



**SAN JOAQUIN
County Employees'
Retirement Association**

bylaws

Updated February 23, 2010

San Joaquin County Employees' Retirement Association

BYLAWS

Effective February 23, 2010

As adopted by the Board of Retirement and approved by the San Joaquin County Board of Supervisors pursuant to California Government Code Section 31525. In the event a conflict between these bylaws and the County Employees Retirement Law arises, the law shall prevail.

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SECTION 1. NAME

The name of this retirement system is the "SAN JOAQUIN COUNTY EMPLOYEES' RETIREMENT ASSOCIATION" ("SJCERA").

SECTION 2. PURPOSE

SJCERA is established under the County Employees' Retirement Law of 1937 (Chapter 3 of Part 3 of Division 4 of Title 3 of the California Government Code, Section 31450 et seq.) (hereinafter "the Act") for the purpose of carrying out the provisions of the Act within the County of San Joaquin, California, as more particularly described in Government Code Section 31451. These bylaws govern the management and operation of the retirement system for the benefit of its membership, including its retired members and their survivors, dependents, and beneficiaries.

SECTION 3. DEFINITIONS

Words, terms, and phrases used in these bylaws shall be given meaning as defined in the Act unless otherwise specified in these bylaws.

SECTION 4. ADMINISTRATION

4.1 General

- (a) Management of the retirement system is vested in the Board of Retirement ("Board"). Routine day-to-day administration of the retirement system may be delegated to the Retirement Administrator ("Administrator"), who shall be that individual appointed by the Board pursuant to Government Code Section 31522.2.
- (b) All meetings of the Board shall be subject to the open meeting provisions known as the Ralph M. Brown Act, Government Code Section 54950 et seq. ("The Brown Act".)
- (c) At the first regular meeting in July of each year, the Board shall elect, pursuant to open nomination and secret ballot or roll call vote, at the discretion of the Board, one of its members as Chair, one of its members as Vice-Chair, and one of its members as Secretary, each to hold office for a term of the later of one (1) year or until a successor is duly elected. Should any officer fail for any reason to complete a full term, the Board shall elect a successor for the balance of the unexpired term at its next regular meeting. The County Treasurer shall serve ex-officio as the Treasurer for the SJCERA. Except as otherwise provided by law, an appointed or elected member of the Board shall continue to serve beyond the prescribed term until a successor is duly qualified and elected or appointed. The Alternate Member shall serve as provided in Government Code Section 31520.1. The Alternate Retired Member shall serve as provided in Government Code Section 31520.5.
- (d) Unless otherwise notified in advance, the regular meetings of the Board shall be held on the second Friday of each month, and the financial meetings shall

be held on the fourth Friday of each month, both meetings are to begin at 9:00 a.m. in the Retirement Boardroom, 6 S. El Dorado Street, Suite 400, Stockton, California.

- (e) Special meetings of the Board may be requested at any time by any Officer of the Board or by any five (5) Members of the Board. The Officer or Members requesting a special meeting shall direct the Administrator, in writing, to give each Member not less than four (4) days' notice of the special meeting, unless by unanimous written consent time is waived before or at the time of the special meeting. The Administrator shall give public notice of the meeting as required under the Brown Act.
- (f) Regular or Special meetings may be reset or continued by the Board for good cause. If a meeting is reset or continued, the Administrator shall give at least four (4) days' notice of the date of the reset or continued meeting to such Officers or members as were not present at the time of re-setting or continuance.

4.2 Election and Appointment of Board Members

- (a) Pursuant to Government Code Section 31520.1, the Board shall be composed of nine (9) members, one alternate member, and one alternate retired member.
- (b) The following procedure shall be established for the election of the second, third, seventh, eighth, and alternate retired members:
 - (1) The election shall be conducted by the County Registrar of Voters who shall establish the filing dates for candidates, the method of election, all election rules, the election date, and who also shall conduct the election and certify the results.
 - (2) In the event there are more than two candidates for any elective position, a candidate must receive a majority of the votes cast to be elected. Should no candidate receive a majority of the votes cast, the County Registrar of Voters shall provide for a run-off election between the two candidates receiving the greatest number of votes.

