

VENTURA COUNTY EMPLOYEES' RETIREMENT ASSOCIATION

BOARD OF RETIREMENT

DISABILITY MEETING

JULY 13, 2020

MINUTES

**TRUSTEES
PRESENT:**

Arthur E. Goulet, Chair, Retiree Member
Steven Hintz, Treasurer-Tax Collector
Mike Sedell, Public Member
Robert Ashby, Safety Employee Member
Jordan Roberts, General Employee Member
Will Hoag, Alternate Retiree Member

**TRUSTEES
ABSENT:**

Steve Bennett, Public Member

**STAFF
PRESENT:**

Linda Webb, Retirement Administrator
Henry Solis, Chief Financial Officer
Julie Stallings, Chief Operations Officer
Dan Gallagher, Chief Investment Officer
Lori Nemiroff, General Counsel
Leah Oliver, Chief Technology Officer
Shalini Nunna, Retirement Benefits Manager
Josiah Vencel, Retirement Benefits Manager
Rebekah Villalobos, Retirement Benefits Manager
Jess Angeles, Communications Officer
Chris Ayala, Program Assistant

PLACE:

In Accordance with the Governor's Executive Order N-29-20 (3), the Members of the Board will be participating via teleconference. Pursuant to Government Code §54954.3, members of the public, to the extent required by law, will have the opportunity to directly address the Board concerning the below mentioned business.

TIME:

9:00 a.m.

ITEM:

I. CALL TO ORDER

Chair Goulet called the Disability Meeting of July 13, 2020, to order at 9:00 a.m. and asked for a moment of silence in memory of the late, William W. Wilson.

II. APPROVAL OF AGENDA

MOTION: Approve.

Moved by Hintz seconded by Sedell

Vote: Motion carried

Yes: Ashby, Goulet, Hintz, Roberts, Sedell

No: -

Absent: Bennett

Abstain: -

III. APPROVAL OF MINUTES

A. Business Meeting of June 22, 2020.

Ms. Webb offered a few corrections to the minutes. On Master Page (MP) 6, remove apostrophe after "UBS;" On MP 8 and 9, reduce instances of capitalization in the motions; MP 10, first paragraph, second sentence, replace "appointments" with "meetings."

After discussion by the Board, the following motion was made:

MOTION: Approve with Corrections.

Moved by Roberts seconded by Ashby

Vote: Motion carried

Yes: Ashby, Goulet, Hintz, Roberts, Sedell

No: -

Absent: Bennett

Abstain: -

IV. RECEIVE AND FILE PENDING DISABILITY APPLICATION STATUS REPORT

Ms. Webb said a public comment request had been received from VCERA member, Theresa Germack. Ms. Germack had provided a letter to the Board expressing her dissatisfaction with delays in her case and expressed her belief that her disability case was improperly linked to her Workers Compensation case, among other issues. Ms. Germack was also in attendance and had indicated she was willing to answer any questions from the Board.

Ms. Webb said public comment request also had been received from Mr. Roberson and Ms. Laveau of Ventura County Risk Management.

Chair Goulet said that since the Board had already reviewed Ms. Germack's letter, he would allow Mr. Roberson and Ms. Laveau to comment on it.

Mr. Roberson said that in Ms. Germack's case, there had been no permanent and stationary report regarding permanent work restrictions, and the only medical report that existed, which addressed work restrictions, was from a Panel Qualified Medical Evaluator (PQME), Dr. Dunlop. In that report, Dr. Dunlop stated that there were no industrial work restrictions for Ms. Germack because her back injury was related to a work injury prior to her employment with the County of Ventura. Therefore, he had not proposed that the case be sent to a hearing yet because there was not yet a medical report providing permanent work restrictions. Therefore, no delay had been caused by Risk Management. Risk Management had also attempted to return Ms. Germack back to work in 2019, but she then retired in 2020 and there were a lot of issues in the case that may need to be litigated.

Ms. Laveau agreed with Mr. Roberson's comments and also encouraged Ms. Germack to reach out to Mr. Roberson to discuss the process. She said the County of Ventura's position in late 2019 was that they could fully accommodate an opportunity to return Ms. Germack to work, but it was declined.

