SBCERS
Santa Barbara County Employees' Retirement System

130 Robin Hill Road, Suite 100
Goleta, CA 93117
(877) 568-2940
www.sbcers.org

Re: Application for Disability Retirement

Dear Member:

Enclosed, you will find the application for disability retirement, along with the SBCERS Disability Procedures and other supporting documents. The application consists of four parts, all of which must be submitted before it is considered complete.

Completing the Application

Part A –Provide your identifying, contact, and employment information.

Part B – Authorize SBCERS to obtain your medical, employment, and risk management records. Complete a medical records release for each provider that treated or evaluated you, as indicated in your responses to questions #10-12, 20-24, 29 and 32 in Part C. Failure to disclose all providers may cause significant delays in processing your application.

Part C – Submit additional supporting information for your disability retirement application by completing the enclosed questionnaire. Your responses must be written in full, signed under penalty of perjury.

Part D Your treating physician must complete this section, detailing the condition(s) forming the basis of your application. If multiple conditions (e.g., orthopedic and psychiatric) contribute to your incapacity, a separate Part D form should be completed for each.

Your application will not be considered complete until SBCERS receives all four parts.

Processing Your Application

SBCERS is obligated to thoroughly investigate the merits of each application to ensure benefits are granted only to members who meet the legal criteria under the County Employees' Retirement Law (CERL). Approval for other benefits—such as Workers' Compensation or Social Security—does not necessarily mean you qualify for disability retirement. Under the CERL, you

must demonstrate more than just an on-the-job injury; you must show **permanent incapacity** from performing the usual duties of all assignments within your job classification.

Processing applications is a lengthy process that involves requesting and reviewing all relevant medical and employment records, completing a detailed job description (Job Factors Form), and scheduling appointments for you to evaluated by 2-3 independent medical examiners (IME) who will examine you and provide a written opinion to the Board of Retirement concerning the primary legal issues below:

1. **Incapacity**: Whether you are unable to perform all assignments within your job classification, considering reasonable accommodations.
2. **Permanency**: Whether further medical treatment (surgery, medication, therapy) is likely to restore your ability to perform your usual duties.
3. **Service-Connection:** Whether a measurable link exists between your employment and your incapacitating condition

Although SBCERS reviews applications, it is your responsibility to demonstrate you meet these legal requirements.

Currently, processing times average 12 months. To avoid delays, submit a thorough application, disclose all medical providers, and promptly respond to SBCERS' requests. If you receive new treatments (e.g., surgeries, MRI scans), **notify SBCERS immediately**. Failure to cooperate with the Board's procedures may result in the dismissal of your application.

While Your Application is in Process

If you are eligible for service retirement while awaiting a disability retirement decision, schedule an appointment with a Member Services Representative at **(877) 568-2940** or www.sbcers.org. Appointments are available in person or virtually.

Additionally, contact your employer's human resources office to inquire about long-term disability and other available benefits while your application is pending. Safety members should also check with their employer regarding eligibility for Advanced Disability Payments.

If your doctor clears you for modified or alternative work and your employer can accommodate you, you may continue working—full- or part-time—while the application is processed.

Determination of Eligibility

Once SBCERS receives the IME reports, your disability application will be placed on the agenda for the Board's next regular meeting. You will receive a copy of the reports and written notice of the meeting's date and location.

The staff's recommendation—whether to grant or deny benefits—will be based on the IME doctors' opinions. At the meeting, you may briefly address the Board. However, this is not a formal hearing, so no new evidence can be submitted—any relevant materials must be provided during the application review.

If the Board denies your application, you may appeal the decision by requesting an administrative hearing.

If you have questions about how to complete the application or need clarification on any aspect of the disability retirement process, please don't hesitate to contact us. You may also find additional information on our website: https://www.sbcers.org/active-members/disability-retirement/

Sincerely,

Disability Retirement Division

SBCERS
Santa Barbara County Employees' Retirement System

130 Robin Hill Rd, Suite 100
Goleta, CA 93117
(877) 568-2940
sbcers.org

Application for Disability Retirement

Part A - Applicant Information

Full Name: _____ Date of Birth: _____
Last *First* *M.I.*

Address: _____
Street Address *Apartment/Unit #*

_____
Mailing Address if different *Apartment/Unit #*

_____
City *State* *ZIP Code*

Phone: _____ personal email: _____ Last 4 digits of SSN: ###-##- _____

Preferred method of communication (circle one) for ensuring a prompt response: select one

Job Class: _____ Department: _____

Last Assignment: _____ Work Location: _____ Employee ID: _____

Date of Hire: _____ Last Day of Work: _____ Years of Service: _____

Name and Title of Supervisor: _____ Pay Status select one

of attorney, if any, representing you in connection with this application: _____

By my signature, I acknowledge that I have been provided with a copy of the Board's Disability Retirement Effective Date Guidelines, and that I have read and understand how their application will affect the effective date of any disability retirement benefit I may be granted. I understand that receipt of leave balances such as vacation, holiday pay, and sick leave, in whatever amounts, is considered regular compensation and will delay the start of any disability benefit I may be entitled to. I understand that I may contact SBCERS at any time for clarification on how these guidelines will be applied in my particular case.

Signature: _____ Date: _____

WARNING: §72 of the California Penal Code provides:
"Every person who, with intent to defraud, presents for allowance or for payment to any state board or officer, or to any county, city, or district board or officer authorized to allow or pay the same if genuine, any false or fraudulent claim, bill, account, voucher, or writing, is punishable either by imprisonment in the county jail for a period of not more than one year, by a fine of not exceeding one thousand dollars (1,000.00), or by both that imprisonment and fine, or by imprisonment pursuant to subdivision (h) of Section 1170, by a fine of not exceeding ten thousand dollars ($10,000), or by both such imprisonment and fine..."
I declare, under penalty of perjury, that my answers are true and complete to the best of my knowledge.

Signature: _____ Date: _____

SBCERS

Application for Disability Retirement

Part B – Authorization for Release of Employment Records

TO: Employer: _____

The purpose of the Authorization is to permit the investigation and determination of my entitlement to disability retirement benefits from the Retirement System

The undersigned hereby authorizes and requests you to permit the Santa Barbara County Retirement System, and any authorized agent thereof, to inspect and copy all records of whatever nature in your possession or under your control, without omission, pertaining to any employment that I have held, including (without limitation) records relating to my employment application, hiring, job duties, job performance, hours worked, compensation paid, termination, injuries (either on the job or off), medical insurance, pre-employment medical examination records and medical history questionnaires, workers compensation claims, fitness for duty evaluations, leave applications, correspondence to/from my doctors, any investigative reports, any grievances, any meeting notes, memos, correspondence to/from me, any job descriptions, any requests for reasonable accommodation, any offers of reasonable accommodation, any letters of resignation, separation documents, etc.

To the extent that the confidentiality of any of these records may be protected by state or federal law, I waive the same because the records may be relevant to matters that are properly the subject of investigation by the Retirement System. I understand and acknowledge that records disclosed to the Retirement System pursuant to this authorization may be disclosed to individuals assisting the Retirement System to adjudicate my application for benefits, including attorneys, independent medical examiners, hearing officers, court reporters and Board trustees. If an appeal of a Board action is filed with the Superior Court, I understand that such records may become part of the court file. I reserve the power to revoke this Authorization at any time, except to the extent that action has already been taken to comply with it. Without my express revocation, this Authorization shall automatically expire two years from the date of my signature below. I understand that I have the right to request and receive a copy of this Authorization.

A photocopy of this Authorization shall be as valid as the original.

Full Name (Print): _____ Relationship to Employee: _____

Date of Birth: _____ Last Four of SSN #: ### / ## / _____

Signature: _____ Date: _____

SBCERS

Application for Disability Retirement

Part B – Authorization for Release of Workers' Compensation Records

TO: County of Santa Barbara and its departments, agents, and third party administrators, or SBCERS member special districts

The purpose of this Authorization is to permit the investigation and processing of an application for disability retirement that I filed with the Retirement System.

The undersigned hereby authorizes and requests you to permit the Santa Barbara County Retirement System, and any authorized agent thereof, to inspect and copy all records of whatever nature in your possession or under your control, without omission, pertaining to my Workers Compensation claims including (but not limited to), subpoenaed medical records, treating physician medical records, all P & S reports, all IME, IMR, QME or AME medical reports and records, all fitness for duty examination reports, all pre-employment and periodic health examinations, all Workers Compensation claim forms, all claimant deposition transcripts, all physician deposition transcripts, all witness statements, all investigative reports, all excuse from work notes, all return to work notes, all correspondence to/from physicians, all job descriptions, all job analysis reports, all RU 91 forms, all RU 94 forms, all written offers of modified work or offered reasonable accommodations, all vocational rehabilitation notes and reports, all C & R agreements, all Findings and Awards documents, etc. If any such records pertain to my psychological condition or use of alcohol, drugs, or other substances, their release is hereby specifically authorized.

