

**DISABILITY RETIREMENT PROCEDURES**  
**APPLICATIONS FOR DISABILITY RETIREMENT**

**500. DEFINITIONS**

Unless the context requires otherwise, the following terms shall have the stated definitions:

(a) "**Applicant**" means the person or entity filing an application for disability retirement (or service-connected death) pursuant to the County Employees Retirement Law of 1937.

(b) "**Application**" means an application for disability retirement (or service-connected death) pursuant to the County Employees Retirement Law of 1937.

(c) "**Incapacity**" and "**incapacitated**" mean as judicially construed under the County Employees Retirement Law of 1937, analogous statutes and associated case law.

(d) "**Interested party**" means the subject employee, an employee's representative or beneficiary with standing to pursue an Application, the Board of Retirement, the Retirement System, or the employer of the subject employee.

(e) "**Referee**" means a person appointed by the Board in accordance with the Board's Guidelines for Retention and Assignment of Referees (the "Referee Guidelines") to make a determination, pursuant to Government Code section 31533.

(f) "**Referee's report**" means a Referee's proposed findings of fact and recommended decision pursuant to Government Code section 31533.

(g) "**Retirement Law**" means the County Employees Retirement Law of 1937, Government Code section 31450 *et seq.*

(h) "**Section**" or "**subsection**" mean section or subsection of these procedures.

(i) "**Subject employee**" means the member of the Retirement System on behalf of whom an application for disability retirement is filed.

## **501. REPRESENTATION BY COUNSEL**

(a) Subject to the provisions of this section, any interested party may, at that party's expense, hire and be represented by an attorney, but no applicant or subject employee is required to have an attorney at any time. In no case shall a party's unreasonable delay in retaining an attorney be considered good cause to delay any proceeding.

(b) When any interested party becomes represented by an attorney, that attorney promptly shall file with the Retirement Office and serve upon all other interested parties written notice of representation, including the attorney's name, address, and telephone number. Unless appearing with an interested party at a hearing, conference, or Board meeting, an attorney shall not be deemed counsel of record until such notice of representation is duly filed and served. Attorneys representing interested parties shall be members in good standing of the California State Bar. The substitution, withdrawal, or dismissal of an attorney of record shall be in the manner prescribed by the California Code of Civil Procedure ("CCP"). An interested party may not be represented by a relative, friend or other non-attorney. The Board or a referee has discretion to allow such a person to be present at a Board meeting or hearing solely to assist or support a member in self-representation.

## **502. APPLICATIONS**

(a) A claim for disability retirement or service connected death shall be made by filing with the Retirement Office a completed application on a form approved by the Board for that purpose. The application form shall be in four parts: **Part A** shall be a one-page application initiation form requiring the name, address, and telephone number of the applicant (and of the subject employee, if other than the applicant), and such other information as the Retirement Office may deem appropriate; **Part B** shall be multiple authorization forms for the release of medical and other information concerning the subject employee; **Part C** shall be a questionnaire requiring, sworn answers in writing to such questions as the Retirement Office may deem pertinent; and **Part D Treating Physician's Statement** shall be a questionnaire

requiring written answers to pertinent questions from a physician who is treating applicant for each separate medical condition that is the subject of the application. The “Filing Date” shall be the date that the completed application (Parts A, B, C and D) is filed with the Retirement Office.

(b) If at any time during the pendency of an application there is any change in any of the facts or claims set forth in any part of the application, the applicant immediately shall file with the Retirement Office and serve on all interested parties written notice of the change. Failure to do so until after a hearing has been set may, in the discretion of the Referee, preclude the applicant from asserting or introducing evidence of the omitted or changed fact(s) or claim(s). In the event a Referee allows the applicant to present evidence pertaining to a material amendment of an application, the Referee shall take steps, including if necessary the postponement of the hearing, to ensure that the Retirement System has had the opportunity to investigate the amended application pursuant to subdivision (c).

(c) With respect to any change of which notice is required to be given pursuant to subsection (b) of this section, if the change does not materially affect the nature or basis of the claim, the application shall be deemed so amended as of the date that written notice of the change is filed with the Retirement Office; if the change does materially affect the nature or basis of the claim, it shall be deemed to constitute a new and separate application, which shall have as its effective filing date the date that written notice of the change is filed with the Retirement Office. The Board may extend the time for processing the application to allow for investigation of the changed circumstances or amended claim.