4.3 Procedures

- (a) ROBERT'S RULES OF ORDER shall guide the Board in its proceedings, except as otherwise provided herein or in the Act. The Chairperson shall have a vote on all questions and motions and shall not be required to relinquish the chair in order to participate in discussions. The order of business shall include:
 - (1) Roll Call
 - (2) Pledge of Allegiance
 - (3) Approval of Minutes
 - (4) Benefit Applications / Investment Issues and Transactions
 - (5) Old Business/New Business
 - (6) Communications

- (7) Comments
- (8) Adjournment

The order of business may also include one or more closed sessions in accordance with and as allowed by the Brown Act as needed to conduct the Board's business.

- (b) Five Members of the Board shall constitute a quorum. Subject to paragraph (c) below, no motion may be passed or business transacted except in matters dealing with hearings without at least five (5) affirmative votes.
- (c) Disability retirement hearings conducted by the Board must have at least seven (7) members in attendance (see 10.3).
- (d) Communications and requests shall be made in writing and directed to the Board in care of the Administrator. The substance of such communications and requests, and Board action thereon, shall be noted in the minutes of the Board meeting.

4.4 Clerk of the Board

The Clerk of the Board, who shall be that person authorized as such by the Administrator, shall cause to be recorded in the minutes the time and place of each meeting, the name of each member present, all official acts and discussions of the Board, the votes given (except where the action is unanimous) and, where requested by a dissenting or approving member, such member's dissent or approval. The Clerk shall cause the minutes to be reduced to written form forthwith and presented for Board approval at its next regular or financial meeting. Such minutes, or a true copy thereof, shall be signed by the Secretary and Chairperson and shall become a part of the Board's permanent record.

4.5 Correction of Member Errors or Omissions

- (a) The Board of Retirement may, in its discretion and upon any terms it deems just, correct the errors or omissions made by any active or retired member, or any beneficiary of an active or retired member, provided that all of the following facts exist:
 - (1) The written request for correction is filed with the board within a reasonable time after discovery of the error or omission, which in no case shall exceed six months after discovery of the error or omission.
 - (2) The error or omission was the result of mistake, inadvertence, surprise, or excusable neglect, as each of those terms is used in Section 473 of the Code of Civil Procedure.
 - (3) The correction will not provide the party seeking correction with a status, right, or obligation not otherwise available under the Act.
- (b) The Board of Retirement may correct prospectively all actions taken as a result of errors or omissions of the SJCERA.

(c) Correction of errors or omissions pursuant to this section may be implemented retroactively and shall include the collection or return of inaccurate contributions together with interest, unless the Board of Retirement in its discretion finds any of the following:

- (1) The correction cannot be performed in a retroactive manner;
- (2) The status, rights, and obligations of all of the parties affected cannot be adjusted to be the same that they would have been if the error or omission had not occurred;
- (3) Any purposes of this chapter, including funding of benefits on a sound actuarial basis, will not be effectuated if the correction is performed in a retroactive manner.
- (4) Retroactive application is precluded by the doctrine of equitable estoppels;
or
- (5) The error or omission is not due to a clerical error by the SJCERA and, as of the date the request for correction is filed with the Board, a judicial action seeking retroactive relief is barred by the period of commencement of actions set forth in the Code of Civil Procedure, the Government Code, or other applicable provisions of law.

4.6 SJCERA Clerical Error

If the Board of Retirement finds that the error or omission is due to a clerical error by the SJCERA, the Board may, in its sole discretion, waive the period for commencement of actions in order to adjust the payment due to the member to be the same the member would have received if payment had been made at the proper time, but for the SJCERA's clerical error. Such payment shall include regular interest. "Clerical error," as used herein, means only those errors of a mechanical, mathematical, or clerical nature, not involving judgment or discretion, where it can be shown from the SJCERA documents that the error was not intended by the SJCERA at the time it occurred.

