

# LIVE VIRTUAL COMMITTEE MEETING



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**Attention:** Public comment requests must be submitted via email to [PublicComment@lacera.com](mailto:PublicComment@lacera.com).

LOS ANGELES COUNTY EMPLOYEES RETIREMENT ASSOCIATION  
300 N. LAKE AVENUE, SUITE 650, PASADENA, CA

## AGENDA

### A SPECIAL MEETING OF THE JOINT ORGANIZATIONAL GOVERNANCE COMMITTEE AND BOARD OF RETIREMENT AND BOARD OF INVESTMENTS\*

LOS ANGELES COUNTY EMPLOYEES RETIREMENT ASSOCIATION

300 NORTH LAKE AVENUE, SUITE 810, PASADENA, CALIFORNIA 91101

8:00 A.M., WEDNESDAY, JULY 21, 2021

This meeting will be conducted by the Joint Organizational Governance Committee and the Board of Retirement and Board of Investments by teleconference under the Governor's Executive Order No. N-29-20.

Any person may view the meeting online at  
[https://members.lacera.com/lmpublic/live\\_stream.xhtml](https://members.lacera.com/lmpublic/live_stream.xhtml).

*The Committee may take action on any item on the agenda,  
and agenda items may be taken out of order.*

- I. CALL TO ORDER
- II. APPROVAL OF MINUTES
  - A. Approval of the Minutes of the Joint Organizational Governance Committee of June 16, 2021
- III. PUBLIC COMMENT

(Written Public Comment - You may submit written public comments by email to [PublicComment@lacera.com](mailto:PublicComment@lacera.com). Correspondence will be made part of the official record of the meeting. Please submit your written public comments or documentation as soon as possible and up to the close of the meeting.

Verbal Public Comment - You may also request to address the Committee. A request to speak must be submitted via email to [PublicComment@lacera.com](mailto:PublicComment@lacera.com). We will contact you with information and instructions as to how to access the meeting as a speaker. If you would like to remain anonymous at the meeting without stating your name, please let us know.)

IV. NON-CONSENT ITEMS

- A. Recommendation as submitted by Steven P. Rice, Chief Counsel: That the Committee provide input on the proposed Use of Name Policy and make a recommendation to the Board of Retirement and Board of Investments if deemed appropriate. (Memo dated July 12, 2021)
- B. Recommendation as submitted by Steven P. Rice, Chief Counsel: That the Committee provide input on the content and possible revision of the Code of Ethical Conduct and make a recommendation to the Board of Retirement and Board of Investments if deemed appropriate. (Memo dated July 12, 2021)
- C. Recommendation as submitted by Steven P. Rice, Chief Counsel: That the Committee provide input on the content and possible revision of LACERA's Media Policy and make a recommendation to the Board of Retirement and Board of Investments if deemed appropriate. (Memo dated July 12, 2021)
- D. Recommendation as submitted by Carly Ntoya, Ph.D., Director of Human Resources: That the Committee (1) recommend the proposed classification changes be approved for implementation for the existing Media Artist classification by the Board of Retirement and Board of Investments and (2) recommend the proposed classification and compensation changes be approved for implementation for the creation of a new Senior Media Artist classification by the Board of Retirement and Board of Investments. (Memo dated July 11, 2021)

V. REPORT

- A. For Discussion Purposes as submitted by Ashley K. Dunning and Allison C. Callaghan, Nossaman LLP; Robert D. Klausner and Adam Levinson, Klausner Kaufman Jensen & Levinson, Fiduciary Counsel, regarding Trustees as Employees and Trustee Health Care Issues. (Memo dated July 13, 2021) (Privileged and Confidential Attorney-Client Communication/Attorney Work Product)

VI. ITEMS FOR STAFF REVIEW

VII. GOOD OF THE ORDER

VIII. ADJOURNMENT

*\*The Board of Retirement and Board of Investments have each adopted a policy permitting any member of the Board to attend a standing committee meeting open to the public. In the event five (5) or more members of the Board of Retirement or the Board of Investments (including members appointed to the Committee) are in attendance, the meeting shall constitute a joint meeting of the Committee and the Board or Boards for which a quorum is present. Members of the Board of Retirement and Board of Investments who are not members of the Committee may attend and participate in a meeting of the Committee but may not vote on any matter discussed at the meeting. The only action the Committee may take at the meeting is approval of a recommendation to take further action at subsequent meetings of the Board of Retirement and Board of Investments.*

*Documents subject to public disclosure that relate to an agenda item for an open session of the Committee that are distributed to members of the Committee less than 72 hours prior to the meeting will be available for public inspection at the time they are distributed to a majority of the Committee members at LACERA's offices at 300 N. Lake Avenue, Suite 820, Pasadena, CA 91101, during normal business hours of 9:00 a.m. to 5:00 p.m., Monday through Friday.*

*Requests for reasonable modification or accommodation of the telephone public access and Public Comments procedures stated in this agenda from individuals with disabilities, consistent with the Americans with Disabilities Act of 1990, may call the Board Offices at (626) 564-6000, Ext. 4401/4402 from 8:30 a.m. to 5:00 p.m. Monday through Friday or email [PublicComment@lacera.com](mailto:PublicComment@lacera.com), but no later than 48 hours prior to the time the meeting is to commence.*

MINUTES OF THE SPECIAL MEETING OF THE JOINT ORGANIZATIONAL  
GOVERNANCE COMMITTEE AND BOARD OF RETIREMENT  
AND BOARD OF INVESTMENTS

LOS ANGELES COUNTY EMPLOYEES RETIREMENT ASSOCIATION  
300 NORTH LAKE AVENUE, SUITE 810, PASADENA, CALIFORNIA 91101

9:00 A.M., WEDNESDAY, JUNE 16, 2021

This meeting was conducted by the Joint Organizational Governance Committee and the Board of Retirement and Board of Investments by teleconference under the Governor's Executive Order No. N-29-20.

PRESENT: Shawn R. Kehoe, Chair

Alan Bernstein

Vivian H. Gray

Keith Knox

Les Robbins

Herman B. Santos

ABSENT: Joseph Kelly

Elizabeth Greenwood, Vice Chair

MEMBERS AT LARGE:

Patrick Jones, Board of Investments

Gina Sanchez, Board of Investments

Ronald Okum, Board of Retirement

Wayne Moore, Board of Retirement

James Harris, Board of Retirement

William Pryor, Board of Retirement

STAFF ADVISORS AND PARTICIPANTS

Santos H. Kreimann, Chief Executive Officer

Steven P. Rice, Chief Counsel

Johanna Fontenot, Interim Chief Counsel

Klausner, Kaufman, Jensen & Levinson  
Bob Klausner, Principal

Sheppard Mullin  
Samantha Grant, Partner

Sheppard Mullin  
Namal Tantula, Associate

I. CALL TO ORDER

The meeting was called to order virtually by Mr. Kehoe at 12:00 p.m.

II. APPROVAL OF MINUTES

A. Approval of the Minutes of the Joint Organizational Governance  
Committee of May 28, 2021

Mr. Bernstein made a motion, Mr. Robbins seconded, to approve the meeting minutes of May 28, 2021. The motion passed (roll call) with Messrs. Knox, Bernstein, Kehoe, Robbins, Santos, and Ms. Gray voting yes. Mr. Kelly and Ms. Greenwood were absent.

III. PUBLIC COMMENT

There were no requests from the public to speak.

IV. ITEMS FOR STAFF REVIEW

There were no items to report.

V. GOOD OF THE ORDER

There were no items to report.

June 16, 2021

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## VI. EXECUTIVE SESSION

- A. Conference with Legal Counsel – Anticipated Litigation  
Significant Exposure to Litigation (Pursuant to Paragraph (2) of  
Subdivision (d) of California Government Code Section 54956.9)

Number of Cases: 1

In open session, before this item was heard, it was stated that the item relates to an employment claim by James Brekk.

The Committee and Boards met with counsel. The Committee and Boards did not take any action. There is nothing to report.

## VII. ADJOURNMENT

There being no further business to come before the Committee, the meeting adjourned at 12:40 p.m.

July 12, 2021

TO: Each Trustee,  
Joint Organizational Governance Committee

FROM: Steven P. Rice, *SPR*  
Chief Counsel

FOR: July 21, 2021 Joint Organizational Governance Committee Meeting

SUBJECT: Use of Name Policy

## **Recommendation**

That the Joint Organizational Governance Committee (JOGC) provide input on the proposed Use of Name Policy and make a recommendation to the Board of Retirement and Board of Investments if deemed appropriate

## **Legal Authority**

Under Article XVI, Section 17 of the California Constitution, the Board of Retirement and Board of Investments have plenary authority and exclusive fiduciary responsibility for, respectively, the administration of the system and investment of system assets. Under Section 7.4 of its Charter, the JOGC has authority to make recommendations to the Boards with respect to joint policies.

## **Background**

Trustee Kelly suggested that Staff consider a Use of Name Policy with regard to the use of LACERA's name and logos (collectively, Name). The purpose of a such a policy is to recognize the importance of an organization's name and set standards for the internal and external use and enforcement of the Name.

At LACERA, these issues are already partially included in the Code of Ethical Conduct (Code) provisions relating to limitations on the use of the LACERA positions by trustees and staff in connection with personal activities outside the normal course of LACERA's business (Code, Section VIII, page 20) and political activities, such as endorsements (Code, Section X, page 22). The Code does not mention use of the name LACERA directly, although the name would reasonably be understood to be LACERA property as mentioned in the Code. The Code directly limits the use of the logo only in Section X relating to political activities.

The Code of Ethical Conduct is on today's JOGC agenda for review. The Code is included as an attachment to the memo in support of that item.



Re: Use of Name Policy

July 12, 2021

Page 2 of 3

The Media Policy also addresses limits on communication with the media and other third-parties. It does not specifically mention use of the LACERA Name. A fair reading of the current policy would preclude use of the Name in trustees' personal communications, except to identify themselves. The Media Policy is on today's JOGC agenda and attached to the memo on that item.

The JOGC may choose to address the use of name issue in revisions to the Code of Ethical Conduct and Media Policy. Alternatively, the JOGC may recommend that the Boards approve a separate Use of Name Policy. In either approach, the JOGC has the opportunity to harmonize the terms of Board policies on the subjects addressed in all three policies, including use of the Name, so as to encourage clear and consistent communication and compliance with Board standards.

At the April 14 and May 5, 2021 First Amendment training provided to the Boards by fiduciary counsel, counsel encouraged discussion of the governance issues arising from the Code of Ethical Conduct and the Media Policy and the standards governing public communication. Fiduciary counsel's training PowerPoint is attached to today's JOGC memo on the Media Policy.

### **Discussion**

A proposed Use of Name Policy is attached to this memo for the JOGC's consideration. The policy includes the following sections:

Section I -- Purpose. This section identifies the specific names and logos covered by the Policy and states that they have value to LACERA. The section provides that unauthorized use may cause damage, may be misleading, may cause confusion, may violate contracts, and may violate applicable law.

Section II -- General Standards. This section states the overarching principles that apply to the use of the Name by any internal or external person or entity, including accuracy and that any internal or vendor use be additive to LACERA's interests.

Section III -- Internal Persons. This section sets the standards for trustees and staff. Trustees may use the Name to identify themselves, so long as it does not violate the Code of Ethical Conduct and Media Policy and complies with fiduciary duty. Staff may use the Name in the course of performing their LACERA duties and to identify themselves, subject to the Code of Ethical Conduct and the Media Policy. Staff use is overseen by the CEO, Chief Investment Officer (CIO), and Human Resources.

Section IV -- External Persons and Entities. External parties may not use the Name to imply endorsement or for any commercial, political, or personal use without the CEO's

Re: Use of Name Policy

July 12, 2021

Page 3 of 3

written authorization. This section addresses use by vendors under contract with LACERA, which must comply with the Policy and the Code of Ethical Conduct. The CEO and CIO are responsible to address issues of vendor noncompliance.

Section V -- No Impairment of Lawful Use. This section provides that the Policy does not impair, interfere with, or limit lawful use of the Name.

### **Conclusion**

Staff requests that the JOGC provide input on the proposed Use of Name Policy and make a recommendation to the Boards if deemed appropriate.

c: Santos H. Kreimann  
Jonathan Grabel  
Luis Lugo  
JJ Popowich  
Richard Bendall  
Cynthia Martinez  
Johanna Fontenot

## BOARD OF RETIREMENT AND BOARD OF INVESTMENTS

### USE OF NAME POLICY

#### I. Purpose


The purpose of this Policy is to state restrictions on the use of the Los Angeles County Employees Retirement Association (LACERA) name, its abbreviation LACERA, its Board of Retirement, its Board of Investments, any LACERA divisions, the positions of LACERA trustees and staff, and the logos



and



in conjunction with LACERA (collectively,

Name).  is a registered trademark. The Name has value to LACERA. Unauthorized use of the Name may cause damage to LACERA's reputation and its Mission to produce, protect, and provide the promised benefits to members and their beneficiaries, may interfere with the performance of LACERA's fiduciary duty, may be misleading, may cause confusion among LACERA stakeholders and others, may be contrary to the terms of a contract with LACERA, and may violate applicable law. This Policy relates to use of the Name by internal and external parties.

#### II. General Standards

All uses of the Name by any person, internal or external, or entity shall be accurate and not misleading or cause confusion. Uses of the Name by internal persons and LACERA vendors should be additive to LACERA's Mission, Vision, and Value and LACERA's other organizational interests. No use of the Name by internal persons and LACERA vendors is permitted that would cause damage to LACERA or undermine public trust in LACERA, and its Mission, Vision, and Values. The Name shall not be used by internal or external parties to support a political position or candidate or other purpose or cause except in compliance with this Policy, LACERA's Code of Ethical Conduct, the Media Policy, and other LACERA's policies and procedures. The Name shall only be used all parties in compliance with applicable law. Appropriate action will be taken by LACERA to address uses of the Name in violation of this Policy.

#### III. Internal Persons

##### A. *Trustees*

Trustees may use the words Trustee, Los Angeles County Employees Retirement Association, LACERA, and Board of Retirement and Board of Investments to identify their position with LACERA, provided that they ensure it is prominently stated in any written or

oral communication that it is made in the trustee's individual capacity, not on behalf of LACERA, and that the use is not inconsistent with the Code of Ethical Conduct and Media Policy. Trustees may use the Name in communicating with members and in performing their other responsibilities, subject to the terms of the Code of Ethical Conduct and Media Policy. All trustee uses of the Name shall comply with their fiduciary duty, including the duty of prudence and the duty of loyalty to put the interests of the systems and its members and beneficiaries first. Trustees are responsible to ensure that all uses of the Name that they initiate or participate in comply with the terms of this Policy, the Code of Ethical Conduct, and the Media Policy.

***B. Staff***

Staff may use the Name in the course of performing their duties for LACERA. Staff may use their title, Los Angeles County Employees Retirement Association, and LACERA to identify their position with LACERA, provided that they ensure that they are not used in a manner inconsistent with the Code of Ethical Conduct and Media Policy. The Chief Executive Officer (CEO), or their designee, will oversee use of the Name by LACERA staff, and address improper use, in consultation with the Human Resources (HR) Division, as needed, except that the Chief Investment Officer (CIO), or designee, will oversee LACERA Investment Division staff, in consultation with the HR Division, as needed.

**IV. External Persons and Entities**

External parties may not use the Name to imply endorsement of any product, service, or position on any subject or for other commercial, political, or personal use without the express written permission of the CEO, or designee. Use of the Name by external parties may not be misleading and cause harm or confusion among LACERA, its members, other stakeholders, or other persons and entities. The CEO, or designee, will promptly take appropriate action to address improper use based on the facts and law.

External parties that are LACERA vendors are also subject to this provision, subject to the terms of their contract with LACERA. LACERA's contracts will contain specific provisions with respect to the use of the Name as are appropriate to the nature of the goods or services provided or other circumstances in each case and subject to the terms of this Policy and the Code of Ethical Conduct. The CEO, or designee, with respect to administrative contracts, and CIO, or designee, with respect to investment contracts, will oversee the use of the Name by vendors and promptly take appropriate action to address improper used based on the facts, the terms of the contract, and law. Staff are responsible to ensure that vendor contracts incorporate and are consistent with this Policy and the Code of Ethical Conduct.

///

**V. No Impairment of Lawful Use**

This Policy does not and is not intended to interfere with or limit any lawful use of the Name.

Approved: Board of Retirement, \_\_\_\_\_, 2021  
Board of Investments, \_\_\_\_\_, 2021

July 12, 2021

TO: Each Trustee,  
Joint Organizational Governance Committee

FROM: Steven P. Rice, *SPR*  
Chief Counsel

FOR: July 21, 2021 Joint Organizational Governance Committee Meeting

SUBJECT: Review of Code of Ethical Conduct

## **Recommendation**

That the Joint Organizational Governance Committee (JOGC) provide input on the content and possible revision of LACERA's Code of Ethical Conduct and make a recommendation to the Board of Retirement and Board of Investments if deemed appropriate.

## **Legal Authority**

Under Article XVI, Section 17 of the California Constitution, the Board of Retirement and Board of Investments have plenary authority and exclusive fiduciary responsibility for, respectively, the administration of the system and investment of system assets. Under Section 7.4 of its Charter, the JOGC has authority to make recommendations to the Boards with respect to joint policies.

## **Background**

The current Code of Ethical Conduct was approved by the Board of Investments and Board of Retirement on, respectively, December 14 and 15, 2016. The Code provides for a three-year review cycle, and accordingly, it is overdue for review. In 2016, the Code was completely updated and restated from the version that had been in use for many years. The Code remains current, with a couple of minor exceptions noted below. The Code has served as a useful and important tool in the communication and enforcement of ethical standards among trustees and staff.

