

BYLAWS

OF THE

BOARD OF RETIREMENT

OF THE

SONOMA COUNTY EMPLOYEES' RETIREMENT

ASSOCIATION

(Includes Amendments to 06/21/11)

SONOMA COUNTY EMPLOYEES' RETIREMENT ASSOCIATION

BYLAWS

I. ADMINISTRATION

A. Adoption of Regulations

These regulations, adopted pursuant to Section 31525 of the Government Code of the State of California, when approved by the Board of Supervisors of the County of Sonoma, shall be the official regulations of the Sonoma County Board of Retirement, shall be in full force and effect from the date of approval and shall repeal any and all previously promulgated regulations which may be in conflict.

B. Name

The name of this association is the Sonoma County Employees' Retirement Association (SCERA).

C. Management

The Board of Retirement shall be responsible for the management of SCERA.

D. Officers

At the first regular meeting in January, the Board shall elect one of its members Chair and one of its members Vice-Chair. The Chair and Vice-Chair shall hold office for a term of one year or until his or her successor is duly elected or appointed and qualified. The Retirement Administrator shall serve as the Secretary to the Board.

II. BOARD MEETINGS

A. Regular Meetings

Regular Board meetings shall be held on the third Thursday in each month at the SCERA office at 433 Aviation Boulevard, Suite 100, Santa Rosa, CA, unless otherwise specified in the posted agenda.

B. Special Meetings

Special meetings of the Board may be called at any time by the Chair or by a majority of the Board as permitted by law.

III. RULES OF ORDER

A. Roberts' "Rules of Order"

Roberts' "Rules of Order", except as otherwise provided, shall guide the Board of Retirement in its proceedings.

B. Quorum

A majority of the members of the Board or its standing committees respectively shall constitute a quorum. No motion may be passed or business transacted without the affirmative vote of the majority of the members of the Board in attendance.

C. Communications

Communications and requests to the Board shall be made in writing. The substance of such request and the action of the Board shall be noted in the minutes.

D. Minutes

The Secretary or a designee shall cause to be recorded in the minutes the time and place of each meeting of the Board, the names of members present, all official acts of the Board, the votes given by members of the Board except where the action is unanimous and, when requested, a member's dissent or approval with the reasons. The Secretary shall cause the minutes to be drafted and presented for approval at the next regular meeting. The minutes or a true copy, submitted by the Secretary and signed by the Chair, shall form part of the permanent records of the Board.

IV. MEMBERSHIP

A. Sworn Statement

Every employee of the County of Sonoma shall, upon his entry into SCERA, fill out and execute a Member's Enrollment Affidavit. Such affidavit, properly sworn to, is hereby adopted as the official SCERA Sworn Statement. The County Auditor may withhold all payments of the employee's compensation until the employee has complied with this rule.

B. Form of Annuity Certificate

The Board shall issue an appropriate form of annuity certificate to qualified retired employees.

IV. MEMBERSHIP, continued

C. Temporary, Seasonal, Intermittent, Part-Time and CETA Participant Employees

Temporary employees, seasonal employees, intermittent employees, part-time employees working less than 40 hours bi-weekly (50% of full-time) in a permanent position and CETA participant employees are excluded and exempt from membership in SCERA. For purposes of these Bylaws, "CETA Participant" employees are all County employees whose salary and benefits are subsidized through Federal employment and training programs under the Comprehensive Employment Training Act (CETA) or its successors, excluding, however, those employees occupying permanently allocated County positions.

D. Compulsory Membership

Any employee of the County of Sonoma (or any employee of any district who has joined SCERA) who is eligible for membership shall be considered to be a member on the first day of eligible employment.

1. Reciprocal employees, for the purpose of these Bylaws, shall be construed as being those employees who become members of SCERA within six months of last rendering service in another California public retirement system subject to the conditions of GC Section 31840.2. Notwithstanding GC Section 31527(h), a member claiming reciprocity shall allow the Board to coordinate with the member's previous retirement association in establishing the dates of membership and termination so that there is no overlap of membership between the two systems. SCERA will adjust the membership date if necessary to allow for the development of reciprocity, provided that date shall be no later than 12 weeks after the member's entrance into SCERA covered employment and no earlier than 12 weeks prior to the member's termination from SCERA covered employment and provided that the member's entrance or termination to be adjusted is after December 31, 2010.
2. Temporary employees, for the purpose of these Bylaws, shall be construed as being those appointed for temporary service and those employees who are appointed as provisional employees except where the provisional employee is already a member of the system.
3. Seasonal employees, for the purpose of these Bylaws, shall mean employees whose service for the County or district is at certain specified periods each year or every second year
4. Intermittent employees, for the purpose of these Bylaws, shall mean employees whose service for the County or district is not regular in nature, but periodic and recurrent at intervals.

IV. MEMBERSHIP, continued

D. Compulsory Membership, continued

5. Part-time employees, for the purpose of these Bylaws, shall mean employees whose scheduled service for the County or district requires for the performance of duties less than 50% of the full standard hours required in County service.
6. A newly hired employee, age 60 or over, shall have the privilege of waiving membership in accordance with the provisions of Government Code (GC) Section 31552.
7. Elected officers shall file a declaration with the Board to become a member in accordance with the provisions of Government Code Section 31553.

