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**BOARD OF RETIREMENT REGULATIONS FOR DISABILITY RETIREMENT CLAIMS**

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**1. Definitions**

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

- a) "Applicant" means:
  1. Any member of the Merced County Employees' Retirement Association claiming benefits under the County Employees' Retirement Law of 1937 (CERL), or
  2. Any person claiming such benefits through or on behalf of a member.
- b) "Subject Member" means a member on whose behalf an application for disability retirement is filed pursuant to Government Code section 31721 or otherwise.
- c) "Interested Party" includes the Applicant, the Subject Member, the Board, the Association, counsel for the Plan Administrator, the plan sponsors, and any other party who has a legal interest in the matter and has requested notice. A department or agency of the County shall not act as an Interested Party unless expressly authorized by the Board of Supervisors to represent the County in the particular matter.
- d) "Retirement Office" means the Merced County Employees' Retirement Association staff.
- e) "Association" means the Merced County Employees' Retirement Association.
- f) "Board" means the Board of Trustees of the Merced County Employees' Retirement Association.
- g) "Application Package" means completed application and medical examination reports and other information required by these Regulations for submission to the Board.
- h) "Hearing Officer" means a person appointed by the Board to make a determination pursuant to section 31533 of the Government Code. A Hearing Officer may also be referred to as a "Referee."

**2. Representation by Counsel**

- a) Any Interested Party, at that party's expense, may hire and be represented by an attorney subject to the provisions of this section. No Applicant is required to have an attorney at any time. It is advised, however, that all Interested Parties, including Applicants and Subject Members, consider retaining an experienced attorney who is knowledgeable about disability retirement law and the CERL.
- b) If any Interested Party becomes represented by an attorney, either such party or such attorney shall promptly file with the Retirement Office, and serve upon all other Interested Parties, written notice of such representation, including the attorney's name, address, telephone number, and email address. Unless appearing with an Interested Party at a hearing, an attorney shall not be deemed counsel of record until such notice of representation is duly filed and served.
- c) Once an application is submitted, the failure to retain counsel or to provide written notice of representation by such counsel shall in no event be considered good cause, in and of itself, to delay any proceeding under these Regulations.

### 3. Applications

- a) A claim for disability retirement shall be made by submitting to the Retirement Office a complete Application Packet. The application shall not be deemed complete until the Applicant has filed with the Retirement Office all of the following:
  1. An application on a form approved by the Retirement Office for that purpose, complete with all information requested therein.
  2. Signed authorizations for release of medical and other information deemed by Retirement Office relevant to a full and complete evaluation of the application.
  3. Copies of all medical reports and records supporting the application.
  4. Identification documents.
  5. Divorce judgments, if any.
- b) The application for disability retirement shall not be deemed effective or filed within the meaning of Sections 31721 through 31724, inclusive, of the California Government Code, or otherwise, until the date upon which it is complete as described in Paragraph 3(a) above.
- c) If, at any time during the pendency of an application, the Applicant changes, in any material way, the facts or claims set forth in the application, the Applicant shall immediately file with the Retirement Office and serve on all Interested Parties written notice of such change. The failure to do so, may, in the discretion of the Board or the Hearing Officer, preclude the Applicant from asserting the facts so alleged or introducing evidence with respect thereto. Notice of any such changed facts or claims shall be given, in writing, to the Retirement Office within ten (10) days of the date the Applicant first knows or should reasonably know of the changed facts or claims, and in no event later than thirty (30) days prior to any hearing.
- d) When an Applicant files an application for disability retirement on behalf of a Subject Member pursuant to Government Code section 31721, or otherwise, and said application lacks all the documents and information required pursuant to Paragraph 3(a) above, the Retirement Office shall proceed as follows:
  1. The Retirement Office shall write to the Subject Member, at the Subject Member's last known address, advising that the application has been filed, providing a copy of the application, and requesting that the Subject Member provide all the information required pursuant to Paragraph 3(a) above. This includes, without limitation, all information requested in the application form, signed authorizations for release of medical records and other information, all supporting medical records, and identification documents. The letter shall advise that the Subject Member has thirty (30) days to provide the requested information and that failure to do so may result in denial of the application on the merits. If appropriate, the letter shall also advise the Subject Member that denial of the application may result in termination of the member's employment by the employer.
  2. The letter from the Retirement Office shall be sent to the Subject Member via Certified U.S. mail, return receipt requested. If, after a reasonable time, the letter is undeliverable, the Retirement Office shall have another copy of the letter personally served on the Subject Member.
  3. If after thirty (30) days the Subject Member has not provided the requested information and documents, or made a good faith effort to do so, the Retirement Office may refer the matter to the Board with a recommendation that the application be denied based on the lack of evidence and the