4.7 Authority to Refrain from Collection

The SJCERA may refrain from collecting an overpayment of benefits or underpayment of contributions whenever the board determines in its reasonable discretion that the costs of collection would exceed any probable recovery.

4.8 Offset Against Future Benefit Payments

The Board of Retirement may direct staff to correct an error or omission by offsetting the amount to be recovered against future benefits. In no event, however, shall a member's or beneficiary's allowance be reduced by more than ten percent (10%) per month, unless the member agrees in writing to a higher percentage.

4.9 Right to Administrative Appeal of Board Decisions

Any member or beneficiary who is dissatisfied with the Board's determination pursuant to this section shall, upon request, be entitled to a hearing before the Board, or before a referee appointed by the Board pursuant to Government Code Section 31533. Any such request for hearing shall be in writing, and shall be made within 30-days after notice of the Board's action correcting the error or omission is mailed by certified or registered mail to the member or beneficiary. The request for hearing is deemed made on the date mailed if mailed by certified or registered mail, or the date postmarked if mailed by first class mail and received, or on the date received by the system, whichever is earlier.

4.10 Rights and Remedies Cumulative

The rights and remedies provided in these bylaws or the Act are in addition to any other rights and remedies any party may have at law or equity. Nothing shall preclude any party from instituting an action for declaratory or other relief in lieu of proceeding under these bylaws or the Act.

SECTION 5. MEMBERSHIP

5.1 General

- (a) Membership shall be as defined by the Act as supplemented by these bylaws.
- (b) Every employee of the County of San Joaquin or of any district included in the SJCERA appointed to a permanent full-time position, as specified in the ordinances of the County of San Joaquin or resolutions of districts, shall be a member as follows:
 - (1) After successful completion of a pre-employment physical, if required for that job classification; and
 - (2) On the first day of employment in a permanent full-time position.
- (c) Employees who are appointed to a position for a period not to exceed a total of nine (9) months in any consecutive twelve (12) month period, seasonal employees, intermittent employees, or part-time employees are excluded from membership in the SJCERA. Elected officials, filing a declaration with the Board to become a member, shall become a member as of the beginning of the next payroll period following the filing of such declaration. Persons employed under contract for a period not to exceed a total of nine (9) months in any consecutive twelve (12) month period providing services requiring professional, highly technical skills are ineligible for membership.
- (d) Superior Court Officers and their attaches and the Public Administrator shall be included in the SJCERA pursuant to the Act.

- (e) The Board may, from time-to-time, determine by classification of position, other than those specifically provided by the Act, the eligibility for membership and shall list those to be ineligible.

5.2 Application for Membership

- (a) Every employee who is or becomes a member of the SJCERA shall file a sworn statement showing that employee's date of birth, the nature and duration of the employment with the County of San Joaquin, or any contracting districts, and the compensation received. Such information shall be in a form supplied by the SJCERA. It shall be the duty of the appointing authority to assure that all eligible employees complete the required sworn statement and to forward such statement immediately to the Administrator.
- (b) Every employee who is eligible for membership in the SJCERA also shall submit a certified copy of the employee's birth certificate or, if unobtainable, other proof of age. The following alternative documents will be acceptable:
 - (1) Any one of the following:
 - (a) Infant baptismal certificate;
 - (b) School age record;
 - (c) Hospital birth record;
 - (d) Authenticated family record;
 - (e) Passport issued within the last 10 years; or
 - (2) Any two of the following:
 - (a) Marriage record, if age is shown;
 - (b) Military record;
 - (c) Child's birth certificate showing age of parent;
 - (d) Affidavit by older member of family;
 - (e) Naturalization certificates issued by Immigration and Naturalization Service.

In the event of a discrepancy in age, the earliest birth date shall prevail.