(d) When an application is filed on behalf of the same employee for whom another application is pending, the proceedings may be consolidated for the purposes of administrative review and hearing. In the event that a new application is consolidated with a previously filed application that is in the process of administrative review, the time limits for administrative review applicable to the previously filed application may be abrogated and the time limits for administrative review in the consolidated cases may be calculated from the

date that the new application is filed. In the event that a new application is consolidated with a previously filed application that is in the hearing process, the previously filed application may be withdrawn from the hearing process, the consolidated cases may be subject to administrative review, and the time limits for administrative review in the consolidated cases may be calculated from the date that the new application is filed.

(e) The Retirement Office shall provide, along with each application, a copy of these procedures.

### **503. FURTHER INFORMATION REQUIRED FROM APPLICANT**

(a) At any time during the pendency of an application, the Retirement Office, the Board, or counsel for the Retirement System may, by written notice to the applicant, require that the applicant serve within thirty days on the Retirement Office any or all of the following items:

(1) copies of records, reports, notes, statements, documents, photographs, or other writings within the definition of Evidence Code section 250;

(2) a narrative report of the subject employee's current medical condition from any or all of the health care professionals that have provided treatment, to be obtained by the applicant at the applicant's expense;

(3) sworn written responses to written inquiries concerning any matter that is either relevant to the subject matter of the case or is reasonably calculated to lead to the discovery of evidence that would be admissible at a hearing.

(b) In the event that the applicant fails or refuses to comply with any demand made pursuant to subsection (a) of this section during the initial investigation process, the application may be suspended or dismissed in the discretion of the Board. In the event that such failure and refusal occurs after the matter has been referred to hearing, the Referee shall consider the matter pursuant to sections 518 and 519. All time limits for processing the application shall be tolled during the period of the applicant's non-compliance.

#### **504. MEDICAL EXAMINATIONS**

(a) The Retirement System may, at any time during the proceedings, on one or more occasions, require the subject employee to undergo one or more examinations by a physician designated by the Retirement Office. The Retirement Office shall, at least ten days before the appointment date, serve the subject employee with written notice of the date, time and place of the examination, unless the subject employee agrees to accept notice that is by other mode or is given closer to the examination date.

(b) If the place of the examination is neither in Santa Barbara County nor the county where the subject employee currently resides, the subject employee may apply to the Board for reimbursement of travel expenses. Travel expenses, as referenced herein and elsewhere in these procedures shall generally be limited to reimbursement for mileage at the business rate then allowed by the IRS. The mileage amount for reimbursement shall be calculated as the lesser of the distance between the member's current residence or the last place of residence when actively employed and the location of the medical examination. When travel to and from an examination in a single day is not reasonably possible, or where an applicant is required to attend examinations on successive days, the CEO may authorize reimbursement of the reasonable costs of lodging, consistent with County guidelines. All requests for reimbursement of lodging must be made and approved in advance of the expenses being incurred. In cases where the applicant does not reside in Santa Barbara County, the Retirement System shall require that the applicant return to the Santa Barbara area at the applicant's expense for required medical examinations.

(c) The records and reports of the examining physician shall be confidential, privileged, and not subject to discovery except in accordance with section 508(g) except that any reports of examining physicians provided to the Board as part of or an attachment to the confidential written report submitted pursuant to section 505(d) shall be provided to the subject employee and/or his or her counsel following completion of all requested examinations and prior to the meeting date at which the Board will consider staff's administrative recommendation. A

psychiatric report will not be provided directly to the subject employee where the physician preparing the report so recommends, but such report may be provided to counsel for the subject employee, or if the subject employee is unrepresented to his or her treating physician.

(d) In the event that the subject employee fails or refuses to comply with any examination pursuant to subsection (a) of this section, the application may be suspended or dismissed at the discretion of the Board. In the event of an examination after the matter has been referred to hearing, the Referee has authority to consider the matter pursuant to sections 518 and 519. All time limits for processing the application shall be tolled during the period of the applicant's non-compliance. If the applicant fails to appear for a scheduled examination, absent good cause, the Board may dismiss the application, without prejudice to applicant's right to re-apply.

#### **505. ADMINISTRATIVE RECOMMENDATION**

(a) Following the filing of an application, the Retirement Office shall gather and evaluate the pertinent facts, in consultation with counsel.

(b) Among the subjects investigated by the Retirement Office shall be whether or not there exists within the department and job class in question a permanent assignment or assignments, including but not limited to the employee's pre-injury assignment, the usual duties of which the employee would be substantially capable of performing with reasonable accommodation.

