



May 13, 2019

TO: Each Member,
JOGC Meeting

SUBJECT: JOGC Meeting on May 15, 2019 – Green Folder Items

Following are the Green Folder items for the above meeting:

**FY 19-20 Administrative, Retiree Healthcare Benefits, and OPEB Trust Budgets
(Item V.A.)**

Supplemental Information Requested by Board Members

Chief Counsel Reporting Structure (Item V. C.)

Attachment B of the agenda item has been updated to include pages 3-5 of the memorandum.

Agency Temporary Expense as of 5/7/19

FY 2018-2019	Budget	Actual
Administrative Services	\$114,000	\$69,197
Benefits	-	73,086
Communiations	102,500	18,315
Disability Litigation	-	-
Disability Retirement	42,009	46,525
Executive Office	-	-
FASD	296,300	328,780
Human Resources	101,100	79,203
Internal Audit Services	-	8,346
Investment Office	-	-
Legal Services	118,700	57,106
Member Services	129,300	122,012
Quality Assurance	-	-
Systems	992,000	1,313,890
Total	\$1,895,909	\$2,116,460
 RHC	 \$132,100	 \$47,479

Agency Temporary Expense

FY 2017-2018	Budget	Actual
Administrative Services	\$122,500	\$202,123
Benefits	24,400	57,435
Communiations	143,300	21,198
Disability Litigation	0	0
Disability Retirement	104,200	40,318
Executive Office	0	0
FASD	143,200	351,042
Human Resources	39,200	109,680
Internal Audit Services	26,100	38,810
Investment Office	35,000	900
Legal Services	68,000	118,929
Member Services	75,100	121,427
Quality Assurance	0	0
Systems	1,527,000	1,759,983
Total	\$2,308,000	\$2,821,845
 RHC	 \$72,500	 \$47,203

Agency Temporary Expense

FY 2016-2017	Budget	Actual
Administrative Services	\$151,600	\$125,800
Benefits	35,000	42,460
Communiations	67,500	-
Disability Litigation	-	-
Disability Retirement	28,400	-
Executive Office	-	-
FASD	75,200	257,008
Human Resources	-	38,702
Internal Audit Services	-	-
Investment Office	30,000	33,590
Legal Services	42,200	16,347
Member Services	142,000	105,603
Quality Assurance	-	-
Systems	1,927,000	1,163,864
Total	\$2,498,900	\$1,783,374
RHC	\$68,400	\$60,337

Overtime Expense as of 5/7/19

FY 2018-2019	Budget	Actual
Administrative Services	\$28,007	\$23,861
Benefits	191,075	243,470
Communiations	3,600	948
Disability Litigation	-	3
Disability Retirement	11,972	16,931
Executive Office	6,376	44,329
FASD	63,720	39,336
Human Resources	1,403	349
Internal Audit Services	3,327	54
Investment Office	2,000	138
Legal Services	36,144	4,356
Member Services	115,400	156,651
Quality Assurance	1,871	2,069
Systems	130,100	89,996
Total	\$594,995	\$622,491
 RHC	 \$36,245	 \$8,453

Overtime Expense

FY 2017-2018	Budget	Actual
Administrative Services	\$20,200	\$44,619
Benefits	175,400	274,246
Communiations	6,900	5,480
Disability Litigation	0	61
Disability Retirement	14,000	12,148
Executive Office	3,100	40,315
FASD	52,900	51,380
Human Resources	6,200	1,844
Internal Audit Services	2,000	137
Investment Office	0	134
Legal Services	35,000	1,037
Member Services	115,400	201,391
Quality Assurance	1,000	881
Systems	130,100	150,962
Total	\$562,200	\$784,635
 RHC	 \$30,700	 \$19,079

Overtime Expense

FY 2016-2017	Budget	Actual
Administrative Services	\$21,504	\$28,183
Benefits	165,200	184,072
Communications	2,376	6,918
Disability Litigation	-	-
Disability Retirement	21,376	7,330
Executive Office	2,280	462
FASD	52,084	48,207
Human Resources	3,093	1,222
Internal Audit Services	2,000	896
Investment Office	-	1,806
Legal Services	12,118	27,343
Member Services	108,684	192,226
Quality Assurance	3,950	2,140
Systems	130,010	132,355
Total	\$524,675	\$633,160
RHC	\$12,834	\$8,568

The Positions here have been vacant from May 1, 2018 to April 30, 2019

<u>Title</u>	<u>No. Pos</u>	<u>Division(s)</u>
Accountant	1	FASD
Assistant Information Systems Mgr	1	Systems
Data Systems Coordinator	8	Systems
Data Systems Supervisor I	1	Systems
EDP Senior Programmer Analyst	1	Systems
Media Artist	1	Communications
Programming Systems Specialist	1	Systems
Retirement Benefits Specialist II	5	Member Services
Retirement Systems Specialist	1	Systems
Senior Accountant	1	FASD
Senior Management Secretary	1	Legal
Secretary	1	FASD
Total	23	

Overall Budget for Last Ten (10) Years

FY	Budget	Actual
2009-2010	\$50,811,842	\$46,267,840
2010-2011	53,390,551	50,282,133
2011-2012	52,826,137	50,133,144
2012-2013	56,848,853	53,985,901
2013-2014	62,193,060	58,580,444
2014-2015	65,629,252	62,917,421
2015-2016	73,090,757	67,394,845
2016-2017	76,828,817	67,426,897
2017-2018	83,554,666	78,283,571
2018-2019*	88,622,236	83,780,537
2019-2020	\$94,599,990	

