

Disability Policies and Procedures

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Approved by the Board on August 2, 1995

July 18, 1995

TO: EACH MEMBER
BOARD OF RETIREMENT

FROM: JACK THOMAS, CHAIR
DISABILITY PROCEDURES & SERVICES COMMITTEE

SUBJECT: REVISION TO THE DISABILITY RETIREMENT HEARING PROCEDURES

On May 15, 1995 the Disability Procedures & Services Committee considered a proposed revision to the Disability Retirement Hearing Procedures.

The proposed revision to the Procedures would require that the disability retirement application and the staff investigator's report (Disability Retirement Evaluation Report) be admitted as exhibits during the disability hearing. These exhibits would then be made a part of the record, subject to the rights of the parties to object to any portion of the exhibits.

At the Disability Procedures and Services Committee meeting of July 5, 1995 the committee approved the proposed revision is attached for your review and approval.

IT IS THEREFORE RECOMMENDED THAT THE BOARD OF RETIREMENT approve the revision to Disability Retirement Hearing Procedures, adding Rule 22 (a) and 22 (b) DISABILITY APPLICATION; DISABILITY RETIREMENT EVALUATION REPORT.

SRM:shg

Attachment

Rule 22 of Disability Retirement Hearing Procedures is revised to read:

22. DISABILITY APPLICATION; DISABILITY RETIREMENT EVALUATION REPORT
 - (a) The disability retirement application shall be admitted as an exhibit and made a part of the record of all hearings.
 - (b) The disability retirement evaluation report shall be admitted as an exhibit and made a part of the record in all hearings, subject to the right of either party to object to portions thereof.

The remaining rules would then be renumbered as follows:

23. CONDUCT OF HEARING
24. AFFIDAVITS
25. OFFICIAL NOTICE
26. SERVICE OF PROPOSED FINDINGS OF FACT AND RECOMMENDED DECISION
27. OBJECTIONS TO PROPOSED FINDINGS OF FACT AND RECOMMENDED DECISION
28. FILING OF PROPOSED FINDINGS OF FACT AND RECOMMENDED DECISION AND RECORD ON APPEAL; ACTION BY THE BOARD
29. ORAL ARGUMENT IN SUPPORT OF OBJECTIONS TO REFEREE'S RECOMMENDED DECISION
30. BOARD'S DECISION AFTER REVIEW OF THE RECORD
31. ALTERATION OF TIME REQUIREMENTS
32. DISMISSAL FOR LACK OF PROSECUTION
33. SERVICE OF DOCUMENTS
34. JUDICIAL REVIEW



February 22, 1995

TO: Each Member
Board of Retirement

FROM: David L. Muir
Chief Counsel

SUBJECT: AMENDMENT TO RULE 13 OF THE DISABILITY RETIREMENT
HEARING PROCEDURES

On February 15, 1995, an ad hoc committee was convened to consider a proposed amendment to Rule 13 of the Disability Retirement Hearing Procedures. The ad hoc committee consisted of Board members Robert J. Hermann, Jack M. Thomas, and Simon S. Russin.

A copy of background materials presented to the committee is attached. The proposed amendment to Rule 13 would require the payment of an expert witness fee when a medical witness other than the applicant's treating physician is subpoenaed to testify. The applicant's treating physician would be entitled to an expert witness fee if the party requesting oral testimony intends to question the physician as to the physician's expert opinion.

The ad hoc committee adopted a motion to recommend to your Board that Rule 13 be amended as proposed, with Messrs. Hermann and Thomas voting "yes" and Mr. Russin voting "no."

The proposed amendment is attached hereto. **Please note**, however, that after consulting with Mr. Aguilar of the County Counsel's Office, an additional change not considered by the ad hoc committee has been incorporated. The change is the addition of the last sentence in the third paragraph under the heading " Subpoenas and Fees." This sentence is added to give guidance to the referee when resolving disputes over the amount of the expert witness fee payable, by providing that the fee shall be the same as the fee the witness would be entitled to claim if subpoenaed to testify in a civil action or proceeding.

THEREFORE, IT IS RECOMMENDED your Board adopt the attached amendment to Rule 13 of the Disability Retirement Hearing Procedures.

Attachments

- c. Marsha Richter
Sylvia Miller
Lou Aguilar

Rule 13 of Disability Retirement Hearing Procedures is amended to read:

13. ORAL TESTIMONY OF MEDICAL WITNESSES:

Hearing:

Oral testimony of medical witness on direct or cross-examination, for any purpose, shall be taken at a hearing set at a reasonable time as requested by the medical witness in the office of the medical witness, or such other reasonable place requested by the medical witness. If the parties and the referee so agree, the referee need not attend such a hearing and the referee shall consider the transcript of the medical witness's testimony as evidence in reaching the recommended decision.

Hearing for oral testimony of medical witness for any purpose shall be requested at any time prior to the submission of the case for decision and shall be set to take place after the completion of testimony of lay witnesses.

Deposition:

A medical witness's deposition may be taken before the referee. The deposition shall be scheduled at a reasonable time as requested by the medical witness. The deposition shall take place in the office of the medical witness, or such other reasonable place as requested by the medical witness. If the parties and the referee so agree, the referee need not be present at such a deposition.

Subpoenas and Fees:

Issuance of a subpoena for a medical witness's attendance at a hearing or deposition shall be contingent on the party accepting the obligation to pay the medical witness, ~~when served with the subpoena, at least such fees and mileage as Government Code Section 68093 prescribes for ordinary, non-expert witnesses in the superior court~~ the fees set forth herein.

~~The party requesting oral testimony of a medical witness at a deposition or hearing for purposes including questioning the medical witness as to the witness's expert opinion shall advance to the medical witness an expert witness fee.~~ **The party requesting oral testimony of a treating physician shall advance to the treating physician such fees and mileage as Government Code Section 68093 prescribes for ordinary, non-expert witnesses in the superior court. If the party requesting oral testimony of a treating physician intends to question the physician as to the physician's expert opinion, the party requesting the oral testimony shall advance to the medical witness an expert witness fee.**

The party requesting oral testimony of a medical witness that is not the applicant's treating physician shall in all cases advance to the medical witness an expert witness fee. The witness shall be entitled to claim an expert witness fee on the same conditions that such witness would be

entitled to claim under Government Code Section 68902.5 if subpoenaed to testify in civil action or proceedings.

When payment of an expert witness fee is required. ~~¶~~the party requesting oral testimony shall contact the office of the medical witness and determine the witness's reasonable and customary hourly or daily fee and shall advise the office of the medical witness of the anticipated length of the deposition or hearing. The medical witness's fee, based on the witness's reasonable customary rate and anticipated length of the testimony, shall be delivered to the medical witness at least ten (10) days in advance of the deposition or hearing. If a balance is due following the testimony, the party requesting the oral testimony shall pay the balance upon receipt of an itemized statement. Disputes as to fees between the medical witness and the party requesting the oral testimony shall be resolved by the referee in the manner prescribed in Rule 16.

Failure to serve a subpoena and/or pay the prescribed witness fee in advance may be treated by the referee and Board as a waiver of the right to question such witness. Failure to advance the expert witness fee ~~may be treated by the referee and the Board as a waiver of the right to question such witness as to the witness's expert opinion.~~ **will be deemed a waiver of the right to question the witness or require the witness's appearance at the deposition or**

hearing, and any subpoena which may have been issued to compel the witness's attendance shall be canceled and shall be of no further force or effect. Service of the subpoena and payment of the fee may be made by mail if the witness so agrees.



Approved by the Board on October 2, 1996

September 6, 1996

TO: Each Member
Board of Retirement

FROM: Disability Procedures & Services Committee
Jack Thomas, Chair
Edgar H. Twine, Vice Chair
Cody Ferguson
Sadonya Antebi
Warren Bennett (Alternate)

SUBJECT: REVISIONS TO RULE 21, DISABILITY RETIREMENT HEARING
PROCEDURES

On September 4, 1996, during its regular meeting, the Disability Procedures & Services Committee approved a proposed revision to Rule 21 of the Disability Retirement Hearing Procedures. A copy of the proposed revision is attached.

The amendment to Rule 21 would allow referees to unilaterally refer applicants or medical records to panel physicians when it is determined that further medical evaluation is necessary. Panel physicians would then provide a written medical report to the referees with copies to both counsel.

IT IS THEREFORE RECOMMENDED that your Board approve the revision to Rule 21 of the Disability Retirement Hearing Procedures in the form attached.

Attachment

c. Marsha Richter
Gregg Rademacher
Sylvia Miller
Lou Aguilar

Rule 21 of Disability Retirement Hearing Procedures is revised to read:

21. FURTHER MEDICAL AND LAY EVIDENCE

- (a) On the request of ~~the assigned deputy county~~ LACERA's counsel the Board's disability retirement staff may obtain independent medical examinations and/or investigations. The fees for these medical examinations and/or investigations shall be paid by the Board.
- (b) The applicant shall submit to examinations by physicians appointed by the Board's disability retirement staff where reasonably necessary to the respondent's discovery of the claim. Such examinations shall be scheduled with due consideration to the applicant's convenience and ability to attend.
- (c) **A referee may, at his or her discretion, direct the disability staff to refer the applicant or medical records submitted, or both, to a physician appointed by the Board, for further medical evaluation. The physician will provide a written medical report to the referee with copies to counsel for the parties.**

The applicant shall submit to medical examination pursuant to this rule.



March 11, 1993

Louis M. Zigman
Attorney at Law
473 South Holt Avenue
Los Angeles, CA 90048

**RE: IMPLEMENTATION OF RULES 26 AND 27
PROCEDURES FOR DISABILITY RETIREMENT HEARINGS**

Dear Mr. Zigman:

Rule 26 establishes time limits for the filing of objections to the referee's proposed findings and recommended decision, the opposing party's reply and the referee's response. Rule 27 establishes the mechanism by which the referee's decision and the record will go to the Board of Retirement for its consideration.

Rule 26 Time Limits

When the referee serves the recommended decision on the parties for the first time, it is not contemplated that the referee will at that time file it with the Board of Retirement. It is contemplated that the recommended decision will be filed with the Board of Retirement after the parties have had an opportunity to argue against and in favor of the recommended decision and the referee has had an opportunity to fine tune it.

The "unsuccessful" party has twenty days in which to serve on the referee written objections to the recommended decision. The "successful" party has ten days from the date of the objections in which to send to the referee a response to the objections. From the date of the objections, the referee has thirty days to either submit his recommended decision as it was originally formulated or to make changes as the referee deems appropriate. Note that the time in which to act in response to an item served by mail is extended five days under Rule 32.

Referees are expected to respond to objections in writing, if only to indicate that no change in the recommended decision is thought to be necessary after considering the objections. The referee's response may also be in the form of a recommended decision amended in response to points raised by the parties.

Louis M. Zigman
Implementation of Rules 26 and 27
March 11, 1993
Page 2

Filing The Record Under Rule 27

At the time the referee serves the referee's response to the objections, be it summary denial or a change to the recommended decision as originally composed, the referee is expected, under Rule 27, to forward to the Board of Retirement a package containing the record of the administrative appeal. In the ordinary case the record will consist of the prehearing statements, the documentary evidence, points and authorities, the recommended decision as originally composed, objections, the successful party's response and the referee's response if there is no change to the recommended decision and the final recommended decision if there are changes made by the referee.

If this procedure is followed, at the time the Board receives the referee's recommended decision, it will also have the supporting record. This will assist the Board of Retirement's disability staff in preparing the matter for the Board's agenda and in responding to any future request for the administrative record should the matter proceed to the Superior Court.

Elimination of Delay Whenever Possible

The Board of Retirement places a high priority on having the disability retirement appeal process move quickly whenever possible. The time for objections, responses and the filing of the final recommended decision provided for in Rule 26 and 27 are intended to be maximum time limits. If neither party wishes to file an objection, there is no reason why the record and the recommended decision cannot go to the Board immediately. Therefore, we will encourage the attorneys to notify the referee when objections or responses to objections are not going to be filed so that the referee need not wait unnecessarily before acting.

Very truly yours,

Sylvia R. Miller, Section Manager
Disability Retirement Services

SRM:mrg

**LOS ANGELES COUNTY EMPLOYEES RETIREMENT ASSOCIATION
BOARD OF RETIREMENT**

POLICY ON CONTINUANCES OF CASES SCHEDULED FOR ORAL ARGUMENT

Approved by the Board July 2, 1997

It is the policy of the Board of Retirement that the following basis will be considered good cause for a continuance under the provisions of Rule 29 of the Procedures For Disability Retirement Hearings:

1. Death of an attorney;
2. Illness of an attorney;
3. Substitution of a new attorney;
4. A significant change in the status of the case such that the case is not ready to be determined by the Board.

The Board of Retirement will also consider requests for continuances requested on the basis of the unavailability of an attorney. Where the basis of a request for continuance is the unavailability of an attorney due to a scheduling conflict, the Board will consider answers to the following questions presented in the written request.

1. Could the attorney have reasonably anticipated the scheduling conflict so that the conflict could have been avoided?
2. Did the attorney act promptly to request the continuance upon being apprised of the scheduling conflict?

No request for a continuance will be entertained unless a party has filed timely written objections and timely written request to present oral argument.



April 16, 1996

TO: Each Member
Board of Retirement

FROM: Disability Procedures & Services Committee
Jack Thomas, Chair
Edgar H. Twine, Vice Chair
Cody Ferguson
Sadonya Antebi
Warren Bennett (Alternate)

SUBJECT: PROPOSED AMENDMENT TO RULE 32 OF THE DISABILITY
RETIREMENT HEARING PROCEDURES

On April 3, 1996, during its regular meeting, the Professional Services Committee reviewed Rule 32 of the Disability Retirement Hearing Procedures.

The committee determined that it is in LACERA's best interest to amend Rule 32, dismissal for Lack of Prosecution. Rule 32 requires the dismissal with prejudice, of cases not heard within three (3) years after a request for hearing is granted by the board.

The proposed amendment, attached for your review, requires notice to the applicant and to the applicant's attorney, six months before mandatory dismissal. The notice will state that failure to commence a hearing within six months will result in dismissal of the case.

THEREFORE, IT IS RECOMMENDED that your board approve the amendment to Rule 32 of the Disability Retirement Hearing Procedures.

Attachment

FMB:vc

c. Marsha Richter
Gregg Rademacher
David L. Muir
Sylvia Miller

Rule 32 of Disability Retirement Hearing Procedures is amended to read:

32. DISMISSAL FOR LACK OF PROSECUTION

If, as a result of the applicant's failure to comply with the procedures specified above, the matter is not heard within three (3) years after a request for hearing is granted by the Board, the case shall be dismissed with prejudice.

Notwithstanding the above, no case shall be dismissed without six-months prior written notice to the applicant and the applicant's attorney that failure to commence a hearing within six months from the date of the notice will result in dismissal of the case with prejudice.

~~This provision shall only apply to cases where a request for hearing was granted by the Board after the original effective date of this section, November 7, 1979. Rule 32 is not applicable to two-year review hearings.~~

DISABILITY RETIREMENT SERVICES

RULE 32 PROCESSING PROCEDURES

1. A listing of pending appeal cases will be generated on a quarterly basis by the Supervising Staff Assistant for review by the Manager
2. A listing of those cases is provided to the Staff Assistants (Appeals) for verification that no activity has taken place within the last 2 ½ years
3. List of cases ready for Rule 32 letters is forwarded to Disability Litigation Office for approval
4. Once approved, the Division Secretary will prepare Rule 32 letters
 - Included with the letter should be the Declaration of Service By Mail form and the Disability Retirement Hearing Procedures brochure
 - Copies should be prepared for applicant, applicant's attorney (if applicable), Disability Litigation staff, Referee, and file
 - The member's letter is always mailed certified
 - Details of the letter are to be entered into Tracker and CERIS (i.e. date sent and recipients)
5. Once mail receipt is returned, it is to be attached to the file copy
6. The Division Secretary on a quarterly basis will provide Rule 32 Correspondence Report to management and Appeals staff
7. The Rule 32 Correspondence Report will provide information noting interested parties, date letter was sent, dismissal date, and appeals staff handling the case
8. After 6-month period, the appeal cases are pulled and prepared for dismissal
9. A listing of appeal cases to be dismissed is provided to the Disability Litigation Office for approval

10. Once approved, the case files are given to the Division Secretary for preparation of the Board memo, recommending dismissal
11. Once the Board dismisses the case, the file is returned to the Appeals staff along with the approved memo and manager's initials
12. The Appeals staff then prepares a letter stating that the case has been dismissed
 - Copies should be prepared for applicant, applicant's attorney (if applicable), Disability Litigation staff, Referee, and file



June 6, 1995

TO: EACH MEMBER
BOARD OF RETIREMENT

FROM: SYLVIA R. MILLER, SECTION MANAGER
DISABILITY RETIREMENT SERVICES

SUBJECT: APPEALS

On May 15, 1995 the Disability Procedures and Services Committee met and one of the topics of discussion was the ongoing challenge of the Disability Section Manager to reduce the amount of paper that is sent to the Board each month.