Ms. Germack said that she did not believe Mr. Roberson's and Ms. Laveau's statements to be true, and no one had spoken to her about this previously. She had sent the County medical documents stating she could not return to work, but was never told to contact Mr. Roberson and had simply been waiting to see what the County would do. She also stated she had asked for extensions.

Ms. Webb informed the Board that Mr. Pode was also in attendance and he had requested to make a public comment on the case. Mr. Pode said that he just wanted to address Ms. Germack's reference to a civil case, possibly to influence the Board's decision regarding her disability case. Also, there were factual difficulties with her allegations. With respect to her Equal Employment Opportunity Commission (EEOC) complaint, because there were no findings or sanctions against the County, and there were also no penalties, the complaint was resolved in mediation. He quoted the settlement agreement letter as reading, "The parties agreed that the resolution did not constitute an admission of liability."

Trustee Sedell inquired about next steps in Ms. Germack's case.

Chair Goulet replied that he believed that Ms. Germack needed to contact Mr. Roberson to get a clear understanding of the status of her case and what needs to be done so that the issue can be resolved. Chair Goulet then asked Ms. Germack and Mr. Roberson if they understood what needed to be done now.

Ms. Germack replied yes.

Mr. Roberson said that if Ms. Germack would contact him, he would explain the disability process to her.

After discussion by the Board, the following motion was made:

MOTION: Receive and File.

Moved by Hintz seconded by Sedell

Vote: Motion carried

Yes: Ashby, Goulet, Hintz, Roberts, Sedell

No: -

Absent: Bennett

Abstain: -

V. APPLICATIONS FOR DISABILITY RETIREMENT

- A. Application for Service-connected Disability Retirement – Myers, Christopher M.; Case No. 18-015 – Consideration of County’s Request for Board to Order Applicant to Undergo Further Medical Examination and Determination on Selection of Evaluating Physician.
1. Staff letter to Board of Retirement, dated July 13, 2020.
 2. Letter to VCERA and Stephen Roberson filed by Jane Oatman, Attorney for Applicant, dated July 7, 2020.
 3. Letter with attachments from Respondent, County of Ventura-Risk Management, filed by Stephen Roberson, Attorney for Respondent, dated July 7, 2020.
 4. Letter filed by Jane Oatman, Attorney for Applicant, dated May 15, 2020.
 5. Notice of Board Action filed by VCERA, dated May 6, 2020.
 6. Approved minutes from the Board of Retirement Disability Meeting on May 4, 2020.
 7. Response to County of Ventura-Risk Management’s request filed by Jane Oatman, Attorney for Applicant, dated April 8, 2020.
 8. Request with attachments from Respondent, County of Ventura-Risk Management, to require Applicant to attend medical appointment with Dr. Lawrence Richman from Respondent, County of Ventura-Risk Management, filed by Stephen Roberson, Attorney for Respondent, dated April 6, 2020.
 9. Approved minutes from the Board of Retirement Disability Meeting on February 10, 2020.
 10. Hearing Notice, dated July 7, 2020.

Stephen Roberson, Attorney at Law was present on behalf of County of Ventura-Risk Management. Josiah Vencel and Nancy Jensen were present on behalf of VCERA. Jane Oatman, Attorney at Law, was present on behalf of applicant, Christopher M. Myers, who was not present.

Ms. Webb said that the case had previously been before the Board for consideration a few times. At the May 4th Board meeting, the Board directed both counsels to come to an agreement on a doctor to perform an evaluation of Mr. Myers, but the two parties had been unable to come to an agreement. Specifically, the Board had directed that Ms. Oatman select several physicians, from which the County of Ventura could choose, to evaluate whether there was a possibility of improvement for the applicant’s condition that would allow him to return to work. If unable to agree on a physician, the Board had directed both parties to agree on a process to move the case forward. However, the parties had been unable to agree. Ms. Webb said that the case was now back before the Board for further direction.

Trustee Roberts asked if the County of Ventura received previously-referenced medical reports from the nerve block treatments the applicant received in November to December 2019.

Mr. Roberson said that Risk Management had received a report indicating the applicant had received the nerve blocks, but not a subsequent detailed report on its full effect. While the report said there

had been some minimal benefit from the nerve blocks, the applicant was not able to proceed because of COVID-19.

