearing Policy); and
- (2) Direct staff to engage with stakeholders on the proposed revisions to the Policy and then return to the Committee with the results of that engagement for a second reading of the Policy.

Background/Discussion

At its January 2018 meeting, the Board adopted the current Adjudication Policy and Administrative Hearing Rules (Policy), created the Disability Committee, and approved the Disability Committee Charter. The approval of the Policy came after a first reading by the Board in December 2017, and after meetings of the Governance Committee in September, October and November of 2017 during which the Committee and staff engaged in robust discussions regarding the proposed revisions to the Policy. Between the Board's two readings of the Policy, staff engaged with stakeholders including OCERS employers, labor representatives and the attorneys who regularly represent OCERS members about the proposed changes to the Policy.

The Policy became effective for requests for administrative hearings filed by members on and after June 1, 2018. From staff's perspective, the Policy adopted by the Board in early 2018 represented a vast improvement over the 2015 version of the Policy. However, over the course of the past two years, staff has identified additional opportunities to improve the Policy and processes even further, and also identified a couple of processes that were better under the 2015 version of the Policy and that should be restored.

Accordingly, staff is proposing numerous revisions to the Policy. The proposed revisions that are substantive in nature are summarized below. Both the substantive and non-substantive revisions are reflected in the attached redline of the Policy. Staff requests the Governance Committee approve the revisions (as presented or with additional revisions by the Committee) on a first reading for release to and discussion with OCERS' employers, labor representatives and the attorneys who regularly represent OCERS members.

Proposed Substantive Revisions

Narrowing Scope of Issues Reviewed by a Hearing Officer

Under Government Code (CERL) section 31533, the Board is empowered to determine whether a hearing is necessary in order for the Board to make a determination. Section 31533 states in full as follows:

Whenever, in order to make a determination, it is necessary to hold a hearing the board may appoint either one of its members or a member of the State Bar of California to serve as a referee. The referee shall hold such a hearing and shall transmit, in writing, to the board his proposed findings of fact and recommended decision.

Under the current Policy, if the member disagrees with the Disability Committee's recommendations, all aspects of the disability application are processed together and subject to review by a hearing officer. As a result, tangential issues, such as timeliness of an application, ineligibility due to termination, application of the disability offset, etc., that are beyond the fundamental issues relating to a disability determination as set forth in CERL Section 31724, i.e, (1) permanent incapacity, (2) service connection, and (3) the effective date, end up being litigated before the hearing officer.

In addition, the Policy as currently drafted gives members the right to request a hearing on all benefit determinations, and does not provide the Board with the opportunity to exercise its authority under section 31533 (set forth above) to determine whether a hearing is necessary, or to define the issues to be presented to the hearing officer. As a result, the hearing officer hears and issues recommendations on a variety of questions that involve interpretations of the CERL and/or policy decisions by the Board. Examples include whether a particular pay item is pensionable for Legacy members; whether Board Resolution 98-001 should be revised; whether the disability offset should be applied where reciprocity has not been established; how to calculate a year of service credit; etc. These are issues for which the Board, and not a hearing officer, is the appropriate arbiter, unless and until challenged in state court in a writ proceeding.

The proposed revisions to the Policy would limit the issues to be reviewed by a hearing officer in connection with a disability application to the three issues outlined in section 31724 (permanent incapacity; service connection and effective date). All other tangential issues related to an application for disability retirement would be treated as benefit determinations; and for these, and for all other questions regarding benefit determinations, staff recommends restoring to the Board the power under section 31533 to determine what issues require a hearing. Under the proposed revision, members can request CEO review of staff level determinations of a member's benefit (e.g., calculation of the amount of the benefit, effective date, reciprocity determinations), and if the member is dissatisfied with the CEO determination, the member may request review by the Board. The Board would then have the choice of deciding the issue itself (and the Board's decision at that point would be final and subject to a writ proceeding filed with state court) or sending the matter to a hearing with the issues to be considered by the hearing officer as defined and limited by the Board's order.

Additionally, the Policy as currently drafted does not expressly address the situation where the member wants to appeal limited aspects of a Disability Committee recommendation such as the effective date of the benefit or

whether the disability is service connected. Currently, staff moves forward to the Board the committee's recommended grant of a non-service connected disability retirement, and allows the member to simultaneously appeal the issues of effective date or service connection. The proposed revisions would memorialize the process currently followed by staff and allow a hearing limited to the contested issues with the non-contested issues sent directly to the Board for action.

Consolidation of Requests for Administrative Review or Hearing

Staff proposes revising the Policy to include the ability of the Board and the hearing officer to consolidate review or hearing of individual member cases that involve related issues after considering 1) the complexity of the issues involved; 2) the potential prejudice to any party; 3) the avoidance of duplicate or inconsistent orders; and 4) the efficient utilization of OCERS' resources. This is the process that was followed earlier this year in connection with the five cases that involved the issue of the application of the disability offset. Because the Policy didn't contemplate consolidation of the cases, staff was required to formally request the Board to order the consolidation at a meeting of the Board.

Procedural Issues Raised at the Pre-Hearing Conference

Staff proposes adding a provision to Rule 8 in the Hearing Rules (appendix to the Policy) to permit OCERS to raise procedural issues not previously raised by OCERS staff that could moot an appeal such as timeliness of the Application or ineligibility due to the member having been terminated for cause. This issue has arisen in a few cases where an eligibility or timeliness issue was not addressed by staff at the determination level. The purpose of the proposed revision is to avoid having a matter that could or should be resolved by the Board going all the way through the hearing process. As proposed, the hearing officer would give the other parties an opportunity to respond, and could continue the Pre-Hearing Conference to do so. If the hearing officer found in favor of OCERS on the issue of eligibility or timeliness, the hearing would be suspended and the matter would be referred to the Board and handled as if it were a CEO Determination.

Party Objections to Hearing Officer Recommendations

As currently drafted, the Policy permits all parties to file objections to the hearing officer's recommendations, but does not include a process for the hearing officer to review and respond to those objections – either by affirming the original recommendations or by issuing revised recommendations in light of the objections. This puts the Board in the position of having to review and consider the parties' objections without the benefit of knowing whether the objections would persuade the hearing officer to alter his or her original recommendation. The only alternative currently is for the Board to send the matter back to the hearing officer with instructions to consider the objections.

The above process represented a change that was made in 2018; and after two years of living with the new Policy, staff believes the process regarding objections to hearing officer recommendations under the 2015 version of the Policy is superior to the current language. Staff therefore recommends reverting to the previous process and revising the Policy to provide that any objections will be filed with the hearing officer, who will consider the objections and either affirm or revise the original recommendations, before the matter is presented to the Board. This will eliminate any "guesswork" regarding whether the hearing officer would have found any of the objections to be persuasive.

There are numerous non-substantive revisions to the Policy that are recommended by the staff and that are not outlined or summarized here. The attached redline of the Policy reflects all of the revisions proposed. Staff welcomes the Committee's questions, comments and suggestions for improvements to the Policy.

Submitted by:



Gina M. Ratto
General Counsel