After discussion with the committee and counsel, it was decided to try sending the disability appeals in a different format. If the appeal is new, it will include the paperwork provided to the Board at its initial decision as well as the referee's report and any objections that are filed.

If the Board requests a transcript, the board will receive all of the above paperwork with the transcript and the exhibits.

By trying this approach to the mailings, it allows staff to save paper and manpower. It will still provide you with the information necessary for you to act on the disability appeals.

SRM:shg



January 28, 1997

TO: Each Member
Board of Retirement

FROM: Disability Procedures & Services Committee
Edgar H. Twine, Chair
Sadonya Antebi, Vice Chair
Cody Ferguson
Michael Falabrino
Warren Bennett (Alternate)

SUBJECT: REVISED FORMAT FOR REFEREE REPORTS

On January 9, 1997, during its regular meeting, the Disability Procedures & Services Committee approved a revised format for referee reports. Attached is a copy of the revised format.

This format enables all referees to present findings of fact and recommended decision in a consistent format. The format will result in a referee report that is concise and complete.

IT IS THEREFORE RECOMMENDED that your Board approve the revised referee format in the form attached.

Attachment

c. Marsha Richter
Gregg Rademacher
Daniel McCoy
Sylvia Miller

APPLICANT'S EXHIBITS OFFERED

ADMITTED INTO EVIDENCE

(check one)

Yes

No

1.	<input type="checkbox"/>	<input type="checkbox"/>
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(Continued on Attachment)

BOARD'S EXHIBITS OFFERED

ADMITTED INTO EVIDENCE

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SUMMARY OF TESTIMONY

(Continued on Attachment)

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REFEREE'S DISCUSSION AND ANALYSIS

(Continued on Attachment)

Application No.: _____

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propfind.ref



July 23, 1998

TO: Sylvia Miller, Section Manager
Disability Retirement Services

FROM: Daniel E. McCoy
Chief Counsel, Disability Litigation

SUBJECT: **Authorization for Appeals of Adverse Superior Court Decisions**

You asked me to consider what sort of authorization Disability Litigation needs from the Board of Retirement to undertake an appeal of a superior court decision. The current policy, formulated with the Office of the County Counsel, provides a blanket authorization. As I recall, the blanket authorization to the County Counsel to file a notice of appeal was thought to be necessary so that LACERA's rights would be preserved when the Deputy County Counsel would be unable to place the matter before the Board of Retirement for its consideration before the limitations period would run.

I do not believe that Disability Litigation needs a blanket authorization. We have sufficient time in which to present a superior court decision to the Board of Retirement with our recommendation on whether or not to appeal. We believe that the Board would prefer that we take cases up on appeal only after the matter has been explained to the Board in a letter and the Board has had an opportunity to thoroughly discuss it with us and deliberate.

The time Disability Litigation has to obtain the Board's approval or disapproval of an appeal is made up of the following;

1. The time between the issuance of the superior court's decision and the service of the notice of entry of judgement. This will usually be anywhere from a few days to two weeks, plus
2. 60 days from the service of the notice of entry of judgement.

Either at the time of the hearing before the superior court of within one or two days after the hearing, and before the 60 day limitations period has started to run, we will know what the court decided and what sort of recommendation we will make to the Board.

Therefore, we recommend the adoption of the following policy: As a general rule, Disability Litigation should present to the Board all adverse decisions of the superior court, together with a recommendation on whether or not to appeal before filing a notice of appeal.

Sylvia Miller, Section Manager

Subject: Authorization for Appeals of Adverse Superior Court Decisions

Page 2

There are two situations in which we believe that the Board's policy should be that the attorneys in Disability Litigation have authority to file a notice of appeal, if it is necessary to preserve LACERA's appellate rights, subject to the appeal being withdrawn if the Board does not later approve the appeal:

1. Where the member appeals from a decision of the superior court which is partially adverse to LACERA and an appeal of the superior court's decision, which LACERA might otherwise not undertake, appears appropriate given that the member is appealing.

This might be a situation in which the Board decides not to appeal a superior court decision finding the member disabled for nonservice-connected reasons, but then at the last minute the member appeals the decision. The 60 day period in which the Board might have filed a notice of appeal may have passed, but the law permits a cross appeal. The period in which a cross appeal may be filed is 20 days from the date the superior court clerk mails out a notification of the filing of the first notice of appeal. This time may pass before we can obtain the Board's direction as to whether it wishes to file a cross appeal in light of the fact that the member has filed an appeal or merely respond to the appeal itself.

2. Where it is necessary to file a notice of appeal in order to preserve LACERA's right to an appeal, subject to the appeal being withdrawn if the Board determines that it does not wish the matter to be appealed.

Things can go wrong and I suggest that we be authorized to file a notice of appeal without prior authorization from the Board where such a filing is necessary in order to preserve LACERA's rights to an appeal. An example would be where a notice of entry of judgement has been misplaced or misdirected in the mail and it is delivered to a person who does not recognize it for what it is.

POLICY

AUTHORIZATION FOR APPEALS OF ADVERSE SUPERIOR COURT DECISIONS

As a general rule, before it undertakes an appeal, the Disability Litigation Office should present to the Board a written explanation of all decisions of the superior court adverse to LACERA, together with a recommendation on whether or not to appeal.

In following circumstances the attorneys in Disability Litigation Office have authority to file a notice of appeal, if it is necessary to preserve LACERA's appellate rights, subject to the appeal being withdrawn if the Board does not later approve the appeal:

1. Where the member appeals from a decision of the superior court which is partially adverse to LACERA and an appeal of the superior court's decision, which LACERA might otherwise not undertake, appears appropriate given that the member is appealing.
2. Where it is necessary to file a notice of appeal in order to preserve LACERA's right to an appeal, subject to the appeal being withdrawn if the Board determines that it does not wish the matter to be appealed.



March 23, 2009

Approved
Board of Retirement
April 1, 2009

TO: Each Member
Board of Retirement

FROM: Disability Procedures and Services Committee
James P. Harris, Chair
Yves Chery, Vice Chair
Sadonya Antebi
Ed C. Morris

Simon S. Russin, Alternate

FOR: April 1, 2009, Board of Retirement Meeting

SUBJECT: PROCEDURES RELATING TO THE TRANSCRIPTION OF ORAL ARGUMENTS DURING BOARD OF RETIREMENT MEETINGS

SUMMARY

Background: At the January 7, 2009, Disability Procedures & Services Committee meeting, Mr. Castranova suggested that the Board consider revising its procedures to allow a transcription of the oral argument heard during the Board of Retirement meeting. This would assist the Board with understanding why a hearing transcript was requested. Based on a review of the transcribed recording of oral argument before the Board, each Board member could refer to selected portions of the hearing transcript as necessary to make an informed decision. There was also input from J. Patrick Joyce and Allison Barrett. The Committee voted to recommend that staff will provide a transcription of the recording made during oral argument when a transcript is ordered.

Additional information was then gathered by staff regarding the process and costs, and staff requested that the matter be returned to the Committee for further evaluation.

Discussion: At the March 4, 2009, Disability Procedures & Services Committee meeting, Ms. Juul explained the concerns the court reporting firms had regarding transcribing from tape and that they thought it would be better to have a court reporter present at the meetings. She also explained the estimated cost and process of transcribing from tape or having a court reporter present ([exhibit 1](#)).

J. Patrick Joyce stated that he no longer felt that a transcription of the oral argument is the best method if no reporter were to be present because of the difficulty in distinguishing the numerous speaking voices. Mr. Joyce suggested that when the attorneys argue the case they should make it clear to the Board which portions of the transcript they are emphasizing in support of their arguments. Mr. Joyce suggested that a letter be sent to all attorneys practicing before the Board stating the need to reference the transcript during oral argument.

After further discussion the Committee voted to revise its previous recommendation.

RECOMMENDATION

That the Board of Retirement instruct staff to notify the attorneys that they will need to clearly state why they are asking the board to request a transcript when they are presenting oral arguments, and staff will include a summary of that statement with the transcript when it is sent to the board members.

DJ/pr

Exhibit 1

**Cost Comparison
Audio Tape vs. Transcript**

	Estimated Annual Cost*	Process at Board Meeting	Comments
Audio Tape	Transcript ordered only: 7 x \$500 = \$3,500 per diem + transcription/page	Proceedings will pause before and after each oral argument so Systems can change tape.	May be difficult to transcribe from.
	All oral arguments: 35 x \$500 = \$17,500 per diem + transcription/page		
Court Reporter	Transcript ordered only: 7 x \$500 = \$3,500 per diem + transcription/page + 5 x \$150 = \$750 per diem only Total \$4,250	Court reporter will set up before oral arguments begin and leave when they are done.	More accurate. LACERA is charged for oral arguments that do not result in the ordering of a transcript.
	All oral arguments: 11 x \$150 = \$1,650 per diem only 35 x \$350 = \$12,250 transcription/page only Total \$13,900		

*based on 35 referee recommendations brought to the Board in 2008, with 7 transcripts ordered
1 board meeting had no oral arguments, 1 meeting had 2 transcripts ordered

October 26, 2000

[Recipient Name]
[Address]
[City, State, Zip Code]

RE: [Employee Name]– Disability Application

Dear [Recipient]:

We received your application for disability retirement filed on behalf of the above named employee on [date].

Please be advised that we will be contacting the employee to obtain an “Authorization to Release Records” so that you can provide us with the following:

1. A job profile that indicates the usual duties actually required to be performed by the employee.
2. A class specification.
3. All accident reports filed.
4. All medical reports filed.
5. The payroll office telephone number.
6. The date on which sick leave benefits expire.

When we are ready to begin processing the application our office will contact you. Please contact the Disability Retirement Services Section if you have further information to add to the application, if you wish to withdraw the application, or have other information affecting the application for disability.

Sincerely,

Sylvia R. Miller, Manager
Disability Retirement Services

cc:

SRM:tc



July 31, 1996

Adopted August 7, 1996

TO: Each Member
Board of Retirement

FROM: Sylvia R. Miller, Section Manager
Disability Retirement Services

SUBJECT: ALTERED APPLICATIONS FOR DISABILITY RETIREMENT

In the early 1980's the Board of Retirement directed the Disability Section Manager to design a disability application that would provide better information to the Board regarding the applicant's claim. The Section Manager worked with County Counsel, applicant's attorneys and representatives of some the unions to obtain information from other counties and design a new application.

When the application was finalized, it went to the Board of Retirement for their approval. The Board approved the application being used today.

Recently the staff in the Disability Section began receiving applications for disability retirement that are altered. Applicants represented by the law firm, Lewis, Marenstein, Wicke and Sherwin are lining out the last statement on the application that reads "I declare, under penalty or perjury, that to the best of knowledge the foregoing is true and correct". They then sign the application.

In consulting the Chief Counsel, Dave Muir, it was determined that applications that are altered should be rejected by the Board. However, in consideration of the applicant, staff and counsel feel that notice should be given to the law firm that the altered applications received by LACERA will be rejected.

Those applications already received by the Disability Section, will be placed on hold and the law firm will have ten (10) days to provide an unaltered copy of the application signed by the applicant. Until such copy is received, no further processing of the application will be done by the Disability Division.

Notice should also be given to the law firms, that any altered applications received after August 7, 1996 by LACERA will be rejected and returned to the law firm or the applicant.

It is therefore recommended that the board adopt the following policy:

Any applications received by LACERA that have been altered in any manner will be rejected and returned to the applicant or the law firm representing the applicant.

**BOARD OF RETIREMENT
LOS ANGELES COUNTY EMPLOYEES RETIREMENT ASSOCIATION
ATTORNEY'S CONSENT FOR THIRD PARTY/PARTIES TO ATTEND
CLOSED SESSION**

The undersigned represents and warrants as follows:

1. I am an attorney at law. One or more of my clients have disability retirement applications pending before the Board of Retirement at today's meeting.
2. I am authorizing the individuals listed below ("third parties") to attend the closed sessions of the Board of Retirement during the Board's discussion and consideration of the applications filed by my clients.
3. The third parties authorized to attend the closed sessions are:

4. This consent shall be in full force and effect through December 31, 2003, unless terminated earlier by written notice.
5. I am authorized to grant this consent. I agree to indemnify, defend, and hold harmless LACERA, its officers and employees, against any claims asserted by my clients arising out of the attendance of third parties pursuant to this consent.

Signature

Date

Disability Retirement Process

NON-SERVICE CONNECTED DISABILITY RETIREMENT

1. Eligibility is based upon a minimum of five years continuous County Service and Membership in a contributory retirement plan.
2. Retirement process takes three to six months (90-180 days).
3. Anyone considering a non-service connected disability retirement is urged to submit the application early.
4. The Department Head may submit an application for retirement for the employee, but only after well-documented extensive counseling. This procedure is reserved for the truly disabled employee. This procedure should not be abused.
5. Information needed for non-service connected disability retirement.
 - A) The Application is available from:

Retirement Division
Room 109
Hall of Administration (213) 617-2575, Ext. 260
 - B) Application Packet Includes:
 1. Information sheet
 2. Application for disability retirement (same as application for Service-Connected Disability)
 3. Physician's Statement
 4. Signature Card
 5. Medical Release
 6. Beneficiary Designation form
 7. Previous Service request form
 8. TEPHRA (tax withholding form)
 9. Self addressed envelope
 - C) Remind employee or family member that copies of the recorded of marriage certificate, and spouse's birth certificate (if married) will be needed to accompany the Retirement Application.
 - D) Application requires employee's signature.

Disability Retirement Process

NON-SERVICE CONNECTED DISABILITY RETIREMENT (Cont'd)

- E) The attending physician will not prepare the medical statement unless authorized to do so by the employee or, in the case of an incapacitated person, by the responsible next of kin.
6. Personnel Officers should not discuss amount of Nonservice Connected benefits with employees. Employee should be referred to retirement for answers regarding allowances.

Disability Retirement Process

Sections 31725.5 & 31725.6
Salary Supplement Provisions (Conti'd)

Sections 31725.5 and 31725.6 of the County Employees' Retirement Law provide a County employee, who is disabled from the original position, with the capability of being reassigned (rehabilitated) to a lesser position a salary supplement up to the amount of disability retirement allowance. This employee must meet all criteria for regular disability retirement. The issue before the Board of Retirement is the same as any other disability retirement, with the burden of proof being placed on the applicant.

The utilization of these two Sections of the Retirement Law requires that several conditions must be met:

- A) The Applicant must be found to be disabled by the Board of Retirement.
 - 1. Due to Service-connected causes (Section 31725.6)
 - 2. Due to Nonservice-connected causes (Section 31725.5)
- A) The criteria for the supplement is the same as for a disability retirement.
- B) The Applicant must be WILLING to accept the lesser position.
- C) The department must have a position to accommodate the applicants work restrictions.
 - 1. Applicant can be placed on a 'Y' rate until the Retirement Board action.
 - 2. Applicant is voluntarily demoted to the lesser position.

Mechanically speaking, upon the Retirement Board's action the department is notified of the Board's action and an effective date for the supplement is established.

The effective date is determined by:

- 1. If on 'Y' rate- the 1st of the following month.
- 2. If demoted, either the date of the disability application or the date of the demotion, which ever is the latest date. (Section 31724)

Disability Retirement Process

Sections 31725.5 & 31725.6
Salary Supplement Provisions (Conti'd)

The Retirement staff then determines the amount of the supplement and initiates a warrant to the applicant on a monthly basis. (Adjustments are made for cost of living raises)

At the time an applicant on the supplement finds that he/she ca no longer perform the duties of the lesser position, he/she should contact the Disability Section in order to retire. At this time the employee, and only the employee, may voluntarily file for total disability retirement. All that is required is a letter from the employee tath he/she no longer can work.

The Board then grants the retirement.

Disability Retirement Process

SERVICE-CONNECTED DISABILITY RETIREMENT

1. Permanent employees who are contributing members to the retirement system are eligible for benefits.
2. Length of employment required for eligibility is permanent employment status.
3. Disability Retirement process takes approximately 8 months from filing to decision.

A) Any employee considering application for service-connected disability retirement is urged to apply early before expiration of benefits.

B) Department may file application for employee under Section 31721.

C) Rehabilitation Services may assist employee in filing application.

4. The Application:

A) Available from:

Retirement Division
Room 109
Hall of Administration (617-2575, Ext. 260)

B) Application Packet Includes:

1. Information Sheet
2. Application for Disability Retirement
3. Physician's Statement
4. Signature Card
5. Self-addressed envelope
6. Medical Release
7. Beneficiary Designation form
8. Previous Service request for, -, q
9. TEPHRA- (tax withholding form)

C) The Application is completed by the employee.

D) Items in which Personnel Officer can supply assistance.

1. Inform return-to-work coordinator of department's desire to file an application on behalf of employee.

Disability Retirement Process

SERVICE-CONNECTED DISABILITY RETIREMENT (Cont'd)

2. Obtain Employer's Report of occupational injury/illness from RTW.
3. Provide copies of performance evaluations and other pertinent data with the application.