Ms. Oatman said that on May 5th, Dr. James Nepola issued a report that Mr. Roberson should have received, which stated that Mr. Myers underwent a C.T. Scan and had a treatment that provided no pain relief. Therefore, she did not believe that there was anything else that could be done to eliminate the applicant's permanent work restrictions that would allow him to return to work.

Mr. Roberson replied that the last report he had received was from Dr. Shy, dated April 28, 2020, indicating that because of COVID-19, the applicant had not received any Physical or Occupational Therapy for a few months, which made it obvious why he had seen no further improvement.

Chair Goulet expressed concern that the case was going backwards. He reminded the counsels that the Board's direction was for both parties were to select a doctor who was qualified to opine on the applicant's Complex Regional Pain Syndrome (CRPS), and they failed to do that.

Ms. Oatman said that she was directed to provide 5 names of qualified physicians, and she had provided 6 instead, all of which were experts. She did not know what else she could have done to select a qualified physician to evaluate the applicant.

Mr. Roberson replied that the 6 doctors Ms. Oatman had selected were all pain management or anesthesiologists, and were not qualified to help the applicant's overall condition to improve, but only to reduce discomfort. Further, it was the County's position that the applicant should instead be seen by a neurologist who could possibly help improve his condition. This was the reason the County had not agreed to any of the doctors selected by Ms. Oatman.

Ms. Oatman said that the County's own expert, Dr. Brazina, who had evaluated the applicant previously, had suggested Dr. Prager, an anesthesiologist and pain management doctor. Also, the 2 doctors recommended by Mr. Roberson were not experts in CRPS, unlike all 6 of the doctors she selected who were.

Trustee Sedell commented that that both parties seemed unable to agree on what type of doctor should evaluate the applicant. He asked if the parties could agree on a qualified neurologist to make the evaluation.

Ms. Oatman repeated that the County's recommended doctors were not qualified in the field of CRPS. After researching and finding 6 specialists, she said she did not know what more she could have done.

Chair Goulet suggested that because both parties were not able to come to an agreement, that VCERA staff obtain the medical records from the County and review all of the recommended doctors and make a recommended selection. He noted that under the new proposed model, staff would be making decisions of this nature. He then asked Ms. Webb if she felt it was appropriate for staff to make that selection.

Trustee Sedell said that his initial question was more related to the staff's comfort level in selecting a physician, given the dispute between both parties.

Ms. Webb replied that staff would review and recommend a physician if that was the Board's direction. However, regardless of which physician was selected, clearly one of the parties involved would be unhappy with the choice.

Trustee Sedell asked what would happen if one or both parties disagreed with the selection.

Ms. Webb replied that the unhappy party likely would file something with the Board to dispute staff's choice.

Trustee Sedell then suggested both parties use the same process as before, which was to work together on selecting a neurologist to evaluate the applicant and make a recommendation for the Board.

Ms. Oatman agreed as long as the selected doctor's instructions were limited to addressing the specific issue that the Board put forward on May 4th, quoting, "*the selected doctor will evaluate the applicant to determine what medical treatment was recommended to allow Mr. Myers to reach the maximum range of motion and to what degree that level of improvement was likely to enable him to work.*"

Mr. Roberson remarked that he believed the evaluation would be to determine what the appropriate type of medical treatment would be to permit him to return back to work, with one of the issues being increasing the applicant's range of motion, and possibly his strength and other such considerations in regard to returning the applicant to work.

Ms. Oatman said that she just previously stated the request by the Board verbatim.

Trustee Sedell said then both parties should abide by that previous direction.

Chair Goulet suggested another alternative, given that both parties could not agree on a physician. The Board could direct Mr. Roberson to have Dr. Richmond evaluate the applicant, and if Ms. Oatman was unsatisfied with the report, she could engage one of the doctors she had recommended to evaluate the applicant for a rebuttal. Then the case could proceed to hearing and a Hearing Officer would decide which medical evaluation was more credible.

Trustee Sedell then asked General Counsel on her opinion of what would be the best option for the case to proceed.

