

**BYLAWS AND REGULATIONS OF THE MARIN COUNTY
EMPLOYEES' RETIREMENT ASSOCIATION**

PART I. ADMINISTRATION

Section 101: Name

The name of this Association, organized in accordance with Government Code Section 31550, is:

Marin County Employees' Retirement Association

Section 102: Board Members and Officers

Retirement Board members are elected and appointed pursuant to Section 31520.1 of the Government Code. At the first regular meeting in November of each year, the Retirement Board shall elect from its members a Chairperson, a Vice-Chairperson and a Secretary for a term of one (1) year or until a successor is duly elected and qualified. At the first regular meeting in December of each year, the Chairperson will appoint all committee chairpersons and members.

*(Amended December 16, 1987 by Resolution #87/88-1;
Approved by Board of Supervisors January 5, 1988)*

Each member of the Board of Retirement not appointed to a particular committee, shall be an ex-officio member of that committee and shall be a voting member of that committee in an ex-officio capacity when said vote is needed to establish a quorum of said committee.

*(Amended April 8, 1992 by Resolution #91/92-2;
Approved by Board of Supervisors April 14, 1992)*

PART II. MEETINGS

Section 201: Regular Meetings

Regular meetings of the Retirement Board shall be held on the second Wednesday of each month commencing at 9:00 a.m. at the office of the Marin County Retirement Administrator, Civic Center, San Rafael, California, or such other place as the Retirement Administrator may designate.

In the event that the regular meeting cannot be held on the stated date, the Chairperson shall designate the date and time of the meeting and properly notify as to a special meeting.

Whenever scheduled meetings of the Retirement Board or committees thereof are scheduled to have such meetings in the morning and afternoon of the same day, the members of the Retirement Board or of the committee shall, at their discretion, be entitled to lunch at the expense of the Association.

*(Amended April 19, 1983 by Resolution #83-1)
(Amended July 13, 1994 by Resolution #93/94-2;
Approved by Board of Supervisors July 19, 1994)
(Amended September 12, 2001 by Resolution #2001/02-1;
Approved by Board of Supervisors September 25, 2001)*

Section 202: Special Meetings

Special meetings of the Retirement Board may be called at any time by the Chairperson or a majority of the members of the Retirement Board. A notice of not less than twenty-four (24) hours shall be given to each member and all other parties in satisfaction of the Brown Act.

*(Amended December 16, 1987 by Resolution #87/88-1;
Approved by Board of Supervisors January 5, 1988)
(Amended November 13, 1991 by Resolution #91/92-1;
Approved by Board of Supervisors January 14, 1992)*

Section 203: Rules of Order

Robert's "Rules of Order", newly revised addition, except as otherwise provided herein, shall guide the Retirement Board in its proceedings. Further, the provisions of Chapter 9, Division 2, Title V of the California Government Code (the Ralph M. Brown Act) shall also govern the Retirement Board in its proceedings.

*(Amended July 13, 1994 by Resolution #93/94-2;
Approved by Board of Supervisors July 19, 1994)*

Section 204: Quorum

Five (5) permanent members of the Retirement Board constitute a quorum. With respect to committees, a majority of membership of any committee shall constitute a quorum. In the event a majority of the members of the Retirement Board or a committee thereof find themselves attending a purely social or ceremonial occasion, such members shall not discuss among themselves business of a specific nature that is within the subject matter jurisdiction of the Retirement Board.

*(Amended July 13, 1994 by Resolution #93/94-2;
Approved by Board of Supervisors July 19, 1994)*

Section 205: Agenda

In order to ensure that items for the agenda are presented at the regular monthly Retirement Board meeting, proposed agenda items must be in writing and received by the Retirement Administrator not later than 4:30 on the last Thursday of the month preceding the scheduled Board meeting. All Board members and all other parties appearing on the agenda shall receive a preliminary agenda prior to the monthly meeting. There shall also be a copy of the agenda posted outside the meeting place.

*(Amended December 16, 1987 by Resolution #87/88-1;
Approved By Board of Supervisors January 5, 1988)
(Amended September 9, 1998 by Resolution #98/99-2;
Approved by Board of Supervisors Res. #98-133 September 22, 1998)*

Section 206: Minutes

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

Section 207: Vacancies

If a vacancy on the Board occurs for any cause other than on the expiration of a term of office of such member, a successor shall be chosen in the same manner as his predecessor to complete the term of office, except that if the vacancy is in the office of an elected member, a special election shall be called within eighty (80) days of said vacancy by the County Clerk/Registrar of Voters to be held within 150 days of said vacancy in accordance with these Bylaws; it being the intent that the election be held as soon as practical with the seating of the new member following the certification of the election.