*FY 2018-2019 is FYE projection for actual

Overall Fund Assets in Last Ten (10) Years

(Dollars in Thousands)

	2018	2017	2016	2015	2014	2013	2012	2011	2010	2009
Total Assets	\$ 59,367,904	\$ 55,818,990	\$ 50,895,682	\$ 51,394,401	\$ 51,067,299	\$ 43,726,018	\$ 41,206,623	\$ 42,729,060	\$ 36,051,372	\$ 33,200,215
Fiduciary Net Position	\$ 56,299,982	\$ 52,743,651	\$ 47,846,694	\$ 48,818,350	\$ 47,722,277	\$ 41,773,519	\$ 38,306,756	\$ 39,452,011	\$ 33,433,888	\$ 30,498,981

Total Permanent Staffing for Last Ten (10) Years

Division	FY 2008-2009	FY 2009-2010	FY 2010-2011	FY 2011-2012	FY 2012-2013	FY 2013-2014	FY 2014-2015	FY 2015-2016	FY 2016-2017	FY 2017-2018	FY 2018-2019	FY 2019-2020
Administrative Services	28	28	28	28	29	30	31	31	32	33	33	34
Benefits	57	57	57	57	62	62	62	63	66	70	70	71
Communications	12	12	11	11	10	10	10	10	10	13	13	13
Disability Litigation	8	8	7	7	7	7	7	7	7	7	7	7
Disability Retirement	25	25	25	25	35	35	39	39	39	39	40	41
Executive Office	8	8	7	7	7	7	7	7	7	8	8	8
FASD	28	28	28	28	28	29	29	29	29	29	29	30
Human Resources	12	12	12	12	12	12	12	12	12	13	13	13
Internal Audit	10	10	10	10	10	10	10	10	10	11	11	11
Investment Office	27	27	27	27	27	27	27	28	33	39	41	44
Legal Services	17	16	15	15	15	16	17	17	20	22	23	26
Member Services	55	55	59	59	59	63	64	64	67	67	77	79
Quality Assurance	12	12	12	12	11	17	17	17	17	18	18	19
Systems	46	46	46	46	49	49	49	51	52	60	60	60
Total	345	344	344	344	361	374	381	385	401	429	443	456
Retiree HealthCare	FY 2008-2009	FY 2009-2010	FY 2010-2011	FY 2011-2012	FY 2012-2013	FY 2013-2014	FY 2014-2015	FY 2015-2016	FY 2016-2017	FY 2017-2018	FY 2018-2019	FY 2019-2020
	17	17	17	17	18	21	21	21	22	22	28	31



April 11, 2019

TO: Each Member,
Joint Organizational Governance Committee

FROM: Johanna M. Fontenot *JMF*
Senior Staff Counsel

FOR: May 15, 2019 JOGC Meeting

SUBJECT: **Chief Counsel Reporting Structure**

In 2017, the Joint Organizational Governance Committee requested that staff evaluate whether the Chief Counsel position should report directly to the Boards and the Chief Investment Officer should report directly to the BOI. In 2018, the Joint Boards discussed and approved a written policy formalizing the reporting structure for the CIO position, but neither the JOGC or the Joint Boards made a decision or provided direction to staff as to the whether the Chief Counsel position reporting structure should change.

For this reason, the memoranda, which were presented to the JOGC in December 2017, are presented again for discussion as to whether the Committee wants to revisit the Chief Counsel reporting structure. Attachment A is Staff Analysis for Proposal that Chief Counsel Report to the Board of Retirement and Board of Investments and Attachment B is Harvey Leiderman's memorandum offering a fiduciary perspective.

Attachments

c: Lou Lazatin
John Popowich

Attachment A

December 13, 2017 Board Memo



November 28, 2017

TO: Each Member,
Joint Organizational Governance Committee

FROM: Johanna M. Fontenot
Senior Staff Counsel

FOR: December 13, 2017 JOGC Meeting

SUBJECT: **STAFF ANALYSIS FOR PROPOSAL THAT CHIEF COUNSEL REPORT TO THE BOARD OF RETIREMENT AND BOARD OF INVESTMENTS**

This memo provides background and other information to assist your Committee on the proposal to change the Chief Counsel reporting structure from reporting to the CEO to reporting jointly to the Board of Retirement and Board of Investments (the Boards).

Legal Authority

As previously explained in the October 2, 2017 memo, your Boards have the legal authority under Section 31522.4 to change the reporting structure from the Chief Counsel reporting to the CEO to the Boards. For your convenience, the October 2, 2017 memo is attached as Exhibit A.

Role of LACERA's Chief Counsel

The Chief Counsel serves as general counsel to LACERA and has complete responsibility for planning, directing and evaluating all operations of the Legal Division. In representing LACERA, the Chief Counsel's client is the organization itself.

The Legal Office is currently comprised of twenty people: ten lawyers including the Chief Counsel, four paralegals, a legislative affairs officer and five management secretaries. In addition to overseeing the work of legal staff, the Chief Counsel provides advice and assistance on legal problems with all the other divisions and confers with the CEO and LACERA management daily on legal issues. The day to day operations of Chief Counsel involve a lot of interaction, communication and direction to Legal staff and as well as other divisions of LACERA.

Additionally, Chief Counsel prepares Board memorandums on various legal matters, provides legal advice during public and closed sessions of Board meetings, and provides legal advice and counsel to individual Board members. Further, the Chief Counsel handles various administrative appeals, litigation matters, and reviews all matters on the Board agendas. A copy of the job description for the Chief Counsel position is attached as Attachment B.