Ms. Nemiroff favored having both parties attempt to come to an agreement on a physician to evaluate the applicant, but and if they are unable to agree, to allow the County to send the applicant to Dr. Richmond and allow Ms. Oatman to select a doctor of her choice to evaluate the applicant and then have the case be sent to a hearing. She believed the Board could make a motion to that effect so that the case did not have to come back to the Board.

Trustee Roberts recommended the Board provide a timeline for both parties to select a physician to evaluate the applicant.

After discussion by the Board, the following motion was made:

MOTION: Direct Both Parties to Mutually Select a Neurologist to Evaluate the Applicant by the Disability Meeting on September 14, 2020; if Still Unable to Agree, for the County of Ventura to Send Applicant to Dr. Richmond for Evaluation, Allowing Ms. Oatman to Send Applicant for Evaluation by a Chosen Physician of her Choice, after which the Case be Referred to a Hearing.

Moved by Sedell seconded by Roberts.

Vote: Motion carried

Yes: Ashby, Goulet, Hintz, Roberts, Sedell

No: -

Absent: Bennett

Abstain: -

B. Romney, Scott; Case No. 02-044 – Determination on Incapacity Following Disability Retirement Medical Re-Evaluation Under Government Code 31729.

1. Staff letter to Board of Retirement, dated July 13, 2020.
2. Letter from Tracey Pirie, Sheriff's Bureau Manager, dated June 24, 2020.
3. Independent Medical Evaluation Report filed by Dr. Mark Ganjianpour, dated December 19, 2020.
4. Staff letter to Board of Retirement, dated May 6, 2019.
5. Hearing Notice, dated July 8, 2020.

Catherine Laveau was present on behalf of County of Ventura-Risk Management. Josiah Vencel and Nancy Jensen were present on behalf of VCERA. The applicant, Scott Romney, was also present.

Ms. Webb reminded the Board that Mr. Romney was granted a disability retirement in March 2003. In May 2013, the Ventura County Fraud Hotline received an anonymous call questioning Mr. Romney's continued incapacity. On May 6, 2019, the Board directed that Mr. Romney undergo a medical re-examination in accordance with Government Code section 31729, as he was under the age of 55 and met the criteria for re-examination under that section. In December 2019, a doctor conducted an Independent Medical Examination (IME) and found that Mr. Romney was no longer incapacitated for the performance of his previous job duties, provided he be accommodated with at least a half-hour break following 3.5 hours of continuous sitting. In January 2020, staff spoke with the Ventura County Sheriff's Office, Mr. Romney's previous employer, who said that they could accommodate his medical restriction; however, they did not intend to reinstate Mr. Romney because he was no longer California POST certified as a law enforcement officer. Therefore, the Board could determine that Mr. Romney remains incapacitated for the performance of duty, or that he is no longer incapacitated. The implications of the second option were listed in the staff letter and it would be under the provision that the employer would not reinstate Mr. Romney.

Trustee Sedell asked if there were other accommodations that could be made to allow Mr. Romney to return to another position or, did he have to return to his previous position

Ms. Webb replied that she believed that he would have to return to the position that he held before he retired.

Ms. Nemiroff said that she did not believe a disability reassignment under CERL was an option, as this situation is arising from a re-evaluation as opposed to initial application for disability retirement.

Trustee Sedell remarked that it seemed a bit unfair, though the Board did not also decide on what was fair, that many years after Mr. Romney had been retired and received a re-examination, the County determined they cannot reinstate him because the state law will not allow him to be an officer

in California. Also, it seemed that he should be offered the opportunity to take another position that did not require a POST certification with the Sheriff's Office or some other agency within the County.

Ms. Webb pointed out that the applicant did not live in the state and had been retired for more than 17 years. If the Board were to determine that Mr. Romney was no longer incapacitated for his previous duties then he could continue to draw his retirement, it would just no longer be a disability retirement with the related tax benefits.

Ms. Nemiroff remarked that the statute was set out so that the benefit would be cancelled if the applicant were reinstated, but if the applicant were not reinstated there was no penalty because he would continue to draw the same exact retirement allowance.

Trustee Sedell said that he would, however, not continue to receive the same amount in his pension check.

