

**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.