(c) If the member requests a service retirement pending determination of entitlement to a disability retirement, the Retirement Office shall convey that request to the Board, along with a recommendation as to the member's eligibility for service retirement.

(d) Within 180 days following the date a complete application for disability retirement is received in the Retirement Office, the Retirement Office shall provide to the Board a confidential written report including a summary of the pertinent facts, copies of the pertinent documents, and one of the following recommendations:

(1) "Grant service-connected disability retirement": where there is no substantial question that the subject employee is permanently incapacitated for the performance of duty, that the incapacity is a result of injury or disease arising out of and in the course of employment, and that such employment contributes substantially to such incapacity;

(2) "Grant non-service-connected disability retirement": where the subject employee has elected to have the application considered for a non-service-connected disability retirement, and where there is no substantial question that the subject employee is permanently incapacitated for the performance of duty, and that such incapacity is not a result of injury or disease arising out of and in the course of employment, or that such employment does not contribute substantially to such incapacity;

(3) "Deny, subject to hearing": where there is no substantial question that the subject employee is not permanently incapacitated for the performance of duty; or, where the recommendation would be to grant a non-service-connected disability retirement, but the applicant is not eligible for or has elected not to receive such a benefit;

(4) "Refer for hearing": where none of the foregoing recommendations is deemed appropriate.

(e) At any time prior to the Board's final determination, the Retirement Office may amend its recommendation, and the Board may act thereon as provided in section 506.

(f) The time periods prescribed in this section do not commence to run until the application is complete, and at the discretion of the Board may be tolled in the event of non-cooperation by any interested party, or their doctor or attorney, or other circumstances constituting good cause.

## **506. BOARD ACTION UPON ADMINISTRATIVE RECOMMENDATION**

Upon receiving an administrative recommendation pursuant to section 505, the Board may take one of the following actions:

(a) Order that the application be granted unless within 21 days of the mailing of notice an interested party files with the Retirement Office a written request for hearing. If such a request is timely filed, the Retirement Office shall cause the matter to be set for hearing pursuant to section 507. If no such request is timely filed, the application shall be deemed granted, and the Board shall issue a written decision pursuant to section 515.

(b) Order that the application be denied unless within 21 days of the mailing of notice an interested party files with the Retirement Office a written request for hearing. If such a request is timely filed, the Retirement Office shall cause the matter to be set for hearing in accordance with section 507. If no such request is timely filed, the application shall be deemed denied, and the Board shall issue a written decision pursuant to section 515.

(c) Take no action on the merits of the application, and order that the matter be set for hearing in accordance with section 507

(d) Refer the matter back to the Retirement Office with instructions for further investigation, evaluation, or other action.

## **507. SETTING FOR HEARING**

(a) If the Board determines that a Referee is to hear a matter, the Board shall at the same time instruct the Retirement Office to select and appoint a Referee from the Board's list of approved Referees in accordance with the Referee Guidelines. If the referred matter involves a renewed application heard previously, the matter will be referred to the same Referee who heard the matter previously if available.

(b) Once a Referee has been assigned to hear a matter, the Notice of Referee Assignment shall be served on the Referee and the parties, setting forth the issues for hearing, and with instructions that the hearing be set within 120 days of the date of the Notice. The



Notice shall describe hearing procedures, and be served with a copy of these procedures.

#### **508. PRE-HEARING PROCEDURES**

(a) Any interested party may request that the Referee schedule a pre-hearing telephone conference to set a hearing date and to discuss preliminary issues. In cases where the applicant is not represented by legal counsel, a mandatory pre-hearing phone conference will be scheduled to discuss the hearing procedures with the applicant and set a hearing date. Once the hearing date is set, the Referee will issue to the parties a Hearing Notice listing the time, date and location of the hearing and the issues to be heard. The Retirement Office will provide a copy of the Hearing Notice to the employing department and the County (or employing member district).

(b) A Referee appointed to hear a matter pursuant to section 507(c) shall set a hearing date that is no more than 120 days from referral, and no less than thirty days after all interested parties are served with Notice of the Referee Assignment. If the Referee determines that a hearing cannot reasonably be commenced within the foregoing constraints, the Referee shall file with the Retirement Office and serve upon all interested parties a written recommendation for a specific extension of time, along with an explanation of the circumstances necessitating the extension. If a hearing is not commenced within the 120 days allowed, or within such additional time as has been granted by the Board, the Referee's jurisdiction shall be deemed suspended, and the Referee shall provide to the Board a written report setting forth the reasons that the hearing was not brought to a timely conclusion, along with the Referee's recommendations regarding further proceedings. If said reasons include an applicant's unreadiness or unwillingness to proceed, the Board may dismiss the application in its discretion.