(Added April 14, 1980, by Resolution #80-1)

PART III. MEMBERSHIP

Section 301

The following persons shall be eligible for membership in the Marin County Employees' Retirement Association:

1. Any employee in an allocated budgeted position devoting not less than seventy-five percent (75%) of that full-time allocated budgeted position; provided, however, that any employee electing membership under this subsection shall accrue service credit towards retirement in accordance with the provisions of Section 750 of these Bylaws.
2. A full-time contractual employee; excepting, however, contractual employees hired solely for a specific project.
3. An elected official.
4. An employee of a geographical area, or for a specific function such as, but not limited to, "on-call" physicians in the County Physician's Office, if the Personnel Director certifies that such employee's

compensation is greater than seventy-five percent (75%) of full-time compensation for comparable duties.

5. An employee who was a member of the Association prior to August 5, 1968, even though presently or subsequently employed for less than seventy-five (75%) of full-time compensation, at the option of the employee, shall remain eligible for membership so long as said employee has had continuous service from said date.
6. All Marin County employees eligible for membership in the Marin County Employees' Retirement Association shall become members of the Association as of their date of employment with the County. City of San Rafael employees eligible for membership in the Marin County Employees' Retirement Association shall become members of the Association as of the first day of any pay period.
7. Membership in the Marin County Employees' Retirement Association shall cease on the day following the last date of employment unless the member is eligible for deferred retirement.

Persons hired, otherwise eligible for membership on or after December 8, 1980, who have attained the age of sixty (60) years at the time of their employment, may waive membership in the Marin County Employees' Retirement System on a form and in a manner acceptable to the Retirement Administrator.

*(Amended December 16, 1987 by Resolution #87/88-1;
Approved by Board of Supervisors January 5, 1988)
(Amended September 9, 1998 by Resolution #98/99-2;
Approved by Board of Supervisors Resolution 98-133)*

Section 302:

Persons in all other categories of employment shall be excluded from membership in the Marin County Employees' Retirement Association. Persons otherwise qualified for membership pursuant, to Section 301 of these Bylaws, employed after June 30, 1979, under the provisions of the Public Service Employment Program of the Comprehensive Employment and Training Act Amendments of 1978 (29 U.S.C. 801), shall be excluded from membership unless the Government of the United States makes the employer contributions required by law.

(Amended June 11, 1979 by Resolution #79-03)

PART IV. MEMBERS' CONTRIBUTIONS

Section 401: Withdrawal Upon Termination

Upon termination of service other than by retirement or death, a member shall submit an application to the Retirement Board for the withdrawal of accumulated contributions. In addition to the amount of accumulated contributions, the Retirement Board shall allow the payment of interest credited to the member's account at the rate set yearly by the Retirement Board.

Payment in the amount as determined by the Retirement Board shall be made to the members as follows:

Upon receipt of an approved application, payment in the amount as determined by the Retirement Board, shall be made to the members within ninety (90) days of receipt of said application. The Retirement Administrator is authorized to refund these contributions prior to Retirement Board approval. On a monthly basis the Retirement Administrator shall report to the Retirement Board those individuals who have received a refund of contributions, indicating their employer as well as the amount refunded.

*(Amended December 16, 1987 by Resolution #87/88-1;
Approved by Board of Supervisors January 5, 1988)
(Amended December 16, 1998 by Resolution 98/99-2;
Approved by Board of Supervisors Res. 98-133 September 22, 1998)*

PART V. COMPENSATION EARNABLE

Section 501:

- (a) Compensation earnable for the purpose of computing retirement benefits shall be defined as the average compensation as determined by the Board for the period under consideration upon the basis of the average number of days ordinarily worked by persons in the same rate or class of positions during the period and at the same rate of pay, pursuant to Government Code Section 31641, as interpreted by the courts of record.
- (b) Compensation for the purpose of computing contributions by each member shall be defined as the base pay and all other cash payments constituting compensation earnable for each period for such member.