- (c) If it is impractical for the Board to determine from the records the age of any member, or if the member refuses or fails to give the Board a statement of the member's age, the Board may estimate the member's age for the purposes of the Act.
- (d) If the Administrator is satisfied that the applicant's date of birth should be corrected on the records of the SJCERA, the Administrator may recommend such correction be made. The recommendation shall be in writing, shall summarize the evidence in support of the recommendation, and shall provide the total amount of contributions necessary to satisfy the correction, either additional or refundable.

5.3 Designation of Beneficiary

- (a) Every member at the time of retirement shall submit evidence of marriage if the member's designated beneficiary is the member's spouse and the member elects an option pursuant to Sections 31760 et seq. of the Government Code.
- (b) Every member, at the time of retirement, shall submit proof of age for any designated beneficiary or beneficiaries selected pursuant to the exercise of an option contained within Section 31760 et seq. of the Government Code. Proof of age shall be as described in Section 5.2 of these bylaws.
- (c) For purposes of the Act, registered domestic partners, as defined in California Family Code Section 297, of SJCERA members have the same rights, protections, and benefits, and are subject to the same responsibilities, obligations, and duties as are granted to or imposed upon spouses of SJCERA members.

SECTION 6. MEMBER CONTRIBUTIONS

6.1 General

Contributions shall be made in accordance with the Act as supplemented by these bylaws. Normal and cost-of-living contributions shall be made on recognized compensation factors of the classification as determined by the Board.

6.2 Withdrawal of Contributions

- (a) A member who has terminated employment subject to membership may elect to withdraw his or her accumulated contributions, including interest last credited. The date of termination of employment is defined as the date the employee last received compensation on the payroll. A request to withdraw accumulated contributions shall be presented to the Administrator in writing. The member shall receive a refund of accumulated contributions as soon as approved by the Administrator, but in all cases within sixty (60) days from the date of request for withdrawal.
- (b) If a member electing to withdraw his or her accumulated contributions is covered under the provisions of a reciprocal retirement system, the member shall receive a refund of contributions on approval of the Administrator following the receipt of request for withdrawal of member contributions from, and certification of termination of membership in, such reciprocal system.

6.3 Crediting of Member and Employer Accounts

At the regular meetings immediately preceding June 30 and December 31 of each year, the Board will declare the rate of interest which shall be credited to the members' and employers' accounts prospectively in accordance with the Act.

6.4 Acceptance of Plan-to-Plan Transfers and Rollovers

- (a) To the extent authorized by both federal and State law, SJCERA shall accept trustee-to-trustee transfers and/or rollovers of funds from members' deferred compensation plans.
- (b) These transfer and rollover funds may be used only for the redeposit of previously withdrawn contributions and/or for the purchase of permissive service credits to the extent and in the manner allowed under the Act and, where applicable, authorized by the Board of Supervisors.
- (c) All such redeposits and/or service purchases shall be made on a lump-sum basis.

SECTION 7. SERVICE RETIREMENT: APPLICATIONS

In addition to the provisions of the Act pertaining to service retirement, an application for service retirement shall be deemed complete when the following have been submitted: (i) a written application on forms supplied by the SJCERA, (ii) proof of age of the member and beneficiary as provided in Sections 5.2 and 5.3, (iii) evidence of marriage or registered domestic partnership of the beneficiary as required in Section 5.3, and (iv) designation of the option elected by the retiring member on the form provided by the SJCERA.

SECTION 8. DISABILITY RETIREMENT: APPLICATIONS

8.1 Purpose

The purpose of this section is to provide a procedure for acting upon applications to the Board for rights, benefits and privileges inuring to members under the Act. It is intended that applications be fairly and expeditiously processed and that the applicant and the Board will have fair notice of any required hearing and will provide an opportunity for the applicant to appear before the Board and present a case for approval of the application, as well as an opportunity for the Board to properly secure and have before it such facts as will enable the Board to arrive at a true and fair decision on the application. For the purposes of a fair hearing, the Board is to act as an independent body, finding facts and applying law.