Chief Counsel is a Civil Service Position

In 2001, LACERA sponsored legislation that authorized LACERA to employ certain management positions not subject to the civil service system, and therefore, the individuals occupying these positions would serve at the pleasure of the Board. (Government Code Sections 31522.2 and 31522.4) Although the Chief Counsel position is listed as one of the positions in 31522.4, the Board of Retirement did not designate the Chief Counsel position in 2001 or anytime thereafter. As a result, the Chief Counsel position remains a civil service position.

Although the Board Minutes do not clearly indicate the reason for not designating the Chief Counsel position, the Minutes do indicate that the Board was informed that it could include the Chief Counsel position as an at-will position and the Board elected to not to make the Chief Counsel an at-will position. There are a couple of possible explanations. One possible reason is that the Board wanted the position to be classified so there would be a degree of autonomy and independence with Chief Counsel not being subjected to pressure and reprisals from a CEO or other leaders in the organization. Another explanation could be at the time the position was held by Dave Muir who enjoyed civil service protection; and later when Mr. Muir retired and a new Chief Counsel was hired, the Board and the CEO did not reconsider whether the position should be at-will so it remained a classified position.

There are significant differences between an at-will employee versus a civil service or classified position. Minimal standards of due process require that a civil service employee receive certain procedural safeguards such as notice, grounds for discipline, the charges and materials upon which the action is based and the opportunity to respond in opposition to the proposed action prior to imposing discipline. This is very different than an at-will employee who can be dismissed at any time and without cause.

If the Boards decide to change the reporting arrangement to have the Chief Counsel position report to the Boards then actions taken by the Boards to approve appointment, discipline, dismissal and/or removal will be subject to the County's Civil Service Rules. The Civil Service Rules provide detailed provisions relating to appointment, progressive discipline, and/or removal of classified employees. In addition, the Chief Counsel is a Management Appraisal and Performance Plan (MAPP) Tier II employee. Therefore, the Boards' role in preparing annual performance evaluations will need to be performed in compliance with the Civil Service Rules and the County Code, including use of the required rating standards.

Although the Chief Counsel position is currently a classified position, the Committee may designate the next Chief Counsel as an at-will position if it chooses to do so.

Peer Systems

Staff conducted surveys of the National Association of Public Pension Attorneys (NAPPA) and CERL systems with regard to their reporting arrangement of the Chief Counsel position. In most CERL systems, the Chief Counsel position reports to the CEO, except for a couple smaller funds where the County Counsel's Office represents the system. Ventura and San Bernardino are the only two CERL systems where the Chief Counsel reports to the Board. Similarly, most other state and other large systems, including CalPERS, the Chief Counsel position reports to the CEO with fewer systems having their Chief Counsel reports to the Board.

Additionally, a couple systems have a board policy requiring the CEO to seek the board's input for the evaluation of the CEO's direct reports. This practice allows a board to have input in the evaluation of the Chief Counsel and other key positions without taking on all the responsibilities involved in managing the position.

Fiduciary Review by Ennis Knupp & Associates

Ennis Knupp & Associates conducted a fiduciary review on behalf of the BOI in 2008. Ennis Knupp reviewed documentation, analyzed data, and interviewed staff. As part of their review, they made observations about reporting structure of the Chief Counsel position. On this subject they noted the following;

“Some retirement boards have decided that the Chief Counsel/General Counsel should have the highest allegiance to the board and, therefore, they adopt an organizational structure having a direct reporting line (a solid line) to the board and a secondary reporting line (dotted line) to the CEO. Other boards have decided that since the day-to-day interaction of the Chief Counsel/General Counsel is with the staff, the solid line should be to the CEO and the dotted line should run to the Board. Either way can work well. This is a decision for a board to make. What does not work well is to leave the reporting lines unclear until a time a serious issue arises and confusion sets in about whom the Chief Counsel/General Counsel is obligated to advise.”

The fiduciary review further states that the best practice for LACERA (BOI) was to “keep the CEO responsible for hiring, firing, evaluating and compensating General Counsel and have a policy requiring the CEO to seek Board and staff input as part of the evaluation process.” Ennis Knupp noted that LACERA's practice was for the CEO to receive informal input from the Boards; however, Ennis Knupp recommended as a best practice that the Boards adopt a formal policy requiring the CEO to seek board input as part of the evaluation process of the Chief Counsel position. This recommendation, however, was never implemented by the previous CEO. For this reason, LACERA does

not have a formal policy requiring the CEO to seek board input as part of the evaluation process.

Interview of Legal Staff and Managers

The crucial relationship of trust and respect should exist between Chief Counsel and staff. This type of credibility comes from the Chief Counsel's experience, reputation, and the ability to explain issues clearly and concisely. Staff, at all levels of LACERA, currently have access to the Chief Counsel to bring concerns about financial, legal, and ethical issues.

Most of the staff interviewed about the proposed change in reporting of the Chief Counsel position stated that they prefer the current reporting arrangement. There is a perception that if the reporting structure changes the Chief Counsel would work more closely and spend more time working with Board issues and less time working with staff. Although this is possibly only a perception and not necessarily a reality, it is a legitimate concern if staff seeks out the advice of Chief Counsel less due to this perception that the Chief Counsel's primary duties would change if the position reported to the Boards.

Another expressed concern by staff is the lack of clear direction and communication if the Chief Counsel reports to the Boards. For example, there was uncertainty as what role would the CEO serve with regard to assignments given to Chief Counsel and whether there would be the appropriate checks and balances as it relates to the Boards' influence. Checks and balances is normally defined as the ability of one set of decision makers to challenge others in the organization. Additionally, staff expressed concern that it would be difficult for Chief Counsel to effectively manage the Legal Division if duties expanded with the new reporting and for the Boards to perform the administrative functions necessary to manage the Chief Counsel, i.e., approving time off, setting forth accountability standards and expectations.

