

## **VCERA New Model Disability Retirement Hearing Rules**

1. The VCERA New Model Disability Retirement Hearing Rules (“Hearing Rules”) set forth in this document shall apply only to applications for disability retirement received under VCERA’s Disability Retirement Process Document (“New Model”), as authorized by the Board of Retirement in July 2020. The Hearing Rules are intended to be harmonious in purpose and practice with VCERA’s Disability Hearing Procedures (“DHPs”), last revised in 1999, with respect to the purpose set forth below.
2. The Hearing Rules and the DHPs share the same purpose, as set forth in Section 1 of the DHPs: *“to provide an equitable, fair and impartial method for acting upon applications for rights, benefits and privileges under the County Employees’ Retirement Law of 1937, as amended, to the end that applications for disability retirement may be expeditiously processed with a minimum lapse of time, and that when a hearing is required, all parties will have notice of the hearing and an opportunity to appear before the Board or duly appointed Hearing Officer to present their cases.”*
3. Parties to the evidentiary hearing include the applicant and VCERA. In addition, as set forth in Section 2(b) of the DHPs, the County of Ventura and participating districts, as non-applicant employers, are authorized to participate as parties to an evidentiary hearing, as described in this document, regardless of whether the employer agrees with or objects to VCERA’s Final Recommendation on an application for disability retirement.
4. To achieve the explicit objective of the New Model Hearing Rules and the Disability Hearing Procedures that disability retirement applications be “expeditiously processed with a minimum lapse of time,” evidentiary hearings for New Model cases shall commence on or before 270 days after service of the Notice of Hearing Officer Assignment. A party may submit a written request for an extension of time not to exceed 90 days, upon a showing of good cause, to the assigned Hearing Officer as the Retirement Administrator’s designee, pursuant to the Retirement Administrator’s authority as set forth in Section 5 of the DHPs.
5. If the first day of hearing is not commenced by 5:00 p.m. on the 270<sup>th</sup> day, or the date to which the deadline was extended under these Hearing Rules, the Referee’s jurisdiction shall lapse. No later than thirty (30) days after the lapse of jurisdiction, the Referee shall provide to the Board a written report setting forth the reasons the hearing was not brought to a timely conclusion, along with the Referee’s recommendations regarding further proceedings. If said reasons include a party’s unreadiness or unwillingness to proceed, the Board may in its discretion impose penalties on the party or parties for noncompliance, including, but not limited to, exclusion or limited admission of evidence, and dismissal of the application. In addition, the Board may (a) reinstate the Hearing Officer’s jurisdiction with a new hearing commencement deadline; (b) assign a new Hearing Officer with a new 270-day or other revised hearing commencement deadline;

(c) set the hearing before the Board; or (d) take any other action consistent with applicable law.

6. As of the date of VCERA's Final Recommendation to deny an application, or as of the date of the Board's decision to direct a case to evidentiary hearing, the applicant shall have thirty (30) days to retain legal representation before the matter will be assigned to a Hearing Officer, pursuant to Section 4(b) of the DHPs.
7. VCERA shall distribute to the parties the Administrative File for an application for disability retirement on the same day as the Notice of Hearing Officer Assignment.
8. The parties shall meet and confer promptly after issuance of the Notice of Hearing Officer Assignment to seek agreement on pre-hearing and hearing-related procedural matters such as: time estimate for hearing, setting the hearing date(s) pursuant to Section 4 above, written or oral closing arguments, agreed upon methods of service, and any other applicable matters. If, after meeting and conferring in good faith, the parties cannot agree on a matter, they shall promptly notify the Hearing Officer of the disputed matter(s). The Board of Retirement expressly authorizes the Hearing Officer to make binding determinations on disputed procedural and/or evidentiary issues arising between the parties.
9. Informal discovery and exchange of information between the parties is encouraged. In the event of a pre-hearing discovery dispute, the Hearing Officer, on his or her own motion or upon the written noticed motion of a party, may make appropriate orders concerning discovery.
10. There shall be a pre-hearing conference involving the parties and the Hearing Officer for all cases in which an applicant is in pro per to ensure the rights and responsibilities of the applicant are properly and timely conveyed. This pre-hearing conference shall be held no later than sixty (60) days after the issuance of the Notice of Hearing Officer Assignment, unless waived by the applicant or otherwise ordered by the Hearing Officer.
11. No later than forty-five (45) days before the date of the hearing, the parties shall serve a pre-hearing statement upon the Hearing Officer and the other parties. The pre-hearing statement shall contain the following:
  - a. A statement of the party's issues and contentions;
  - b. A list identifying the documentary exhibits the party intends to present at hearing, including medical reports and depositions of medical witnesses on which the party will rely at hearing, but excluding impeachment evidence. Each document shall be described with sufficient information to reasonably identify the document. Copies of the documentary exhibits are encouraged, but not required, to be exchanged;