In reviewing the Code, the JOGC may consider the extent to which it overlaps with the issues addressed in the proposed Use of Name Policy and the Media Policy, both of which are also on today's agenda. The consideration of these two policies and the Code at the same meeting provides an opportunity to consider how the policies fit together and may be harmonized to ensure consistency and compliance. It is also possible to expand the way in which the Code of Ethical Conduct addresses use of name, media, and

communication issues, so that the Code continues to serve as the primary comprehensive document defining ethical conduct at LACERA.

### **Discussion**

The current Code of Ethical Conduct is attached to this memo. It is annotated to identify areas for possible revision. Because the Code remains current in its content, the proposed areas for suggested review are narrow, but important. The annotations include the following parts of the Code:

Cover Page, page 1. Upon revision of the Code, the Communications Division will update the look and formatting of the Code. Board approval dates will also be updated.

CEO Letter, page 2. The CEO's transmittal letter, which sets a tone from the top in fostering an ethical culture at LACERA, will be rewritten for the revised Code when it is transmitted to the organization to highlight his views and perspectives on the importance of the Code and its content.

Section II, General Standards, pages 7-8. Depending on the JOGC's approach to use of name, media, and communication issues, one or more bullets may be added to the list of General Standards to clarify ethical expectations in these areas.

Section III, Prohibited Transactions, pages 9-10. As above, the JOGC's approach to use of name, media, and communication issues may support additional language in this section to describe limitations that apply in these areas.

Section IV.C, Fiduciary Duties of Vendors, page 12. Staff suggests that language may be added to this section to state that, when a vendor is a fiduciary, its contract must contain language defining that duty. LACERA's current contract templates for fiduciary vendors include such language. However, addition of language in the Code will emphasize the importance of defining the duty in contracts with fiduciary vendors.

Section V.B, Gifts, Honoraria, Travel & Loans, page 14. The annual single source gift limit will be updated to \$520, which is the amount in effect for the period January 1, 2021 through December 31, 2022.

Section VIII, Use of LACERA Positions, Resources, and Information, page 20. Depending on the JOGC's approach to the Use of Name Policy discussion, language may be added in this section to described relating to use of the LACERA name and logs in that they constitute valuable assets of the organization. This section may also implicate the committee's discussion of use of name and media issues.

///

Section IX, Personal Conduct and Communication, page 21. The JOGC may consider revisions to this section based on the committee's discussion of use of name, media, and communication to clarify standards of ethical conduct in these areas.

Section X, Political Activities, page 22. This section may also be revised based on the JOGC's discussion of media and communication issues. The use of name issue is also relevant in this area.

Section XIII, Reporting, page 24. The reference to the hotline in this section will be updated to provide information for the new LACERA Ethics Hotline.

Section XV.B, Resources, page 28. This section should also be updated with the new hotline information.

Appendix A – Summary of Gift Limitations and Restrictions, page 31. The appendix will be updated to state the new \$520 annual single source gift limit in effect from January 1, 2021 to December 31, 2022.

In addition to these areas, the JOGC may identify additional sections of the Code for review and possible change.

### **Conclusion**

Staffs recommends that the Committee provide direction as to the content and possible revision of the Code of Ethical Conduct and make a recommendation to the Boards if deemed appropriate

c: Santos H. Kreimann  
Jonathan Grabel  
Luis Lugo  
JJ Popowich  
Richard Bendall  
Cynthia Martinez  
Johanna Fontenot



**COMMENT:** Once revised, Communications will update the look and formatting of the Code. The Board approval dates will also be updated.

# **CODE OF ETHICAL CONDUCT**

Restated  
and Approved:

Board of Retirement: December 15, 2016  
Board of Investments: December 14, 2016



**COMMENT: CEO Santos Kreimann will prepare his own cover letter to transmit the revised Code once it is approved by the Boards.**

To LACERA Board Members and Staff:

LACERA holds itself to the highest ethical standards of honesty, integrity, trustworthiness, and fairness.

We must employ these principles every day in fulfilling LACERA's **Mission** to *produce, protect, and provide the promised benefits*. These principles are an important part of our shared **Values** of *Professionalism, Respect, Open Communications, Fairness, Integrity, and Teamwork* (PROFIT) and our collective **Vision** of *Excellence, Commitment, Trust, and Service*.

Ethics extends to all aspects of our business, including our interactions with each other inside the organization, with LACERA's members, with our plan sponsor, with vendors, with the public, and with all others.

The attached Code of Ethical Conduct provides detailed information as to the ethical standards of conduct required at LACERA. The Code addresses specific legal requirements. The Code also includes other standards rooted beyond the law in concepts of what we want to be as an organization. The Code applies equally to everyone at LACERA, including Board members and staff, because ethical lapses by any of us will reflect on all of us.

Please read the Code carefully and familiarize yourself with it. Every ethical situation you may encounter cannot be specifically addressed in such a document, and it is important that you seek additional information when needed. In this regard, the Code has sections on Reporting and Resources, including contacts for specific questions and reporting of ethical concerns.

Ethics is one of the most important criteria by which our colleagues and stakeholders will measure us. Each and every one of us has responsibility for ensuring the excellence of LACERA's ethics. Thank you for following the Code of Ethical Conduct in your work at LACERA.

Very truly yours,

Gregg Rademacher  
Chief Executive Officer

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**APPENDIX A – SUMMARY OF GIFT LIMITATIONS AND RESTRICTIONS**

## I. Purpose and Scope

The Los Angeles County Employees Retirement Association (LACERA) is a public pension plan organized under the County Employees Retirement Law of 1937 (CERL) (Cal. Gov't Code §§ 31450 et seq.) and the California Public Employees' Pension Reform Act of 2013 (PEPRA) (Cal. Gov't Code §§ 7522 et seq.). The management and administration of LACERA are vested in the Board of Retirement. All investments of LACERA are the responsibility of the Board of Investments.

The members of the LACERA Boards are mindful of the positions of trust and confidence they hold. The Boards adopt this Code of Ethical Conduct to define standards of ethical conduct required of LACERA Board members and staff. The purpose of the Code is to ensure the proper administration of LACERA and to foster public confidence in LACERA's institutional integrity as a well-managed public pension system.

"Ethics" and "ethical conduct" are defined for purposes of this Code as conduct that complies with principles of honesty, integrity, trust, fairness, and duty in connection with LACERA's business as a public pension fund. This Code looks to three sources for determination of ethical standards:

- First, laws and regulations applicable to LACERA and its business, Board members, and staff, including the California Constitution, CERL, the Political Reform Act and the regulations adopted thereunder, and other statutes, regulations, and case law.
- Second, best practices of ethical conduct. Best practices are drawn from ethical codes and practices of other public pension systems in California and elsewhere, professional associations, and similar sources.
- Third, LACERA's **Mission, Values, and Vision**, historical LACERA practices, and judgment as to the moral principles and behavior that LACERA as an organization strives to follow.

This Code provides ethical standards for LACERA Board members and staff. The Code provides specific guidance for common situations raising ethical issues. However, the Code does not specifically address every issue that Board members and staff will encounter. As to those other situations, the Code should be used and followed as a reference for standards of conduct and the basis for evaluation of facts and circumstances. The Code requires that additional information be requested when a user is unsure as to how the Code should be interpreted or when a user encounters an ethical issue not covered in the Code.

This Code is important:

- To ensure legal compliance with ethics laws and regulations.

- To further best ethical business practices.
- To establish an organization-wide culture and accountability for ethics.
- To foster trust, credibility, and positive relationships between LACERA and all parties necessary for the effective performance of LACERA's **Mission to produce, protect and provide the promised benefits**. These parties include others inside the organization, members, the plan sponsor and other participating employers, vendors, the public, and all others with whom LACERA may deal.
- To further LACERA's **Values** and **Vision**, which incorporate ethics, honesty, integrity, fairness, and trust.
- To establish common ethical standards followed by everyone at LACERA, instead of leaving ethics to unguided and possibly inconsistent personal judgment and interpretation.
- To mitigate the legal and business risks associated with ethical issues.
- To further the organization's business goals and objectives.
- To confirm the process for reporting or raising ethical concerns or questions.
- To identify resources for additional information concerning ethics and the applicable laws and regulations.

The Code shall not be construed as the sole source of ethics laws and regulations which must be observed by LACERA Board members and staff. Nothing in this Code shall exempt any person from any other applicable federal, state, or local law or regulation. The standards of ethical conduct in this Code are in addition to any such other laws and regulations.

**COMMENT:** Depending on the JOGC's approach to use of name, media, and communication, a bullet may be added here to address those areas.

## II. General Ethical Standards

This Code addresses specific ethical requirements in subsequent sections. The application of those specific requirements is summarized in this Section II as General Ethical Standards.

The following General Ethical Standards apply to LACERA Board members and staff:

- Recognize and be accountable for all fiduciary responsibilities.
- Comply with all applicable laws and regulations.
- Conduct all LACERA business in a fair manner, and be honest in all business dealings.
- Strive to provide the highest quality of performance and counsel.
- Avoid any activity which constitutes an actual conflict of interest or which could be perceived or interpreted as a conflict of interest by others.
- Avoid exerting improper influence or being improperly influenced, and the appearance of improper influence or being improperly influenced.
- Exercise prudence and integrity in the management of funds.
- Report to an appropriate person actions which may constitute violations of this Code of Ethical Conduct.
- Be responsible for maintaining professional competence.
- Be respectful, professional, and courteous to all LACERA Board members and staff, LACERA members, and all persons and entities with which LACERA does business or may otherwise interact.
- Maintain the confidentiality of all plan member information and all other confidential or privileged information so designated, including but not limited to information provided for or related to closed sessions of the Boards, which is received from or created or maintained by LACERA.
- To the extent not otherwise covered by the preceding bullets, conduct LACERA business in a manner consistent with:
  - LACERA's **Mission** to produce, protect, and provide the promised benefits.
  - LACERA's **Values** of *Professionalism, Respect, Open Communications, Fairness, Integrity, and Teamwork*.
  - LACERA's **Vision** of *Excellence, Commitment, Trust, and Service*.

- All other applicable LACERA policies and procedures.
- Report or seek additional information from an appropriate person, when necessary, concerning ethical questions and issues.



**COMMENT:** Depending on the JOGC's approach to use of name, media, and communication, a bullet may be added here to address those areas.

### III. Prohibited Transactions

The specific ethical requirements in subsequent sections of the Code define and describe certain prohibited conduct. Those prohibitions are summarized in this Section III as Prohibited Transactions.

LACERA Board members and staff shall not engage in the following Prohibited Transactions:

- Utilizing any property, resources, information, or opportunity of LACERA for personal gain.
- Falsifying or failing to record proper entries on any books or records of LACERA.
- Knowingly becoming a party to, or condoning, any illegal activity.
- Authorizing payment of any amount on behalf of LACERA, or for any purpose, other than that explicitly disclosed in the original request for payment.
- Directly or indirectly seeking or accepting gifts, money, property, or other benefit that would influence or appear to influence the conduct of duties.
- Engaging in or conducting outside activities or offices of financial or personal interest that may conflict with the impartial and objective execution of LACERA business activities.
- Selling or providing goods or services to LACERA without disclosure.
- Utilizing the services of relatives or close personal associates for LACERA business without disclosing such relationship prior to execution and obtaining the appropriate approval.
- Engaging in activities involving dishonesty, fraud, deceit or misrepresentation.
- Engaging in outside employment with any providers of supplies or services to LACERA.
- Engaging in outside employment that would interfere with or hamper expected performance at LACERA.
- Engaging in other activities which compromise or appear to compromise one's objectivity in the conduct of one's duties.
- Releasing to any third person plan member information or other confidential or privileged information so designated, including but not limited to information provided for or related to closed sessions of the Boards, which is received from or created or maintained by LACERA.

- Engaging in any other conduct prohibited by this Code of Ethical Conduct or applicable laws and regulations.

## **IV. Fiduciary Duties**

Members of LACERA's Board of Retirement and Board of Investments have fiduciary duties under the California Constitution and other law. LACERA as an organization also has fiduciary duties, which are implemented through LACERA's employees. Finally, certain of LACERA's vendors have a fiduciary duty to LACERA. This Section IV addresses all three categories of fiduciary duty.

### **A. Fiduciary Duties of Board Members**

The California Constitution, Article XVI, Section 17, defines the fiduciary duties of the LACERA Boards, and the Board members:

- The Boards "shall have plenary authority and fiduciary responsibility for investment of moneys and administration of the system."
- The Boards "shall have the sole and exclusive fiduciary responsibility over the assets of the system. The retirement board also has sole and exclusive responsibility to administer the system in a manner that will assure prompt delivery of benefits and related services to the participants and their beneficiaries. The assets of a public pension or retirement system are trust funds and shall be held for the exclusive purposes of providing benefits to participants in the pension or retirement system and their beneficiaries and defraying reasonable expenses of administering the system."
- The members of the LACERA Boards "shall discharge their duties solely in the interest of, and for the exclusive purposes of providing benefits to, participants and their beneficiaries, minimizing employer contributions thereto, and defraying reasonable expenses of administering the system. A retirement board's duty to its participants and their beneficiaries shall take precedence over any other duty."
- The member of the LACERA Boards "shall discharge their duties with the care, skill, prudence, and diligence under the prevailing circumstances that a prudent person acting in a like capacity and familiar with these matters would use in the conduct of an enterprise with a like character and like aims."
- As to the Board of Investments, the members of the Board "shall diversify the investments of the system so as to minimize the risk of loss and to maximize the rate of return, unless under the circumstances it is clearly not prudent to do so."

These duties are also included in Section 31595 of CERL.

California case law provides that the Boards and the Board members have a trust relationship with LACERA's members and beneficiaries. This trust relationship means that the Boards and the Board members have a fiduciary duty of prudence and loyalty to members and beneficiaries, which must be exercised in good faith. Further, the Boards and the Board members have a duty to deal fairly with the members and beneficiaries,

without the slightest misrepresentation, concealment, threat, or adverse pressure. *Hittle v. Santa Barbara County Employees Retirement Assn.* (1985) 39 Cal.3d 374.

To perform their fiduciary duties, each member of the LACERA Boards shall diligently attend to the business of the Board on which he or she serves, and shall not leave to the other members of the Board control over the administration of the affairs of such Board.

### **B. Fiduciary Duties of LACERA, and Staff's Role**

LACERA as an organization has the same fiduciary duties. LACERA staff supports the organization, the LACERA Boards, and Board members in the fulfillment of their fiduciary duties as described in Section IV(A) of this Code. Accordingly, LACERA staff shall be familiar with the fiduciary duties described in Section IV(A) and conduct themselves at all times in a manner consistent with those duties. LACERA staff shall take no action inconsistent with those duties. LACERA staff shall avoid any conduct which is, or may be perceived to be, detrimental to LACERA and its members and beneficiaries. In dealing with members, LACERA staff shall be honest and forthright. Staff shall ensure that the information provided to members in connection with their rights, questions, choices and decisions, concerns, and issues is complete and accurate.

### **C. Fiduciary Duties of Certain Vendors**

Certain LACERA vendors have a fiduciary duty to the organization under applicable law or under the terms of a contract with LACERA. LACERA Board members and staff shall be aware of those vendors that owe a fiduciary duty and monitor them to ensure that the vendors comply with that duty.

**COMMENT: Language may be added to Section C to state that, when a vendor is a fiduciary, its contract should contain language defining that duty.**

## **V. Conflicts of Interest**

LACERA Board members and staff shall avoid conflicts of interest, including the appearance of conflicts of interest, in all aspects of their work for LACERA and shall comply with applicable laws and regulations relating to conflicts.

### **A. Form 700 Statement of Economic Interests**

Public officials, including LACERA Board members and certain staff, who make or influence governmental decisions are required to submit Form 700 Statements of Economic Interests. Form 700s are an important tool in the identification of actual or potential conflicts of interest by LACERA Board members and staff. Form 700s are public documents. LACERA Board members and designated staff shall file Form 700s when and as required by applicable law and regulations, which are generally summarized here. Additional information can be obtained from LACERA's Legal Office and from Fair Political Practices Commission publications.

Pursuant to California's Political Reform Act, LACERA's Boards have adopted, and the County of Los Angeles Board of Supervisors has approved as code reviewing authority, a Conflict of Interest Code that requires the filing of a Form 700 by positions "which involve the making or participation in the making of decisions which may foreseeably have a material effect on any financial interest," except positions which manage public investments. Cal. Gov't Code § 87302(a). Persons, including members of the Board of Retirement and identified staff, who file under an agency-adopted Conflict of Interest Code are referred to as "Code Filers." LACERA's Conflict of Interest Code sets forth the positions of all Code Filers and describes the specific economic interest Disclosure Categories that apply to each position.

There is also a separate Conflict of Interest Code for staff who serve as officers or hold other positions in LACERA's wholly-owned title holding entities.

Separate provisions of the Political Reform Act require positions managing public investments to file a Form 700. Cal. Gov't Code § 87200. Persons who file under Section 87200, including members of the Board of Investments and identified staff, are referred to as "87200 Filers." 87200 Filers are required to disclose investments, interests in real property, income (including gifts, loans, and travel payments), and business positions as described in Form 700 and the Political Reform Act. While 87200 Filers are not subject to LACERA's Conflict of Interest Codes, they are listed as a matter of information in the Appendix to LACERA's Code.

Form 700s shall be filed, both by Code Filers and 87200 Filers, upon assuming an applicable position, annually thereafter, and on leaving an applicable position. Form 700s shall be filled out by all required filers in a timely, accurate, and thorough and complete manner.

