

**MCERA BOARD OF RETIREMENT
PROCEDURES FOR HEARINGS ON
MATTERS OTHER THAN DISABILITY RETIREMENT**

ADOPTED: June 11, 2007
AMENDED: November 7, 2012
REVIEWED: December 9, 2015
REVIEWED: December 12, 2018
REVIEWED: November 3, 2021

The procedures (the “Procedures”) set forth below shall apply to all hearings conducted by the Marin County Employees’ Retirement Association regarding matters, other than disability retirement applications, as to which the Board of Retirement or Retirement Administrator determines that such a hearing may be necessary or appropriate in order to make a determination as provided by California Government Code sections 31533 and 31542.

1. DEFINITIONS

Unless the context otherwise requires, the definitions in this section shall govern the construction of these rules.

- (a) “MCERA” means the Marin County Employees’ Retirement Association.
- (b) “Board of Retirement” and “Board” mean the Board of Retirement of MCERA.
- (c) “Procedures” means these MCERA Board of Retirement Procedures for Hearings on Non-Disability Retirement Related Matters.
- (d) “Retirement Administrator” means the Retirement Administrator of MCERA.
- (e) “Claimant” means any MCERA member, beneficiary or successor-in-interest, or Plan Sponsor, who has timely submitted a claim to MCERA’s Board of Retirement (“Claim”) challenging a determination made by the Retirement Administrator or the Board, as the case may be, as to such Claimant.
- (f) Any party who opposes a Claim, and that party’s counsel, shall be referred to collectively as an “Adverse Party.”
- (g) “Hearing Officer” means a member of the Board or a member of the State Bar of California, in each case appointed by the Board as a referee pursuant to Government Code section 31533, to hold a Hearing on any Claim.
- (h) “Hearing” means one or more hearings conducted by the Hearing Officer pursuant to the Procedures.
- (i) “MCERA Counsel” means the attorney, if any, hired by MCERA to represent it during a Hearing.

- (j) “Plan Sponsor” means any employer plan sponsor of MCERA (Marin County or any MCERA District).
- (k) “Plan Sponsor Counsel” means the attorney, if any, hired by a Plan Sponsor to represent it during a Hearing.
- (l) “Statement of Claim” or “Statement” means an MCERA form that is to be completed by every Claimant and timely submitted to the Hearing Officer, MCERA’s Counsel, if any, and Plan Sponsor Counsel, if any.

2. REPRESENTATION BY COUNSEL

Any Claimant may, at Claimant’s expense, hire and be represented by an attorney subject to the provisions of these Procedures. No Claimant is required to have an attorney at any time. If any Claimant is represented by an attorney, Claimant or his or her attorney shall promptly file with the Retirement Administrator, and serve upon MCERA’s Counsel, written notice of such representation, including the attorney’s name, address and telephone number. The substitution, withdrawal, or dismissal of an attorney of record shall be in the manner prescribed in the California Administrative Procedures Act.

3. STATEMENT OF CLAIM AND LIMITED WAIVER OF CONFIDENTIALITY

Any MCERA member, beneficiary or successor-in-interest or Plan Sponsor (“Requestor”) may request MCERA’s position regarding whether pay items made to, or by, them are pensionable either as “compensation earnable” under Government Code section 31461 and/or as “pensionable compensation” under Government Code section 7522.34.

The Retirement Administrator will advise the Requestor of MCERA’s initial determination regarding the pensionability of a pay item, or other administrative matter other than disability retirement, in writing, and will summarize the rationale for that determination. The Retirement Administrator will also notify the Requestor at that time that if the Claimant seeks to challenge the determination, the Requestor may administratively appeal it.

Within fourteen (14) calendar days of receiving written notice from MCERA of the Board of Retirement’s or Retirement Administrator’s initial determination and right to administrative appeal, Claimant shall file a completed Statement of Claim with the Retirement Administrator and shall serve such Statement on any Adverse Party, as identified in the written notice provided by MCERA, and on the Retirement Administrator. The Statement of Claim shall be on the official form provided by MCERA, and must provide all information and documents requested on such form. A Statement of Claim may, but is not required to be, filed jointly by any Claimants who are jointly represented by counsel.