To the extent that the confidentiality of any of these records may be protected by state or federal law, I waive the same because the records may be relevant to matters that are properly the subject of investigation by the Retirement System. I understand and acknowledge that records disclosed to the Retirement System pursuant to this authorization may be disclosed to individuals assisting the Retirement System to adjudicate my application for benefits, including attorneys, independent medical examiners, hearing officers, court reporters and Board trustees. If an appeal of a Board action is filed with the Superior Court, I understand that such records may become part of the court file. I reserve the power to revoke this Authorization at any time, except to the extent that action has already been taken to comply with it. Without my express revocation, this Authorization shall automatically expire two years from the date of my signature below. I understand that I have the right to request and receive a copy of this Authorization. A photocopy of this Authorization shall be as valid as the original.

Full Name (Print): _____ Relationship to Employee: _____

Date of Birth: _____ Last Four of SSN #: ### / ## / _____

Signature: _____ Date: _____

SBCERS
Application for Disability Retirement

Part B – Authorization for Release of Medical Records

(Complete a separate authorization for each separate medical facility listed in question # 11 of Part C - e.g. if you have seen several doctors at Sansum Clinic, complete only one release for Sansum Clinic)

Name of Medical Provider	*Phone Number*
Street Address of Medical Provider	*Suite/Unit #*
City	*State* *Zip*

The purpose of this Authorization is to permit the investigation and processing of an application for disability retirement that I filed with the Retirement System.

The undersigned hereby authorizes and requests you to permit the Santa Barbara County Retirement System, and any authorized agent thereof, to inspect and copy all records of whatever nature in your possession or under your control, without omission, pertaining to any physical or mental health care or examination I have received from any source, including (but not limited to) intake documents, personal history questionnaires, progress notes, Workers Compensation forms, job descriptions, excuse from work notes, return to work notes, all reports, diagnostic test results, correspondence, memoranda, and notes, whether typed or handwritten. If any such records pertain to my psychological condition or use of alcohol, drugs, or other substances, their release is hereby specifically authorized.

To the extent that the confidentiality of any of these records may be protected by state or federal law, I waive the same because the records may be relevant to matters that are properly the subject of investigation by the Retirement System. I understand and acknowledge that records disclosed to the Retirement System pursuant to this authorization may be disclosed to individuals assisting the Retirement System to adjudicate my application for benefits, including interested parties, attorneys, independent medical examiners, hearing officers, court reporters and Board trustees. If an appeal of a Board action is filed with the Superior Court, I understand that such records may become part of the court file. I reserve the power to revoke this Authorization at any time, except to the extent that action has already been taken to comply with it. Without my express revocation, this Authorization shall automatically expire two years from the date of my signature below. I understand that I have the right to request and receive a copy of this Authorization.

Full Name (Print): _____ Relationship to Patient: _____

Date of Birth: _____ Last Four of SSN #: ### / ## / _____

Signature: _____ Date: _____

SBCERS

Application for Disability Retirement

Part C – Supplemental Question

_____

Name of Applicant

Personal Information

1) List all other names by which you have been known:

Nature of your Incapacity

2) Is your claimed incapacity the result of ☐ Injury ☐ Illness
3) Please specify the medical condition(s) for which you are claiming permanent incapacity:

Work-Related Factors

4) Do you believe that your employment ***caused*** your incapacitating condition(s)? ☐ YES ☐ NO
5) If so, please describe the work-related circumstances that you believe caused your incapacitating condition(s):

6) Do you believe that your employment ***aggravated*** your pre-existing condition to the point that it is now incapacitating? ☐ YES ☐ NO
7) If you answered yes, please describe the work-related circumstances that you believe aggravated your pre-existing condition(s):

Details of your injury or Illness

-On-the-job Injury/Illness (if applicable)

8) If your incapacitating condition resulted from work-related injury/illness complete the following (otherwise check ☐ N/A):

   a. Date of the injury/onset:

   b. Location where injury occurred (if applicable):

   c. Describe the circumstances of the injury (if applicable)

   d. Names of any witnesses:

   e. List your symptoms and how frequently they occur:

   f. Is your condition changing in any way (improving or worsening) or has it stabilized? Provide details:

   g. List all medications you are currently taking, along with the dosage and condition each medication is prescribed to treat:

-Non-industrial Injury/Illness (if applicable)

9) If your incapacitating condition is the result of a non-industrial injury/illness, complete the following (otherwise check ☐ N/A):

   a. Describe the injury/illness:

   b. List your symptoms and how frequently occur:

   c. Is your condition changing in any way (improving or worsening) or has it stabilized? Provide details:

   d. Indicate all medications you currently take to treat the injury/illness:

Medical Treatment History

-Emergency Medical Care

10) Have you received any emergency medical treatment related to your condition? If so, please provide details, including:

    a. The date(s) of emergency treatment

    b. The name of the hospital or urgent care facility

    c. The reason for the emergency visit(s)

    d. Any procedures, treatments, referrals, or medications administered during the visit

- Surgeries or Procedures

11) Have you undergone surgery or other procedures, including alternative, to treat your condition? If so, please provide details, including:

    a. The specific procedure(s)

    b. The date(s) of the procedure(s)

    c. The name of the medical provider who performed the procedure(s)

    d. Whether you have any planned procedures, including the specific procedure(s) and date(s) scheduled

    e. If applicable, reasons for deciding against any recommended procedure(s)

-Imaging & Diagnostic Tests

12) Have you undergone any imaging or diagnostic scans, such as MRIs, CT scans, or nerve conduction studies, in relation to your condition(s)? If so, please provide the following details:

   a. Type of scan performed and the date for each

   b. Name of the facility or hospital where the scan was conducted

   c. Reason for the scan (e.g., diagnosing the condition, monitoring progression, assessing treatment options)

-Medical Records

13) Do you have copies of any medical records related to your claimed condition(s)? ☐ YES ☐ NO
If yes, please provide either a paper or electronic copy of the records. If the documents are extensive, you may contact us to schedule a time to bring them to our office for copying.

Impact on Job Duties

14) Explain why you believe your condition prevents you from performing your usual job duties. Specify which duties you are permanently unable to perform and why:

15) When did you become aware that you would not be able to return to your usual duties? Approximate Date:_____ Please describe the circumstances, including whether any medical professional advised you that you cannot return to your usual duties.

16) Is there anything that your employer can do that you believe would enable you to perform your duties?

a. give you another assignment within your job class:

b. make physical modifications to your work area:

c. delegate some of your duties to a co-worker:

d. allow you to perform some duties with assistance:

e. Provide you with ergonomic technology (a voice activated computer, lifting belt, headset, etc.)

f. If you requested reasonable accommodations from your employer, describe your request and how your employer responded. Be specific and include dates and employer representatives you communicated with.

Impact on Daily Life

17) How does your condition affect your ability to perform everyday activities outside of work?

18) Describe any lifestyle changes or accommodations you have made due to your condition.

19) Outline your typical weekly activities, including household and family responsibilities, hobbies, volunteer work, and other engagements.

Medical Providers and Evaluations

Note: Please be sure to include a signed Part B Medical Release for every medical provider/facility listed in response to the questions below.

20) List the names, addresses, and phone numbers of all the medical providers[1] who ***treated*** you for the incapacitating condition(s) listed in response to question #3.

21) List the names, addresses, and phone numbers of all the medical providers who ***evaluated*** your incapacitating condition(s) listed in response to question #3, for purposes of obtaining any benefits such as Workers' Compensation, Social Security Administration benefits, etc. (including QME, AME, or IME evaluators.

22) List the name, addresses, and phone number of your current primary care or family physician.

23) If different than above, please the names, addresses, and phone number of your primary care or family physician(s) during the 5-year period immediately prior to the onset of the claimed incapacitating condition(s).

24) List the names, addresses, and phone numbers of all medical providers who evaluated you for purposes of a pre-employment medical exam.

[1] Medical Providers includes doctors, physician's assistants, nurse care practitioners, nurses, hospitals, chiropractors, acupuncturists, counselors, and therapists (mental, physical, occupational, etc.).

Employment Status

25) Are you currently working for an employer other than the County of Santa Barbara/SBCERS Participating Employer, including in a self-employment capacity? ☐ YES ☐ NO
If yes, complete a Part B release of records for that employer and provide the following:

a) Employer Name:

b) Employer Address and Phone Number:

c) Employment Dates:

d) Position/Title:

e) Usual Work Schedule:

f) Description of employment Duties:

26) Have you applied or are you currently in the process of applying for employment? ☐ YES ☐ NO

If so, what type of position are you seeking?

Workers' Compensation Claim(s)

Note: An award of Workers' Compensation benefits does not automatically qualify you for disability retirement.

27) Have you filed a Workers' Compensation claim in connection with the condition(s) you are claiming as part of your disability retirement application? ☐ YES ☐ NO If yes, provide the following for each claim filed:

Claim Number(s)

Date(s) Filed

Body part(s) claimed

*Please submit a copy of all related Workers' Compensation claim forms.