**COMMENT: Annual single source Gift Limit will be updated to \$520 through 12/31/2022.**

## **B. Gifts, Honoraria, Travel & Loans**

The Political Reform Act, and Regulations promulgated thereunder by the Fair Political Practices Commission (FPPC), impose limitations on gifts, honoraria, travel, and loans. The legal rules associated with gifts, honoraria, travel, and loans are lengthy and detailed. Additional information can be obtained from LACERA's Legal Office and from FPPC publications. A summary of the general standards with respect to these matters is as follows:

**Gifts.** LACERA Board of Retirement members and staff who are Code Filers are prohibited from receiving gifts totaling more than the legally established gift limit from any single source in a calendar year, if receipts of gifts from that source are required to be disclosed on Form 700 by LACERA's Conflict of Interest Code. LACERA Board of Investments members and staff who are 87200 Filers may not accept gifts totaling more than the legally established limit from any single source in a calendar year. Even if a gift is not subject to Form 700 reporting or the gift limit, a gift may still create a conflict of interest; therefore, LACERA requires Board members and all staff shall make disclosure to the Legal Office of all gifts from a single source with a combined total equal to or greater than \$50 in a calendar year from any individual or entity. Gifts to family members are included in the gift rules under certain circumstances. There are also exceptions to the gift rules for certain gifts; questions should be addressed to LACERA's Legal Office or the FPPC. The gift limit is adjusted biennially. The gift limit for 2015-2016 is \$460; the limit for 2017-2018 is \$470; the limit for any date after December 31, 2018 should be confirmed with the LACERA Legal Office or the FPPC. Gifts from a single source with a combined total less than \$50 in a calendar year currently are not reportable under FPPC law and regulations; gifts equal to or in excess of this limit are subject to reporting on Form 700, subject to the requirements and limitations described above. A more detailed SUMMARY OF GIFT LIMITATIONS AND RESTRICTIONS is attached as Appendix A.

**Honoraria.** LACERA Board of Retirement members and staff who are Code Filers are prohibited from receiving honoraria from any source if receipts of gifts from that source are required to be disclosed on Form 700 by LACERA's Conflict of Interest Code. LACERA Board of Investments members and staff who are 87200 Filers may not accept any honoraria payments. There are certain exceptions to the honoraria rules; questions should be addressed to LACERA's Legal Office or the FPPC. Even if an honorarium is not subject to disclosure, Board members and staff shall make disclosure to the Legal Office of such a payment from any individual or entity as to which LACERA will take any action.

**Travel.** Payments or reimbursement for travel are subject to the reporting requirements for gifts and income. If a travel payment is a gift, it is subject to the gift limit. A travel payment can also be considered an honorarium. Recusal may be required from any decision that will have a materially foreseeable financial effect on the source of a travel payment. There are exceptions to the travel

rules; additional information can be obtained from LACERA's Legal Office or the FPPC.

**Loans.** 87200 Filers and elected members of the Boards may not receive a personal loan that exceeds \$250 at any given time from an officer, employee, member, or consultant of LACERA or from any individual or entity that has a contract with LACERA. Ordinary retail loans and credit card transactions are excepted if they are offered on the same terms as generally available to the public. Elected members of the Boards may not receive a loan of \$500 or more unless the loan is made in writing and clearly states the terms. There are other limitations and exceptions. A loan can constitute a gift under certain circumstances. Additional information is available from LACERA's Legal Office or the FPPC.

Board members and staff are prohibited from soliciting any gift or any other consideration (including but not limited to money, service, gratuity, favor, entertainment, hospitality, loan, or other thing of value) from anyone who is doing or is seeking to do business of any kind with LACERA.

Board members and staff are prohibited from accepting any gift from anyone who is doing or is seeking to do business of any kind with LACERA, when the gift is offered with a view toward securing favorable treatment in the awarding of any contract or agreement, or the making of any determination.

All rules relating to gifts, honoraria, travel, and loans are subject to change by the FPPC and other authority. Confirmation of the current rules can be obtained from LACERA's Legal Office or the FPPC.

### **C. Incompatible Activities/Incompatible Offices**

LACERA Board members and staff shall not engage in any employment, activity, or enterprise which is inconsistent, incompatible, in conflict with, or inimical to his or her duties for or on behalf of LACERA, or with the duties, functions, or responsibilities of the position he or she occupies for LACERA. LACERA Board members and staff shall not perform any work, service, or counsel outside his or her responsibilities for LACERA where any part of his or her efforts will be subject to approval by the Boards or any employee of LACERA acting in that capacity. Cal. Gov't Code § 1126.

Board members may not simultaneously hold two public offices where the functions of the offices are inconsistent or where there are conflicting interests. Cal. Gov't Code § 1199.

### **D. Contracts**

LACERA Board members and staff shall not be financially interested, directly or indirectly, in any contract made between LACERA and any individual or entity. The making of a contract includes any participation whatsoever, including the development

of the need for the goods or services subject to the contract, issuance of a Request for Proposals (RFP), Request for Information (RFI), purchase order, or other solicitation or contracting process, evaluation of prospective contracting parties, selection of contracting parties, negotiation of the terms of the contract, and performance of the contract. Cal. Gov't Code § 1090 et seq.

#### **E. Investments**

LACERA Board members and staff shall not have any personal interest, direct or indirect, in the making of any investment by LACERA, or in the gains or profits from any investment. Board members and staff shall not, directly or indirectly, for himself or herself, or as an agent or partner of others, sell or provide any investment product to LACERA. Cal Gov't Code § 31528 (a), (b).

#### **F. Disclosure and Recusal**

LACERA Board members and staff shall disclose actual or potential conflict of interest, or the appearance of an actual or potential conflict of interest, to the Chief Executive Officer and the Legal Office. Board members and staff shall recuse themselves from involvement, consideration, and decision of a matter as to which the member has an actual conflict of interest. Recusal, or disqualification, is mandatory in certain circumstances, and discretionary in others. Board members and staff should consider recusing themselves from consideration and decision of a matter as to which the member has a potential conflict of interest, or the appearance of an actual or potential conflict of interest. Board members and staff shall consult with the Legal Office on any issue of recusal to discuss legal requirements that may apply to the particular circumstances, including whether recusal is required, whether recusal is an effective remedy for a conflict or potential conflict or whether other steps (up to and including disqualification of an individual or the Board) are necessary, and the way in which recusal, if possible, should be documented.

#### **G. Conflicts of Interest by Vendors**

LACERA's contracts shall include appropriate provisions to ensure that there are no conflicts of interest during the contracting process and to prevent conflicts of interest during the term of a contract. Board members and staff should be alert to, and take other appropriate steps to prevent, actual or potential conflicts of interest by vendors in connection with the making or performance of contracts.



## **VI. Employment of Related and Unrelated Persons**

To avoid nepotism or the appearance of nepotism, LACERA may not employ a person who is related to:

- A Board member.
- The Chief Executive Officer.
- Persons serving as an Assistant Executive Officer and any other employee reporting directly to the Chief Executive Officer.
- A division manager.

This prohibition does not prevent the continued employment of a person who has already been working for LACERA in a full time and non-probationary capacity for thirty consecutive days prior to the date the Board member or other individual described above acquired their position, or the related party became related. If a related party is retained under these circumstances, any actual or potential conflict of interest must still be corrected or sufficiently mitigated.

Related parties of other LACERA staff may be considered for employment by LACERA provided the applicant possesses all the qualifications for employment. Such a related party may not be hired for or assigned to a position which would either:

1. Create either a direct or indirect supervisor/subordinate relationship with a related party; or
2. Create either an actual conflict of interest or the appearance of a conflict of interest.

These criteria will also be considered when assigning, transferring, or promoting a staff member.

For purposes of this policy, related parties include:

- Spouse, parent or grandparent, child or grandchild, or sibling.
- First degree aunt, uncle, niece, nephew or cousin.
- Any “step” or “in-law” variant of the aforementioned relationships.
- Any member of the employee’s household, whether or not related.

A LACERA Board member or staff may not exercise discretionary authority to hire, evaluate or promote a related party under any circumstances, even when otherwise permitted under the standards above.

Board members and staff may participate in the hiring process for any person, whether related or unrelated, only in accordance with established LACERA policies and procedures and shall not use or attempt to use influence outside of their individual hiring authority to cause the organization to hire any individual as a permanent or temporary LACERA employee. Board members and staff may refer individuals interested in potential employment to LACERA's Human Resources.

## **VII. Contracting and Vendor Relationships**

LACERA Board members and staff shall not have contact with individuals or entities who are seeking engagement by LACERA in response to an RFP, RFI, purchase order, or other solicitation or contracting process, except in accordance with the published terms of the contracting process or except for, and limited to, contact necessary in connection with ongoing LACERA business with an individual or entity.

LACERA's RFPs, RFIs, and other contract solicitations shall include notice that a "quiet period" will be in place from the beginning of the contracting process until the selection of the successful party such that LACERA Board members and staff, as well as potential contracting parties, are instructed that contact between Board members and staff, on the one hand, and all potential contracting parties, on the other hand, shall not occur, except as provided in the preceding paragraph. As part of the contracting process, potential contracting parties shall be required to disclose potential conflicts of interest.

LACERA Board members and staff shall participate in the contracting process only in accordance with established LACERA policies and procedures, and the published terms of the process. Board members and staff shall not use or attempt to use influence, outside of their individual authority to cause the organization to enter into a contract with any individual or entity. Board members and staff may refer individuals or entities for consideration for contracting to the appropriate LACERA staff responsible for the particular procurement or contract process.

## VIII. Use of LACERA Position, Resources, and Information

LACERA Board members and staff shall not use their position or status with LACERA, LACERA property, funds, or other resources, or LACERA information, including plan member information, investment information, and other information concerning LACERA's business, for any personal purpose or gain, to secure any special privilege or exemption for himself or herself or any other individual or entity, or to assist or further the interests of any other individual or entity except in the normal course of LACERA's business. LACERA position, resources and information are to be exclusively used for LACERA business.

Board members and staff shall maintain the confidentiality of plan member information. Cal. Gov't Code § 31532.

Disclosures of public LACERA information pursuant to the Public Records Act shall be handled by the Legal Office to ensure compliance with legal requirements, consistency, and proper recordkeeping.

Board members and staff shall not disclose information acquired during a closed session of the Board unless the Board takes action to authorize disclosure. Cal. Gov't Code § 54963.

Board members and staff shall not, directly or indirectly, for himself or herself, or as an agent or partner of others, borrow or use any of the funds or deposits of LACERA, except to make authorized current and necessary payments of the retirement system. Cal. Gov't Code § 31528(a).

**COMMENT: Depending on the JOGC's approach to the Use of Name Policy discussion, language may be added here to describe standards relating to use of the LACERA name and logos.**

**COMMENT: Based on the JOGC's discussion of use of name, media, and communication, language may be added clarifying standards in these areas.**

## **IX. Personal Conduct and Communication**

LACERA Board members and staff shall adhere to the following standards in their personal conduct in performing their work on behalf of LACERA:

- Board members and staff shall conduct themselves in accordance with this Code of Ethical Conduct.
- Board members and staff shall abide all applicable laws and regulations.
- Board members and staff shall act in a manner consistent with LACERA's **Mission, Values, and Vision** and shall follow all LACERA policies and procedures.
- Board members and staff shall treat similarly situated individuals and entities in a similar way, absent good cause, in the conduct of LACERA's business and decision-making to ensure consistency and fairness.
- Board members and staff shall communicate with, orally and in writing, and otherwise in all respects and at all times treat each other and all others in a respectful, professional, courteous, and civil manner.

A Board member shall not correspond with a non-LACERA person or entity using LACERA letterhead unless the communication is authorized by the Board on which the member serves. Copies of all written communications from a Board member to a current service provider, or person or entity related to a current service provider, relating to LACERA's business (other than purely personal or social correspondence) shall be provided to the Chief Executive Officer for subsequent distribution to all members of the Board on which the member serves. A copy of any written communication (other than purely personal or social correspondence, routine announcements, generally distributed newsletters, and the like) received by a Board member from a current LACERA service provider, or person or entity related to a current service provider, shall be forwarded to the Chief Executive Officer for subsequent distribution to all members of the Board on which the member serves. For purposes of this paragraph, the terms "communication" and "written communication" include email and other forms of electronic communication as well as physical or hard copy forms of communication.

Board members and staff shall be aware of the risk of communicating inaccurate information to plan members. Board members and staff shall refrain from providing specific advice or counsel with respect to a plan member's rights, benefits, or obligations, except staff who are authorized to communicate with members on such matters. All others should refer plan member questions and concerns to the Chief Executive Officer or appropriate designee.

## X. Political Activities

LACERA Board members and staff may work on individual candidate and ballot campaigns, and attend campaign events, during their personal time. They may make campaign contributions using personal funds, subject to applicable campaign finance laws. No LACERA funds, property, technology, letterhead, logo, or other resources may be used by LACERA Board members and staff to support personal political activities. LACERA Board members and staff may not solicit political contributions to a candidate or ballot campaign from other Board members and staff except (1) as part of a solicitation that is made to a significant segment of the public or (2) with respect to a ballot measure which would affect the rate of pay, hours of work, retirement, civil service, or other working conditions of LACERA employees; solicitations permitted by these two exceptions may only be made on personal time. LACERA Board members and staff may not use their influence or make any threats or promises relating to potential or current employment, promotion, or compensation to secure a vote or financial or other support for a candidate or ballot campaign. Cal. Gov't Code §§ 3201 et seq. LACERA Board members and staff may use their LACERA position to identify themselves when making an endorsement, provided that no statement may be made or action taken directly or indirectly indicating that the person represents LACERA in making the endorsement or that the endorsement is supported by or represents the position of LACERA, except when providing information authorized by the Boards. Nothing in this section is intended to impose any limitation on the personal political activities of LACERA Board members and staff not permitted by California law.

**COMMENT: This section may be revised based on the discussion regarding media and communication.**

## **XI. Leaving LACERA**

### **A. Prospective Employment**

LACERA Board members and all staff shall not make, participate in making, or influence a decision by LACERA that directly relates to a nongovernmental prospective employer while negotiating or after reaching an employment agreement. The foregoing prohibition is triggered by an interview with a nongovernmental prospective employer or a nongovernmental prospective employer's agent, discussing an offer of employment with a nongovernmental prospective employer or a nongovernmental prospective employer's agent, or accepting an offer of employment. The foregoing prohibition does not apply if the Board member or staff is legally required to make or participate in the making of the decision or if the decision affects the nongovernmental prospective employer in substantially the same way as it will affect a significant segment of the public generally. Cal. Gov't Code § 87407.

### **B. Limitations on Subsequent Activities**

LACERA Boards members, the Chief Executive Officer, Assistant Executive Officers, persons next in line to Assistant Executive Officers, Chief Counsel, chief deputy legal officers, the Chief Investment Officer, and persons next in line to the Chief Investment Officer shall not, for two years after leaving that position, for compensation, act as agent or attorney for, or otherwise represent, any person except the County of Los Angeles, by making any formal or informal appearance before, or any oral or written communication to, LACERA, or any Board member or employee of LACERA, for the purpose of influencing action by LACERA, including any action involving the awarding or issuance of a contract or sale or purchase of goods or property. Cal. Gov't Code § 31528(c).

## **XII. Reporting**

Reporting of ethical issues is an important element of ensuring compliance with ethical requirements. Any concerns by Board members and staff about possible violations of this Code of Ethical Conduct or other ethical issues shall be reported to the Chief Executive Officer, the Chief Audit Executive, or Chief Counsel. Board members may also report concerns to their Board Chair. Staff may also report ethical issues to their immediate supervisor or division manager.

Concerns may be reported anonymously at the Internal Audit Hotline, which may be reached externally at (626) 564-6000, extension 2040, or internally by dialing extension 2040 directly.

**COMMENT: The reference to the hotline will be updated to provide information for the new LACERA Ethics Hotline.**



### **XIII. Enforcement**

LACERA's Chief Executive Officer is responsible for communicating, implementing and enforcing the Code of Ethical Conduct with respect to LACERA staff. The Board Chairs will enforce this Code with respect to Board members and the Chief Executive Officer in accordance with Board administrative policies and applicable laws.

Violations of any of the provisions of the Code by staff may result in disciplinary action as the situation may warrant, up to and including termination of employment. Violations by Board members will be handled in accordance with Board Regulations, Bylaws, and policies and applicable law.

Questions on this matter should be referred to LACERA's Director of Human Resources, Internal Audit, or the Legal Office.

## **XIV. Training**

LACERA management will provide training to new staff on this Code of Ethical Conduct as part of the new employee orientation. Management will provide training to existing staff on this Code at least every two years.

Management will include discussion of this Code in the training for new and incoming Board members. The Code will be circulated to all Board members at least every two years.

**COMMENT: Section B will be updated information about the new LACERA Ethics Hotline.**

## **XV. Resources**

Board members and staff may refer to the following resources for additional information concerning this Code, questions concerning the application and interpretation of the Code to specific situations, and other issues concerning ethics and ethical conduct relevant to the performance of their duties and work for LACERA and its members and beneficiaries.

### **A. LACERA's Legal Office**

The LACERA Legal Office is familiar with the laws and regulations that form the foundation for this Code. The Legal Office is experienced in applying those laws and regulations to specific situations. The Legal Office is available at any time to provide additional information concerning ethics questions and issues and provide written or oral advice or opinions with respect to specific situations. The Legal Office will respond to information about potential ethical issues, concerns, and violations in the LACERA organization and take appropriate action. Questions for the Legal Office should be directed to LACERA's Chief Counsel.