(c) The Referee may, upon a stipulation by the interested parties, continue a hearing to a new date, provided that the new date is within the time allowed by subsection (b) of this section. Continuances are disfavored, and may be granted only upon a clear showing of good cause. Mistake or inadvertence occasioned by ignorance of these procedures shall not constitute

good cause for a continuance. If a continuance is requested less than two weeks before a scheduled hearing or pre-hearing conference, the Referee may require as a condition of granting the continuance that the requesting party bear any costs reasonably incurred by any other interested party or by the Referee as a result of the continuance. Referees are encouraged to set hearing dates in consultation with hearing counsel for the parties that are convenient for all concerned, thereby minimizing the need for continuances. Referees should emphasize to the parties that the dates set are dates certain, which will not be continued absent good cause shown, such as counsel actually being in trial in another matter or the serious illness of a party or counsel. Requests for continuance by an Applicant who is the subject employee or a beneficiary must be accompanied by a written statement from the Applicant that she has been advised of the extension and consents thereto and/or a statement of counsel, under penalty of perjury, that he or she has explained the need for the continuance to the applicant and that the applicant has consented to the continuance.

(d) Except as otherwise provided in this subdivision, any interested party shall be entitled to notice and take depositions in the manner prescribed by the CCP. The provisions of the CCP applicable to depositions of non-expert depositions shall apply to depositions of experts and non-experts alike, and the CCP provisions applicable to depositions of expert witnesses shall not apply. Unless all interested parties agree otherwise, any deposition of the subject employee shall be taken in Santa Barbara County regardless of the employee's current place of residence, and each party shall bear its own costs in connection with such deposition. Any interested party noticing a deposition of any witness other than the subject employee shall, at the time of the serving of the deposition notice, pay the witness any fee or mileage to which the witness would be entitled under the CCP. The Referee shall not attend depositions, unless instructed by the Board to attend.

(e) Any interested party may request that the Board issue a subpoena or subpoena duces tecum pursuant to Government Code section 31535. The Board delegates to the CEO the authority to issue subpoenas on its behalf, subject to the authority of the Board's

Referee to modify or quash the subpoena pursuant to sections 518 and 519. In order to request the issuance of a subpoena or subpoena duces tecum, an interested party shall complete and submit to the Retirement Office a form approved by the Board for that purpose, and shall do so at least five working days before the date the subpoena or subpoena duces tecum is to be issued. No subpoena or subpoena duces tecum shall be issued until the requesting party has posted with the Retirement Office any fees to which the subpoenaed witness is likely to be entitled. The party requesting a subpoena or subpoena duces tecum shall be responsible for serving and enforcing it. Appearances of interested party witnesses, for deposition or at a hearing, may be compelled by notice pursuant to CCP 2025.280 or 1987(b) without the necessity of subpoena.

(f) Any interested party desiring to introduce evidence at a hearing shall serve all other interested parties with a written statement identifying all writings that the party will introduce and all witnesses that the party will call to testify. If any of the identified writings have not previously been served, a copy thereof shall be attached to the statement. In addition to stating the name, address, and telephone number of each witness, the statement shall contain a summary of the testimony that the witness is expected to give. If service is made by personal delivery, the date of delivery shall be no later than the thirtieth day before the hearing; if service is made by mail, the date of mailing shall be no later than the thirty-fifth day before the hearing.

(g) Formal discovery shall be limited to the procedures provided in this Article, except as may be stipulated between the parties.

## **509. HEARING PROCEDURES**

(a) The Referee shall exercise such control over the hearing as is reasonable, necessary, and consistent with these procedures, including, but not limited to, setting the date, time and place of the hearing, confirming the issues to be heard pursuant to the Hearing Notice, prescribing the order of proof, ruling upon the admissibility of evidence, questioning witnesses, and determining whether the matter shall proceed or be adjourned subject to continuation.

(b) All hearings and conferences shall be held in a location designated by the Retirement Office.