28) What is the current status of your claim?

29) Have you attended or are you scheduled to attend any QME or AME evaluations? If so, list the doctor(s), address, and date(s) of evaluation. Attach copies of the reports if available.

30) Have you attended or are scheduled to attend a deposition? If so, list the date(s) and attach a copy of the transcript.

31) Have any other parties, including a medical provider been deposed, or scheduled to be deposed, in connection to your case? If so, provide the name of the party deposed, the date of the deposition, and attach a copy of the transcript.

Other Disability Benefit Claims

Note: An award of other disability benefits does not automatically qualify you for disability retirement.

32) Other than this application for disability retirement and Workers' Compensation, have you filed for any other type of disability benefit e.g., state disability insurance, social security disability, private long-term disability, etc.? ☐ YES ☐ NO

If yes, list the insurance provider, date, claims status, and any evaluations you have undergone or are scheduled for. Provide copies of any claim forms and medical evaluations

33) Since the start of your County employment, have you entered into marriage or undergone a marital dissolution? ☐ YES ☐ NO

If yes, please provide details, including dates of marriage and/or dissolution, and your spouse or former spouses' name

This application will be deemed complete upon receipt of all records necessary for the investigation of the claim, including medical, employment, personnel records, etc. When the Retirement Office deems the application complete, the 180-day investigative period will begin. If upon review of the received records, additional records are deemed necessary; the 180-day investigative period will be suspended until additional records are subpoenaed, received, and reviewed. Please note: failure to provide complete and accurate information, including a complete list of all health care providers may result in a suspension of the investigative period and may delay the determination of your entitlement to disability retirement benefits.

I declare, under penalty of perjury, that my answers are true and complete to the best of my knowledge.

Signature: _____ Date: _____

SBCERS
Santa Barbara County Employees' Retirement System

Part D – Treating Physician's Statement

To determine whether your patient meets the requirements for a disability retirement under the County Employees Retirement Law, the Retirement Board will consider the information that you provide in this statement along with information contained in your treating records and the records of other evaluating medical professionals. **Return to: SBCERS, 130 Robin Hill Rd, Suite 100, Goleta, CA 93117 / Fax (805) 695-2755**

_____
Patient Name *Patient Date of Birth*

_____
Name of Physician *Phone Number*

_____
How long have you treated this patient? *Frequency of visits*

1. Identify the incapacitating medical condition(s) : _____

2. Is this disability temporary, permanent or indeterminable at this time? Note: A disability is permanent when further change in the medical condition that would render applicant able to perform his/her duties is unlikely. An incapacity is not permanent where there is a distinct probability that further conventional medical treatment reasonably available will bring about a positive material change in the applicant's medical condition, enabling him/her to perform his/her duties.

_____

3. Please list the applicant's permanent work restrictions:

_____

_____

4. Please list any reasonable accommodations, that would allow the applicant to perform his/her duties in:

_____

_____

5. Please explain the factors that led to the development of the incapacitating medical condition(s) listed in question #1:

_____

_____

Treating Physician Signature: _____ Date: _____

SBCERS
Santa Barbara County Employees' Retirement System

Dear Member:

DISABILITY RETIREMENT APPLICATION PROCEDURES

The Retirement Board's rules and procedures for disability retirement applications are outlined in the Board's Disability Procedures, a full copy of which is enclosed for your reference. Please review these provisions carefully, as noncompliance may delay the determination of entitlement or result in an adverse decision.

LEGAL REPRESENTATION

Applicants for retirement disability are not required to have an attorney at any stage of the process. However, they may choose to retain one at their own expense at any time. If an applicant elects legal representation, their attorney must submit a written Notice of Representation to this office.

DISABILITY RETIREMENT BENEFITS

Your Member Services Representative can provide details on the estimated amount of your monthly disability retirement allowance (if granted), the effective date of benefits, survivor benefits, and other related information.

Santa Barbara Office - California residents with zip code lower than 93200, plus residents of Buellton, Los Olivos, Santa Ynez, and Solvang:

Member Services Specialist	***email***	***Phone Number***	
Barbara Gordon	BGordon@sbces.org	(805) 770-1254	Members with last name starting with A-K
Scott Dunlap	SDunlap@sbcers.org	(805) 730-0055	Members with last name starting with L-Z

Santa Maria Office - All out of state residents, and California residents with zip code higher than 93200, excluding residents of Buellton, Los Olivos, Santa Ynez, and Solvang:

Member Services Specialist	***email***	***Phone Number***	
Jenny Labastida	JLabastida@sbces.org	(805) 730-0727	Members with last name starting with A-K
Scott Dunlap	SDunlap@sbcers.org	(805) 730-0055	Members with last name starting with L-Z

SERVICE RETIREMENT:

Under Government Code § 31725.7, certain members may apply for and receive a service retirement allowance while their disability retirement eligibility is being determined. If you are interested in this option, consult your Member Services Representative to assess your eligibility. However, if you choose to retire for service, you will not be able to return to your previous employment under § 31725 if your disability retirement is denied. Please review the text of § 31725.7 below, and if you have questions about your eligibility, contact your Member Services Specialist at the phone numbers listed above.

If you have any questions on the disability application process, please contact our office. You can also find an informational video and other resources by visiting:
https://www.sbcers.org/active-members/disability-retirement/

Government Code § 31725.7 Service retirement allowance pending determination of entitlement

At any time after filing an application for disability retirement with the board, the member may, if eligible, apply for, and the board in its discretion may grant, a service retirement allowance pending the determination of his entitlement to disability retirement. If he is found to be eligible for disability retirement, appropriate adjustments shall be made in his retirement allowance retroactive to the effective date of his disability retirement as provided in Section 31724.

This section shall not be construed to authorize a member to receive more than one type of retirement allowance for the same period of time nor to entitle any beneficiary to receive benefits which the beneficiary would not otherwise have been entitled to receive under the type of retirement which the member is finally determined to have been entitled. In the event a member retired for service is found not to be entitled to disability retirement he shall not be entitled to return to his job as provided in Section 31725.

If the retired member should die before a final determination is made concerning entitlement to disability retirement, the rights of the beneficiary shall be as selected by the member at the time of retirement for service. The optional or unmodified type of allowance selected by the member at the time of retirement for service shall also be binding as to the type of allowance the member receives if the member is awarded a disability retirement.

SBCERS
Santa Barbara County Employees' Retirement System

VOCATIONAL REHABILITATION

Dear Member:

Enclosed are copies of Government Code §§ 31725.5 and 31725.65. These provisions state that if the Board of Retirement determines you are eligible for disability retirement but capable of performing the duties of another position within County service, the Board will refer you to a County agency to initiate a suitable re-employment plan. If successfully placed in a new role, you will receive compensation at least equivalent to your current position. If the new role has a lower salary, the Retirement System will cover the difference in lieu of disability retirement benefits.

If you accept a new position and later separate from County employment—whether voluntarily or involuntarily—your disability retirement benefits will resume following the conclusion of your second period of County employment.

As part of our obligations under Sections 31725.5 and 31725.65, we ask that you complete and sign the questionnaire below as part of your disability retirement application.

I have read the above describing the provisions of Government Code §§ 31725.5 and 31725.65, and have received a copy of the statute. Fully informed as to my rights under the statutes, I make the following election.

☐ In the event that I am determined to be permanently incapacitated from performing my usual duties in County service, I am interested in considering a rehabilitation/re-employment plan that may result in my being placed in another position within County service in a different job classification. I request that potential positions within County service be explored concurrently with my disability retirement application, if feasible.

☐ In the event that I am determined to be permanently incapacitated from performing my usual duties in County service, I am not interested in participating in a rehabilitation/re-employment plan to be placed in another position within County service in a different job classification. I hereby waive my rights to be considered for such a plan and instruct the Retirement System not to pursue such a plan on my behalf.

☐ I am not currently interested in being considered for a rehabilitation/re-employment plan to be placed in another position within County service in a different job classification. However, in the event that I am found to be permanently incapacitated from performing my usual duties in County service, I would like to be re-contacted and provided with further information regarding my available options at that time.

_____ _

Applicant Name | Applicant Signature | Date

GOVERNMENT CODE § 31725.5 If the board finds, on medical advice, that a member in county employment, although incapacitated for the performance of his duties, is capable of performing other duties in the service of the county, the member shall not be entitled to a disability retirement allowance if any competent authority in accordance with any applicable civil service or merit system procedures offers and he accepts a transfer, reassignment, or other change to a position with duties within his capacity to perform with his disability. If this new position returns to the member compensation less than that of the position from which he was disabled, the board, in lieu of a disability retirement allowance, shall pay him the difference in such compensation until the compensation of the new position equals orexceeds the compensation (including later changes) of the former position, but such amount shall not exceed the amount to which he would otherwise be entitled as a disability retirement allowance. Such payments in lieu of disability retirement allowance shall be considered as a charge against county advance reserve for current service.

