

FIDUCIARY COUNSEL POLICY

1. PURPOSE

This policy confirms the role of outside fiduciary counsel and parameters for use of fiduciary counsel by LACERA and its Board of Retirement and Board of Investments (each, a Board), Board Committees, individual Board Members, and LACERA staff.

2. LEGAL AUTHORITY

Under Article XVI, Section 17 of the California Constitution, the Boards have “sole and exclusive responsibility to administer” LACERA. Under Government Code Section 31529.6, the Boards “may contract with attorneys in private practice for legal services and advice. The boards shall pay reasonable compensation for the legal services and advice. The compensation shall be considered a cost of administration of the system.” Under this authority, the Boards may engage outside fiduciary counsel to provide assistance in the exercise of fiduciary duties by LACERA and the Boards. The Boards, collectively and as individual Board Members, must satisfy their fiduciary duties in all matters they consider, all decisions they make, and all aspects of their conduct on behalf of LACERA.

3. POLICY STATEMENT

3.1 *Retention.* The Boards acting jointly shall retain one or more outside fiduciary counsel to represent the interests of LACERA and provide advice to the Boards and LACERA staff in connection with fiduciary issues under the terms of this policy.

3.2 *Scope of Services.* The services provided by outside fiduciary counsel shall include:

3.2.1 *Meeting Attendance.* An outside fiduciary counsel, selected from the list of Board approved and retained counsel, shall, upon request by a Board Chair, Committee Chair, any other Board Member, the Chief Executive Officer, or Chief Counsel, attend any Board of Retirement, Board of Investments, and Committee meeting to provide advice concerning fiduciary issues when such attendance appears relevant and helpful to an issue before a Board or Committee. Fiduciary counsel may also attend any meeting when, in counsel’s view after consultation with relevant Board Members, the Chief Executive Officer, or Chief Counsel, attendance is appropriate. In considering whether fiduciary counsel will attend a meeting, but without limiting attendance when appropriate, consideration shall be given to the cost of attendance as well as cost-effective and efficient alternatives to attendance, such as a

telephonic consultation prior to the meeting, appearance by telephone or video at a meeting, or a written opinion.

3.2.2 Advice to the Board Chairs and Other Board Members Outside Noticed Meetings. Outside fiduciary counsel shall provide such advice concerning fiduciary issues as may be requested by the Chairs and officers of the Boards or any Committee in the setting of Board and Committee agendas and in fulfilling their duties and responsibilities. Outside fiduciary counsel shall also, without limitation, provide advice in connection with fiduciary issues to any individual Board Member who requests it. Board Members are encouraged to seek counsel from LACERA's Chief Counsel or from outside fiduciary counsel on any fiduciary issues that may arise; however, without limiting the right of individual Board Members to contact outside fiduciary counsel, individual Board Members should be mindful of costs and issues of the attorney-client privilege and confidentiality (as outlined in Sections 3.3 and 3.4 of this policy) in determining whether to seek advice from outside fiduciary counsel on a given issue. Board Members are encouraged to discuss any questions regarding privilege and confidentiality with outside fiduciary counsel before beginning a substantive discussion or requesting specific advice.

3.2.3 Consultation with Staff. LACERA's Chief Executive Officer (CEO) and Chief Counsel, or their designees, may seek advice on fiduciary issues from outside fiduciary counsel. The Chairs shall be copied on staff's written communications, and promptly advised of staff's oral communications, with fiduciary counsel. Chief Counsel, in coordination with the CEO, shall provide the Board Chairs with a privileged monthly written report of staff written and verbal contacts, which shall also be copied to all Board Members.

3.2.4 Other Projects. Outside fiduciary counsel shall be available to perform any other work concerning fiduciary issues as may be requested from time to time by the Boards.

