

VENTURA COUNTY EMPLOYEES' RETIREMENT ASSOCIATION

EX PARTE COMMUNICATION POLICY

I. Background and Objectives

The Board is the decision-maker for all disability retirement applications. The Board is committed to processing and reviewing disability retirement applications in a fair and unbiased manner. As such, informal communications that could influence how the application or appeal is decided must be avoided.

This policy is intended to provide guidance to the Board, staff, and other interested parties or their representatives in this regard.

The legal basis for this policy is found in the California Constitution, which provides: "A person may not be deprived of life, liberty, or property without due process of law ..." (Cal.Const. Art. I, § 7(a)). A member's right to disability retirement benefits, when legal criteria is met, is considered a property right. In the context of an application for disability retirement benefits, procedural due process requires that VCERA provide members with adequate notice and opportunity for a fair hearing, as well as an impartial decision-maker.

II. Definitions

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 pending before the Board (the "Pending Action").

A Pending Action covers the period from the time an application is filed until a final determination is made, and includes: (1) a pending disability retirement application (i.e. during staff investigation); or (2) a pending evidentiary hearing on a disability retirement application. A disability retirement application is considered pending before the Board until the decision of the Board or VCERA can no longer be appealed administratively via the evidentiary hearing process or, if applicable, until the conclusion of a writ of mandamus or other appellate process.

The following additional definitions are consistent with VCERA's Disability Hearing Procedures, with some clarification on the definition of "Party":

"Applicant" means (1) a member of VCERA claiming benefits, rights, or privileges under the County Employees' Retirement Law (CERL) of 1937, as amended, or (2) any person claiming such benefits, rights, or privileges on behalf of or through a member.

"Board" means the Board of Retirement of VCERA.

"Employer" means the County of Ventura or any district which is a member of VCERA.

“Hearing Officer” means the designee of the Board to conduct a hearing pursuant to the provisions of Government Code Sections 31533 and 31534.

“Party” means any person and his/her representative, if one, disclosed by the records of the retirement system or by the application to have an interest in the subject matter of an application for benefits. The term “Party” shall also include the County of Ventura and districts which are included within VCERA. The term “Party” also includes VCERA staff, Board Members, Hearing Officers, health care professionals, expert witnesses, or investigators involved in the application or hearing process. The term “Party” also includes attorneys representing any of the parties.

III. Policy Guidelines

- 1) To ensure that the decision-making process is fair and impartial, all Parties (including applicants, employers, VCERA staff, and their respective attorneys) are prohibited from engaging in informal communications with Board Members and Hearing Officers where such communications could influence how the application or appeal is decided.
- 2) A Party, or anyone acting on their behalf, 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.
- 3) An attorney representing a Party 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.
- 4) A Hearing Officer shall not initiate, permit or consider an ex parte communication with a Party or consider other communications made to the Hearing Officer outside the presence of all Parties concerning a Pending Action, except as follows:
 - a. 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.
- 5) A Board Member shall not initiate, permit or consider an ex parte communication with a Party 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.
 - a. 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.
 - b. Ex parte communications may result in a Board request for recusal of that Board Member from any discussion or vote on the application.
- 6) Board Members and Hearing Officers shall not make any public comments about a Pending Action that might interfere with a fair hearing. This requirement does not prohibit Board Members or Hearing Officers from briefly explaining VCERA’s procedures for disability applications, 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. Further questions on these procedures should be referred to VCERA staff, consistent with the Trustee Communication Policy.

V. Policy Review

The Board will review this policy at least every (3) three years to ensure that it remains relevant and appropriate.

VI. Policy History

The Board reviewed and approved this policy on January 27, 2025.