V. MEMBER'S CONTRIBUTIONS

The normal rates of contributions of employees shall be based upon age at the nearest birthday at time of entrance into SCERA.

A. Normal Contributions

Contributions shall be based on the compensation earned and shall be deducted only for the hours during which service for compensation is rendered; however, if the amount of the warrant should be less than the contributions, the deduction shall be made from the succeeding warrant.

B. Deposit of Contributions for Part-time, Temporary, Seasonal, Intermittent Service

Where County service, prior to membership in SCERA, was rendered on a part-time, temporary, seasonal, or intermittent basis and the employee desires to receive credit for such service and elects to pay into the association the contributions he would have made had he been a member for that service approved by the Board, employee may pay for such service by lump sum or by installment payments over a length of time not to exceed the length of the period of service being purchased.

Any member seeking credit for temporary, part-time, or seasonal (intermittent) employment shall be responsible for providing proof of the nature of such employment and its relationship to regular full time employment. Certification of such credit must be requested from the Sonoma County Auditor-Payroll Division.

All payments are to be made prior to the date of retirement.

V. MEMBER'S CONTRIBUTIONS, continued

C. Withdrawals

A member, because of termination of membership in SCERA, may withdraw their accumulated contributions together with the interest accrued to their account. In order to withdraw tax deferred contributions and interest, the erstwhile member cannot be employed by Sonoma County in any capacity.

D. Redeposit of Contributions Withdrawn

A member may redeposit accumulated contributions previously withdrawn at any time prior to his or her retirement date. Redeposit may be made by lump sum, or by installment payments over a length of time not to exceed the length of the period of service being redeposited. Regular interest is charged thereon for the period from the date of separation from the retirement system until the required redeposit amount has been paid.

E. Dormant Account Trust Fund (Deleted 2009)

VI. SERVICE CREDIT

A. Service

These Bylaws recognize that under the Retirement Act a system is contemplated in which the employees of certain public agencies, namely the County itself and certain districts within the County, will receive benefits based on credit for service.

Service rendered prior to the time that the employee becomes a member of SCERA shall be known as prior service. In addition, service rendered to such employer after the individual becomes a member of SCERA shall be referred to as current service.

B. Prior Service (Deleted 2009)

C. Delayed Current Service (Deleted 2009)

D. Credit for Prior Service (Deleted 2009)

E. Credit for Service Prior to Membership

An individual may receive prior service credit by compliance with the provisions of the following Government Code Sections 31641.5, 31641.56, 31641.6, 31648, 31648.5, and 31649, by paying the sums required by those sections, subject to those provisions in those instances in which law permits such employee contributions to be paid by the employer. For purposes of Section 31648, members brought into the system shall have the privilege of making employees' contributions to obtain credit for County service rendered prior to membership by making a payment at any time prior to retirement.

VI. SERVICE CREDIT, continued

F. Current Service Calculations – Credit

Current service credit shall be given for the eligible time in pay status for which a contribution is made by the employee to SCERA.

G. Leave of Absence Without Pay – Contributions and Service Credit

In the event that any member in any regular pay period has a leave of absence without pay due to own illness, injury/maternity leave (not bonding time) or military leave (active duty), a contribution will be taken and service credit will be given for the eligible time in pay status. The right to pay for time representing a leave of absence without pay shall nevertheless be subject to the provisions of GC Section 31646 (illness) and, hence, if the employee does not return to County service following conclusion of such leave of absence, employee shall be denied service credit for the time represented by the leave of absence without pay.

H. Purchase of Service Under AB 131 (Deleted 2009)

I. Purchase of Service (Plan to Plan Transfers and Rollovers)

1. Governing Document

The By-laws of the Sonoma County Employees' Retirement Association ("SCERA") for accepting funds for redeposits and purchase of service shall include the rules set out herein. These rules shall be made available to all active, inter-system, and deferred members of SCERA, along with all other documents that govern the operation of the system.

2. Compliance with AB 1122

Effective April, 2002, the California Legislature enacted AB 1122 in order to bring the provisions of California law into conformance with the Federal Economic Growth and Tax Relief Reconciliation Act of 2001. These rules are adopted by SCERA in order to comply with the rules of AB 1122. To the extent that they are contrary to any other rules of SCERA, these rules shall govern. Nothing in these rules shall authorize a member to make a redeposit or purchase service credit in circumstances under which a redeposit or purchase cannot otherwise occur under SCERA.

Nothing contained herein shall require SCERA to take any action that would jeopardize the tax qualified status of the system.

VI. SERVICE CREDIT, continued

I. Purchase of Service (Plan to Plan Transfers and Rollovers), continued

3. Operational Dates

These rules are effective as of the date that they are adopted by the SCERA Retirement Board.

4. Eligible Members

SCERA members who are in active, deferred or inter-system status may purchase service credit or make deposits in accordance with these rules. These members are called "Eligible Members" under this section. No other person is eligible to purchase service credit or make redeposits under this section.

5. Source of Funds for Purchase or Redeposit

a. EGTRRA

Any Eligible Member may purchase service credit or make a redeposit in accordance with the governing rules of SCERA, by the purchase deadline, if he or she does so with funds that qualify for rollover or trust to trust transfer under the Economic Growth and Tax Relief Reconciliation Act of 2001 ("EGTRRA").

b. Evidence of Source of Funds

An Eligible Member shall provide to SCERA the written certification from the administrator of the eligible plan, that

- i. the plan meets the requirements for an eligible plan under the Code; and
- ii. that the funds are paid either as an eligible rollover distribution or as an eligible trustee to trustee transfer under the Code.

