

**ORANGE COUNTY EMPLOYEES RETIREMENT SYSTEM  
2223 E. WELLINGTON AVENUE, SUITE 100  
SANTA ANA, CALIFORNIA 92701**

**DISABILITY COMMITTEE MEETING**

**April 24, 2018**

**1:00 p.m. or Upon Adjournment of the Investment Committee Meeting, whichever is later**

**Members of the Committee**

Roger Hilton, Chair  
Frank Eley, Vice Chair  
David Ball  
Chris Prevatt, Alternate

**AGENDA**

This agenda contains a brief general description of each item to be considered. The Committee may take action on any item listed on this Agenda; however, except as otherwise provided by law, no action shall be taken on any item not appearing on the Agenda. The Committee may consider matters included on the agenda in any order, and not necessarily in the order listed.

**OPEN SESSION**

**CALL MEETING TO ORDER**

**PUBLIC COMMENT**

At this time, members of the public may comment on matters not included on the Agenda that are within the subject matter jurisdiction of the Committee, provided that no action can be taken on any item not appearing on this Agenda unless otherwise authorized by law.

When addressing the Committee, please state your name for the record prior to providing your comments. Speakers will be limited to three (3) minutes.

**OPEN SESSION**

**NOTE:** Public comment on matters listed in this agenda will be taken at the time the item is addressed, prior to the Committee's discussion of the item. Persons wishing to address items on the agenda should provide written notice to the Secretary of the Committee prior to the Committee's discussion on the item by signing in on the Public Comment Sign-In Sheet located at the back of the room.

**INFORMATION ITEMS**

**I-1**     **[OVERVIEW OF JUNE 5, 2018 DISABILITY COMMITTEE MEETING](#)**  
*Presented by Suzanne Jenike, Assistant CEO, External Operations*

**I-2**     **[DISABILITY APPLICATION REVIEW PROCESS - OCERS ADMINISTRATIVE PROCEDURE \(OAP\)](#)**  
*Presented by Suzanne Jenike, Assistant CEO, External Operations*

**I-3 [ADMINISTRATIVE HEARING FILING PROCEDURES - OCERS ADMINISTRATIVE PROCEDURE \(OAP\)](#)**

*Presented by Lee Fink, Deputy General Counsel*

**I-4 [UPDATE ON PANEL PHYSICIAN AND HEARING OFFICER CONTRACTS](#)**

*Presented by Lee Fink, Deputy General Counsel*

**COMMITTEE MEMBER COMMENTS**

**CHIEF EXECUTIVE OFFICER/STAFF COMMENTS**

**COUNSEL COMMENTS**

**NOTICE OF NEXT MEETINGS**

**REGULAR BOARD MEETING**

**May 14, 2018**

**9:00 A.M.**

**ORANGE COUNTY EMPLOYEES RETIREMENT SYSTEM**

**2223 E. WELLINGTON AVENUE, SUITE 100**

**SANTA ANA, CA 92701**

**INVESTMENT COMMITTEE MEETING**

**May 24, 2018**

**9:00 A.M.**

**ORANGE COUNTY EMPLOYEES RETIREMENT SYSTEM**

**2223 E. WELLINGTON AVENUE, SUITE 100**

**SANTA ANA, CA 92701**

*All documentation supporting open session items is available for public review in the retirement office during regular business hours, 8:00 a.m. – 5:00 p.m., Monday through Thursday and 8:00 a.m. – 4:30 p.m. on Friday.*

It is OCERS' intention to comply with the Americans with Disabilities Act ("ADA") in all respects. If, as an attendee or participant at this meeting, you will need any special assistance beyond that normally provided, OCERS will attempt to accommodate your needs in a reasonable manner. Please contact OCERS via email at [adminsupport@ocers.org](mailto:adminsupport@ocers.org) or call 714-558-6200 as soon as possible prior to the meeting to tell us about your needs and to determine if accommodation is feasible. We would appreciate at least 48 hours' notice, if possible. Please also advise us if you plan to attend meetings on a regular basis.

## Memorandum

---

**DATE:** April 24, 2018  
**TO:** Members of the Disability Committee  
**FROM:** Suzanne Jenike, Assistant CEO, External Operations  
**SUBJECT: OVERVIEW OF JUNE 5, 2018 DISABILITY COMMITTEE MEETING**

---

### BACKGROUND/DISCUSSION

Staff will lead a discussion on the mechanics of how the newly formed Disability Committee will operate starting June 5, 2018. The topics will include:

- **2018 Calendar and Timeline**
- **Process of hearing matters in closed session/closed hearing and reporting decisions in public**
- **Format of materials that will be presented to the Committee**
- **Format of materials that will be presented to the Board of Retirement**
- **Timeline for materials being forwarded to Board of Retirement for review/decision**
- **Board Vantage materials**
- **Security**
- **Staff communication to applicants with pending claims**

### Submitted by:



SJ Approved

Suzanne Jenike  
Assistant CEO, External Operations

## Memorandum

---

**DATE:** April 24, 2018  
**TO:** Members of the Disability Committee  
**FROM:** Suzanne Jenike, Assistant CEO, External Operations  
**SUBJECT:** **DISABILITY APPLICATION REVIEW PROCESS – OCERS ADMINISTRATIVE PROCEDURE (OAP)**

---

### **BACKGROUND/DISCUSSION**

On June 5, 2018 the newly formed Disability Committee (“Committee”) will begin making initial determinations all disability retirement applications. The Committee’s determinations will then be forwarded to the Board of Retirement for final determination unless appealed. One of the directives given to staff upon creation of the Committee was to ensure that the Board receives training on the disability retirement process, legal standards, medical issues etc... Staff would like to take this opportunity to remind the Committee of the process the Disability Team undertakes during the initial phase.

The initial phase of processing a disability retirement from submission of a completed application to an initial determination can take nine to 12 months on average. Once a complete medical record is compiled the process moves quickly and is typically presented to the Board within four months. Even though the member has the burden of proving their permanent incapacity and job causation (if applicable) the Disability Team assists the member by retrieving medical records from workers compensation carriers and from treating physicians. The Team also requests information from the employer regarding essential job duties and reasonable accommodation. The timing of this process is heavily reliant on the member’s cooperation and involvement. It has been our position to allow members as much time as they need to gather evidence in support of their claim and to assist in any reasonable way that we can.