E. Information which Retirement Board may find useful if known (not heresay) to Personnel officers, employee's supervisor, or other responsible member of department.

1. Has employee been working at a second job, or attending school while off work.
2. Resume' of return to work and placement attempts.
3. Supervisory comments.
4. Other health problems at work, not formally documented, e.g. chest pains, fainting spells.
5. Any Environmental Health Section reports which are relevant.

NOTE:

Retirement Board staff urges quick, thorough investigation, and reporting of all industrial accidents by responsible departmental staff to protect both employees and departments.

F. Remind employee, or family member that these items will be needed with the retirement application.

1. Marriage License copy after it has been recorded.
2. If not married, that should be noted.
3. If married, proof of spouse's date of birth.
4. Copy of any Industrial Accident Commission (IAC) award.
5. Copy of any Compromise and Release statement.

Disability Retirement Process

SERVICE-CONNECTED DISABILITY RETIREMENT (Cont'd)

6. Any other supporting information or documents that apply to their case and application for retirement.
- G) Remind employee that Workers Compensation file will be processed through Retirement Board and no employee action is needed.



Adopted March 3, 1999

February 25, 1999

TO: Each Member
Board of Retirement

FROM: The Disability Procedures and Services Committee
Edgar Twine, Chair
Warren Bennett, Vice Chair
Les Robbins
Michael L. Falabrino

MEMBERS AT LARGE

Robert Stotelmeyer
Simon Russin

SUBJECT: **DISABILITY RETIREMENT EVALUATION
SUMMARY RECOMMENDATIONS**

On January 6, 1999, the Disability Procedures and Services Committee suggested a change be made to the "Disability Retirement Evaluation Summary" form. The change is requested for cases where a recommendation from staff is to deny the disability because the member is being accommodated.

In the past when an employer could accommodate a member's work restrictions, staff submitted their recommendation as "not disabled". During discussion the committee expressed a desire to have a more accurate recommendation that stated the denial was based on employer accommodation.

A new form including a "Deny-employer can accommodate" under Staff Recommendation, was submitted at the February 3, 1999 committee meeting for its review. A copy of the new form with an example agenda is attached for your review. The new form was approved and a recommendation was made to submit the new form to the Board for approval.

IT IS THEREFORE RECOMMENDED THAT the Board adopt the format change including a recommendation to "Deny-employer can accommodate" on the "Disability Retirement Evaluation Summary Form".

Attachments

SRM:ga



SAMPLE

APPLICATION NO.	0000
BOARD MEETING DATE	12-2-98
DATE OF APPLICATION	2-6-98

DISABILITY RETIREMENT EVALUATION SUMMARY

NAME	JOHN DOE	SOCIAL SECURITY NO.	999-99-9999
CLASSIFICATION	WORD PROCESSOR		
DEPARTMENT	FIRE	YEARS OF COUNTY SERVICE CREDIT	30
EMPLOYEE NO.	000	AGE	72

APPLICATION FOR	<input type="checkbox"/> NSCD <input checked="" type="checkbox"/> SCD	MEMBERSHIP	<input type="checkbox"/> GENERAL <input checked="" type="checkbox"/> SAFETY	SECTION	31720
NATURE OF DISABILITY	LOWER BACK				
DATES OF INJURY	1991				
WORK ASSIGNMENT AT TIME OF INJURY	FIRE STATION				

PRESENTLY IN COUNTY SERVICE	<input type="checkbox"/> YES <input checked="" type="checkbox"/> NO	DATE SERVICE ENDED	12-7-00	LAST DAY ON JOB	12-7-00
IF IN COUNTY SERVICE, CURRENT DUTIES					
CURRENTLY EMPLOYED ELSEWHERE	<input type="checkbox"/> YES <input checked="" type="checkbox"/> NO				
DUTIES IF EMPLOYED ELSEWHERE N/A					

RECOMMENDATIONS

PANEL DOCTOR'S REC.	<input type="checkbox"/> NOT PERM. INCAP. <input checked="" type="checkbox"/> PERMANENTLY INCAP.	<input type="checkbox"/> NSCD <input checked="" type="checkbox"/> SCD
STAFF REC.	<input type="checkbox"/> NOT PERM. INCAP. <input checked="" type="checkbox"/> DENY-EMPLOYER CAN ACCOMMODATE <input type="checkbox"/> PERMANENTLY INCAP	<input type="checkbox"/> NSCD <input type="checkbox"/> SCD

BOARD ACTION

FOUND TO BE PERMANENTLY INCAPACITATED	<input type="checkbox"/> NONSERVICE-CONNECTED <input type="checkbox"/> SERVICE-CONNECTED
<input type="checkbox"/> DENIED <input type="checkbox"/> UNRESOLVED	<input type="checkbox"/> SECTION 31725.5 <input type="checkbox"/> SECTION 31725.6
SM:GW	CONTINUED TO



July 18, 1995

Adopted August 6, 1995

TO: Each Member
Board of Retirement

FROM: Jack Thomas, Chair
Disability Procedures and Services Committee

**SUBJECT: PROPOSED PROCEDURES FOR ACCEPTANCE
OF DISABILITY APPLICATIONS**

The Board of Retirement has asked that staff recommend procedures for acceptance of disability applications. The Disability Procedures and Services Committee met and reviewed procedures.

We currently have a case pending in which the sole issue for the referee is whether the applicant should be permitted to file a disability claim 22 years after his retirement (i.e., whether or not the application is barred by the equitable doctrine of Laches).

Attached are proposed procedures for acceptance of disability applications prepared by our Legal Office for your review. The committee met and reviewed the recommendation and asked staff to prepare this item for the Board's approval.

IT IS THEREFORE RECOMMENDED THAT THE BOARD OF RETIREMENT approve the Procedures of Acceptance of Disability Applications.

SRM:shg

Attachment

PROCEDURES FOR ACCEPTANCE OF DISABILITY APPLICATIONS

APPLICATIONS FILED LESS THAN THREE YEARS AFTER SERVICE

1. Applications are processed. (LACERA will generally not be prejudiced by such a short delay).

APPLICATIONS FILED BETWEEN THREE TO FIVE YEARS AFTER SERVICE

1. The application will be "accepted subject to rejection".
2. The Applicant will be notified in writing that due to the delay in filing an application, LACERA must determine if the application should be processed. The letter will also inform the applicant that the determination will be based on whether the delay has prejudiced LACERA's ability to evaluate the Applicant's, medical condition as of the date of discontinuance of service.
3. The disability investigator will determine whether the delay has prejudiced LACERA's ability to evaluate the application and document the determination in a memorandum. A determination of prejudice shall require the concurrence of the Legal Office.
4. If it is determined that there is no prejudice, the application will be processed.
5. If it is determined that prejudice exists, the matter will be placed on the Board's agenda in closed session with a recommendation that the application be rejected as untimely.

APPLICATIONS FILED MORE THAN FIVE YEARS AFTER SERVICE

1. After consulting with the Legal Office, the disability staff will make a recommendation to the Board regarding the processing of the application.

POLICY FOR RETENTION OF DISABILITY RECORDS

This policy sets forth the retention requirements for disability retirement recordings relating to proceedings before the Board of Retirement.

(1) Tape Recordings of Disability Retirement Portions of Meetings of the Board of Retirement:

Audio tape recordings of disability retirement proceedings before the Board of Retirement will be made separate from, and in addition to, the recording of the entire meeting. All recordings of the disability retirement proceedings will be retained for **six years** and then returned to Administrative Services destruction.

(2) Disability Retirement Files:

(a) **Three years:** Hard copies of all disability retirement files will be retained for three years following :

1. Notice by mail of the Board's final action on the disability retirement application; e.g. granting of requested SCD or NSCD.
2. Final court order where the applicant sought review of the Board of Retirement's decision in the courts.

(b) **Six years:** Hard copies of disability retirement files will be retained for six years when:

1. A disability retirement benefit is denied by the Board of Retirement.
2. The applicant has filed an appeal, requesting an administrative hearing; however, the applicant subsequently withdraws the appeal.

**Adopted by the Board of Retirement
December 6, 2006**

Sections § 31725.5 and § 31725.6

Applications for § 31725.5 and § 31725.6 are to be treated like any other application; meaning the criteria is that the applicant must be found to be disabled for the ORIGINAL job.

Section § 31725.5 applies to nonservice-connected disabilities.

Section § 31725.6 applies to service-connected disabilities.

The conditions for a supplemental retirement allowance are contingent on:

1. The location of a position for the applicant within the applicant's work restrictions, as found by Workers' Compensation Rehabilitation and the department.
2. The acceptance of this position by the applicant.
3. The **voluntary** demotion by the employee. (The department should send us a letter indicating that the demotion took place in (date) (old item) (new item).

A voluntary demotion can be done two ways:

1. Demoted to lesser position, lesser salary, and no provisions to supplement for the pay cut. These cases will have the supplement start on either the date of application or the date of demotion per Section § 31724.
2. Demoted to lesser position, with a Y rate, assigned at the time of demotion.

The Y rate is based upon the salary earned at the time of demotion; it does not allow for any raises including the cost of living raise.

A Y rate must be approved by the Civil Service commission.

These cases have the supplement starting on the first of the month following the Board Action, and the Department removes the Y rate at the end of the month in which the Board acts.



July 12, 1996

TO: Management Staff

FROM: Marsha D. Richter
Chief Executive Officer

SUBJECT: **BOARD AGENDA ITEMS**

Agenda items prepared by staff for Board Meetings and Board Committee Meeting are to be reviewed by appropriate Executive staff prior to placement on a meeting's agenda. Legal memorandum should be reviewed by the Chief Counsel and investment related items should be reviewed by the Chief Investment Officer. Other items should be reviewed by either the Assistant Executive Officer or Chief Executive Officer.

This policy will apply to action and informational items prepared for the Boards.

Memos should be addressed to identify the actual author and should concluded with an "approved" line and space for the reviewer's signature.

Submission of drafts for review and approval should be done sufficiently in advance of the meeting's mailing date to allow for adequate review.

MDR:ivi

c: Board of Retirement
Board of Investments
Secretarial Staff



January 28, 1997

TO: Each Member
Board of Retirement

FROM: Disability Procedures and Services Committee
Edgar Twine, Chair
Sadonya Antebi
Cody Ferguson
Warren Bennett
Robert Stotelmeyer

SUBJECT: POLICY REGARDING BOARD ORDERED SECOND OPINIONS

The Disability Committee proposes that the Board of Retirement establish a policy of requesting clarification from the original examiner in a specialty before requesting a second opinion.

Staff discussed some recent issues that have been raised when the Board of Retirement asks for a second opinion by a new physician in lieu of a supplemental report from the original examiner.

Recently the Board has hired several new physicians. These physicians are many times providing first time reports to the Board for review. On occasion the Board has found the physician's report to be unclear or confusing. It would benefit the staff, the physician and the Board requesting a second opinion, that the Board requests a supplemental report requesting clarification.

By requesting a supplemental, staff and the physician will be better educated in knowing the Board's requirements for determining a disability retirement. It also provides staff the guidelines in which to measure a physician's ability to provide the type of reports that the Board requires of its examiners.

It is therefore recommended that the board establish the policy of requesting clarification from the original examiner in a specialty before requesting a second opinion.

If after a supplemental is ordered, the Board does not feel the report is adequate, the Board will provide staff with an explanation of why the report is not acceptable and request a second opinion.

SRM:shg

**BOARD OF RETIREMENT POLICY
BOARD MEMBER PROTECTION OF DISABILITY RECORDS**

Revised: September 7, 2006

PURPOSE:

LACERA is required by law to protect the privacy of its members' records. The disability retirement evaluation process presents a special challenge because of the large volume of medical records and other confidential information that must be distributed to physicians and members of the Board and LACERA staff.

In addition to basic privacy protections required by the 1937 Law and the Health Insurance Portability and Accountability Act (HIPAA), other laws that require LACERA to protect this information include:

- 1) the Health Insurance Information and Privacy Protection Act,
- 2) the Confidentiality of Medical Information Act, and
- 3) the California Health and Safety Code Sections 123110 et seq.

The Board of Retirement is establishing this policy for its members to follow in order to safeguard the confidentiality of the large number of documents and confidential information that they review in connection with the disability retirement evaluations.

LACERA'S DISABILITY RECORD PROTECTIONS:

The Disability Retirement Services Division (Disability Division), with the help of LACERA's Privacy Officer, has implemented a number of safeguards to protect the privacy of each applicant for disability retirement and minimize LACERA's exposure to liability when handling disability records. These safeguards include:

- 1) authorization requirements for data collection and access,
- 2) storage security,
- 3) chain of custody control and accountability,
- 4) copying control,
- 6) distribution control, and
- 7) destruction control.

The Disability Division carefully controls the copying of disability records. Proper authorizations must be on file, the copying must be done in a secure environment by designated staff, and the copies are accounted for until they are delivered to a final destination or destroyed. When confidential records are sent to a person or agency outside of LACERA, they are sent in a manner that preserves privacy. When the records are returned to LACERA, they are securely filed or destroyed using certified and bonded services.

These procedures help LACERA's staff fulfill their obligation to protect the confidentiality of member records.

BOARD OF RETIREMENT POLICY:

LACERA staff are required to observe the document control, privacy and security rules established to protect member disability records and related confidential information. These rules apply regardless of form. The records or information may be on paper, in electronic computer files, in audio and video recordings, or in any other medium. In support of staff's efforts, the Board of Retirement and its committees hereby adopt similar controls. Specifically:

Storage

Board Members are required to protect any member personal information in their possession from inappropriate access as stated in LACERA's Privacy Policy. This includes storing and transporting this information securely using reasonable safeguards, such as locked filing systems protected from misappropriation. Any electronic data should be protected using safeguards prescribed by LACERA's Security Officer.

Usage by LACERA and its Associates

Use of member personal information should be limited to the minimum amount necessary to achieve the authorized objective, the processing of the disability application. Unless otherwise authorized by the member, this means that member personal information connected with an application for disability may only be used by or discussed with those designated staff and associates of LACERA directly involved in the specific member's disability application process. Any such discussion or examination of member personal information should be conducted in a private environment away from unauthorized hearing or viewing. For instance, during Board of Retirement disability meetings, member personal information may only be discussed in a closed session.

Sharing with External Parties

If any party outside of LACERA, including the disability applicant, requests from board members any information contained in disability records, the board member should direct the requesting party to the Disability Division so that any exchange of information is controlled and secured.

Copying

To ensure the effectiveness of procedures established to secure confidential records, LACERA's board members may not copy for any purpose any member disability records in their possession. In addition, they may not copy or remove from LACERA's premises any electronic recordings of Board executive sessions.

Return of Records

Board members must leave disability records intact in the Boardroom for proper accounting and destruction at the close of the board meeting in which the applications are adjudicated.

Enforcement

Board members who become aware of conditions which may increase the risk that member disability records can be compromised should immediately notify the Disability Division, LACERA's Privacy Officer, or LACERA's Executive office so that appropriate steps may be taken to correct the condition or mitigate the risk.

The Board of Retirement may investigate and address any suspected violation of this policy in a manner consistent with LACERA's privacy policy, the Board of Retirement's ethics policy, other policies regarding board member conduct and dispute resolution, and applicable laws.

**LACERA
BOARD OF RETIREMENT POLICY**

**EX PARTE COMMUNICATIONS
ON DISABILITY RETIREMENT MATTERS**

I. STATEMENT OF PURPOSE

The Board of Retirement adopts this policy to protect the due process rights of LACERA members who apply for a disability retirement, and to ensure the fairness and integrity of the manner in which disability retirement applications are processed and considered by the Board. This policy recognizes the right of the disability retirement applicants to have their applications decided on an impartial basis, while at the same time accommodating the need for flexibility in the administrative process. Such considerations were discussed by the California Court of appeal in **Howitt v. Superior Court** (1992) 3 Cal.App.4th 1575. The Board of Retirement adopts this policy to ensure compliance with guidelines set forth in the **Howitt** decision.

II. COMMUNICATIONS BETWEEN BOARD MEMBERS AND LACERA STAFF

A. Pre-Appeal Proceedings

- 1. Disability Investigation Division.** Members of the Board of Retirement may contact the Manager, Disability Investigation Division or the manager's staff for information and assistance regarding the procedural aspects of a disability retirement application. Discussions with staff members of the Disability Investigation Division regarding the merits of a particular case should be avoided, in the interest of assuring that all members of the Board receive the same information. This does not prohibit a Board member from providing factual information to the Disability Investigation Division relating to an application, nor does it prohibit a Board member from contacting the Manager, Disability Investigation Division and requesting that additional information or clarification be provided at the time the matter comes before the Board for action.