Any funds paid or transferred to SCERA to purchase service under this section shall be by check, made payable to Sonoma County Employees' Retirement Association "for the benefit of" (FBO) the named member.

VI. SERVICE CREDIT, continued

I. Purchase of Service (Plan to Plan Transfers and Rollovers), continued

6. Tax Limits

a. Section 415(b)

Prior to accepting any funds for redeposit or purchase of service, SCERA shall evaluate whether Section 415(b) of the Code limits the amount of benefits that can be paid by SCERA to the member and shall inform the member of the results and consequences thereof. The employer may have established a replacement benefits plan under Section 415(m) of the Code to pay the difference between the total benefits that can be earned by the member under the retirement plan and the benefits that can be paid by SCERA. In all cases, SCERA shall notify the member that 1) should the benefits from his/her service purchase or redeposit exceed the limits of Section 415 of the Code, the benefits in excess of the Section 415 limits can only be paid, if authorized, by the member's employer from the employer's general assets, which are subject to the claims of its creditors; and 2) the employer is solely responsible for the establishment and administration of the replacement benefits plan and questions regarding the availability and operation of that plan should be directed to the employer.

b. Section 415(n)

Prior to accepting any funds for purchase of service, SCERA shall evaluate whether Section 415(n) of the Code limits the amount of benefits that can be purchased under the system by the member and shall inform the member of the results and consequences thereof. In all cases, SCERA shall notify the member that 1) should the benefits from his/her service purchase or redeposit exceed the limits of Section 415 of the Code, the benefits in excess of the Section 415 limits can only be paid, if authorized, by the member's employer from the employer's general assets, which are subject to the claims of its creditors; and 2) the employer is solely responsible for the establishment and administration of the replacement benefits plan and questions regarding the availability and operation of that plan should be directed to the employer.

c. 10% Penalty Tax

Prior to accepting any funds under this section from a Section 457 plan, SCERA shall inform the member that, after receipt of such funds, the member could become subject to an extra 10% Federal income tax penalty with respect to such funds.

7. Effective Date of Additional Benefits

Additional benefits obtained through redeposit or purchase of service credit under this section shall begin as of the first date of the member's retirement under SCERA.

VI. SERVICE CREDIT, continued

I. Purchase of Service (Plan to Plan Transfers and Rollovers), continued

8. Interest on Payment by Member

The amount payable for redeposit or purchase of service under this section shall bear interest until the date of repayment as generally provided for under SCERA's rules for redeposit or purchase of service credit

9. Correction of Errors

The SCERA Administrator shall have full authority to take whatever actions are necessary or appropriate to correct any errors in the administration of this section, including but not limited to, repayment of excess transfers or rollovers, reduction of the amount of service credit purchased or collection of overpayments.

VII. COMPENSATION EARNABLE

A. Salaried Employees

Compensation earnable shall be the regular hourly compensation on the basis of 2,087.12 hours per year plus the amount of eligible buy back time.

B. Regular Compensation

Regular compensation shall be construed as base pay plus eligible premium pay excluding overtime or special hours.

C. Calculations for Broken Periods

When computing services for a broken period, the fraction of a year of such service shall be determined as follows:

Per Diem and Hourly Employees: Compensation earnable shall be the regular hourly rate X 80 hours for each bi-weekly pay period or 2,087.12 hours for one year of service credit.

D. Calculations for Broken Periods continued

No member will be credited for more than one year of service in any one fiscal year.

E. Earnings Limits (Internal Revenue Code - 401(a)(17))

Eligible earnings for the calculation of a retirement benefit are limited by this Internal Revenue Code section.

VIII. BOARD ELIGIBILITY AND ELECTION

Pursuant to GC Section 31520.1, the Board shall be composed of nine (9) members and one alternate.

- A.** Subject to the provisions of Government Code Section 31520.1, any active member of the Sonoma County Employees' Retirement Association shall be eligible to serve on the Board of Retirement of said association unless prohibited by law.
- B.** On or prior to October 1 of each year, the Retirement Administrator shall notify the Board of Supervisors of the County of Sonoma and the County Clerk of said County of the name or names of the Board members for whom successors must be elected the following December. Along with such notice, said Retirement Administrator shall obtain from Information Systems the list of the members of this association as of October 1 of said year who shall be entitled to vote in said election.

In that regard, it is recognized that Government Code Section 31520.1 provides that position nos. 2 and 3 on the Board of Retirement shall be filled by the election of non-safety members and that only non-safety members are eligible to vote for such officers. Position 7, in turn, is a safety member position with safety members voting for the selection thereof. Position 8 shall be filled by the election of a retired member.

- C.** Not less than sixty-five (65) days prior to the election, the Retirement Administrator shall mail or cause to be distributed to each member who is entitled to vote at the forthcoming election, a notice of election, which shall include among other things an election calendar and a statement of the place or places where nomination forms can be obtained.
- D.** A qualified member may be nominated for one of the positions to be filled by filing with the Retirement office a petition bearing not less than five (5) nor more than ten (10) signatures of qualified voters. The nomination petition shall have appended thereto a statement by the nominee indicating his consent to be a candidate. Nominations shall be made upon forms of nominating petition prepared by the Retirement office. A supply of such forms shall be maintained in the Retirement office, and at such other places as the Retirement Administrator shall deem convenient for use by any proposed candidate or his representative. Nominations shall be open for not more than fifty-five (55) nor less than forty (40) days prior to the election.
- E.** The Retirement Administrator shall cause the names of those persons nominated for the Board of Retirement to be printed upon ballots of such form as may be determined by the Retirement Administrator provided that such ballots shall contain blank spaces for write-in candidates.