This approach may make the process appear to take longer than necessary however we believe that it is an important fiduciary responsibility to see that the member has a thorough opportunity to prove permanent incapacity at the initial phase of the process.

The Disability Application Review Process OAP is intended to document the process so that members and stakeholders are aware of the steps OCERS staff will follow in processing the initial determination phase of the disability retirement process.

### **Submitted by:**



SJ Approved

Suzanne Jenike  
Assistant CEO, External Operations

## OCERS Administrative Procedure (OAP) **Disability Application Review Process**

---

### **Disability Application Review Process**

The following describes the disability application review process for service connected and non-service connected disabilities:

1. **Submission of Completed Application:** Either the member or the employer, on behalf of the member, can apply for a disability retirement by filing with OCERS: (1) an application for disability retirement form and (2) an authorization signed by the member permitting OCERS Disability Staff (OCERS Staff) to obtain all medical information relating to the member's physical or mental illness or injury and permitting access to records relating to the member's current and prior employment and (3) an employee's statement of disability and (4) a physician's statement indicating that the member is permanently incapacitated from performing the usual and customary duties of their OCERS covered position. The Member's employer shall complete forms provided by OCERS and provide information as deemed necessary. All information received by OCERS or its agents shall be treated as confidential and not released to anyone except insofar as may be necessary for the administration of the retirement system or upon an order of a court of competent jurisdiction, as provided by Government Code section 31532.
2. **Determination of the Disability:** The determination of the member's disability shall be limited to the condition as set forth in the application for disability retirement and supported by a physician's statement of disability.
3. **Additional Information:** If at any point in the process OCERS Staff determines that additional information is necessary; OCERS Staff may require the member or the employer to submit the additional information.
4. **Medical and Investigatory Services:** OCERS Staff is authorized and directed to secure such medical, investigatory and other services and advice in connection with applications for disability retirement as the may be required in order to make its decision.
5. **Review of Records:** OCERS Staff will secure necessary records regarding the employment, injury, medical care, and accommodation of the member within 180 days of the date the application was filed with OCERS. OCERS Staff will inform the member when all of the information and records requested by OCERS Staff have been received. The member will have five (5) business days to supplement the record or otherwise respond indicating that all necessary information in support of the application has been submitted.
6. **Examination by an Independent Medical Examiner:** In the event that OCERS Staff believes that additional medical evidence is necessary to evaluate the application, then OCERS Staff shall schedule an appointment for the member with an Independent Medical Examiner (IME). OCERS Staff will schedule the appointment immediately following the member's confirmation that the record is complete as set forth in ¶15, above. All examinations will be expected to occur within 60 days of finalization of medical record. OCERS Staff will forward the record to the physician for his or her evaluation of the member's condition. OCERS Staff will notify the member in writing of the date, time and location of the appointment. If the member is unable

## **Disability Application Review Process**

---

to attend the appointment, the member shall notify OCERS immediately, who shall re-schedule the appointment within 30 days of the original appointment, or at a mutually agreed upon future date not to exceed 90 days. As an alternative to an examination by an IME, OCERS Staff may refer the record to an IME for a records-only review. Alternatively, OCERS Staff may make a recommendation based on the medical evidence presented in the application.

7. **Receipt of Independent Medical Examiner opinion:** OCERS Staff will require the IME to submit his/her report within 45 days of the appointment (or within 45 days of the referral for a records-only review). OCERS Staff will forward a copy of the report to the member and his/her attorney upon receipt, certain exceptions may apply to psychiatric claims.
8. **Supplemental Reports, Investigations, or Evaluations:** Within 60 days of receiving the IME report, the OCERS Disability Staff shall complete any or the completion of any additional investigations, evaluations of reasonable accommodations, or any supplemental reports of an IME.
9. **Submission of Application the Disability Committee:** OCERS Staff shall make a recommendation to the Disability Committee (the Committee) regarding the approval or denial of the application summarizing the application and information received from medical, employment and any other pertinent records. The recommendation shall be submitted to the Committee within 30 days of receipt of the IME report or the completion of any additional investigations, evaluations of reasonable accommodations, or any supplemental reports of an IME. OCERS Staff shall prepare a memorandum for the Committee.
10. **Denial of an Application for Failure to Cooperate:** OCERS Staff may recommend that an application for disability retirement be denied and considered null and void for one or more of the reasons set forth below, and the member does not correct that failure within 90 days:
  - a. Failure of the member to submit to a medical examination when directed by the OCERS Staff; or
  - b. Failure of the member to timely submit additional information as requested by OCERS Staff; or
  - c. Any failure to cooperate by the member or any other act or omission by the member or member's representative which prevents the Committee from hearing and making a recommendation to the Board of Retirement (the Board) on the application for disability retirement within one year of the filing of the application .
11. **Notification of Disability Committee Review:** OCERS Staff shall notify the member in writing when the matter will be submitted to the Committee for its consideration. The notice will include OCERS Staff's memorandum as well as the date and time that the matter will be placed on the Committee's agenda. The member, plan sponsor, and/or their attorneys may appear before the Committee, but the appearance is not mandatory. All matters heard by the Committee will be heard in closed session/closed hearing unless otherwise requested by the member. The Committee will recommend that the Board grant or deny the application

## Disability Application Review Process

---

and report that recommended action in open session. When the Committee's recommendation is to grant the application for disability retirement the matter will be forwarded to the Board at its next regularly scheduled meeting, unless an objection is received. The item will be placed on the Board consent agenda. In the event that the Committee's recommendation is to deny the application for disability retirement the member will have 90 days to file an appeal. No application shall be continued at the request of the member more than twice without the approval of the Committee.

12. **Notification of Board of Retirement Determination:** OCERS Staff shall notify the member in writing when the matter will be submitted to the Board of Retirement for a determination.
13. **Adjudication of Disability Application.** The Committee and the Board shall adjudicate the application in accordance with the OCERS "Adjudication Policy and Administrative Hearing Rules (Disability and Non-Disability Benefits)."