(c) Every hearing shall be reported by a certified shorthand reporter. Conferences shall be reported only if so ordered in advance by the Referee. The Retirement Office shall arrange for a reporter to be present whenever one is required. The reporter's notes shall be transcribed only if requested by the Referee or an interested party, in which case the requesting party, if not the Referee, shall pay the transcription costs. The non-requesting parties may, at their expense, order certified copies directly from the court reporting service. The Board of Retirement will not provide uncertified photocopies of the transcript to the parties.

(d) Oral evidence shall be taken only on oath or affirmation.

(e) On any relevant matter, each interested party shall have the right, in compliance with these procedures, to call and examine witnesses, introduce documentary and other physical evidence, and cross-examine opposing witnesses. Any interested party who does not testify on his or her own behalf may be called and examined as a witness as if under cross-examination.

(f) The party calling a non-party witness shall be responsible for paying any fees or other expenses of that witness.

(g) A refusal by any interested party to testify when called, or to answer proper questions in the course of testifying, shall be grounds for deeming such testimony, or the answers to such questions, to have been given and to have been adverse to the refusing party.

(h) A duly noticed hearing may proceed in the absence of any interested party.

## **510. EVIDENCE**

(a) Except as otherwise provided in these procedures, any relevant evidence shall be admitted if it is the sort of evidence on which reasonable and responsible persons are accustomed to rely in the conduct of serious affairs, regardless of the existence of any common law or statutory rule which might make improper the admission of such evidence over objection in civil actions. Hearsay evidence that meets the foregoing criteria may be used for

the purpose of supplementing or explaining any admissible non-hearsay evidence, but shall not be sufficient in and of itself to support a finding unless admitted pursuant to subsection (b), (d), or (e) of this section, or unless it would be admissible over objection in civil actions. Upon proper objection, evidence that is irrelevant or unduly repetitious shall be excluded.

(b) Any interested party may offer, and the Referee shall receive into evidence, any medical records or reports that are relevant and that constitute substantial evidence, provided that they have been disclosed and served in compliance with section 508(g). Each interested party shall have the right, at their own cost, to cross-examine by deposition the author of any such medical report or record, provided that such party makes a reasonable effort to complete the deposition prior to the hearing. Medical reports prepared for purposes of Workers' Compensation proceedings are not made admissible or inadmissible by that fact alone; however, no opinion therein shall constitute substantial evidence to support a finding of permanent incapacity if that opinion is based upon any criterion that is peculiar to Workers' Compensation, or is otherwise not germane to the issue of permanent incapacity under the Retirement Law. Medical reports should include the following, and may be found not to constitute substantial evidence if they do not:

- (1) a history of the subject injury or illness, and the source(s) of that information;
- (2) the subject employee's prior and subsequent medical history, and the source(s) of that information;
- (3) the current subjective complaints;
- (4) the findings upon examination;
- (5) the nature, extent, and likely duration of any impairment of function;
- (6) the anticipated nature and extent of any necessary future treatment;
- (7) whether the subject employee is permanently incapacitated from the performance of usual duties, or is substantially able to perform those duties, and a thorough explanation of the basis for that opinion; and,

(8) whether or not any permanent incapacity is a result of injury or disease arising out of and in the course of employment with the County (or member district) and, if so, a thorough explanation of the basis for that opinion, including a discussion of the likely mechanism of the injury or process of the disease, a discussion of the effect of employment on the member's condition applying legal standards pertaining to a determination of causation under the Retirement Law, and citations to supporting medical authorities.

(c) Except as provided in section 510(f), no party shall be permitted to introduce a forensic medical report not disclosed by the deadline provided in 508(f). It is the intention of these provisions to foreclose the obtaining of rebuttal and surrebuttal reports, thereby avoiding the costs, delays, and abuses of rebuttal/surrebuttal cycles.

(d) Any interested party may offer, and the Referee shall receive into evidence, any relevant written statement by a non-medical witness, if (1) it is made by affidavit or by declaration upon penalty of perjury, and (2) it has been disclosed and served in compliance with section 508(f), and (3) no interested party has timely served the proponent with a written demand that the witness be produced to testify at the hearing. If service of such demand is made by personal delivery, it shall be timely if the date of delivery is no later than the tenth day before the hearing; if by mail, it shall be timely if the date of mailing is no later than the fifteenth day before the hearing. The Referee shall disregard any portion of a statement received pursuant to this subsection that would be inadmissible if the witness were testifying in person, but the inclusion of inadmissible matters shall not render the entire statement inadmissible.