Subject Member's refusal to cooperate.

4. After due consideration, and in the absence of good cause to the contrary, the Board may deny the application, with or without a hearing, or take whatever action it deems appropriate. Any such denial shall be on the merits.

4. Further Information Required from Applicant or Subject Member

- a) At any time during the pendency of an application, the Board or the Retirement Office may, by written notice to the Applicant or Subject Member, require that they serve within thirty (30) days any or all of the following items:
  1. Copies of records, reports, notes, statements, documents, photographs, or other writings within the definition of Evidence Code Section 250.
  2. Sworn written responses to written inquiries concerning any matter relating to the application or to any matter that is reasonably calculated to lead to the discovery of evidence that would be admissible at a hearing.
- b) If the Applicant or Subject Member fails or refuses to comply with any demand made pursuant to subsection (a) of this section, the Retirement Office may do any of the following:
  1. Suspend action on the application until such time as Applicant or Subject Member complies in full with all such reasonable requests.
  2. Seek to compel compliance with the request by making a motion to the Board pursuant to Section 18 of these Regulations. Such motion may include a request for sanctions pursuant to Section 19 of these Regulations.
  3. If, after the passage of one hundred and twenty (120) days from the date of suspension as set forth in Section 4 (b) (1) above, or in the event that the Applicant or Subject Member refuses to comply with an order issued pursuant to subparagraph (2) within thirty (30) days thereafter, and further provided that there is an absence of good cause for either failure specified herein, the Board may declare that the application is dismissed with prejudice.

5. Medical Examinations

- a) The Board, acting through the Retirement Office, may, on one or more occasions, as deemed necessary, require the Applicant or the Subject Member, as the case may be, to submit to examination(s) by a physician or psychologist with expertise relative to the medical condition designated by the requesting party. The party requiring the examination shall, at least fifteen (15) days before the appointment date, serve the subject member with written notice of the date, time, and place of examination, unless the subject member agrees to accept notice that is by other mode. If the member is unable to keep the examination appointment, the member or their attorney shall notify the Retirement Office in writing of such fact at least ten (10) days before the scheduled examination. If the place of examination is neither in Merced County, nor the County in which the subject member currently resides, the subject member may apply to the Board for reimbursement of travel expenses, in amounts paid at prevailing rates by the County of Merced for meals and mileage, and which the Board, in its discretion, may grant. The records and reports of the examining physician shall be confidential and not subject to discovery except in accordance with these Regulations.
- b) If the Applicant or Subject Member fails or refuses to comply with any demand

made pursuant to subsection (a) of this section, fails or refuses to cooperate fully with the examiner or to submit to all reasonable tests required by such examiner, or fails to notify the Retirement Office of their inability to attend the appointment, the member shall pay all of the expenses incurred by the Retirement Office as a result of the failure to comply, and the demanding party may do any of the following:

1. Suspend all action on the application until the Applicant or Subject Member complies with the request to submit to an examination.
2. Counsel for the Plan Administrator may seek to compel compliance by making a motion pursuant to Section 18 of these Regulations directed to the Board hereof. Such motion may include a request for sanctions pursuant to Section 19 of these Regulations.
3. If the Applicant or the Subject Member, as the case may be, fails after the passage of one hundred and twenty (120) days from the date of the suspension, as set forth in subsection (1) above, or in the event that the Applicant or Subject Member refuses to comply with an order issued pursuant to subsection (2) within thirty (30) days thereafter, and further provided that there is an absence of good cause for either failure specified herein, the Board may declare that the application is dismissed with prejudice.