Ms. Nemiroff replied that the way in which the IRS treats his income was between the IRS and the applicant. According to the statute, it was the Board's responsibility to determine whether Mr. Romney continued to be incapacitated or not.

Trustee Sedell asked if the County was asked if they could make accommodations to place him on another position.

Ms. Webb replied that it was her understanding that the provision was essentially pass or fail, in regard to whether Mr. Romney was incapacitated or not, and the disability reassignment process prior to retirement was a separate issue.

Chair Goulet asked why it took the County of Ventura five months to conclude that while they could accommodate his work restrictions, he could not be reinstated because he did not meet the POST standards. This seemed a long time to keep the issue pending, asked why the County could not reinstate Mr. Romney as a trainee, and after he passed POST certification return to work as a Deputy Sheriff.

Ms. Nemiroff said that she believed that the County was most likely looking into what their obligations were if the Board were to find that Mr. Romney was no longer incapacitated. They were presumably trying to determine and evaluate how they might reinstate him, because this may have been a new issue for them. She also noted that the Sheriff's Office stated that they did not intend to reinstate Mr. Romney, but the Board could, once it has made a decision based on the IME, request that the County inform VCERA as to whether they would offer another position or not, and the reason.

Trustee Sedell asked if Mr. Romney had any discussion with VCERA regarding this issue or had he been notified of the situation.

Ms. Webb said that she personally had not spoken to Mr. Romney, but assumed the Disability staff had.

Ms. Nemiroff said a hearing notice was sent to Mr. Romney regarding the issue prior to the meeting.

Mr. Romney remarked that the entire process was frustrating for him, as it had been 17 years since he retired, and had the issue been brought to his attention 10 or 12 years ago when he was still residing in California, he could have returned to work as a Deputy Sheriff and retired with a much higher benefit than what he currently received. He now resided in Idaho with his family because he was unable to afford to live in California on the disability retirement pension. He had since purchased a house based on service award letters for his lifetime non-taxable disability retirement and his life in Idaho was based on that benefit. Therefore, if his retirement became subject to taxes, it would create a major financial burden. Further, it was unfeasible for him to sell his home in Idaho and relocate back to California only to work for the County of Ventura for a few years before retiring again. He said he would appreciate it if his pension payments could remain non-taxable.

Trustee Sedell said that he felt it was unfortunate that he had made a decision to relocate and then somehow almost 20 years later his health improved, which seemed unfair. However, the law states because of the situation he would be required to come back to work for the County, and if he were unable, then the non-taxable benefit would be required to change, and the Board did not seem to have a choice. He then asked Ms. Nemiroff if the Board had any choice in the matter.

Ms. Nemiroff replied that the Board did not have a choice, because Mr. Romney had been sent to an IME and the report was then provided to the Board for a decision based on its information. She had not heard Mr. Romney state that he was no longer incapacitated, but if he were, the case could go to an evidentiary hearing. However, it did not seem as though that was the issue, but more like a fairness argument.

Trustee Hintz said that he would not support any proposal in which the Board had to consider a twenty-year-old complaint regarding someone behaving contrary to their disability retirement. He said that he would vote no on anything the Board decided to do in terms of a hearing. He believed it was a completely bogus effort that was likely to lead to a mountain of work.

Trustee Sedell said that he agreed with Trustee Hintz, but on the other hand the law states what the Board was required to do in these types of situations.

Trustee Hintz replied that the Board would just deal with those ramifications and he would vote no.

Trustee Sedell then said that he would reluctantly make the motion that VCERA comply with the law and find that Mr. Romney was no longer incapacitated.

Mr. Romney asked that given that the issue had been going on for some time and he was not notified of the meeting until July 8th, if the Board could delay their decision to allow him to discuss the matter with his attorney.

Trustee Sedell said that he would be willing to withdraw his motion to allow Mr. Romney time to get legal advice on his situation.

Chair Goulet said that given that he would also reluctantly vote to find him no longer incapacitated, the Board could continue the matter to the Disability Meeting in September, which should allow Mr. Romney sufficient time explore his legal position.

Mr. Romney then asked that even though the statute stated that if he was found to be no longer disabled, then he could return to work, however he still had a sitting restriction. Therefore, he was technically still partially disabled and if there was any way that would allow the Board to vote in favor of allowing him to keep his retirement as a disability retirement.