- 2. Disability Litigation Office.** Board members should not contact the Disability Litigation Office regarding a particular case. The **Howitt** Court cautioned that "[t]o allow an advocate for one party to also act as counsel to the decision-maker creates the substantial risk that the advise give to the decision-maker, 'perhaps unconsciously' as we recognized in Civil Service Commission [citation], will be skewed." To assure the proper separation of

functions within LACERA, the Disability Litigation Office has been organized as a division separate and independent from the Legal Office, reporting directly to the Chief Executive Officer. In keeping with the proper separation of functions, members of the Board shall seek advice regarding the legal issues raised in a case from the Legal Office, and shall not discuss the case with the attorneys in the Disability Litigation Office.

3. **Legal Office.** The Legal Office serves as the legal advisor to the Board. Members of the Board may contact the Chief Counsel or members of his staff for advice regarding legal issues raised in a disability retirement application.

B. Administrative Appeal

1. **Disability Investigation Division.** Communications with the staff of the Disability Investigation Division regarding the merits of a case are prohibited. Communication regarding the status of a case, or other procedural aspects, may be directed to the Division Manager, Disability Investigation Division.
2. **Disability Litigation Office.** Attorneys in the Disability Litigation Office serve as the Fund's advocate while a case is pending in the administration appeal. To preserve their impartiality, members of the Board should not communicate with the Disability Litigation Office staff regarding the merits of a case.
3. **Legal Office.** The Legal Office may continue to advise the Board regarding legal issues raised by a disability retirement application.

C. Post-Appeal Litigation Proceedings

1. **Disability Investigation Division.** Board members may contact the Manager, Disability Investigation Division for information regarding the status of a case in litigation.
2. **Disability Litigation Office.** To preserve their impartiality, members of the Board should not communicate with the Disability Litigation Office staff regarding the merits of a case.
3. **Legal Office.** The Legal Office may advise the Board regarding disability retirement cases being litigated in the courts.

III. COMMUNICATIONS OF BOARD MEMBERS WITH THE APPLICANT AND/OR THE APPLICANT'S COUNSEL

Members of the Board should avoid communicating with the applicant and/or the applicant's counsel regarding the merits of the application during the time the matter is pending before the Board. Questions and inquiries from applicants or their counsel regarding the merits of the application should be directed to the Disability Investigation Division, until such time as the Board has acted on the application. This Section III does not preclude a Board member from responding to questions and inquiries from applicants or their counsel regarding procedural matters or the status of an application.

IV. COMMUNICATIONS BETWEEN THE LEGAL OFFICE AND THE DISABILITY LITIGATION OFFICE

Attorneys in the Legal Office shall restrict their role to that of advisor to the Board and LACERA staff on legal issues related to disability retirement applications. Attorneys in the Disability Litigation Office shall restrict their role to that of advocate for the Fund in disability cases pending on administrative appeal.

The staff of the Legal Office shall not communicate with the staff of the Disability Litigation Office concerning the merits of any case pending before the Board.

This policy does not prohibit attorneys in the Legal Office from conferring with attorneys in the Disability Litigation Office concerning general issues of law and procedure.

February 14, 2008

APPROVED

March 5, 2008

TO: Each Member
Board of Retirement

FROM: Disability Procedures and Services Committee
James P. Harris , Chair
Yves Chery, Vice Chair
Sadonya Antebi
Simon S. Russin

Ed C. Morris, Alternate

SUBJECT: HEART PRESUMPTION: POLICY REGARDING REVISED
PROCEDURES TO ACCOUNT FOR THE APPELLATE COURT'S
OPINION IN **PELLERIN V. KERN COUNTY EMPLOYEES'**
RETIREMENT ASSOCIATION

FOR: March 5, 2008 Board Meeting

RECOMMENDATIONS

1. That staff be required to investigate whether any admissible evidence exists to rebut the presumption. Staff's findings on this issue must be set forth in the Evaluation Summary Report in the following format:

Heart Presumption

Government Code Section 31720.5, applicable to safety members, fireman members, and members in active law enforcement with at least 5 years of retirement service credit, establishes a rebuttable presumption that a disability based on "heart trouble" is service-connected. Under the heart presumption, the burden of proof is shifted to LACERA to introduce evidenced sufficient to override the presumption. If not rebutted by admissible evidence, the Board is required to find the member's disability service-connected.

Staff's investigation produced the following evidence that the Board should consider in determining whether the presumption has been rebutted: [List evidence.]

OR

Staff's investigation failed to produce any evidence that could be considered to rebut the presumption.

2. That the Board grants a disability retirement pursuant to both Government Code sections 31720 and 31720.5 in cases where the heart presumption cannot be rebutted.

EXECUTIVE SUMMARY

Due to the decision of the Court of Appeal in **Pellerin v. Kern County Employees' Retirement Association** the Disability Procedures Committee proposes that in cases where the heart presumption of Government Code section 31720.5 is raised, the Board of Retirement amend Board procedures to comply with this decision.

Staff discussed the issues raised by the **Pellerin** decision and the impact upon the Retirement Association. The legal effect of the Court's decision is that LACERA has the burden of proof to show that a member's heart trouble is not service-connected. In the absence of such showing, the member is entitled to a service-connected disability.

The **Pellerin** decision further held that when the presumption is not rebutted, the system should grant a service-connected disability retirement under both sections 31720 and 31720.5

Noted and approved:

Janice Golden
Assistant Executive Officer

Attachment

September 6, 2001

TO: Each Member
Board of Retirement

FROM: Disability Procedures and Services Committee
Warren Bennett, Chair
William Pryor, Vice Chair
Mark Saladino
Sadonya Antebi
Les Robbins, Alternate

SUBJECT: **PAYMENT OF COURT AWARDED COSTS**

When a disability applicant is successful in obtaining a writ of mandate to compel the Board of Retirement to grant a disability retirement, the court may also award costs of the lawsuit. The LACERA Disability Litigation then takes the following steps:

1. The attorney reviews the Memorandum of Costs submitted by applicant's attorney.
2. The attorney determines if the claimed costs are valid. In appropriate cases, a motion to tax costs is filed and the Court is then required to rule as to whether the cost items in question are recoverable.
3. The attorney writes a memorandum to your Board requesting payment of the court-awarded costs.

The Disability Procedures and Service Committee recommends that the Disability Litigation Office be authorized to pay court-awarded costs without seeking Board of Retirement approval. After payment is made, the Disability Litigation Office would then advise the Board of Retirement of the payment of such costs.

This recommendation is limited to court costs only, and does not include consideration of awards for attorney's fees. This procedure would enable your Board to streamline the payment process.

THEREFORE, IT IS RECOMMENDED your Board authorize the Disability Litigation Office to pay court-awarded costs in disability cases without seeking Board of Retirement approval, and to advise the Board of Retirement when costs have been paid.

FMB/lh
BOR/costs.mem



Adopted February 4, 1998

January 22, 1998

TO: Each Member
Board of Retirement

FROM: Disability Procedures & Services Committee
Edgar H. Twine, Chair
Sadonya Antebi, Vice Chair
Les Robbins
Michael Falabrino
Warren Bennett (Alternate)

SUBJECT: PROPOSED PROCEDURES FOR RETURNING DISABILITY CASES TO
STAFF FOR CLARIFICATION

On January 7, 1998, during its regular meeting, the Disability Procedures & Services Committee reviewed the procedures for returning disability cases to staff for clarification.

The committee determined that it is in LACERA's best interest to adopt the proposed procedures to ensure the integrity of the disability process with regard to the removal of cases.

The proposed procedures, attached for your review, provide the process which Board members should use when removing a case from the Disability agenda. The procedures also require the Advisory Physician to confirm in writing the specific reason for the removal of the case.

Therefore, it is recommended that your board approve the proposed procedures for returning disability cases to staff for clarification.

Attachment

FMB:ag

c: Marsha D. Richter
Gregg Rademacher
David L. Muir
Sylvia Miller

PROCEDURE FOR RETURNING CASES
TO STAFF FOR CLARIFICATION

(ADVISORY PHYSICIAN)

This procedure is being established for the Board of Retirement's Advisory Physician to remove a case from the disability agenda and return to the Disability Section Manager for clarification and additional information.

1. The advisory Physician will contact the Section Manager asking the case be removed. This should be done as early before the Board meeting as possible.
2. The Section Manager will inform the Chair of the Board so that an announcement may be made, if necessary, to the other Board Members.
3. The specific reason for the request will be confirmed in writing by the Advisory Physician and sent to the Section Manager.
4. The Section Manager will review the request with the Investigator handling the case and they will investigate the case further and/or request more information from the examining physician.
5. Once the information is obtained, the Section Manager will contact the Advisory Physician and provide the updated information.
6. A supplemental report by the investigator will be written providing the Board of Retirement the updated information and all back-up material.
7. The case will be rescheduled on the agenda under the Revised Section.

PROCEDURE FOR RETURNING CASES
TO STAFF FOR CLARIFICATION

(BOARD MEMBERS)

This procedure is being established for the Members of the Board of Retirement to remove a case from the disability agenda and return it to the Disability Section Manager for clarification and additional information.

1. At the beginning of the disability portion of the meeting in open session, the Board member will request that the Chair remove the case.
2. When the case comes forward for discussion the Board Member will state the specific reason why they want it returned to staff. The Board by majority vote will approve motion to return case to staff.
3. The Section Manager will review the request with the Investigator handling the case and they will investigate the case further and/or request more information from the examining physician.
4. A supplemental report by the investigator will be written providing the Board of Retirement the updated information and all back-up material.
5. The case will be rescheduled on the agenda under the Revised Section.

Rev. 12/16/97



August 14, 2008

APPROVED**September 3, 2008**

TO: Each Member
Board of Retirement

FROM: Disability Procedures and Services Committee
James P. Harris, Chair
Yves Chery, Vice Chair
Sadonya Antebi
Simon S. Russin

Ed C. Morris, Alternate

FOR: September 3, 2008, Board of Retirement Meeting

**SUBJECT: PROPOSED MONTHLY BILLING PROCEDURES COVERING
REVIEW OF DISABILITY RETIREMENT CASES**

RECOMMENDATION

As used in Assembly Bill 753 for billing purposes, that your Board adopt the term "month" to mean a thirty day period, extending from the fifteenth day in one month to the fifteenth day of the next month.

SUMMARY

Background: Assembly Bill 753, now Government Code section 31521.3, authorized compensation for the review of disability cases, and took effect on January 1, 2008. Such compensation applies to the appointed and retired members of the Board who must certify, each month, the amount of time devoted to reviewing cases. A question has arisen regarding the meaning of the term "month" for billing purposes. Some members want to know if the term refers to a calendar month or a thirty day period. As written, the term refers to a thirty day period.

Discussion: Webster's defines the term "month" as:

1. One of the 12 divisions of the year according to the Gregorian calendar.
2. A period extending from a date in one calendar month to the corresponding date the next month.
3. **a.** Four weeks. **b.** Thirty days."

Websters' II, New Riverside University Dictionary, 1984.

Government Code section 31521.3 (b) provides in part:

“(b) A board member compensated pursuant to subdivision (a) shall certify to the retirement board, in a manner specified by the retirement board, the number of hours spent reviewing disability cases each month. In no event shall the number of hours compensated under this section exceed 32 hours a month.”

Said subsection deals with the time spent reviewing disability cases. Disability cases are sent by LACERA to Board members for review twice a month. The first “mailing” occurs two weeks prior to the monthly Disability Retirement Board Meeting. This meeting is scheduled for the first Wednesday of the month unless it occurs on a holiday or it is rescheduled due to some exigency. The second “mailing” takes place one week before the scheduled Disability Board of Retirement Meeting. Both mailings always take place after the 16th of the month.

For billing purposes, the monthly cycle should follow the cycle of mailing cases to the Board. To simplify matters, the monthly cycle should run from the fifteenth of one month to the fifteenth of the following month. This should provide the Board members with sufficient time to review a case and be compensated for up to 32 hours as allowed by law. To assist you, the proposed Disability Review Claim Form and Schedule for Reporting are [attached](#).

Conclusion: Government Code section 31521.3 provides for compensation for time spent each month by certain retirement board members to review disability cases. As this code section does not specify a calendar month, the term “month” can be interpreted to mean a thirty day period from a date in one month to the corresponding date in the following month. This will provide for uniformity and fairness.

IT IS THEREFORE RECOMMEND THAT YOUR BOARD adopt the monthly cycle for billing under Government Code section 31521.3 from the fifteenth of one month to the fifteenth of the following month.

July 25, 2002

TO: Fern Billingsy, Senior Counsel
Legal Office

FROM: Sylvia R. Miller, Manager
Disability Retirement Services

SUBJECT: ASSIGNMENTS OF CASES TO HEARING OFFICERS

Per your request, I have prepared our procedure for assigning cases to our hearing officers. Below I have listed the steps followed by our two appeals clerks in assigning cases to our hearing officers on a rotational basis. (Originally the staff used a card method in which the referees were assigned according to whichever card was first. Once the assignment was made, the card was moved to the back of the group)

NEW APPEALS

1. Staff uses a Referee Assignment Log, where referees are listed in alphabetical order. Once the alphabetical listing has been exhausted, staff repeats the process.
2. Staff then logs the date the case was assigned next to the referee's name, the name of the member and the clerk who assigns the case.
3. If an affidavit is filed, the case is reassigned and the reassignment date is listed and the name of the new referee.

REASSIGNED CASES

1. Staff uses a Reassignment Log to track the reassigned cases. The purpose of the second log is to maintain a time line and to ensure that packages are sent out in a timely manner.
2. The following information is contained in this log:

Name of applicant
Date of appeal
Attorney for applicant
Original referee
Date package sent to attorney
Last date for first reassignment
Date package sent to referee (If there is no second affidavit filed)
Name of person filing affidavit
New referee
Last date for second reassignment
Date package sent to referee (If there is a second affidavit filed)

LACERA POLICY STATEMENT**DISABILITY RETIREMENT SERVICES APPROVAL OF SERVICE
PROVIDER INVOICE POLICY STATEMENT****(Effective January 1, 2015)****Purpose**

Disability Retirement Services (DRS) routinely receives service provider invoices from various vendors in conjunction with the processing of applications for disability retirement. Service providers include panel physicians, hearing officers, copy services, job analysts, court reporters, investigative and database services, and outside legal counsel.

DRS has a robust checks and balances system to ensure any invoices received adhere to established contracts, procedures, and the costs charged for goods or services is reasonable based on the type and amount of work performed. DRS Investigative Staff, DRS Legal Counsel, and Disability Litigation Staff review the invoices to ensure services were provided in the prescribed manner and in compliance with the contract guidelines within the appropriate fee schedules and timelines. DRS Quality Assurance resolves any disputes related to invoices prior to submission to DRS Management for final review and payment authorization. DRS Administrative Staff processes the request and sends the payment request to Accounting for review and final payment.

This policy will authorize and direct LACERA staff to pay service provider invoices directly after they have been processed through the above described quality control process and approved by the DRS Division Manager. The DRS Division Manager, or their designated staff, will provide a quarterly report to the Board of Retirement for review and comment.

I. Statement of Policy

Staff is authorized to pay DRS Service Provider Invoices up to \$15,000 upon receipt and after concurrence of DRS Investigative Staff or Disability Litigation Staff, DRS Quality Assurance Staff, DRS Administrative Staff, DRS Management, DRS Legal Counsel, and Financial and Accounting Services Division review and approval. Invoices over \$15,000 will be submitted to the Board of Retirement for approval prior to payment. DRS will provide a quarterly report to the Board of Retirement for review and comment.

II. Implementation

This policy is established pursuant to the Board of Retirement's fiduciary responsibility to prudently administer the retirement plan in accordance with the

County Employees Retirement Law of 1937. This policy may be modified in the future by Board of Retirement action.

Adopted: December 3, 2014

Some felt it was more difficult to get some of their findings completed within the 60-day requirement.

Another important issue was that of in pro per hearings. When a hearing officer receives an in pro per applicant, a prehearing is set as early as possible. Once the prehearing has been conducted, it can take many months to set a hearing or the case is dismissed after 3 years. This means the hearing officer can wait up to 3 years to bill LACERA for a bill of \$300 or less.

Based on the information obtained, staff recommends that the Board consider increasing the fees for the hearing officers and making immediate payment for all in pro per prehearings. In consulting with Legal Counsel, it has been determined that an amendment to the current agreement would be sent to each hearing officer if adopted.

IT IS THEREFORE RECOMMENDED THAT THE BOARD:

- (1) Increase the hourly compensation paid to their Disability Hearing Officers from \$100 per hour to \$150 per hour; and
- (2) Allow compensation to be paid to the Disability Hearing Officers immediately following all prehearings for in pro per applicants.

Noted and approved:

David L. Muir
Chief Counsel

Attachment

DM:SRM:tlc

October 16, 2002

TO: Each Member
Board of Retirement

FROM: Disability Procedures & Services Committee
William Pryor, Chair
Edgar Twine
Mark Saladino
Sadonya Antebi

Alternate: Les Robbins

**SUBJECT: PROPOSED POLICY AND PROCEDURES
FOR HIRING LACERA HEARING OFFICERS**

Recommend the Board of Retirement adopt the attached policy and procedures for hiring LACERA hearing officers.