Best Practices

Surveys of other peer systems show that there is not a "one size fits all" standard of care that all systems must follow when it comes to reporting structure. Instead, an assessment of many factors should be considered and analyzed to ensure that your Committee is selecting a reporting arrangement that strengthens fiduciary principles and provides good governance.

Stanford's Clapman Report *Fund Governance Best Practice Principles* (the "Report") summarized the principles of fund leadership and the interplay of the governing body and executive staff, in part, as follows:

- A fund should identify and disclose its leadership structure and all persons in position of senior responsibility.
- A fund should establish clear lines of authority between its governing body and its staff that reflect a commitment to representing beneficiary interests. Delegations of authority from a governing body to its staff should be clearly defined and regularly reviewed.
- A governing body should have authority to select or dismiss key staff and independent advisors and counsel. However, executive staff must be qualified and able to fully discharge their duties. Trustees must therefore not allow undue influence to be exerted on staff, usurp the function of staff, nor allow staff to usurp the function of trustees.

The Clapman Report 2.0, which updates the original Report, references the comprehensive review performed by CalPERS of its governance policies and states that it “provides an excellent example of a framework for addressing these issues.” With regard to reporting structure, CalPERS Governance Policy, Section 9 *Delegations to Executives and Board Reporting Relationships* states the following six principles:

- A. The Board will have one direct report: The Chief Executive Officer. The Chief Executive Officer is responsible for the overall administration of all units, departments and functions within CalPERS. The Board and the Chief Executive Officer share responsibility for hiring, evaluating and, if necessary, terminating the Chief Investment Officer.
- B. The Board will have long-term Chief Executive Officer and Chief Investment Officer succession planning processes.
- C. The Board will evaluate direct report performance and compensation based on the agreed-upon strategy and performance outcomes and metrics. If the Board is not satisfied with the performance of the Chief Executive Officer, it will discipline or replace him or her, but will not get involved in day-to-day operations.
- D. The Board will have ready access to all executives, and such access will be coordinated by the Chief Executive Officer.
- E. The Board strongly supports an environment where CalPERS staff may engage in impartial, robust, objective and ethical decision-making free of improper influence from individual Board members, executives or third parties. The Board requires implementation of a staff policy regarding impartial decision-making and immediate reporting of instances of undue influence.

- F. The Board and/or its committees will establish a schedule of closed session meetings with selected executives, i.e., those making frequent reports to Board, including the Chief Investment Officer.

The Chief Counsel position has significant obligations and responsibilities to staff and the Boards, and there is not one reporting structure which is clearly superior to the other. Indeed, most of the considerations relating to independence, autonomy, checks and balances can be argued both as an advantage and disadvantage as it relates to the position reporting to the CEO or the Boards. For this reason, it seems the “best practice” with regard to the reporting of the Chief Counsel is selecting a structure that promotes high performance with high integrity.

Summary

The Boards have the authority under Section 31522.4 to change the reporting structure of the Chief Counsel position. There are three possible reporting structures for the Board to consider for the Chief Counsel position: 1) Chief Counsel report to the CEO; 2) Chief Counsel assigned to report jointly to the BOR and BOI; or 3) Chief Counsel report to the CEO and have a formal policy that requires the CEO to seek the input from the Boards with regard to hiring, evaluation and termination.

The purpose of this memorandum is to provide you with some background of the Chief Counsel position at LACERA and to give you feedback as to LACERA staff, other systems practices and best practices. With regard to conflicts, ethics and fiduciary duty, Harvey Leiderman is preparing a separate memorandum covering these issues.

Attachments

c: Robert Hill
James Brekk
Jonathan Gabel
John Popowich
Bernie Buenaflor
Harvey Leiderman
Fern Billingsy
Frank Boyd
Michael Herrera
Christine Roseland
John Nogales
Annette Cleary

October 2, 2017

TO: Each Member,
Board of Investments

Each Member,
Board of Retirement

FROM: Steven P. Rice *SPR*
Chief Counsel

FOR: October 11, 2017 Board of Investments Meeting
October 12, 2017 Board of Retirement Meeting

SUBJECT: **REPORT ON WORK PLAN FOR PROPOSAL THAT CHIEF COUNSEL
REPORT JOINTLY TO BOARD OF RETIREMENT AND BOARD OF
INVESTMENTS**

The Joint Organizational Governance Committee (JOGC), on August 28, 2017, directed the JOGC Chair to work with Staff to develop a proposal that LACERA's Chief Counsel report jointly to the Board of Retirement (BOR) and Board of Investments (BOR) (collectively, Boards). This memo reports to the Boards on Staff's work plan with regard to the issue. No action is required at this time.

LEGAL AUTHORITY

A. Chief Counsel Role.

Government Code Section 31529.1 is a LACERA-specific provision providing that the Boards "may elect to secure legal representation, on such matters as the board of retirement or the board of investments may specify, from other than county counsel. The cost of legal representation shall not exceed one-hundredth of 1 percent of system assets in any budget year." Many years ago, under authority of Section 31529.1, the Boards authorized an in house LACERA legal department, led by the Chief Counsel.

The job classification for the Chief Counsel position broadly states that Chief Counsel "Serves as general counsel to the Los Angeles County Employees Retirement Association (LACERA)." The classification provides examples of the essential job functions, including: providing "legal advice during public and closed sessions of" the Boards; providing "advice and assistance on legal problems within the other divisions of LACERA;" conferring "with the Chief Executive Officer, and LACERA management staff;" directing "the work of divisional counsel;" and coordinating "the work of outside counsel." This description captures the broad mandate of the Chief Counsel to advise the Boards and Staff and oversee the resources necessary to accomplish that goal.