6. Administrative Recommendation

- a) After reviewing the application and all other documents and information obtained in connection therewith and conducting any necessary investigation, the Retirement Office shall make an appropriate recommendation to the Board. The recommendation may consist of one or more of the following:
  1. "Grant service connected disability retirement" where the Retirement Office determines that the Applicant has proved by a preponderance of the evidence all the elements legally necessary to entitle the member to service connected disability retirement.
  2. "Deny service connected disability retirement" where the Retirement Office determines that the Applicant has not proved by a preponderance of the evidence all the elements legally necessary to entitle the member to service connected disability retirement.
  3. "Grant non-service connected disability retirement" where the Retirement Office determines that the Applicant has proved by a preponderance of the evidence all the elements legally necessary to entitle the member to non-service connected disability retirement.
  4. "Deny non-service connected disability retirement" where the Retirement Office determines that the Applicant has not proved by a preponderance of the evidence all the elements legally necessary to entitle the member to non-service connected disability retirement.
- b) The Retirement Office's recommendation to the Board shall be made at a Board meeting after placing the matter on the agenda.

7. Board's Action Upon Administrative Recommendation

Upon receiving an administrative recommendation from the Retirement Office to grant or deny a disability retirement application, the Board shall, at the first meeting where the matter properly appears on its agenda, take the following actions, or any other actions it deems appropriate: grant disability retirement, deny disability retirement, remand the application back to the Retirement Office for further investigation, or refer any or all issues to hearing.

8 Request for Hearing

Whenever the Board denies an application for disability retirement without a hearing, the Applicant shall, upon written request, be entitled to a hearing before the Board or before a Hearing Officer appointed by the Board. Any such request for hearing shall be in writing and shall be made within fifteen (15) days after the Applicant is served with the Board's decision denying the application.

9. Setting Matters for Hearing

- a) If the Board determines that a matter is to be set for hearing, the matter shall be heard by a Hearing Officer unless the Board moves to hear the matter itself. If the Board determines that a matter is to be heard by a Hearing Officer, the Retirement Office shall notify the Plan Administrator's counsel who shall promptly schedule a hearing, taking into consideration the availability of a qualified Hearing Officer, the availability of witnesses for the parties, and any other matter necessary and appropriate for the hearing. The Plan Administrator's counsel shall serve written notice of the date, time, and place of the hearing on all Interested Parties at least thirty (30) days in advance of the scheduled hearing, unless otherwise stipulated by all Interested Parties.
- b) The Retirement Office shall maintain a list of qualified licensed attorneys who are approved by the Board and who are available to serve as Hearing Officers. The Retirement Office shall appoint the Hearing Officer for each hearing by determining which person on the list served last and selecting the person next in order. In the event the person next in order declines to serve or is unavailable to serve within a reasonable period of time, the Retirement Office shall appoint the person next in order. The notice of hearing shall include the name of the person appointed to serve as Hearing Officer. Any Interested Party may promptly object in writing to the appointment of a particular person to serve as Hearing Officer. However, such objection must be made in writing and must be served on all parties within ten (10) days of service of the notice of hearing. Failure to do so shall constitute a waiver of the right to object. In the event an objection is timely served, the Retirement Office shall appoint as Hearing Officer the person next in order on the Hearing Officer list.
- c) Upon stipulation by all the Interested Parties or upon a showing of good cause, the Hearing Officer or the Board may continue a hearing to a new date. The grounds for a continuance and the factors to be considered in determining good cause are as set forth in Rule 3.1332 of the California Rules of Court.
- d) The party requesting a hearing continuance shall bear all costs relating to the continuance unless good cause is shown to the Hearing Officer or the Board, as the case may be. Such costs include, but are not limited to, Hearing Officer fees, court reporter fees, witness fees, and any other costs, fees, and expenses incurred by the Association or any other Interested Party as a result of the continuance.