## Memorandum

---

**DATE:** April 24, 2018  
**TO:** Disability Committee Members  
**FROM:** Lee Fink, Deputy General Counsel  
**SUBJECT:** Administrative Hearing Filing Procedures - OCERS Administrative Procedure (OAP)

---

### Background/Discussion

On January 16, 2018, the Board of Retirement adopted the new Adjudication Policy and Administrative Hearing Rules (Disability and Non-Disability Benefits) (the "Hearing Rules"), to go into effect on June 1, 2018. Under the old Hearing Rules, each party was responsible for serving on the other parties and the hearing officers the various documents that were necessary during the case—the Administrative Record, Pre-Haring Statements, Post-Haring Briefs, and other requests and notices that came up during the course of the administrative hearing process. These were all served by mail, and there was not a definitive and central repository of these documents.

The new Hearing Rules require that all documents be filed centrally with a Clerk of the Hearing Officers, who will be designated by the General Counsel. Other than applicants who are representing themselves, all documents must now be electronically filed. This is consistent with litigation practices in the state and federal courts, which are (and in most cases, largely have) migrated to electronic filing. Additionally, the Clerk will serve all the documents once they are filed. This removes the burden from the member to separately serve and complete a proof of service, something which is convenient since the parties that typically need to be served are either OCERS attorneys or OCERS Hearing Officers.

To facilitate the new electronic filing, the Hearing Rules required that OCERS promulgate an OAP to set forth the filing procedures. The attached draft OAP sets forth those procedures, explains the technical requirements for documents, and sets up samples/templates of documents that can be used. In the initial phase, the electronic filing will be accomplished through sending the documents to be filed to a designated OCERS e-mail account. In the future, we envision the possibility of a web-based portal for submitting documents.

### Submitted by:

A handwritten signature in black ink that reads "Lee Fink".

---

Lee Fink  
Deputy General Counsel



# **Administrative Hearing Filing Procedures**

---

## **I. Purpose**

This OAP describes the procedure for filing documents in Administrative Hearings before a Hearing Officer appointed by the Orange County Employees Retirement System (“OCERS”).

## **II. Authority**

This OAP is promulgated pursuant to Rule 2 (Filing of Documents) of the OCERS Board Policy “Adjudication Policy and Administrative Hearing Rules (Disability and Non-Disability Benefits)” (“Hearing Rules”).

Consistent with the Hearing Rules, all documents required or permitted to be filed by any Party during the course of the Administrative Hearing shall be filed with the Clerk. An Applicant may file documents in person, by US Mail, or electronically, in conformance with the Administrative Hearing Filing Procedures. Any other Party or the Hearing Officer shall file all documents electronically, in conformance with this OAP.

## **III. Use of Mandatory and Optional Forms**

**A. Mandatory Forms.** The following forms, attached as exhibits to this OAP, are mandatory:

1. Request for Administrative Hearing
2. Information for Petitioner Regarding Administrative Hearing Process
3. Notice of Assignment of Hearing Officer
4. Proposed Scheduling of Pre-Hearing Conference
5. Scheduling Order
6. Post-Hearing Notice of Ruling
7. Notice of Board Meeting
8. Result of Board Meeting (including Appellate Language)

**B. Optional Forms.** The following forms, attached as exhibits to this OAP, are optional, and may be used as appropriate:

1. Consent to Electronic Service by Applicant/Applicant’s Attorney
2. Notice of Appearance By An Attorney/Substitution of Attorney

**C. Improper Use of Mandatory Forms.** Any time a party files a document for which a mandatory form is otherwise required, the Clerk shall send to the filing party the applicable form and require that it be completed and filed within five (5) days. Provided that a party files a completed form within five (5) days, the filing shall be considered filed as of the date the original document was filed.

## **IV. Format of Documents**

## **Administrative Hearing Filing Procedures**

---

Except for forms set forth in this OAP, all other documents filed with the Clerk shall conform to the following standards.

- A. General Requirements.** For parties represented by counsel, filing documents that generally comply with the California Rules of Court (Title 2, Division 2, §§ 2.100-2.150) is expected and sufficient. Numbered lines are encouraged but not required.
- B. First Page.** The first page of each document must include, at a minimum:
  - a. the name, mailing address, telephone number, and e-mail address, and State Bar membership number of the attorney for the Party on whose behalf the document is presented, or of the Party if he or she is appearing in person.
  - b. a statement that the matter is “Before the Board of Retirement of the Orange County Employees Retirement System;”
  - c. the case name referencing the Petitioner who filed the Request for Administrative Hearing (i.e. “In Re: John Doe”);
  - d. the unique case number assigned by the Clerk when the Request for Administrative Hearing is filed; and
  - e. the nature of the document (i.e. Pre-Hearing Statement, Closing Brief, etc.).
- C. Size and Quality of Paper.** All documents filed must be formatted for 8 ½ by 11 inch paper. All documents not filed electronically must be on opaque, unglazed paper, white or unbleached, of standard quality not less than 20-pound weight.
- D. Typewritten or Printed.** All documents must be computer-generated, printed or typewritten or be prepared by a photocopying or other duplication process that will produce clear and permanent copies equally as legible as printing (unless a Member representing him/herself is unable to provide typewritten or printed documents).
- E. Font and Type Size.** Unless otherwise specified in these rules, all papers filed must be prepared using a font size not smaller than 12 points. The font style must be essentially equivalent to Courier, Times New Roman, or Arial. The font color must be black or blue-black.
- F. Spacing.** The lines on each page must be one and one-half spaced or double-spaced, except for footnotes, quotations, and footers.
- G. Page Numbering.** Each page must be numbered consecutively at the bottom.
- H. English.** All documents must be presented in English unless: (a) an English translation is concurrently provided; or (b) the Hearing Officer orders otherwise upon a showing of good cause.

## **V. Electronic Filing of Documents**

# **Administrative Hearing Filing Procedures**

---

## **A. Filing by E-Mail.**

1. All documents required or permitted to be filed electronically shall be filed by sending the document via electronic e-mail to the Clerk's E-Mail  
Address: [administrativehearings@ocers.org](mailto:administrativehearings@ocers.org).
2. All documents shall be filed coming from the e-mail account of the Party, the attorney representing the Party, or and Additional Authorized Electronic Filer of the Attorney (e.g. the attorney's legal assistant or staff).