If a new position cannot be arranged at the time of eligibility for disability retirement allowance, such disability retirement allowance to which the member is entitled under this article shall be paid until such time as a new position is available and accepted.

If a disability retirement allowance is paid and the member later accepts such a new position, the period while on disability retirement shall not be considered as breaking the continuity of service and his rate of contributions shall be based on the same age as it was at the date of disability. The member's accumulated contributions shall be the same as at the date his disability retirement began less the amount charged to his accumulated normal contributions.

Nothing in this section shall be construed to require a member to accept reassignment or transfer in lieu of a disability retirement allowance.

The provisions of this section become effective in any county only when the board of supervisors adopts an ordinance providing for their implementation by the board of retirement which may include application to persons retired for disability before such effective date.

The provisions of this section shall only apply to members eligible to retire for nonservice-connected disability.

GOVERNMENT CODE § 31725.65. (a) When the board finds, based on medical advice, that a member in county service is incapacitated for the performance of the member's duties, the board shall determine, based upon that medical advice, whether the member may be capable of performing other duties. If the board determines that a member, although incapacitated for the performance of the member's duties, is capable of performing other duties, the board shall notify the appropriate agency in county service of its findings.

(b) When the appropriate agency in county service receives that notification from the board, the agency shall immediately inform the member of any vacant county positions that may be suitable for the member, consistent with his or her disability, and shall consult with the member in an effort to develop a reemployment plan that shall identify what position, if any, in county service would be compatible with the member's aptitudes, interests, and abilities.

(c) Upon approval by the member of the reemployment plan, the appropriate agency in county service shall notify the board that the agency is proceeding to implement the approved reemployment plan.

(d) Upon commencement of service by the member in the position specified in the approved reemployment plan, the member shall not be paid the disability retirement allowance to which the member would otherwise be entitled during the entire period that the member remains in county service. However, if the compensation rate of the position specified in the approved reemployment plan is less than the compensation rate of the position for which the member was incapacitated, the board shall, in lieu of the disability retirement allowance, pay to the member a supplemental disability allowance in an amount equal to the difference between the compensation rate of the position for which the member was incapacitated, applicable on the date of the commencement of service by the member in the position specified in the approved reemployment plan, and the compensation rate of the position specified in the plan, applicable on the same date. The supplemental disability allowance shall be adjusted annually to equal the difference between the current compensation rate of the position for which the member was incapacitated and the current compensation of the position specified in the approved reemployment plan. The supplemental disability allowance payments shall commence upon suspension of the disability retirement allowance and the amount of the payments shall not be greater than the disability retirement allowance to which the member would otherwise be entitled. Supplemental disability allowance payments made pursuant to this section shall be considered as a charge against the county advance reserve for current service, and all of these payments received by a member shall be considered as a part of the member's compensation within the meaning of Section 31460.

(e) From the time that the member is eligible to receive a disability retirement allowance until the appropriate agency is able to provide the position in county service specified in the approved reemployment plan, and the member has commenced service in that position, the disability retirement allowance to which the member is
entitled under this article shall be paid. Upon commencement of service by the member in the position specified in the approved reemployment plan, the period during which the member was receiving disability retirement payments shall not be considered as breaking the continuity of the member's service, and the rate of the member's
contributions shall continue to be based on the same age at entrance into the retirement system on which the member's rates were based prior to the date of the member's disability. The member's accumulated contributions shall not be reduced as a result of the member receiving the disability retirement payments, but shall be increased by the amount of interest that would have accrued had the member not been retired.

(f) Notwithstanding Section 31560, a member whose principal duties, while serving in the position for which the member was incapacitated, consisted of activities defined in Section 31469.3 shall, upon commencement of service by the member in the position specified in the approved reemployment plan, continue to be considered as satisfying the requirements of Section 31560, notwithstanding the actual duties performed during the entire period that the member remains in county service.

(g) This section shall apply only to members who are incapacitated for the performance of the member's duties on or after January 1, 2004, and who are eligible to retire for service-connected disability.

SBCERS
Santa Barbara County Employees' Retirement System

NOTICE OF DISABILITY RETIREMENT EFFECTIVE DATE GUIDELINES

Dear Member:

Attached is a copy of the Board of Retirement Guidelines for Determining the Effective Date of Disability Retirements. These guidelines have been established to ensure compliance with Government Code § 31724 (below) and relevant court interpretations, aiming to prevent inappropriate benefit overlap.

If your disability retirement application is approved, the Board may adjust your actual application date to an earlier "deemed" file date if it determines that the delay was due to (1) administrative oversight or (2) the inability to confirm the permanency of your incapacity.

However, the effective date of your disability retirement allowance will be postponed if you receive any form of regular compensation after leaving work. This includes vacation pay, holiday pay, and sick leave.

Government Code §31724. If the proof received, including any medical examination, shows to the satisfaction of the board that the member is permanently incapacitated physically or mentally for the performance of his duties in the service, it shall retire him effective on the expiration date of any leave of absence with compensation to which he shall become entitled under the provisions of Division 4 (commencing with Section 3201) of the Labor Code or effective on the occasion of the member's consent to retirement prior to the expiration of such leave of absence with compensation. His disability retirement allowance shall be effective as of the date such application is filed with the board, but not earlier than the day following the last day for which he received regular compensation. Notwithstanding any other provision of this article, the retirement of a member who has been granted or is entitled to sick leave shall not become effective until the expiration of such sick leave with compensation unless the member consents to his retirement at an earlier date.

When it has been demonstrated to the satisfaction of the board that the filing of the member's application was delayed by administrative oversight or by inability to ascertain the permanency of the member's incapacity until after the date following the day for which the member last received regular compensation, such date will be deemed to be the date the application was filed.

SBCERS GUIDELINES FOR
DISABILITY RETIREMENT EFFECTIVE DATES

1.0 INTRODUCTION. These Guidelines explain how the Board interprets and applies Government Code section 31724, which governs the effective date of disability retirement allowances. The Board delegates to the Administrator the authority to provide additional direction to staff consistent with these Guidelines, and to make preliminary determinations on issues not specifically addressed here. The Board reserves the right to amend these Guidelines at any time, as the Board deems appropriate.

2.0 PROMPT APPLICATION ENCOURAGED. The Board encourages members to apply for disability retirement as soon as they have reason to believe that their disability is likely to prevent them from returning to their current job. When an application for disability retirement is filed promptly, memories of witnesses are fresher and medical evidence is more readily available, which assists the Board in making an informed decision. When an application is delayed, during the delay witnesses may die or move away and relevant medical records may be lost or destroyed, making it difficult or impossible for the member to prove entitlement to a disability retirement, which is the member's burden to prove. A delay in applying may also bar the member from receiving a disability retirement the member would otherwise deserve if the delay is unreasonable and granting the benefit would be unfair to the retirement system membership or the employer.

3.0 DEFINITIONS. For purposes of these Guidelines, the following definitions apply:

3.1 LABOR CODE DIVISION 4 COMPENSATION means any compensation paid for a leave of absence pursuant to Labor Code section 4850.

3.2 APPLICATION DATE means the date an application for disability retirement is filed with the Retirement Board.

3.3 EFFECTIVE DATE means the date from which a disability retirement allowance is payable.

3.4 REGULAR COMPENSATION means compensation of any kind or amount that the employer pays (a) at the member's regular rate of pay, (b) for employment in the member's regular position, and (c) for actually working, or for an absence from work.

4.0 NORMAL EFFECTIVE DATE. Subject to the exceptions in subsection 6 below, the effective date will be the application date.

5.0 LATER EFFECTIVE DATE. Subject to the exceptions in subsection 5.1 below, if the member receives regular compensation or Labor Code Division 4 compensation, or both, for a period after the application date, the effective date will be the day following the last day for which the member received any such compensation.

6.0 APPLICATION DATE DEEMED EARLIER. If the filing of an application is delayed for one of the following reasons, the application date will be deemed to be the day following the day for which the member last received regular compensation, and the effective date will then be determined

according to sections 4 and 5 above, substituting the deemed application date for the actual application date:

6.1 ADMINISTRATIVE OVERSIGHT. Such cases include those where, through administrative error, the application was filed timely, but then lost, or was submitted timely for filing, but was not filed. Such cases may also include those where the member was involved in a civil service proceeding seeking to maintain the right to work over the employer's objection, if filing a disability retirement application would have compromised the member's position in the civil service proceeding.

6.2 INABILITY TO ASCERTAIN THE PERMANENCY OF THE INCAPACITY UNTIL AFTER THE MEMBER LAST RECEIVED REGULAR COMPENSATION. The Board will determine whether, on the day following the last day for which the member received regular compensation, the member knew or should have known that the incapacity was permanent. If not, the Board will generally find that an application filed later was delayed by the inability to ascertain the permanency of the incapacity; however, if the member unreasonably delays applying after the member knew or should have known of the permanency, the Board may conclude that the member has not carried his or her burden of demonstrating that the filing was delayed by inability to ascertain the permanency.