Notwithstanding Subsection (b) above, any member who retires will contribute through the day before the member's retirement. If excess contributions have been deducted, the member shall be refunded such excess.

*(Amended May 10, 1976, by Board of Supervisors Res. #76-208)
(Amended February, 1984 by Resolution #84-1)*

Section 502: Leaves of Absence, Contributions and Service Credit

In the event that any member is required by his or her employer to take a leave of absence or take a leave of absence voluntarily at the invitation of the employer without pay, such person shall nevertheless be entitled to full credit for service upon payment of the full pay period's retirement contribution by the employer and member if he works at least one half of such pay period. If, however, the member works less than one half of such pay period, no contributions will be made and no service credit will be given. Notwithstanding the foregoing, the member shall have all such rights as are contained in Section 31642 as it may be from time to time amended.

*(Amended March 10, 1993 by Resolution #92/93-2;
Approved by Board of Supervisors March 16, 1993)*

PART VI. BIRTH CERTIFICATES

Section 601:

Every member of the Association shall be required to submit to the Retirement Administrator a certified copy of their birth certificate to be retained in the files of said office. If unable to secure a certified copy of birth certificate, the member must submit documentation that is acceptable to the Administrator.

Upon failure of a member to provide the foregoing, the member's rate for purposes of contribution shall be set at the highest current rate available. Upon later submission of proof of age, an employee may receive, upon written request, a refund of excess contributions for a period of no greater than three (3) years from date of submission of acceptable proof of age.

The employer shall satisfy the Retirement Board of the discontinuance of service of each employee whether final, by leave of absence, sick leave or otherwise as soon as is possible.

*(Amended December 16, 1987 by Resolution #87/88-1;
Approved by Board of Supervisors January 5, 1988)
(Amended September 9, 1998 by Resolution #98/99-2;
Approved by Board of Supervisors Res. #98-133 September 22, 1998)
Amended September 12, 2001 by Resolution #2001-02-1;
Approved by Board of Supervisors September 25, 2001)*

PART VII. CERTIFICATES

Section 701:

Prior to the time the first warrant is issued to a member for retirement allowance, such member shall be furnished with a statement indicating the amount of his retirement allowance calculated in accordance with the unmodified and various optional modes of settlement.

Such statement shall provide a place for the signature of the member, indicating the choice as to the type of retirement allowance selected and, when signed by the Retirement Administrator or any other authorized retirement staff, shall constitute the annuity certificate provided for in Section 31526 of the Government Code, as amended.

*(Amended September 9, 1998 by Resolution #98/99-2;
Approved by Board of Supervisors Res. 98-133 September 22, 1998)*

Section 750:

For purposes of Government Code Section 31640.5, all employees who qualify for membership in the Marin County Employees' Retirement Association, pursuant to Sections 301 and 302 of these Bylaws and Regulations, shall be considered full-time employees and entitled to one (1) year credit for each calendar year of employment, both for the purpose of computing eligibility for retirement, pursuant to Government Code Section 31672 and computing retirement benefits; provided, however, that members

working less than a full-time budgeted position shall be entitled to only a proportional year's credit for each calendar year of employment for the purpose of computing retirement benefits. Said proportional credit shall be computed by comparing the hours worked or compensation received to that of a full-time employee in the same category of employment.

*(Amended December 16, 1987 by Resolution #87/88-1;
Approved by Board of Supervisors January 5, 1988)*

PART VIII. ELECTIONS

Section 801:

Where not otherwise provided, the County Clerk/Registrar of Voters will conduct all elections according to procedures established in the California Election Code.

The following rules and regulations are adopted as the manner of nomination and election by the members of the Retirement Association of the second, third, seventh and eighth members of the Board of Retirement to serve for terms of three (3) years.

Nominations

1. Nomination of the members to be elected from and by members of the Retirement Association shall be by petition signed by not less than ten (10) members of the Association. No person shall sign more than one petition of nomination for each member.

*(Amended June 8, 2005 by Resolution #2004/2005-2;
Approved by Board of Supervisors July 28, 2005)*

2. The nomination petition shall specify the name of the nominee and agency which will also appear on the official ballot and whether the member is nominated as the second, third, seventh or eighth member of the Board of Retirement.

3. Nomination petitions shall be in substantially the following form:

"We, the undersigned (regular) (safety) (retired) members of the Marin County Employees' Retirement Association do hereby nominate as the member of the Retirement Board of the Marin County Employees' Retirement Association to serve for a term of three (3) years to be elected from and by the members of said Association."