### **B. LACERA's Internal Audit Division/Audit Hotline**

LACERA's Internal Audit Division will respond to information concerning ethical issues, problems, and concerns regarding acts or omissions in connection with LACERA's operations and will take appropriate action. Questions for the Internal Audit Division should be directed to LACERA's Chief Audit Executive. The Internal Audit Division may also be contacted anonymously on the Internal Audit Hotline, which may be reached externally at (626) 564-6000, extension 2040, or internally by dialing extension 2040 directly.

### **C. LACERA's Conflict of Interest Code**

Board members and staff should refer to LACERA's current Conflict of Interest Code, which is available on LACERA's website, [www.lacera.com](http://www.lacera.com), with respect to LACERA's requirements for the filing of Form 700 Statements of Economic Interests.

### **D. California Constitution**

The California Constitution, Article XVI, Section 17, which sets forth the fiduciary duties of the Board and Board members and the retirement system, is available on line at [https://leginfo.legislature.ca.gov/faces/codes\\_displayText.xhtml?lawCode=CONS&division=&title=&part=&chapter=&article=XVI](https://leginfo.legislature.ca.gov/faces/codes_displayText.xhtml?lawCode=CONS&division=&title=&part=&chapter=&article=XVI).

### **E. CERL**

CERL, California Government Code §§ 31450 et seq., is available online at [https://leginfo.legislature.ca.gov/faces/codes\\_displayexpandedbranch.xhtml?tocCode=GOV&division=4.&title=3.&part=3.&chapter=3.&article=](https://leginfo.legislature.ca.gov/faces/codes_displayexpandedbranch.xhtml?tocCode=GOV&division=4.&title=3.&part=3.&chapter=3.&article=)

## **F. California Government Code Section 1090 et seq.**

Conflict of interest rules relating to financial interest in the making of contracts, incompatible activities, and incompatible offices are contained in California Government Code Section 1090 et seq., which is available online at [https://leginfo.legislature.ca.gov/faces/codes\\_displayText.xhtml?lawCode=GOV&division=4.&title=1.&part=&chapter=1.&article=4](https://leginfo.legislature.ca.gov/faces/codes_displayText.xhtml?lawCode=GOV&division=4.&title=1.&part=&chapter=1.&article=4).

## **G. California Government Code Section 3201 et seq.**

Rules regarding political activities are contained in California Government Code Section 3201 et seq., which is available online at [https://leginfo.legislature.ca.gov/faces/codes\\_displayText.xhtml?lawCode=GOV&division=4.&title=1.&part=&chapter=9.5.&article=](https://leginfo.legislature.ca.gov/faces/codes_displayText.xhtml?lawCode=GOV&division=4.&title=1.&part=&chapter=9.5.&article=).

## **H. Other California Statutes**

Other California statutes relating to ethics issues are available online at <https://leginfo.legislature.ca.gov/faces/codes.xhtml>.

## **I. Fair Political Practices Commission**

The California Fair Political Practices Commission (FPPC) has a large number of resources available concerning ethics issues under the Political Reform Act, FPPC Regulations, and related law. FPPC resources include:

1. Website: [www.fppc.ca.gov/](http://www.fppc.ca.gov/).
2. FPPC Publications available on the website:
  - a. Form 700 Statement of Economic Interests, and Form 700 Statement of Economic Interests Reference Pamphlet.
  - b. Limitations and Restrictions on Gifts, Honoraria, Travel and Loans: A Fact Sheet for Local Officials.
  - c. Recognizing Conflicts of Interest: A Guide to the Conflict of Interest Rules of the Political Reform Act.
  - d. Leaving Local Government Employment.
  - e. Political Reform Act, including the full text of the law.
  - f. FPPC Regulations, including the full text of the regulations.
  - g. FPPC Letters and Opinions, including a searchable database of letter and opinions issued by the FPPC on ethical issues.

3. Campaign Rules/Finance. <http://www.fppc.ca.gov/learn/campaign-rules.html>.
4. Advice and Enforcement. The FPPC offers informal and formal advice on ethical issues and has procedures for making a complaint. Instructions for seeking advice or making a complaint are on the FPPC website.

#### **J. California Attorney General Conflict of Interest Guide**

The California Attorney General has published a Conflict of Interest Guide which contains information on a wide range of conflict of interest issues. Although the Guide was last updated in 2010, it remains a useful reference. The Guide is available online at <https://oag.ca.gov/sites/all/files/aqweb/pdfs/publications/coi.pdf>.

#### **K. Los Angeles County Registrar-Recorder/County Clerk**

Information concerning Los Angeles County campaign rules and finance can be obtained at <https://lavote.net/home/voting-elections/candidate-measure-information/campaign-finance-prop-b-reporting/campaign-disclosure-information>.

#### **L. Los Angeles County Fraud Hotline**

Ethical concerns may be reported to the Los Angeles County Fraud Hotline, <http://fraud.lacounty.gov/>. The County Fraud Hotline will not generally investigate LACERA issues, but it will forward concerns to LACERA for response.

[Grab your reader's attention with a great quote from the document or use this space to emphasize a key point. To place this text box anywhere on the page, just drag it.]

## **XVI. Review of Code**

This Code shall be reviewed by the Board of Retirement and Board of Investments every three years. The Legal Office and Internal Audit shall monitor applicable laws, regulations, and best practices on an ongoing basis and shall request amendment of the Code when deemed necessary and appropriate. This Code may be amended by action of both Boards at any time.

**COMMENT: Annual single source Gift Limit will be updated to \$520 through 12/31/2022.**

## **APPENDIX A – SUMMARY OF GIFT LIMITATIONS AND RESTRICTIONS**

**WHAT IS A GIFT?** A “gift” is any payment or other benefit that confers a personal benefit for which you do not provide payment or services of equal or greater value. Gifts are valued at fair market value as of the time the gift is received. Gifts include price discounts and rebates, unless generally available to the public. Gifts are income reportable on Form 700, Schedule D or E, subject to applicable rules and exceptions, including those below.

### ***Examples of Gift Exceptions (no reporting/no dollar limit/no conflict of interest):***

1. Items returned unused to the donor, or for which you reimburse the donor, within 30 days.
2. Items donated unused, within 30 days of receipt, to (a) a 501(c)(3) non-profit with which you do not hold a position, or (b) a government agency. You cannot claim a tax deduction.
3. Gifts from a family member (spouse or former spouse, child, parent, grandparent, grandchild, sibling, current or former parent-in-law, siblings-in-law, aunt, uncle, niece, nephew, or first cousin, or the spouse of any such person), unless the family member is acting for another person.
4. Informational material provided to assist you in performing your official duties, including books, periodicals, videos, admission or discounts to informational conferences, demonstrations, or tours. This exception does NOT apply to meals, lodging, or (generally) transportation.
5. Tickets that you do not use and do not give to another person.
6. Two tickets, used by you and one guest, to attend a fundraiser for a campaign committee or candidate or a 501(c)(3) non-profit, provided the tickets are received from the organizer.
7. Items provided to LACERA and used by you for official business.
8. Travel payments made to LACERA and used to pay for your official business travel.

### ***Examples of Limited Gift Exceptions:***

1. Gifts commonly received from a dating partner, long-time personal friend, existing personal or business relationship unrelated to LACERA, or as an act of human compassion (no reporting or dollar limit, but these exceptions do not apply if person has LACERA business).
2. Wedding gifts received (not subject to dollar limit but reportable on Form 700 if meet gift threshold, with ½ of value reportable by each spouse; disqualification applies if donor has LACERA business).
3. Gifts commonly exchanged on holidays, birthdays, or similar occasions to the extent the gifts exchanged are not disproportionate in value.
4. Reciprocal exchanges with another individual (e.g., rotating lunches) so long as payments are not substantially disproportionate, payments are roughly equal over any calendar year, and no single payment is greater than the gift limit.
5. Travel payments for actual transportation, meals, and lodging the day of, day before, and day after you give a speech for a legitimate LACERA business purpose or on a state/national policy issue. Such payments are reportable on Form 700 and subject to conflict of interest disqualification.

## **GIFT LIMITS**

Gifts with a combined total of under \$50 from a single source for the calendar year need not be disclosed. Gifts greater than the gift limit below in any 12-month period may require disqualification.

### ***Board of Retirement and Staff Identified in LACERA Conflict of Interest Code (“Code Filers”):***

For 2016, you may not accept gifts from a single source with a combined total of more than \$460 for the calendar year if the Code requires you to report gifts from that source on your Form 700. For 2017-18, the limit increases to \$470.

### ***Board of Investments and Staff Identified in Appendix to the Conflict of Interest Code (“87200 Filers”):***

For 2016, you may not accept gifts from ANY single source with a combined total of more than \$460 for the calendar year. For 2017-18, the limit increases to \$470.

**IMPORTANT NOTE: This document is only a summary of applicable law as of December 2016; additional rules apply. Any gift may create the appearance of a conflict of interest. Please contact the LACERA Legal Office with any questions. This summary will be updated as needed.**

July 12, 2021

TO: Each Trustee,  
Joint Organizational Governance Committee

FROM: Steven P. Rice, *SPR*  
Chief Counsel

FOR: July 21, 2021 Joint Organizational Governance Committee Meeting

SUBJECT: Review of Media Policy

### **Recommendation**

That the Joint Organizational Governance Committee (JOGC) provide input on the content and possible revision of LACERA's Media Policy and make a recommendation to the Board of Retirement and Board of Investments if deemed appropriate.

### **Legal Authority**

Under Article XVI, Section 17 of the California Constitution, the Board of Retirement and Board of Investments have plenary authority and exclusive fiduciary responsibility for, respectively, the administration of the system and investment of system assets. Under Section 7.4 of its Charter, the JOGC has authority to make recommendations to the Boards with respect to joint policies.

### **Background**

The current Media Policy is dated March 18, 2009. A copy is attached as Attachment A. It has not been revised since that time. Staff cannot confirm that the policy was approved by either Board.

At its April 10, 2019 meeting, the JOGC determined not to recommend an External Communications Policy put forth by staff. The Board of Retirement and Board of Investments concurred with that recommendation at their respective May 1 and 15, 2019 meetings. The Boards determined not to adopt either policy and to keep the current policy and practice in place with respect to trustee communications. The proposed staff policy from 2019 is attached as Attachment B.

At the June 13, 2019 Board of Retirement Operations Oversight Committee meeting, Trustee Kelly put forth a proposal to add a section on Communications to the Code of Ethical Conduct. Motions to recommend the proposal, with amendments, failed for lack of a second. A copy of Trustee Kelly's proposal is attached as Attachment C.



Re: Review of Media Policy

July 12, 2021

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At the First Amendment training provided by fiduciary counsel to the Board of investments on April 14, 2021 and to the Board of Retirement on May 5, 2021, counsel raised the question for discussion of whether the current Media Policy and Code of Ethical Conduct sufficiently respect the roles and responsibilities of trustees and executive staff. Fiduciary counsel provided a governance framework to address communications by trustees in their roles as trustees and as private citizens. Fiduciary counsel's presentation is attachment as Attachment D (see particularly Slides 8 and 12).

The Code of Ethical Conduct, which is also on today's agenda for JOGC review, addresses political activities. It does not specifically address media, although it does generally provide that ethics and fiduciary duty apply to all interactions with the public, which includes the media. The Code is attached to the memo on the separate agenda item.

### **Discussion**

The agenda item for today's meeting is intended for the JOGC to discuss the current Media Policy and provide staff with direction as to the policy. Given the recent history of JOGC and Board consideration as described above, staff does not at this time present a revised policy and instead request JOGC input and direction.

Suggested issues to consider include:

1. The need for a clear. policy that is consistent with other LACERA policies , including the Code of Ethical Conduct and any Use of Name Policy, both of which are also on today's JOGC agenda. This issue includes the appropriate place to state the Boards' policy on media, whether it be a separate policy or the Code of Ethical Conduct.
2. The importance of the concepts of fiduciary duty laid out by fiduciary counsel, including the principle expressed by fiduciary counsel that statements by trustees as a private citizen on LACERA matters can impact the organization and therefore have fiduciary implications.
3. The role of the Chief Executive Officer (CEO) as LACERA's spokesperson for administrative matters, and the Chief Investment Officer's (CIO) role as spokesperson for investment matters.
4. The positive organizational value to LACERA's Mission of consistent and coordinated media and public messaging.
5. Continuation of the requirement to provide media contact reports to the trustees.

Re: Review of Media Policy

July 12, 2021

Page 3 of 3

6. The responsibility of the CEO and CIO to oversee their staff with respect to media and public communications.

In reviewing the Media Policy, the presence of the Code of Ethical Conduct and a proposed Use of Name Policy provides the JOGC with the opportunity to harmonize the three overlapping documents to enhance clarity and consistency of the Boards' standards in these areas.

### **Conclusion**

Staffs recommends that the Committee provide direction as to the content and possible revision of the Media Policy and make a recommendation to the Boards if deemed appropriate

c: Santos H. Kreimann  
Jonathan Grabel  
Luis Lugo  
JJ Popowich  
Richard Bendall  
Cynthia Martinez  
Johanna Fontenot

Attachment A  
Current Media Policy

## MEDIA POLICY

### PURPOSE:

The purpose of creating a formal LACERA media policy is to ensure that the policies of the Boards of Retirement and Investments are accurately transmitted and explained to legitimate representatives of the mass media. The same policy will serve as a guide for communications with all outside parties, including the Board of Supervisors, Chief Administrative Officer, County departments, employee organizations, and other industry groups.

### LACERA STAFF:

The general spokesperson for LACERA is the Chief Executive Officer (CEO). The CEO is authorized to respond to legitimate inquiries by relaying any policy officially adopted by the Board(s). This includes making available any documents which have been presented to the Board(s) and are therefore matters of public record.

Neither the CEO, nor any other LACERA employee, is authorized to speculate as to the intent or motivations of a Board or staff member. Personal opinions are to be avoided whenever possible. When a personal opinion is provided, discretion is to be utilized and the opinion is to be so identified to the inquiring party.

On Board of Investment policies and practices, the Chief Investment Officer (CIO) is the primary spokesperson. The CIO's discretion and restrictions are the same as those mentioned above.

The Assistant Executive Officer (AEO) is the primary spokesperson for Board of Retirement policies and practices and general administrative and benefits issues. The same discretionary authority and restrictions apply to the AEO.

On occasion, the CEO, CIO or AEO may designate a particular staff member as the sole and exclusive contact for a particular issue. Such designations will be made only to senior staff members who are technically proficient with respect to the subject of the designation and who possess the maturity and discretion to effectively deal with media representatives.

As a general rule, LACERA staff members will not initiate any mass media contact without specific Board direction. Written press releases should be referred to the respective Board Chairman for review. All media contacts will be reported to the Board immediately using E-mail or fax and as part of the Staff Activity Report.

## LACERA BOARD MEMBERS:

In order to achieve the purposes of the press policy, Board members should be encouraged to refer inquiries to the appropriate staff spokesperson unless a Board spokesperson has been designated.

In the event that a Board member does respond to a media inquiry, discretion should be utilized to limit the discussion to formally approved Board policy. Personal opinions and speculation as to the motivations of any Board or staff member are to be avoided. Any personal opinion given is to be clearly identified as such.

As a courtesy to other Board members, all such contacts should be reported to the Board(s) concerned at the earliest opportunity.

All Board contacts with outside parties, in which LACERA policies and practices are discussed, should be conducted in accordance with the intent of this policy.

## RESPONSES TO MEDIA REPORTS:

Generally, LACERA representatives will not initiate contacts with the media. News stories related to LACERA, even when positive in content, often provoke consternation and concern among our participants and beneficiaries. However, if a news story contains clearly inaccurate information, authorized LACERA representatives will contact the author and/or publication responsible for the inaccuracy in order to request a correction. Such instances shall be reported to the LACERA Boards.

Editorials or opinion pieces will be addressed as necessary by "letters to editor." Such communications will be submitted to the Board for approval prior to their release.

Executive Office staff will prepare position papers on media articles for staff to use when responding to member inquiries. Copies of these "position papers" will also be provided to Board members.

## ATTENDANCE AT CONFERENCE AND OTHER PUBLIC MEETINGS:

Board members and staff representing LACERA at conferences and other public meetings should remember that reporters often attend such events. When making presentations or participating in discussions at such events, care should be taken not to speculate about past or future Board actions. Moreover, the expression of personal opinions should be avoided. If a personal opinion is given, it should be clearly identified as such. If media representatives are present when a LACERA representative makes a presentation, copies of the presentation materials should be provided to all Board members.

LACERA REPORT OF MEDIA CONTACT

Prepared By: \_\_\_\_\_

Date of Contact: \_\_\_\_\_

Reporter's Name: \_\_\_\_\_

Reporter's Phone Number: \_\_\_\_\_

Reporter's Employer: \_\_\_\_\_

Where Will the Story Be Aired? \_\_\_\_\_

When Will the Story Appear? \_\_\_\_\_

Is the Story for an Opinion Piece or a News Story?

What Prompted the Reporter's Interest?

What Topics Were Covered by the Reporter?

Distribution:      Members of the Board of Retirement  
                         Members of the Board of Investments  
                         Chief Executive Officer  
                         Assistant Executive Officers  
                         Chief Counsel  
                         Chief Financial Officer

**Attachment B**  
**April 10, 2019 Staff Proposed**  
**External Communications Policy**

**BOARD OF RETIREMENT AND BOARD OF INVESTMENTS**  
**JOINT POLICY REGARDING EXTERNAL COMMUNICATIONS**  
**OF BOARD MEMBERS**

**A. Statement of Purpose.**

The Board of Retirement and the Board of Investment (Boards) support Board Members in their engagement and visibility with third parties in furtherance of LACERA's interests and objectives. The Boards also respect the right of Board Members to communicate in their own names on matters of interest to them as individuals separate from their role as LACERA trustees.

