



San Bernardino County Employees'
Retirement Association

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PROCEDURES FOR BENEFIT ADMINISTRATIVE APPEAL HEARINGS

_____, 2025

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SBCERA

PROCEDURES FOR BENEFIT

ADMINISTRATIVE APPEAL HEARINGS

These procedures establish a fair and efficient process for handling appeals related to SBCERA benefits under Benefits Policy No. 025 – Requests and Appeals for Pension Benefits, excluding disability retirement appeals. These administrative hearings are not required by law, but they may be provided to assist the Board in its decision-making process, and they will be provided upon referral of, and in the discretion of, the SBCERA Chief Executive Officer or Board of Retirement. These procedures apply to any appeals concerning SBCERA benefit issues, including but not limited to eligibility determinations, benefit calculations, or disputes over benefit entitlements, as governed by Benefits Policy No. 025.

RULE 1. FILING AN APPEAL

Pursuant to Section 5 of SBCERA Benefits Policy No. 025, the Appellant must file a written appeal within 30 days of the date of the contested SBCERA decision. The written appeal must include:

- (i) The Appellant's name and contact information.
- (ii) A description of the contested decision.
- (iii) The basis for the appeal, including supporting facts and documentation.
- (iv) The remedy sought.

Appeals must be submitted to the SBCERA office in person, by mail, or electronically as specified in the SBCERA Benefits Policy No. 025.

RULE 2. RIGHT OF REPRESENTATION

Under these Rules, there is no requirement for an Appellant to be represented by an attorney of his or her selection. An Appellant has the right to have representation by an attorney, at the Appellant's expense, or in the alternative to represent themselves at the Administrative Hearing. Under no circumstances other than as provided in Rule 6 infra, shall a person who is not the Appellant or a licensed attorney for Appellant represent Appellant at the Administrative Hearing. However, a person with a Power of Attorney and/or Conservatorship may assist Appellant in completing any required forms during the proceedings and may attend the proceedings at the Appellant's request. Representation is at the expense of the Appellant. Before an attorney appears on behalf of the Appellant, a written notice of representation shall be submitted to SBCERA and served on all Parties. All future notices, pleadings, and correspondence shall be served upon that attorney, unless a Notice of Withdrawal is submitted to SBCERA and served on all Parties.

The Attorney representing the Appellant in an Administrative Hearing must be an active member of the California State Bar in good standing. SBCERA is entitled to be represented by counsel at all times related to matters in these Procedures.

RULE 3. REFERRAL TO AND APPOINTMENT OF HEARING OFFICER

The appeal will be forwarded to a Hearing Officer for formal administrative adjudication. The Chief Counsel, in consultation with the Chief Executive Officer, will

exercise discretion in selecting a qualified Hearing Officer based on the complexity, technical requirements, and other factors pertinent to adjudication of the appeal. Such selection will also consider the nature of the appeal and the Hearing Officer's expertise in the relevant subject matter. The Hearing Officer will be appointed by SBCERA from a list of qualified individuals experienced in administrative law or retirement benefits. The Hearing Officer must be impartial and have no prior involvement in the contested decision unless the Board directs that the matter be referred to such Hearing Officer. Once selected, the Hearing Officer's appointment will be communicated to both the Appellant(s) and Respondent.

RULE 4. ADMINISTRATIVE HEARING

All Hearings shall be held in-person at SBCERA offices located at 348 W. Hospitality Lane, City of San Bernardino, State of California. Unless the Parties and the Hearing Officer agree otherwise, a Hearing shall be deemed set for one full day (i.e., a morning session and an afternoon session). Morning sessions shall begin at 9:30 A.M. and end at 12:00 noon, and afternoon sessions shall begin at 1:30 P.M. and end at 5:00 P.M. Hearings that are not concluded within either the full day (i.e., a morning and an afternoon) session, or whatever other time period to which Appellant and SBCERA have stipulated, shall be continued to the next agreeable hearing date. The continued date must be within the 180-day jurisdiction of the Hearing Officer. When the hearing date and time have been selected, SBCERA staff shall arrange for a court reporter and use of a hearing room and shall notify the Parties and the Hearing Officer in writing of the time and place of the Hearing.

