



# Board Administration Policy

## Administrative Appeals Policy (Other Than Disability Retirement and Active Member Death)

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### I. Purpose

- A. To establish SJCERA's procedures for administrative appeals on matters other than eligibility for disability retirement and active member death benefits.

### II. Objective

- A. To ensure fair and timely resolution of claims, to specify when a matter will be decided by the Board or referred for an Administrative Hearing, and to confirm the authority of SJCERA's Chief Executive Officer "CEO" to take other appropriate action authorized by the California Employees Retirement Law of 1937 (Gov. Code §31450, et seq.) ("CERL") and, if applicable, the Public Employees' Pension Reform Act of 2013 (Gov. Code §7522, et seq.) ("PEPRA").

### III. Definitions

- A. Unless the context otherwise requires, the definitions in this section shall govern the construction of this Policy.
  - 1. "Administrative Record" means the compiled, indexed, and Bates-labeled set of nonprivileged materials assembled by SJCERA for a hearing before a Referee.
  - 2. "Board" means the San Joaquin County Employees' Retirement Association's Board of Retirement.
  - 3. "Board's Counsel" means an employed staff attorney or other counsel designated by the Board pursuant to Government Code Section 31529.9.
  - 4. "Claim" means a demand for retirement or survivor benefits, or other payments from SJCERA, that differs from the amounts or entitlements that SJCERA's CEO has determined are due.
  - 5. "Claimant" means any person or entity that has submitted a Claim, which may include any Member of SJCERA, the head of the office or department in which the Member is or was last employed, the Board or its agents, or any other person claiming benefits, rights, or privileges under the CERL and, if applicable, PEPRA.
  - 6. "Day" means calendar day. For deadlines that fall on a weekend or holiday, the time to act is the next business day.
  - 7. "The Fund" means the trust fund governed by the Board pursuant to Government Code Section 31588 and administered under the CERL solely for the overall best interest of Members and their beneficiaries. The Fund

shall be a real party in interest at all hearings conducted under this Policy and independent Fund Counsel, who does not advise the Board with respect to such proceedings, shall represent the Fund in such hearings.

8. "Fund Counsel" means the attorney retained by SJCERA to represent the interests of the Fund in investigating and evaluating Claims, providing recommendations to SJCERA, and representing the Fund before the Board.
9. "Interested Party" means any person, including a Claimant, a Member to whom a Claim pertains, the Fund, and any authorized representatives of each of them, disclosed by the records of SJCERA or by the Claim to have a legal interest in the subject matter of the Claim.
10. "Member" means the SJCERA member who submits the Claim or on whose behalf the Claim is submitted.
11. "Referee" means an outside hearing officer, administrative law judge, other member of the California State Bar, or another Retirement System organized under CERL to whom SJCERA refers a Claim.
12. "Retirement Office" means the physical office of SJCERA at the address posted on [www.sjcera.org](http://www.sjcera.org).
13. References to written notice or any notice in writing from or by SJCERA mean that such notice may be delivered electronically, by first class mail, or certified mail at the discretion of the CEO.

#### **IV. Representation by Counsel**

##### **A. Right to Representation**

1. Any Interested Party, at that Party's expense, may hire and be represented by an attorney subject to the provisions of this section.
2. No Claimant is required to have an attorney at any time.
3. Claimants are advised to consider retaining an experienced attorney knowledgeable in CERL and/or PEPR, as may be applicable.

##### **B. Notice of Representation**

1. If any Interested Party becomes represented by an attorney, either the Party or attorney shall promptly file with the Retirement Office, and serve upon all other Interested Parties, written notice of such representation, including the attorney's name, address, and telephone number.
2. Unless appearing with an Interested Party at a hearing, an attorney shall not be deemed counsel of record until such notice of representation is duly filed and served.
3. The Interested Party shall be deemed represented by said attorney until written notice of withdrawal or substitution of said attorney is filed with SJCERA and served on all other Interested Parties.

4. After a notice of representation is filed, service on counsel constitutes service on the represented Interested Party.

#### C. Effect on Scheduling

1. The failure to retain an attorney or to provide written notice of representation by such attorney shall in no event be considered good cause, in and of itself, to delay any proceeding under this Policy and procedure.
2. A substitution of counsel close to a scheduled hearing date is not, by itself, good cause for a continuance.