**B. Filing Confirmations and Conformed Copies.** Within one (1) business day of receipt, the Clerk shall provide the filing party a conformed copy with a stamp indicating the date the document was received and served (or an acknowledgment of filing) which will become a part of the document in the official file.

## **C. Signatures**

1. If a document does not require a signature under penalty of perjury, the document is deemed signed by the party if the document is filed electronically.
2. If a document to be filed electronically must be signed under penalty of perjury, the following procedure applies:
  - a. The document is deemed signed by the declarant if, before filing, the declarant has signed a printed form of the document or provided an electronic signature.
  - b. By electronically filing the document, the electronic filer certifies that subsection (a) has been complied with and that the original signed document is available for inspection and copying. At any time after the document is filed, the Hearing Officer may order the filing Party to produce the original signed document in for inspection and copying.
3. When a document to be filed electronically, such as a stipulation, requires the signatures of multiple Parties, the following procedure applies:
  - a. The Party filing the document must obtain the signatures of all Parties, either in the form of an original signature on a printed form of the document or in the form of an electronic signature. By electronically filing the document, the electronic filer indicates that all Parties have signed the document and that the filer has the signatures of all Parties in a form permitted by this rule in his or her possession.
  - b. By electronically filing the document, the electronic filer certifies that subsection (a) has been complied with and that the original signed document is available for inspection and copying. At any time after the document is filed, the Hearing Officer may order the filing Party to produce the original signed document in for inspection and copying.
4. An electronic signature, as defined under the Uniform Electronic Transactions Act (UETA), Cal. Civ. Code §§ 1633.1-1633.17, shall be sufficient to sign any document that is filed, including to authenticate the report of a Medical Witness.

## **Administrative Hearing Filing Procedures**

---

### **D. Technical Requirements (File Format and Size Limitations).**

1. Documents filed electronically must be submitted in Adobe Portable Document Format (PDF).
2. Except as provided elsewhere in this OAP, the document filed with the Clerk should be created using word-processing software, then published to PDF from the original word-processing file (to permit the electronic version of the document to be searched via optical character recognition (OCR). Exhibits submitted as attachments to a document and may be scanned and attached, in PDF form, if the filer does not possess a word-processing file version of the attachment.
3. Where scanned signature pages are used, only the signature pages may be scanned; the remainder of the document must be generated by publishing to PDF from the original word-processing file.
4. Individual PDF files shall not exceed **10 MB** in size, and shall contain no more than one document (provided that the Administrative Record shall be considered one document) or portion of one document per file. PDF files that exceed 10 MB must be divided into sub-volumes. PDF files that exceed 30 MB may be filed on a compact disc (CD) or digital versatile disc (DVD) after consultation with the Clerk.

### **E. Hyperlinks**

1. Electronically filed documents may contain the following types of hyperlinks.
  - a. Hyperlinks to other portions of the same document;
  - b. Hyperlinks to a location on the Internet that contains a source document for a citation.
2. Hyperlinks to cited authority may not replace standard citation format. Complete citations must be included in the text of the filed document. Neither a hyperlink, nor any site to which it refers, shall be considered part of the record, but are simply mechanisms for accessing material cited in a filed document.

## **VI. Electronic Service of Documents**

All service of documents shall be effectuated by the Clerk, in conformance with the Hearing Rules.

### **A. Service of Documents on the Applicant**

1. An Applicant may elect to accept service of documents filed with the Clerk via e-mail by filing with the Clerk the Form "Consent to Electronic Service by Applicant/Applicant's Attorney" or by checking the appropriate box on the Request for Administrative Hearing form.
2. An Applicant who does not accept electronic service shall be served with all documents filed by U.S. Mail at their address on file with OCERS (or, if the Applicant is not an OCERS Member, with the last known address provided to the Clerk).

### **B. Service of Documents on Parties and the Hearing Officer**

## **Administrative Hearing Filing Procedures**

---

1. Other than an Applicant who has declined electronic service, the Clerk shall serve every Party and the Hearing Officer electronically via e-mail. The Clerk shall serve documents on the e-mail address of the party last known to OCERS.
2. Notwithstanding subsection B.1, above, files that exceed 10 MB may be served by mail on a compact disc (CD) or digital versatile disc (DVD).

### **C. Maintaining Address for Service**

1. In every case, the parties and the Hearing Officer shall provide and maintain current contact information with the Clerk. A Party may update his/her contact information by filing notice with the Clerk, including but not limited to filing:
  - a. Consent to Electronic Service; or
  - b. Notice of Appearance By An Attorney/Substitution of Attorney.

### **D. Proof of Service**

The OCERS Administrative Hearing File Stamp on the first page of the document, completed with the date the document was served and the initials of the OCERS Clerk serving the document, shall be proof of service that the document was served on all Parties.



## **REQUEST FOR ADMINISTRATIVE HEARING**

This is a request for an Administrative Hearing filed pursuant to the OCERS Adjudication Policy and Administrative Hearing Rules (Disability and Non-Disability Benefits).

### **Instructions:**

1. Parts I-VIII of this "Request for Administrative Hearing" form.
  - a. The Clerk will complete Part I.
  - b. In Part II, check the box that indicates if this is an appeal of a Disability Retirement Application or a Non-Disability Benefit matter. (A Disability Retirement Application is one that was previously considered by the OCERS Disability Committee.)
  - c. Complete Part IV only if you **are not** the OCERS Member whose benefits are at issue.
  - d. Complete Part V only if you **are** the attorney for the Applicant.
  - e. Complete Part VI only if you are seeking a review of the Disability Application.
  - f. Check the Box in Part VIII only if you want your case to be considered under the OCERS Alternative Expedited Review Procedure.
  
2. File this Form by sending it via e-mail to [administrativehearings@ocers.org](mailto:administrativehearings@ocers.org) or return it to:  
OCERS  
Attn: Clerk of the Hearing Officers  
2223 E. Wellington Ave., Suite 100  
Santa Ana, CA 92701
  
3. Timing
  - a. **Denial of Disability Retirement Application.** If you are appealing the *denial* of a disability retirement application (in whole or in part, including the denial of service connection or the effective date), you must file this request **no later than** ninety (90) days from the date that OCERS provides notice of the Disability Committee's recommendation.
  