4. Nomination petitions shall be available from the County Clerk/Registrar of Voters not earlier than 8:00 a.m. on the first Wednesday of June and must be filed not later than 4:30 p.m. on the third Wednesday of June of each year in which the term of office of one of the elected members of said Board shall terminate.
5. If the incumbent member of the Retirement Board fails to file by 4:30 p.m. on the third Wednesday of June, the filing period shall be extended to 4:30 p.m. on the fourth Wednesday of June for the nomination of candidates other than the incumbent.

6. The Retirement Board Administrator shall, within three (3) working days, verify these signatures and send a certified list of eligible candidates and their agency/department to the County Clerk/Registrar of Voters for preparation of the ballots.

Candidate's Statement of Qualifications

1. Each candidate for the Retirement Board may prepare a Candidate's Statement of Qualifications on a form to be provided by the County Clerk/Registrar of Voters.
2. The Statement may include the name, age and occupation of the candidate and a brief description, no more than 200 words in length, of the candidate's education and qualifications.

*(Amended June 8, 2005 by Resolution #2004/2005-2;
Approved by Board of Supervisors July 28, 2005)*

3. The Statement shall be filed in the office of the County Clerk/Registrar of Voters at the time of filing nomination papers.
4. The County Clerk/Registrar of Voters shall send to each voter, together with the ballot, a copy of all written statements filed.

Elections

1. Election shall be by secret ballot. Only the names of those duly nominated for each position as provided herein shall be printed on the ballot.
2. The election shall be held on the last Friday of July of each year in which the term of office of the elective members of said Board shall terminate.
3. Ballots shall be prepared by the County Clerk/Registrar of Voters and mailed to each eligible voter no later than one (1) week before the third Friday in July of each election year.

*(Amended March 10, 1999 by Resolution #98/99-3;
Approved by Board of Supervisors March 23, 1999)*

4. Each miscellaneous member of the Association may vote for one candidate for the second board member and/or one candidate for the third board member. No miscellaneous member shall vote for the seventh or eighth member. Each safety member may vote for one candidate for the seventh member. No safety member shall vote for the second or third or eighth member. Each retired member may vote for one candidate for the eighth member. No retired member shall vote for the second or third or seventh member.
5. Each member shall place the voted ballot in the ballot envelope provided for that purpose and shall seal and enclose said envelope in an identification envelope which the member shall personally seal and sign. The member shall then deposit said envelope in the ballot box provided at one of several designated locations or shall mail said ballot to the County Clerk/Registrar of Voters to be received not later than 4:30 p.m. on the day on which said election is held.

6. The County Clerk/Registrar of voters shall submit said identification envelopes containing the ballots, with a statement of the number so delivered, to the Administrator of the Retirement Association who will check against a list of existing members of said Association. Each member shall be allowed one identification envelope only with one ballot envelope enclosed. These shall be returned to the County Clerk/Registrar of Voters by the Administrator with a report of the number of identification envelopes so received. Safety, retired and/or miscellaneous envelopes should be separated.
7. The County Clerk/Registrar of Voters shall count the votes in accordance with rules established in the California Elections Code and shall submit the results of the election to the Marin County Board of Supervisors, and said Board shall declare the nominee receiving the most votes for the respective memberships duly elected. Said members shall assume office on the next November 1st, or if the seat is vacant, upon certification of the election.
8. Write-in votes shall not be counted.
9. All costs for the conduct of the election, including the printing of the ballots and related supplies, shall be billed to the Retirement Board by the County Clerk/Registrar of Voters at actual cost.

*(Amended December 14, 1981, by Resolution #81-1;
Approved by Board of Supervisors January 26, 1982)*

PART IX. AMENDMENTS

These Bylaws shall be amended as follows:

1. Amendments must be read at a regular meeting.
2. No vote may be taken earlier than the next regular scheduled meeting.
3. There must be a two-thirds (2/3) affirmative majority vote of the Retirement Board members in attendance.
4. Such amendments shall not become effective until approved by the Board of Supervisors.

If any section, sub-section, sentence, clause or phrase of these Bylaws and Regulations is for any reason held to unconstitutional, invalid, or unenforceable, such decisions shall not affect the validity or enforceability of the remaining portions of these Bylaws and Regulations.