In an audit conducted by PriceWaterhouseCoopers, the Disability third party contracts process was reviewed and a report was issued ending June 30, 2001. Consequently, the firm made the following recommendation:

“Management should develop written policies and procedures in relationship to the disability third party contracts process. Written policies and procedures are an essential component of the sound internal control function and will significantly add to the overall effectiveness of the disability third party contracts process. The development and dissemination of such procedures will also illustrate the tasks and responsibilities to be performed by each staff member in the case of employee turnover.”

The policies and procedures for hiring physicians to the LACERA Panel of Examining Physicians was reviewed by the Disability Procedures and Services Committee on October 2, 2002, and was approved as written for recommendation to the Board.

Attached are the proposed policy and procedures for hiring hearing officers for the disability appeal administrative hearing process.

IT IS THEREFORE RECOMMENDED THAT the Board of Retirement adopt the written Policy and Procedures for Hiring LACERA Hearing Officers.

Noted and approved:

David Muir
Chief Counsel

Attachment

DM:SRM:tlc



**DISABILITY RETIREMENT SERVICES DIVISION
POLICY AND PROCEDURE FOR HIRING LACERA HEARING OFFICERS**

LACERA's Board of Retirement, by use of the Disability Procedures & Services Committee, oversees policies and procedures for processing Disability applications. They also oversee the performance of service provider and their fees. In addition, the Committee conducts training on implementation and interpretation of Disability legislation.

As part of the appeal process for disability applicants, the Committee interviews and makes recommendation to hire new hearing officers to the Board of Retirement. The procedures for recruitment and retention of new hearing officers are listed below.

Step 1: The process for hiring Hearing Officers for LACERA's Disability Retirement Appeals is prompted by a request by the Board of Retirement or by the Disability Procedures and Services Committee.

Step 2: A proposal to hire additional hearing officers is placed on the Disability Procedures and Services Committee agenda for discussion to determine a tentative schedule for advertising, interviewing and hiring. The Disability Retirement Services Manager will work with LACERA's Legal Office to prepare background materials.

Step 3: Once the request is issued, an advertisement is written as follows:

The Los Angeles County Employees Retirement Association (LACERA) is seeking qualified attorneys to serve on its panel of hearing officers to preside over administrative hearings held for the purpose of determining eligibility for disability retirement.

Applicants must be a member of the State Bar of California and should have a minimum of five years of experience in administrative agency proceedings. Prior experience in a judicial or quasi-judicial position is desirable.

Hearing Officers are engaged as independent contractors for a period of one year, subject to annual renewal and are compensated at the\$ [current rate] per hour set by Board of Retirement.

Interested candidates may send their resume to:

Disability Retirement Services
LACERA
P.O. Box 7060
Pasadena, CA 91109-7060

Responses must by postmarked no later than _____.

- Step 4: The advertisement will be placed with various media, organizations and LACERA's website to achieve a diverse candidate pool.
- Step 5: The Legal Office and Disability Procedures and Services Committee will set a schedule for reviewing resumes and conducting interviews.
- Step 6: The Legal Office will conduct an initial screening of all candidates using a point system to rate the candidates for the following criteria:
- Overall legal experience
 - Worker's compensation & disability experience
 - Other administrative proceedings
 - Presiding judge experience
- Step 7: The Chairman of the Board of Retirement will appoint members to an Ad Hoc Committee to conduct interviews. The Ad Hoc Committee consists of four board members and one alternate member.
- Step 8: The Legal Office will select the top candidates to be interviewed by the Ad Hoc Committee.
- Step 9: Interview schedules are set and the Ad Hoc Committee and Legal Office staff will conduct 20-30 minute interviews. References and writing samples are also reviewed.
- Step 10: The Ad Hoc Committee then makes a recommendation to the Board of Retirement to hire the top selected candidates.
- Step 11: Once the candidates are approved by the Board of Retirement, the Disability Retirement Services Manager will send the Hearing Officers their formal agreements and their names are placed on the Panel of Hearing Officers. Each hearing officer will be selected to arbitrate appeals on a rotating basis.



March 20, 2002

TO: Each Member
Board of Retirement

FROM: Disability Procedures & Services Committee
Warren Bennett, Chair
William Pryor, Vice Chair
Mark J. Saladino
Sadonya Antebi

Adopted by the Board of Retirement April 3, 2002

Alternate: Les Robbins

**SUBJECT: PROPOSED POLICY FOR DISABILITY EXAMINATIONS
FOR OUT-OF-STATE APPLICANTS**

The Board requires that one or more of LACERA's panel physicians examine all members applying for disability retirement. The Board should establish a policy for physician examinations for members who live out of state and apply for disability retirement.

Members can apply for more than one claim of disability. If a member files two or more claims of disability, each claim is examined separately. If the physician finds the member not disabled or the disability to be nonservice-connected for the first claim, then the member is examined for the next claim.

In the case of out of state applicants, traveling back and forth for multiple claims can create a hardship for our members. In order to eliminate this problem, the Disability Retirement staff could try to arrange the medical appointments as close together as possible so that the member need only make one trip to California.

Although the multiple examinations may not be necessary, the number of occurrences for these arrangements would be minimal at most.

On March 12, 2002, Disability Procedures and Services Committee reviewed and recommended that the attached policy for disability examination for out-of state applicants be adopted by the Board of Retirement.

IT IS THEREFORE RECOMMENDED THAT the Board of Retirement adopt the proposed policy for members living out of state and applying for disability retirement.

Noted and approved:

David L. Muir
Chief Counsel

Attachment

SRM:tc

POLICY REGARDING OUT-OF-STATE PHYSICALS

The Board of Retirement requires each applicant for disability benefits to be examined by one of more Board appointed physicians. Each applicant may seek retirement benefits based on more than one injury.

In order to reduce the burden on applicants who live outside the State of California, the Board has determined that the following procedure must be applied:

1. Disability staff will contact the out-of-state applicant regarding medical evaluations, and inform the applicant of the need to return to the State of California. The return to the State of California will be at the applicant's expense.
2. Disability staff will schedule medical evaluations for out-of-state applicants. If the applicant has more than one injury that necessitates evaluation by more than one physician, the applicant will be evaluated for all claimed injuries within the same visit to the State of California.
3. If evaluation for all claims is not feasible within the same visit to the State of California, the member, at his or her own expense, must return to the State of California for each additional evaluation.
4. The application for disability will be initially evaluated for the first claimed injury. If the Board denies the application, or finds the member disabled for nonservice-connected reasons, then the application will proceed on the next claimed injury.



January 26, 2009

Approved
February 4, 2009
Board of Retirement

TO: Each Member
Board of Retirement

FROM: Disability Procedures & Services Committee
James P. Harris, Chair
Yves Chery, Vice Chair
Sadonya Antebi
Simon S. Russin
Ed C. Morris, Alternate

FOR: February 4, 2009, Board of Retirement Meeting

SUBJECT: **PROPOSED POLICY REGARDING CONFLICT OF INTEREST
AND LACERA PANEL PHYSICIANS**

SUMMARY

Background: At the January 7, 2009 Disability Procedures & Services Committee meeting there was a discussion regarding whether it would be a conflict of interest for a LACERA Panel Physician to be permitted to submit a Physician Statement of disability in connection with a member's Application for Disability Retirement.

Discussion: James Castranova, Legal Counsel provided a legal opinion stating that "there is no conflict of interest as long as that doctor is not subsequently used by LACERA as the Board Panel Physician in the case". He informed the Committee that LACERA currently has an unwritten practice of NOT using a physician who has served as a treating doctor, performed services in a workers' compensation case, or signed the Physician Statement of Disability in connection with a member's Application for Disability Retirement.

The Committee instructed staff to prepare a formalized policy to address this issue, thus preventing any appearance of impropriety.

IT IS THEREFORE RECOMMENDED THAT the board adopt the following proposed policy to address this issue:

Proposed Policy: LACERA will not use a Board Panel Physician in a disability retirement case where that physician previously provided, in another matter, services relating to the applicant's medical condition.



**PANEL PHYSICIAN GUIDELINES
FOR EVALUATING MEMBERS FOR DISABILITY RETIREMENT
(Please review before completing your report)**

The Board of Retirement relies heavily upon the report by its panel physician to make a finding on applications for disability retirement. You are requested to provide the Board with your opinions, and the reasons for your opinions, on the following questions:

- (1) Is the applicant capable of performing each of the duties described in the Class Specification for the applicant's occupation?
- (2) Is the applicant substantially able to perform the usual duties of his or her actual assignment?

In this regard, an employee may not be able to perform each and every duty within the job classification, yet still be capable of substantially performing the usual duties. If an employee cannot substantially perform the usual duties of the job and the condition is permanent in terms of recovery, that employee is incapacitated under Retirement Law.

A disability is considered "permanent" when the employee has reached maximal medical improvement, meaning his or her condition is well stabilized and unlikely to change substantially in the next year with or without medical treatment.

- a) If the employee is **permanently incapacitated**, the physician must describe which duties of the job the employee cannot perform and why the employee cannot perform them.
 - b) Was the employee permanently incapacitated **at the time** he/she **left County service**?
 - c) If the employee is **not** permanently incapacitated, the physician must state why the employee, despite his/her claim for disability, can perform the job.
- (3) Did the Applicant's employment play a role in any injury or illness that the Applicant claims to cause incapacity for duty?

If so, please state in detail how the job or job environment including industrial factors caused, aggravated, lighted up, or contributed to the condition(s) including a summary of all supportive facts. The Board will determine from your opinion whether the role was real and measurable.

Your evaluation must be based on:

- Your examination of the applicant
- Your review of the Class Specification and the Job Analysis, if available
- Your exam with the applicant to determine the actual and usual job duties and the physical requirements of the job
- Your review of the medical records
- The information provided in the Disability Retirement Evaluation Report, prepared by LACERA staff.

Note: The applicant has been instructed NOT to bring any records to the medical appointment. Should the applicant do so, please do not review them. The correct procedure is to direct the applicant to forward these documents to the Disability Retirement Specialist

assigned to his or her case. The documents will be recorded and sent to you for review. This procedure is necessary should the case go to appeal.

The opinion you provide LACERA is restricted to matters within your specialty.

However, you may identify medical conditions outside of your specialty that you believe need medical attention.

The report should include at least the following sections:

- I. Job Description** – Your description of the applicant's job duties and its requirements.
- II. History of Injury/Illness**
- III. Applicant's Complaints** – Must be based on your interview of the applicant.
- IV. Description of Examination** – Examination protocol, explanation of tests conducted, if any, and statement of findings. Include the member's height and weight in your report.
- V. Medical History** – Review of applicant's medical history and prior injuries/illnesses.
- VI. Review of Records**
- VII. Diagnostic Impression**
- VIII. Conclusions** - Present your answers to the question of whether the applicant is incapacitated and, if so, whether the incapacity is service-connected. Include the data on which you rely and the reasoning by which you progress to your conclusions.
- IX. Contrary Opinions** – Include a statement of why you do not accept the contrary opinions of other physicians.

If LACERA receives a panel's physician's report that is unclear or does not justify the conclusions, a supplemental report may be requested.

ATTENTION MEDICAL STAFF: If any psychiatrist on our panel orders a MMPI-2 test, it should be sent to Caldwell Reports for interpretation. When Caldwell interprets the test, a copy will be sent to LACERA and the requesting physician.

All Panel Physicians: Please order MRI, CT, and selected other diagnostic imaging services through Magnetic Imaging Services, Inc. LACERA's evaluating physician should contact LACERA's case investigator/Disability Retirement Specialist for scheduling and processing. If you have any questions or need additional information, contact LACERA's Disability Retirement Services Division at **(626) 564-2419**.

LACERA POLICY STATEMENT

HIRING OF PANEL PHYSICIANS: QUALIFICATIONS, LICENSING, CERTIFICATION, AND INSURANCE REQUIREMENTS FOR BOARD APPOINTED PANEL PHYSICIANS

(Effective November 4, 2015)

Purpose

The purpose of this policy is to establish the governance concerning the qualifications, hiring, licensing, certification and insurance requirements for all Board Appointed Panel Physicians (“Physician(s)”) and to clearly define the auditing mechanism to ensure that all requirements are maintained throughout the life of the contractual relationship with the physicians. This policy will also establish actions in the event a Physician is unable to maintain the Board required licensing, certification, or insurance coverage.

I. Statement of Policy

The Board of Retirement requires all Physicians, wishing to be appointed to the Board of Retirement's Panel of Physicians, to hold and maintain a valid California medical license, board certification when available within a specialty, and medical malpractice insurance coverage.

Medical License

All Physicians shall, at all times during the term of their contractual agreement with LACERA, maintain a valid medical license issued by the State of California Medical Board and shall maintain a medical record free of significant disciplinary actions, malpractice judgments/settlements, and criminal charges.

Board Certification

All Physicians shall, at all times during the term of their contractual agreement with LACERA, be a member of the American Board of Medical Specialties, a specialty board with the Accreditation Council for Graduate Medical Education accredited postgraduate training program, or a specialty board approved by the Medical Board of California's Licensing Program or its equivalent when available within a specialty.

Insurance Coverage

All Physicians shall, at all times during the term of their contractual agreement with LACERA, maintain insurance coverage and limits as specified in the individual contract. Physicians will provide LACERA with proof of such insurance coverage upon entering into a contract and annually thereafter.

Physician Requirements Regarding Reporting of Lapses and Resulting Penalties for Non-Compliance

All Physicians shall immediately notify LACERA if any license, certification, or insurance coverage is lapsed, suspended, or revoked, or if any proceeding or investigation is commenced by an agency relating to the Physician's license or certification.

In the event a Physician no longer meets the Board of Retirement's requirements as outlined above the Physician's contract with LACERA will be immediately suspended. Notification to the panel physician will be sent via certified mail.

All Physicians will be required to respond within 30 business days upon any LACERA inquiry regarding licensing, certification, or insurance coverage, or any reports of an investigation. Failure to respond shall result in the Physician's contract with LACERA to be suspended. Any inquiry will be made in writing to the panel physician and will be sent via certified mail.

Physicians in non-compliance who correct the non-compliance issue, shall be allowed to request an expedited reinstatement review by the Board of Retirement.

Disability Retirement Services Physician Compliance Audit Procedures

Upon entering a contractual agreement with LACERA, all Physicians shall supply staff with proof of licensing, certification, and insurance coverage as set forth in this policy. Staff shall maintain a record of all expiration dates and conduct quarterly audits to ensure that all licensing, certification, and insurance coverage are current. If a Physician is unable to provide proof upon request within 30 business days of the request, the Physician will be suspended until all policy requirements are met.

DISABILITY RETIREMENT SERVICES

The Board grants staff the authority to suspend services of any Physician that is suspected of violating this policy. Staff shall commence a preliminary inquiry to confirm the validity of the violation. Staff shall notify the Board of any lapses, suspensions, revocations, or any proceedings/investigations commenced by a licensing or certifying agency at the next available Board of Retirement meeting.

BOARD OF RETIREMENT

The Board may place a Physician on temporary probation or rescind any contractual agreement upon notification of a violation of this policy. The Board reserves the right to reinstate a Physician once a violation has been corrected to its satisfaction. Physicians will undergo an expedited reinstatement process, applications for reinstatement will be submitted directly to the Board of Retirement.

II. Implementation

The policy is established pursuant to the Board of Retirement's fiduciary responsibility to prudently administer the retirement plan in accordance with the County Employees Retirement Law of 1937, and replaces the previous policy titled "Hiring of Panel Physicians". This policy may be modified in the future by Board of Retirement action.

Adopted: November 4, 2015

May 19, 2008

TO: Each Member,
Board of Retirement

FROM: James P. Harris, Chair
Disability Procedures and Services Committee

SUBJECT: **Proposed policy regarding Applications to become Board Panel Physicians submitted by doctors previously disciplined by the Medical Board.**

FOR: June 4, 2008 Board of Retirement Meeting

RECOMMENDATION

- That the Board of Retirement adopt a policy regarding Applications of doctors, previously disciplined by the Medical Board, seeking to becoming Board Panel Physicians
- That Board Policy provide for rejection of all such Applications unless a critical need exists for that physician's services.

SUMMARY

Background: At the February 5, 2008 meeting of the Disability Procedures and Services Committee, there was discussion regarding Applications of doctors, previously disciplined by the Medical Board of California, to become Board Panel Physicians. A physician whose probation expired in January 2008 had expressed an interest in becoming a Board Panel Physician. Staff drafted a policy regarding this issue which was approved by the Disability Procedures and Services Committee at its April 2, 2008 meeting.

Discussion: The Board acts in a fiduciary capacity when deciding disability retirement cases. Any doubts regarding the experts you must rely on should be resolved in favor of protecting the interests of the member.

The process to become a Board Panel Physician involves time and expense by both parties. Upon receipt of an Application from a physician, a background check is made with the Medical Board of California. After reviewing the Application and sample medical reports, two LACERA staff members visit and interview each prospective applicant. Travel to the doctor's office, interview, and preparation of staff recommendations to the Board usually involve a full day. This does not take into consideration time spent by support staff in photocopying and distributing documents to the Disability Procedures and Services Committee.