10. Pre-Hearing Regulations

- a) Any Interested Party shall be entitled to notice and take depositions in the manner prescribed by the California Code of Civil Procedure, except that there shall be no distinction between the depositions of expert and non-expert witnesses, and the provisions of the California Code of Civil Procedure limited to the depositions of expert witnesses shall not apply. The party noticing a deposition shall pay any and all costs of depositions and fees to which the witness is entitled.
- b) All requests for subpoenas or subpoena duces tecum shall be made pursuant to

Government Code Section 31535. In order to request the issuance of a subpoena or subpoena duces tecum, an Interested Party shall complete and submit to the Retirement Office a form approved by the Plan Administrator for that purpose, and shall do so at least five (5) working days before the date the subpoena or subpoena duces tecum is to be issued. No subpoena or subpoena duces tecum shall be issued until the requesting party has posted with the Retirement Office any fees to which the subpoenaed witness is likely to be entitled. The party requesting a subpoena or subpoena duces tecum shall be responsible for serving and enforcing it. Fees and costs associated with the issuance or service of any subpoena or subpoena duces tecum as described herein shall be the same as those made applicable by law to witnesses in the Superior Courts of this State.

- c) Formal discovery shall be limited to written interrogatories, requests for production of documents, and depositions as set forth in the California Code of Civil Procedure, except as may be stipulated between the parties.
- d) The parties may submit a hearing brief supporting or opposing the Application. Such briefs should set forth the legal basis and key evidence supporting or opposing the Application. A hearing brief must be delivered to all Interested Parties and the Board of Retirement or the Hearing Officer, as the case may be, at least twenty (20) days prior to the hearing date. Initial briefs should be no longer than fifteen (15) pages, double spaced. Rebuttal or response briefs, if any, must be delivered to all Interested Parties and the Board of Retirement or the Hearing Officer, as the case may be, at least seven (7) days prior to the hearing date. Rebuttal or response briefs should be no longer than ten (10) pages, double spaced. Late briefs may be accepted, for good cause delay, at the discretion of the Chair of the Board or the Hearing officer, as the case may be.

#### 11. Hearing Regulations

- a) Closed Session: All hearings before the Board shall be conducted in closed session unless the member requests that the hearing be held in open session. Such request shall be made on the record. Hearings before a Hearing Officer shall in all cases be closed to the public.
- b) Reporting: Every hearing shall be reported by a Certified Shorthand Reporter (court reporter). The Retirement Office shall arrange for a court reporter to be present and shall pay the court reporter's per diem costs and for the original and one copy of the hearing transcript
- c) Documentary Record: At the commencement of the hearing on each application for disability retirement or other matter, the Board Chair or the Hearing Officer, as the case may be, 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 Board Chair, or acting Chair, or the Hearing Officer, as the case may be, shall exercise such control over the hearing as is reasonable, necessary, and consistent with these Regulations, prescribing the order of proof, ruling upon the admissibility of evidence, questioning witnesses, and determining whether the matter shall proceed or be adjourned subject to continuation.
- e) Objections: In hearings before the Board, all objections to the introduction or admissibility of evidence shall be determined by the Chair of the Board, subject to the re-determination by the Board through motion duly made, seconded and adopted by a majority of the members. The advice of the Board's Counsel shall

be sought on all objections to the admissibility of evidence, in advance of ruling. In hearings before a Hearing Officer, all objections to the introduction or admissibility of evidence shall be decided by the Hearing Officer.