Trustee Sedell replied no, because the County had said that they could accommodate that restriction.

Chair Goulet said that while Mr. Romney was seeking legal counsel, Ms. Nemiroff could look into what other options the Board may have.

Trustee Sedell said that he would put that into his motion.

Ms. Webb then asked for clarification regarding the motion, which she believed was to table the item until the disability meeting in September and instruct counsel to provide information on reassignments to other positions for Mr. Romney.

Chair Goulet said that he did not believe the reassignment issue was what the Board was concerned with, but whether Mr. Romney could realistically move back to California.

Mr. Romney said that unfortunately, that was something that he could not do, since he had a house, family, and a life in Idaho.

Trustee Sedell then said that he was looking for either Mr. Romney's attorney or the Board's General Counsel to determine if there was another way to allow Mr. Romney to keep his retirement a disability retirement rather than a service retirement.

Trustee Roberts asked if Mr. Romney's attorney disputed the re-examination and requested an evaluation by a different physician, would this then cause the matter to go before a Hearing Officer.

Ms. Webb noted that the law was very specific, and a re-examination was done, and Mr. Romney did not dispute the findings of the re-examination.

Mr. Romney said that he knows that the re-examination was a mutually agreed upon QME, but he was given no choice on which doctor would evaluate him. He had to fly to California to have it done, instead of in Idaho, which was what he had originally requested.

Ms. Nemiroff said, to answer Trustee Roberts' question, if Mr. Romney would like to present alternative medical evidence, the Board would have the option to send the case to a Hearing Officer for an evidentiary hearing on the issue of whether he remains incapacitated.

After discussion by the Board, the following motion was made:

MOTION: Table the Item Until the Disability Meeting of September 14th and Direct General Counsel to Provide the Board with Any Other Options Regarding Mr. Romney's Case.

Moved by Sedell seconded by Goulet

Vote: Motion carried

Yes: Ashby, Goulet, Hintz, Roberts, Sedell

No: -
Absent: Bennett
Abstain: -

VI. OLD BUSINESS

A. SACRS Election Ballot Slates and Designation of Voting Proxy.

RECOMMENDED ACTION: Designate Board's Voting Proxy and Direct Voting Proxy on Chosen Ballot for SACRS Board of Directors.

1. Staff Letter.
2. SACRS Board of Director Elections 2020-2021 - Notice of Electronic Voting and Final Ballot.
3. Solicitation from Mr. Edward Robinson for Support for SACRS Board of Directors Election.

Ms. Webb noted that 2020 Spring Conference where the elections were originally scheduled was postponed due to COVID-19, and the SACRS Board had opted to move forward with an electronic vote. Staff had provided the recommended slate by the Nominating Committee Voting Ballot and Voting Proxy Form. Therefore, the VCERA Board would need to designate a trustee to vote on VCERA's behalf, as well as determine the preferred ballot.

Chair Goulet remarked that it was unusual for someone who had not been nominated to for a position to be defeated and he recommended that the Board vote in favor of the nominees.

After discussion by the Board, the following motion was made:

MOTION: Designate Chair Goulet as the Voting Proxy and Direct the Voting Proxy to Vote in Favor of the Nominated Slate.

Moved by Sedell seconded by Goulet

Vote: Motion carried
Yes: Ashby, Goulet, Hintz, Roberts, Sedell
No: -
Absent: Bennett
Abstain: -

VII. NEW BUSINESS

A. Review and Approval of Amended Conflict of Interest Code.

RECOMMENDED ACTION: Approve.

1. Staff Letter.
2. 2018 Conflict of Interest Code.

Ms. Webb said that staff recommendation was approve the Conflict of Interest Code with no changes, aside from updating the review date.

Chair Goulet noted that the code did not list Ms. Nemiroff with her correct title of General Counsel.

After discussion by the Board, the following motion was made:

MOTION: Approve the Conflict of Interest Code with the Recommended Date Corrections, and with the Correction to General Counsel's Title.

