

SAN DIEGO COUNTY EMPLOYEES RETIREMENT ASSOCIATION
POLICY ON DEFENSE AND INDEMNIFICATION OF BOARD OF RETIREMENT MEMBERS

I. BEST INTEREST OF SDCERA

- A. SDCERA's Board of Retirement (hereinafter, BOR) has determined it is in SDCERA's best interest to defend and indemnify present and former Board Members in connection with matters arising from or related to their service as members of the BOR on the terms set forth in this policy.

II. PERSONS COVERED

- A. SDCERA shall defend and indemnify as provided in this policy any present or former SDCERA Board Member (hereinafter, Indemnitee) against all expenses and liabilities, including, without limitation, attorneys' fees and costs (including any necessary experts), judgments, fines, excise taxes, penalties, settlement payments, and other sums, reasonably incurred by or imposed upon such person in connection with any threatened, pending, or completed Action (which is defined for purposes of this policy as those matters set forth in Section VI A-C below), in which he or she may become involved arising from or related to his or her service in such capacity;
1. provided that no defense and indemnity shall be provided for any such person, and SDCERA shall have a right to recover any monies expended under this policy for the benefit of such person, with respect to any matter as to which it shall have been finally adjudicated in any Action or other proceeding, or in the event of an adverse determination or the absence of a determination by the tribunal determining the matter, by an Independent Determination in accordance with Section VIII below, that the Indemnitee acted or failed to act because of actual fraud, corruption, or actual malice; and
 2. further provided that any compromise or settlement payment shall be approved by a majority vote of a quorum of the BOR who are not at that time parties to the proceeding, or if more than a quorum of the BOR is a party to the proceeding, by a quorum of the entire BOR, subject to any Board Member's right to seek an Independent Determination in accordance with Section VIII as to whether any compromise or settlement should be made.

III. SCOPE OF COVERAGE

- A. The defense and indemnification provided hereunder shall not be deemed exclusive of any other rights to which a party seeking indemnification may be entitled under any statute, bylaw, insurance, agreement, or otherwise, and shall inure to the benefit of the heirs, executors, and administrators of such party with respect to Actions arising from or related to a Board Member's service in such capacity. Such defense and indemnification shall supplement indemnification and other legal protections provided by the federal Volunteer Protection Act, California Tort Claims Act and, other statutes, and other policies of SDCERA and are provided for all covered actions or proceedings to the fullest extent permitted by law and public policy, regardless of any limitations of coverage contained in the indemnification provisions of relevant statutes or

policies.

IV. GENERAL CONDITIONS FOR DEFENSE AND INDEMNIFICATION

- A. As a condition of receiving defense and indemnification, an Indemnitee shall give notice to SDCERA's CEO and General Counsel of any Action for which he or she may appropriately seek defense and indemnification, shall keep the BOR or its designee apprised of significant developments in the Action, and shall cooperate in good faith with SDCERA in the defense of the Action. Late notice can be asserted as a defense by SDCERA to an Indemnitee's right to defense or indemnity if SDCERA obtains an Independent Determination in accordance with Section VIII below that SDCERA suffered substantial prejudice as a result, including, without limitation, the inability to materially participate in the defense or settlement of an Action.

V. WHEN A DEFENSE IS PROVIDED

A. Civil Actions

- 1. Subject to the conditions of Section IV above, an Indemnitee shall be entitled to a defense under this policy in a Civil Action if it arises from or relates to the Indemnitee's service as a member of the BOR, unless it is determined by the tribunal determining the matter, or in the event of an adverse determination or the absence of a determination by the tribunal determining the matter, by an Independent Determination in accordance with Section VIII below, that the Indemnitee acted or failed to act because of actual fraud, corruption, or actual malice. The extent of entitlement to a defense may be established by successful defense of the Civil Action or of claims, issues, or matters therein, or by the tribunal determining the matter, or in the event of an adverse determination, by an Independent Determination in accordance with Section VIII below.