- f) Prerogatives of the Board: In hearings before the Board, the Board reserves the right to reject any recommendation that an application be granted or denied, and to interrupt any hearing for the purpose of seeking independent medical advice or receiving other testimony or evidence not presented by the parties.
- g) Absent Board Members: In hearings before the Board, no member of the Board who has not been in attendance during any portion of a hearing on an application for disability retirement shall participate in the determination by the Board of the application unless the member has read a transcript of that portion of the hearing in which he/she was not in attendance and has stated on the record that such review has been undertaken and completed.
- h) Rules of Evidence: Except as otherwise provided in these Regulations, any relevant evidence shall be admitted if it is the sort of evidence on which reasonable and 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. Hearsay evidence may be used for the purpose of augmenting or explaining any direct evidence but shall not be sufficient in and of itself to support a finding unless admitted pursuant to subsections (m), (n), (o) or (p) of this section, or unless it would be admissible over objection in civil actions. Upon proper objection, evidence that is irrelevant or unduly repetitious shall be excluded.
- i) Oral Evidence: Oral evidence shall be taken only on oath or affirmation.
- j) Witnesses: On any relevant matter, each Interested Party shall have the right to call and examine witnesses, introduce documentary and other physical evidence, and cross-examine opposing witnesses. Any Interested Party who does not testify on his own behalf may be called and examined as a witness as if under cross-examination.
- k) Witness Fees: The party calling a witness shall be responsible for paying any fees or other expenses of that witness.
- l) Refusal to Testify: A refusal by an Interested Party to testify when called, or to answer proper questions in the course of testifying, shall be grounds for deeming such testimony, or the answers to such questions, to have been given and to have been adverse to the refusing party.
- m) Medical Evidence: The production of medical evidence in the form of written reports is favored, provided that they have been served in the manner and within the time set forth in subsection (n) of this section.
- n) Medical Records or Reports: Any Interested Party may offer, and the Board or Hearing Officer shall receive into evidence, any medical records or reports that are relevant and that constitute substantial evidence, if copies of the said documents have been delivered to all Interested Parties at least twenty (20) days prior to the hearing, along with written notice of intention to offer the same into evidence. Any interested party may, at their own expense, subpoena the author of such a medical report or record as a witness, and examine the author as if under cross-examination. Any party calling such an expert witness or an expert witness who has not provided a report must give notice of at least fifty (50) days prior to the date of the hearing to all Interested Parties. The Board or the Hearing Officer, as the case may be, may, in their discretion, waive the lack of a fifty (50) day notice for good cause as determined by the Board or the Hearing Officer. Medical reports

prepared for purposes of Worker's Compensation proceedings are not made inadmissible by that fact alone; however, no opinion therein shall constitute substantial evidence to support a finding of permanent incapacity or service connection if that opinion is based upon any criterion that is peculiar to Worker's Compensation or is otherwise not germane to the issue of permanent incapacity or service connection under CERL.

- o) Non-Medical Written Statements: Any interested party may offer, and the Board or the Hearing Officer shall receive into evidence, any relevant written statement by a non-medical witness, if:
  - 1. It is made by affidavit or by declaration upon penalty of perjury.
  - 2. A copy has been delivered to all interested parties at least twenty (20) days prior to the hearing, along with written notice of intention to offer the same into evidence; and
  - 3. No Interested Party has, at least ten (10) days prior to the hearing, delivered to the proponent a written demand that the witness be produced in person to testify at the hearing. The Board shall disregard any portion of a statement received pursuant to this subsection that would be inadmissible if the witness were testifying in person, but the inclusion of inadmissible matters shall not render the entire statement inadmissible.
- p) Deposition Transcripts: Any interested party may offer, and the Board or Hearing Officer shall receive into evidence, any relevant deposition transcript and/or video recording if:
  - 1. The deposition was taken in the manner provided by law or by stipulation of the parties, and
  - 2. At least twenty (20) days prior to the hearing the offering party delivered to all interested parties notice of intention to offer the same into evidence. Nothing herein shall require or permit receiving into evidence any deposition testimony to which objection is properly raised if such testimony would be inadmissible were the witness present and testifying at the hearing.
- q) Obligation to Appear at Hearing: A duly noticed hearing may proceed in the absence of any Interested Party. Applicants and Subject Members, where applicable, shall personally appear at all hearings pertaining to their application. Service by mail of written notice of hearing shall be sufficient to compel the appearance of the Applicant and Subject Member at hearing. Failure of an Applicant or a Subject Member to personally appear and testify at any duly noticed hearing, whether before the Board or a Hearing Officer, may be deemed a withdrawal of the corresponding disability retirement application with prejudice, unless the hearing is continued by stipulation of the Interested Parties or upon a showing of good cause.
- r) For the purposes of this section, "delivery" of a document or a notice may be accomplished by personal service in accordance with the Code of Civil Procedure or by mail in accordance with Section 20 of these regulations except that if delivery is by mail the time prescribed in this section for the delivery of documents and notices shall be increased by five (5) days.