Moved by Ashby seconded by Roberts

Vote: Motion carried

Yes: Ashby, Goulet, Hintz, Roberts, Sedell

No: -

Absent: Bennett

Abstain: -

B. Presentation of Internal Process Document to Implement Full In-House Independent Investigation Approved by the Board on October 7, 2019.

1. Staff Letter.
2. October 7, 2019, Staff Memo Requesting Board Direction on Disability Model Options.
3. VCERA Board of Retirement Disability Hearing Procedures (1999).
4. VCERA's New Disability Model Process Document.
5. VCERA's New Disability Model Process Flowchart.
6. Questions and Responses from Meeting with Risk Management on June 25, 2020.

Ms. Webb noted that in the provided Q&A document, number 14 was not correct according Mr. Podes so staff would re-examine it to clarify before Board action. She said that in October 2019, the Board of Retirement voted to adopt a new model of disability retirement in which VCERA would perform its own in-house investigations. The new model's process presented today was not in conflict with the 1999 Disability Hearing Procedures (DHPs). The new process was designed to address the deficiencies raised by fiduciary counsel in 2019. Ms. Webb proposed that the Board review the new model and for it to be brought back at the Business Meeting of July. In the meantime, the Board could provide their input. Risk Management had requested that action on the new model be delayed until September.

Trustee Sedell noted staff letter described a 21-day comment period for Risk Management to object to staff's preliminary recommendation to the Board. He asked what would happen if they objected.

Mr. Vencel replied that if Risk Management were to object to the preliminary recommendation, staff would take their written objection and their reasons for objecting and re-evaluate staff's position based on their analysis in light of the objection.

Trustee Sedell also asked if Risk Management needed more than 21 days to respond to the preliminary recommendation, could they request an extension.

Mr. Vencel replied that they would only have 21 days to respond, but once staff presented its final recommendation to the Board, Risk Management could then request that the Board delay the case.

Ms. Webb reminded the Board that the new process was intended to allow VCERA staff to do the independent investigation and make a recommendation to the Board. Risk Management would still have the ability to take a position and argue it.

Trustee Sedell noted that the staff letter said other County personnel would likely have further feedback on the process, and asked if they had provided that yet.

Ms. Webb replied no, however Mr. Pode was in attendance and could address that issue.

Trustee Sedell said that he would like Mr. Pode present Risk Management's comments for the Board related to adopting the new process. However, if they had none, the Board needed to continue to move the process along.

Mr. Pode said VCERA staff had been working on the new process for about 8 months and the County of Ventura was given about 2 to 3 weeks to review. Given the activity at the end of the fiscal year, that timeline was difficult. He said the County CEO's office would like to review the summary of the process, but because of COVID-19 and the nationwide issue of policing and diversity, they have not been able to do so. Mr. Pode said that he had received some preliminary recommendations from County Counsel. He appreciated time given to review the new process as it was an important issue to VCERA and the County. Ms. Webb had referenced the overlay from Workers Compensation cases to the disability retirement cases, which there was. Also, Risk Management had discussed with VCERA staff that the largest component of the timing issue was being corrected in the proposed procedures, which was to allow the applicant to file the application for disability retirement after there was medical evidence that their condition had reached a permanent and stationary level, because in the vast majority of cases, that was the issue that was being litigated. He then asked the Board to table consideration of the issue until the September 14th meeting, which would allow County Counsel a chance to complete the review of the procedures and confer with Mr. Pettit, and then the County could then give a response to the Board of Retirement, rather than simply having a review from Risk Management. They would also be able to make a presentation of the outcome of prior disability cases and the County's view of the new procedures from its perspective.

Trustee Ashby thanked staff for their hard work in creating the new process and after reading through some of the process, he believed it was a great step forward in the goal of completing the disability retirement cases in a timely fashion. He also said that he looked forward to an independent process.

Trustee Sedell said that he agreed with Trustee Ashby that staff had done a great job on the new process.

Chair Goulet said that he did not have any objection to continuing the matter to September, as it was a very extensive document. However, these were VCERA's procedures and not the County's. He said that Section 17 of the Constitution read, "*The Retirement Board of a Public Pension Retirement System shall have the sole and exclusive fiduciary responsibility of the assets of the public pension or retirement system. The Retirement Board shall also have the sole and exclusive responsibility to administer the system in a manner that will ensure prompt delivery of benefits and related services to its participants and beneficiaries.*" This matter was about the prompt delivery of retirement disability benefits.