It was suggested that LACERA should accept and process all applications. The applications from doctors who have been disciplined would ultimately be denied. Gregg Rademacher pointed out this procedure would involve a waste of LACERA resources. Furthermore, it would be unfair to raise the expectations of the doctor and waste his or her time, when the outcome is predetermined. . Instead, it is better to have an established policy that a previously disciplined physician is not eligible for appointment as a LACERA Board Panel Physician.

In reaching this conclusion, consideration has been given to the argument that a physician who has served a period of suspension and/or probation has satisfied his/her punishment and should not be automatically disqualified from serving on LACERA's Board Panel of Physicians. Although this contention has some merit, LACERA has a fiduciary duty and should not place a member **in a potentially compromising situation**. The disability retirement process should not involve unnecessary risks and disability retirement applicants should have complete confidence of the qualifications of panel physicians

There may be situations, however, where the physician has expertise in a field of medicine for which LACERA has a critical need determined by appropriate staff. Therefore, it is recommended that the proposed LACERA Policy provide for an exception. Where such a need exists, the doctor should be interviewed and questioned about the reasons for the discipline. The physician's response will determine the appropriate recommendation that can be made by staff to the Board.

Conclusion: As the Board acts in a fiduciary capacity when deciding disability retirement cases, the following policy should be adopted:

A medical physician who has been previously disciplined by a medical regulatory body is not eligible for appointment as a LACERA Panel Physician. A limited exception may be approved by the Board of Retirement when there is a critical need for a physician's service and the Board has determined the physician is otherwise qualified notwithstanding the physician's prior misconduct and discipline.



Date: _____

TO: Tamara Caldwell
Disability Retirement Services

FROM: _____
Disability Retirement Services

SUBJECT: AUTHORIZED INVOICE ADJUSTMENT

The attached invoice as been reviewed, negotiated and adjusted, please pay the adjusted amount.

Applicant Name:		SSN:
Vendor Name		
Original Amount Billed:	\$	Total Amount to Pay \$
Adjusted Amount:		
Contact Person:		
Title:		
Date Negotiated:		

Invoice Attached

Supervisor Approval: _____

cc: Accounting Department



To: Disability Retirement Services Staff
From: Sylvia R. Miller, Manager
Date: May 27, 2004
Subject: Procedures for Requesting Disability Case Files

Please comply with the following procedures when requesting disability case files from the 8th floor file room and Administrative Services storage area:

SECTION 1

To Request an Appeal

Appeal Clerks
Mary Ortiz
Lorraine Veloz

Requesting Party
Investigators
Supervisors

1. Contact Appeal Clerk via email requesting your file.
2. Include the following information on each email:
 - Member Name
 - Social Security Number
 - Date file is needed
3. Appeal Clerk will print email and pull file.
4. File will be delivered to the requesting party.
5. Requesting party will initial and date original email as having received the file.
6. Appeal Clerk will maintain email until file is returned.
7. Requesting party will return the file to the Appeal Clerk and again initial and date the original email as having returned the file.
8. Appeal Clerk will then initial the email as having received the file for return to 8th floor file room.
9. Email will then be filed.

SECTION 2

To Request File from Administrative Services Storage Area

Applications Clerk
Roena Bernard

Back-up
Laura Gonzalez

Requesting Party
Investigators
Supervisors

10. Contact Applications Clerk via email requesting your file.
11. Include the following information on each email:
 - Member Name
 - Social Security Number
 - Reason file is needed
 - Date file is needed
12. Applications Clerk will print email and request file from Administrative Services.
13. File will be delivered to the requesting party.
14. Requesting party will initial and date original email as having received the file.
15. Applications Clerk will maintain email until file is returned.

Entry will be made in Tracker reflecting transaction and reason file was requested.

	<ol style="list-style-type: none"> 16. Requesting party will return the file to the Applications Clerk and again initial and date the original email as having returned the file. 17. Applications Clerk will then initial the email as having received the file for return to Administrative Services. 18. Email will then be filed. 19. Entry will be made in Tracker reflecting that the file was returned to Administrative Services.
<p>SECTION 3</p> <p>One and Two Year Review Cases</p> <p>Quarterly Report Generated by Laura Gonzalez</p>	<p>Cases that are one and two year reviews will be filed with the Appeal cases in the 5th Floor file cabinets. No longer stored in Administrative Services storage area.</p> <ol style="list-style-type: none"> 20. All one and two year review cases will be stored in a “yellow folder.” 21. A quarterly report will be generated of all cases that are 1 or 2 year review cases. 22. Report will be distributed to each investigator and a copy to each supervisor. 23. Use same procedures as discussed in Section 1.
<p>SECTION 4</p> <p>Requesting Files for Re-applying Members</p> <p>Applications Clerk Roena Bernard</p>	<ol style="list-style-type: none"> 24. Applications Clerk will request old file from Administrative Services when “new” application is received. 25. ADMINISTRATIVE SERVICES STAFF WILL BE NOTIFIED TO DELETE THE FILE FROM FILE ROOM DATABASE AS IT WILL BE MERGED WITH THE NEW APPLICATION. 26. Applications Clerk will make a notation in Tracker reflecting that the old files has been pulled and merged with new application. 27. File will then be assigned to an investigator.
<p>SECTION 5</p> <p>Files for New Appeals</p> <p>Appeal Clerks Mary Ortiz Lorraine Veloz</p>	<p>When an appeal is filed after the case have been sent for scanning.</p> <ol style="list-style-type: none"> 28. Appeal Clerk will request file from Administrative Services and make a notation in Tracker reflecting transaction. 29. ADMINISTRATIVE SERVICES STAFF WILL BE NOTIFIED TO DELETE THE FILE FROM FILE ROOM DATABASE AS IT WILL BELONG TO DISABILITY RETIREMENT SERVICES DIVISION AS A NEW APPEAL.
	<p>Note: Under this new procedure, we should know the location of all disability retirement files. Periodically a report will be generated to verify location of all files to enable staff to determine where a file is located at any given time.</p> <p>If you have any questions about these procedures, please call me at extension 2401.</p> <p>SRM/tlc</p>



December 23, 2009

TO: Each Member
Board of Retirement

FROM: Disability Procedures and Services Committee
James P. Harris, Chair
Yves Chery, Vice Chair
Sadonya Antebi
Ed C. Morris

Simon S. Russin, Alternate

FOR: January 6, 2010 Board of Retirement Meeting

SUBJECT: **PROPOSAL TO REQUIRE BOARD PANEL PHYSICIANS TO ADDRESS
HEIGHT AND WEIGHT IN REPORT**

On December 2, 2009, the Disability Procedures & Services Committee staff and the Committee members discussed whether information regarding a member's height and weight would be useful in determining the issues of permanent incapacity and causation.

RECOMMENDATION

IT IS RECOMMENDED THAT THE BOARD OF RETIREMENT:

1. Instruct all LACERA Panel Physicians to be required to include the member's height and weight in their medical reports.
2. Instruct Staff to amend the Board Panel Physician Guidelines to reflect this change.

Background: At the October 7, 2009 meeting, your Committee requested that staff obtain input from various attorneys regarding a proposal that Board Panel Physicians be required to include height, weight and body mass index (BMI) in their reports. A letter was sent to various attorneys dated October 8, 2009 requesting input (Attachment #1). Only Ed Faunce has responded (See Attachment #2 dated October 22, 2009). Mr. Faunce inquired about the purpose of asking the doctors to collect this information. He expressed concerns regarding the members' privacy rights. A response was drafted and sent to him dated October 28, 2009 (Attachment #3). We have received no reply.

After discussion, the Committee decided that BMI was not necessary, but it would be helpful to ask the Board Panel Physicians for height and weight.

Discussion: Some Committee and Board members have expressed concern over the increasing number of applications for disability retirement that involve members obtaining disability retirements in part due to factors related to obesity. Some members indicated it would be helpful if all of the Board Panel Physicians include height, weight and body mass index in their reports. This would allow the Board to make a more informed decision regarding permanent incapacity and causation of the disability.

At present, most Board Panel Physicians do include height and weight in their reports. Some also include body mass index.

Morbid obesity which is defined as “weighing more than 100 percent over the norm” is considered a disability by the ADA (Americans with Disabilities Act) if it “substantially limits, has limited, or is viewed as substantially limiting a major life activity.” The Committee has recently been provided numerous articles about obesity. The County is aware of the impact of obesity on the County workforce and has embarked on a Countywide Wellness Program to bring about a healthier workforce.

Staff disagrees with Mr. Faunce’s concerns that his client’s privacy rights would be “implicated” if these items were included in a Board Panel Physician report. Taking a patient’s height and weight are a routine part of any medical examination. The body mass index is computed from this information, i.e., weight is divided by height squared.

Conclusion: As the member has applied for a disability retirement, the Board has the duty to make an informed decision based upon all available information, not just the information the member wishes to provide. Otherwise, the Board would be negligent. However, the Board must be cognizant of the fact that morbid obesity is considered an impairment, and individuals with obesity may have an underlying or resultant physiological disorder, such as hypertension or a thyroid disorder, which are impairments and may permanently incapacitate an individual from performing his or her usual job duties.

May 12, 2017

**DISABILITY RETIREMENT SERVICES DIVISION
SUBROGATION PROCEDURES****PURPOSE**

The purpose of these procedures is to provide staff with instructions on how to refer a case to the Legal Office for review for subrogation.

LACERA has the right to pursue subrogation when an applicant’s disability is caused by a third-party. LACERA has the right to pursue reimbursement on someone else’s claim as their own, if their claim arises by express agreement of the parties, or operations of law, when someone reimburses another’s loss or pays another’s obligation.

Governing Laws - CERL

Government Code § 31820

“If benefits are payable...because of injury to, or the death of, a member of the retirement association, and such injury or death is the proximate consequence of the act of any person other than his employer, the board on behalf of the retirement association may recover from such person...”

By Operation of Law - Government Code § 31820-31823

”Actions brought by the board under this article shall be commenced within three years after the liability of the retirement system to pay benefits is fixed.”

Please comply with the following procedures when processing potential subrogation cases.

Responsible Party	Action
Disability/Senior Retirement Specialist	<p>Within 90 days of receipt of the disability application and records, staff should review Claim Against Third Party Form to determine whether the case should be referred to the Legal Office for review for subrogation.</p> <p>If it is determined that a third party may be at fault, complete the Subrogation Checklist (see Sample).</p> <p>Important: The checklist is a PRIVILEGED and CONFIDENTIAL document and is FOR INTERNAL USE ONLY.</p>

PLEASE NOTE: The checklist is intended solely as a general guide. Individual cases can vary greatly. Any questions, concerns or close calls that arise when evaluating the case for referral as a potential subrogation claim should be referred to your supervisor or, where necessary, the Legal Office, for assistance and clarification.

Determining the estimated monthly retirement allowance:

- a. Use appropriate Plan Brochure

[Plan A/S](#)
[Plan B/S](#)
[Plan C/S](#)

[Plan A/G](#)
[Plan B/G](#)
[Plan C/G](#)

[Plan D/G](#)
[Plan G/G](#)

Follow the link below:

http://www.lacera.com/benefits/PlanBookSection/d_planbook/section12.html

- b. Use DRS Benefit Estimate Excel Worksheet

Follow the link below:

<H:\DIVISION\DISABIL\BENEFITS\COORDINATION\Estimate>

- c. Request assistance via Service Request to Intake Unit for complex estimates

- d. Request Intake Unit to escalate to Member Services

If it is determined that the application should be referred to the Legal Office. Any information obtained for the purpose of subrogation should be immediately forwarded to legal counsel for review.

1. Prepare Subrogation Memo (see sample) detailing the application details and possible third party involvement.
2. Attach signed Subrogation Checklist with your memo
3. Verify whether Workers' Compensation has filed any subrogation claims, if yes, provide information
4. Investigate through civil case filings if a personal injury claim(s) has been filed by the applicant against a third party
5. After you refer the application to the Legal Office, continue to provide any updates or any pertinent records as you receive them.
6. After the Board of Retirement considers and enters a Board Action, provide a copy of the Board packet to the Legal Office.

PRIVILEGED AND CONFIDENTIAL

ATTORNEY WORK PRODUCT- FOR INTERNAL USE ONLY

Subrogation Checklist

1. Is the estimated monthly retirement allowance to which the member is entitled under a theoretical service retirement greater than what they would receive under a SCD (50% of FAC) or NSCD (33% of FAC)?

NO _____. Continue with checklist.

YES _____. **STOP.** No need to refer to the Legal Office. Under CERL, LACERA can only pursue a subrogation claim where "benefits are payable ... because of an injury to, or the death of, a member..., and such injury or death is the proximate consequence of the act of any person other than his employer." LACERA cannot therefore recover for benefits it was already obligated to pay regardless of the acts of a third party. Govt. Code § 31820; see *also Ventura County Employees Retirement Assn. v. Pope*, 87 Cal. App. 3d 938 (1978).

Example 1: Member Jane Jones is in General Plan D. She is 51, has 11 years of service, and her FAC is \$3,400. If she service retired on her last day of regular compensation, her (theoretical) monthly allowance would be 13.67% of her FAC, or \$464/month. By comparison, her disability allowance under a SCD would be \$1,700/month, and disability allowance under a NSCD would be \$1,122/month. As a result, if Ms. Jones is granted a SCD or NSCD due to the acts of a 3rd party, LACERA could assert a subrogation claim because the benefits it would have to pay under a SCD or a NSCD are greater than what she is otherwise entitled.

Example 2: Member John Smith is in Safety Plan B. He is 56, has 28 years of service, and his FAC is \$6,200. If he service retired on his last day of regular compensation, his (theoretical) monthly allowance would be 73.35% of his FAC, or \$4,526/month. By comparison, his disability allowance under a SCD would be \$3,100/month, and his disability allowance under a NSCD would be \$2,046/month. As a result, even if Mr. Smith receives a SCD or NSCD as a result of the acts of a 3rd party, LACERA could not pursue a subrogation claim because the benefits it would have to pay under a SCD or NSCD are less than what he is already entitled.

2. Is a third party – i.e., person(s) or entity other than LACERA or the County of Los Angeles, responsible for the injury or injuries underlying the member's claim of permanent disability?

YES _____. Continue with checklist.

NO _____. **STOP.** No need to refer to the Legal Office. Under CERL, subrogation claims can only be pursued where the "injury or death is the proximate consequence of the act of any person other than his employer." Govt. Code § 31820. [Emphasis added.]

3. Does there appear to be a connection between the injury or injuries sustained in an incident and the condition(s) underlying the member's claim of permanent disability?

YES _____. Refer to the Legal Office.

NO _____. **STOP.** No need to refer to the Legal Office. Under CERL, LACERA can only pursue a subrogation claim where benefits are payable because of an injury or death of a member "and such injury or death is the proximate consequence of the act of any person

other than his employer." Govt. Code § 31820. [Emphasis added.]; see also Ventura County Employees Retirement Assn. v. Pope, 87 Cal. App. 3d 938 (1978).

Whether a connection may exist between an injury sustained in a prior incident and the condition(s) purportedly underlying the member's claim of permanent disability is subjective and requires legal investigation and analysis. Those cases where there appears to be a genuine and real connection, based on the totality of facts and circumstances such as the nature, severity and timing of the injury(ies), etc. relative to the condition(s) purportedly supporting the claim of disability, should be referred to the Legal Office for further evaluation (assuming the other factors on this checklist are satisfied). Cases where there does not appear to be a genuine and real connection need not be referred to the Legal Office.

Example 1: Member Jane Jones was involved in a traffic accident in 2008 and sustained various injuries to her wrist and knees. In 2016, she files for a SCD claiming permanent disability due to – e.g., a heart condition, GERD and IBS. Since it is unlikely the conditions upon which she is claiming permanent disability are the proximate consequence of the wrist and knee injuries she sustained in the 2008 traffic accident, LACERA would not likely be able to establish the requisite nexus between the claim of permanent disability and the acts of the driver in the 2008 traffic accident. The case need not be referred to the Legal Office.

Example 2: Member John Smith was involved in a traffic accident in 2012 and sustained significant neck and back injuries. In 2016, he files for a SCD claiming permanent disability due to various orthopedic injuries. Since it is possible the various "orthopedic" injuries upon which he is now claiming permanent disability may be the proximate consequence of the neck and back injuries sustained in the 2012 accident, LACERA may be able to establish the requisite nexus between the claim of permanent disability and the acts of the driver in the 2012 traffic accident. The case should therefore be referred to the Legal Office.

PLEASE NOTE: this checklist is intended solely as a general guide. Individual cases can vary greatly. Any questions, concerns or close calls that arise when evaluating the case for referral as a potential subrogation claim should be referred to your supervisor or, where necessary, the Legal Office, for assistance and clarification.

Prepared for the Legal Office by: _____.