8.2 Definitions

- (a) "Party" means any person, including an applicant, a member to whom an application pertains and the Fund, and any authorized representatives of each of them, disclosed by the records of the SJCERA or by the application to have a proper interest in the subject matter of the hearing on the application.
- (b) "Applicant" means a member of the SJCERA claiming benefits, rights, or privileges under the Act, any person claiming such benefits through any member, or any person or entity filing on behalf of a member.

- (c) "Application" means a written copy by the member, head of the office or department in which the member was employed, or by any other person on the member's behalf for benefits, rights, or privileges under the Act.
- (d) "Board's Counsel" means the County Counsel or other counsel designated by the Board pursuant to Government Code Section 31529.9.
- (e) "The Fund" means the trust fund created by the Board pursuant to Government Code Section 31588 and administered under the Act solely for the benefit of the members and retired members of the system and their survivors and beneficiaries. The Fund shall be a real party in interest at all disability hearings conducted under these bylaws and independent legal counsel shall represent the Fund in such hearings.

8.3 Case Files

Each case shall be listed in the files of the SJCERA under the name of the member for or through whom benefits, rights, or privileges are claimed, whether such member is the applicant or not. Reference to the case shall be by the name of the member and the SJCERA's case number, if any.

8.4 Notice, Examination(s), and Physicians' Reports

Within ten (10) calendar days of the date an application for disability retirement is filed with the SJCERA, the Administrator shall notify the applicant at the address shown on the application, by certified mail, of the following:

- (a) Applicant shall furnish, within 90-days of the filed application a physicians' report (see 8.4 (d)) and any evidence in the form of written reports, certificates, and other documents which will be used by the applicant in support of the application.
- (b) The member who is the subject of an application for disability retirement benefits shall report at specific date(s) and time(s) to the physician(s) designated by the Administrator for one or more medical examination(s), as the Administrator deems necessary. The medical examination may be a general evaluation of the health of the member or a specific evaluation by a certified medical specialist relative to the medical conditions allegedly causing the claimed disability. Should the member be unable to appear for the medical examination(s), the member shall notify the Administrator at least seventy-two (72) hours in advance of the appointment. Failure to notify and appear for the medical examination may result in the Board assessing medical cancellation fees to the member if there is not sufficient cause given. The Administrator may require the member to be examined by one or more private physicians, the cost of such examination, including mileage expense from within the San Joaquin County region to the physician's office, to be borne by the Fund.
- (c) Refusal of any member to submit to a medical examination required by the Administrator shall result in the dismissal of the member's application.

(d) Physicians' reports submitted by members as evidence shall be in written form and shall contain, but not be limited to, the following information relating to the member:

- (1) History of the injury or illness;
- (2) The member's medical complaints;
- (3) Past medical history;
- (4) Family medical history;
- (5) Source of all facts set forth in the history and complaints;
- (6) Findings on examination;
- (7) Opinion as to whether the member is substantially incapacitated to perform the member's normal and usual duties of the member's employment;
- (8) Cause of the substantial incapacity, if any;
- (9) Medical treatment indicated;
- (10) Likelihood of permanent disability;
- (11) Opinion as to whether or not the member's incapacity is a result of an injury or disease arising out of and in the course of employment and whether such employment contributes substantially to such incapacity;
- (12) Opinion as to whether or not the member's incapacity is due to in-temperate use of alcoholic liquor or drugs, or so far as the medical examination discloses, willful misconduct;
- (13) Opinion as to whether or not the member's incapacity would preclude the member from performing any employment in the county service; and
- (14) The reasons for these opinions.

(e) Each physician's report must be in affidavit form and include this statement signed by the physician: "I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct and that this report was made the ____ day of _____, 20____, at _____, City of _____, CA., (Signature) _____."

(f) A copy of these bylaws shall be included with such notice.

8.5 Release of Medical Records

Every member to whom an application pertains for disability retirement or service-connected death benefits shall execute and deliver to the Administrator one or more written consents for release of the member's medical records and pertinent information and provide a listing of names and addresses of all the member's medical providers.