7.0 RATE. In calculating benefits, it is necessary to calculate the member's final compensation pursuant to Government Code section 31462.1 or 31462, or the member's final compensation pursuant to Government Code Section 7522.32 where applicable. Under those statutes, the member may select the highest periods of compensation, while still working, as final compensation for purposes of calculating the amount of retirement benefits received. Where no selection is made by the member, the applicable period (one year or three years) will be the period immediately preceding retirement. When a member is absent from the workplace during the period used for the calculation, the member's compensation for the period of the absence shall be based on the rate of compensation, during the period of the absence, of the position held by the member at the beginning of the absence. Different rules may apply to calculation of compensation during leave of absences for members employed after January 1, 2013 pursuant to Government Code Section 7522.32.

8.0 PROCEDURES. The Board directs that preliminary determinations of effective date be made by staff in consultation with the member and/or the member's counsel, and that staff then inform the employer, the Department of Human Resources, and County Counsel of the preliminary determination. If any party disputes the preliminary determination, the Board will finally adjudicate the matter, and may refer the issue to hearing where appropriate.

9.0 AMENDMENT HISTORY. This policy was adopted by the Retirement Board on January 29, 2009; and revised on April 23, 2014.

DISABILITY RETIREMENT PROCEDURES

APPLICATIONS FOR DISABILITY RETIREMENT

500. DEFINITIONS

Unless the context requires otherwise, the following terms shall have the stated definitions:

(a) "**Applicant"** means the person or entity filing an application for disability retirement (or service-connected death) pursuant to the County Employees Retirement Law of 1937.

(b) "**Application"** means an application for disability retirement (or service-connected death) pursuant to the County Employees Retirement Law of 1937.

(c) "**Incapacity"** and "**incapacitated"** mean as judicially construed under the County Employees Retirement Law of 1937, analogous statutes and associated case law.

(d) "**Interested party"** means the subject employee, an employee's representative or beneficiary with standing to pursue an Application, the Board of Retirement, the Retirement System, or the employer of the subject employee.

(e) **"Referee"** means a person appointed by the Board in accordance with the Board's Guidelines for Retention and Assignment of Referees (the "Referee Guidelines") to make a determination, pursuant to Government Code section 31533.

(f) **"Referee's report"** means a Referee's proposed findings of fact and recommended decision pursuant to Government Code section 31533.

(g) "**Retirement Law"** means the County Employees Retirement Law of 1937, Government Code section 31450 *et seq.*

(h) "**Section"** or "**subsection"** mean section or subsection of these procedures.

(i) "**Subject employee"** means the member of the Retirement System on behalf of whom an application for disability retirement is filed.

501. REPRESENTATION BY COUNSEL

(a) Subject to the provisions of this section, any interested party may, at that party's expense, hire and be represented by an attorney, but no applicant or subject employee is required to have an attorney at any

time. In no case shall a party's unreasonable delay in retaining an attorney be considered good cause to delay any proceeding.

(b) When any interested party becomes represented by an attorney, that attorney promptly shall file with the Retirement Office and serve upon all other interested parties written notice of representation, including the attorney's name, address, and telephone number. Unless appearing with an interested party at a hearing, conference, or Board meeting, an attorney shall not be deemed counsel of record until such notice of representation is duly filed and served. Attorneys representing interested parties shall be members in good standing of the California State Bar. The substitution, withdrawal, or dismissal of an attorney of record shall be in the manner prescribed by the California Code of Civil Procedure ("CCP"). An interested party may not be represented by a relative, friend or other non-attorney. The Board or a referee has discretion to allow such a person to be present at a Board meeting or hearing solely to assist or support a member in self-representation.

502. APPLICATIONS

(a) A claim for disability retirement or service connected death shall be made by filing with the Retirement Office a completed application on a form approved by the Board for that purpose. The application form shall be in four parts: **Part A** shall be a one-page application initiation form requiring the name, address, and telephone number of the applicant (and of the subject employee, if other than the applicant), and such other information as the Retirement Office may deem appropriate; **Part B** shall be multiple authorization forms for the release of medical and other information concerning the subject employee; **Part C** shall be a questionnaire requiring, sworn answers in writing to such questions as the Retirement Office may deem pertinent; and **Part D Treating Physician's Statement** shall be a questionnaire requiring written answers to pertinent questions from a physician who is treating applicant for each separate medical condition that is the subject of the application. The "Filing Date" shall be the date that the completed application (Parts A, B, C and D) is filed with the Retirement Office.

(b) If at any time during the pendency of an application there is any change in any of the facts or claims set forth in any part of the application, the applicant immediately shall file with the Retirement Office and serve on all interested parties written notice of the change. Failure to do so until after a hearing has been set may, in the discretion of the Referee, preclude the applicant from asserting or introducing evidence of the omitted or changed fact(s) or claim(s). In the event a Referee allows the applicant to present evidence pertaining

to a material amendment of an application, the Referee shall take steps, including if necessary the postponement of the hearing, to ensure that the Retirement System has had the opportunity to investigate the amended application pursuant to subdivision (c).

(c) With respect to any change of which notice is required to be given pursuant to subsection (b) of this section, if the change does not materially affect the nature or basis of the claim, the application shall be deemed so amended as of the date that written notice of the change is filed with the Retirement Office; if the change does materially affect the nature or basis of the claim, it shall be deemed to constitute a new and separate application, which shall have as its effective filing date the date that written notice of the change is filed with the Retirement Office. The Board may extend the time for processing the application to allow for investigation of the changed circumstances or amended claim.

(d) When an application is filed on behalf of the same employee for whom another application is pending, the proceedings may be consolidated for the purposes of administrative review and hearing. In the event that a new application is consolidated with a previously filed application that is in the process of administrative review, the time limits for administrative review applicable to the previously filed application may be abrogated and the time limits for administrative review in the consolidated cases may be calculated from the date that the new application is filed. In the event that a new application is consolidated with a previously filed application that is in the hearing process, the previously filed application may be withdrawn from the hearing process, the consolidated cases may be subject to administrative review, and the time limits for administrative review in the consolidated cases may be calculated from the date that the new application is filed.

(e) The Retirement Office shall provide, along with each application, a copy of these procedures.

503. FURTHER INFORMATION REQUIRED FROM APPLICANT

(a) At any time during the pendency of an application, the Retirement Office, the Board, or counsel for the Retirement System may, by written notice to the applicant, require that the applicant serve within thirty days on the Retirement Office any or all of the following items:

(1) copies of records, reports, notes, statements, documents, photographs, or other writings within the definition of Evidence Code section 250;

(2) a narrative report of the subject employee's current medical condition from any or all of the health care professionals that have provided treatment, to be obtained by the applicant at the

applicant's expense;

(3) sworn written responses to written inquiries concerning any matter that is either relevant to the subject matter of the case or is reasonably calculated to lead to the discovery of evidence that would be admissible at a hearing.

(b) In the event that the applicant fails or refuses to comply with any demand made pursuant to subsection (a) of this section during the initial investigation process, the application may be suspended or dismissed in the discretion of the Board. In the event that such failure and refusal occurs after the matter has been referred to hearing, the Referee shall consider the matter pursuant to sections 518 and 519. All time limits for processing the application shall be tolled during the period of the applicant's non-compliance.

504. MEDICAL EXAMINATIONS

(a) The Retirement System may, at any time during the proceedings, on one or more occasions, require the subject employee to undergo one or more examinations by a physician designated by the Retirement Office. The Retirement Office shall, at least ten days before the appointment date, serve the subject employee with written notice of the date, time and place of the examination, unless the subject employee agrees to accept notice that is by other mode or is given closer to the examination date.

(b) If the place of the examination is neither in Santa Barbara County nor the county where the subject employee currently resides, the subject employee may apply to the Board for reimbursement of travel expenses. Travel expenses, as referenced herein and elsewhere in these procedures shall generally be limited to reimbursement for mileage at the business rate then allowed by the IRS. The mileage amount for reimbursement shall be calculated as the lesser of the distance between the member's current residence or the last place of residence when actively employed and the location of the medical examination. When travel to and from an examination in a single day is not reasonably possible, or where an applicant is required to attend examinations on successive days, the CEO may authorize reimbursement of the reasonable costs of lodging, consistent with County guidelines. All requests for reimbursement of lodging must be made and approved in advance of the expenses being incurred. In cases where the applicant does not reside in Santa Barbara County, the Retirement System shall require that the applicant return to the Santa Barbara area at the applicant's expense for required medical examinations.

(c) The records and reports of the examining physician shall be confidential, privileged, and not

subject to discovery except in accordance with section 508(g) except that any reports of examining physicians provided to the Board as part of or an attachment to the confidential written report submitted pursuant to section 505(d) shall be provided to the subject employee and/or his or her counsel following completion of all requested examinations and prior to the meeting date at which the Board will consider staff's administrative recommendation. A psychiatric report will not be provided directly to the subject employee where the physician preparing the report so recommends, but such report may be provided to counsel for the subject employee, or if the subject employee is unrepresented to his or her treating physician.

