



## Ex Parte Communications Policy

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### I. Ex Parte Communication Definition

- A. An ex parte communication is defined as any oral or written, off-the record communication that is directed to the merits or outcome of a disability retirement application or administrative appeal pending before the Board of Retirement (the "Pending Action").

### II. Pending Action Definition

- A. A Pending Action is defined as: (1) a pending disability application proceeding before the Board of Retirement; or (2) a pending appeal of any administrative determination.
- B. A disability application or administrative appeal is pending before the Board of Retirement until the decision of the Board or SJCERA can no longer be appealed administratively or, if applicable, until the conclusion of a writ of mandamus or other appellate process.

### III. Communications Requirements

- A. To ensure that the decision-making process is fair and impartial, applicants, appellants, attorneys, hearing officers and Board Members are prohibited from engaging in informal communications that could influence how the application or appeal is decided.
- B. An Applicant, Appellant, or anyone acting on behalf of an Applicant or Appellant shall not initiate an ex parte communication with a Board Member or Hearing Officer concerning the facts or merits of, or any substantive matters relating to, a Pending Action.
- C. A lawyer representing an Applicant, Appellant or SJCERA shall not initiate or permit an ex parte communication with a Board Member or Hearing Officer concerning the merits of, or any substantive matters relating to, a Pending Action.
- D. A Hearing Officer shall not initiate, permit or consider an ex parte communication with an Applicant, Appellant, a lawyer representing an Applicant, Appellant or SJCERA, a Board Member, health care professionals, expert witnesses or investigators or consider other communications made to the Hearing Officer outside the presence of all parties concerning a Pending Action, except as follows:

1. A Hearing Officer may initiate or permit an ex parte communication where circumstances require for scheduling, administrative purposes or emergencies that do not deal with substantive matters provided the Hearing Officer reasonably believes that no party will gain a procedural or tactical advantage as a result of the ex parte communication.
- E. A Board Member shall not initiate, permit or consider an ex parte communication with Applicants, Appellants, Hearing Officers, lawyers, health care professionals, expert witnesses or investigators outside the presence of all parties concerning a Pending Action. Further, a Board Member shall not consider any other communications made to the Board Member individually or outside the presence of all parties concerning the Pending Action.
1. A Board Member shall disclose the circumstances and substance of any ex parte communication concerning a Pending Action on the record at the time of the hearing on the Pending Action before the Board of Retirement.
- F. Hearing Officers and Board Members shall not make any public comments about a Pending Action that might interfere with a fair hearing. This requirement does not prohibit Hearing Officers or Board Members from explaining SJCERA's procedures for disability applications, compensation appeals, or other administrative appeals, or from discussing legal, procedural or other subject matters relating to the administration of disability applications and administrative appeal proceedings generally in Board meetings, conferences or educational programs or with legal counsel.

**IV. Policy Review**

Staff shall review this Policy at least once every three years to ensure that it remains relevant, appropriate, and in compliance. Any revisions or amendments to this policy must be approved by the Board of Retirement in accordance with the bylaws.

**V. History**

- 08/16/2017 Adopted by the Board of Retirement
- 06/29/2018 Reviewed, no content changes required; Staff modified format
- 04/12/2019 Policy Review section amended to at least once every three years
- 07/12/2019 Reviewed, no changes
- 07/08/2022 Reviewed, no changes

**Certification of Board Adoption:**

  
 Clerk of the Board

07/08/2022

Date