8.6 Medical Records Received Within 90-Days

All physicians' reports must be received by the Administrator within 90-days of the filing of the application or the application will be subject to dismissal by the Board for failure to diligently pursue the application. Applicants may request time extensions in writing to the Board. The Board may extend the application period for good cause. If the Board dismisses the application or denies the extension, the applicant may reapply, subject to a new application date for determination of benefits.

8.7 Process Prior to Hearing

Before a hearing is set or an Administrative recommendation is made to the Board, the following shall be completed:

- (a) All medical information requested of the applicant by the Administrator shall be submitted to the Administrator.
- (b) All medical examinations requested by the applicant or Administrator as specified in 8.4 have been completed and written reports thereof have been submitted to the Administrator and to the applicant or the applicant's medical or legal representative.
- (c) All medical examinations taken by the applicant have been completed and reports thereof have been submitted to the Administrator and the applicant or the applicant's medical or legal representative.
- (d) The member's written consents for release of medical records and pertinent information have been submitted to the Administrator.
- (e) The parties have submitted to the Administrator written notice whether such parties shall be represented by legal counsel or other representative. Such a notice shall contain the name, address, and telephone number of such counsel or representative, if any. If the parties are to be represented by other than legal counsel, written authorization of representation must be submitted to the Administrator.

8.8 Dismissal of Application

The failure of an applicant to diligently pursue an application, including the submission of any and all written documentation required by these bylaws, may result in the dismissal of the application. Such a dismissal may cause the loss of certain monetary benefits or other rights and privileges. Upon the Board's own motion or a recommendation by the Administrator, and notice to the applicant, the Board may dismiss any application which the Board finds, upon consideration of the facts presented to it, is not being diligently pursued.

8.9 Administrator's Recommendation

The Administrator may recommend to the Board that a member be retired for service-connected or nonservice-connected disability retirement benefits. The recommendation shall be in writing and include:

- (a) A determination of permanent physical or mental incapacity for the performance of the member's duties;
- (b) A determination whether the incapacity is employment related;
- (c) A summarization of the evidence in support of the recommendation.

8.10 Board Actions

Upon receipt of the Administrator's recommendation, the Board may approve the application, set the matter for hearing, or take other appropriate action authorized by the Act.

8.11 Certification of Information

In the absence of an Administrative recommendation that an application be approved, and before a hearing date is set, the applicant shall certify in writing to the Administrator that all information and evidence, including the name and address of all witnesses to be called, necessary for the determination of the issues raised by the application has been completed and disclosed to the Administrator. A written Statement of Issues shall be prepared by the Administrator in conjunction with all other written evidence pertaining to the application. Upon request of the Board Chair, Board counsel shall assist in the Board determination of the issues.

8.12 Timeliness of Certification

Unless otherwise allowed by the Board upon a showing of good cause, such certification of information shall be filed with the Administrator within 180 days of the date of the filing of the application. Thereafter, no augmentation of the evidence, witness list, issues or other information necessary for a determination of the issues shall be allowed except by the Board or referee upon a showing of good cause. Any party failing to file such certification within the time limits set by these bylaws or by the Board or referee shall be precluded from presenting any evidence or argument on that party's behalf at any hearing on the application.

8.13 Hearings Set

Unless expressly waived in writing by the applicant, hearings shall be set for all applications for disability retirement which are not otherwise approved by the Board or for any other matter in which the decision of the Board would cause a deprivation of any vested retirement right or benefit of the applicant or applicant's beneficiary.

8.14 Scheduling the Hearing

A hearing on the application shall be held at the earliest date agreeable to the Parties. The Board shall determine whether the hearing shall be before the Board or a referee. Upon setting a date for such hearing before the Board or referee, all parties shall be notified in writing by the Administrator of such date at least 30 days before the hearing. Such notice shall be given immediately upon the setting of a date of the hearing. A hearing date may not be rescheduled except by the Administrator upon a showing of good cause. Subject to approval of the Board, any expense caused any party by such rescheduling shall be borne by the party requesting the rescheduling.