(d) In the event that the subject employee fails or refuses to comply with any examination pursuant to subsection (a) of this section, the application may be suspended or dismissed at the discretion of the Board. In the event of an examination after the matter has been referred to hearing, the Referee has authority to consider the matter pursuant to sections 518 and 519. All time limits for processing the application shall be tolled during the period of the applicant's non-compliance. If the applicant fails to appear for a scheduled examination, absent good cause, the Board may dismiss the application, without prejudice to applicant's right to re-apply.

505. ADMINISTRATIVE RECOMMENDATION

(a) Following the filing of an application, the Retirement Office shall gather and evaluate the pertinent facts, in consultation with counsel.

(b) Among the subjects investigated by the Retirement Office shall be whether or not there exists within the department and job class in question a permanent assignment or assignments, including but not limited to the employee's pre-injury assignment, the usual duties of which the employee would be substantially capable of performing with reasonable accommodation.

(c) If the member requests a service retirement pending determination of entitlement to a disability retirement, the Retirement Office shall convey that request to the Board, along with a recommendation as to the member's eligibility for service retirement.

(d) Within 180 days following the date a complete application for disability retirement is received in the Retirement Office, the Retirement Office shall provide to the Board a confidential written report including a summary of the pertinent facts, copies of the pertinent documents, and one of the following recommendations:

(1) "Grant service-connected disability retirement": where there is no substantial question that the subject employee is permanently incapacitated for the performance of duty, that the incapacity

is a result of injury or disease arising out of and in the course of employment, and that such employment contributes substantially to such incapacity;

(2) "Grant non-service-connected disability retirement": where the subject employee has elected to have the application considered for a non-service-connected disability retirement, and where there is no substantial question that the subject employee is permanently incapacitated for the performance of duty, and that such incapacity is not a result of injury or disease arising out of and in the course of employment, or that such employment does not contribute substantially to such incapacity;

(3) "Deny, subject to hearing": where there is no substantial question that the subject employee is not permanently incapacitated for the performance of duty; or, where the recommendation would be to grant a non-service-connected disability retirement, but the applicant is not eligible for or has elected not to receive such a benefit;

(4) "Refer for hearing": where none of the foregoing recommendations is deemed appropriate.

(e) At any time prior to the Board's final determination, the Retirement Office may amend its recommendation, and the Board may act thereon as provided in section 506.

(f) The time periods prescribed in this section do not commence to run until the application is complete, and at the discretion of the Board may be tolled in the event of non-cooperation by any interested party, or their doctor or attorney, or other circumstances constituting good cause.

506. BOARD ACTION UPON ADMINISTRATIVE RECOMMENDATION

Upon receiving an administrative recommendation pursuant to section 505, the Board may take one of the following actions:

(a) Order that the application be granted unless within 21 days of the mailing of notice an interested party files with the Retirement Office a written request for hearing. If such a request is timely filed, the Retirement Office shall cause the matter to be set for hearing pursuant to section 507. If no such request is timely filed, the application shall be deemed granted, and the Board shall issue a written decision pursuant to section 515.

(b) Order that the application be denied unless within 21 days of the mailing of notice an interested

party files with the Retirement Office a written request for hearing. If such a request is timely filed, the Retirement Office shall cause the matter to be set for hearing in accordance with section 507. If no such request is timely filed, the application shall be deemed denied, and the Board shall issue a written decision pursuant to section 515.

(c) Take no action on the merits of the application, and order that the matter be set for hearing in accordance with section 507

(d) Refer the matter back to the Retirement Office with instructions for further investigation, evaluation, or other action.

507. SETTING FOR HEARING

(a) If the Board determines that a Referee is to hear a matter, the Board shall at the same time instruct the Retirement Office to select and appoint a Referee from the Board's list of approved Referees in accordance with the Referee Guidelines. If the referred matter involves a renewed application heard previously, the matter will be referred to the same Referee who heard the matter previously if available.

(b) Once a Referee has been assigned to hear a matter, the Notice of Referee Assignment shall be served on the Referee and the parties, setting forth the issues for hearing, and with instructions that the hearing be set within 120 days of the date of the Notice. The Notice shall describe hearing procedures, and be served with a copy of these procedures.

508. PRE-HEARING PROCEDURES

(a) Any interested party may request that the Referee schedule a pre-hearing telephone conference to set a hearing date and to discuss preliminary issues. In cases where the applicant is not represented by legal counsel, a mandatory pre-hearing phone conference will be scheduled to discuss the hearing procedures with the applicant and set a hearing date. Once the hearing date is set, the Referee will issue to the parties a Hearing Notice listing the time, date and location of the hearing and the issues to be heard. The Retirement Office will provide a copy of the Hearing Notice to the employing department and the County (or employing member district).

(b) A Referee appointed to hear a matter pursuant to section 507(c) shall set a hearing date that is no more than 120 days from referral, and no less than thirty days after all interested parties are served with Notice of the Referee Assignment. If the Referee determines that a hearing cannot reasonably be commenced

within the foregoing constraints, the Referee shall file with the Retirement Office and serve upon all interested parties a written recommendation for a specific extension of time, along with an explanation of the circumstances necessitating the extension. If a hearing is not commenced within the 120 days allowed, or within such additional time as has been granted by the Board, the Referee's jurisdiction shall be deemed suspended, and the Referee shall provide to the Board a written report setting forth the reasons that the hearing was not brought to a timely conclusion, along with the Referee's recommendations regarding further proceedings. If said reasons include an applicant's unreadiness or unwillingness to proceed, the Board may dismiss the application in its discretion.

(c) The Referee may, upon a stipulation by the interested parties, continue a hearing to a new date, provided that the new date is within the time allowed by subsection (b) of this section. Continuances are disfavored, and may be granted only upon a clear showing of good cause. Mistake or inadvertence occasioned by ignorance of these procedures shall not constitute good cause for a continuance. If a continuance is requested less than two weeks before a scheduled hearing or pre-hearing conference, the Referee may require as a condition of granting the continuance that the requesting party bear any costs reasonably incurred by any other interested party or by the Referee as a result of the continuance. Referees are encouraged to set hearing dates in consultation with hearing counsel for the parties that are convenient for all concerned, thereby minimizing the need for continuances. Referees should emphasize to the parties that the dates set are dates certain, which will not be continued absent good cause shown, such as counsel actually being in trial in another matter or the serious illness of a party or counsel. Requests for continuance by an Applicant who is the subject employee or a beneficiary must be accompanied by a written statement from the Applicant that she has been advised of the extension and consents thereto and/or a statement of counsel, under penalty of perjury, that he or she has explained the need for the continuance to the applicant and that the applicant has consented to the continuance.

(d) Except as otherwise provided in this subdivision, any interested party shall be entitled to notice and take depositions in the manner prescribed by the CCP. The provisions of the CCP applicable to depositions of non-expert depositions shall apply to depositions of experts and non-experts alike, and the CCP provisions applicable to depositions of expert witnesses shall not apply. Unless all interested parties agree otherwise, any deposition of the subject employee shall be taken in Santa Barbara County regardless of the employee's current place of residence, and each party shall bear its own costs in connection with such deposition. Any interested party noticing a deposition of any witness other than the subject employee shall, at the time of the serving of

the deposition notice, pay the witness any fee or mileage to which the witness would be entitled under the CCP. The Referee shall not attend depositions, unless instructed by the Board to attend.

(e) Any interested party may request that the Board issue a subpoena or subpoena duces tecum pursuant to Government Code section 31535. The Board delegates to the CEO the authority to issue subpoenas on its behalf, subject to the authority of the Board's Referee to modify or quash the subpoena pursuant to sections 518 and 519. In order to request the issuance of a subpoena or subpoena duces tecum, an interested party shall complete and submit to the Retirement Office a form approved by the Board for that purpose, and shall do so at least five working days before the date the subpoena or subpoena duces tecum is to be issued. No subpoena or subpoena duces tecum shall be issued until the requesting party has posted with the Retirement Office any fees to which the subpoenaed witness is likely to be entitled. The party requesting a subpoena or subpoena duces tecum shall be responsible for serving and enforcing it. Appearances of interested party witnesses, for deposition or at a hearing, may be compelled by notice pursuant to CCP 2025.280 or 1987(b) without the necessity of subpoena.

(f) Any interested party desiring to introduce evidence at a hearing shall serve all other interested parties with a written statement identifying all writings that the party will introduce and all witnesses that the party will call to testify. If any of the identified writings have not previously been served, a copy thereof shall be attached to the statement. In addition to stating the name, address, and telephone number of each witness, the statement shall contain a summary of the testimony that the witness is expected to give. If service is made by personal delivery, the date of delivery shall be no later than the thirtieth day before the hearing; if service is made by mail, the date of mailing shall be no later than the thirty-fifth day before the hearing.