By filing a Statement of Claim, a Claimant waives confidentiality as to any Adverse Party, MCERA, and the Hearing Officer, for purposes of the Hearing and any related Board action thereafter only with respect to any documents in Claimant’s MCERA file that relate in any way to Claimant’s Claim and any defense thereto.

4. RESPONSE TO STATEMENT OF CLAIM

- (a) Upon Claimant's filing of a Statement of Claim, MCERA shall provide Claimant and any Adverse Party with all documents in Claimant's file that relate in any way to the Claim and any defense thereto, and shall set the matter for Hearing.
- (b) Within thirty (30) days of providing the information as defined in 4(a) above, the Retirement Administrator shall request from the Claimant written notice of intent to proceed with an administrative appeal. Upon receipt of the Claimant's written notice of intent to proceed, the Retirement Administrator will set the matter for Hearing, or agendaize it for a Board of Retirement meeting, as applicable.
- (c) The Hearing Officer shall provide Claimant, MCERA and any Adverse Party with notice of any such Hearing not fewer than thirty (30) court days prior to the date set therefore. Said Hearing shall be set within sixty (60) court days of the receipt by the Hearing Officer of the completed Statement. The Hearing Officer may request additional time for the completion of its actions pursuant to these Procedures, which may be approved or denied in the reasonable discretion of the Board.
- (d) Notwithstanding the provisions contained elsewhere herein, upon written request by a party to the action and for good cause shown, the Hearing Officer may continue, to a date certain, any Hearing scheduled before him or her. Any request for continuances shall be made not later than ten (10) court days in advance of the scheduled date for Hearing, except in the event of extenuating circumstances when the basis for the continuance is not known ten (10) court days in advance.

5. PRE-HEARING PROCEDURES

- (a) Claimant and any Adverse Party shall receive from MCERA all non-privileged documents or other information in the possession, custody or control of MCERA, which may be related to the Claim and any defense thereto.
- (b) Should Claimant or an Adverse Party request additional non-privileged documents that are not in the custody of MCERA, but are in the custody of a Plan Sponsor, then MCERA, the Claimant and/or the Adverse Party shall meet and confer jointly to seek voluntary delivery of such documents from said Plan Sponsor.
- (c) Unless otherwise ordered by the Hearing Officer, at least nine (9) court days before the Hearing, the Adverse Party shall file a written response to the Statement of Claim ("Response") with the Retirement Administrator and shall serve the Response on Claimant.
- (d) Unless otherwise ordered by the Hearing Officer, at least five (5) court days before the Hearing, Claimant shall file a reply to the Response ("Reply") with the Retirement Administrator and shall serve the Reply on any Adverse Party, Plan Sponsor and MCERA.

6. CONDUCT OF HEARINGS

- (a) Subject matter to be considered by Hearing Officer:

When hearing an appeal under these Procedures, the Hearing Officer may make proposed findings of facts and a recommended decision (“Proposed Findings and Recommended Decision”) with respect to only those questions specifically posed by the Board of Retirement or Retirement Administrator in response to the Statement of Claim. Evidence submitted on any other matter shall be deemed by the Hearing Officer to be irrelevant.

- (b) Reporting:

Every Hearing shall be reported by a Certified Shorthand Reporter (“CSR”). The Adverse Party shall arrange for a CSR to be present whenever one is required. The CSR’s notes may be transcribed if the requesting party agrees to pay for the cost of such transcription. The per diem cost of the CSR shall be borne by MCERA.

- (c) Documentary Record:

At the commencement of the Hearing, the Hearing Officer shall identify each document which is being made a part of the record of the Hearing. Any and all objections to the admissibility of any document so identified shall be made and ruled upon at the time of identification. Objections not made at that time shall be deemed waived.