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RULE 5. HEARING OFFICER

The Hearing Officer shall have full authority to regulate the hearing, rule on procedural matters, and maintain order. They may impose time limits on testimony, limit redundant arguments, and exclude disruptive participants. The Hearing Officer may issue interim rulings on procedural matters, including motions to exclude evidence, continuance requests, and witness-related disputes. The Hearing Officer shall base recommendations on the preponderance of the evidence unless a different standard applies under SBCERA's policies. The Hearing Officer may grant reasonable extensions or modifications of deadlines or procedures for good cause.

RULE 6. CONSOLIDATED ADMINISTRATIVE HEARING

(a) Basis for Consolidation

The Chief Executive Officer, in consultation with Chief Counsel, may consolidate an Administrative Hearing where one the following circumstances exists:

1. Whether the common question of fact or law is predominating and significant to the matter;
2. The convenience of the parties, witnesses, and counsel; and
3. The disadvantages of duplicative and inconsistent rulings and orders.

(b) Consolidated Procedures

If five (5) or more Appellants are representing themselves (in pro per) in a consolidated hearing, the Hearing Officer may implement procedures to ensure an orderly and efficient process, including but not limited to:

1. Establishing reasonable time limits for each Appellant's testimony and witness presentation.

2. Group Representation: Encouraging similarly situated Appellants to designate a spokesperson to present shared arguments and evidence.
3. Written Submissions: Allowing or requiring pre-submitted written testimony to reduce repetitive oral presentations.
4. Limited Cross-Examination: Allowing cross-examination but requiring questions to be relevant, non-duplicative, and submitted in writing for pre-approval if necessary.
5. Hearing Segmentation: Dividing the hearing into structured segments to accommodate all parties fairly.

(c) Group Representation

Notwithstanding Rule 3, Appellants, or any subgroup of Appellants, may select their own Group Representative(s) from among themselves.

The Group Representative(s) will act as the primary spokesperson for the group during the hearing. The appointed person(s) may present evidence, call witnesses, and conduct direct and cross-examinations on behalf of all Appellants, communicate with the other Appellants and ensure their key arguments and concerns are represented, submit any required prehearing statements, evidence, or written testimony on behalf of the group. If there are Appellants not represented by the Group Representative(s), the Hearing Officer may modify the structure of the hearing to ensure fairness.

Further, any individual Appellants represented by the Group Representative(s) retain the right to supplement the record in writing if they believe their interests have not been adequately represented by the Group Representative(s).

Any Appellant not represented by the Group Representative(s) may proceed at the same scheduled hearing representing themselves.

If no Group Representative is selected, the Hearing Officer may set reasonable limits on individual participation to avoid redundancies and ensure an efficient process in accordance with Rule 7(b).

RULE 7. SETTING OF HEARING DATE

(a) Jurisdiction

The Hearing Officer has 180 calendar days from the date of notification of selection as Hearing Officer to hold and complete the Formal Hearing. This means that the Hearing Officer has 180 days to receive all of the evidence, both testimonial and documentary, and close the record. SBCERA will coordinate the Hearing date with all Parties and set the dates when the Prehearing Statements are due, consistent with Rules herein and set the cut-off date for requests to Subpoena witnesses. The CEO is authorized to extend the Hearing Officer's jurisdiction.

(b) Rescheduling of Hearings

When a request is received to reschedule a hearing, the request must be submitted to the Chief Executive Officer in writing at least five (5) business days before the scheduled hearing, unless there is an emergency or other justifiable cause. The Chief Executive Officer, in consultation with Chief Counsel has discretion to grant or deny rescheduling requests based on the circumstances and impact on the proceedings.

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RULE 8. PREHEARING STATEMENTS

The Hearing Officer may require each party to submit a prehearing statement to outline the issues, evidence, and arguments prior to the hearing. Prehearing statements must include:

- (a) A concise statement of the issues to be addressed.
- (b) A summary of the key facts and arguments supporting the party's position.
- (c) A list of witnesses the party intends to call, along with a brief summary of their expected testimony.
- (d) A list of exhibits or documents to be introduced as evidence, along with copies if feasible.