  - b. **Grant of Disability Retirement Application (Plan Sponsors Only).** If you are appealing the *grant* of a disability retirement application (in whole or in part, including the granting of service connection or the effective date), you must file this request **no later than** ten (10) days from the date that OCERS provides notice of the Disability Committee's recommendation.
  
  - c. **Non-Disability Benefit Determination.** If you are appealing a non-disability benefit determination, you must file this request **no later than** ninety (90) days from the date OCERS provides notice of the benefit determination.
  
4. Once this request has been filed:
  - a. A Hearing Officer will be assigned;
  - b. Within 30 days, the Clerk will schedule a Pre-Hearing Conference; and
  - c. Within 45 days, OCERS will assemble and file the initial Administrative Record.

**BEFORE THE BOARD OF RETIREMENT OF THE  
ORANGE COUNTY EMPLOYEES RETIREMENT SYSTEM**

**Part I. To Be Completed by the Clerk**

In Re:

\_\_\_\_\_  
Petitioner.

Case No.:

**REQUEST FOR ADMINISTRATIVE HEARING**

Hearing Officer:

**Part II. Appeal of a Disability or Non-Disability Benefit (check one)**

- This is a request for an Administrative Hearing of a Disability Retirement Application  
 This is a request for an Administrative Hearing of a Non-Disability Benefit Determination

**Part III. Applicant's Information**

Applicant is:

- OCERS Member  
 Filing on behalf of an OCERS Member  
 OCERS Plan Sponsor  
 Other person with interest in an OCERS Member's pension (e.g., heir, beneficiary, spouse)

Applicant's Name: \_\_\_\_\_

Applicant's Address: \_\_\_\_\_  
\_\_\_\_\_

Applicant's Telephone Number: \_\_\_\_\_

Applicant's E-Mail Address: \_\_\_\_\_

Check here if Applicant consents to have all documents served via e-mail.

**Part IV. OCERS Member Information (complete only if the Applicant is not the OCERS Member)**

OCERS Member Name: \_\_\_\_\_

OCERS Member's Address (if known): \_\_\_\_\_

OCERS Member's Telephone Number: \_\_\_\_\_

OCERS Member's E-Mail Address: \_\_\_\_\_

**Part V. Attorney Information (complete only if Applicant is represented by an Attorney)**

Attorney's Name: \_\_\_\_\_

Attorney's California Bar Number: \_\_\_\_\_

Attorney's Firm Name: \_\_\_\_\_

Attorney's Address: \_\_\_\_\_

\_\_\_\_\_

Attorney's Phone Number: \_\_\_\_\_

Attorney's E-Mail Address: \_\_\_\_\_

**Part VI. Details of Appeal (complete only for Disability Retirement Applications):**

Applicant is contesting (check all that apply):

- Finding on permanent incapacity
- Finding on service connection
- Effective Date
- Timeliness of application

Date of Disability Committee Meeting: \_\_\_\_\_

**Part VII. Details of Request for Administrative Hearing and Appeal**

Provide a short description of your claim(s) and why the Disability Committee's recommendation or Non-Disability Benefit Determination should be reversed (attach extra pages if necessary):

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_





**BEFORE THE BOARD OF RETIREMENT OF THE  
ORANGE COUNTY EMPLOYEES RETIREMENT SYSTEM**

In Re:

\_\_\_\_\_  
Petitioner.

Case No.:

**INFORMATION FOR PETITIONER**

Hearing Officer:

**TO THE PETITIONER, PLEASE TAKE NOTICE THAT:**

Your Request for Administrative Hearing has been filed with OCERS. This document provides an overview of the Administrative Hearing Process. Attached to this notice are two documents: the OCERS Board Policy Adjudication Policy and Administrative Hearing Rules (Disability and Non-Disability Benefits) (the "Hearing Rules") and the OCERS Administrative Procedure (OAP) Administrative Hearing Filing Procedures (the "Filing Procedures OAP").

***Read the Hearing Rules and the Filing Procedures OAP. These documents contain details about how your case will be adjudicated. You will be responsible for all of the dates and deadlines contained in the Hearing Rules and the Filing Procedures OAP. You must follow the Hearing Rules and the Filing Procedures OAP.***

This document is intended to summarize for you the process by which your case will be adjudicated. It does not substitute for the Hearing Rules or the Filing Procedures OAP. If there is any instance where this document, the Hearing Rules, or the Filing Procedures OAP appear to be in conflict, then the Hearing Rules and the Filing Procedures OAP control. OCERS and its Staff cannot and will not give you legal advice concerning the facts of your case. If you decide to represent yourself you must review the enclosed Hearing Rules and Filing Procedures OAP, as well as the information in this document.

The Hearing Rules, the Filing Procedures OAP, and useful forms and documents are all available on the OCERS website at: [www.ocers.org/\\_\\_\\_\\_\\_](http://www.ocers.org/).

**Hiring a Lawyer**

If you have not already hired a lawyer, you must decide whether or not you will hire a lawyer. OCERS cannot and will not recommend any specific attorney to you. However, the Orange County Employees Association ([www.oceamember.org](http://www.oceamember.org)), the Association of Orange County Deputy Sheriffs ([www.aocds.org](http://www.aocds.org)), the Orange County Professional Firefighters Association ([www.ocfirefighters.org](http://www.ocfirefighters.org)), the Retired Employees Association of Orange County ([www.reaoc.org](http://www.reaoc.org)), or your union or collective bargaining unit may be able to refer you to a lawyer. Additionally, the Orange County Bar Association ([www.ocbar.org](http://www.ocbar.org)) has a Lawyer Referral & Information Service, at (949) 440-6747. The State Bar ([www.calbar.ca.gov](http://www.calbar.ca.gov)) also has information for consumers on its website under the tab "Public." You may check with the State Bar to determine whether a person is actually an active and licensed attorney, and whether any attorney you may be considering has a public record of discipline.

If you hire a lawyer, you must file a notice of appearance or substitution of counsel with the Clerk. If you are represented by a lawyer, all communications from the Hearing Officer, OCERS, or any other party, will be made through your lawyer.