The purpose of this policy is to establish standards for Members of both Boards in their LACERA and personal roles. When Board Members are communicating in their LACERA role, their message as a matter of good governance should be consistent with Board decisions and policies, without regard to their position or vote, and with fiduciary duty. When Board Members communicate in their personal capacity, it should be expressly stated that the views are their own and do not represent the views of LACERA or the Boards.

This policy is intended to encourage and facilitate good communication and mitigate risks to LACERA, the Boards, and Board Members that may arise in connection with communications.

For purposes of this policy, "communicate" and "communication" refer to all forms of communication, including: verbally in speeches, presentations, and conversation, whether live or recorded, in person or by means of audio or video technology; by email; over social media; in writing; and any other means by which information is shared and opinions are expressed.

**B. Communications on Behalf of LACERA.**

**1. *Speeches and Presentations.***

A Board Member shall seek authorization from the Member's Board before making a speech or written or verbal presentation on behalf of LACERA or either Board. If a Member is on both Boards, the Member will seek advance approval from the Board with authority over the subject matter of the communication. If a Member gives a speech or presentation at any event for which the costs of attendance are paid by LACERA, such speech or presentation shall be deemed to be on behalf of LACERA and shall require Board approval.

///



**2. *Communications with Legislators, Regulators, the Plan Sponsor, or Other Public Officials.***

When communicating for LACERA with public officials, such communications shall be subject to the advance approval of the Member's Board.

**3. *Communications with Vendors or Potential Vendors.***

Board Members should not communicate with LACERA vendors or potential LACERA vendors concerning LACERA business unless authorized in advance by the Member's Board. "Vendors" is defined to include all parties that contract, are participating in an RFP or other vendor selection process or contract negotiations, or desire to do business with LACERA in connection with any goods and services, including providers of goods, service providers, consultants, and investment managers.

**4. *Media Inquiries.***

Board Members will not make communications to the media on behalf of LACERA without the advance approval of the Member's Board. All media inquiries shall be referred to the Chief Executive Officer and, for investment-related matters, also to the Chief Investment Officer, who are authorized to speak on behalf of LACERA.

**5. *Other Communications and Actions.***

With respect to other communications and actions, a Board Member will not communicate or take other actions on of behalf of LACERA or the Boards unless authorized in advance by the Member's Board, provided that Board Members may accurately summarize public Board actions.

**6. *Approval Request.***

In seeking authorization under this section, a Member will provide a brief written statement of proposed talking points for review by the Board. When a communication opportunity arises without time to present a request to the Board, a Member may direct their request to the Chair and the Vice Chair for decision, provided that notice will be provided by the Chair to the Board at its next meeting.

**C. Personal Communications.**

A Member may make communications on their own behalf on matters relating to LACERA, the Boards, and issues of interest to LACERA and the Boards so long as it expressly stated that the Member's communication is on behalf of the member in their

personal capacity, not as a Member of the Board, and does not represent the views of and is not on behalf of LACERA or the Boards.

**D. Limitation on All Communications.**

Board Members may not under any circumstances disclose confidential LACERA information, including information received in closed session, member information, attorney-client communications, information regarding LACERA employees, or other confidential or privileged information. In all communications, Board Member shall comply with all applicable law and other LACERA policies, including but not limited to the Code of Ethical Conduct.

**E. Review.**

This policy shall be review by the Joint Organizational Governance Committee and both Boards at least every three years.

Approved by the Board of Retirement: \_\_\_\_\_, 2019

Approved by Board of Investments: \_\_\_\_\_, 2019

## Attachment C

June 13, 2019 Trustee Kelly Proposed  
Communications Policy



May 29, 2019

TO: Each Member  
Operations Oversight Committee

FROM: Joseph Kelly, Board Member

FOR: June 13, 2019 Operations Oversight Committee

SUBJECT: **Communications Policy**

I requested the addition of the attached Communications Policy (Policy) to the Operations Oversight Committee's (Committee) June 2019 agenda. It is my hope that the Committee, after appropriate review and discussion, would support advancing this Policy to the Board of Retirement for adoption. I drafted the Policy in order to address what I believed were deficiencies in the prior communication policy proposed by staff, which each Board rejected in the recent past. I determined the structure and content of the Policy, although I did request the Legal Division's review, and I incorporated comments from the Chief Counsel.

I believe that a Communications Policy can serve to guide Board members and staff in their communications with each other and external parties. In preparing the Policy, I reviewed at least a dozen (12) communication policies of other organizations. The Policy reflects learning gained from this review, while being tailored to the fiduciary duties and unique needs of LACERA and its Board and staff.

My intention is to also present the Policy to the Board of Investments at its July meeting.

I also wanted to bring to your attention that the LACERA Code of Ethical Conduct currently contains a brief section on Communication (page 21, attached) which I believe is appropriate to delete given this Communications Policy.

/jk  
Attachment

## IX. Personal Conduct and Communication

LACERA Board members and staff shall adhere to the following standards in their personal conduct in performing their work on behalf of LACERA:

- Board members and staff shall conduct themselves in accordance with this Code of Ethical Conduct.
- Board members and staff shall abide all applicable laws and regulations.
- Board members and staff shall act in a manner consistent with LACERA's **Mission, Values, and Vision** and shall follow all LACERA policies and procedures.
- Board members and staff shall treat similarly situated individuals and entities in a similar way, absent good cause, in the conduct of LACERA's business and decision-making to ensure consistency and fairness.
- Board members and staff shall communicate with, orally and in writing, and otherwise in all respects and at all times treat each other and all others in a respectful, professional, courteous, and civil manner.

~~A Board member shall not correspond with a non-LACERA person or entity using LACERA letterhead unless the communication is authorized by the Board on which the member serves. Copies of all written communications from a Board member to a current service provider, or person or entity related to a current service provider, relating to LACERA's business (other than purely personal or social correspondence) shall be provided to the Chief Executive Officer for subsequent distribution to all members of the Board on which the member serves. A copy of any written communication (other than purely personal or social correspondence, routine announcements, generally distributed newsletters, and the like) received by a Board member from a current LACERA service provider, or person or entity related to a current service provider, shall be forwarded to the Chief Executive Officer for subsequent distribution to all members of the Board on which the member serves. For purposes of this paragraph, the terms "communication" and "written communication" include email and other forms of electronic communication as well as physical or hard copy forms of communication.~~

~~Board members and staff shall be aware of the risk of communicating inaccurate information to plan members. Board members and staff shall refrain from providing specific advice or counsel with respect to a plan member's rights, benefits, or obligations, except staff who are authorized to communicate with members on such matters. All others should refer plan member questions and concerns to the Chief Executive Officer or appropriate designee.~~

## **Purpose**

To facilitate effective communication between and among the trustees of the Los Angeles County Employee Retirement Association's (LACERA) Board of Retirement, Board of Investments, staff, active members, retired members, and other stakeholders.

## **Guiding Principles**

1. Information the Board and staff share with stakeholders and the public should be factually correct and unless otherwise restricted by law or policy, the information should be shared in a transparent manner.
2. Board members and staff are fiduciaries, and, as such, must exercise good judgment in communication with others and realize that their actions and words can have widespread impact.
3. No disparaging or damaging remarks should be made in verbal or written form by any member of the LACERA Boards or staff to any member of the media, community or the public.
4. All communications shall be consistent with the Brown Act, the Code of Ethical Conduct, and other applicable laws and LACERA policy.

## **Communication among Board Members**

1. The Board shall carry out its activities in the spirit of open governance and in accordance with relevant law.
2. Board members shall communicate with each other in an open, constructive, straightforward, and respectful manner during meetings of the Board and committees. While members may disagree on issues, all members employ their own perspective and judgment in good faith to fulfill their fiduciary duty. Disagreement and respectful discussion among members with different points of view will assist the Board as a whole in making good decisions.
3. No favoritism shall be shown by Board members to those Board members with whom they have a personal friendship. Board members shall at all times in connection with LACERA business deal with each other equally as all others without regarding to personal friendship.

## **Board Communication with LACERA Members**

1. Board members shall be aware of the risk of communicating inaccurate information to members and the potential exposure to liability and possible harm to a member that may result from such miscommunications. Board members shall mitigate this

risk by refraining from providing specific advice, counsel or education with respect to the rights or benefits to which a member may be entitled.

2. In the event a member requests that a Board member provide explicit advice with respect to benefits, the Board member should refer the member to the Chief Executive Officer (CEO) or his or her designee, or have the CEO or his or her designee contact the member. The CEO or designee shall inform the Board member of the outcome.

### **Board Communication with LACERA Staff**

1. The CEO is responsible for the operational management of the organization; the Chief Investment Officer (CIO) is responsible for investment-related matters. While the CEO may delegate tasks to other staff, the CEO remains accountable for staff performance. Staff are not directly accountable to the Board, except as provided in the Los Angeles County Code or Board policy.
2. As the CEO is delegated the day to day operational management of LACERA, the CEO is therefore the contact for Board members pertaining to operational matters. The CIO is the contact for Board members with respect to investment-related matters. Where Board members have another role, such as an active member, then they will have contact with the appropriate staff member directly only as it relates to that role. Board members need to be mindful in communication with staff, not to give what could be construed as direct instructions or comments about specific work performance. This can confuse lines of accountability. It is not appropriate for Board members to ask staff directly for assistance; Board members should route these requests directly to the CEO, or the CIO for investment-related matters. Likewise, it is not appropriate for staff to be in direct contact with Board members on strategic or operational matters unless they have permission to do so from the CEO, the CIO for investment-related matters, or the Board Chair.
3. Board members and staff shall, in Board meetings and other communications, address each other respectfully and act professionally.
4. No favoritism shall be shown by Board members to those staff with whom they have a personal friendship, and no favoritism shall be shown by staff to those Board members with whom they have a personal friendship. Board members and staff shall at all times in connection with LACERA business deal with each other equally as all others without regarding to personal friendship.
5. Board members shall direct questions regarding specific aspects of administrative operations to the CEO or in his or her absence, the appropriate Executive Management Team member. Questions regarding investment-related matters should be directed to the CIO.

6. Board member requests for information that require a significant expenditure of staff time or the use of external resources should be:
  - a. Formally requested and approved at a Board or committee meeting;
  - b. Directed to the CEO, or the CIO for investment-related matters; and
  - c. Consistent with the policy role of the Board.

The CEO, or the CIO for investment-related matters, shall ensure that information that has been requested by the Board or by a Board member is made available to all Board members as appropriate.

7. In the spirit of open communication, Board members shall share any information pertinent to the agency with the CEO, or the CIO for investment-related matters, in a timely manner. The CEO, or the CIO, shall similarly share with the Board any information pertinent to the Board in a timely manner.

### **Board Member Communication with External Parties**

1. The CEO or Board Chairs or their designee shall serve as the spokesperson for LACERA or the Boards, unless the Boards designate the Board Chair or another member of the Board to serve as spokesperson on a specific issue. The Chief Investment Officer (CIO) shall serve as spokesperson for LACERA with respect to investment-related matters.
2. When asked to be interviewed or otherwise approached by the media for substantive information concerning LACERA's affairs, the Board member should refer the matter to the CEO, the CIO for investment-related matters, or other spokesperson, and shall make no commitments on behalf of the Board or LACERA.
3. In their external communications, the Board member shall:
  - a. Speak on behalf of the Board only when explicitly authorized to do so by the Board, or by the Chair when there is genuinely insufficient time to bring the matter to the Board;
  - b. Respectfully indicate (i) when they are representing a personal position, opinion, or analysis, whether the same or different from a Board-approved position, (ii) when their position, opinion, or analysis does not represent the official position of the Board, and (iii) when their position is in opposition to the position of the Board;
  - c. Indicate if they are speaking in a capacity other than that of a member of the Board; and
  - d. Advise the Board Chair(s) and the CEO in a timely fashion if a personal position, opinion, or analysis was publicly communicated, such that it could receive media coverage. The Board member shall advise as to whom the communication was made and what was discussed.
4. Board members shall at all times abide by the policy or decision of the Board, but they may respectfully indicate publicly that they disagree with a policy or decision.
5. Communications by Board members, when acting in their capacity as Board members, should be consistent with their fiduciary duty to represent the interests of all system participants.



6. The CEO is responsible for all written press releases concerning all matters, except those press releases which also address Board policy should be submitted to the Board chairs for approval prior to release and except for investment-related press releases, which are the responsibility of the CIO.

END

DRAFT - FOR DISCUSSION

Attachment D  
Fiduciary Counsel First Amendment  
Training Presentation

**FREE SPEECH RIGHTS AND  
FIDUCIARY DUTIES: A GOVERNANCE  
CHALLENGE FOR RETIREMENT SYSTEM  
TRUSTEES**

**Los Angeles County Employees Retirement Association  
Board of Investments and Board of Retirement**

**April 14, 2021 and May 5, 2021**

Presented By:

Peter Mixon

Ashley Dunning



# Free Speech & Fiduciary Duties

- **Fiduciary Duties**

- Public Pension Trustees Owe Duties of Loyalty and Prudence

- **Free Speech Fundamentals**

- First Amendment of the U.S. Constitution and Article I of the California Constitution
- Right to Free Speech is not “Absolute”
  - Certain Forms Are Protected: artistic, symbolic, commercial, political, and government speech
  - Certain Forms Are Not: defamation, fraud, obscenity, incitement to violence and others
  - Statutes May Regulate Protected Speech In Certain Contexts, Which Involves A “Weighing of the Governmental Interest Involved.” (*Konigsberg v. State Bar* (1961) 366 U.S. 36.)

- **Focus: Trustees’ Fiduciary Duties And Their Rights of Free Speech**

# Free Speech & Fiduciary Duties

- Government Speech Of LACERA And Its Agents
  - California Constitution
    - Governmental entities may speak freely “provided it does not drown out private communication.” (*Miller v. Cal. Com. On Status of Women* (1984) 151 Cal.App.3d 693.)
    - Exception: Expenditure of public funds to influence the outcome of an election
    - In the absence of a “clear and explicit legislative authorization,” a public agency expenditure of public funds to promote a partisan position in an election is an illegal expenditure of public funds. (*Stanson v. Mott* (1976) 17 Cal.3d 206.)
    - General legislative authority to provide information to the public will support a “fair presentation” of information relating to the electoral issue. This includes an analytical evaluation and opinion of the merits of a ballot measure. (*Vargas v. City of Salinas* (2009) 46 Cal.4<sup>th</sup> 1.)

# Free Speech & Fiduciary Duties

- Regulation Of Government Officials' Speech: Balancing The Interests
  - Government Service
    - “When a citizen enters government service, the citizen by necessity must accept certain limitations on his or her freedom ....”
    - Frequently litigated example: public employee speech
    - U.S. Supreme Court has developed a two-part balancing test: court will weigh the interests of the public employee, as a citizen, to comment upon matter of public concern and the interests of the government, as an employer, to promote efficiency and effectiveness of the public services that it performs. (*Garcetti v. Ceballos* (2006) 547 U.S. 410.)
    - California courts follow the *Garcetti* analysis in analyzing free speech rights of California public employees. (*Kaye v. San Diego County Public Law Library* (2009) 179 Cal.App.4th 48.)
  - Public Pension Trustees Accept Fiduciary Responsibilities And Corresponding Free Speech Limitations Upon Entry of Government Service

## Free Speech & Fiduciary Duties

- Application of Government Speech Balancing Test To Elected Officials
  - Split of Authority In Federal Courts (*Werkeiser v. Pocono Township* (3<sup>rd</sup> Cir. 2015) 780 F.3d 172.)
  - The Supreme Court Has Not Addressed The Issue
  - None of the Cases Address A Public Fund Trustee's Fiduciary Duties In This Context
- Balancing Approach: Government's (including LACERA's) interest in ensuring pension boards meet their constitutional responsibilities weighs in the balancing test
  - "Restricting speech that owes its existence to a public employee's professional responsibilities" does not violate Free Speech rights. (*Garcetti, supra*, 547 U.S. at p. 422 [emphasis added].)

# Free Speech & Fiduciary Duties

- **Fiduciary Duties And Constitutional Rights**

- There are constraints on a prudent trustee's free speech rights: exercise of a power by a public pension plan trustee is subject to the trustees' prudent exercise of their fiduciary duties.
- The U.S. Supreme Court and other federal courts have held that First Amendment rights do not supersede fiduciary obligations owed by a person who holds these rights. (*Snepp v. United States* (1980) 444 U.S. 507 and *Askew v. Trustees of the Gen. Assembly of the Church of the Lord Jesus Christ* (E.D.Pa. 2009) 644 F.Supp.2d 584.)

- **First Amendment Review Premised On Speaker's Specific Injury**

- Enforcement of ethics or governance policies by censure or similar actions unlikely to trigger First Amendment protections. (*Phelan v. Laramie County Community College Bd. Of Trustees* (10th Cir. 2000) 235 F.3d 1243.)



# Free Speech & Fiduciary Duties

## • Free Speech And Fiduciary Duties: Legal Conclusions

- There is no free speech exception to the fiduciary duties owed by public pension trustees. LACERA Board members voluntarily enter government service as trustees and their actions (including speech) that are within the scope of their duties as board members are subject to fiduciary obligations.
- All Board members are subject to reasonable LACERA Board governance policies that may potentially restrict their speech. These governance restrictions reflect the collective decision of the Boards applicable to all co-trustees and are a form of speech themselves.
- An individual trustee's interest in free speech will be weighed against the interests of the Boards in having the Board members effectively govern themselves individually and collectively for the overall benefit of LACERA members and beneficiaries.
- The governmental speech balance of interests must also weigh the fiduciary responsibilities of all Board members to act consistently with their duties of loyalty and prudence.