SBCERA's Counsel shall submit a prehearing statement 90 days (postmarked) prior to the date of the hearing. Appellant(s) shall submit a prehearing statement 60 days (postmarked) prior to date of the hearing. Failure to submit a prehearing statement may result in the exclusion of evidence or witnesses not disclosed, unless the Hearing Officer finds good cause for the omission.

RULE 9. LATE SUBMISSION

A prehearing statement submitted late and/or documentary evidence submitted subsequent to the filing of the Party's Prehearing Statement but still within the Hearing Officer's 180-day jurisdiction shall be admitted and considered by the Hearing Officer only upon a showing of good cause. The Party requesting admission of such late-submitted materials shall address the request to the Hearing Officer assigned to the case and send a copy of the request to opposing counsel, or, if no counsel, then to the opposing Party. The

request shall state the reason the prehearing statement and/or documentary evidence was not timely produced. The Hearing Officer shall have the power to rule on such a request.

If late submitted documents are admitted into evidence, the other Party shall have the right to a continuance to engage in further discovery, obtain rebuttal evidence, and/or cross-examine the witness. If a continuance is beyond the 180-day jurisdiction of the Hearing Officer, then the Chief Executive Officer is authorized to extend the Hearing Officer's jurisdiction to accommodate this request.

RULE 10. REQUEST AND ISSUANCE OF SUBPOENAS

(a) Authorization

The Chief Executive Officer is authorized to issue and sign subpoenas to compel the attendance of witnesses or the production of documents, records, or other evidence relevant to hearings on benefit appeals upon request of the Appellant(s), SBCERA's Counsel, or the Hearing Officer.

(b) Request

Either party may request the issuance of a subpoena. The request must be submitted in writing and part of the prehearing statement to SBCERA and received no later than 30 days before the hearing. The request must include:

- (i) The name and contact information of the individual or entity to be subpoenaed.
- (ii) A description of the documents or evidence being requested (if applicable).
- (iii) A statement explaining the relevance of the testimony or evidence to the appeal.

Upon receiving a request, the Chief Executive Officer will determine whether the subpoena is reasonable and necessary for resolving the appeal. If approved, the Chief Executive Officer will issue the subpoena. Subpoenas must be served in accordance with applicable legal requirements, typically by personal delivery or other authorized methods. Proof of Service must be filed with SBCERA before the hearing. Subpoenas shall be served upon the prospective witnesses no later than fifteen (15) calendar days before the hearing. The party subpoenaing witnesses is responsible for the cost of service and all witness fees, if applicable. Any disputes regarding witness fees shall be adjudicated in superior court and not in the SBCERA administrative review venue. If a subpoenaed individual fails to comply, the party requesting the subpoena may seek enforcement through a court of competent jurisdiction, as allowed by law.

A party or subpoenaed individual may file a written objection with the Hearing Officer within five (5) days of receiving the subpoena. The Hearing Officer will rule on the objection promptly and may modify or quash the subpoena if deemed overly broad, burdensome, or irrelevant.

RULE 11. PREHEARING PROCEDURES

(a) Notice of Hearing

The Appellant and Respondent will be notified of the hearing date, time, and location at least 30 days in advance.

(b) Pre-Hearing Conference

At the discretion of the Hearing Officer, a pre-hearing conference may be held to clarify issues, discuss procedural matters, including resolution of procedural disputes. The

Prehearing Conference shall be held remotely through a video conference application and no personal appearance will be required. The video conference will be coordinated through SBCERA. A Certified Court Reporter will attend the scheduled hearing to transcribe the proceedings.

RULE 12. HEARING PROCEDURES

The hearing will be conducted in a fair and impartial manner. The Hearing Officer will preside and control the proceedings. Hearings will be transcribed by an official court reporter.

(a) Order of Proceedings:

1. Opening statements by both parties.
2. Presentation of evidence and witnesses by the Appellant.
3. Presentation of evidence and witnesses by the Respondent.
4. Rebuttal evidence or witnesses, if necessary.
5. Closing statements by both parties.

(b) Closing Briefs

Closing briefs shall be submitted according to the following schedule and the timeline will be calculated from the receipt of the reporter's transcript and will commence thereafter as follows:

1. Appellants Closing Brief – Due 30 days after receipt of Reporter's Transcript (postmarked).
2. SBCERA Counsel's Closing Brief – due 30 days after receipt of Appellant's Closing Brief (postmarked).