### **Filing Documents**

All documents that are to be considered by the Hearing Officer MUST be filed with the Clerk. The Clerk will serve all documents filed by any party or the Hearing Officer. Parties may file documents electronically by e-mailing them to: [administrativehearings@ocers.org](mailto:administrativehearings@ocers.org). In addition, Applicants for benefits who are representing themselves may file documents with the Clerk in person at the OCERS office at:

OCERS  
2223 E. Wellington Ave.  
Santa Ana, CA 92701  
Attn: Clerk of the Hearing Officers

The Filing Procedures OAP has details about how the documents should be prepared and formatted. Please review those thoroughly before filing any document.

### **Hearing Officer Assignment**

You will separately receive notice of the assignment of a Hearing Officer. You will have fourteen (14) days from receipt of that notice to object to the assigned Hearing Officer. If you object, a new Hearing Officer will automatically be assigned. You will not be allowed to object to the assignment of the new Hearing Officer unless you can prove that the Hearing Officer is biased or has a conflict of interest.

### **Administrative Record**

Within 45 days of the filing of your case, a copy of the Administrative Record will be filed with the Clerk and sent to you. The Administrative Record constitutes all of the records that OCERS has in its possession regarding your application. OCERS and/or the Disability Committee may or may not have relied on the documents in the Administrative Record when making the initial determination or recommendation that you are appealing, and OCERS may request to admit or exclude some portion of these documents at the Administrative Hearing. As with all documents filed with the Clerk, copies of the Administrative Record will be provided to the Hearing Officer, counsel for OCERS, and any other party in the case.

### **Pre-Hearing Scheduling Conference**

The Clerk will schedule a Pre-Hearing Scheduling Conference that must be held within 30 days of filing the Administrative Record. You or your attorney MUST appear either in person at the OCERS office, telephonically, or electronically (e.g. Skype, Facetime).

The Pre-Hearing Conference is not to take testimony or to argue the case. It is your opportunity to discuss the hearing procedures with the Hearing Officer and to set a hearing date. A court reporter will not be present unless a party specifically requests one seven (7) days in advance.

At the Pre-Hearing Scheduling Conference, all dates for this matter will be set, including the date(s) of the Administrative Hearing, the dates that the Pre-Hearing Statements are due, and dates that the Closing Briefs will be due. Once set, these dates may not be changed unless an unforeseeable circumstance arises. If you fail to meet the deadlines established at the Pre-Hearing Scheduling Conference, your case may be dismissed.

At the Pre-Hearing Scheduling Conference, you should be prepared to do your best to:

- Identify the witnesses, both expert and non-expert, that you intend to call;
- Ensure that the witnesses you call either speak and understand English or request a translator
- Indicate whether you expect to request that any medical witnesses appear in person. You will be obligated to pay the expense of each medical witness whose appearance you request. Any fee dispute between you and any medical witness is independent from any proceeding between you and OCERS, and the Hearing Officer has no authority or jurisdiction to decide any such dispute.
- Set any dates for depositions, if necessary

### **Depositions**

During the course of the proceeding, you may want to conduct a deposition of a witness. This is questioning the witness under oath while a Court reporter transcribes the proceedings. The party conducting the deposition is responsible for arranging the time and place of the deposition, for paying for the costs the deposition, and for providing a copy of the transcript to each party.

### **Subpoenas**

If you need a subpoena for any witness (co-worker, supervisor, etc.) to appear at a deposition or at your hearing, you must file a written request with the Clerk. Each request must state the witness' full name, and the complete address of the witness' place of employment or their residence. OCERS will prepare each subpoena requested, but you are responsible for serving each subpoena and for paying all costs or fees of serving each witness.

### **Pre-Hearing Statements**

The Hearing Rules require applicants to file a Pre-Hearing Statement at least 60 days before the Administrative Hearing. The enclosed sample Pre-Hearing Statement should prove helpful. You may choose to use the sample as the actual Statement.

The Pre-hearing Statements must include the following:

- A statement of the issues and contentions of the Party, and a brief summary of the evidence to be presented;
- A list and copies of any expert's reports, depositions of any witnesses, and any other documentary evidence on which the Party will rely, if not already in the Administrative Record;
- The names, addresses and telephone numbers of any non-expert witnesses whose testimony the Party intends to present at the Hearing and a brief description of the content of that testimony.
- The names, addresses and phone numbers of any expert witnesses whom the Party intends to call for oral testimony at the Hearing and a synopsis of the expected testimony.

If you do not submit the documentary evidence that you plan to rely on with your Pre-Hearing Statement, those documents may be excluded at the Hearing. If you do not submit the names of the witnesses you plan to call, that testimony may be excluded.

OCERS will file its Pre-Hearing Statement at least 30 days before the Administrative Hearing. OCERS' Pre-Hearing Statement must contain the same information. Any party may file a Supplemental Pre-Hearing Statement no later than fourteen (14) days prior to the hearing date, but solely for the purpose of providing rebuttal information or reports to information or evidence included in another party's Pre-Hearing Statement.

### **The Administrative Hearing**

Hearings are typically set at least 120 days after the Pre-Hearing Scheduling Conference. Between the Pre-Hearing Conference and the Administrative Hearing you will have time to review the Administrative Record, contact witnesses, and obtain any additional exhibits.

The hearing format is similar to one in a court; a court reporter is also present. As a hearing starts, the Hearing Officer usually asks if the parties agree on documents the Hearing Officer will review. The Hearing Officer will resolve any disputes between parties about documents. Each party may make an opening statement, and each may call witnesses.

The Applicant presents his/her evidence to the Hearing Officer first. Most applicants testify on their own behalf at their hearing. Parties may also call witnesses to testify. Each witness is subject to cross-examination by the attorney for the other parties, or by the parties who are representing themselves. All testimony is under oath, which is the same as the oath taken in court. If an interpreter is needed to assist a witness, raise this at the Pre-Hearing Scheduling Conference. OCERS or any other party is then able to call witnesses, which you will be allowed to cross-examine.

Parties also present closing argument, either at the hearing orally or after the hearing by a letter or a written brief filed with the Clerk. There is no preferred method, but written closing argument is the most common. That is because a court reporter is present and some people like to have and review a copy of the hearing transcript before making their final argument.