Chief Counsel owes a duty to LACERA, as an organization, including the Boards and Staff. LACERA and Staff act in furtherance of the same fiduciary duties described for the Boards under the California Constitution, Article XVI, Section 17 (see below).

B. Appointment of Chief Counsel and Civil Service Status.

Under Government Code Section 31522.4, the Boards may elect to appoint a chief legal officer; the position must be included in the Los Angeles County Salary Ordinance. Appointees under Section 31522.4 need not be subject to the County Civil Service Rules and may serve at the will of the Boards. However, the LACERA Boards elected to delegate their appointing authority under Section 31522.4 to the Chief Executive Officer (CEO); the Boards also determined that the Chief Counsel position is a civil service position subject to the Civil Service Rules.

These decisions are confirmed in the County Code. Section 6.127.040 B 1 of the Los Angeles County Salary Ordinance provides that the CEO is the "Appointing Authority" for the Chief Counsel and other staff; other sections of the Salary Ordinance provide that salary determinations, discipline, and dismissal are functions of the Appointing Authority. The published Class Specification for the Chief Counsel position provides that the Chief Counsel reports to the CEO. The Table of Classes of Positions in Section 6.28.050 of the Salary Ordinance shows that it is a classified position. Classified positions are subject to the Civil Service Rules in Appendix 1 to Title 5 of the County Code.

The Boards have the authority under Section 31522.4 to change the reporting structure. By action of both Boards, and with the approval of the Board of Supervisors as to necessary Salary Ordinance changes, the Chief Counsel may be assigned to report jointly to the BOR and BOI, as proposed. Under Section 31522.4, the Boards also have the authority to change the civil service status of the Chief Counsel by creating a new unclassified position that would be applicable prospectively as to future holders of the Chief Counsel position.

C. Fiduciary Standards.

In considering a change in the Chief Counsel reporting structure, the Boards will exercise their plenary authority and discretion over administration of the system and their fiduciary duties of prudence and loyalty under Article XVI, Section 17 of the Constitution and Government Code Section 31595.

Article XVI, Section 17 provides, in relevant part:

- (a) The retirement board of a public pension or retirement system shall have the sole and exclusive fiduciary responsibility over the assets of the public pension or

retirement system. The retirement board shall also have sole and exclusive responsibility to administer the system in a manner that will assure prompt delivery of benefits and related services to the participants and their beneficiaries. The assets of a public pension or retirement system are trust funds and shall be held for the exclusive purposes of providing benefits to participants in the pension or retirement system and their beneficiaries and defraying reasonable expenses of administering the system.

(b) The members of the retirement board of a public pension or retirement system shall discharge their duties with respect to the system solely in the interest of, and for the exclusive purposes of providing benefits to, participants and their beneficiaries, minimizing employer contributions thereto, and defraying reasonable expenses of administering the system. A retirement board's duty to its participants and their beneficiaries shall take precedence over any other duty.

(c) The members of the retirement board of a public pension or retirement system shall discharge their duties with respect to the system with the care, skill, prudence, and diligence under the circumstances then prevailing that a prudent person acting in a like capacity and familiar with these matters would use in the conduct of an enterprise of a like character and with like aims.

Section 31595 contains similar language.

WORK PLAN

The proposed change represents a major shift in LACERA's longstanding governance model. The change affects many existing LACERA governance documents, policies, procedures, and practices. Accordingly, the change should be considered by means of a careful, deliberate, and thorough process that will enable potential issues to be identified, discussed, and addressed up front before the change is effective, if approved, and that is consistent with the Boards' fiduciary duties as outlined above.

Staff has considered the issues involved in the proposed change and will employ the following work plan in evaluating the issues and then presenting the proposal for discussion and action to the JOGC, the LACERA Boards, and ultimately the Board of Supervisors. The tasks and completion dates will be modified as needed based on information obtained as the process moves forward. However, it is reasonable for the Boards to expect that all tasks will be completed in time to permit implementation, if the proposal is approved, on July 1, 2018, which is the beginning of the 2018-2019 fiscal year and is also the beginning of the Staff Evaluation Year:

///

TASK	COMPLETION
<p>Step 1: Staff Analysis</p> <ul style="list-style-type: none"> • The Role of Chief Counsel and the Legal Division • Survey of Peer Systems • 2008 LACERA Fiduciary Review by EnnisKnupp & Associates • Review of Available Literature on Best Practices, including Stanford's Clapman Report on Public Pension Governance, AFSCME Best Pension Practices Report, San Diego City Pension Governance Reports, and Others • Ethics and Conflict of Interest Issues • Review and Analysis of Fiduciary Issues and Implications in Performing Appointing Authority Role <ul style="list-style-type: none"> ○ Independence ○ Checks and Balances • Review of Civil Service Considerations <ul style="list-style-type: none"> ○ New Unclassified Position? • Elements of Appointing Authority's Responsibilities <ul style="list-style-type: none"> ○ Hiring ○ Performance Standards ○ Goals ○ Supervision and Monitoring ○ Evaluation ○ Feedback ○ Compensation Setting ○ Discipline • Ramifications of Dual Board Reporting Structure, Including Coordination of Board Evaluations • Effect on Chief Counsel Supervision of Legal Division Staff, including Administrative Policies and Procedures • Effect on Chief Counsel Responsibilities for Counseling the Boards 	<p>November 2017</p>