## 12. Hearings before the Board

- a) Four (4) members of the Board shall constitute a quorum for a hearing held before the Board pursuant to the provisions of this Article. With respect to any such hearing, no findings of fact or decision by the Board shall be valid or effective

without the votes of the greater of the following:

1. A majority of all members present; or
  2. Four (4) members.
- b) The Board shall decide and provide a decision to the Applicant on all material issues no later than sixty (60) days following the meeting at which the matter is submitted unless there is a delay in obtaining additional information pursuant to Section 11 (f).

13. Hearings before Hearing Officers

- a) When a hearing is held before a Hearing Officer, he/she shall prepare a written recommended decision to be submitted to the Board. The document shall include detailed findings of fact and conclusions of law on all relevant issues. It is essential that the document include a thorough analysis regarding how each disputed fact and legal issue was decided. The recommended decision must be in a form which, if adopted by the Board, will satisfy the judicial review requirements of Code of Civil Procedure section 1094.5.
- b. The Hearing Officer shall submit the proposed recommended decision to the Retirement Office and serve a copy thereof on all Interested Parties within forty-five (45) days after the matter is submitted. The Hearing Officer shall simultaneously deposit with the Retirement Office all documents marked as hearing exhibits, which the Retirement Office shall add to the administrative record. The Hearing Officer shall not be entitled to remuneration for his/her services until the recommended decision has been submitted and served. For purposes of this subsection, a matter is considered "submitted" on the last day of the hearing, unless the Hearing Officer, for good cause, orders otherwise.
- c. Post hearing briefs are permitted at the Hearing Officer's discretion. Such briefs shall be submitted to the Retirement Office and served on all Interested Parties no more than twenty (20) days after the conclusion of the hearing.
- d. Upon service of the Hearing Officer's recommended decision, the Interested Parties shall have ten (10) days to submit objections thereto by filing said written objections with the Retirement Office and serving copies thereof on all Interested Parties. Said objections shall be considered by the Board and included in the administrative record. Objections not made within ten (10) days shall be deemed waived.

14. Action by the Board on Hearing Officer's Recommended Decision

- a) Upon receipt of the Hearing Officer's recommended decision, the Retirement Office shall place the matter on the Board's agenda.
- b) The Board shall, at the first meeting where the matter properly appears on its agenda, review the Hearing Officer's recommended decision as well as any timely filed objections thereto. After giving the matter due consideration, the Board may:
  1. Approve and adopt the Hearing Officer's recommended decision as its own; or
  2. Request and review a transcript of the hearing as well as all the evidence introduced at the hearing. Upon receipt and review thereof, the Board may issue an opinion based on its review of the evidence; or
  3. Refer the matter back to the Hearing Officer with instructions for further proceedings; or
  4. Set the matter for hearing before the Board. At such hearing, the Board shall hear and decide the matter as if it had not been referred to a Hearing Officer.

15. Board Decisions

- a) All of the following provisions apply to any decision of the Board that is subject to judicial review pursuant to Code of Civil Procedure Section 1094.5:
  1. The decision shall be in writing.
  2. The decision shall include or be accompanied by notice that the time in which judicial review must be sought is governed by Code of Civil Procedure Section 1094.6 and shall include or be accompanied by the text of Section 1094.6.
  3. The decision shall be accompanied by a copy of an affidavit or certificate of mailing.
  4. The foregoing shall be served upon all Interested Parties by first class mail, with postage prepaid.
- b) For purposes of judicial review, a decision of the Board is final on the date that the written decision is served on the Interested Parties.
- c) Neither Code of Civil Procedure Section 1013 (a) nor any provision of these regulations shall apply to extend the time within which judicial review must be sought.
- d) The Board shall not entertain any petition for reconsideration of any decision after the decision is final.