- (d) Control Over Hearing:

The Hearing Officer shall exercise such control over the Hearing as is reasonable, necessary and consistent with these Procedures, prescribing the order of proof, ruling upon the admissibility of evidence and determining whether the matter shall proceed or be adjourned subject to continuation.

- (e) Objections:

All objections to the introduction or admissibility of evidence shall be determined by the Hearing Officer.

- (f) Rules of Evidence:

The California Rules of Evidence shall apply to the conduct of Hearings, subject to the requirements of these Procedures; provided, however, that such Rules may be reasonably modified at the discretion of the Hearing Officer.

7. POST-HEARING PROCEDURES

- (a) Following the Hearing, the Hearing Officer may, but is not required to, request that Claimant and/or Adverse Party submit post-Hearing briefing in a manner to be determined by the Hearing Officer at that time.
- (b) The Hearing Officer shall prepare his or her written Proposed Findings and Recommended Decision.
- (c) The Proposed Findings and Recommended Decision shall be submitted to the Board of Retirement, and served on the Claimant and Adverse Party, no later than thirty (30) court days following the submission of the last post-Hearing brief, if any, following the conclusion of the Hearing.
- (d) Claimant and Adverse Party shall have ten (10) court days to submit written objections, if any, to the Proposed Findings and Recommended Decision, which shall be incorporated into the administrative record to be considered by the Board of Retirement.

8. ACTION BY THE BOARD OF RETIREMENT

Upon receiving the recommendation from the Hearing Officer, the Board of Retirement will, within sixty (60) days of receipt of the Proposed Findings Recommended and Decision, unless extended by the Board, issue a decision in writing (“Board Decision”), ordering one of the following:

- (a) That the relief requested in a Claimant’s Statement be granted if the record and law establish, to the satisfaction of the Board, that the Claimant stated sufficient grounds to support the Claimant’s position; or
- (b) That the relief requested in the Statement be denied, and the reasons therefore; or
- (c) That the matter be referred back to the Hearing Officer with instructions to conduct a further investigation, or to take other action, as deemed appropriate by the Board.

In accordance with Government Code section 31542, if the Board Decision reflects a final determination by the Board that compensation was paid to enhance a member’s retirement benefit in a manner that warrants its exclusion from the member’s retirement allowance calculation, the Board will provide notice of that determination to the member and employer. The member or employer may obtain judicial review of the Board’s action by filing a petition for writ of mandate within 30 days of the mailing of that notice.

9. SERVICE

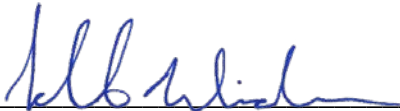
- (a) When a provision of these Procedures requires that documents be “served,” service shall be made upon the Retirement Administrator and all parties to the Hearing (i.e., Claimant and all Adverse Parties).
- (b) If the party to be served has an attorney of record in accordance with section 2 of these Procedures, service shall be made upon the attorney of record.
- (c) Unless otherwise provided in these Procedures, when a provision herein requires service, 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.
- (d) Service by mail shall be effected 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. Service by mail shall extend applicable time limitations in the manner prescribed in Code of Civil Procedure section 1013. For purposes of determining the effectiveness of service upon a subject employee, a mailing shall be deemed “properly addressed” if it bears the address specified on the Statement of Claim, or, if the Statement has been amended, the address specified on the most recently-filed amended Statement.

10. REVIEW

The Retirement Board shall review these Procedures at least every three years to assure their efficacy and relevance. These Procedures may be amended at any regular or special meeting of the Board of Retirement by a majority vote of the Board.

Retirement Administrator’s Certificate

I, Jeff Wickman, the duly appointed Retirement Administrator of the Marin County Employees’ Retirement Association, hereby certify that these Procedures were reviewed by the Board of Retirement of the Marin County Employees’ Retirement Association on November 3, 2021.



Retirement Administrator