# Free Speech & Fiduciary Duties

- **Governance Framework**

- The fiduciary duties owed by a prudent LACERA trustee will apply to all statements made by the trustee when the trustee is speaking as a trustee
- Statements made by a LACERA trustee as a private citizen may still be subject to a balance between free speech rights and the interests of LACERA in meeting fiduciary responsibilities.
  - Simple disclaimer that trustee is speaking as a citizen is often not enough to distinguish these two speech types because reference to LACERA inherently implicates the Board member's fiduciary role and fiduciary duties.
  - Statements made about LACERA matters even as a private citizen could have an impact on the fiduciary mission of the system
  - Ethics and fiduciary policies may reasonably govern the content and manner of trustee speech

# Free Speech & Fiduciary Duties

## • Governance Examples

- Trustee statements made from the dais are subject to fiduciary obligations
  - Vigorous debate and advocacy, but within the fiduciary mission of LACERA
- Trustee statements made to the media or in public speeches on LACERA matters, even as a private citizen, will likely be construed as statements of LACERA representatives
  - Identification of speaker as a trustee infers some official status
  - Statements of “personal opinion” made about LACERA matters could have an impact on the retirement system with direct or indirect consequences
  - Trustees should consider the impact before speaking or signing written statements and, in the interests of effective governance, consider discussing with Board Chairs, the CEO, the CIO and/ or the Chief Counsel in advance any fiduciary and related responsibilities implicated by the speech or statement
  - Disparaging and unprofessional comments raise the risk of reputational injury
- Trustee statements on topics unrelated to LACERA business are far less likely to implicate the fiduciary mission of the system
- How will the trustee’s statement impact the governance of the system and, potentially, the members’ interests in the security and safety of their retirement benefits?

# Free Speech & Fiduciary Duties

- LACERA Media Policy

- Purpose: To ensure that the policies of the BOR and BOI are accurately transmitted and explained to mass media representatives.
- Serves as a “guide” for communications “with all outside parties[,]” which is not limited to media and covers other contacts, presentations, and interviews with any third parties.
- Board members are encouraged to refer media inquiries to staff.
- Board member responses to media inquiries should use “discretion” to “limit the discussion to formally approved Board policy.”
- Personal opinions and speculation about Board member or staff motives “are to be avoided” and a personal opinion regarding LACERA and its business must be clearly identified as such.
- All media contacts will be reported to the Board
- Board member contacts with outside parties concerning LACERA “should be conducted in accordance with the intent of this policy.”

# Free Speech & Fiduciary Duties

- LACERA Code of Ethical Conduct – Political Activities

- No LACERA funds, property, logo, or other resources may be used to support personal political activities.
- Board members and staff may not use their influence or their position to secure a vote or other support for a political campaign.
- Board members and staff “may use their LACERA position to identify themselves when making an endorsement, provided that no statement may be made or action taken directly or indirectly indicating that the person represents LACERA in making the endorsement or that the endorsement is supported by or represents the position of LACERA, except when providing information authorized by the Boards.”

# Free Speech & Fiduciary Duties

- **Board Governance Considerations: Discussion/Questions**

- Are the current policies sufficiently clear so that all Board members understand their responsibilities and their compliance obligations?
- Are the interests of LACERA and its governing Boards in an effectively functioning organization sufficiently identified?
- Are the fiduciary duties of the Boards and its members sufficiently considered?
- Do the policies reflect and/or respect the roles and responsibilities of trustees and executive staff?
- What role, if any, should the Board Chairs, Committee Chairs, CEO, CIO, and/or Chief Counsel have in consulting with any Board member in advance of the member making public statements?
- What role should the Board Chairs and/or the Boards have in enforcing policy requirements?
- Other questions?

# Thank You



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**TO:** Members of the Board of Investment and Board of Retirement  
Los Angeles County Employees Retirement Association

**FROM:** Peter Mixon  
Ashley Dunning  
Nossaman LLP

**DATE:** April 14, 2021

**RE:** Memorandum of Legal Issues: Free Speech Rights and Fiduciary Duties

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This memorandum supplements the training sessions provided to the Board of Retirement and the Board of Investments (collectively, “Boards”) for the Los Angeles County Employees Retirement Association (“LACERA”). The focus of the training is on the free speech rights of LACERA Board members and the exercise of these rights in the context of the Board members’ fiduciary duties of prudence and loyalty owed to the members and beneficiaries of the LACERA pension plan. This memorandum provides more depth and detail on the legal authorities and concepts cited in the training session.

## **I. Introduction**

The First Amendment to the United States Constitution provides that “Congress shall make no law abridging the freedom of speech.” This amendment restricting the right of Congress to make legislation abridging free speech also applies to the States through the 14th Amendment. Similarly, the California Constitution provides that “[e]very person may speak freely .... A law may not restrain liberty of speech.” (Cal. Const., art. I, section 2.) The free speech clause of the California Constitution is broader than its First Amendment counterpart in some respects. But the California Supreme Court will not depart from United States Supreme Court First Amendment precedent unless there are “cogent reasons for doing so.” (*Edelstein v. City and County of San Francisco* (2002) 29 Cal.4th 164, 168.)

The rights of free speech, press, and assembly are not “absolutes.” The Supreme Court has consistently recognized at least two ways in which constitutionally protected freedom of speech is narrower than an unlimited license to talk. First, certain forms of speech, or speech in certain contexts, has been considered outside the scope of constitutional protection. Second, there are general regulatory statutes ... [that are] justified by subordinating governmental interests, ... which has necessarily involved a weighing of the governmental interest involved.” (*Konigsberg v. State Bar* (1961) 366 U.S. 36, 50-51.) Thus, a LACERA trustee does not have an unlimited license to speak. As explained further, the constitutional fiduciary obligations of a LACERA trustee are governmental interests that factor into the “weighing” of the Board’s interests. Board



members may not avoid their fiduciary duties by claiming to exercise free speech rights. The federal courts have devised a specific “balancing test” that governs restrictions on a public employee’s speech. While the United States Supreme Court has not applied this analysis to elected or appointed officials, it is instructive. The test weighs the interests of the government in effective management of the public agency against the free speech rights of the individual employee. Even when the employee speaks as a private citizen, restrictions are generally justified when the speech interferes with the “effective functioning” of the public agency. Like governmental employers, the LACERA Boards have an interest in the effective administration of their system. Because fiduciary obligations override a trustee’s rights to free speech, governance policies designed to implement these obligations and otherwise ensure the effective operation of the system may be justified even if they may restrict a trustee’s rights as a citizen to free speech, so long as those restrictions are narrowly tailored to the trustee’s statements and activities in which LACERA’s name and/or business is directly implicated. The LACERA Boards also have their own rights to free speech, and policy enforcement actions such as censure and similar measures, taken within the parameters noted, are unlikely to impair any rights of individual board members.

## **II. Government Speech**

### **A. First Amendment**

The free speech clause of the First Amendment generally does not regulate the speech of a governmental entity. “[T]he First Amendment does not say that Congress and other government entities must abridge their own ability to speak freely.” As the Supreme Court explained, “[i]t is not easy to imagine how government could function if it were subject to the restrictions that the First Amendment imposes on private speech.” (*Matal v. Tam* (2017) – U.S. – [137 S. Ct. 1744, 1758].) Similarly, citizens may challenge compelled support of private speech, “but have no First Amendment right not to fund government speech.” (*Johanns v. Livestock Mktg. Ass’n*. (2005) 544 U.S. 550, 562.)

### **B. California Constitution**

The free speech provisions of the California Constitution are not quite as broad as those in the First Amendment. Government may “add its voice to the many that it must tolerate, provided it does not drown out private communication.” And the viewpoint expressed by the government need not be “ideologically neutral.” (*Miller v. Cal. Com. On Status of Women* (1984) 151 Cal.App.3d 693, 700.) In *Miller*, for example, a California commission on women’s rights had the right to advocate views on improving the status of women by issuing press releases, lobbying legislators, and responding to inquiries.

### **C. Government Speech, Elections and Misuse of Public Funds**

In California, courts will closely scrutinize the expenditure of public funds to influence an election: “[T]he use of the public treasury to mount an election campaign which attempts to influence the resolution of issues which our Constitution leaves to the ‘free election’ of the people ... present[s] a serious threat to the integrity of the electoral process.” (*Stanson v. Mott*

(1976) 17 Cal.3d 206, 218.) In the absence of “clear and explicit legislative authorization,” a public agency may not expend public funds to promote a partisan position in an election campaign. To do so would violate the California constitutional prohibition on illegal expenditures of public funds. (*Id.* at pp. 216-218.) Examples of this form of prohibited speech include bumper stickers, advertising “floats,” radio and television ads, and dissemination (at public expense) of campaign materials. In other words, “the threat to the fairness of the electoral process ... arises when a public entity or public official is able to devote funds ... to campaign activities favoring or opposing such a measure.” (*Vargas v. City of Salinas* (2009) 46 Cal.4th 1, 36-37.)

However, general legislative authority to provide the public with information about the agency’s activities will support speech for informational purposes. In connection with an election issue, the agency may provide the public with “a fair presentation of relevant information relating to” the electoral issue. (*Stanson v. Mott, supra*, 17 Cal.3d at p. 221.) Thus, government agencies are not prohibited from analytically evaluating a proposed ballot measure and publicly expressing an opinion as to its merits.

The line between unauthorized campaign expenditures and authorized informational activities “is not so clear.” (*Stanson v. Mott, supra*, 17 Cal.3d at p. 222.) This determination depends upon a “careful consideration of such factors as style, tenor and timing” of the publication. (*Id.*)

### **III. Regulating Speech Of Government Officials**

“When a citizen enters government service, the citizen by necessity must accept certain limitations on his or her freedom. ... Government employers, like private employers, need a significant degree of control over their employees’ words and actions; without it, there would be little chance for the efficient provision of public services.” (*Garcetti v. Ceballos* (2006) 547 U.S. 410, 418.)

The Supreme Court has also recognized that public employees do not surrender all of their First Amendment rights by reason of their service. “[T]he First Amendment protects a public employee’s right, in certain circumstances, to speak as a citizen addressing matters of public concern.” (*Garcetti v. Ceballos, supra*, 547 U.S. at p. 417.)

As a threshold observation and as further discussed below, *Garcetti v. Ceballos* analyzes government “employee” speech only. It does not consider the speech of those who are elected or appointed to boards and thereby become public officials, such as trustees on the Boards. Nevertheless, we conclude that the Supreme Court’s analysis in *Garcetti v. Ceballos* is useful to considering the manner in which the Boards may regulate co-trustees and themselves, in that, as quoted above with respect to trustees on the Boards, entering such “government service,” particularly in a fiduciary capacity, reasonably results in the conclusion that public retirement system trustees “by necessity must accept certain limitations on his or her freedom.” (*Garcetti v. Ceballos, supra*, 547 U.S. at p. 418.)

Courts have developed a two-part test to determine constitutional protection of government employee speech. The test is “a balance between the interests of the [employee], as a citizen, in

commenting upon matters of public concern and the interest of the State, as an employer, in promoting the efficiency of the public services it performs ....” (*Id.* at p. 418.) California courts follow the U.S Supreme Court’s analysis in *Garcetti*. (*Kaye v. San Diego County Public Law Library* (2009) 179 Cal.App.4th 48, 58.)

Federal courts have held that “the more the employee’s job requires confidentiality, policymaking, or public contact, the greater the state’s interest” in restricting or punishing the employee’s speech. (*McEvoy v. Spencer* (2nd Cir. 1997) 124 F.3d 92, 103.) “Common sense tells us that the expressive activities of a highly placed supervisory, confidential, policymaking, or advisory employee will be more disruptive to the operation of the workplace than similar activity by a low level employee with little authority or discretion.” (*Ibid.*; see also *Kinsey v. Salado Independent School District* (5th Cir. 1992 950 F.2d 988, 994 [government’s interests more easily outweigh the employee’s interests in balancing test when public employee occupies policymaker or confidential position].)

There is a split of authority in the federal courts over application of the *Garcetti* balancing test to determine government restrictions on the free speech rights of elected officials. (See *Werkeiser v. Pocono Township* (3rd Cir. 2015) 780 F.3d 172, 177-180 [collecting the cases on each side].) In *Hogan v. Township of Haddon* (D.N.J. 2006) 2006 U.S. Dist. LEXIS 87200\*, *aff’d on other grounds*, 278 F.App’x 98 (3d Cir. 2008), the court reviewed the First Amendment claims of an elected member of a township commission. The plaintiff commissioner claimed that another elected member of the commission – the town mayor – took action to preclude publication of numerous articles in a local government-owned newspaper and to prevent access to the township cable access channel. The court rejected these claims because, in part, the plaintiff commissioner was seeking to speak in her capacity as a township commissioner and not as a private citizen; therefore, following the decision in *Garcetti* the plaintiff had no First Amendment rights to access these communication channels. (*Id.* at p. \*23-\*24.) However, other courts have found the *Garcetti* analysis inapplicable to elected officials. (See *Melville v. Town of Adams* (D.Mass. 2014) 9 F.Supp.3d 77, 102 [elected official has cognizable First Amendment rights in the face of board action directing her not to speak with certain town employees]; see also *Jenevein v. Willing* (5th Cir. 2007) 493 F.3d 551, 558 [“preferable course” is not to draw on *Garcetti* balancing test for sorting the free speech rights of employees elected to state office].)

The Supreme Court has not ruled on this issue. However, development of the law regarding government employees is instructive in evaluating the fiduciary responsibilities of LACERA trustees when they are speaking on LACERA matters. Moreover, the line of cases that disapprove of the application of *Garcetti* to *elected officials* may not automatically extend to individuals who are appointed or elected by retirement system membership, or those officials who serve *ex officio*, on a board of trustees. Thus, we recommend considering the *Garcetti* analysis as an appropriate framework for analyzing the manner in which the Boards may govern, and regulate, all trustees when they are speaking or taking other actions by reference to LACERA and its business.

### **A. First Inquiry: Speaking As a Citizen On a Matter of Public Concern**

In applying the balancing test, the first inquiry is whether the employee is speaking as a citizen on a matter of public concern. If not, the employee has no claims of a First Amendment infringement based on the employer's reaction to the speech. (*Garcetti v. Ceballos*, *supra*, 547 U.S. at p. 418.)

The content of the speech will not be viewed in a vacuum. In determining whether speech touches on matters of public concern, courts will take into account the “the content, form, and context” of the employee's speech. “Speech relates to a matter of public concern if it is of political, social, or other concern to the community, with particular consideration given to speech that concerns issues about which information is needed or appropriate to enable members of society to make informed decisions about the operation of their government.” (*LeFande v. District of Columbia* (D.C. Cir. 2010) 613 F.3d 1155, 1159.)

To be protected, the person's speech must also be made as a “citizen” – not as a public employee. “When public employees make statements pursuant to their official duties, the employees are not speaking as citizens for First Amendment purposes, and the Constitution does not insulate their communications from employer discipline.” (*Garcetti v. Ceballos*, *supra*, 547 U.S. at p. 421.) In *Garcetti*, for example, the Supreme Court held that a memorandum of a supervising attorney criticizing accuracy of affidavit representations and affiant presented to supervisors as part of the attorney's job duties was not protected by First Amendment.

In *Williams v. Johnson* (D.C. Dist. 2008) 537 F.Supp. 141, the federal district court considered statements that were made by an employee of an office of the District of Columbia. She made statements during testimony to a governmental oversight commission which admitted that a particular program was a “failure.” After receiving substantial criticism from her supervisor, plaintiff met privately with a member of the commission and made similar statements in more detail. The federal district court held that because giving testimony to the commission was part of her job duties, this speech was not protected by the First Amendment. On the other hand, statements made at her private meeting would be protected if these statements were outside her duties because plaintiff's statements would be as “a citizen on a matter of public concern.” (*Id.* at pp. 152-153.)

The inquiry focuses on identifying the employee's practical duties and whether the speech was made pursuant to those responsibilities. In determining whether the speech was made pursuant to the public duties of the employee, the following are relevant factors:

- Whether the employee was commissioned to make the speech;
- Whether the speech took place at the place of employment;
- Whether the subject matter of the speech is within the employee's duties;
- Whether the speech was made up the chain of command;

- Whether the speech objectively gave the impression that the employee was representing the employer;
- Whether the speech derived from special knowledge obtained during employment; and
- Whether there is no “citizen analogue” to the speech.

(*Decotiis v. Whittemore* (1st Cir. 2011) 635 F.3d 22, 33-34.) The more these factors are answered in the affirmative, then the more likely the speech would fall within the employee’s responsibilities and thus be outside the protections of the First Amendment. We believe that these factors are instructive on the issue of trustee speech. The governmental interest at stake for LACERA is maintaining the Board’s responsibilities as trustee and fiduciary of the retirement system. When a trustee speaks outside of his or her responsibilities as a trustee, this speech is less likely to implicate his or her fiduciary responsibilities and thus less likely to be subject to limitation by the Board.

## **B. Second Inquiry: Adequate Justification Of The Government**

If the speech is made as a citizen on a matter of public concern, the question becomes whether the government employer had “an adequate justification for treating the employee differently from any other member of the general public.” (*Garcetti v. Ceballos*, *supra*, 547 U.S. at p. 418.) Courts will perform a balancing test: the interests of the speaker in making the statement are weighed against “the interest of the State, as an employer, in promoting the efficiency of the public services it performs through its employees.” (*Rankin v. McPherson* (1987) 483 U.S. 378, 388.) For public contractor speech, the same test is used, “adjusted to weigh the government’s interest as a contractor rather than an employer.” (*Board of County Commissions v. Umbehr* (1996) 518 U.S. 668, 673.)