B. Other Proceedings

- 1. Subject to the conditions of Section IV above, an Indemnitee shall be entitled to a defense under this policy in an Other Proceeding if it arises from or relates to the Indemnitee's service as a member of the BOR, unless it is determined that the acted or failed to act because of actual fraud, corruption, or actual malice. The extent of entitlement to a defense may be established by successful defense of the Other Proceeding or of claims, issues, or matters therein, or by the tribunal determining the matter, or in the event of an adverse determination, by an Independent Determination in accordance with Section VIII below.

C. Threatened Action

- 1. Subject to the conditions of Section IV above, an Indemnitee shall only be entitled to defense and indemnity of a threatened Action at the BOR's sole discretion pursuant to the same procedure described in Section II-A-2 above.

D. Defense Prior to Final Disposition

- 1. SDCERA shall begin providing an Indemnitee with a defense and/or advancing all defense costs on the Indemnitee's behalf upon notice of an Action and prior to its final disposition.

Any advancement of fees or costs shall be subject to and will be provided only upon execution of a written agreement by the Indemnitee to repay SDCERA for such fees or costs, as well as any amounts incurred by SDCERA for indemnity under Section VII below, if ultimately it is determined according to the terms of this policy or by an Independent Determination under Section VIII below that the Indemnitee was not entitled to a defense or indemnity.

E. Counsel Retained by Indemnitee

1. Unless otherwise requested by the Indemnitee, SDCERA shall provide a defense for the Indemnitee through SDCERA's General Counsel and/or through other counsel retained by SDCERA at its expense. In lieu of a defense by SDCERA, the Indemnitee may retain separate counsel for his or her defense at SDCERA's expense, subject to the following: the Indemnitee must provide advance written notice of the proposed retention to SDCERA's General Counsel; the proposed retention and its terms must be reasonable under the circumstances; all invoices or payment requests from separate counsel must be processed through SDCERA; all payment requests must be for fees and/or costs actually and reasonably incurred; and, unless there is a conflict of interest identified by Indemnitee's counsel, the Indemnitee and separate counsel must cooperate with SDCERA in the defense of other parties and/or claims in the Action.

Pursuant to this Section V-E, the Indemnitee shall be permitted to proceed with the proposed retention of separate counsel following delivery of notice to SDCERA's CEO. If SDCERA disputes the choice of counsel, the terms of engagement, or any fees or costs incurred by such counsel, such disputes will be resolved by Independent Determination under Section VIII below, provided that no Indemnitee will be deprived of counsel of their choice and no payments to such counsel will be withheld or need be reimbursed by an Indemnitee until issuance of the Independent Determination.

No request by an Indemnitee for separate counsel shall be denied on grounds that the Indemnitee fails to meet the requirements for a defense under this policy unless there has been an adverse determination in the Action.

Where the interests in an Action of multiple Indemnitees are aligned, it is the policy of the BOR that Indemnitees will reasonably cooperate in the selection of joint counsel, although pending an Independent Determination under Section VIII below, no Indemnitee will be deprived of separate counsel of their choice.

VI. DEFINITIONS

A. Civil Action

1. A Civil Action is defined as any civil action or proceeding threatened, filed, maintained, or pending in state or federal court, excluding Other Proceedings.

B. Other Proceedings

1. Other proceedings include but are not limited to any action or proceeding threatened, filed,

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maintained, or pending in state or federal court brought by or in the right of beneficiaries, administrative proceedings initiated by third parties, and criminal proceedings threatened, filed, maintained, or pending in any forum, administrative, arbitral, or investigative, and whether formal or informal.

C. Action

1. An Action is defined as a Civil Action or Other Proceeding, as the case may be.

D. Expenses

1. Expenses includes, without limitation, those reasonable attorneys' fees, retainers, court costs, transcript costs, fees of experts, travel expenses, duplicating costs, printing and binding costs, telephone charges, postage, delivery service fees and other disbursements or expenses of the types customarily incurred in connection with defense of an Action.

E. Defense

1. Defense as provided under this policy shall be limited to Expenses, as defined in Section VI-D above, actually and reasonably incurred by the Indemnitee in connection with the defense of the Action.

F. Indemnitee

1. Indemnitee is defined as each person described in Section II above.

VII. WHEN INDEMNIFICATION IS PROVIDED**A. Civil Actions**

1. Subject to the conditions set forth in Section IV above, an Indemnitee shall be entitled to indemnification under this policy for any judgments, fines, excise taxes, penalties, settlement payments, and other sums due upon resolution of a Civil Action if the acts or omissions of the Indemnitee satisfy the requirements for a defense under Section V-A-1 above.