16. Judicial Review of Board Decisions

- a) Any request for the preparation of the administrative record pursuant to Code of Civil Procedure Section 1094.6 shall be made in writing and filed with the Retirement Office. The Retirement Office shall, within ten (10) days of receiving such a request, notify the requesting party of the estimated cost of preparing the record.
- b) Any requesting party other than a MercedCERA Employer or the Retirement Office shall within ten (10) days of receiving such notification, deposit with the Retirement Office an amount sufficient to cover the estimated costs. If during the preparation of the record it becomes apparent that the costs will exceed the amount of the deposit, the requesting party shall be notified and shall deposit the additional amounts before the record is completed. If the cost of preparing the record exceeds the amount deposited, the party requesting the record shall pay the excess. If the amount deposited exceeds the cost, the difference shall be returned to the party requesting such record. Upon receiving the required deposit, the Retirement Office shall promptly prepare the administrative record, exclusive of documents protected by attorney-client privilege or the attorney work-product doctrine.

17. Disability Beneficiaries Under 55 Years of Age

The Board may request information from any disability beneficiary under fifty-five (55) years of age in the manners prescribed in Sections 4, 5, and 10 of these Regulations. If from such information and medical re-examination it appears that the disability beneficiary may no longer be incapacitated, the Board may order a hearing on the issue of incapacity, in which case the procedure shall be the same as those provided in these Regulations for applications for disability retirement.

18. Motions

Any Interested Party claiming that another Interested Party has not complied with any requirement of these regulations or the CERL shall first attempt to resolve the issue with the other party. Thereafter the said Interested Party may make written notice for an order compelling compliance. The motion shall include the following:

- a) A verified statement of all relevant facts, including a description of efforts made to resolve the dispute informally and the reasons given by the respondent party for non-compliance.
- b) A statement of the relief sought.
- c) A memorandum of supporting points and authorities; and,
- c) A copy of an affidavit or certificate of service upon all Interested Parties.

The motion shall be made to the Board, which may refer the matter to hearing before a Hearing Officer. The respondent party shall have five (5) days from the date the motion is served to submit written opposition. Such opposition shall include the following:

- a) A verified statement of all relevant facts.
- b) A memorandum of supporting points and authorities; and
- c) A copy of an affidavit or certificate of service upon all Interested Parties.

Upon the expiration of the time allowed for opposition, the Board shall either grant or deny the motion without a hearing, set a hearing on the motion before itself, or refer the matter to hearing before a Hearing Officer.

19. Sanctions

Upon a motion pursuant to Section 18 of these Regulations, the Board may impose against any Interested Party any of the sanctions available under the Code of Civil Procedure, on any grounds that would support the imposition of those sanctions in a superior court civil matter. The Board may suspend an Applicant's right to proceed until the Applicant has satisfied the terms of an order imposing sanctions.

20. Service

- a) When a provision of this Article requires that any party be served, service shall also be made upon all Interested Parties, the Retirement Office, and all counsel who have appeared in the matter.
- b) If the party to be served has an attorney of record in accordance with Section 2 of these Regulations, service shall be made upon the attorney of record.
- c) Unless otherwise provided in these Regulations, when a provision of this Article 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 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. 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 member, a mailing shall be deemed "properly addressed" if it bears the address specified on the application, or, if the application has been amended, the address specified on the most recently-filed amended application.

21. Amendments

These regulations may be amended at any regular or special meeting of the Retirement Board by a majority vote of the Board, subject to approval by the Board.

The foregoing regulations are hereby adopted and made effective for the Merced County Employees' Retirement System this 11<sup>th</sup> day of July, 1996.

The foregoing regulations are hereby amended and made effective for the Merced County Employees' Retirement System this 10<sup>th</sup> day of July, 2008.

The foregoing regulations are hereby amended and made effective for the Merced County Employees' Retirement System this 11<sup>th</sup> day of February, 2010.

The foregoing regulations are hereby amended and made effective for the Merced County Employees' Retirement System this 09<sup>th</sup> day of September, 2010.

The foregoing regulations are hereby amended and made effective for the Merced County Employees' Retirement System this 08<sup>th</sup> day of September, 2011.

The foregoing regulations are hereby amended and made effective for the Merced County Employees' Retirement System this 09<sup>th</sup> day of May, 2013.

The foregoing regulations are hereby amended and made effective for the Merced County Employees' Retirement System this 10<sup>th</sup> day of May, 2018