(e) Any interested party may offer, and the Referee shall receive into evidence, any relevant deposition transcript, if (1) the deposition was taken in the manner provided by law or by stipulation of the parties, and (2) it has been disclosed and served in compliance with section 508(f). Nothing herein shall require or permit receiving into evidence any deposition testimony to which objection is properly raised if such testimony would be inadmissible were

the witness present and testifying at the hearing. Nothing herein shall prevent receiving into evidence any deposition testimony that would be admissible under the CCP in a Superior Court civil action.

(f) No party may, over timely objection, introduce any evidence with respect to which that party has failed to comply with section 508(f), unless the Referee finds that the offering party made a good faith effort to comply, or that the failure to comply was the result of mistake, inadvertence, surprise, or excusable neglect within the scope of CCP section 473. Notwithstanding the foregoing, a failure to comply with the provisions of section 508(f) shall not be excused, if the failure was a result of the party's ignorance of the said provisions.

(g) The Referee may impose such conditions as may be just upon the admission of evidence pursuant to subsection (f) of this section, including, without limitation, continuing the hearing for a reasonable period of time and recommending to the Board that the party offering the evidence be required to pay any reasonable costs incurred by the other interested parties by reason of the continuance.

## **511. REFEREE'S REPORT**

(a) Within forty-five days after a matter is submitted to a Referee for a decision, the Referee shall file with the Board and serve upon all interested parties a written report that includes a summary of the evidence, proposed findings of fact, recommended decision, and proof of service. A hearing shall not be deemed concluded until the Referee has received all timely evidence, briefs, and argument, and the matter stands submitted for decision. Any post-hearing briefs shall be simultaneously submitted on a date directed by the Referee within 30 days of the last day of hearing, followed by simultaneous reply briefs on a date directed by the referee within 10 days of the date set for post-hearing brief submittal. Such briefing periods shall only be extended by the Referee for good cause.

(b) The interested parties shall have ten days (plus 5 days if served by mail) from the date the Referee's report is served to file written objections with the Retirement Office, along with proof of service upon all other interested parties. Any timely filed objections shall be

incorporated in the record to be considered by the Board. The Board has discretion to decline consideration of untimely written objections, or oral objections or argument from any party that has not filed timely written objections.

### **512. COMPENSATION FOR REFEREES**

Referees shall be compensated in accordance with a fee schedule incorporated into written agreements between the Retirement System and the Referee, which fee schedule shall be periodically reviewed by the Board. A Referee shall not be entitled to remuneration for services until his/her report has been filed and served, and such remuneration may be reduced if the report is untimely as provided for by contract.

### **513. ACTION BY THE BOARD UPON REFEREE'S REPORT**

When a Referee's report is filed with the Retirement Office pursuant to section 511, the Retirement Office shall cause the matter to be placed on the agenda of the next regular Board meeting to take place after the expiration of the period in which the interested parties may file written objections. The Board may, but is not required to, hear oral argument from any interested party that has filed timely written objections, subject to the same limitations as apply to public comment under the Board's Bylaws. The Board shall hear disability retirement matters in closed session pursuant to the Ralph M. Brown Act, unless a member waives the privacy protections of such statute and requests that the matter be heard in public session. The Board shall take one of the following actions:

- (a) approve and adopt the proposed findings and recommendation of the Referee; or
- (b) require a transcript or summary of all the testimony, plus all other evidence received by the Referee, and upon receipt thereof take such action as in the Board's opinion is indicated by such evidence; or
- (c) refer the matter back to the Referee for further proceedings, with or without instructions; or
- (d) set the matter for hearing before itself. At such hearing the Board shall hear and



decide the matter as if it had not been referred to a Referee.

#### **514. HEARINGS BEFORE THE BOARD**

(a) Should the Board elect to require a transcript or summary of all of the testimony, plus all other evidence received by the Referee, pursuant to section 513(b), the Board may deem the report and recommendation of the Referee as a summary of the testimony and evidence received, as supplemented by excerpts of the record as the Board may direct.

(b) Should the Board elect to hear the matter itself pursuant to section 513(d), the matter shall be heard by a quorum of the Board at a special meeting in accordance with the Board's Bylaws and sections 509 and 510, except that the Board may direct that a transcript of prior proceedings be considered in lieu of live testimony for portions of the testimony as the Board may direct.