- c. The names and contact information of any lay witnesses whose testimony the party intends to present at the hearing, and a summary of each witness's expected testimony;
  - d. The name of each expert witness the party intends to call at hearing along with a brief statement of the opinion the expert is expected to give;
  - e. A list and summary of any affidavits the party proposes to introduce as evidence at the hearing; and
  - f. Parties' time estimate for hearing.
12. At least twenty (20) days before the hearing, the parties shall submit to the Hearing Officer and all other parties an exhibit list and copies of exhibits intended to be introduced at the hearing. The exhibit list shall contain enough information about each exhibit to reasonably identify the document. Except on rebuttal or for impeachment, or as otherwise authorized by the DHPs, no party will be allowed to offer an exhibit at hearing that is not identified on an exhibit list without a showing of good cause as to why the existence of that exhibit was not earlier discovered and disclosed through the exercise of due diligence.
13. At least twenty (20) days before the hearing, the parties shall submit to the Hearing Officer and all other parties a witness list identifying witnesses expected to be called at the hearing. The witness list shall contain the names and identities of witnesses and a summary of each witness's expected testimony. If a witness list contains the names of expert witnesses, the witness list shall also include a brief statement of the opinion each expert is expected to give and shall be accompanied by a copy of each expert's curriculum vitae. Except on rebuttal or for impeachment, or as otherwise authorized by the DHPs, no party will be allowed to call a witness who is not identified on a witness list without a showing of good cause as to why the identity of that witness was not earlier discovered and disclosed through the exercise of due diligence.
14. Unless otherwise ordered by the Hearing Officer, hearing briefs are optional. If a party elects to submit a hearing brief, it shall be submitted to the Hearing Officer and served on all other parties no later than seven (7) days before the hearing.
15. If a party elects to submit a closing brief, the brief shall be submitted to the Hearing Officer and served on the parties no later than thirty (30) days after either the close of the hearing record or service of the hearing transcripts, whichever is later. Rebuttal briefs shall be submitted to the Hearing Officer and served on the parties no later than fourteen (14) days after service of the closing brief.
16. The Hearing Officer shall serve on the parties the Proposed Findings of Fact and Recommended Decision within ninety (90) days of the closing of the hearing record, pursuant to Section 7 of the DHPs. Any post-hearing briefing shall not extend the date the Proposed Findings of Fact and Recommended Decision is due. The parties shall then have ten (10) days, inclusive of the tenth day, to submit written objections thereto for

inclusion in the materials to be considered by the Board of Retirement. The Board may, upon a written showing of good cause, accept and consider any objections filed after the 10-day deadline under this paragraph.

17. Nothing in these Hearing Rules is to be construed as preventing the parties from stipulating to lesser intervals than those described above. The Hearing Officer may for good cause shown and after notice and an opportunity to be heard, shorten or lengthen the times specified above.
18. The Hearing Rules are effective upon adoption by the Board of Retirement. The Hearing Rules may be amended by the Board of Retirement at any time to better achieve the stated purposes of the DHPs.
19. In the event there is a conflict between VCERA's New Model Disability Retirement Hearing Rules, enacted in July 2023, and the Disability Retirement Hearing Procedures, as revised April 1999, the April 1999 Procedures shall prevail, subject to the Board of Retirement's duties under the County Employees Retirement Law of 1937 (CERL) and/or other applicable law.

*(Approved by the Board on 7/24/2023)*