<ul style="list-style-type: none"> • Effect on Chief Counsel Responsibilities for Counseling Staff on LACERA Administration, Including Benefits, Disabilities, Investments, Human Resources, Facilities Management, Cybersecurity, Audit, Compliance, and Other Functions of LACERA's Divisions and Business Units • Review and Analysis of Relevant Existing Documents, including Class Specification, JOGC Charter, Board Charters, and Other LACERA and Board Policies and Procedures • Consultation with Legal Division Staff • Consultation with CEO • Consultation with Outside Fiduciary Counsel <ul style="list-style-type: none"> ○ Implications of Fiduciary Counsel Policy 	
<p>Step 2: Draft Supporting Documents</p> <ul style="list-style-type: none"> • Class Specification • Salary Ordinance • JOGC Charter • Board Charters and Other Governance Documents • New Legal Division Charter • New Board Policy Setting Forth Hiring, Supervision, Reporting, Evaluation, and Discipline Standards and Processes • Other Documents, As Needed 	January 2018
<p>Step 3: JOGC Discussion and Recommendation</p>	March 2018
<p>Step 4: BOR and BOI Discussion and Action, If Recommended by JOGC</p> <ul style="list-style-type: none"> • Joint Meeting, which will also include proposed Chief Investment Officer reporting change 	April 2018
<p>Step 5: Board of Supervisors Approval of Salary Ordinance Changes, If Approved by LACERA Boards</p>	June 2018
<p>Step 6: Implementation, If Approved</p>	July 1, 2018

CONCLUSION

Staff believes this plan is prudent and will facilitate full and deliberate consideration of all the issues associated with this major proposed change and a smooth implementation, if

Work Plan re Chief Counsel Reporting Proposal
October 2, 2017
Page 6

the change is approved. Staff will report back to the Boards monthly as to the progress on the work plan.

cc. Robert Hill
James Brekk
Jonathan Grabel
John Popowich
Bernie Buenaflor
Johanna Fontenot
Fern Billingsy
Frank Boyd
Michael Herrera
Christine Roseland
John Nogales
Annette Cleary

Attachment B

Fiduciary Counsel Memorandum

From: Harvey L. Leiderman
 Direct Phone: +1 415 659 5914
 Email: HLeiderman@reedsmith.com

Reed Smith LLP
 101 Second Street
 Suite 1800
 San Francisco, CA 94105-3659
 +1 415 543 8700
 Fax +1 415 391 8269
 reedsmith.com

To: Joint Organizational Governance Committee of the
 Board of Retirement and Board of Investments
 Los Angeles County Employees Retirement Association

Date: December 1, 2017

Subject: Reporting Responsibilities of Chief Counsel and Chief Investment Officer

The Joint Organizational Governance Committee (JOGC) is considering the appropriate lines of reporting for the LACERA executive positions of Chief Counsel and Chief Investment Officer. The JOGC has approved a Staff Work Plan for considering the various governance, legal and implementation aspects of the issue for each position. We will endeavor not to repeat Staff’s analysis here; rather, the purpose of this Memorandum is to offer a fiduciary perspective as the JOGC considers its recommendations to the two Boards.

Because the considerations applicable to one position can inform our thinking about the other position, we will address them separately but together in this one Memorandum. ¹

CHIEF COUNSEL

LACERA has appointed a Chief Counsel pursuant to Secs. 31522.4 and 31529.1 of the County Employees Retirement Law of 1937, Government Code sections 31450, et seq. (CERL). Although under CERL the Boards are the appointing authority for the Chief Counsel position, the Boards have delegated that authority to the Retirement Administrator (Chief Executive Officer, or CEO), and that delegation is reflected in the County Code adopted by the County Board of Supervisors at Sec. 6.127.040 B 1.

By law and the rules governing the practice of law in California, the client of the Chief Counsel is the retirement system, LACERA, as directed by its “highest authorized ...body.” Rule 3-600, CA Rules of Professional Conduct. In the unique case of LACERA, the role of the “highest authorized body” is shared by the Board of Retirement and the Board of Investments. Govt. Code. Sec. 31520.2; *see also*, CERL Sec. 31459.1. Together, the Boards have plenary authority and fiduciary responsibility for administering the retirement system. CA Const. Art. XVI, sec. 17. In connection with their administration of the system, the Boards have chosen to delegate substantial fiduciary responsibilities to attorneys, employed both in the office of the Chief Counsel and in private practice. Govt. Code sec.

¹ In this Memorandum we refer to the job descriptions for the Chief Executive Officer, Chief Counsel and Chief Investment Officer posted on the LACERA website. For convenience, a copy of the CEO job description is attached to this Memorandum; copies of the other two are attached to Staff’s Memoranda reporting on the results of its Work Plans.

31529.6. All such attorneys owe a fiduciary responsibility to the system and its members and beneficiaries. Further, the Chief Counsel is a “public official who manages public investments” under section 87200 of the state Political Reform Act (Govt. Code secs. 81000 *et seq.*), with all of the fiduciary obligations that Act imposes.

The right to choose counsel enjoys special recognition under California (and common) law. That choice includes establishing the scope of counsel’s representation. Absent engaging in criminal or unethical activity, a client has an absolute right to instruct counsel on all aspects of counsel’s engagement.

Notwithstanding the Boards’ absolute legal authority to administer the retirement system, as a practical matter the Boards cannot effectively administer the day-to-day operations of a \$50 billion retirement system, with over 160,000 members and a staff of some 430 employees. Nor would it be prudent to try to do so. As high-functioning Boards, you rightly focus your attention on setting overall strategic policy for every aspect of the retirement system, and expect staff to implement those policies on a tactical basis. You then periodically verify that your policies have been effectively carried out by staff.