### V. Communication with the Board

#### A. *Ex Parte* Communications

1. The Board is the decision-maker for all Claims.
2. Communications concerning the merits or substance of a Claim between any Board member and any Interested Party or their representatives, other than the CEO, are forbidden until the Board's decision is final and the time to appeal by writ or otherwise has expired.
3. This prohibition shall remain in effect during the pendency of any writ, appeal, and rehearing.
4. This subsection does not limit statements made on the record at a properly noticed public meeting.

#### B. Permitted Channels and Filings

1. Administrative or scheduling communications shall be directed through the CEO or the Clerk as designated by SJCERA.
2. Any written submission concerning the merits shall be filed with SJCERA (to the attention of the CEO or Clerk) and served on all Interested Parties in accordance with this Policy.
3. A copy of the *Ex Parte Communication Policy* can be found at [www.sjcera.org](http://www.sjcera.org).

### VI. Confidential Records

#### A. Scope and General Rule

1. All individual records of Members (including, but not limited to, reports, sworn statements, medical reports and records, applications, notices, orders, and findings and decision relating to an application for disability retirement) are confidential and shall not be disclosed by SJCERA to anyone except as set forth in these procedures, upon order of a court of competent jurisdiction, or upon written authorization by the Member.

#### B. Use and Disclosure in Proceedings Under This Policy

1. SJCERA may disclose nonprivileged materials from the claim file to Interested Parties as necessary for the fair adjudication of the Claim, consistent with confidentiality protections and any applicable protective orders.
2. If the Claimant is not the Member, Member records shall be disclosed only upon the Member's written authorization or as ordered by the Referee or the Board.

#### C. Protective Orders

1. On motion or on the Referee's own order, the Referee may issue protective orders, seal portions of the record, or require redactions to protect privilege, privacy, or other legally protected interests.

#### D. Access to the Administrative Record

1. Subject to law and any protective order, Interested Parties may inspect and obtain copies of the compiled Administrative Record.
2. SJCERA may charge reasonable fees for copies consistent with applicable law and SJCERA policy.

### **VII. Service and Filing**

#### A. Methods and Effect of Service

1. SJCERA may serve notices and filings by electronic mail and U.S. mail. Service by electronic mail is effective on transmission; service by U.S. mail is effective on mailing. Personal delivery or overnight courier service is effective on delivery or deposit, respectively.
2. Each filing must include proof of service listing all Interested Parties and counsel of record and the method of service used.
3. Parties must promptly file and serve any change to their mailing or electronic-mail addresses. Service to the address of record is effective until a change is filed.
4. A filing is timely if received by 11:59 p.m. Pacific Time on the due date. If a deadline falls on a weekend or holiday, the time to act is the next business day.

### **VIII. Claims Process**

#### A. Filing a Claim

1. Claims may be filed by SJCERA Members, the head of the office or department in which the Member is or was last employed, the Board or its agents, any other person acting on a Member's behalf, or as authorized by CERL.

2. A Claim must be filed in writing with the Retirement Office by electronic mail or U.S. mail and should identify: (a) the determination or issue at stake; (b) the relief requested; (c) the material facts; and (d) supporting documents reasonably available to the Claimant.
3. The Claim should be signed by the Claimant (or authorized representative), but may be sent by email from an email address associated with the Claimant or the Claimant's representative.
4. If a Claim is materially incomplete, SJCERA may issue a deficiency notice and allow thirty (30) calendar days to cure. Failure to cure may result in administrative closure without prejudice.

**B. Initial Review of the Claim**

1. Within sixty (60) days of receipt of a Claim, SJCERA shall review the Claim and the CEO, in consultation with the Board's Counsel, shall determine whether the Claim will be referred directly to the Board for review and decision, or whether it will be referred for an administrative hearing by a Referee.
2. Within sixty (60) days of receipt of SJCERA's receipt of a Claim, Fund Counsel shall inform the Claimant of the procedure for its determination.
3. If placed on a Board agenda for decision, SJCERA shall provide Claimant with at least forty-five (45) days' written notice, with an opportunity for written submissions by deadlines set in such notice.

**IX. Hearings Before A Referee**

**A. Referral to Referee**

1. If SJCERA's CEO refers the Claim for administrative hearing, the Referee shall be provided by the Office of Administrative Hearings of the State of California or by a prescreened panel of acceptable Referees selected by SJCERA.
2. Compensation for the Referee shall be determined by the CEO and shall be paid by SJCERA.