- Petitioner's closing brief shall be filed within thirty days (30) of the date the transcript of the Hearing is filed.
- Respondents' closing briefs shall be filed within sixty (60) days of the date the transcript of the Hearing is filed.
- Petitioner's reply brief shall be filed within fifteen (15) days of the date that Respondents' closing briefs are filed.

### **After the Hearing**

After the Hearing Officer has considered all parties' closing arguments the Hearing Officer will file written findings of fact, and a recommended decision (collectively, "Findings") with the Clerk. Any party may object to the Findings within 20 days after the Findings are filed with the Clerk. The Findings

and any objections that are filed with the Clerk are sent to the Board of Retirement for a final decision. Each party or their attorney will be able to address the Board when it considers the Findings.

**Location**

All hearings and Board meetings (other than any telephone Pre-Hearing Conference) are held at the OCERS office, 2223 E. Wellington Ave., Santa Ana, California. On the day of your hearing, you and your witnesses should check in with the receptionist on the first floor.

Dated: \_\_\_\_\_

OCERS CLERK OF THE HEARING OFFICERS

**BEFORE THE BOARD OF RETIREMENT OF THE  
ORANGE COUNTY EMPLOYEES RETIREMENT SYSTEM**

In Re:

\_\_\_\_\_  
Petitioner.

Case No.:

**NOTICE OF ASSIGNMENT OF HEARING OFFICER**

Hearing Officer:

**TO ALL PARTIES, PLEASE TAKE NOTICE THAT:**

\_\_\_\_\_, Esq., has been assigned as the Hearing Officer for this matter.

[HO Name].  
[Address]  
[Phone number]  
[Email Address]

You have the right to object if you do not agree with the Hearing Officer assignment. In order to exercise this right, you must file this objection in writing within fourteen (14) days of the date of this notice. Please send your objection to [administrativehearings@ocers.org](mailto:administrativehearings@ocers.org) or mail it to:

OCERS  
Attn: Clerk of the Hearing Officers  
2223 E. Wellington Ave., Suite 100  
Santa Ana, CA 92701

The Clerk of the Hearing Officers shall assemble the Administrative Record within forty-five (45) days following receipt of the Request for Administrative Hearing. Upon completion, the Administrative Record will be forwarded to you (or your legal representative, if any), the Hearing Officer, and Counsel representing the retirement system.

If an Applicant files a challenge to the Hearing Officer, then the Clerk shall re-assign the matter to another Hearing Officer. An Applicant may file only one automatic challenge to a Hearing Officer (unless this matter is later re-assigned due to unforeseen circumstances pursuant to Hearing Administrative Hearing Rule 4.F.). Any party may challenge the assignment of a Hearing Officer for cause at any time by filing a Challenge to the Hearing Officer Form with the Clerk of the Hearing Officers.

The Clerk of the Hearing Officers will be contact all parties involved to set a mutually agreeable Pre-Hearing Scheduling Conference to be held within 30 days of the filing of the Administrative Record.

Dated: \_\_\_\_\_

OCERS CLERK OF THE HEARING OFFICERS

**BEFORE THE BOARD OF RETIREMENT OF THE  
ORANGE COUNTY EMPLOYEES RETIREMENT SYSTEM**

In Re:

\_\_\_\_\_  
Petitioner.

Case No.:

**PROPOSED SCHEDULING OF PRE-HEARING  
CONFERENCE**

Hearing Officer:

TO ALL PARTIES, PLEASE TAKE NOTICE THAT:

The following dates are proposed for the Pre-Hearing Scheduling Conference:

\_\_\_\_\_  
\_\_\_\_\_

Be advised that it is not necessary to make a personal appearance during this portion of Administrative Hearing process. The Pre-Hearing Scheduling Conference may be held telephonically or electronically via Skype or Facetime. Further; this conference *will not* be transcribed unless a Party s request for a court reporter at least seven (7) days before the Pre-Hearing Scheduling Conference. If any Party requests a transcription, the Clerk shall arrange for a court reporter, but the requesting Party shall be liable for reimbursing OCERS for the costs. Any party may make an audio recording of the Pre-Hearing Scheduling Conference, and a copy of the recording must be filed with the Clerk. The Pre-Hearing Scheduling Conference shall not be considered a “confidential communication” under the California Invasion of Privacy Act, Cal. Penal Code § 632(c).

The Pre-Hearing Scheduling Conference must be held within 30 days of filing of the Administrative Record. To schedule the Pre-Hearing Scheduling Conference, please contact the Clerk at (714) 558-XXXX. If you do not respond to this notice, the Pre-Hearing Scheduling Conference will be set for one of the dates listed above.

Dated: \_\_\_\_\_

OCERS CLERK OF THE HEARING OFFICERS



**BEFORE THE BOARD OF RETIREMENT OF THE  
ORANGE COUNTY EMPLOYEES RETIREMENT SYSTEM**

In Re:

\_\_\_\_\_  
Petitioner.

Case No.:

**SCHEDULING ORDER**

Hearing Officer:

**TO ALL PARTIES, PLEASE TAKE NOTICE THAT:**

The date of Hearing in this matter has been agreed to. The aforementioned hearing shall begin promptly at [TIME], on [DATE], and will continue day to day thereafter. The hearing shall be held at:

OCERS  
2223 E. Wellington Ave.  
Santa Ana, CA 92701

**PLEASE BE ADVISED THAT:**

Pre-Hearing Statements:

- Petitioner shall file a Pre-Hearing Statement with the Clerk *no later than* [DATE].
- Respondent(s) shall file a Pre-Hearing Statement *no later than* [DATE].
- Any party may file a supplemental Pre-Hearing Statement no later than [DATE].

Further; there will be a court reporter paid at OCERS's expense present during the hearing. Oral evidence shall be taken only on oath or affirmation administered by the Hearing Officer or the court reporter. The court reporter shall file the transcript of the Hearing within 30 days of the final day of the Hearing.

Closing Briefs:

Unless the parties waive closing briefs:

- Petitioner shall file a closing brief within thirty days (30) of the date the transcript of the Hearing is filed.
- Respondent(s) shall file a closing brief within thirty days (60) of the date the transcript of the Hearing is filed.
- Petitioner may file a reply brief within fifteen (15) days of the date that Respondents' closing briefs are filed.