#### **515. BOARD DECISIONS**

(a) All of the following provisions apply to any decision of the Board that is subject to judicial review pursuant to Code of Civil Procedure section 1094.5:

(1) The decision shall be made in writing;

(2) The decision shall include or be accompanied by notice that the time in which judicial review must be sought is governed by CCP section 1094.6, and shall include or be accompanied by the text of section 1094.6;

(3) The decision shall be accompanied by a copy of an affidavit or certificate of mailing;

(b) For purposes of judicial review, a decision of the Board is final on the date that the written decision is mailed pursuant to subsection (a) of this section, and neither CCP section 1013(a) nor any provision of these procedures shall apply to extend the time within which judicial review must be sought.

(c) The Board shall not entertain any petition for reconsideration of any decision that

is final. Such rule does not preclude consideration of a new application pertaining to a prior decision of the Board made without prejudice or a subsequent timely application based on a material change in the subject employee's condition.

#### **516. JUDICIAL REVIEW OF BOARD DECISIONS**

(a) The provisions of CCP section 1094.6 apply to the judicial review of any decision of the Board that is subject to judicial review pursuant to CCP section 1094.5.

(b) Any request for the preparation of the administrative record pursuant to CCP section 1094.6 shall be made in writing and filed in the Retirement Office. The Retirement Office shall, within ten days of receiving such a request, notify the requesting party of the estimated cost of preparing the record. Any requesting party other than the County or the Retirement System shall, within ten days of receiving such notification, deposit with the Retirement Office an amount sufficient to cover the estimated cost. If during the preparation of the record it becomes apparent that the costs will exceed the amount of the deposit, the requesting party shall be notified and shall deposit the additional amounts before the record will be completed. If the cost of preparing the record exceeds the amount deposited, the party requesting the record shall pay the excess. If the amount deposited exceeds the cost, the difference shall be returned to the party requesting such record. Upon receiving the required deposit, the Retirement Office promptly shall prepare the record, and shall include the transcript of the proceedings, all pleadings, all notices and orders, any proposed decision by a Referee, the final decision, all admitted exhibits, all rejected exhibits in the possession of the Board of Retirement, its officers, or agent, all written evidence, and any other papers in the case.

#### **517. DISABILITY BENEFICIARIES UNDER 55 YEARS OF AGE**

The Retirement Office may request information from any disability retiree under fifty five years of age in the manner prescribed in section 503, and may require any such beneficiary to undergo medical examination pursuant to Government Code section 31729. If from such information and medical examination it appears that the retiree may no longer be incapacitated, and it has been determined that an offer of employment to the retiree is likely to

be made by his or her former employer pursuant to Section 31729 if he or she is found no longer to be incapacitated, the Retirement Office shall so report in writing to the Board. The Board may order a hearing on the issue of incapacity, in which case the procedures shall be the same as those provided in these procedures for applications for disability retirement.

#### **518. MOTIONS**

Any interested party to a disability retirement hearing claiming that another interested party has not complied with any requirement of these procedures or the Retirement Law may make a written motion for an order compelling compliance. The motion shall include the following: (1) a verified statement of all relevant facts, including a description of efforts made to resolve the dispute informally, and the reasons given by the respondent party for non-compliance; (2) a statement of the relief sought; (3) a memorandum of supporting points and authorities; and, (4) a copy of an affidavit or certificate of service upon all interested parties. The motion need not comply with the technical requirements applicable to motions to compel under the CCP. The motion shall be made to the appointed Referee. The respondent party shall have five days from the date the motion is served to submit written opposition. Upon the expiration of the time allowed for opposition, the Referee shall either grant or deny the motion without a hearing, or set a telephonic hearing on the motion.

#### **519. SANCTIONS**

Upon a motion pursuant to section 518, the Referee may impose sanctions affecting the ability of a party to introduce evidence at a hearing and/or for a party to bear certain costs as a condition for conducting specified discovery or for introducing certain evidence at a hearing, but shall not otherwise be authorized to impose monetary sanctions. The Board may recommend sanctions limiting an application from proceeding, including suspension of an application until certain conditions are complied with or dismissal of an application. The imposition of suspension or terminating sanctions shall be in the form a report and recommendation to the Board, to be considered by the Board at its next regularly scheduled meeting.

## **520. SERVICE**

(a) When a provision of these procedures requires that "interested parties" be served, service shall be made upon the Retirement Office, the member's employer (if the employer is the County service shall be on County Counsel), all interested parties who have appeared in the subject proceedings, and all interested parties who have not appeared but have filed a request to be served.