VIII. BOARD ELIGIBILITY AND ELECTION, continued

- F.** Not less than twenty (20) days prior to the first Tuesday in December of each year, the Retirement Administrator shall mail or cause to be distributed to each member authorized to vote at said election one of said ballots together with a ballot envelope and an identification envelope and instructions for return of same. Said instructions shall indicate that the voted ballot shall be placed in the envelope marked "ballot envelope", or words of like effect, which shall then be sealed; the ballot envelope shall be placed in the identification envelope which shall, in addition to the return address of the Registrar of Voters office, contain provision for the signature of the member and the name of the County Department or district to which he/she belongs, if applicable. Said instructions shall further indicate that said identification envelope containing the ballot envelope and ballot, in order for the ballot to be counted, must be returned to the Registrar of Voters office by 5:00 P.M. on the first Tuesday in December.
- G.** On the day following the first Tuesday in December, the Registrar of Voters shall publicly canvass the returns of said election and the County Clerk shall certify the results thereof to the Board of Retirement and to the Board of Supervisors of the County of Sonoma. The candidate receiving the highest number of votes shall be declared elected except that in addition thereto, at a safety member election, the safety member, if any, who has been nominated in the other safety classification and receives the highest number of votes in such other classification shall be declared the alternate Board member.
- H.** Whenever a deadline for a procedure associated with a Retirement Board election falls on a holiday or weekend, the final day for completion of the procedure affected by the deadline shall be the last business day preceding such deadline.

IX. DISABILITY RETIREMENT

A. Purpose

The purpose of this rule is to provide a procedure for acting upon applications for disability retirement under the County Employees' Retirement Law of 1937, to the end that the application can be expeditiously processed and that when a hearing is to be held, the applicant will have notice of the hearing and an opportunity to appear and present his or her case.

B. Definitions

- 1.** Applicant - Any person who files an application for disability retirement benefits and who is authorized by statute or, pursuant to a valid order of a Court having jurisdiction over the matter, to be party to a disability retirement application to apply for such benefits on his or her own behalf, or on behalf of a member of the retirement system.

IX. DISABILITY RETIREMENT, continued

B. Definitions, continued

2. Application - The written form supplied by the retirement system for the purposes of applying for disability retirement benefits.
3. Party - Any person authorized by statute or authorized pursuant to a valid order of a Court having jurisdiction over the matter to be party to a disability retirement application.
4. Retirement Administrator – The Retirement Administrator of SCERA or his or her designee.

C. Filing of Applications

1. An application for disability retirement benefits shall be filed with the Board. The applicant shall attach to the application any evidence in the form of written medical reports or other documents which will be used by the applicant in support of his application. If such medical reports or documents are not reasonably available to applicant at the time of filing the application, then applicant shall provide such medical reports or documents at the applicant's earliest opportunity.
2. The Retirement Administrator will endeavor to gather all pertinent evidence from the employer and/or other sources in connection with the application.
3. The Retirement Administrator may transmit any evidence gathered in connection with the application to experts qualified to offer opinions on the evidence.
4. Upon request of the Retirement Administrator, the County Health Officer shall advise the Board on medical matters and, if requested by the Board, shall attend its meetings.

D. Dismissal of an Application for Disability Retirement

The failure of an applicant to diligently pursue or prosecute an application may result in the dismissal of the application. Diligently pursuing or prosecuting an application includes, but is not limited to: timely submission of any and all written documentation requested by the Board; compliance with lawful instructions of the Board; and cooperation with the Board staff in obtaining information pertinent to the application. Prior to dismissal of an application for failure to diligently pursue or prosecute, applicant shall be given notice and an opportunity to respond.

E. Addressing the Disability Committee or Board

Upon request, an applicant may address the Disability Committee or Board regarding his/her disability retirement application either personally or through counsel.

IX. DISABILITY RETIREMENT, continued

F. Submission to the Disability Committee

Upon receipt of the evidence submitted by the applicant and the report of the County Health officer, the Retirement Administrator shall submit the application, the evidence submitted by the applicant, and any other evidence gathered by the Administrator to the Disability Committee of the Board.

G. Disability Committee Recommendation

The Disability Committee shall review all evidence submitted and formulate a recommendation to the Board as to whether to preliminarily grant or deny the benefit sought, and shall also formulate recommendations as to the applicability of other County Employees' Retirement Law (CERL) provisions which are pertinent to the application.

H. Submission to the Board

1. The recommendation of the Disability Committee shall be submitted to the Board for its consideration and the Board shall be provided evidence reviewed by the Disability Committee in reaching its recommendation.
2. Upon consideration of the evidence and the recommendation of the Disability Committee, the Board shall reach a preliminary determination to grant or deny the application, or may take other action on the application authorized by law.