**B. Notification of Referral to Referee and Statement of Issues; Certification of Issues, Documents, and Witnesses.**

1. Before a hearing date is set, the following notifications and certifications shall be provided:
  - a) The Fund's Counsel shall notify the Claimant in writing that SJCERA has referred the matter to hearing before a Referee ("Notice of Hearing") and that a Referee will be appointed and a hearing scheduled upon SJCERA's receipt the certifications required by this section.
  - b) The Notice of Hearing will further advise that if SJCERA does not receive

the required certification within thirty (30) calendar days, SJCERA will commence dismissal procedures for noncompliance.

c) The Notice of Hearing will include the following:

- i. A list of issues to be determined at the hearing and the names and contact information of all witnesses that may be called by the Fund's Counsel to testify at the hearing.
- ii. A copy of SJCERA's Administrative Appeals Policy and Procedures (Other Disability Retirement and Active Member Death).
- iii. An electronic copy of all nonprivileged records, reports, and other documents in SJCERA's file relevant to the Claim review. If the Claimant is not the Member, such records shall not be disclosed to the Claimant unless authorized by the Member, the Referee or the Board.
- iv. The compiled file of materials on which staff relied.

d) The Notice of Hearing shall enclose a certification form requiring the Claimant to:

- i. Identify any additional documents the Claimant intends to introduce or certify that none exist. Unless otherwise ordered by the Referee or by stipulation, any document not produced with the certification shall be barred from introduction at the hearing.
- ii. State whether the Claimant will be represented by an attorney at the hearing and, if so, the name and contact information for the attorney.
- iii. List the names and contact information for any witnesses the Claimant intends to call to testify at the hearing. Unless otherwise ordered by the Referee or by stipulation of the parties, any witnesses not identified by the Claimant on the certification shall be barred from testifying at the hearing.
- iv. Indicate any request for reasonable accommodation or interpreter services.

C. Setting the Hearing Date

- 1. Within thirty (30) days of the timely receipt of the Claimant's certification of documents and witnesses, the Fund's Counsel shall contact the Claimant or their attorney to select a mutually agreeable hearing date. The hearing date selected must be no later than ninety (90) days after the filing of the Claimant's certification of documents and witnesses, and SJCERA will pre-clear potential hearing dates with the Referee.
- 2. If a Claimant fails to respond to SJCERA's reasonable requests to set a hearing date, SJCERA may either schedule a hearing date or notify the

Claimant in writing that continued failure to confer on a hearing date may result in dismissal of the Claim for noncompliance.

#### D. Time and Place of Hearings

1. Unless the parties and the Referee agree otherwise, all hearings shall take place at the Retirement Office. When the date and time of the hearing are selected, SJCERA shall notify the parties and the Referee of the time and place of the hearing.
2. Unless the parties and the Referee agree otherwise, all hearings are deemed set for one full day, beginning at 9:30 a.m. Unless the parties and the Referee agree otherwise, hearings which are not completed by the end of the day shall be continued to the next agreeable hearing date which shall be no more than thirty (30) days from the initial hearing date.
3. On motion or stipulation, the Referee may allow all or part of the hearing to proceed by videoconference or teleconference and may set related procedures.

#### E. Prehearing Conferences

1. At the request of any Interested Party, or on the Referee's own motion, a prehearing conference may be scheduled with the Referee for the purpose of resolving any evidentiary, discovery and/or other prehearing disputes or issues. Prehearing conferences may be attended in person, by videoconference, or telephonically.
2. Following the prehearing conference, the Referee may issue any orders relating to briefing, discovery, and/or the conduct of the hearing, including the final exchange of documents and witnesses.
3. Unless otherwise stipulated by the parties, a prehearing conference is mandatory in all cases where the Applicant is unrepresented by counsel.

#### F. Consolidation

1. When two or more pending appeals involve common questions of law or fact, the Referee may order consolidation for limited or all purposes after considering complexity, potential prejudice or delay, avoidance of duplicate or inconsistent orders, and efficient use of resources.

#### G. Determining Issues

1. The Referee shall determine all issues presented by the Claim, as set forth in SJCERA's Notice of Issues, by a preponderance of the evidence.

#### H. Conduct of Hearing

1. A stenographic reporter shall record the proceedings of all hearings authorized by the Board at SJCERA's cost. Any transcription and copies shall be charged to the requesting Party.

2. The hearing shall be considered closed to the public unless Claimant requests that it be open to the public, or that certain individuals be permitted to attend. The Referee may issue protective orders as appropriate.