(g) Formal discovery shall be limited to the procedures provided in this Article, except as may be stipulated between the parties.

509. HEARING PROCEDURES

(a) The Referee shall exercise such control over the hearing as is reasonable, necessary, and consistent with these procedures, including, but not limited to, setting the date, time and place of the hearing, confirming the issues to be heard pursuant to the Hearing Notice, prescribing the order of proof, ruling upon the admissibility of evidence, questioning witnesses, and determining whether the matter shall proceed or be adjourned subject to continuation.

(b) All hearings and conferences shall be held in a location designated by the Retirement Office.

(c) Every hearing shall be reported by a certified shorthand reporter. Conferences shall be reported only if so ordered in advance by the Referee. The Retirement Office shall arrange for a reporter to be present whenever one is required. The reporter's notes shall be transcribed only if requested by the Referee or an interested party, in which case the requesting party, if not the Referee, shall pay the transcription costs. The non-requesting parties may, at their expense, order certified copies directly from the court reporting service. The Board of Retirement will not provide uncertified photocopies of the transcript to the parties.

(d) Oral evidence shall be taken only on oath or affirmation.

(e) On any relevant matter, each interested party shall have the right, in compliance with these procedures, to call and examine witnesses, introduce documentary and other physical evidence, and cross-examine opposing witnesses. Any interested party who does not testify on his or her own behalf may be called and examined as a witness as if under cross-examination.

(f) The party calling a non-party witness shall be responsible for paying any fees or other expenses of that witness.

(g) A refusal by any interested party to testify when called, or to answer proper questions in the course of testifying, shall be grounds for deeming such testimony, or the answers to such questions, to have been given and to have been adverse to the refusing party.

(h) A duly noticed hearing may proceed in the absence of any interested party.

510. EVIDENCE

(a) Except as otherwise provided in these procedures, any relevant evidence shall be admitted if it is the sort of evidence on which reasonable and responsible persons are accustomed to rely in the conduct of serious affairs, regardless of the existence of any common law or statutory rule which might make improper the admission of such evidence over objection in civil actions. Hearsay evidence that meets the foregoing criteria may be used for the purpose of supplementing or explaining any admissible non-hearsay evidence, but shall not be sufficient in and of itself to support a finding unless admitted pursuant to subsection (b), (d), or (e) of this section, or unless it would be admissible over objection in civil actions. Upon proper objection, evidence that is irrelevant or unduly repetitious shall be excluded.

(b) Any interested party may offer, and the Referee shall receive into evidence, any medical records

or reports that are relevant and that constitute substantial evidence, provided that they have been disclosed and served in compliance with section 508(g). Each interested party shall have the right, at their own cost, to cross-examine by deposition the author of any such medical report or record, provided that such party makes a reasonable effort to complete the deposition prior to the hearing. Medical reports prepared for purposes of Workers' Compensation proceedings are not made admissible or inadmissible by that fact alone; however, no opinion therein shall constitute substantial evidence to support a finding of permanent incapacity if that opinion is based upon any criterion that is peculiar to Workers' Compensation, or is otherwise not germane to the issue of permanent incapacity under the Retirement Law. Medical reports should include the following, and may be found not to constitute substantial evidence if they do not:

(1) a history of the subject injury or illness, and the source(s) of that information;

(2) the subject employee's prior and subsequent medical history, and the source(s) of that information;

(3) the current subjective complaints;

(4) the findings upon examination;

(5) the nature, extent, and likely duration of any impairment of function;

(6) the anticipated nature and extent of any necessary future treatment;

(7) whether the subject employee is permanently incapacitated from the performance of usual duties, or is substantially able to perform those duties, and a thorough explanation of the basis for that opinion; and,

(8) whether or not any permanent incapacity is a result of injury or disease arising out of and in the course of employment with the County (or member district) and, if so, a thorough explanation of the basis for that opinion, including a discussion of the likely mechanism of the injury or process of the disease, a discussion of the effect of employment on the member's condition applying legal standards pertaining to a determination of causation under the Retirement Law, and citations to supporting medical authorities.

(c) Except as provided in section 510(f), no party shall be permitted to introduce a forensic medical report not disclosed by the deadline provided in 508(f). It is the intention of these provisions to foreclose the obtaining of rebuttal and surrebuttal reports, thereby avoiding the costs, delays, and abuses of rebuttal/surrebuttal cycles.

(d) Any interested party may offer, and the Referee shall receive into evidence, any relevant written statement by a non-medical witness, if (1) it is made by affidavit or by declaration upon penalty of perjury, and (2) it has been disclosed and served in compliance with section 508(f), and (3) no interested party has timely served the proponent with a written demand that the witness be produced to testify at the hearing. If service of such demand is made by personal delivery, it shall be timely if the date of delivery is no later than the tenth day before the hearing; if by mail, it shall be timely if the date of mailing is no later than the fifteenth day before the hearing. The Referee shall disregard any portion of a statement received pursuant to this subsection that would be inadmissible if the witness were testifying in person, but the inclusion of inadmissible matters shall not render the entire statement inadmissible.

(e) Any interested party may offer, and the Referee shall receive into evidence, any relevant deposition transcript, if (1) the deposition was taken in the manner provided by law or by stipulation of the parties, and (2) it has been disclosed and served in compliance with section 508(f). 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. Nothing herein shall prevent receiving into evidence any deposition testimony that would be admissible under the CCP in a Superior Court civil action.

(f) No party may, over timely objection, introduce any evidence with respect to which that party has failed to comply with section 508(f), unless the Referee finds that the offering party made a good faith effort to comply, or that the failure to comply was the result of mistake, inadvertence, surprise, or excusable neglect within the scope of CCP section 473. Notwithstanding the foregoing, a failure to comply with the provisions of section 508(f) shall not be excused, if the failure was a result of the party's ignorance of the said provisions.

(g) The Referee may impose such conditions as may be just upon the admission of evidence pursuant to subsection (f) of this section, including, without limitation, continuing the hearing for a reasonable period of time and recommending to the Board that the party offering the evidence be required to pay any reasonable costs incurred by the other interested parties by reason of the continuance.

511. REFEREE'S REPORT

(a) Within forty-five days after a matter is submitted to a Referee for a decision, the Referee shall file with the Board and serve upon all interested parties a written report that includes a summary of the evidence, proposed findings of fact, recommended decision, and proof of service. A hearing shall not be deemed

concluded until the Referee has received all timely evidence, briefs, and argument, and the matter stands submitted for decision. Any post-hearing briefs shall be simultaneously submitted on a date directed by the Referee within 30 days of the last day of hearing, followed by simultaneous reply briefs on a date directed by the referee within 10 days of the date set for post-hearing brief submittal. Such briefing periods shall only be extended by the Referee for good cause.

(b) The interested parties shall have ten days (plus 5 days if served by mail) from the date the Referee's report is served to file written objections with the Retirement Office, along with proof of service upon all other interested parties. Any timely filed objections shall be incorporated in the record to be considered by the Board. The Board has discretion to decline consideration of untimely written objections, or oral objections or argument from any party that has not filed timely written objections.

512. COMPENSATION FOR REFEREES

Referees shall be compensated in accordance with a fee schedule incorporated into written agreements between the Retirement System and the Referee, which fee schedule shall be periodically reviewed by the Board. A Referee shall not be entitled to remuneration for services until his/her report has been filed and served, and such remuneration may be reduced if the report is untimely as provided for by contract.

513. ACTION BY THE BOARD UPON REFEREE'S REPORT

When a Referee's report is filed with the Retirement Office pursuant to section 511, the Retirement Office shall cause the matter to be placed on the agenda of the next regular Board meeting to take place after the expiration of the period in which the interested parties may file written objections. The Board may, but is not required to, hear oral argument from any interested party that has filed timely written objections, subject to the same limitations as apply to public comment under the Board's Bylaws. The Board shall hear disability retirement matters in closed session pursuant to the Ralph M. Brown Act, unless a member waives the privacy protections of such statute and requests that the matter be heard in public session. The Board shall take one of the following actions:

(a) approve and adopt the proposed findings and recommendation of the Referee; or

(b) require a transcript or summary of all the testimony, plus all other evidence received by the Referee, and upon receipt thereof take such action as in the Board's opinion is indicated by such evidence; or

(c) refer the matter back to the Referee for further proceedings, with or without instructions; or

(d) set the matter for hearing before itself. At such hearing the Board shall hear and decide the matter as if it had not been referred to a Referee.

514. HEARINGS BEFORE THE BOARD

(a) Should the Board elect to require a transcript or summary of all of the testimony, plus all other evidence received by the Referee, pursuant to section 513(b), the Board may deem the report and recommendation of the Referee as a summary of the testimony and evidence received, as supplemented by excerpts of the record as the Board may direct.