Chair Goulet continued that he took issue with the view that the Board of Supervisors would have to approve the regulations, because he believed it was an obsolete provision in the statute that had been repealed because it was in conflict due to the explicit language from the Constitution. He then thanked staff on their hard work and said that it seemed like it would make their procedures much

better, but as he said in the outset, he did not have any objection to continuing the matter until September.

Mr. Vencel thanked Chair Goulet for his comments and said that the disability staff at VCERA was ready to move forward today, even though that was not staff's request. The model should provide better service for the applicants and it also addressed the Board's fiduciary concern.

Ms. Webb reminded the Board that staff was directed to develop the new process because the Board had identified weaknesses in the current process. Up until this point, the Board had delegated responsibility to Risk Management. The new process would not dilute the rights of Risk Management to be a party and to make arguments and present their position to the Board, and they would still be involved in the process.

Ms. Webb wanted to clarify Mr. Pode's comment in which he said that the County wanted to give a presentation regarding the outcome of past disability cases. She did not believe this would be helpful, unless the Board decided to abandon the new model. When the item returned for consideration, it would have Board input incorporated, so a review of past cases would not be helpful in moving forward.

Mr. Pode said that he thought that the presentation would provide a baseline to help evaluate the new procedures, which could be very helpful.

Trustee Ashby requested disability retirement training for the Board. Speaking for himself, he felt it would be helpful to understand the process from start to finish.

Ms. Webb said that staff would be happy to meet with any trustees who would like more information regarding the disability retirement process, and asked the Board to contact her to set up a time for this.

Chair Goulet said that if the Board were ever able to hold another Board Retreat, that could be a good topic for that event, since the Board will soon have some new members.

Ms. Webb agreed, and that staff would also like to incorporate more information in the new trustee orientation materials regarding the disability retirement process.

Trustee Sedell stated that he would make the motion that to approve staff's request that it be brought back at the business meeting of July. Hopefully, the County will be able to submit the comments at that time.

After discussion by the Board, the following motion was made:

MOTION: Table the Item and Bring it Back at the Business Meeting of July 2020.

Moved by Sedell seconded by Ashby

Vote: Motion carried

Yes: Ashby, Goulet, Hintz, Roberts, Sedell

No: -

Absent: Bennett

Abstain: -

VIII. INFORMATIONAL

A. VCERA COVID Plan Update.

Ms. Webb updated the Board that most staff were working remotely because of the recent spike in COVID-19 cases, although a handful were working in the office with precautions in place. Staff was also monitoring the situation to see when the office would move into the next phase of the plan. She anticipated operating remotely until at least the end of July.

B. SACRS Legislative Update – July 2020.

Chair Goulet said the SACRS Legislative Committee had been working on a comprehensive revision to the California Employees Retirement Law (CERL) with the hope of amending it into an existing bill, SB 783, but the committee Chair had been working with the legislative staff and it had been amended into AB 2021, verbatim from what the legislative committee had recommended. The bill would not be passed this year; however it was anticipated that it would be re-introduced next year and the legislative committee's hope was that it would move through the House very quickly on a consent because it had been vetted.

IX. PUBLIC COMMENT

None.

X. STAFF COMMENT

Ms. Webb reminded the Board that the Business meeting in July was the last meeting until September 14th. Also, as they were aware, VCERA's CFO was retiring in August and a potential interim CFO had been identified. Also, the General Member election was won by Cecilia Hernandez-Garcia and she would be contacting her and welcoming her to the Board. Because of the recent death of Trustee Wilson, staff would be honoring him on VCERA's website and in the newsletter, and staff would welcome any quotes or comments regarding Trustee Wilson to include.

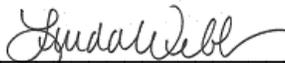
XI. BOARD MEMBER COMMENT

None.

XII. ADJOURNMENT

At 10:47 a.m., Chair Goulet adjourned the meeting in memory of William W. Wilson.

Respectfully submitted,



LINDA WEBB, Retirement Administrator

Approved,



ARTHUR GOULET, Chair