#### I. Exhibits

1. The Referee shall mark for identification only, and not as evidence, all exhibits submitted by the parties, which should include:
  - a) the Claim;
  - b) the Notice of Hearing, with proof of service on the Claimant;
  - c) The compiled Administrative Record;
  - d) all documents to be used by any Party to the Proceeding.
2. Exhibits are admitted into evidence on motion or by agreement, subject to objections.
3. Hearing Process.
  - a) Each Party may make an opening statement.
  - b) Each other Party then shall present evidence, in the order determined by the Referee in accordance with each Party's burden of proof and burden of presenting evidence to establish such proof.
  - c) Each Party may cross-examine witnesses.
  - d) Rebuttal evidence may be presented.
  - e) Each Party may make oral closing arguments.
  - f) Upon the conclusion of all closing arguments, the Referee shall determine if all parties are ready to submit the matter for decision, and if so, or if the Referee otherwise orders for good cause, the Referee shall close the hearing and declare the matter submitted for decision.

#### J. Stipulations

1. Nothing in these procedures may be construed as preventing the parties from stipulating to lesser time requirements than prescribed in these procedures.
2. The Referee may, upon written notice and for good cause shown, lengthen or shorten the times specified in these procedures.

#### K. Subpoena Powers and Witness Fees

1. Subpoena powers shall be vested in the Board officers, the CEO and the Referee in accordance with Government Code Section 31535. On request of a Party or the Referee, subpoenas may issue for attendance of witnesses



or production of documents.

2. Subpoenas shall be requested through the Fund's Counsel who shall transmit the request to SJCERA. Subpoenas issued shall be transmitted to the Party requesting the subpoena. The requesting Party shall have the sole responsibility for serving and enforcing the subpoena and for paying all costs associated with the subpoena.
  3. A written motion to quash a subpoena may be made to the Referee on one or more of the following grounds, which shall be clearly and fully stated in the motion and supported by declarations under penalty of perjury:
    - a) Compliance will be unduly burdensome or against public policy.
    - b) The things subpoenaed are privileged by law.
    - c) The things subpoenaed are irrelevant or unnecessary to the proceedings.
    - d) The things subpoenaed have not been described with sufficient clarity to enable the witness to comply.
  4. Before it commences or continues with the proceeding, the Referee shall wholly or partially grant or deny the motion to quash.
  5. On motion or on the Referee's own order, the Referee may limit or condition compliance with a subpoena to protect a privilege, trade secret, privacy interest, or other legally protected interest.
  6. The Party calling a witness to testify (whether by subpoena or otherwise) shall be solely responsible for paying any expert or nonexpert witness fees, mileage charges, and other costs associated with the witness' testimony. Non-expert witness fees and mileage charges shall be calculated as provided by law.
- L. Service of Proposed Findings of Fact and Recommended Decision
1. Within thirty (30) days after closing the hearing, the Referee will prepare a summary of the evidence received, findings of fact, conclusions of law, and a recommended decision. In accordance with the provisions of Government Code Section 31533, the findings of fact and proposed recommendation of the Referee shall be served on the CEO, who in turn shall distribute a copy to all parties.
  2. Either Party may submit written objections to the Referee's recommended decision to SJCERA within ten (10) calendar days from the date SJCERA distributes the notice to all parties. The non-objecting Party may submit their response to the objections ten (10) days after the filing of the objections. The written objections and response shall be incorporated into the record submitted to the Referee's consideration.

#### M. Board's Decision

1. Upon receipt and review of the recommended decision of the Referee and any filed objections and responses, the Board may:
    - a.) Approve and adopt the recommended decision of the Referee, or
    - b.) Refer the Application with or without instructions to the Referee for further hearing and/or consideration, or
    - c.) Require a written transcript or summary of all testimony and all other evidence received by the Referee to be submitted by the CEO to the Board. Following its receipt and review of the transcript and evidence, the Board shall:
      - i. Take action as is appropriate to the evidence and the provisions of applicable law, or
      - ii. Refer the matter back with or without instruction to the Referee for further proceedings; or
      - iii. Set the matter for hearing de novo before itself.
  2. If the Board sets the matter for a de novo hearing before itself, it shall hear and decide the matter as if it had not been referred to the Referee.
  3. Unless otherwise allowed by the Board, the hearing shall be confined to the evidence, witnesses, and issues set forth in the certification and statement required by this Policy.
  4. All hearings before the Board shall require the attendance of at least the same seven (7) members throughout the hearing and shall be conducted as if it were a hearing held before a Referee in accordance with this Policy.
- N. If the Board holds a hearing de novo, a Board member who did not attend all portions may participate only after reviewing the transcript or recording of the missed portion and acknowledging that review on the record, when necessary to reach a quorum.