The employee’s statements are not considered in a vacuum; the “manner, time and place” are relevant factors in determining whether the speech is protected. Pertinent considerations include: (i) whether the statement impairs discipline or harmony among co-workers, (ii) whether the speech has a detrimental impact on close working relationships, (iii) whether the statement impedes performance of the speaker’s duties, and (iv) whether the statement interferes with the regular operation of the enterprise. (*Rankin v. McPherson*, *supra*, 483 U.S. at p. 388.) The interests of the State must be “focus[ed] on the effective functioning of the public employer’s enterprise.” (*Ibid.*)

In one case, *Richardson v. Pratcher* (S.D.N.Y. 2014) 48 F.Supp.3d 651, a federal district court applied the balancing test to determine whether speech of an employee at an investment firm that managed assets of a public pension plan was protected by the First Amendment. In *Richardson*, investments officials of the New York State Common Retirement Fund (“NY Common”) objected to the activities of a managing director (“Director”) of a private equity firm. NY Common invested in two funds of the firm and was considering a new commitment to a third fund when the Director engaged in lobbying efforts for the adoption of legislation requiring NY Common to invest certain percentages of its assets in emerging managers with a “significant presence in New York.” NY Common staff (including the investment officers) expressed

concerns about this aspect of the legislation and engaged in a series of meetings and conversations with the Director. At the end of the legislative process, the investment officers met with the managing member of the private equity firm, questioned the activities and judgment of the Director in lobbying for the legislation, and intimated that NY Common would stop investing in the private equity firm if the Director remained there. Ultimately, the private equity firm decided to terminate the Director, who sued the investment officials (among others) for unlawful retaliation in violation of his First Amendment rights. (*Id.* at pp. 657-661.)

The district court reviewed the Director's claims under the balancing test used to evaluate speech made by a citizen on a matter of public concern: A public official (here, the NY Common investment officials) may take an adverse action against a contractor (the private equity firm, including the Director) if: "(1) the official's prediction of the disruption that such speech will cause is reasonable; (2) the potential for disruption outweighs the value of the speech; and (3) the official took the adverse action not in retaliation for the speech, but because of the potential for disruption." (*Id.* at p. 664; see also *Jeffries v. Harleston* (2nd Cir. 1995) 52 F.3d 9, 13 [government need only show that speech "likely" interferes with agency operations].) The court reviewed the defendants' arguments that their actions were premised on legitimate concerns about the professionalism and efficacy of the Director's conduct, noting that the "manner, time and place" in which speech occurs is an important factor. Speech conducted in private on the speaker's own time is more likely to be protected than confrontational speech in front of other workers. Because the parties disputed the tenor and professionalism of the Director's discussions with the defendant officials, the court could not find as a matter of law that his speech was sufficiently disruptive to support a reasonable belief that the Director could not be trusted with NY Common investments. The court therefore denied the defendants' motion for summary judgment. (*Id.* at pp. 665-666.)

#### **IV. First Amendment Rights and Fiduciary Duties of Public Pension Plan Trustees**

Public pension plan trustees owe fiduciary duties to the overall best interest of the members of the plan with respect to their public retirement benefits. (Cal.Const., Art. XVI, section 17.) "The exercise of a power by a [public plan] trustee is subject to the trustee's fiduciary duties." (*O'Neal v. Stanislaus County Employees' Retirement Assn.* (2017) 8 Cal.App.5th 1184, 1209.) A trustee's actions must therefore conform to the duties of loyalty and prudence.

Several decisions of the federal courts are instructive on the intersection of First Amendment rights and fiduciary duties. In these decisions, the courts have held that a person's right to free speech does not supersede any fiduciary duties that the person owes.

In *Snepp v. United States* (1980) 444 U.S. 507, a former C.I.A. agent published a book about certain C.I.A. activities without submitting the account to a pre-publication review by the agency. The agent had entered into an agreement with agency at the time of his employment which gave rise to a trust or fiduciary relationship by the agent with the agency. Publication violated the express terms of an agreement as well as the agent's fiduciary obligations and thus the court was entitled to impose a constructive trust on proceeds from publication notwithstanding First Amendment prohibitions on restricting free speech. (*Id.* at pp. 514-515; see also *Askew v. Trustees Of the Gen. Assembly of the Church of the Lord Jesus Christ of*

*Apostolic Faith* (E.D.Pa. 2009) 644 F.Supp.2d 584, 593, 596 (First Amendment deference to religious organizations regarding internal disputes does not preclude breach of fiduciary duty claim against church trustees).

These cases demonstrate that LACERA trustees are required to fulfill their fiduciary duties even though they also have protected rights to free speech. As the court in *O'Neal* explained: the “grant of a power to a trustee, whether by trust instrument, by statute or by the court, does not in itself require or permit the exercise of the power. The *exercise* of a power by a trustee is *subject to the trustee’s fiduciary duties*.” (*O'Neal, supra*, 8 Cal.App.5th at p. 1209 [emphasis added].) The “general powers” of LACERA trustees should clearly include the authority to speak about LACERA matters. (See 13 Witkin, Summary of California Law, Trusts, § 105 [trustee has general power to act for the purposes of the trust under the prudential standard of care].) As the court in *O'Neal* states, however, the exercise of this authority is subject to the trustee’s fiduciary duties. Thus, the governmental interest in the effective fiduciary governance of the LACERA system weighs can be considered a “subordinating interest” over a Board member’s free speech rights.

Even if a trustee’s statement is qualified as a “personal opinion,” reasonable governance policies may still apply. As a practical matter, it is sometimes difficult to separate private citizen speech from LACERA statements. Trustee statements made to the general public by LACERA trustees infer official status. Even if they are clearly qualified as “personal opinions,” they could be construed as a statement by a LACERA representative. And even personal opinions on LACERA matters may still have an impact on the effective governance of the system.

Finally, the constitutional protections afforded to the free speech of elected, ex officio, and other officials acting within the scope of their duties likely apply “only when the retaliation interferes with their ability to adequately perform their elected duties.” (*Werkeiser v. Pocono Township, supra*, 780 F.3d at p. 181. In *Phelan v. Laramie County Community College Bd. Of Trustees* (10<sup>th</sup> Cir. 2000) 235 F.3d 1243, the Tenth Circuit considered a First Amendment claim brought by an elected community college board member. The board member had run an advertisement as a trustee urging voters to reject ballot proposition that was supported by the board and the board later censured her for violating the board’s ethics policy. While declining to apply the *Garcetti* balancing test to analyze the member’s free speech rights, the court nevertheless dismissed her complaint because the censure resolution “does not trigger First Amendment scrutiny.” (*Id.* at 1247.) It did not, the court noted, impose a specific injury such loss or denial of employment or denial of state bar admission. “The Board simply made a statement” that the complaining member “violated the ethics policy and ,, ask[ed] that she not engage in similar conduct in the future.” (*Id.* at 1248; see also *Curley v. Monmouth County Bd. Of Chosen Freeholders* (Dist.N.J. 2018) 2018 U.S.Dist. LEXIS 124039\*, \*34-\*35 [censure does not give rise to First Amendment scrutiny].) Fiduciary and media policies that subject board members to “censure” or similar actions thus would likely not rise to the level of First Amendment scrutiny.

## **V. Legal Conclusions**

1. There is no First Amendment exception to the fiduciary duties owed by trustees. All Board members voluntarily enter government service as trustees and actions (including speech) that are within the scope of their duties as LACERA trustees are subject to fiduciary standards.
2. All Board members are subject to reasonable LACERA Board governance policies that may potentially restrict their speech. These governance restrictions reflect the collective decision of the Boards and are applicable to all co-trustees. They are a form of speech by LACERA itself.
3. An individual trustee's interest in free speech will be weighed against the interests of the Boards in having the Board members effectively and prudently govern themselves individually and collectively for the overall benefit of LACERA members and beneficiaries.
4. The governmental balance of interests must also weigh the fiduciary responsibilities of all Board members to act consistently with their duties of loyalty and prudence.

## **VI. LACERA Policies**

### **A. Media Policy**

The purpose of the policy is to ensure that the policies of the Boards of Retirement and Investments are accurately transmitted and explained to mass media representatives. The policy also “serve[s] as a guide for communications with all outside parties ....” The policy is a reasonable limitation on the trustees' free speech rights. The Media Policy is summarized below.

#### **1. LACERA Staff**

The Media Policy appoints the LACERA CEO as the general spokesperson of the organization. The CIO is spokesperson on investment policies and practices and the AEO is spokesperson on retirement board policies, practices, and benefits issues.

Under the policy, staff may respond to inquiries by relaying any policy officially adopted by the Board. Staff may not speculate on the motivations of an individual Board or staff member. Personal opinions are to be avoided. When a person opinion is offered, discretion must be used and the opinion is to be identified as such.

Staff in general may not initiate any media contact without specific Board direction. Written press releases should be reviewed by the Chair of the Board that has jurisdiction over the subject matter of the release. Media contacts shall be reported to the Board.

#### **2. Board Members**

The Media Policy encourages Board members to refer media inquiries to staff. When a Board member responds to an inquiry, “discretion should be utilized to limit the discussion to formally



approved Board policy.” Personal opinions and speculation about the motivations of a Board or staff member “are to be avoided.” A personal opinion must be clearly identified as such.

As a courtesy, all media contacts should be reported to the Board.

All Board member contacts with outside parties concerning LACERA policies and practices “should be conducted in accordance with the intent of this policy.”

## **B. Code of Ethical Conduct – Political Activities**

Like the Media Policy, the relevant provisions of the Code of Ethical Conduct are a reasonable limitation on trustee speech. These provisions are summarized below.

Board and staff members may work on candidate and ballot campaigns during their personal time. No LACERA funds, property, logo, or other resources may be used to support personal political activities. Solicitations of political donations are subject to certain requirements and may only be made on personal time. Board members and staff may not use their influence or their position to secure a vote or other support for a campaign.

Board members and staff “may use their LACERA position to identify themselves when making an endorsement, provided that no statement may be made or action taken directly or indirectly indicating that the person represents LACERA in making the endorsement or that the endorsement is supported by or represents the position of LACERA, except when providing information authorized by the Boards.”



July 11, 2021

**TO:** Each Trustee,  
Joint Organizational Governance Committee

**FROM:** Carly Ntoya, Ph.D. *CN*  
Director Human Resources

**FOR:** July 21, 2021 Joint Organizational Governance Committee Meeting

**SUBJECT:** Media Artist Classification/Compensation Changes

### RECOMMENDATIONS

It is recommended that the proposed classification changes be approved for implementation for the existing Media Artist classification by the Board of Retirement and Board of Investments.

It is recommended that the proposed classification and compensation changes be approved for implementation for the creation of a new Senior Media Artist classification by the Board of Retirement and Board of Investments.

### SUMMARY OF PROPOSED CLASSIFICATION AND COMPENSATION CHANGES

| Current Classification Title | Current Sal Sch | Proposed Classification Title  | Proposed Sal Sch |
|------------------------------|-----------------|--------------------------------|------------------|
| NEW                          | N/A             | Senior Media Artist,<br>LACERA | 103B<br>NMO      |

The recommended title and salary range serves to preserve LACERA's current pay differential practice to ensure appropriate internal equity.

The authority to implement the proposed new classification rests jointly with the Board of Retirement and Board of Investments. Such authority is provided in the California Government Code Sections 31522.1, 31522.2, and 31522.4, and will require the County Board of Supervisors (BOS) to amend the Salary Ordinance.

### EXECUTIVE SUMMARY

#### Background

On April 16, 2015, Communications Division (Communications) requested a classification study of two (2) Media Artist, LACERA (Item No. 0789) positions because the duties and

responsibilities of the positions have changed. Communications is responsible for communicating retirement information to LACERA Members by producing newsletters, forms, letters, retirement plan and other brochures, the LACERA web site, annual reports, and an array of internal projects.

The Media Artist, LACERA, class specification was last updated in April 2008, and the organizational structure and duties of the studied positions have changed since then. The class specification for Media Artist, LACERA, states that the position reports to an Assistant Division Head, LACERA, which no longer exists in Communications. According to the Communications Organizational Chart, the division is divided into two (2) teams with one team specializing in video, print, and graphics: the other specializing in web, print, and graphics. There are a total of four (4) Media Artist, LACERA positions in the division, two (2) allocated to each team. The proposed Communication Division organizational structure is shown as **Attachment A**.

### Classification

Civil Service Rule 5.01 requires that a class specification be developed and maintained for each class in the classification service to meet the needs of the service for the allocation of new positions and the reallocation of existing positions. A fundamental principle in classification is that the class specification should describe and define the nature and scope of responsibilities, work activities, qualifications, and other level defining characteristics of the class so that it is properly classified within the classification structure.

Classes, and jobs within them, evolve for many reasons and under many influences. A classification may undergo gradual growth that results in additional or changed duties and responsibilities and thereby require a corresponding class specification be amended or a position be reclassified to a new or existing classification. To keep current, a class specification should be reviewed when significant duties and level of responsibilities change.

Human Resources (HR) reviewed the studied positions to determine whether they function at the level assigned, and whether the duties performed warranted creation of a new classification. The study found that each of the studied positions are responsible for providing technical supervision to one (1) Media Artist, LACERA. As the technical specialist and lead for print, web, and/or video projects, the studied positions receive project assignments from the Creative Coordinator, LACERA, and have authority to delegate and direct work of other media artist(s). The studied positions are responsible for developing and maintaining a Style Guide to be followed for all media projects, developing brand standards, providing training, and reviewing the work of less experienced media artists, to ensure technical standards such as type specification and color quality are met.

Based on the study findings, HR, with consultation of the Chief of Communications in charge of oversight of this division:

- Revised the existing Media Artist, LACERA classification to reflect changes in the organizational structure; and
- Developed a new Senior Media Artist, LACERA classification that encompasses the nature and scope of responsibilities, duties, work activities, and qualifications required to perform as a technical lead.

The proposed class specifications are shown as **Attachment B**. As shown in Attachment A, the Senior Media Artist, LACERA, positions will take the place of two existing Media Artist positions.

Compensation

A survey of public agencies and private compensation surveys revealed that there was no appropriate match for Media Artist or Senior Media Artist. The survey found that graphic design, web design, and videography are highly specialized technical functions that are typically not combined at the senior journey-level.

As such, there is no recommended change to the Media Artist, LACERA salary. The recommended salary for Senior Media Artist, LACERA is based on LACERA's current pay differential practice for non-MAPP positions to ensure appropriate internal equity, typically between 7 ½ to 15%. 15% is typically provided for bonafide supervisors performing both administrative and technical supervision. The proposed salary schedule of 103B, with a maximum salary of \$9,241.00, to be effective upon implementation after January 1, 2021, will provide a salary differential of approximately 10% to compensate the Senior Media Artist, LACERA for the responsibility of acting as lead to the lower-level Media Artist, LACERA.

|         | Classification Title             | Salary Schedule | Monthly Min. | Monthly Max. | Salary Differential |
|---------|----------------------------------|-----------------|--------------|--------------|---------------------|
| LACERA* | Media Artist                     | 99H NMO         | \$ 6,244.55  | \$ 8,414.45  | 10%                 |
|         | NEW - Senior Media Artist (Lead) | 103B NMO        | \$ 6,857.09  | \$ 9,241.00  |                     |

\*Note: LACERA Compensation effective 1/1/2021.

**BUDGET IMPACT**

Implementation of the proposed classification changes will result in an annual budget increase of \$29,558.62.

| No. of Pos. | Budgeted Position Title | SALARY (1/1/21) |             |               | Proposed Position Title | PROPOSED SALARY |             |               | ANNUAL BUDGET IMPACT w/Benefits @ 55% |
|-------------|-------------------------|-----------------|-------------|---------------|-------------------------|-----------------|-------------|---------------|---------------------------------------|
|             |                         | Sch             | Max Salary  | Annual        |                         | Sch             | Max Salary  | Annual        |                                       |
| 2           | Media Artist            | 99H             | \$ 8,414.45 | \$ 100,973.40 | Senior Media Artist     | 103B            | \$ 9,241.00 | \$ 110,892.00 | \$ 30,747.66                          |

## PROCEDURE FOR ESTABLISHING CLASSIFICATIONS AND PAY RANGES

LACERA provides Local 721 notice and consult regarding new classifications of which the primary duties are derived from represented classifications. The Media Artist, LACERA classification currently addressed is represented; therefore, the Local 721 was notified of our intended changes on July 14, 2021.

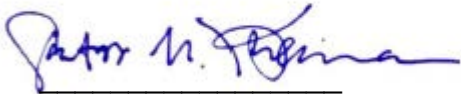
Upon approval from the Board of Retirement and Board of Investments, Human Resources (HR) will prepare a memorandum to the Los Angeles County's Chief Executive Office (LACCEO) which will include the class specification and salary schedule. The LACCEO Classification and Compensation staff will review the submitted documents to assure all necessary information is provided in order to revise the classification title and salary schedule in the County's Payroll System. HR staff, with the LACERA Legal Office's oversight, will prepare and submit an ordinance amending Sections 6.28.050 and 6.127.010 of LACERA's Salary Code to the Los Angeles County Counsel's Office and the BOS for adoption. These actions will add two (2) Senior Media Artist positions to the Ordinance.