I. Notification of Preliminary Determination of the Board and Request for Hearing

The Retirement Administrator shall provide the applicant written notice of the following:

1. The Board's preliminary determination;
2. That if the preliminary determination is to deny the application, then the applicant may demand an evidentiary hearing before a neutral hearing officer;
3. That the applicant may also waive evidentiary hearing;
4. That the right to evidentiary hearing will be deemed waived if the applicant fails to file a written request for hearing with the Retirement Office within two (2) weeks from the date of such notice. In the event applicant waives the right to hearing, then the preliminary determination shall be final.

IX. DISABILITY RETIREMENT, continued

J. Hearings

1. Selection of Neutral Hearing Officer/Referee

When an applicant or party has timely requested a hearing, the party or applicant will be provided a list of qualified referees from which to choose. Upon selection and agreement of the referee to serve, a hearing shall be set within a reasonable time.

2. Notice of Hearing

The applicant or party requesting hearing shall be provided with a Notice of Hearing at least thirty (30) days prior to the date set for hearing, unless Applicant or party consents to later notice. Unless the applicant is represented by counsel, the Notice of Hearing shall be sent by certified mail to the applicant at the address shown by the applicant on the application or at the last known address of the applicant, as disclosed by the records of the Board. The Notice shall specify the time, date, and the place of hearing.

3. Representation by Counsel

Any applicant or party may be represented by legal counsel at any hearing before the Board or referee. After an attorney appears at a hearing on behalf of a party, or after the filing of written notice that an attorney is representing a party, all notices shall thereafter be served upon such counsel.

4. Service

a. When a provision of this Article requires that parties be served, service shall be made upon the Board, respondent's counsel, all parties who have appeared in the subject proceedings, and any parties who have not appeared but have filed a request to be served.

b. If the party to be served has an attorney of record in accordance with subsection (a), service shall be made upon the attorney of record.

c. Unless otherwise provided in these Bylaws, when service is required, service shall be made either personally in a manner permitted under the Code of Civil Procedure for the service of a summons, or by mail in accordance with subsection (d) of this section.

IX. DISABILITY RETIREMENT, continued

J. Hearings, continued

4. Service, continued

- d.** Service by mail shall be affected by sealing the item to be served in an envelope properly addressed to the party to be served and depositing the envelope in the United States mail, with first class postage fully prepaid. Unless otherwise provided in these Bylaws or other applicable law, service by mail shall extend applicable time limitations in the manner prescribed in California Code of Civil Procedure section 1013. For purposes of determining the effectiveness of service upon a party, a mailing shall be deemed "properly addressed" if it bears the address specified on the application, or has been sent to the address of a party's attorney of record.

5. Discovery

- a.** Any party may conduct informal investigation or formal discovery of matters pertinent to an application for disability retirement benefits.
- b.** Such investigation or discovery may consist of informal interviews of witnesses, submission to medical examination, subpoena of documents, or deposition of witnesses.
- c.** Any party may apply to the Board or its designee for issuance of an administrative subpoena or administrative subpoena duces tecum, pursuant to Government Code section 31535.
- d.** Any party conducting discovery, including but not limited to depositions, shall bear any and all costs and fees associated with the discovery, including but not limited to, witness fees, reporter and transcription fees, document costs and cost of service.

6. Depositions of Witnesses

Any party to a hearing may cause the depositions of witnesses to be taken in the manner prescribed by law for depositions in civil actions in the superior courts of California. The parties shall bear their own costs for such depositions. Depositions shall be taken in Santa Rosa, California, unless otherwise stipulated by the parties.

IX. DISABILITY RETIREMENT, continued

J. Hearings, continued

7. Resolution of Discovery Disputes

- a. Disputes regarding depositions or other discovery shall be resolved by the referee.
- b. A motion to compel compliance with discovery shall be made in writing and shall be supported by declarations, a copy of the deposition transcript or subpoena, and a memorandum of points and authorities which includes a proposed resolution of the dispute.
- c. The party resisting discovery may oppose the motion by filing a written opposition with the referee within 14 days of service of the motion. Such opposition shall include a memorandum of points and authorities.
- d. The referee shall prepare a written decision on the motion within 30 days of service of any opposition to the request.

8. Other Motions

- a. A party claiming that another party has failed to comply with any requirement of these bylaws or the CERL may make a written motion for an order compelling compliance. The motion shall include the following:
 - i. A statement of the provision or provisions not complied with;
 - ii. A description of efforts made to resolve the matter informally;
 - iii. A memorandum of points and authorities in support of the motion;
 - iv. A description of how the failure to comply has prejudiced the party's case;
 - v. A proof of service on all parties.
- b. The opposing party shall have ten days from the date of service to submit written opposition to the motion. Such opposition shall include:
 - i. A statement as to whether or not the subject provisions were complied with;
 - ii. A description of efforts made to resolve the matter informally;
 - iii. An explanation of why the provision or provisions were not complied with, if in fact they were not;
 - iv. A memorandum of points and authorities in support of the opposition;
 - v. A proof of service on all parties.
- c. The referee may decide the motion with or without a hearing, at the referee's discretion.

IX. DISABILITY RETIREMENT continued

J. Hearings, continued

9. Sanctions

Where the referee has decided a motion pursuant to section 16 and determined a party has unreasonably failed to comply, the referee may impose any sanction available under the Code of Civil Procedure in a superior court civil matter. Such sanctions include, but are not limited to, drawing adverse inferences against the non-complying party, or suspending or terminating proceedings.