B. Other Proceedings

1. Subject to the conditions set forth in Section IV above, an Indemnitee shall be entitled to indemnification under this policy for any judgments, fines, excise taxes, penalties, settlement payments, and other sums due upon resolution of an Other Proceeding if the acts or omissions of the Indemnitee satisfy the requirements for a defense under Section V-B-1 above.

C. Punitive Damages

1. Indemnification shall be made for punitive damages when it would otherwise be proper under this policy and under the following additional criterion: prior to such indemnification and in its sole discretion, the BOR has determined that the Indemnitee's acts or omissions were without actual fraud, corruption, or actual malice pursuant to the same procedure described in Section II-A-2 above.

VIII. INDEPENDENT DETERMINATION

- A. Where an Independent Determination is required under this policy or there is otherwise a dispute between an Indemnitee and SDCERA concerning any matter arising from or related to this policy or any action taken under this policy, the dispute shall be resolved by final and binding arbitration upon an Indemnitee's written request to or agreement with SDCERA. If an Indemnitee requests or agrees to binding arbitration, SDCERA and the Board of Retirement will be bound to arbitrate the dispute pursuant to the arbitration procedures described in this Section VIII. The arbitration will be held before a panel of three arbitrators, with one arbitrator selected by the Indemnitee, one arbitrator to be selected by SDCERA, and the third arbitrator to be a neutral retired judge of any state or federal court in California selected by agreement of the two party appointed arbitrators. The Indemnitee and SDCERA will simultaneously exchange the names of their respective appointed arbitrators within ten (10) days after the Indemnitee's request or agreement to arbitrate, and the panel arbitrators will then select the neutral arbitrator within ten (10) days thereafter. The neutral arbitrator will serve as chair of the arbitration panel. The arbitration will commence on an expedited basis no later than sixty (60) days after appointment of the neutral arbitrator unless the arbitration panel, for good cause, permits an extension of up to and no more than an additional sixty (60) days. The arbitration panel will set a schedule for expedited exchange of documents and other information and such other discovery, including but not limited to depositions, as the panel may reasonably permit to take place within, and not to exceed, the expedited hearing schedule as provided in this Section VIII. The arbitration panel will set all other procedures and schedules necessary to complete the arbitration. Upon completion of the arbitration, the arbitration panel will issue a written decision, which shall be a reasoned decision explaining the factual and legal reasons therefor. The written decision will be issued no later than thirty (30) days following completion of the arbitration. The decision will be regarded as an Independent Determination as that term is used in this policy and will be final and binding and not subject to judicial review, appeal, or challenge except upon the grounds set forth in California Code of Civil Procedure section 1286.2. Each party will initially bear their own attorneys' fees and costs in connection with the arbitration, their own party arbitrator's fees and costs, and one-half the neutral arbitrator's fees and costs; however, the arbitrators shall award to the prevailing party their reasonable attorneys' fees and costs, their own party arbitrator's fees and costs, and the share they have paid of the neutral arbitrator's fees and costs. All decisions made by the arbitration panel will be by majority vote.

IX. RETROACTIVE EFFECT

- A. This policy shall be given retroactive effect.

REVIEW

This policy shall be reviewed by the Board at least every three (3) years and may be amended at any time.

No amendment or repeal of the provisions of this policy which adversely affects the right of an Indemnitee under this policy shall apply to such person with respect to those acts or omissions which

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occurred at any time prior to such amendment or repeal, unless such amendment or repeal was voted by or was made with the written consent of such Indemnatee.

This policy constitutes a contract between SDCERA and the Indemnatee. No amendment or repeal of the provisions of this policy which adversely affects the right of an Indemnatee under this policy shall apply to such Indemnatee with respect to those acts or omissions which occurred at any time prior to such amendment or repeal.

HISTORY

January 8, 2004	Amended
April 5, 2012	Amended, effective immediately
June 19, 2014	Restated policy adopted, effective immediately
November 6, 2014	Revised, effective immediately