#### **X. Rules of Evidence**

##### A. Burden of Proof

1. The Claimant has the burden of proving by a preponderance of the evidence each affirmative issue on which the Claim depends.
2. Any Party asserting an affirmative defense bears the burden of proof for that defense unless otherwise provided by law.

##### B. Evidence

1. Oral evidence shall be taken only on oath or affirmation.
2. Unless expressly waived by an opposing Party, all written evidence shall be

sworn to or given under penalty of perjury, subject to Subsection E, below.

3. The Referee may receive unsworn statements for limited purposes and give them the weight their contents warrant.
4. The hearing need not be conducted according to the technical rules of law relating to evidence and witnesses. Any relevant evidence shall be admitted if it is the sort of evidence on which responsible persons are accustomed to rely in the conduct of serious affairs, regardless of the existence of any common law or statutory rule that might make improper the admission of such evidence over objection in civil actions.
5. Hearsay evidence may be used for the purpose of supplementing or explaining any direct evidence but shall not be sufficient in itself to support a finding unless it would be admissible over objection in civil actions.
6. The Referee may take official notice of matters that may be judicially noticed by California courts; of statutes, regulations, Board bylaws, and duly adopted policies; and of facts capable of immediate and accurate determination by reliable sources. Parties shall be given a fair opportunity to contest noticed matters.
7. The Referee may exclude evidence that is irrelevant, unreliable, unduly repetitious, or whose probative value is substantially outweighed by undue consumption of time.
8. The compiled administrative record is admissible without further foundation, subject to objections to particular items.
9. Written reports and declarations bearing the author's signature may be received as direct testimony to the extent consistent with other provisions of this Subsection.
10. Each Party has the right to subpoena and cross-examine the author pursuant to this Policy.

#### C. Witnesses

1. Each Party may call and examine witnesses, introduce exhibits, and cross-examine and impeach any witness on any matter relevant to the issues.
2. If the Claimant or any other Party does not testify on that Party's own behalf, that Party may be called and examined as if under cross-examination under Evidence Code Section 776.
3. On request, the Referee may exclude witnesses from the hearing room to prevent testimony from being influenced by others, except for each Party's designated representative.

#### D. Refusal of Witness

1. Refusal by a Claimant or other party to submit to examination or to answer relevant questions shall be grounds for evidentiary or issue sanctions,

including drawing adverse inferences against the refusing Party, up to, and including, denying the relief or benefits sought by the refusing Party.

**E. Certified Copies**

1. Certified copies of the reports and records of any governmental agency, division or bureau, will be accepted as evidence in lieu of the original thereof.

**F. Deposition Transcripts/Video Recordings**

1. Any Party may offer, and the Referee shall receive into evidence, any relevant deposition transcript and/or video recording thereof if: (1) the deposition was taken in the manner provided by law or by stipulation of the Parties; and (2) at least twenty (20) calendar days before the hearing the offering Party delivered a copy of the transcript and/or video recording of the deposition to all Parties along with notice of intent to introduce same into evidence.
2. Nothing herein shall require or permit receiving into evidence any deposition testimony to which objection is properly raised if such testimony would be inadmissible were the witness present and testifying at the hearing.
3. Deposition transcripts/video recordings shall be admissible notwithstanding that the deponent is available to testify. Depositions of experts, including medical experts, may be introduced in lieu of live testimony pursuant to Code of Civil Procedure Section 2025.620(d).

**XI. Final Decision**

- A. The Board's decision shall become final upon notice of the decision on all parties, including the employer.
- B. Judicial Review.
  1. The time and manner to seek judicial review are governed by law; this Policy does not establish any filing deadline.

**XII. Law Prevails**

- A. In the event a conflict between this Policy and CERL, PEPR, other applicable statutes, or other applicable state or federal law arises, the law shall control over this Policy to the extent of the conflict.

**XIII. Policy Review**

- A. Staff shall review this Policy 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 in accordance with the bylaws. This Policy is effective upon adoption.

#### **XIV. History**

12/12/2025 Policy adopted by the Board

#### **Certification of Board Adoption:**



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Clerk of the Board

12/12/2025

Date