Closing briefs should be typed or prepared in a word processing program. Briefs should be double spaced and written in at least 12 point of a standard font type. Closing briefs may not exceed 25 pages. The Hearing Officer may elect not to consider material that is presented in briefs after the page limits has been reached.

(c) Rules of Evidence:

The Administrative Hearing need not be conducted according to technical rules relating to evidence, including without limitation the California Evidence Code. Any relevant evidence shall be admitted and considered if it is the sort of evidence on which reasonable persons are accustomed to rely in the conduct of serious affairs, regardless of any common law or statutory rule that might make improper the admission of such evidence over objection in civil actions. Arguments regarding admissibility may be considered by the Hearing Officer when evaluating the weight of any evidence admitted. The rules of privilege shall be effective to the extent that they are otherwise required by statute to be recognized at the hearing, and irrelevant and unduly repetitious evidence shall be excluded.

(d) Official Notice

In reaching a recommended decision, the Hearing Officer shall take official notice of those matters which must be judicially noticed pursuant to section 451 of the California Evidence Code; may take official notice of those matters which may be judicially noticed pursuant to section 452 of the California Evidence Code; and, shall take official notice of any matter specified in said section 452 if the provisions of the California Evidence Code section 453 are complied with by a Party.

RULE 13. PARTICIPATION IN HEARINGS

(a) Right to Present Witnesses and Testify

Each party has the right to present witnesses, testify on their own behalf, and conduct direct and cross-examinations of witnesses presented by the opposing party. The Hearing Officer will ensure that all parties have a fair opportunity to be heard while maintaining efficiency and order.

(b) Conduct of Witness Examination

The party calling a witness will conduct direct examination first, followed by cross-examination by the opposing party. The Hearing Officer may ask questions for clarification and may impose reasonable time limits on testimony to prevent unnecessary repetition.

RULE 14. FAILURE TO APPEAR AND DEFAULT PROCEDURES

(a) Consequences of Failing to Appear

If an Appellant fails to appear at a scheduled hearing without prior notice and good cause, the Hearing Officer may proceed in their absence and issue a recommendation based on the available evidence.

(b) Notice of Default and Opportunity to Respond

If an Appellant fails to appear, the Hearing Officer may issue a Notice of Default, providing the Appellant with a deadline (e.g., 10 days) to submit a written explanation for their absence and request to reschedule the hearing.

If the Appellant provides a valid reason (such as illness, emergency, or other unforeseen circumstances), the Hearing Officer may grant a new hearing date, unless

such hearing is a Consolidated Hearing, the Hearing Officer will ensure that the absent party's prior submissions, if any, are considered in the decision-making process.

If no response is received within the deadline, the appeal may be deemed abandoned, and the original SBCERA decision may be upheld.

(c) The Board will make the final determination on whether to adopt the dismissal or take other action.

RULE 15. FINDINGS OF FACT AND RECOMMENDED DECISION

Within 60 days of receipt of SBCERA's Closing Brief, the Hearing Officer shall issue a written report with findings of fact, conclusions of law, and a recommended decision. The Chief Executive Officer is authorized to extend the time within which the Hearing Officer's recommendation is due. SBCERA will serve the findings, conclusions, and recommended decision on the Parties.

RULE 16. POST RECOMMENDATION CLARIFICATION BY CHIEF COUNSEL

(a) Authority to Request Clarification

Upon receipt and review of the Hearing Officer's Proposed Decision, Chief Counsel, in consultation with the Chief Executive Officer, may identify areas requiring further clarification or further elaboration to ensure that the recommendation is sufficiently clear and addresses all relevant legal or factual issues.

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(b) Request for Clarification

The Chief Counsel may submit a written request to the Hearing Officer for clarification or additional explanation within ten (10) days of receipt of the Hearing Officer's Proposed Decision. This may include:

- (i) Request for legal or factual clarifications;
- (ii) Request for additional findings on the specific issues raised during the hearing; or
- (iii) Follow-up questions to ensure the record is complete and understandable for the Board's consideration.