SECTION 9. HEARING BEFORE A REFEREE

9.1 Selecting the Referee

The referee shall be provided by the Office of Administrative Hearings of the State of California.

9.2 Hearing Conduct; Subpoenas

The referee shall conduct a hearing in accordance with the hearing procedures set forth in these bylaws for hearing before the Board. Subpoena powers shall be vested in the Board officers and/or the referee in accordance with Government Code Section 31535.

9.3 Evidence, Findings, and Recommendation

- (a) The hearing before the referee shall be conducted in the manner set forth in Section 10 below, with the term "referee" substituted for "Board" wherever warranted by the context.
- (b) After closing the hearing, the referee will prepare a summary of the evidence received, findings of fact, conclusion of law, and a recommended decision based on such findings and conclusions. In accordance with the provisions of Section 31533, the findings of fact and proposed recommendation of the referee shall be served on the Administrator, who in turn shall mail a copy to all parties. Each party shall have ten (10) calendar days from the date the Administrator mails notice of the recommendation in which to submit to the Administrator written objections thereto, which shall be incorporated in the record to be submitted to the Board for its consideration.

9.4 Board's Decision

Upon receipt and review of the recommended decision of the referee and any filed objections and response from the referee thereto, the Board may:

- (a) Approve and adopt the recommended decision of the referee, or,
- (b) Refer the application to the referee for further hearing and/or consideration, or,

- (c) Require a written transcript or summary of all testimony plus all other evidence received by the referee to be submitted by the Administrator to the Board. Following its receipt and review of the transcript and evidence. The Board shall:
- (1) Take action as is appropriate to the evidence and the provisions of the Act, or,
 - (2) Refer the matter back to the referee with or without instruction for further proceedings, or,
 - (3) Set the matter for hearing de novo before itself. The Board shall hear and decide the matter as if it had not been referred to the referee. Unless otherwise allowed by the Board, the hearing shall be confined to the evidence, witnesses, and issues set forth in the certifications and statement required by Section 8.11 of these bylaws.

9.5 Compensation for Referee

Compensation for the referee shall be determined by the Administrator and shall be paid by the SJCERA.

SECTION 10. HEARING BEFORE THE BOARD

10.1 Hearings Recorded

Unless waived by all parties, a stenographic reporter shall record the proceedings of all hearings before the Board at the SJCERA's cost. Any transcription shall be charged to the requesting party. The hearing shall be considered closed unless requested by the applicant or the applicant's representative that the matter be conducted in open (public) session.

10.2 Determine Issues

The Board shall determine all issues set forth in the written statement of issues required by Section 8.11 of these bylaws by a preponderance of the evidence, including the following, if applicable:

- (a) whether the member was employed prior to January 1, 1981, and was required as a condition to such employment to execute a waiver for the alleged disability under Government Code Section 31009;
- (b) whether the member is disabled, that is, whether there is a substantial mental or physical incapacity to perform the member's normal and usual employment duties;
- (c) whether the disability is permanent, that is, whether as a reasonable medical probability the disability is likely to persist indefinitely;
- (d) whether, for non-service-connected disability, the member has completed five (5) years of service;

- (e) whether for a service-connected disability:
 - (1) the incapacity is a result of injury or disease
 - (2) the injury or disease arose out of and in the course of the member's employment; and
 - (3) the employment contributed substantially to the incapacity;
- (f) whether, for members described in Government Code Sections 31720.5, 31720.6, 31720.7 or 31720.9 alleging heart trouble, cancer, blood-borne infectious disease, or illness due to exposure to biochemical substances:
 - (1) the member has completed five (5) years of safety service, if required;
 - (2) the member has the condition alleged;
 - (3) the condition developed while a qualified member of the SJCERA.