A critical role of Chief Counsel in a complex public agency like LACERA is to be an advisor and counselor on all aspects of the law applicable to the delegated administration of the retirement system. These responsibilities include serving as a resource on legal and ethical obligations for the administrative staff to whom the Board has delegated day-to-day responsibilities to administer the system, consistent with the Board’s policies and procedures, and the legal requirements applicable to public employee retirement systems in general and LACERA specifically. Those responsibilities span the spectrum from benefit and health care administration, disabilities, investments, premises, security, audit and compliance, federal tax law, litigation, risk management, information technology, contracting, human resources, labor relations, finance, ethics, member, plan and public communications and more. In order to effectively perform these functions, the Chief Counsel manages a Legal Division employing several professionals and supporting staff, all of whom are devoted to “accomplishing the necessary work of the boards.” CERL sec. 31522.1.

In addition, the Chief Counsel performs key services directly for the Boards and its committees. Despite the fact that the Boards and committees meet, at most, only once or twice a month, the role of legal advisor to the Boards and its committees is on-going, both on procedural and substantive matters. Procedural advice includes agenda-setting, preparing minutes, observing procedures and by-laws, advising on open meeting (Brown Act) requirements, and watching for potential conflicts of interest. Substantive counsel includes presenting securities litigation opportunities and updates, advising on member appeals, reporting on staff activities, risk monitoring and mitigation, preparing compliance updates and the like. All of these activities help the Boards discharge their duty of prudence by establishing sound processes designed to assist the Board in exercising its fiduciary oversight role.

In a modern, complex public pension fund, we believe that Chief Counsel's availability as a resource to the staff that administers the fund is every bit as mission critical to the governing boards' ability to prudently administer the system as is providing direct counsel to those boards. Pension administrations that lack a strong and present legal advisor in the "C-suite" often find themselves struggling with fear, uncertainty and doubt over the conduct of their businesses, hampering the ability of the board to manage the system. Member service suffers and errors proliferate. Staff inertia can lead to missed investment opportunities and heightened risks. Boards get hit by costly surprises that have not been adequately anticipated by staff. In our experience a highly trained and accessible in-house chief counsel open and available to retirement staff is an essential resource for successfully fulfilling the board's important fiduciary duties. And where the Boards are also advised by independent Fiduciary Counsel, the opportunity to assure staff of strong and capable legal resources internally can truly improve the overall functioning of the system.

In this manner, Chief Counsel and the Legal Division assist the Boards in carrying out all of their fiduciary duties: The duty to administer the system solely for the benefit of LACERA's members and beneficiaries; the duty to use system assets to pay correct amounts of benefits to those entitled to them, without incurring unreasonable expenses; the duty to follow rules and procedures, checks and balances in order to prudently manage the system; and, of course, the duty to follow the law.

As the Boards consider options for changing the reporting line for the Chief Counsel, we encourage the Boards to clarify what exactly they mean by "reporting." The foregoing discussion focuses on the functional aspects of the Chief Counsel's job. As shown, the Chief Counsel functions as an advisor both to the retirement staff and to the retirement and investment Boards, but always serving the same master. Functionally, the Chief Counsel "reports" to both the CEO, as the chief administrative officer, and to the Boards, as the "highest authorized body" of the retirement system. Regardless of the color, thickness or direction of the particular lines that may appear on the system's organization chart, ultimately LACERA's Chief Counsel already reports to the Boards.²

If by "reporting," however, the intent is to assure the Boards that Chief Counsel will be as responsive to their direction and needs as the position is to the CEO, and will recognize the Boards as the highest authorized bodies of the organization, we think that assurance can be achieved without the time, expense and uncertainty of trying to change the CERL or the County Code. The easiest and most effective change to the current status would be to enhance the Boards' preeminence through a simple change in the Chief Counsel's and CEO's job descriptions. The change would recognize that the Boards seek a closer, more independent and responsive relationship with counsel appointed to advise them and to carry out their fiduciary responsibilities, while not degrading in any manner his or her accessibility or effectiveness with retirement staff. The change could come in the form of (1) an addition to the Chief Counsel's job description,³ and (2) a direction to the CEO that in hiring, firing, compensating and

² Ironically, we note that the current organization chart posted on the LACERA website omits the two Boards entirely. *See*, https://www.lacera.com/about_lacera/organizational_chart.html.

³ Currently the only reference to the Boards in the Chief Counsel's job description is: "Provides legal advice during public and closed sessions of the Board of Retirement and Board of Investments."

evaluating the Chief Counsel, the CEO will consult with the Boards. These changes could be accomplished by action of the Boards alone, since the Boards have complete authority to administer the retirement system, including, ultimately, the evaluation and appointment of the CEO, an at-will position that serves at the pleasure of the Boards. CERL sec. 31522.1; County Code secs. 6.127.020, 6.127.040 E(2)b (“In the case of the retirement administrator, the evaluation shall be in accordance with the procedures established by the board of retirement and board of investments jointly.”) *See also* Division 7 of the Board of Retirement Policies and Procedures Manual.

If this is the Boards’ goal, we would recommend adding the following language to the job description of the Chief Counsel:

Recognizing that the Board of Retirement and Board of Investments are the highest authorized bodies of the retirement system, provides independent advice and assistance on legal issues to the Boards and their members.

And we would recommend adding the following language to the job description of the CEO:

Selects and evaluates LACERA’s Chief Counsel, with the input of the governing Boards.