(c) Hearing Officer's Supplemental Recommended Decision

The Hearing Officer may issue a supplemental recommendation or addendum to the original Proposed Recommended Decision to address the questions or clarification sought by the Chief Counsel within ten (10) days of receiving a written request for clarification.

Any request shall toll the timeline for presenting the Proposed Decision to the SBCERA Board until a response has been received. The Parties shall be notified of the clarification request and shall receive a copy of the Hearing Officer's response. However, the Parties shall not submit additional argument or evidence unless specifically requested by the Chief Executive Officer or authorized by the Board.

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RULE 17. OBJECTIONS TO PROPOSED FINDINGS OF FACT AND RECOMMENDED DECISION

Any Party objecting to the Proposed Findings of Fact and Recommended Decision has ten (10) calendar days from the date of mailing of the proposed finding of fact and recommended decision to submit written objections to SBCERA which will send them to the Hearing Officer and the opposing Party. The opposing Party may, within ten (10) days of the date of the objections, submit a reply to the objections to the Hearing Officer with service of the reply on the opposing Party. Within forty-five (45) calendar days from the date of mailing the reply to the Hearing Officer, or the time for filing objections expires, whichever is earlier, the Hearing Officer shall:

(a) Adopt the Proposed Findings of Fact and Recommended Decision originally submitted, or

(b) Make such changes in the Proposed Findings of Fact and Recommended Decision as the Hearing Officer deems appropriate in light of the evidence, the objections submitted by the opposing Party, and any response, or

(c) Serve notice of the final Proposed Findings of Fact and Recommended Decision of the Board, together with a summary of the evidence, the pleadings of the Parties, and their attachments.

RULE 18. EX PARTE COMMUNICATIONS PROHIBITED

An “ex parte communication” is any material or substantive off-the-record oral or written communication between any Party and/or their counsel and the Hearing Officer that takes place outside the presence of all other Parties.

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Neither the Parties nor the Hearing Officer shall initiate any ex parte communications between any Party and the Hearing Officer. The Hearing Officer shall not consider any argument or evidence contained solely in an ex parte communication in preparing the Proposed Findings of Fact and Recommended Decision.

The prohibition on ex parte communications does not apply to any communication necessary for scheduling, administration, emergencies, or otherwise unrelated to the substance of the case provided that the Hearing Officer reasonably believes that no party shall gain any advantage as a result of the ex parte communication.

The Hearing Officer shall disclose the substance of any ex parte communication to all Parties as soon as reasonably practicable, and in any event within five (5) days of receipt.

RULE 19. ACTION BY THE BOARD

(a) Upon receipt of the Hearing Officer's Proposed Findings of Fact and Recommended Decision, the following time limits to present to the Board apply

- (1) Each side shall have four (4) minutes of oral argument.
- (2) The Party requesting oral argument may reserve one (1) minute for rebuttal.
- (3) Further argument and discussion shall be at the Board Chair's discretion.

(b) Upon receipt of the Proposed Findings of Fact and Recommended Decision, the Board shall:

- (1) Approve and adopt the Proposed Findings of Fact and Recommended Decision of the Hearing Officer, or
- (2) Require a transcript or summary of all the testimony, plus all other evidence received by the Hearing Officer. Upon the receipt thereof,

the Board shall take such action as in its opinion is indicated by such evidence, or

- (3) Refer the matter back with or without instructions to the Hearing Officer for further proceedings.
- (4) 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 the Hearing Officer.

RULE 20. SERVICE OF DOCUMENTS

Unless otherwise provided, service of documents, except for a Petition for Writ of Mandate or any other Court filings, provided for in these Rules may be made by mail, electronic service, or by personal service. The time requirements of California Code of Civil Procedure section 1013 shall govern all service by mail.

RULE 21. JUDICIAL REVIEW

Judicial review of final retirement decisions shall be subject to Code of Civil Procedure section 1085. Unless stayed by court order, the Board's decision remains in effect pending any further appeal.

RULE 22. AMENDMENT OF PROCEDURES

The SBCERA Administrative Hearing Procedures may be amended from time to time by the SBCERA Board, subject to the approval requirements of the CERL, or other

applicable law. Any ruling or action holding any section of these Procedures invalid shall not affect the remaining sections.

End of Procedures.