(b) Should the Board elect to hear the matter itself pursuant to section 513(d), the matter shall be heard by a quorum of the Board at a special meeting in accordance with the Board's Bylaws and sections 509 and 510, except that the Board may direct that a transcript of prior proceedings be considered in lieu of live testimony for portions of the testimony as the Board may direct.

515. BOARD DECISIONS

(a) All of the following provisions apply to any decision of the Board that is subject to judicial review pursuant to Codeof Civil Procedure section 1094.5:

(1) The decision shall be made in writing;

(2) The decision shall include or be accompanied by notice that the time in which judicial review must be sought is governed by CCP section 1094.6, and shall include or be accompanied by the text of section 1094.6;

(3) The decision shall be accompanied by a copy of an affidavit or certificate of mailing;

(b) For purposes of judicial review, a decision of the Board is final on the date that the written decision is mailed pursuant to subsection (a) of this section, and neither CCP section 1013(a) nor any provision of these procedures shall apply to extend the time within which judicial review must be sought.

(c) The Board shall not entertain any petition for reconsideration of any decision that is final. Such rule does not preclude consideration of a new application pertaining to a prior decision of the Board made without prejudice or a subsequent timely application based on a material change in the subject employee's condition.

516. JUDICIAL REVIEW OF BOARD DECISIONS

(a) The provisions of CCP section 1094.6 apply to the judicial review of any decision of the Board that is subject to judicial review pursuant to CCP section 1094.5.

(b) Any request for the preparation of the administrative record pursuant to CCP section 1094.6 shall be made in writing and filed in the Retirement Office. The Retirement Office shall, within ten days of receiving such a request, notify the requesting party of the estimated cost of preparing the record. Any requesting party other than the County or the Retirement System shall, within ten days of receiving such notification, deposit with the Retirement Office an amount sufficient to cover the estimated cost. If during the preparation of the record it becomes apparent that the costs will exceed the amount of the deposit, the requesting party shall be notified and shall deposit the additional amounts before the record will be completed. If the cost of preparing the record exceeds the amount deposited, the party requesting the record shall pay the excess. If the amount deposited exceeds the cost, the difference shall be returned to the party requesting such record. Upon receiving the required deposit, the Retirement Office promptly shall prepare the record, and shall include the transcript of the proceedings, all pleadings, all notices and orders, any proposed decision by a Referee, the final decision, all admitted exhibits, all rejected exhibits in the possession of the Board of Retirement, its officers, or agent, all written evidence, and any other papers in the case.

517. DISABILITY BENEFICIARIES UNDER 55 YEARS OF AGE

The Retirement Office may request information from any disability retiree under fifty five years of age in the manner prescribed in section 503, and may require any such beneficiary to undergo medical examination pursuant to Government Code section 31729. If from such information and medical examination it appears that the retiree may no longer be incapacitated, and it has been determined that an offer of employment to the retiree is likely to be made by his or her former employer pursuant to Section 31729 if he or she is found no longer to be incapacitated, the Retirement Office shall so report in writing to the Board. The Board may order a hearing on the issue of incapacity, in which case the procedures shall be the same as those provided in these procedures for applications for disability retirement.

518. MOTIONS

Any interested party to a disability retirement hearing claiming that another interested party has not complied with any requirement of these procedures or the Retirement Law may make a written motion for an order compelling compliance. The motion shall include the following: (1) a verified statement of all relevant facts, including a description of efforts made to resolve the dispute informally, and the reasons given by the respondent party for non-compliance; (2) a statement of the relief sought; (3) a memorandum of supporting

points and authorities; and, (4) a copy of an affidavit or certificate of service upon all interested parties. The motion need not comply with the technical requirements applicable to motions to compel under the CCP. The motion shall be made to the appointed Referee. The respondent party shall have five days from the date the motion is served to submit written opposition. Upon the expiration of the time allowed for opposition, the Referee shall either grant or deny the motion without a hearing, or set a telephonic hearing on the motion.

519. **SANCTIONS**

Upon a motion pursuant to section 518, the Referee may impose sanctions affecting the ability of a party to introduce evidence at a hearing and/or for a party to bear certain costs as a condition for conducting specified discovery or for introducing certain evidence at a hearing, but shall not otherwise be authorized to impose monetary sanctions. The Board may recommend sanctions limiting an application from proceeding, including suspension of an application until certain conditions are complied with or dismissal of an application. The imposition of suspension or terminating sanctions shall be in the form a report and recommendation to the Board, to be considered by the Board at its next regularly scheduled meeting.

520. **SERVICE**

(a) When a provision of these procedures requires that "interested parties" be served, service shall be made upon the Retirement Office, the member's employer (if the employer is the County service shall be on County Counsel), all interested parties who have appeared in the subject proceedings, and all interested parties who have not appeared but have filed a request to be served.

(b) If the party to be served has an attorney of record in accordance with section 501, service shall be made upon the attorney of record.

(c) Unless otherwise provided in these procedures, when a provision of these procedures requires service, service shall be made either personally in a manner permitted under the CCP for the service of a summons, or by mail in accordance with subsection (d) of this section.

(d) Service by mail shall be effected by sealing the item to be served in an envelope properly addressed to the party to be served and depositing the envelope in the United States mail, with first class postage fully prepaid. Unless otherwise provided in these procedures or other applicable law, service by mail shall extend applicable time limitations in the manner prescribed in CCP section 1013. For purposes of determining the

effectiveness of service upon a subject employee, a mailing shall be deemed "properly addressed" if it bears the address specified on the application, or, if the application has been amended, the address specified on the most recently-filed amended application.

(e) The parties to a disability retirement hearing may agree to electronic or telefax service in the manner provided for in CCP Sections 101.6 and 1013. In all cases, electronic service shall be provided as a courtesy in addition to other forms of service where feasible, but shall not shorten applicable deadlines unless agreed to by the parties.

521. STATEMENT OF POLICY REGARDING FAIRNESS AND NEUTRALITY OF THE HEARING PROCESS AND EX PARTE COMMUNICATIONS.

(a) As stated in the Referee Guidelines, the Board is committed to fairness and neutrality in the hearing process. During the conduct of disability retirement proceedings, the Referee constitutes the duly authorized representative of the Board. Like the Board, Referees are expected to neutrally consider evidence and argument, with no pre-disposition towards the grant or denial of disability retirement applications. The Board's duty is to determine whether the granting of a disability retirement in a particular case has merit based on the law and the evidence. The Board's policy is to encourage full and accurate fact finding. The Retirement System is equally well served by a grant as by a denial where the decision is based on the law and the evidence. Counsel for the Retirement System is encouraged to assist the Referee and the Board in the presentation of evidence with these objectives in mind.

(b) In order to promote and insure the objective of fairness, interested parties, their counsel, Referees and Board members are prohibited from engaging in informal *ex parte* communications that could influence how the application is decided, so long as an application is pending. Such prohibited *ex parte* communications include the initiation or consideration of such communications regarding an anticipated or pending application between any interested party and a Referee or between any interested party and a Board member. Such prohibition shall not preclude routine communications regarding scheduling or other administrative matters, consideration by the Board of confidential reports provided to all Board members, or consultation by Board members with Board counsel pertaining to their duties and responsibilities with respect to the hearing process.

(c) From time to time, the Board may be required to adjudicate an application for disability retirement of an SBCERS staff member, a SBCERS Board member, or a relative or close acquaintance of an SBCERS staff member

or Board member. In these or similar circumstances, in order to ensure objectivity and fairness, it may be appropriate for some or all SBCERS staff members, in consultation with System counsel, to recuse themselves from participating in the investigation of the application or from making recommendations to the Board based on such investigation. Where such a recusal occurs, the CEO, in consultation with System counsel, is authorized to implement steps to ensure neutral investigation and evaluation of such application, which steps may include (i) measures to prevent participation in the application process by affected SBCERS' employees; (ii) retention of an independent investigative firm with experience in evaluating disability retirement applications under the CERL; (iii) retention of independent counsel with experience in evaluating disability retirement applications under the CERL; (iv) reaching agreement with another CERL retirement system to investigate, evaluate and make a recommendation to the Board with respect to such application through its staff; or (v) some combination of these steps. Where the CEO is recused from selecting a process, for example where the CEO is the applicant, the Board Chair shall make such determination in consultation with System Counsel. To the extent possible, investigation, evaluation and recommendation, as well as any associated administrative hearing, shall be conducted in accordance with these Disability Retirement Procedures, as such procedures are deemed modified to allow non-staff members to serve in the capacity of staff.

522. Hearings in Non-Disability Matters

From time to time the Board may refer a matter to an assigned referee to conduct a hearing and to make a report and recommendation concerning a matter unrelated to disability retirement. In the case of such referrals, such adjudications shall be conducted in accordance with the following sections of these procedures, excluding references to disability retirement: 500(d)-(h); 501, 507-516, 518-521.

History: Adopted by the Board of Retirement on May 23, 2012; revised August 24, 2016 and revised September 26, 2018.