Date completed: _____.

SAMPLE OF MEMO TEXT (include narrative of subrogation details)

September 5, 20Xx

TO: Michael Herrera
Senior Staff Counsel

FROM: <Specialist Name, Title>
Disability Retirement Services

**SUBJECT: POTENTIAL SUBROGATION
JOSEPH H. BROWN
XXX-XX-XXX**

Mr. Brown has filed a disability retirement application reporting neck and back conditions. His classification is a Deputy Sheriff. The automobile accident occurred on July 8, 200x, while on duty, in the city of San Fernando. Enclosed is a copy of the investigation report, a office correspondence, and the traffic collision report. *(Attach any pertinent documents that you have).*

Mr. Brown filed a third party action in Los Angeles County at the San Fernando Superior Court, case number MC000XXXX. The County filed a separate action (case number MC000XXXX), but later dismissed it and filed an intervention. The case was settled in March of 20xx for \$100,000 (Policy limit). The County received \$40,000 and the applicant received \$60,000.

The insurance company was represented by in-house counsel:

Barry, Bartholomew & Associates
21820 Burbank Blvd., Suite 180N
Woodland Hills, CA 91367.

Defendant: Samantha Stewart
5648 Carrolos Street
Van Nuys, CA 91387
Attorney: Gina Weihert, Esq.

The Los Angeles County Workers' Compensation subrogation interest was handled by:

Graves, Robertson & Bourassa
1220 W. Hillcrest Drive, Suite 100
Thousand Oaks, CA 91320
818-707-1333

RE: Potential Subrogation – Joseph Brown
September 5, 20xx
Page 2

Attorney: Stephen Robertson
Member: Joseph H. Brown
DOB: 07/25/58
SSN: xxx-xx-xxxx
Plan: B – Safety

Membership Date: 09/01/89
Effective Retirement Date: NA

Spouse: Carol A. Brown
DOB: 11/24/43
SSN: xxx-xx-xxxx

cc: File

Attachments

1. Claims Against Third Party Form
2. Board Package



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Subrogation Claims



Michael D. Herrera
Senior Staff Counsel

Privileged and Confidential
Attorney-Client Communication/Attorney Work Product



Subrogation: What Is It & Why Do I Care?



What? The right to pursue someone else's claim as your own.

When? Arises by express agreement of the parties, or operation of law, when someone reimburses another's loss or pays another's obligation.

When? Three years from when board grants benefits.



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**By Operation of Law:
The County Employees Retirement Law
Govt. Code § 31820-31823.**

Time to Act (SOL). (Govt. Code § 31823)

"Actions brought by the board under this article shall be commenced within three years after the liability of the retirement system to pay benefits is fixed."





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By Operation of Law: The County Employees Retirement Law Govt. Code § 31820-31823.

Govt. Code § 31820:

"If benefits are payable...because of injury to, or the death of, a member of the retirement association, and such injury or death is the proximate consequence of the act of any person other than his employer, the board on behalf of the retirement association may recover from such person..."





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Case Identification & Evaluation

Step One: Disability Investigation Division

- Identify
- Investigate
- Refer

LACERA Los Angeles County Employees Retirement Association
 300 N. Lake Ave., Pasadena, CA 91101 / PO Box 7060, Pasadena, CA 91109-7060 / www.lacera.com / 626/564-6132 • 800/786-6464

CLAIMS AGAINST THIRD PARTIES
 THIS STATEMENT MUST BE COMPLETED IF YOU ARE APPLYING FOR A DISABILITY RETIREMENT

Please read the entire form then complete either Section 1 or Section 2, whichever applies, and complete Section 3.

SECTION 1
 I certify that my disability is not a result of, or caused by, or connected to, in any manner, an injury or illness that involves a third party (i.e., someone or an organization other than your County/District employer).
 _____ Please initial here and complete Section 3.

SECTION 2
 If your disability involves a third party, please provide the following information:
 Name of third party _____ Phone _____
 Address _____
 City _____ State _____ ZIP _____
 Description of how the injury or illness occurred including third party's involvement.

Did you file a claim of any type against the third party named above?
 Yes No
 Case name _____ Case No. _____ Date filed _____

If no, do you plan to file a claim in the future?
 Yes No
 If no, please tell us why?

SECTION 3
 I, the undersigned, agree to notify LACERA if I file any type of claim against a third party, whether or not named above, for my injury or illness.

Signature _____ Print name _____
 Social Security # _____ Date _____



DIS 117 (3/05)



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Case Identification & Evaluation

Step Two: Disability Investigation Division



• Subrogation Checklist

PRIVILEGED AND CONFIDENTIAL
ATTORNEY WORK PRODUCT- FOR INTERNAL USE ONLY

Subrogation Checklist

1. Is the estimated monthly retirement allowance to which the member is entitled under a theoretical service retirement greater than what they would receive under a SCD (50% of FAC) or NSCD (33% of FAC)?

NO _____. Continue with checklist.

YES _____. STOP. No need to refer to the Legal Office. Under CERL, LACERA can only pursue a subrogation claim where "benefits are payable ... because of an injury to, or the death of, a member..., and such injury or death is the proximate consequence of the act of any person other than his employer." LACERA cannot therefore recover for benefits it was already obligated to pay regardless of the acts of a third party. Govt. Code § 31820; see also *Ventura County Employees Retirement Assn. v. Pope*, 87 Cal. App. 3d 938 (1978).

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Example 2: Member John Smith is in Safety Plan B. He is 56, has 28 years of service, and his FAC is \$6,200. If he service retired on his last day of regular compensation, his (theoretical) monthly allowance would be 73.35% of his FAC, or \$4,526/month. By comparison, his disability allowance under a SCD would be \$3,100/month, and his disability allowance under a NSCD would be \$2,046/month. As a result, even if Mr. Smith receives a SCD or NSCD as a result of the acts of a 3rd party, LACERA could not pursue a subrogation claim because the benefits it would have to pay under a SCD or NSCD are less than what he is already entitled.

2. Is a third party – i.e., person(s) or entity other than LACERA or the County of Los Angeles, responsible for the injury or injuries underlying the member's claim of permanent disability?

YES _____. Continue with checklist.

NO _____. STOP. No need to refer to the Legal Office. Under CERL, subrogation claims can only be pursued where the "injury or death is the proximate consequence of the act of any person other than his employer." Govt. Code § 31820. [Emphasis added.]

3. Does there appear to be a connection between the injury or injuries sustained in an incident and the condition(s) underlying the member's claim of permanent disability?

YES _____. Refer to the Legal Office.

NO _____. STOP. No need to refer to the Legal Office. Under CERL, LACERA can only pursue a subrogation claim where benefits are payable because of an injury or death of a member "and such injury or death is the proximate consequence of the act of any person



LACERA

"Produce, protect, and provide promised benefits."

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"Produce, protect, and provide promised benefits."

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LACERA

"Produce, protect, and provide promised benefits."

3. Does there appear to be a connection between the injury or injuries sustained in an incident and the condition(s) underlying the member's claim of permanent disability?

YES _____. Refer to the Legal Office.

NO _____. **STOP**. No need to refer to the Legal Office. Under CERL, LACERA can only pursue a subrogation claim where benefits are payable because of an injury or death of a member "and such injury or death is the proximate consequence of the act of any person other than his employer." Govt. Code § 31820. [Emphasis added.]; see also Ventura County Employees Retirement Assn. v. Pope.

Whether a connection may exist between an injury sustained in a prior incident and the condition(s) purportedly underlying the member's claim of permanent disability is subjective and requires legal investigation and analysis. Those cases where there appears to be a genuine and real connection, based on the totality of facts and circumstances such as the nature, severity and timing of the injury(ies), etc. relative to the condition(s) purportedly supporting the claim of disability, should be referred to the Legal Office for further evaluation (assuming the other factors on this checklist are satisfied). Cases where there does not appear to be a genuine and real connection need not be referred to the Legal Office.

Example 1: Member Jane Jones was involved in a traffic accident in 2008 and sustained various injuries to her wrist and knees. In 2016, she files for a SCD claiming permanent disability due to – e.g., a heart condition, GERD and IBS. Since it is unlikely the conditions upon which she is claiming permanent disability are the proximate consequence of the wrist and knee injuries she sustained in the 2008 traffic accident, LACERA would not likely be able to establish the requisite nexus between the claim of permanent disability and the acts of the driver in the 2008 traffic accident. The case need not be referred to the Legal Office.



LACERA

"Produce, protect, and provide promised benefits."

3. Does there appear to be a connection between the injury or injuries sustained in an incident and the condition(s) underlying the member's claim of permanent disability?

YES _____. Refer to the Legal Office.

NO _____. **STOP**. No need to refer to the Legal Office. Under CERL, LACERA can only pursue a subrogation claim where benefits are payable because of an injury or death of a member "and such injury or death is the proximate consequence of the act of any person other than his employer."

Whether a connection may exist between an injury sustained in a prior incident and the condition(s) purportedly underlying the member's claim of permanent disability is subjective and requires legal investigation and analysis. Those cases where there appears to be a genuine and real connection, based on the totality of facts and circumstances such as the nature, severity and timing of the injury(ies), etc. relative to the condition(s) purportedly supporting the claim of disability, should be referred to the Legal Office for further evaluation (assuming the other factors on this checklist are satisfied). Cases where there does not appear to be a genuine and real connection need not be referred to the Legal Office.

Example 2: Member John Smith was involved in a traffic accident in 2012 and sustained significant neck and back injuries. In 2016, he files for a SCD claiming permanent disability due to various orthopedic injuries. Since it is possible the various "orthopedic" injuries upon which he is now claiming permanent disability may be the proximate consequence of the neck and back injuries sustained in the 2012 accident, LACERA may be able to establish the requisite nexus between the claim of permanent disability and the acts of the driver in the 2012 traffic accident. The case should therefore be referred to the Legal Office.



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PLEASE NOTE: this checklist is intended solely as a general guide. Individual cases can vary greatly. Any questions, concerns or close calls that arise when evaluating the case for referral as a potential subrogation claim should be referred to your supervisor or, where necessary, the Legal Office, for assistance and clarification.

Prepared for the Legal Office by: _____.

Date completed: _____.



LACERA

"Produce, protect, and provide promised benefits."





LEROY D. BACA, SHERIFF

County of Los Angeles Sheriff's Department Headquarters
4700 Ramona Boulevard
Monterey Park, California 91754-2169

LACERA

12 MAR 22 PM 2: 17

DISABILITY



March 15, 2012

Gregg Rademacher
Chief Executive Officer
Los Angeles County Employees
Retirement Association
300 North Lake Avenue
Pasadena, CA 91101

LACERA
12 MAR 22 PM 2: 35
DISABILITY

Dear Mr. Rademacher:

Pursuant to your request, an evaluation of the current weight measurements of gun belts used by uniformed members of the Los Angeles County Sheriff's Department was recently conducted. The current leather Sam/Sally Browne gun belt configuration issued by the department weighs 12 lbs. 11 1/2 ounces. The weight is an accumulation of the following items:

- one Beretta 92F 9mm handgun loaded with 16 live rounds
- two loaded gun magazines (15 live rounds each)
- one set of handcuffs with two keys
- one canister of Oleoresin Capsicum (pepper spray)
- one PR-24 baton
- one radio (Motorola XTS 5000 with microphone)
- one key ring holder
- one flashlight with batteries

Each of these items are housed in its appropriate holder (e.g., leather gun holster, leather radio holder, etc.) and fixed to the Sam/Sally Browne gun belt, which is secured to the deputy's trouser belt by four leather keeper straps.

Additionally, in April 2012, it is the intention of the Los Angeles County Sheriff's Department to authorize the Smith and Wesson M&P 9mm semiautomatic handgun as a duty weapon. The Smith and Wesson M&P will also be outfitted to house a mounted flashlight. Newly hired personnel will be issued the Smith and Wesson M&P 9mm. The

Mr. Gregg Rademacher

-2-

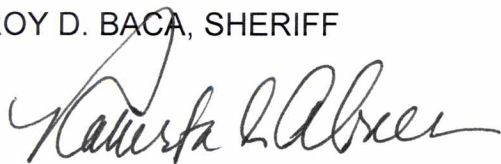
March 15, 2012

transition from the Beretta to the Smith and Wesson is anticipated to be a three-year process. The weight of the fully configured gun belt with the Smith and Wesson M&P handgun with mounted flashlight is 12 lbs. 10 ½ ounces.

If I can be of further assistance to you, please feel free to contact me.

Sincerely,

LEROY D. BACA, SHERIFF

A handwritten signature in black ink, appearing to read "Roberta A. Abner". The signature is written in a cursive style with a large initial "R" and "A".

ROBERTA A. ABNER, CHIEF
LEADERSHIP AND TRAINING DIVISION



County of Los Angeles
Sherriff's Department Headquarters
4700 Ramona Boulevard
Monterey Park, California 91754-2169



LEROY C. BACA, SHERIFF

October 24, 2008

Mr. Gregg Rademacher
Chief Executive Officer
Los Angeles County Employees Retirement Association
300 N. Lake Avenue
Pasadena, California 91101

Dear Mr. Rademacher:

Pursuant to a request for information from Board of Retirement Member J.P. Harris, I am forwarding to you a study conducted by the Sheriffs Department's Training Bureau regarding the weights of Sam Brown belts typically worn by uniformed members of the Department. Because our personnel wear a variety of different types of Sam or Sally Brown belts, one page of the study shows some typical gun belt weights taking some of these variables into account. The second page provides an individual breakdown, by weight, of the various items that may be carried on the gun belt. At a minimum, all uniform deputy sheriff's working in a radio car would carry a Beretta 92F with loaded magazine, two additional loaded magazines, one hand held radio with battery, one pair of handcuffs, OC spray and a baton. The average weight of a Sam or Sally Brown belt, with gear, is 11 pounds 12 ounces. It is possible a gun belt with gear could weigh a few pounds more, depending upon the exact equipment carried, but it would never weigh more than 13 to 15 pounds total.

If I can be of further assistance to you, please feel free to contact me.

Sincerely,

LEROY D. BACA, SHERIFF

Roberta A. Abner, Division Chief
Leadership and Training Division

Attachments

GUN BELT WEIGHT COMPARISONS

9-17-01

1. **LEATHER** (Male recruit)
Beretta w/2 magazines, Ericsson GE M-RK radio, PR 24, 1 set of cuffs w/2 keys, OC, 1 whistle and 4 keeper straps **8 lbs. 6.4 oz.**

2. **LEATHER** (Female recruit) **8 lbs.**
Same as above

3. **LEATHER** (Male Deputy - RTB) **9 lbs. 11.2 oz.**
Beretta w/2 magazines, Ericsson GE M-RK radio, ASP "Airweight" 24" expandable baton, 2 cuffs & OC

4. **LEATHER** (Female San Dimas Trainee) **12 lbs. 8 oz.**
Beretta w/2 magazines, Ericsson GE M-RK radio, ASP expandable baton, 2 cuffs, OC, flashlight, leatherman's tool

5. **LEATHER** (Male San Dimas Trainee) **13 lbs.**
Beretta w/2 magazines, Ericsson GE M-RK radio, ASP expandable baton, 2 cuffs, OC, leatherman's tool

*** Average weight for leather gunbelts is 10 lbs. 5 oz.**

6. **NYLON** (Male FOTU Sergeant) **11 lbs. 12.8 oz.**
Beretta w/2 magazines, Ericsson GE M-RK radio, Monadnock AutoLock 26" expandable baton, 1 cuff, OC, leatherman's tool, Ripp Hobble, Streamlight Stringer Flashlight

7. **NYLON** (Male RTB Staff Instructor) **10 lbs. 9.6 oz.**
Beretta w/2 magazines, Ericsson GE-M-RK radio, ASP 26" expandable baton, 2 cuffs, OC, buck knife, utility pouch w/rubber gloves

8. **NYLON** (Male San Dimas T/O) **12 lbs.**
Beretta w/2 magazines, Ericsson GE M-RK radio, ASP, 2 cuffs, OC, leatherman's tool

9. **NYLON** (Male RTB Staff Instructor) **11 lbs. 1.6 oz.**
Beretta w/2 magazines, Ericsson GE M-RK radio, PR 24 side handle baton, 2 cuffs, OC, leatherman's tool

***Average weight for nylon gunbelts is 11 lbs. 12 oz.**

GUNBELTS WITHOUT EQUIPMENT

9-17-01

BIANCHI "ELITE" LIGHTWEIGHT GUNBELT	2 lbs. 9.6 oz.
BIANCHI NYLON GUNBELT	2 lbs. 3 oz.
LEATHER GUNBELT	3 lbs. 1.6 oz.