The Retirement Board hereby declares that it would have passed and adopted these Bylaws and Regulations, and each section, subsection, sentence, clause and phrase hereof, irrespective of the fact that any one or more sections, sub-sections, sentences, clauses and phrases may be declared unconstitutional, invalid or unenforceable.

*(Amended December 16, 1987 by Resolution #87/88-1;
Approved by Board of Supervisors January 5, 1988)*

PART X. PROCEDURES FOR APPLICATIONS FOR DISABILITY RETIREMENT**Section 1001:**

Applications for disability retirement shall be on a form approved by the Retirement Administrator. Each applicant for disability retirement shall authorize the release to the Retirement Association and/or its counsel all medical information relating to any physical or mental illness or injury of applicant, and shall waive any physician-psychologist/patient privilege connected therewith, and shall authorize the Association and/or its counsel to access all records relating to the applicant's current and prior employment. Said authorizations for release of information shall be on forms approved by the Retirement Administrator or on such other forms as a medical provider, employer or government entity may require for its particular records. All information received by the Association or its agents and counsel shall be treated as confidential and not released to anyone except insofar as may be necessary for the administration of the retirement system or upon an order of a court of competent jurisdiction, as provided by Govt. Code Section 31532.

Upon the submission of an application for retirement for any cause, or benefits payable or alleged to be payable, under the provisions of Chapter 3, Division 4, Title III of the California Government Code (Section 31540, et seq.), the Retirement Administrator shall examine the application and supporting documents for completeness. For purposes of this section, an application shall be deemed complete if the information required by the Administrator and these Bylaws is furnished upon the form provided by the Administrator and approved by this Board. An application for retirement due to alleged incapacity or service-connected incapacity shall be accompanied by written proof relative to each of the issues applicable pursuant to Section 31720 of the Government Code, and an opinion relative to the application submitted by the applicant's employer. The Retirement Administrator may refer the applicant for further evaluations and written reports.

If an application is deemed incomplete by the Retirement Administrator for failure to execute a required authorization for release of information, the Retirement Administrator shall notify the applicant of the incompleteness of the application. If the applicant has not submitted the required authorization within sixty (60) days of notification, the Retirement Administrator may request that the Retirement Board issue an Order to Show Cause requiring that the applicant or his or her counsel, appear before the Retirement Board at a meeting more than thirty (30) days after the issuance of the Order, and show cause why the applicant should not be required to execute the authorization. If the applicant or applicant's counsel fails to appear before the Board or fails to show cause as to why the authorization should not be required, then the Board may, in its discretion, order that the application be summarily denied with prejudice unless the required authorization is executed and delivered to the Retirement Administrator within thirty (30) days.

After a period of six (6) months from date of submission of an application for disability retirement, should it be deemed by the Administrator that the applicant has not submitted documentation to support said application, then the Administrator shall give written notice to the applicant that the applicant has a ninety (90)-day period in which to submit additional documentation. The applicant shall further be notified that at the conclusion of the ninety (90)-day period, said application will be presented to the Retirement Board for action and that the Board's decision will be based on the application and any other documentation received from the applicant on or before the expiration of the ninety (90)-day period. Said notice to the applicant shall be in the form of a certified return receipt letter and shall advise the applicant that a written appeal may be submitted to the Retirement Board for an extension of the ninety (90)-day period, providing said appeal is received no later than sixty (60) days after notification.

*(Added April 8, 1992 by Resolution #91/92-2;
Approved by Board of Supervisors April 14, 1992)
(Amended by Resolution #98/99-2 September 9, 1998;
Approved by Board of Supervisors Resolution September 22, 1998)
(Amended by Resolution #2001/02-1 September 12, 2001;
Approved by Board of Supervisors September 25, 2001)*

Section 1002:

A complete application shall be presented to the Retirement Board by the Administrator. Upon presentation of the application and accompanying documents, the Retirement Board shall have the following powers with respect to said application:

- A. Grant the application;
- B. Deny the application;
- C. Continue the matter for good cause, including, but not limited to a continuance necessitated by the requirement that the applicant submit a medical examination by a doctor or doctors designated by the Retirement Board;
- D. Set a hearing on the application before the Retirement Board; or
- E. Refer the application to the Administrator for hearing before a hearing officer appointed by the Board on a rotational basis for each of the hearing officers selected by the Board, with a selection preference given to that hearing officer who has the fewest number of cases assigned for hearing.