10. Contempt

- a.** If a witness fails to appear at a deposition or hearing, or refuses to answer questions after a referee determines the witness must answer the questions, the referee shall refer the matter to the Board with a recommendation that the witness be held in contempt and a report of the contempt be made by the Board Chair to a judge of the Superior Court pursuant to Government Code sections 31535 and 25170, et.seq.
- b.** The referee shall serve the recommendation on the witness and parties.
- c.** Where a referee makes a recommendation to the Board pursuant to subsection (a) and a party so moves, the Board shall hold a hearing in regard to contempt.
- d.** The witness shall be served with
 - i.** a copy of the request of the moving party;
 - ii.** the referee's recommendation;
 - iii.** a notice that the Board will consider the referee's recommendation at a hearing on contempt; and
 - iv.** the witness shall be given an opportunity to be heard.

11. Petition for Reassignment of Referee, Without Stating Cause

- a.** Each party may petition for reassignment of the hearing to another referee in accordance with the provisions of this section.
- b.** Each party may make only one petition for reassignment without stating cause.

IX. DISABILITY RETIREMENT, continued

J. Hearings, continued

11. Petition for Reassignment of Referee, Without Stating Cause, continued

- c. Proceedings for such reassignment shall be instituted by the making of a petition supported by a declaration under penalty of perjury in substantially the following form:

In re the Disability Retirement Application of (Name of Party)

I, (name of party), declare under penalty of perjury that I am a party to the above-named case. I wish reassignment of the case to a referee other than the referee to whom the case is presently assigned.

*Executed on (date) at (location).
Signature of Party*

12. Petition for Reassignment of Referee, Stating and Proving Cause

- a. Each party is entitled to reassignment of the hearing to another referee where cause for reassignment is stated and proven by a preponderance of the evidence.
- b. Such cause is limited to that defined by California Code of Civil Procedure section 170.1 et.seq.
- c. Hearing on the Petition for Reassignment shall be had before a qualified referee other than the referee challenged.
- d. The Petition must be supported by declarations made under penalty of perjury and based on personal knowledge of the facts asserted.

13. Prehearing Conferences

- a. Before any hearing on a Disability Retirement application, a prehearing conference will be held by the referee.
- b. Any party wishing to present evidence on the application at hearing must attend the prehearing conference.
- c. All evidence to be offered at hearing must be exchanged by the time of the prehearing conference.

IX. DISABILITY RETIREMENT, continued

J. Hearings, continued

13. Prehearing Conferences, continued

- d.** The prehearing conference shall be held no later than the 30th day before the scheduled hearing date.
- e.** The parties shall attempt to resolve any evidentiary or other dispute at the prehearing conference.
- f.** All parties shall provide prehearing statements to the referee.
- g.** The prehearing conference may be waived by stipulation of all parties.

14. Applicant's Prehearing Statement

The applicant shall serve upon the referee and respondent's counsel a prehearing statement, no later than 5 days before the scheduled prehearing conference. The statement shall contain the following:

- a.** A statement of the issues and the contentions of the applicant, and a summary of the evidence to be presented;
- b.** A list and copies of any medical reports or depositions of medical witnesses on which the applicant will rely;
- c.** The names, business addresses and telephone numbers of any witnesses whose testimony the applicant intends to present at the hearing together with a synopsis of each witness's anticipated testimony. If business address and telephone numbers are unavailable to applicant, then applicant shall supply any address or telephone number reasonably available to applicant.
- d.** If, pursuant to Government Code section 31724, the applicant contends the proper commencement date for the disability benefit is a date other than the date of the application, applicant shall state that contention in the prehearing statement and explain the reasons supporting the contention.

IX. DISABILITY RETIREMENT, continued

J. Hearings, continued

15. Respondent's Prehearing Statement

The Respondent shall serve upon the referee and the applicant or his or her counsel a prehearing statement, no later than 5 days before the scheduled prehearing conference. The statement shall contain the following:

- a. A statement of the issues and the contentions of the respondent, and a summary of the evidence to be presented;
- b. A list and copies of any medical reports or depositions of medical witnesses on which the applicant will rely;
- c. The names, business address and telephone numbers of any witnesses whose testimony the respondent intends to present at the hearing together with a synopsis of each witness's anticipated testimony. If business address and telephone numbers are unavailable to respondent, then respondent shall supply any address or telephone number reasonably available to respondent.

16. Reporting of Hearing

- a. A transcriptionist shall be furnished at a hearing upon the request of the applicant who shall make such request, in writing, at least ten days prior to the date set for hearing and who shall pay all expenses and fees required by the transcriptionist, including but not limited to, transcript costs.
- b. If the applicant does not request a transcriptionist, the Board shall provide for the preparation of a record of the proceedings before the referee by a tape recording, written summary, or some other appropriate record of the proceedings.

17. Time and Place of Hearings

- a. Unless otherwise stipulated by the parties, a hearing shall be deemed set for one day.
- b. Unless otherwise stipulated by the parties, morning sessions shall begin at 9:30 a.m. and end at 12:00 noon.
- c. Unless otherwise stipulated by the parties, afternoon sessions shall begin at 1:30 p.m. and end at 5:00 p.m.
- d. Hearings which are not concluded within the allotted time shall be continued to the next mutually agreeable hearing date.