INDIVIDUAL EQUIPMENT WEIGHTS

BERETTA	2 lbs. 11.2 oz.
M26 TASER W/ HOLSTER	2 lbs. 3 oz.
PR 24 BATON	1 lb. 11.2 oz.
ERICSSON RADIO	1 lb. 8 oz.
2 MAGAZINES	1 lb. 6.4 oz.
MONADNOCK AUTOLOCK 26" EXPANDABLE BATON	1 lb. 6.4 oz.
ASP 26" EXPANDABLE BATON	1 lb. 3.2 oz.
PEERLESS S/S CUFF	8 oz.
STREAMLIGHT STRINGER FLASHLIGHT	8 oz.
LEATHERMAN'S TOOL	4.8 oz.
OC	3.2 oz.

To: Disability Retirement Services Staff
 From: Tamara Caldwell
 Date: June 30, 2004
 Subject: Procedures for Processing Service Provider Invoices

Responsible Party	Procedure
Support Staff (Individual Distributing Mail)	<p>Please comply with the following procedures when processing service provider invoices.</p> <ol style="list-style-type: none"> 1. Date stamp invoice. 2. Distribute to appropriate Investigator.
Investigator	<ol style="list-style-type: none"> 3. Verify accuracy of the invoice. 4. Highlight the following information: <ul style="list-style-type: none"> • Applicant's name & SSN • Provider • Provider Tax ID • Invoice Amount. 5. Date stamp using personal date stamp. 6. Initial and indicate the bill is "ok to pay". 7. Submit to the Division Secretary for payment. <p>Multiple Page Invoices</p> <ol style="list-style-type: none"> a. Staple pages together b. Follow steps 3-7 c. The Division Secretary will total all pages and attach a tape to the invoice. The Division Manager will initial the tape, authorizing payment for the full amount of the invoice.
Division Secretary	<ol style="list-style-type: none"> 8. Verify that invoice is not a duplicate. 9. Verify that all pertinent information has been highlighted and approved by investigator. 10. Input invoice details into Invoice Tracking System. 11. If invoice is a copy, notate reason copy is being submitted instead of original invoice. 12. Generate Payment Requests. 13. Submit Payment Requests and invoice to Division Manager for approval.
Division Manager	<ol style="list-style-type: none"> 14. Reviews and approves each invoice and Payment request. 15. Authorize payment by initialing each invoice.

Division Secretary	16. Forward Payment Requests along with original invoices to Accounting Division prior to invoice processing deadline for preparation of Payment of Invoice Report.
Accounting	17. Prepare Payment of Invoice Report for approval by the Board of Retirement. Report Deadline: Final Tuesday of the month.
Division Manager	18. Once the Board approves the payment of all invoices, authorize payment by signing Payment of Invoice Report.
Division Secretary	19. Forward signed report to Budget Unit.
Budget Unit	20. Authorize payment by signing Payment of Invoice Report and forward to Accounting Division.
Accounting	21. Prepare and mail checks to appropriate service provider and forward Final Payment of Invoice Report and to Disability Retirement Services Division.
Division Secretary	22. Update Invoice Tracking System with payment details (i.e. payment date, check number, etc.)
	If you have any questions about these procedures, please call me at extension 2415. TLC

**Disability Retirement Services
Special Authorization Form**

Member Name:	SSN:
Investigator:	

Please indicate below which service is necessary to complete disability retirement application case process.

<input type="checkbox"/> Special Medical Services: Explanation:	<input type="checkbox"/> (1) Physician <input type="checkbox"/> (2) Medical Tests
<input type="checkbox"/> Supplemental Report: Explanation:	Physician Name:
<input type="checkbox"/> Sub Rosa Investigation: Provider Name: Explanation:	
<input type="checkbox"/> Job Analysis: Provider Name: Explanation:	
<input type="checkbox"/> Legal Opinion: Explanation:	<input type="checkbox"/> (1) Subrogation <input type="checkbox"/> (2) Other
<input type="checkbox"/> Other: Explanation:	

Division Manager Approval	Date
----------------------------------	-------------

Completed by Administrative Staff Only: Date Entered: Date Report Received from Provider:
--

**CONFIDENTIAL – ATTORNEY – CLIENT COMMUNICATION**

TO: Disability Litigation Office

FROM: Disability Retirement Services

SUBJECT: SS#

Attached are documents/information requested for review. The following has been requested and/or completed in preparing the above case for hearing. Please refer to **“Things To Do”** memo from Disability Litigation.

“Task Completed” brief description below:

Memo Dated:

Item Number:

Comments:

cc: Appeal Folder
Sylvia R. Miller, Manager (Database)

Attachment(s)

Disability Investigation Background Information E to D Transfers

At their meeting on June 4, 2002, the Los Angeles County Board of Supervisors unanimously adopted the benefits as defined in their Proposal to Enhance LACERA Benefits. The key word here is **Enhance**.

Personalized letters were sent in late June 2002 to members informing them of the plan and the cost to incrementally convert Plan E service credit to Plan D service credit and the resulting impact on the Plan D contribution rate.

There are two possible transfer plans:

- Open Window Transfer Plan
- Prospective Transfer Plan

OPEN WINDOW TRANSFER PLAN

Requires you to **purchase all** of your Plan E service credit **before you are eligible** to receive Plan D benefits. If you are buying the time, you should be purchasing what occurred during that period, e.g. injuries. If you had an on the job injury while a member of Plan E, later purchase all of the time (Open Window) when you transfer to Plan D, and subsequently file for SCD, you should be allowed to get credit for that prior injury in your application. When the transfer is complete, you do. **You will remain a Plan E member until your transfer contract is paid in full.**

PROSPECTIVE TRANSFER PLAN

You **may** purchase and convert some or all of your Plan E service credit and add it to your Plan D service credit. If you only buy some of the time, you will receive a combined retirement from both Plan E and Plan D. If you choose to convert all of your Plan E service credit, your retirement benefits will be those prescribed only under Plan D.

Presumably, if the member purchases the time period when any industrial injuries occurred, that member would also purchase the disability that occurred during that period. This is subject to the requirement of completing two continuous years as an **active** Plan D member after his/her most recent effective date of transfer or earned five years of service as an active Plan D member after his/her most recent effective date of transfer. Any converted service is credited after each incremental contract is paid in full. If that time was not purchased, the member should not be permitted to get credit for the disability resulting from the injury which occurred during Plan E. Remember, there are no disability allowances for Plan E.

If you elect a Prospective Plan Transfer, you may NOT elect a traditional Open Window transfer for any future transfers.

Disability Investigation Background Information E to D Transfers

Terms/Concepts

"Active" service means time spent on active, on-the-job performance of the duties of a full-time or part-time position and on any authorized paid leaves of absence; provided; however, that any authorized paid leave of absence or part-time service shall not constitute active service if the leave of absence or part-time service is necessitated by a preexisting disability, injury, or disease. The Board of Retirement shall determine whether a leave of absence or part-time service is necessitated by a preexisting disability, injury or disease, and thus excluded from the member's active service, based upon evidence presented by the employer and the member upon request by the board.

A member who becomes disabled and retires before meeting either of these conditions:

- (1) may apply for and receive only a deferred or service retirement allowance, and
- (2) for the purposes of calculating his or her retirement benefits under this section, shall be credited with service under Retirement E as provided under subdivision (g) of Section 31488 during any period he or she is totally disabled and receiving, or eligible to receive, disability benefits, either during or after any elimination or qualifying period, under a disability plan provided by the employer.

If a member dies before he or she is eligible to retire and before completing either two continuous years of active service after the transfer date or earning five years of retirement service credit under Retirement Plan D after the transfer date, that member's beneficiary shall not be entitled to the survivor allowance under Section 31781.1 or 31781.2, if operative.

Subsequent Transfer to Plan E

Once a member elects the prospective E to D transfer option he/she cannot transfer back to Plan E until at least 3 years have passed since his/her most recent prospective transfer date. In addition, the transfer back to Plan E must be a prospective transfer. CERL: Article 1.5, Section 31494.5 (a).

Eligibility for Vesting

While the member's aggregate Plan E and Plan D service credit is used to determine eligibility for vesting in either plan, the member still must meet each plan's vesting requirement.

You become vested in Plan D when you have earned 5 years of County (or combined County and reciprocal system) requirement service credits. You become vested in Plan E when you have earned 10 years of County (or combined County and reciprocal system) requirement service credits.

**Disability Investigation
Background Information
E to D Transfers**

Effective Date of Transfer

The effective date of transfer is the first day of the month that is at least 30 days from the date LACERA receives the signed Prospective Transfer Election form. For example, if LACERA receives the transfer form on October 10, the effective date of transfer to Plan D will be December 1.

Minimum Service Requirements for Plan D

Nonservice –Connected Disability: Five or more years of County (or combined County and reciprocal system) requirement service credit.

Service-Connected Disability: No minimum service requirement.

Prospective Plan D Transfer Members: If you prospectively transfer to Plan D, you will be eligible to apply for a service-connected or nonservice-connected disability retirement under Plan D once you have completed one of the following two criteria:

1. Two years of continuous service as an active Plan D member after your most recent effective date of transfer, or if not continuous,
2. Earned 5 years of service as an active Plan D member after your most recent effective date of transfer.

**Disability Investigation
HYPOTHETICALS
General Membership
Plan E to Plan D**

HYPOTHETICAL 1

While a member of Plan E, Ron has one or more back injuries on the job. After 6 years in Plan E, the employee **prospectively** transfers to Plan D. The next day, Ron applies for a service-connected disability retirement (SCD) for disabling back problems.

Q1: What would you do with the application?

A1: The application should not be accepted.

Explanation

Under Plan E, the employee is not entitled to a service-connected disability (SCD) retirement. Although now a member of Plan D, Ron needs to complete two continuous years of active service after his most recent transfer date or earned five years of retirement service credit under Retirement Plan D after his most recent transfer date to be eligible. The hypothetical indicated Ron filed for disability retirement immediately after his transfer to Plan D, therefore the application should not be accepted.

HYPOTHETICAL 2

While a member of Plan E, Ron has one or more back injuries on the job. After 6 years in Plan E, the employee **prospectively** transfers to Plan D. The next day, Ron applies for a nonservice-connected disability retirement (NSCD) for disabling back problems.

Q2: What would you do with the application?

A2: The application should not be accepted.

Explanation

Same fact pattern as in Hypothetical 1, except Ron is requesting a nonservice-connected disability (NSCD) retirement.

HYPOTHETICAL 3

While a member of Plan E, Debra has one or more back injuries on the job. Later the employee elects to transfer to Plan D under the **Open Window transfer**. She signs a contract to convert her Plan E time. It will take six years of payroll deductions to accomplish this. After one year of payroll deductions, the employee applies for a service-connected disability retirement (SCD) for disabling back problems

Q3: What would you do with the application?

A3: The application should not be accepted.

Explanation

Under the Open Window transfer, until the entire contract is paid in full, the employee remains a Plan E member, therefore the application can not be accepted.

**Disability Investigation
HYPOTHETICALS
General Membership
Plan E to Plan D**

HYPOTHETICAL 4

While a member of Plan E, Ron has one or more back injuries on the job. Later the employee **prospectively** transfers to Plan D. Thirteen months following the transfer to Plan D, Ron alleges a cumulative trauma, involving the same body part (back) as his specific injuries, covering a one year period after his prospective transfer to Plan D.

Q4: Would the employee be entitled to a SCD? What do you do with the application?

A4: No, the application should be rejected.

Explanation

Ron needs to complete two continuous years of active service after his most recent transfer date or earned five years of retirement service credit under Retirement Plan D after his most recent transfer date to be eligible. He only has thirteen months.

HYPOTHETICAL 5

While a member of Plan E, Debra has one or more back injuries on the job. Later the employee elects to transfer to Plan D under the **Open Window Transfer**. She buys all of her Plan E time of 6 years in a lump sum with her to 401 (k) Plan. After the purchase is complete, Debra applies for a service-connected disability retirement (SCD) due to her disabling back problems.

Q5: What do you do with the application?

A5: Accept the application.

Explanation

Debra becomes a member of Plan D and is entitled to a disability retirement as soon as the transfer is completed.

HYPOTHETICAL 6

While a member of Plan E, Sue has a back injury on the job. Later, Sue prospectively transfers to Plan D. While in Plan D, the employee is involved in an automobile accident on vacation resulting in an injury to her back.

Q6: Is Sue entitled to a service-connected disability retirement, a nonservice-connected disability retirement or no retirement from LACERA?

A6: If Sue has completed **either** two years of continuous service as an active Plan D member **or** earned five years of service as an active Plan D member, she would be eligible for either a service-connected or a nonservice-connected disability retirement depending on the facts, regardless of age, due to being permanently disabled from performing the job.

**Disability Investigation
HYPOTHETICALS
General Membership
Plan E to Plan D**

Explanation

In order to be eligible for a service-connected disability retirement under the Agreement permitting a member to transfer from Plan E to Plan D, there is a requirement that you either complete two years of continuous service as an active Plan D member after your most recent effective date of transfer or, if not continuous, earn five years of service credit as an active Plan D member after your most recent effective date of transfer.

HYPOTHETICAL 7

Joe, a member of Plan E, in his sixth year of employment, while on vacation, is involved in a serious automobile accident. In his seventh year of employment, Joe prospectively transfers to Plan D. Three years later, the employee applies for a nonservice-connected disability retirement.

Q7: Is the employee entitled to the NSCD?

A7: Yes

Explanation

Under these facts, the employee has satisfied the requirement of two years of continuous service as an active Plan D member after the employee's most recent effective date of transfer and has met the five year service credit requirement combination of Plan E and D service time. As a result, the employee is entitled to a NSCD retirement since the disabling event occurred while the employee was on vacation.

HYPOTHETICAL 8

Rose had 10 years of service in Plan E. During her 2nd year of employment, the employee is diagnosed with emphysema that is non-disabling. In 2002, Rose prospectively transfers to Plan D. In 2006, the employee is found to be permanently disabled due to the emphysema.

Q8: Is Rose entitled to a nonservice disability retirement?

A8: Yes

Explanation

Under these facts, Rose has two years of continuous service as an active Plan D member after the employee's most recent effective date of transfer and five years of County retirement service credit. Rose is entitled to a NSCD retirement.

**Disability Investigation
HYPOTHETICALS
General Membership
Plan E to Plan D**

HYPOTHETICAL 9

Wayne, age 51, is hired by the County in July 1999 and elects to be in Plan E. In January 2002, the employee injures his back while skiing. He misses two weeks from work.

In October 2002, the member transfers to Plan D. Two months later, December 2002, the member elects to have back surgery as the pain is too much for him. Wayne misses six months from work due to the back surgery, returning in June 2003.

In February 2005 the member, now 56, applies for nonservice-connected disability retirement.

Q9: Is he eligible?

A9: No.

Explanation

Wayne does not have two years of consecutive service as an active Plan D member after the most recent effective date of service nor earned five years of service as an active Plan D member after the most recent effective date of transfer. The six month break on sick leave prevents him from having two consecutive years.

HYPOTHETICAL 10

Nancy, age 31, a probation officer, is hired by the County in July 1999 and elects to be in Plan E. In January 2002, the employee injures her right knee while skiing.

In October 2002, Nancy prospectively transfers to Plan D. Two months later, December 2002, she elects to have right knee surgery as the pain is too much for her. Nancy misses six months from work due to the right knee surgery, returning in June 2003. The employee works through November 2007 missing at least one day a month due to continuing knee problems.

In December 2007 Nancy applies for nonservice-connected disability retirement.

Q10: Is Nancy eligible?

A10: Yes.

Explanation

Nancy has earned five years of service as an active Plan D member after the most recent effective date of transfer even though she never had two years of consecutive service as an active Plan D member.

**Disability Investigation
HYPOTHETICALS
General Membership
Plan E to Plan D**

HYPOTHETICAL 11

Paul is hired by the County in May, 2001 and chooses Plan E. On October 10, 2002, the employee prospectively transfers to Plan D. The employee is having trouble making ends meet and decides Plan D is not for him.

Q11: What is the earliest date Paul can transfer out of Plan D back to Plan E?

A11: Not until three years have passed since his most recent prospective transfer date. In this case, he cannot transfer back until December 1, 2005.

HYPOTHETICAL 12

In December 2006, Paul gets married. He and his wife have a combined income that enables him to return to Plan D. Paul prospectively transfers to Plan D on May 1, 2007. In December 2007, the member is severely injured in an automobile accident while on vacation. In January 2008, Paul applies for nonservice-connected disability retirement.

Q12: Is he eligible?

A12: No, under this scenario, Paul is not eligible.

Explanation

For a disability retirement, the Agreement calls for complete two continuous years of active service after his most recent transfer date or earned five years of retirement service credit under Retirement Plan D after his most recent transfer date to be eligible. The most recent transfer date is May 1, 2007. The applicant has not met either requirement.

Q13: Same fact pattern as Hypothetical 12, except the employee dies in the auto accident. Is his spouse eligible for death benefits?

A13: No.

Explanation

The deceased member did not meet the Plan D service requirements. His wife will receive a refund of his Plan D contributions and accumulated interest.

Note: For service retirement, a member should contact Member Services to see if they qualify. One needs to have a combined service credit of ten (10) years and be either 50 to qualify under Plan D or 55 to qualify under Plan E.