*(Amended by Resolution #98/99-2 September 9, 1998;
Approved by Board of Supervisors Res. #98-133 September 22, 1998)
(Amended by Resolution #2001/2002-1 September 12, 2001;
Approved by Board of Supervisors September 25, 2001)*

Section 1003:

Written notice of the time and place of hearing shall be sent by the Administrator by mail to the applicant at the address listed in the application at least thirty (30) days prior to the date set for hearing and within thirty (30) days of the Board's decision to refer the applicant to hearing. County Counsel shall endeavor to ascertain a date that is mutually convenient for Counsel, the applicant and the hearing officer.

*(Amended by Resolution #98/99-2 September 9, 1998;
Approved by Board of Supervisors Res. #98-133 September 22, 1998)
(Amended by Resolution #2001/2002-1 September 12, 2001;
Approved by Board of Supervisors September 25, 2001)*

Section 1004:

When the application is referred to the Administrator, the application shall be set for hearing and a hearing officer selected from those appointed by this Board forthwith.

In the event the hearing officer declines to serve or does not hold a hearing within ninety (90) days from the date of the assignment of the case to him/her, except where a case has been continued, the appointment of the hearing officer shall be vacated, the hearing officer shall be removed from those appointed by this Board and a new hearing officer shall be appointed.

It shall be the duty of the hearing officer to determine whether any cause exists for disqualification upon any of the grounds set forth in Section 170 of the Code of Civil Procedure governing the disqualification of judges. If any member of the hearing officer's law firm would be disqualified under subdivision (4) of Section 170, the hearing officer is disqualified.

*(Amended by Resolution #98/99-2 September 9, 1998;
Approved by Board of Supervisors Res. #98-133 September 22, 1998)
(Amended September 12, 2001 by Resolution #2001/02-1;
Approved by Board of Supervisors September 25, 2001)*

Section 1005 - Continuances

Except as herein provided, County Counsel and the applicant may stipulate to a continuance with respect to the application with the consent of the assigned hearing officer.

Either party may also request a continuance without regard to stipulation. Notice of the continuance shall be sent to the Retirement Administrator.

If the hearing officer declines to give consent to a continuance, upon the motion of the applicant or County Counsel and for good cause shown, the Retirement Board may grant a continuance of the hearing. In the event the Board grants the motion, the party who requested the continuance shall notify the hearing officer, and the hearing officer shall reschedule the hearing giving notice to all parties to the proceeding.

The hearing on an application shall not be continued to a date later than one hundred and five (105) days after the assignment of the case to the hearing officer, except by order of the Board upon the motion of the applicant or County Counsel.

*(Amended by Resolution #98/99-2 September 9, 1998;
Approved by Board of Supervisors #Res. 98-133 September 22, 1998)*

Section 1006:

There shall be no ex parte communication by counsel or the parties with the hearing officer, or a potential hearing officer, except for the purpose of scheduling the hearing or requesting a continuance.

Section 1007:

An applicant has a right to be represented by an attorney at any proceeding or hearing with respect to such application, but this right may be waived.

The hearing or any proceeding with respect to the application may proceed in the absence of the applicant who, after due notice, fails to be present and to obtain a continuance. The disposition of the application shall not be based solely upon the absence of the applicant.

Section 1008:

The hearing officer shall set the time, date and place of the hearing at least thirty (30) days prior to the date set for hearing. No hearing shall be set for Saturdays or legal holidays, except upon the agreement of the applicant, County Counsel and the hearing officer. Hearings shall be scheduled to take place not sooner than thirty-five (35) days, nor later than ninety (90) days, from the date of the assignment of the case to the hearing officer. Hearings shall take place in appropriate facilities at the Civic Center or as selected by the hearing officer.

*(Amended by Resolution #2001/2002-1 September 12, 2001;
Approved by Board of Supervisors September 25, 2001)*

Section 1009:

The parties to the application hearing shall have the right to take depositions and to obtain discovery, and to that end may exercise all of the same rights, remedies, and procedures, and shall be subject to all the same duties, liabilities, and obligations as provided in the Code of Civil Procedure; except that all discovery shall be completed not later than fifteen (15) days prior to the date set for the hearing, unless the Board, upon a showing of good cause, makes an order granting extension of time within which discovery must be completed.