IX. DISABILITY RETIREMENT continued

J. Hearings, continued

18. Conduct of Hearings

- a. The referee shall preside over all hearings and shall exercise such control over the proceedings as is reasonable and necessary.
- b. The referee will read the title of the case and ask for appearances for all parties. This information shall be recorded for the administrative record of the hearing. The referee will inquire if all parties are ready to proceed.
- c. If all parties are ready to proceed, the referee will mark for identification only and not as evidence all papers in the administrative record of the hearing which should include the application and the notice of hearing together with proofs of service.
- d. The party filing the application has the burden of producing evidence and the burden of proof.
- e. Each other party shall then present evidence in the order determined by the referee.
- f. Each party shall be afforded the opportunity to cross examine witnesses.
- g. Each party shall have the opportunity to submit rebuttal evidence.
- h. Each party shall have the opportunity to submit oral argument.
- i. Upon the conclusion of testimony, the referee will inquire if all parties are ready to submit the matter for decision.
- j. If a party wishes to submit further documentary evidence, the referee may allow time for filing and serving such evidence and order that the matter will be deemed submitted after such period unless any party files objections to the evidence within ten days of its service on all parties and the referee.

The hearing will then be closed and the matter submitted to the referee for his or her determinations of fact and recommended decision to the Board.

IX. DISABILITY RETIREMENT, continued

J. Hearings, continued

19. Evidence

- a. The hearing need not be conducted according to the technical rules of evidence.
- b. Any relevant evidence shall be admitted if it is the sort of evidence on which responsible persons are accustomed to rely in the conduct of serious affairs, regardless of the existence of any common law or statutory rule which might make improper the admission of such evidence over objection in civil actions.
- c. Hearsay evidence may be used for the purpose of supplementing or explaining any direct evidence but shall not be sufficient in itself to support a finding unless it would be admissible over objection in civil cases.
- d. Oral evidence shall be taken only on oath or affirmation.
- e. Each party shall have the right to call and examine witnesses, to introduce exhibits, and to cross-examine opposing witnesses on any matter relevant to the issues.
- f. If the applicant or any other party does not testify on his or her own behalf, then the party may be called as if under cross-examination.
- g. Refusal of any applicant or party to answer relevant questions on grounds other than the Fifth Amendment to the United States Constitution or analogous state law provision against self-incrimination, shall be sufficient reason for imposing sanctions.
- h. Any party may apply to the Board or its designee for issuance of an administrative subpoena or administrative subpoena duces tecum, pursuant to Government code section 31535.
- i. The Board may expressly delegate, in writing, its subpoena power to any referee it appoints.

IX. DISABILITY RETIREMENT, continued

J. Hearings, continued

20. Physician's Written Reports

- a. The submission of medical evidence in the form of written reports is favored.
- b. A written medical report bearing the signature of the medical witness shall be admissible in evidence as the author's direct testimony.
- c. Signed medical reports shall not be inadmissible on the grounds of hearsay.
- d. Each party shall have the right to cross-examine an author of a medical report at hearing, unless the right has been waived. Failure to disclose the intention to call the author as a witness in the prehearing conference statement constitutes waiver of the right to cross-examine the author.
- e. Medical reports should include:
 - i. History of the injury or illness;
 - ii. The patient or examinee's complaints;
 - iii. The source of all facts set forth in the history;
 - iv. Findings on examination;
 - v. Opinion as to the extent of disability and working ability;
 - vi. Medical treatment indicated;
 - vii. Likelihood of permanent incapacity from working;
 - viii. Evaluation of connection, if any, between injury or illness and work.
- f. For the purposes of these rules, "physician" includes a person, who by education, current licensure by a state of the United States, and profession is a:
 - i. medical doctor holding an M.D. or D.O. degree;
 - ii. psychologist;
 - iii. optometrist;
 - iv. dentist;
 - v. podiatrist;
 - vi. chiropractor.

IX. DISABILITY RETIREMENT, continued

J. Hearings, continued

21. Affidavits

Affidavits may be introduced into evidence subject to the following provisions:

- a. The affidavit is produced at the prehearing conference together with the specified notice;
- b. The notice shall substantially state: "The accompanying affidavit of (name) will be introduced as evidence at the hearing of (case name). (Name of affiant) will not be called to testify orally and you will not be entitled to question (name of affiant) unless you notify me that you wish to cross-examine him/her. To be effective your request must be mailed or delivered to me on or before (date, which is 15 days from proof of service of affidavit). You may notify me by writing a letter to the following name and address stating you would like to cross-examine (name of affiant.) You must send a proof of service of the letter to all parties, and to the Retirement Office."

22. Late Submission of Evidence

- a. Submission of evidence subsequent to a party's filing of a prehearing statement shall be allowed only upon a showing of good cause.
- b. The party seeking submission of such evidence shall make a written request to the referee, with service of all parties.
- c. For the purposes of this section, "good cause" means that the evidence could not have been produced timely in the exercise of due diligence, or that the evidence did not exist at the time of filing the prehearing statement.
- d. Good cause is not shown where evidence is unavailable at the time of filing the prehearing conference because the party failed to make reasonable attempts to obtain a medical appointment in sufficient time to allow for preparation of a medical report by the filing date.
- e. Good cause is not shown where evidence is unavailable at the time of filing the prehearing statement because a party failed to make timely attempts to procure records prior to the filing date.
- f. If the referee allows a party to submit evidence produced after filing of the prehearing statement, then any other party shall have the right to continue the hearing in order to engage in further discovery, submit rebuttal evidence, or cross-examine a witness.