3.3 *Privilege and the Confidentiality of Communications.* LACERA is the client for which outside fiduciary counsel provides services. The Boards jointly are the highest authorities within LACERA overseeing outside fiduciary counsel. The confidentiality of communications between LACERA, acting by and through the Boards, and outside fiduciary counsel is subject to the attorney-client privilege under applicable California law, including the California Bar's Rules of Professional Conduct for attorneys.

The Boards jointly control the attorney-client privilege, which may not be waived except by joint action of both Boards. Communications with and information disclosed to or by fiduciary counsel during proceedings of one Board or Committee are subject to disclosure to all Boards and Committees, subject to the requirements of the Brown Act with respect to disclosures in closed session. Communications between any individual member of the Board or LACERA staff and outside fiduciary counsel are subject to disclosure to the Boards and other Board Members. Outside fiduciary counsel does not have an attorney-client relationship with individual Board Members or with LACERA staff.

Communications between Board Members and LACERA staff, on the one hand, and outside fiduciary counsel, on the other hand, about the business of LACERA, should be maintained as confidential as to third parties, unless and until the Boards jointly determine otherwise. In order to avoid waiver of the attorney-client privilege, individual Board Members and LACERA staff shall not disclose communications with outside fiduciary counsel to persons outside LACERA without the authority of both Boards, or their designated representatives.

- 3.4 Professional Responsibilities.** In representing LACERA, outside fiduciary counsel shall have such duties and responsibilities as are set forth in the California Rules of Professional Conduct.
- 3.5 Oversight.** LACERA's relationship with outside fiduciary counsel shall be managed by the Board Chairs, subject to the Scope of Services described above, with the Boards jointly having ultimate oversight. In the event advice is required from outside fiduciary counsel on a matter concerning a Board Chair, the Vice Chair of each respective Board shall manage such work. In the event a matter concerns both a Board Chair and Vice Chair, fiduciary counsel shall be overseen on such matter as determined by a majority vote of a quorum of the Board or Boards, with the Board Chairs and Vice Chairs excluded from the quorum count and vote.
- 3.6 Evaluation.** The Boards shall evaluate outside fiduciary counsel annually. Counsel may provide a self-evaluation in the process.

4. DEFINITION OF "FIDUCIARY ISSUES"

For purposes of this policy, "fiduciary issues" is defined to include all issues as to which the Boards, the Audit Committee, other Board Committees, individual Board Members, and LACERA staff may seek advice from independent counsel in the performance of their fiduciary duties, including but not limited to:

- 4.1 Fiduciary duties under the California Constitution, the County Employees Retirement Law of 1937, the California Public Employees' Pension Reform Act of 2013, and other applicable law.
- 4.2 Ethical issues, under LACERA's Code of Ethical Conduct, the Political Reform Act, California Government Code Section 1090 and other provisions of the California Government Code, Fair Political Practices Commission (FPPC) Regulations, FPPC and California Attorney General Opinions, and other applicable laws and LACERA policy relating to conflicts of interest and ethics of Board Members, LACERA staff, and/or LACERA vendors.
- 4.3 Board governance.
- 4.4 LACERA's organizational structure.
- 4.5 Disputes by and between Board Members.
- 4.6 Negotiation and drafting of contracts.
- 4.7 Actuarial and financial matters.
- 4.8 Employment-related matters.
- 4.9 Benefit-related matters, including service retirement, disability retirement, retiree healthcare benefits, and other benefit issues.
- 4.10 Investment-related matters.
- 4.11 Investigations.

5. SCOPE

This policy applies broadly to all matters that may be addressed by the Boards, Board Committees, individual Board Members, or LACERA staff with outside fiduciary counsel concerning fiduciary issues. This policy does not limit the ability of one or both of the Boards, in the exercise of their plenary authority to administer the retirement system, to engage separate outside fiduciary counsel to represent their interests as a Board or Boards in the event of a conflict of interest or in connection with special projects relating to fiduciary issues.

History:

Adopted as Revised June 13, 2018 by Board of Retirement and Board of Investments

Adopted November 2, 2017 by Board of Investments and November 9, 2017 by Board of Retirement