MENDOCINO COUNTY EMPLOYEES RETIREMENT ASSOCIATION

ADMINISTRATIVE HEARING POLICY

I. PURPOSE

The purpose of this Policy is to provide an administrative appeal process on matters other than disability retirement applications as to which the MCERA Board of Retirement ("Board") or Retirement Administrator ("Administrator") determines that such an appeal right is warranted.

II. OBJECTIVE

The primary objective of this Policy is to provide an administrative appeal process that complies with constitutional requirements to due process to any MCERA member, beneficiary or successor-in-interest (collectively referred to herein as "Member") who challenges an administrative determination made by the Administrator, except for disability retirement matters that follow a separate MCERA Policy. For example, appeals under this Policy may address, among other topics: (i) determinations of whether a pay item is "compensation earnable" under Government Code section 31461 or "pensionable compensation" under Government Code section 7522.34; (ii) an adverse action with respect to a retired Member who seeks to, or does, work in excess of 960 hours during a fiscal year; (iii) felony forfeiture of benefits as provided in Government Code sections 7522.72, 7522.74; (iv) adjustment of overpaid benefits, and/or under-collected contributions, or otherwise.

III. GUIDELINES AND PROCEDURES

A. Filing a Timely Appeal

A Member or other claimant (such as MCERA's plan sponsor the County of Mendocino and participating districts the Mendocino County Superior Court and the Russian River Cemetery District) (collectively, "Claimant") may appeal any MCERA staff administrative decision in writing to the Administrator within 30 days of MCERA's notification of the decision ("Appeal").

B. Administrative Response to Appeal

The Administrator will respond in writing to the Appeal, either (i) reconsidering the staff decision and modifying or overturning it; or (ii) reasserting and further explaining the factual and/or legal basis for the decision and informing the Claimant that the administrative decision may be appealed to the Board under this Policy, if appropriate. The Administrator shall also inform the Claimant in that response whether MCERA is aware of any other party who opposes the Appeal ("Adverse Party"). Further, the Administrator will inform the Claimant that the Claimant and any Adverse

Party, including MCERA (collectively, the "Parties"), may be represented by an attorney licensed to practice in the State of California with respect to the Claim at the sole expense of that party. Once MCERA has notice that an attorney is representing any Party, all notices and other papers shall be served on the attorney for that Party.

C. Statement of Claim and Limited Waiver of Confidentiality

1. Within 14 days of receiving written notice from MCERA of the Administrator's decision in response to the Appeal, the Claimant may challenge that decision by filing a completed Statement of Claim with the Administrator and shall provide a copy of the Statement of Claim to the Adverse Party. The Statement of Claim shall be on the form provided by MCERA, and must include all information and documents requested on the form. A Statement of Claim may, but is not required to be, filed jointly by any Claimants who are jointly represented by counsel.

2. By filing a Statement of Claim, a Claimant waives confidentiality with respect to any documents in Claimant's MCERA file that relate in any way to Claimant's Claim and any defense.

D. Response to Statement of Claim

1. Upon Claimant's filing of a Statement of Claim, MCERA will provide Claimant and any Adverse Party with all documents in Claimant's file that relate in any way to the Claim and any defense.

2. Within 30 days of providing the information as defined in D(1) above, the Claimant shall provide the Administrator a written notice of intent to proceed with an administrative appeal. The written notice of intent to proceed with an administrative appeal shall include the Claimant's basis for challenging the decision.

3. Upon receipt of the Claimant's written notice of intent to proceed, the Administrator will either agendize consideration of the Claim for a Board of Retirement meeting, or will set the matter for hearing as contemplated by Government Code section 31533 and as further provided herein, as appropriate under the circumstances as determined by the Administrator.

E. Administrative Hearing Before the Board

1. If the Claim is agendized for a Board meeting, then, at least 10 days before the Board meeting, the Adverse Party and/or the Administrator may provide a written response to the Statement of Claim ("Response") to MCERA and shall timely provide a copy of the Response to the Claimant. The Adverse Party may then provide a reply to the Response ("Reply") at least 5 days before the Board meeting. The Board agenda materials regarding the Claim shall include the Statement of Claim, Response(s) and Reply, and any evidentiary material provided.

2. The Board may hear the Appeal itself or refer it to a hearing officer for a recommendation to the Board for a final decision as provided in Government Code section 31533.

3. If the Board hears the Appeal itself, the Claimant may present arguments to the Board during open session for up to 10 minutes, and the Adverse Party and MCERA may present rebuttal evidence and argument for a total of 10 minutes, unless the Board Chair provides each side with additional time.

4. The Board shall make a final administrative decision on the Appeal by majority vote.

5. MCERA will notify the Claimant and any Adverse Parties, other than itself, in writing of the Board's final administrative decision within 10 days of the Board meeting at which the Board makes a decision on the Appeal.

F. Administrative Hearing Before a Hearing Officer

1. If the Claim is set for hearing, a member of the Board or another hearing officer duly appointed by the Board shall preside over the hearing as contemplated by Government Code section 31533 ("Hearing Officer").

2. The Hearing Officer shall make all rulings necessary for fair and efficient proceedings, including the admissibility of evidence, conduct of witnesses and parties and scheduling. Parties and their counsel are prohibited from having communication with Board members or Hearing Officers regarding matters related to the hearing without the presence or knowledge of the other side.

3. The Claimant has the burden of proof and shall present its case first, followed by MCERA and any other Adverse Party. In all cases, the presentation may include:

   a. Opening statements;

   b. Testimony of witnesses and presentation of documentary evidence;

   c. Cross examination of witnesses;

   d. Rebuttal evidence;

   e. Closing statements

4. The Parties may submit written evidence and argument to the Hearing Officer. Each side will provide copies of the materials proposed to be offered at the Hearing to the other side at least 10 days before the Hearing is held.

5. Witnesses must testify under oath or affirmation administered by the Hearing Officer. Each party is responsible for obtaining those subpoenas it deems necessary for the presentation of its evidence at hearing. All subpoenas are to be issued in accordance with Government Code section 31535.

6. The Hearing need not be conducted according to technical rules relating to evidence and witnesses. Any relevant evidence shall be admitted if it is the sort of evidence on which reasonable 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. The rules of privilege shall be effective to the extent that they are otherwise required by statute to be recognized at the Hearing. The Hearing Officer has discretion to admit relevant and reliable evidence and to exclude irrelevant or repetitious evidence. The record shall be closed to new evidence at the conclusion of the final day of Hearing unless each party stipulates to leave the record open.

7. Following the Hearing, the Hearing Officer shall transmit to the Board written proposed findings of fact, conclusions of law, and recommendations.

G. Board Consideration and Action after Administrative Hearing

1. Upon receiving the Hearing Officer's proposed findings of fact and recommendations, the Board may do one of the following pursuant to Government Code section 31534:

    a. Approve and adopt the proposed findings and recommendations; or

    b. Require a transcript or summary of all the testimony, plus all other evidence received by the Hearing Officer. Upon receipt thereof the Board shall take such action in its opinion is indicated by such evidence; or

    c. Refer the matter back to the Hearing Officer with instructions for further proceedings; or

    d. 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 the Hearing Officer.

2. MCERA will notify the Parties in writing of the Board's determination within 10 days of the hearing.

IV. POLICY REVIEW

The Board shall review the Administrative Hearing Policy at least every three years to ensure that it remains relevant and appropriate.

V. POLICY HISTORY

The Board adopted this policy on July 18, 2018.