IX. DISABILITY RETIREMENT, continued

J. Hearings, continued

23. Government Records

Certified copies of the reports or records of any governmental agency, division, or bureau will be admitted as evidence in lieu of the original thereof.

24. Determinations of Referee

- a. The referee shall make written findings of fact and conclusions of law.
- b. The referee's written findings shall contain detailed analysis of the evidence relied upon or rejected, and findings regarding the credibility of witnesses.
- c. The referee's findings shall address all issues raised by the parties.
- d. Unless otherwise stipulated by the parties, the referee shall submit the recommendations pursuant to subsections (a) and (b) to the Board within 30 days of the closure of the record.
- e. The referee shall serve the recommendations on all parties.

25. Objections to Proposed Findings of Fact and Recommended Decision

- a. A party shall have 30 days after the date of service of the referee's written report and recommendations to submit written objections to the referee.
- b. The objecting party shall serve the objections on all parties.
- c. Other parties may respond to the objections. Response to written objections shall be served on the referee, the Board, and all parties within 10 days of service of the objections.

26. Actions of Referee

- a. The referee shall issue a written response to the objections and any responses thereon and serve the response on all parties.
- b. The referee may confirm his or her original findings.
- c. The referee may make such changes in the findings as the referee deems appropriate in light of the evidence, the objections submitted, and any response thereto.

IX. DISABILITY RETIREMENT, continued

J. Hearings, continued

26. Actions of Referee, continued

- d.** The referee may reopen the record to admit additional evidence subject to allowing all opposing parties a reasonable opportunity to be heard and submit rebuttal evidence on the matter.

27. Filing of Referee's Findings and Transmittal of Record

In addition to the referee's written report and recommendation, the referee shall also transmit to the Board the official record of the hearing including but not limited to, the pleadings of the parties, copies of written stipulations, exhibits offered by the parties, and objections and responses thereto.

28. Powers of the Board

Upon making findings of fact, the referee shall transmit, in writing, to the Retirement Board his or her proposed findings of fact and proposed decision or other recommendations. The Board, upon receiving the proposed findings of fact, proposed decision or other recommendations of the referee, shall proceed according to law to make a final decision on the matter.

29. Decision of the Board

The Board shall render its decision as soon as practicable following submission to the Board by the referee. For the purpose of granting or rejecting applications for disability retirement, a quorum of the Board shall be necessary. Any finding or decision of the Board must be made by a majority of the members of the Board voting. A tie vote results in a failure to find in favor of the applicant and constitutes a denial of the application or that portion of the application on which the vote is taken.

30. Notice of Decision

Written notice of the decision of the Board shall be delivered or mailed to the applicant and each party at his last known address within ten (10) business days following the date the decision is rendered.

IX. DISABILITY RETIREMENT, continued

K. Ex parte Communications

1. Ex parte communications

- a. While a hearing or decision on a hearing is pending there shall be no communication, direct or indirect, regarding any issue in the hearing, to the hearing officer or Board from a party without notice and opportunity for all parties to participate in the communication.
- b. Nothing in this section precludes a communication, including a communication from a party which is made on the record at the hearing.
- c. For the purpose of this section, a hearing is pending from the receipt of a request for hearing.

2. Permissible ex parte communications

- a. A communication otherwise prohibited by section 1 is permissible in any of the following circumstances:
- b. The communication is required for disposition of an ex parte matter specifically authorized by statute.
- c. The communication concerns a matter of procedure or practice, including a request for a continuance that is not in controversy.

3. Other Permissible ex parte communication

A communication otherwise prohibited by section 1 from an employee or representative of an agency that is a party to the hearing officer or Board, is permissible in any of the following circumstances:

- a. The communication is for the purpose of assistance and advice to the hearing officer or Board from a person who has not served as investigator, prosecutor, or advocate in the proceeding or its pre-adjudicative stage. An assistant or advisor may evaluate the evidence in the record but shall not furnish, augment, diminish, or modify the evidence in the record.

IX. DISABILITY RETIREMENT, continued

K. Ex parte Communications, continued

- b. The communication is for the purpose of advising the hearing officer or Board concerning a settlement proposal advocated by the advisor.

The communication is for the purpose of advising the hearing officer or Board in an adjudicative proceeding concerning a technical issue in the proceeding and the advice is necessary for, and is not otherwise reasonably available to, the presiding officer, provided the content of the advice is disclosed on the record and all parties are given an opportunity to address the matter to the hearing officer or Board.

L. Judicial Review

1. Judicial review of any decision by this Board shall be filed within the time limits specified in the code of Civil Procedure section 1094.6, as amended.
2. The complete record of the proceedings shall be prepared by the Board or its officer or agent after a request by any party to the proceeding and a deposit of the estimated cost of preparation. If during the preparation of the record it appears that additional cost will be incurred, the party requesting such record may be notified and, if requested, shall deposit such additional amounts before the record will be completed. If the cost of the preparation of the record exceeds the amount deposited, the party requesting such record shall pay this additional amount. If the amount of deposit exceeds the cost, the difference shall be returned to the party requesting such record.

X. AMENDMENTS (Deleted 2009)