Section 1010: Evidence

All evidence shall be taken in the presence of the hearing officer and the other parties, except where the applicant or County Counsel has waived the right to be present or is absent after due notice of the hearing.

The rules of evidence governing civil actions apply to the conduct of a hearing on an application except:

1. Either side may offer, and the hearing officer shall receive in evidence, written reports of any expert witness, medical records and bills, and police reports concerning an incident which gave rise to the case, if copies have been delivered to all opposing parties at least twenty (20) days prior to the hearing. Any other party may subpoena the author of a report, bill or estimate as a witness and examine the witness as if under cross-examination.
2. The written statements of any other witness maybe offered and shall be received in evidence if:
 - (a) they are made by affidavit or declaration under penalty of perjury;

- (b) copies have been delivered to the opposing parties at least twenty (20) days prior to the hearing; and
 - (c) the opposing party has not, at least ten (10) days before the hearing, delivered to the proponent of the evidence a written demand that the witness be produced in person to testify at the hearing. The hearing officer shall disregard any portion of a statement received pursuant to the rule that would be inadmissible if the witness were testifying in person, but the inclusion of inadmissible matter does not render the entire statement inadmissible.
3. The deposition of any witness may be offered by any party and shall be received in evidence, subject to the objections available under Code of Civil Procedure Section 2016(e), notwithstanding that the opponent is not unavailable as a witness and no exceptional circumstances exist if:
- (a) The deposition was taken in the manner provided for by law or by stipulation of the parties, and within the time provided for in these rules; and
 - (b) Not less than twenty (20) days prior to the hearing the proponent of the deposition delivered to the opposing side notice of intention to offer the deposition in evidence.

For purposes of these rules, "delivery of a document or notice may be accomplished manually or by mail in the manner provided by Code of Civil Procedure.

- (c) The hearing officer may issue subpoenas for the attendance of witnesses at hearings scheduled before him. It shall be the duty of the party requesting the subpoena to modify the form of the subpoena so as to show that the appearance is before the hearing officer and to give the time and place set for the hearing. At the discretion of the hearing officer, non-appearance of a properly subpoenaed witness may be grounds for an adjournment or continuance of the hearing. If any witness properly served with a subpoena fails to appear at the hearing, or having appeared refuses to be sworn or to answer, proceedings to compel compliance with the subpoena may be held before the Board.

Section 1011: Conduct of the Hearing

The hearing officer shall have the following powers:

1. To administer oaths or affirmation to witnesses;
2. To take adjournments upon the request of a party or upon his own initiative when deemed necessary;
3. To permit testimony to be offered by deposition;
4. To permit evidence to be offered and introduced as provided in these rules;
5. To rule upon the admissibility and relevancy of evidence offered;
6. To invite counsel, on reasonable notice, to submit trial briefs;

7. To examine any site or object relevant to the case.

Within thirty (30) days after the conclusion of the hearing, the hearing officer shall transmit in writing to the Board the proposed findings of fact and recommended decision. On the hearing officer's application, in cases of unusual length or complexity, the Board may allow up to twenty (20) additional days for the findings and recommendation after written request by the hearing officer. Upon the receipt of the findings and recommendation, the Retirement Administrator shall compensate the hearing officer at a rate established by the Board, for such time actually spent in the hearing, reviewing documentary evidence, and preparation of the proposed findings of fact and recommended decision. In the event that the report is not filed within the thirty (30)-day period, or an extension is not obtained, the hearing officer shall be compensated at a lesser rate as established by the Board.

*(Amended March 10, 1993 by Resolution #92/93-2;
Approved by Board of Supervisors March 16, 1993)
(Amended July 14, 1993 by Resolution #92/93-3;
Approved by Board of Supervisors July 27, 1993)*

Section 1012:

In the event a hearing officer does not render a decision within sixty (60) days from the time the hearing is completed, the Retirement Board may set the hearing before itself.

In the event a hearing officer does not render a decision within sixty (60) days from the time the hearing is completed, the hearing officer will not receive any compensation for the time he or she has spent unless the hearing officer has received an extension from the Retirement Board pursuant to Section 1011. If the report is rendered within the extension of time permitted by the Board, the hearing officer shall be paid at the rate established by the Board. If the hearing officer does not submit his report within the approved extension period or within the sixty (60)-day limit, the hearing officer will not receive any compensation for the time he or she has spent.