CHIEF INVESTMENT OFFICER

The Boards have the fundamental fiduciary duties to hold and expend the plan’s funds solely in the interest of the members and beneficiaries, to prudently manage the plan and to diversify the assets so as to minimize the risk of loss and maximize the rate of return. Cal. Const. Art. XVI sec. 17(a), (c), (d). In order to accomplish the necessary work of the fund, the Boards delegate many of their responsibilities to others, reserving to themselves the power and ability to monitor their delegations and make changes in the investment program.

LACERA’s Chief Investment Officer (CIO) has a direct delegation of responsibilities from the Boards. The position is appointed by the two Boards (Govt. Code sec. 31522.4) but primarily serves to execute on the strategic investment plan determined by the Board of Investments. *See*, CIO job description, which identifies the direct relationship with the Board of Investments:

The Chief Investment Officer is regarded as the investments expert for the Board of Investments (Board), acting as advisor on all matters involving the investment or the proposed investment of Los Angeles County Employees Retirement Association (LACERA) assets.

This unclassified position reports to the Chief Executive Officer, LACERA and is found in LACERA and is distinguished by its responsibility for directing the implementation of LACERA’s investment policies and programs adopted by the Board; monitoring and supervising the management of LACERA’s portfolio which includes Fixed Income, Equities, Real Estate, and Alternative Investments and ensuring the efficient utilization of investment funds, in accordance with the policies and decisions of the Board.

The balance of the job description is highlighted by several direct references to the CIO's obligations to the Board of Investments. And unlike the Chief Counsel, the primary work of the CIO is to advise the Board, notwithstanding that "this unclassified position reports to the Chief Executive Officer." The CIO, in conjunction with investment consultants, updates the Board regularly on the performance of the portfolio, the risk/reward balance of the investment program, capital markets projections, peer comparisons, market risks and opportunities, and rebalancing.

The duties of the CIO directly descend from the Board of Investments. Contrast that with the duties of the Chief Counsel, whose responsibilities run both to supporting organizational activities the Boards have delegated to others and supporting the Boards directly.

Public retirement boards frequently reexamine whether the CIO should "report" directly to the board or to the chief executive officer. In our experience, this is more often than not a reflection of the unique interpersonal relationships among the board, the CEO and the CIO – and is usually triggered because something in those relationships has gone awry. Most boards end up where they began, however, with the CIO continuing to report directly to the CEO for organizational management reasons. Once again, we ask the Boards to determine what you would want to accomplish by altering the "reporting" of the LACERA CIO. The CIO is the expert to whom the Board directly delegates its fiduciary responsibilities. Of course, the CIO also oversees and administers an Investment Division with dozens of employees. To this extent the CIO necessarily reports to the CEO as a matter of administrative effectiveness. That the CIO "reports" to the CEO for administrative purposes (personnel and HR needs, facilities needs and management, resources, budgeting and the like) should not detract from the fact that the CIO also "reports" to the Board on the substantive scope of his or her job duties.

Once again, perhaps less is more. Should the Boards seek clearer recognition of the direct line between them and the CIO's responsibilities, with enhanced communication and independence from the CEO on investment affairs, that direction can be added to the CIO's job description. Before proceeding with any material change in reporting, however, we suggest that the Boards consult with the current CIO (who recently accepted the position on the basis of certain understandings) and with the soon-to-be-appointed CEO when that person arrives at LACERA. To a very large extent, we have found that improved communications among pension fund executives is more a function of personality, commitment and desire rather than of organization charts. We think that the "reporting" goal can best be achieved by the Board clearly articulating its expectations directly to the CIO, rather than through formal charts and job descriptions.

We will be available at the December 13, 2017 JOGC meeting to address any questions or comments you may have.



Chief Counsel, LACERA

Class Code:
9216

Bargaining Unit: Non-represented (exempt)

LACERA
Revision Date: Dec 6, 2004

SALARY RANGE

\$13,986.60 - \$21,169.86 Monthly
\$167,839.20 - \$254,038.32 Annually

DEFINITION:

Serves as general counsel to the Los Angeles County Employees Retirement Association (LACERA).

POSITION INFORMATION:

This one position class reports to the Chief Executive Officer and has complete responsibility for planning, directing and evaluating all operations of the Legal Division. This position also carries out special assignments as directed by the Chief Executive Officer.

EXAMPLES OF ESSENTIAL JOB FUNCTIONS:

Provides legal advice during public and closed sessions of the Board of Retirement and Board of Investments.

Formulates and directs the execution of divisional policy and evaluates work accomplished.

Directs the work of divisional counsel in trying civil cases in which LACERA or its officers and employees are parties; assumes responsibility for litigation as may be necessary.

Directs the work of division counsel in drafting contracts, resolutions, opinions, and other documents.

Provides advice and assistance on legal problems within the other divisions of LACERA; confers with the Chief Executive Officer, and LACERA management staff on special legal problems.

Coordinates and oversees the work of outside counsel, verifies and controls fees paid.

Oversees the analysis of State and Federal legislation which may impact LACERA; supervises the drafting of legislation sponsored by LACERA.

Develops the division's goals and directs the preparation of the budget.

As directed by the Chief Executive Officer may attend or serve on outside committees and associations as may benefit LACERA.

REQUIREMENTS:

Demonstrated knowledge, skills, and abilities required in managing a legal division of a local, state, or federal public agency. Demonstrated success in the preparation for and trial of civil suits and the provision of legal advice to government officials. Demonstrated ability to work with elected and appointed officials and agency staff.

LICENSE:

Admission to practice law in all courts of California. A valid California Class C Driver License or the ability to utilize an alternative method of transportation when needed to carry out job-related essential functions.