Dated: \_\_\_\_\_

OCERS CLERK OF THE HEARING OFFICERS

**BEFORE THE BOARD OF RETIREMENT OF THE  
ORANGE COUNTY EMPLOYEES RETIREMENT SYSTEM**

In Re:

\_\_\_\_\_  
Petitioner.

Case No.:

**NOTICE OF BOARD MEETING**

Hearing Officer:

TO ALL PARTIES, PLEASE TAKE NOTICE THAT:

The Board of Retirement (Board) will address [APPLICANT'S NAME] application for [DISABILITY/BENEFIT EFFECTIVE DATE] retirement on [DATE], at OCERS. The disability portion of the meeting starts at [TIME].

Each Party will have the opportunity to be heard at the Board meeting, if you desire. However, you *are not* required to do so. Should you choose to attend, we ask that you inform the Clerk and arrive no later than 15 minutes prior to the start of the Disability portion of the Board meeting. This will provide sufficient notice of your attendance as well as whether you wish to address the Board.

The Board will receive the Hearing Officer's Findings of Fact and Recommended Decision, as well as any objections that have been filed. The Board may:

- Approve and adopt the proposed findings and the recommendations of the Hearing Officer; or
- Require a transcript or summary of all testimony, plus all other evidence received by the Hearing Officer. (The Hearing Officer's Proposed Findings of Fact and Recommended Decision is considered a sufficient summary of all testimony and evidence.) On receipt thereof, the Board shall take such action as in its opinion is indicated by such evidence; or
- Refer the matter back with or without instructions to the Hearing Officer for further proceedings; or
- Set the matter for hearing before itself. At such hearing, the Board shall hear and decide the matter de novo.

Dated: \_\_\_\_\_

OCERS CLERK OF THE HEARING OFFICERS

**BEFORE THE BOARD OF RETIREMENT OF THE  
ORANGE COUNTY EMPLOYEES RETIREMENT SYSTEM**

In Re:

\_\_\_\_\_  
Petitioner.

Case No.:

**CONSENT TO ELECTRONIC SERVICE AND NOTICE  
OF ELECTRONIC SERVICE ADDRESS**

Hearing Officer:

1. \_\_\_\_ The Applicant or \_\_\_\_ Applicant's Attorney

Applicant Name \_\_\_\_\_

consents to electronic service of notices and documents in the above captioned action.

2. The electronic service address of the person identified in item 1 is (*specify*):

Date: \_\_\_\_\_

\_\_\_\_\_  
Type or Print Name

\_\_\_\_\_  
Signature of Party or Attorney

**BEFORE THE BOARD OF RETIREMENT OF THE  
ORANGE COUNTY EMPLOYEES RETIREMENT SYSTEM**

In Re:

\_\_\_\_\_  
Petitioner.

Case No.:

**NOTICE OF APPEARANCE BY AN ATTORNEY/  
SUBSTITUTION OF ATTORNEY**

Hearing Officer:

**Part I. Notice of Appearance by an Attorney**

I hereby enter my appearance as attorney on behalf of \_\_\_\_\_.

**Part II. Eligibility**

[ ] I am a member in good standing of the State Bar of California. My State Bar Number is \_\_\_\_\_.

OR

[ ] I am eligible to represent my client *pro hac vice* under Rule 9.40 of the California Rules of Court.

I am admitted to the Bar in the state of \_\_\_\_\_.

Sponsoring attorney: \_\_\_\_\_, California State Bar Number: \_\_\_\_\_.

**I am not subject to any order of any court or administrative agency disbaring, suspending, enjoining, restraining, or otherwise restricting me in the practice of law.**

**Part II. Attorney Information**

Attorney's Name: \_\_\_\_\_

Attorney's Firm Name: \_\_\_\_\_

Attorney's Address: \_\_\_\_\_  
\_\_\_\_\_

Attorney's Phone Number: \_\_\_\_\_

Attorney's E-Mail Address: \_\_\_\_\_

**Part III. Additional Authorized Electronic Filers**

(Use separate sheet for any additional names, if necessary)

A. Electronic Filer’s Name: \_\_\_\_\_

Electronic Filer’s E-Mail Address: \_\_\_\_\_

B. Electronic Filer’s Name: \_\_\_\_\_

Electronic Filer’s E-Mail Address: \_\_\_\_\_

C. Electronic Filer’s Name: \_\_\_\_\_

Electronic Filer’s E-Mail Address: \_\_\_\_\_

**Part IV. Substitution of Attorney**

[ ] I am replacing the attorney of record in this matter

Name of former attorney: \_\_\_\_\_

**Part V. Signature of New Attorney**

I have read and understand the Adjudication Policy and Administrative Hearing Rules of the Orange County Board of Retirement. I declare under penalty of perjury under the laws of the State of California and the United States that the information I have provided on this form is true and accurate.

Dated: \_\_\_\_\_  
Signature of Attorney

**Part VI. Signature of Former Attorney**

I consent to this substitution.

Dated: \_\_\_\_\_  
Signature of Former Attorney



## Memorandum

---

**DATE:** April 24, 2018  
**TO:** Disability Committee Members  
**FROM:** Lee Fink, Deputy General Counsel  
**SUBJECT:** Updated Panel Physician and Hearing Officer Contracts

---

### Background/Discussion

On January 16, 2018, the Board of Retirement adopted the new Adjudication Policy and Administrative Hearing Rules (Disability and Non-Disability Benefits) (the "Hearing Rules"), to go into effect on June 1, 2018. Part of the process included instituting setting clear timelines and standards in the Hearing Rules and in a Disability Procedures OAP. In order to make sure that OCERS contractors, such as panel physicians and hearing officers, were accountable to fulfilling their part of the timelines and standards, staff has developed revisions to those contracts.

In the near future, staff will be finalizing these contracts and executing them with the Panel Physicians and Hearing Officers.

### Submitted by:

A handwritten signature in black ink, appearing to read "Lee Fink". The signature is written in a cursive style with a large, stylized "L" and "F".

---

Lee Fink  
Deputy General Counsel