In the event the hearing officer does not render the decision within ninety (90) days from the time the hearing is completed and the hearing officer has not received an approved extension of time from the Retirement Board, said hearing officer, in addition to not receiving any compensation, shall be removed from the panel of hearing officers utilized by the Retirement Board.

*(Amended March 10, 1993 by Resolution #92/93-2;
Approved by Board of Supervisors March 16, 1993)
(Amended July 14, 1993 by Resolution #92/93-3;
Approved by Board of Supervisors July 27, 1993)*

Section 1013:

A stenographic record shall be made of the hearings at the expense of the Retirement Board. However, if the applicant desires copies of the transcripts, such copies shall be at applicant's expense.

Section 1014: Medical Insurance Reimbursement

The Board will authorize reimbursement of all or a portion of the payment of medical insurance premiums for all County members, excluding dependent coverage, for all or a portion of the period between the time the County ceases payment of such premiums and the first of the month following the month in which the retirement became effective.

1. This regulation shall only be applicable to persons filing for disability retirement on or after the effective date of this regulation (November 10, 1980).
2. The premium is for a medical insurance program for which premiums are paid to the County contracted insurance carriers by the Association for retired members.
3. The member office proves satisfactory to the Board that the above-described payments have, in fact, been made.
4. This regulation shall have no retroactive application.

*(Amended December 16, 1987 by Resolution #87/88-1;
Approved by Board of Supervisors January 5, 1988)*

XI. BUYBACKS AND ROLLOVERS

Section 1101:

All members of the Retirement Association shall be permitted to buy back probationary and/or extra hire time under dictates of Government Code Section 31641.5. Additionally, all members shall be allowed to redeposit previously withdrawn contributions pursuant to the dictates of Government Code Section 31652. Public service buybacks pursuant to Government Code Section 31641.2 shall be allowed for County and contracting districts, other than the City of San Rafael and Novato Fire Protection District, for those members who were members prior to May 1, 1979. Public service buybacks for Novato Fire District members shall be allowed for those individuals who were members as of April 16, 1979. Public service buybacks for those individuals who are employees of the City of San Rafael shall be allowed for those individuals who were members as of May 7, 1979. As a declaration of a policy which has existed since April 27, 1979, and not as a change of existing policy, public service may only be purchased if the member is prohibited from purchasing the time in another system. Public service buybacks for eligible Novato Fire Protection District and City of San Rafael employees shall be computed based on the employee's contribution rate at the time that the contracting district became a member of MCERA. Additionally, buybacks made pursuant to Section 31641.5 shall be paid for by lump sum payment or by installment payments over the period of time being purchased, but in no event shall that period exceed five years.

*(Amended December 12, 1987 by Resolution #87/88-1;
Approved by Board of Supervisors January 5, 1988)
(Amended November 13, 1991 by Resolution #91/92-1;
Approved by Board of Supervisors January 14, 1992)*

Section 1102: Acceptance of Plan-To-Plan Transfers and Rollovers

- (a) To the extent authorized by both federal and state law, the Association shall accept plan-to-plan fund transfers and accept rollover funds from qualified plans to satisfy the lump sum payment of contributions.
- (b) If a member becomes entitled to receive a distribution that constitutes an eligible rollover distribution under both federal and state law, the member may elect to have the distribution or a portion thereof paid directly to the Association.

*(Amended July 10, 2002 by Resolution #2002/2003-1;
Approved by Board of Supervisors July 16, 2002)*

PART XII. 415 LIMITATIONS

Section 1201:

Notwithstanding any other provisions of these Bylaws, the retirement allowance payable to any member of any retirement plan administered by this Association shall in no event exceed the limitation imposed by Section 415 of the Internal Revenue Code of 1986, subject to the adjustment of the limitation provided therein. Retirement benefits will not be paid by this Association that exceeds the limitations of Section 415 of the Internal Revenue Code of 1986. Said limitation shall be adjusted in accordance with Section 415(d)(1)(A) and (B) of that code.

*(Amended November 15, 1989 by Resolution #89/90-1;
(Approved by Board of Supervisors December 19, 1989)
(Amended September 12, 2001 by Resolution #2001/02-1
(Approved by Board of Supervisors September 25, 2001)*

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