## RECOMMENDATION

**That the JOGC recommend** the proposed classification changes be approved for implementation for the existing Media Artist classification by the Board of Retirement and Board of Investments.

**That the JOGC recommend** the proposed classification and compensation changes be approved for implementation for the creation of a new Senior Media Artist classification by the Board of Retirement and Board of Investments.

Reviewed and Approved:



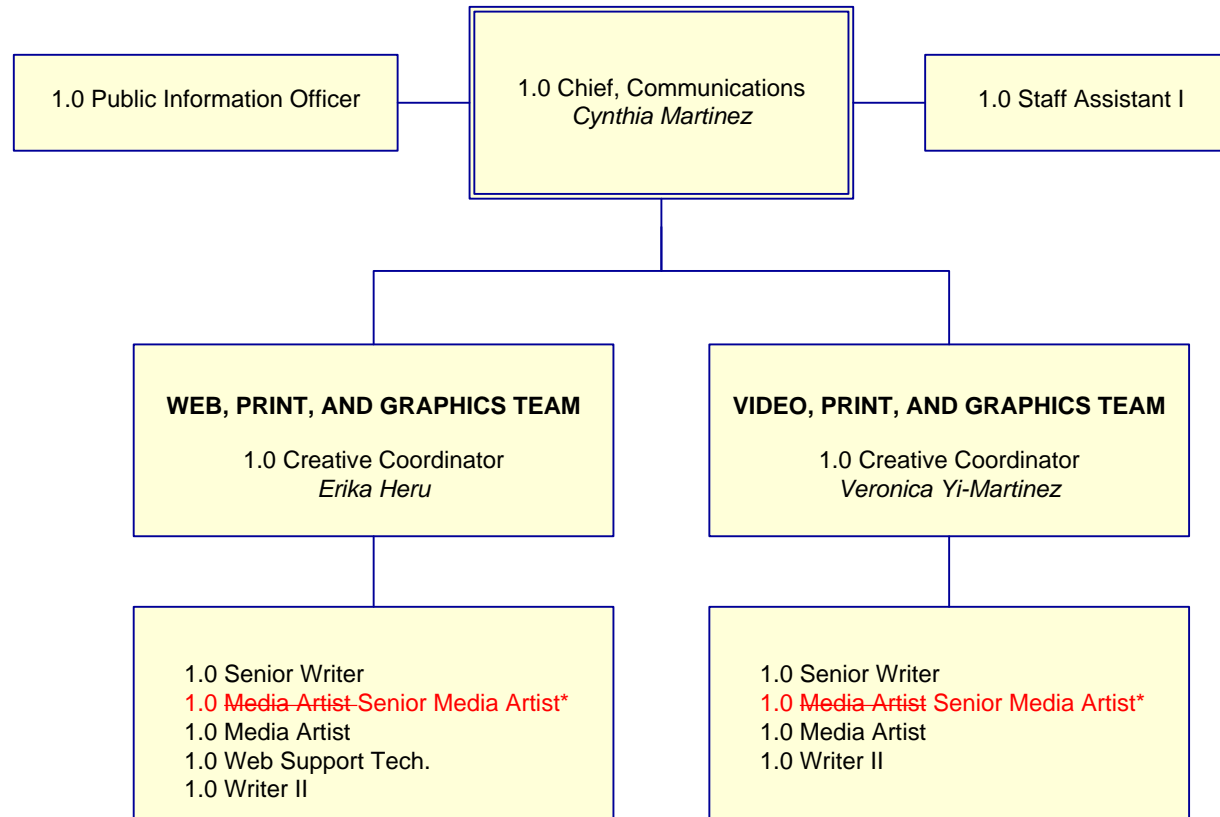
Santos H. Kreimann  
Chief Executive Officer

Attachments

cc: Steven P. Rice  
JJ Popowich

# COMMUNICATIONS

## PROPOSED ORGANIZATIONAL STRUCTURE



+ Added position

\* Reclass to new classification of Senior Media Artist recommended per study findings

**CLASS TITLE:** Media Artist, LACERA

**ITEM NUMBER:** 0789

**APPROVAL DATE:** Apr 22, 2008-TBD

**DEFINITION:**

Creates and produces print, web, and digital media to communicate retirement plan and other employee benefit information to LACERA members and staff.

**POSITION INFORMATION:**

~~Incumbents in this classification report to the Assistant Division Manager~~Positions allocable to this journey-level class report to the Creative Coordinator, LACERA or other equivalent level manager higher and work under the creative direction and technical guidance of a Senior Media Artist, LACERA.

Incumbents independently create and produce quality the artwork and ~~produce~~ print, web, and digital media such as newsletters, business cards, forms, brochures, fliers, posters, animation, videos and ~~websites~~web graphics, under the direction of a higher-level supervisor or Senior Media Artist. Incumbents must utilize an in-depth knowledge of color theory, composition, typography, and production techniques, methods, styles, and media used in the development and creation of various print and graphic arts work.

Depending on the assignment, the position may be required to have specialized technical knowledge of and experience in the following: creating storyboards, producing, directing, creating graphics, incorporating music and/or voiceover into digital media, video editing, or creating animated and other computerized graphics, and/or designing professional and innovative web site and web page graphics. Incumbents must possess the artistic and design project skills to conceptualize an entire assignment while being attentive to details and priorities and satisfying LACERA and County standards of professionalism, artistic expression, tastestyle, image, and customer service.

**EXAMPLES OF ESSENTIAL JOB FUNCTIONS:**

The following examples are intended to describe the general nature and level of work performed by persons assigned to each classification. Depending on the assignment, duties may include, but are not limited to the following:

Creates communication media to inform LACERA members and staff about retirement and other employee benefits by producing freehand, digital/computer generated artwork and multimedia designs.

Produces the final product by conceptualizing and creating the design needed including such artistic characteristics as color, style, shapes and materials, and the pre- and post-production requirements of video, web, and print.

Creates, illustrates, and produces print materials such as business cards, forms, brochures, fliers, newsletters, e-mails, ads, logos, pamphlets, booklets, scrolls, the annual retirement law

book, and the annual financial report by utilizing freehand and ~~computer-computer~~-generated art; determines size and arrangement of illustrative material and copy; selects style and size of type; arranges layout and edits; and monitors the entire pre- and ~~post-post~~-production process.

Designs digital animation, ~~and~~ PowerPoints, ~~and video~~, including the generation of graphic images, animation, sound and text into cohesive multimedia programs through the use of technology.

Designs web sites ~~such as LACERA's Internet, Intranet, Board Resources, Human Resource Professionals,~~ by producing graphic artwork, designs and copy layouts for online content; develops format and posts content; ~~refreshes~~ refreshes imagery and news items; ~~and~~ updates policies, programs and forms.

~~Assesses advances in multimedia technology for use by LACERA.~~

Takes, composes, retouches and archives digital photographs.

~~Operates May operate and directs, stages, edits, and produces video productions~~ a video camera and create storyboards, direct, create graphics, incorporate music and/or voiceover, and edit for video production.

~~The position may~~ May be required to perform other duties as assigned.

#### MINIMUM REQUIREMENTS:

#### TRAINING AND EXPERIENCE:

##### OPTION 1:

A Bachelor's degree from an accredited college in ~~Fine Art, Advertising~~ Graphic Design, Visual Arts, or a related subject -AND- ~~Three-three (3)~~ Three-three (3) years of experience\* in an in-house creative department or design firm producing graphic and commercial arts with extensive use of freehand and ~~computer-computer~~-generated imagery in the creation and the pre- and post-production of video, web, and print, digital and web media.

##### OPTION 2:

~~OR~~

Five (5) years of experience\* in an in-house creative department or design firm producing graphic and commercial arts with extensive use of freehand and ~~computer-computer~~-generated imagery in the creation and the pre- and post-production of video, web, and print, digital and web media.

#### LICENSE:

A valid California Class C Driver License or the ability to utilize an alternative method of transportation to carry out essential job functions.



**PHYSICAL CLASS:**

2 - Light

**SPECIALTY REQUIREMENTS:**

\*Specialized examinations may include:

Specialty

Add to read as:

**Web Graphic Design / Commercial wWeb dDesign** \*experience in an in-house creative department or design firm performing web graphic design and/or commercial web design work that, including determining the layout, font color, font type, logos, pictures, and other visual and verbal aspects of a website.

**Videography / Commercial vVideo pProduction** \*experience creating storyboards, producing, directing, creating graphics, incorporating music and voiceover, and editing video for final production and output to various platforms.

**CLASS TITLE:** Media Artist, LACERA

**ITEM NUMBER:** 0789

**APPROVAL DATE:** ~~Apr 22, 2008~~-TBD

**DEFINITION:**

Creates and produces print, web, and digital media to communicate retirement plan and other employee benefit information to LACERA members and staff.

**POSITION INFORMATION:**

Positions allocable to this journey-level class report to the Creative Coordinator, LACERA or higher and work under the creative direction and technical guidance of a Senior Media Artist, LACERA.

Incumbents independently create and produce quality artwork and print, web, and digital media such as newsletters, business cards, forms, brochures, fliers, posters, animation, videos and web graphics, under the direction of a higher-level supervisor or Senior Media Artist. Incumbents must utilize an in-depth knowledge of color theory, composition, typography, and production techniques, methods, styles, and media used in the development and creation of various print and graphic arts work.

Depending on the assignment, the position may be required to have specialized technical knowledge of and experience in the following: creating storyboards, producing, directing, creating graphics, incorporating music and/or voiceover into digital media, video editing, creating animated and other computerized graphics, and/or designing professional and innovative web site and web page graphics. Incumbents must possess the artistic and design skills to conceptualize an entire assignment while being attentive to details and priorities and satisfying LACERA and County standards of professionalism, artistic expression, style, image, and customer service.

**EXAMPLES OF ESSENTIAL JOB FUNCTIONS:**

The following examples are intended to describe the general nature and level of work performed by persons assigned to each classification. Depending on the assignment, duties may include, but are not limited to the following:

Creates communication media to inform LACERA members and staff about retirement and other employee benefits by producing freehand, digital/computer generated artwork and multimedia designs.

Produces the final product by conceptualizing and creating the design needed including such artistic characteristics as color, style, shapes and materials, and the pre- and post-production requirements of video, web, and print.

Creates, illustrates, and produces print materials such as business cards, forms, brochures, flyers, newsletters, e-mails, ads, logos, pamphlets, booklets, scrolls, the annual retirement law book, and the annual financial report by utilizing freehand and computer-generated art; determines size and arrangement of illustrative material and copy; selects style and size of type; arranges layout and edits; and monitors the entire pre- and post-production process.

Designs digital animation and PowerPoints, including the generation of graphic images, animation, sound and text into cohesive multimedia programs through the use of technology.

Designs web sites by producing graphic artwork, designs and copy layouts for online content; develops format and posts content; refreshes imagery and news items; and updates policies, programs and forms.

Takes, composes, retouches and archives digital photographs.

May operate a video camera and create storyboards, direct, create graphics, incorporate music and/or voiceover, and edit for video production.

May be required to perform other duties as assigned.

**MINIMUM REQUIREMENTS:**

**TRAINING AND EXPERIENCE:**

**OPTION 1:**

A Bachelor's degree from an accredited college in Graphic Design, Visual Arts, or a related subject -AND- three (3) years of experience\* in an in-house creative department or design firm producing commercial art with extensive use of freehand and computer-generated imagery in the creation and the pre- and post- production of video, web, and print media.

**OPTION 2:**

Five (5) years of experience\* in an in-house creative department or design firm producing commercial art with extensive use of freehand and computer-generated imagery in the creation and the pre- and post-production of video, web, and print media.

**LICENSE:**

A valid California Class C Driver License or the ability to utilize an alternative method of transportation to carry out essential job functions.

**PHYSICAL CLASS:**

2 - Light

**SPECIALTY REQUIREMENTS:**

\*Specialized examinations may include:

Specialty

**Web Graphic Design / Commercial Web Design**

department or design firm performing web graphic design and/or commercial web design work that included determining the layout, font color, font type, logos, pictures, and other visual and verbal aspects of a website.

Add to read as:

\*experience in an in-house creative

Media Artist, LACERA

Page 3

**Videography / Commercial Video Production** \*experience creating storyboards, producing, directing, creating graphics, incorporating music and voiceover, and editing video for final production and output to various platforms.

**CLASS TITLE:** Senior Media Artist, LACERA

**ITEM NUMBER:** NEW

**APPROVAL DATE:** TBD

**DEFINITION:**

Creates and produces video, web, and print media to communicate retirement plan and other employee benefit information to LACERA members and staff. Directs staff as a technical lead.

**POSITION INFORMATION:**

Positions allocable to this senior journey-level class report to a Creative Coordinator, LACERA or higher-level position. The positions work with the Chief of Communications to develop brand standards and creative guidelines for all media created for LACERA. As the technical lead on assigned projects, the positions are distinguished by responsibility for providing creative direction, technical guidance, and feedback on work produced by the lower-level Media Artist, LACERA. The positions are responsible for creating and maintaining a Style Guide, and reviewing the work of the Media Artist, LACERA, to ensure consistent standards are followed.

The positions independently create and produce creative, innovative, quality artwork for print, web, and digital media such as newsletters, annual reports, forms, brochures, fliers, posters, animation, videos and website graphics aligned with LACERA's brand strategy. Incumbents must utilize an in-depth knowledge of composition and production techniques, methods, styles, and media used in the development and creation of various print and graphic arts work. Incumbents meet with clients to discuss design projects and their needs.

Depending on the assignment, the position may also be required to have specialized technical knowledge of and experience in the following: creating storyboards, producing, directing, creating graphics, incorporating music and/or voiceover into digital media, video editing, creating animated and other computerized graphics, designing professional and innovative web site and web page graphics, and/or creating high quality studio photography that includes retouching images using image manipulation techniques. In addition, incumbents must possess the artistic and project management skills to conceptualize an entire assignment while being attentive to details and priorities and satisfying LACERA and County standards of professionalism, artistic expression, style, image, and customer service.

**EXAMPLES OF ESSENTIAL FUNCTIONS:**

The following examples are intended to describe the general nature and level of work performed by persons assigned to each classification. Depending on the assignment, duties may include, but are not limited to the following:

Creates communication media to inform LACERA members and staff about retirement and other employee benefits by producing freehand, digital/computer generated artwork and multimedia designs.

Takes creative lead on projects and oversees the production of video, web, print and other marketing materials, including assigning, directing, training, reviewing, and approving the work of lower-level staff.

## Senior Media Artist, LACERA

### Page 2

Collaborates with stakeholders to conceptualize and execute creative solutions that can be translated across various media platforms and to ensure consistency with LACERA branding.

Produces the final product by conceptualizing and creating the design needed including such artistic characteristics as color, style, shapes and materials, and the pre- and post-production requirements of video, web, and print.

Creates, illustrates and produces print materials such as business cards, forms, brochures, flyers, newsletters, e-mails, ads, logos, pamphlets, booklets, scrolls, the annual retirement law book and the annual financial report by utilizing freehand and computer-generated art; determines size and arrangement of illustrative material and copy; selects style and size of type; arranges layout and edits; and monitors the entire pre- and post-production process.

Designs digital animation and PowerPoints including the generation of graphic images, animation, sound and text into cohesive multimedia programs through the use of technology.

Designs web sites by producing graphic artwork, designs and copy layouts for online content; develops format and post content; refresh imagery and news items; and updates policies, programs and forms.

Makes recommendations for the purpose of obtaining paper stock, type, and printing services; and attends press checks when needed.

Researches data in order to select a theme to create a design which is an effective pictorial or graphic presentation of the data or subject to be publicized.

Monitors advances in media solutions and techniques. Continually refines processes to include advances that improve media services for use by LACERA.

Provides day-to-day maintenance and support for the Communications Studio equipment.

Makes recommendations regarding purchases of equipment and production operating policies.

Takes, composes, retouches and archives digital photographs.

May operate a video camera and create storyboards, produce, direct, create graphics, incorporate music and/or voiceover, and edit for video production.

May be required to perform other duties as assigned.

### **MINIMUM REQUIREMENTS:**

### **TRAINING AND EXPERIENCE:**

#### OPTION 1:

A Bachelor's degree from an accredited college in Graphic Design, Visual Arts, or a related subject -AND- five (5) years of experience\* at an in-house creative department or design firm producing commercial art with extensive use of freehand and computer-generated imagery in the creation and the pre- and post-production of video, web, and print media.

#### OPTION 2:

Seven (7) years of experience\* in an in-house creative department or design firm producing commercial art with extensive use of freehand and computer-generated imagery in the creation and the pre- and post-production of video, web, and print, media.

**LICENSE:**

A valid California Class C Driver License or the ability to utilize an alternative method of transportation to carry out essential job functions.

**PHYSICAL CLASS:**

2 - Light

**SPECIALTY REQUIREMENTS:**

\*Specialized examinations may include:

Specialty

**Web Graphic Design / Commercial Web Design**

department or design firm performing web graphic design and/or commercial web design work that included determining the layout, font color, font type, logos, pictures, and other visual and verbal aspects of a website.

Add to read as:

\*experience in an in-house creative

**Videography / Commercial Video Production**

producing, directing, creating graphics, incorporating music and voiceover, and editing video for final production and output to various platforms.

\*experience in creating storyboards,



July 13, 2021

TO: Each Trustee,  
Joint Organizational Governance Committee

FOR: July 21, 2021 Joint Organizational Governance Committee Meeting

SUBJECT: Trustees as Employees and Trustee Health Care Issues

The memo for this item is protected from public disclosure as an attorney-client communication and attorney work product pursuant to Cal. Gov't Code §§ 6254(k), 54957.5(a).