(b) If the party to be served has an attorney of record in accordance with section 501, service shall be made upon the attorney of record.

(c) Unless otherwise provided in these procedures, when a provision of these procedures requires service, service shall be made either personally in a manner permitted under the CCP for the service of a summons, or by mail in accordance with subsection (d) of this section.

(d) Service by mail shall be effected by sealing the item to be served in an envelope properly addressed to the party to be served and depositing the envelope in the United States mail, with first class postage fully prepaid. Unless otherwise provided in these procedures or other applicable law, service by mail shall extend applicable time limitations in the manner prescribed in CCP section 1013. For purposes of determining the effectiveness of service upon a subject employee, a mailing shall be deemed "properly addressed" if it bears the address specified on the application, or, if the application has been amended, the address specified on the most recently-filed amended application.

(e) The parties to a disability retirement hearing may agree to electronic or telefax service in the manner provided for in CCP Sections 101.6 and 1013. In all cases, electronic service shall be provided as a courtesy in addition to other forms of service where feasible, but shall not shorten applicable deadlines unless agreed to by the parties.

## **521. STATEMENT OF POLICY REGARDING FAIRNESS AND NEUTRALITY OF THE HEARING PROCESS AND EX PARTE COMMUNICATIONS.**

(a) As stated in the Referee Guidelines, the Board is committed to fairness and

neutrality in the hearing process. During the conduct of disability retirement proceedings, the Referee constitutes the duly authorized representative of the Board. Like the Board, Referees are expected to neutrally consider evidence and argument, with no pre-disposition towards the grant or denial of disability retirement applications. The Board's duty is to determine whether the granting of a disability retirement in a particular case has merit based on the law and the evidence. The Board's policy is to encourage full and accurate fact finding. The Retirement System is equally well served by a grant as by a denial where the decision is based on the law and the evidence. Counsel for the Retirement System is encouraged to assist the Referee and the Board in the presentation of evidence with these objectives in mind.

(b) In order to promote and insure the objective of fairness, interested parties, their counsel, Referees and Board members are prohibited from engaging in informal *ex parte* communications that could influence how the application is decided, so long as an application is pending. Such prohibited *ex parte* communications include the initiation or consideration of such communications regarding an anticipated or pending application between any interested party and a Referee or between any interested party and a Board member. Such prohibition shall not preclude routine communications regarding scheduling or other administrative matters, consideration by the Board of confidential reports provided to all Board members, or consultation by Board members with Board counsel pertaining to their duties and responsibilities with respect to the hearing process.

(c) From time to time, the Board may be required to adjudicate an application for disability retirement of an SBCERS staff member, a SBCERS Board member, or a relative or close acquaintance of an SBCERS staff member or Board member. In these or similar circumstances, in order to ensure objectivity and fairness, it may be appropriate for some or all SBCERS staff members, in consultation with System counsel, to recuse themselves from participating in the investigation of the application or from making recommendations to the Board based on such investigation. Where such a recusal occurs, the CEO, in consultation with System counsel, is authorized to implement steps to ensure neutral investigation and evaluation

of such application, which steps may include (i) measures to prevent participation in the application process by affected SBCERS' employees; (ii) retention of an independent investigative firm with experience in evaluating disability retirement applications under the CERL; (iii) retention of independent counsel with experience in evaluating disability retirement applications under the CERL; (iv) reaching agreement with another CERL retirement system to investigate, evaluate and make a recommendation to the Board with respect to such application through its staff; or (v) some combination of these steps. Where the CEO is recused from selecting a process, for example where the CEO is the applicant, the Board Chair shall make such determination in consultation with System Counsel. To the extent possible, investigation, evaluation and recommendation, as well as any associated administrative hearing, shall be conducted in accordance with these Disability Retirement Procedures, as such procedures are deemed modified to allow non-staff members to serve in the capacity of staff.

#### **521. Hearings in Non-Disability Matters**

From time to time the Board may refer a matter to an assigned referee to conduct a hearing and to make a report and recommendation concerning a matter unrelated to disability retirement. In the case of such referrals, such adjudications shall be conducted in accordance with the following sections of these procedures, excluding references to disability retirement: 500(d)-(h); 501, 507-516, 518-521.

History: Adopted by the Board of Retirement on May 23, 2012; revised August 24, 2016 and revised September 26, 2018.