10.3 Hearing Process

All hearings before the Board shall require the attendance of at least the same seven (7) members of the Board throughout and shall proceed in the following manner:

- (a) The Chairperson shall announce the matter and ask for appearances by all parties, which shall be recorded in the minutes and in the official file of the hearing. The Chairperson shall ask if all parties are ready to proceed and, if so, or if the Chairperson otherwise rules for good cause, the hearing shall be opened.
- (b) The Chairperson or Clerk shall mark for identification only, and not as evidence, all papers in the official file, which should include:
 - (1) the application;
 - (2) the notice of hearing, with proof of service on the applicant;
 - (3) other documents in the official file required to be submitted by these bylaws.
- (c) The Clerk or other person authorized by the Chairperson shall read the application and the statement of issues.
- (d) Unless otherwise determined by the Board for good cause, the applicant shall have the burden of producing evidence necessary to establish the issues.
- (e) Each party may make an opening statement.
- (f) Each other party then shall present evidence, in the order determined by the Chairperson in accordance with each party's burden of proof and burden of presenting evidence to establish such proof.
- (g) Each party may cross-examine witnesses.
- (h) Rebuttal evidence may be presented.
- (i) Each party may make closing arguments.
- (j) Upon the conclusion of all closing arguments, the Chairperson shall determine if all parties are ready to submit the matter for decision, and if so, or if the Chairperson otherwise orders for good cause, the Chairperson shall close the

hearing and declare the matter submitted to the Board for decision upon the evidence and the instructions of law of its counsel.

- (k) At the conclusion of the hearing, the Board may recess into closed session of the Board members and its Board counsel to deliberate on the matter, to develop its findings and reach a decision.
- (l) At or before the next regularly scheduled meeting or specially called meeting, the Board shall render its decision orally, in open session.
- (m) Decision of the Board. Unless waived by all parties to the hearing, any finding or decision of the Board must be made by a majority vote of the members present throughout the hearing. A tie vote on any issue raised by the applicant results in a failure to find in favor of that issue and constitutes a denial of the application, or that portion of the application, to which the issue relates. The alternate member may cast a ballot in the absence of a regular elected member if such alternate has attended the entire hearing and has heard and considered all evidence and testimony involved.

10.4 Presiding Officer

The Chairperson or Vice-Chairperson in the absence of the Chairperson, shall preside over all hearings. The Chairperson shall exercise reasonable control over the proceedings and in addition to other duties, shall rule on the admissibility of evidence and shall order a party to yield the floor when orderly and expeditious conduct of the hearing requires it. The Chairperson may permit such questioning and other participation in the proceedings by Board members or others as will best serve the purpose of the hearing.

SECTION 11. RULES OF EVIDENCE

11.1 Burden of Proof

The applicant has the burden of proving by a preponderance of the evidence each affirmative issue on which the application depends as identified in the Statement of Issues submitted by the Administrator. In addition, if the applicant seeks to assert one or more of the legislative presumptions afforded by Government Code Sections 31720.5 (heart trouble), 31720.6 (cancer), 31720.7 (blood-borne infectious disease), or 31720.9 (illness due to exposure to biochemical substances), then the applicant first must establish his or her entitlement to invoke the asserted presumption by offering prima facie evidence of each foundational element required by the applicable Government Code section(s), and the presumption(s) so invoked shall be rebuttable as provided in the applicable section(s).

11.2 Evidence

Oral evidence shall be taken only on oath or affirmation. Unless expressly waived by an opposing party, all written evidence shall be sworn to or given under penalty of perjury, subject to 11.5 below.

11.3 Witnesses

Each party may call and examine witnesses, introduce exhibits, and cross-examine and impeach any witness on any matter relevant to the issues. If the applicant or any other party does not testify on that party's own behalf, that party may be called and examined as if under cross-examination under Evidence Code Section 776.

11.4 Refusal of Witness

Refusal by an applicant or party to submit to examination or to answer relevant questions shall be grounds for considering such questions to be answered for the purpose of that hearing unfavorably to the refusing party, and for denying the relief or benefits sought by the refusing party.

11.5 Hearing Conduct

The hearing need not be conducted according to the technical rules of law relating to evidence and witnesses. Any relevant evidence shall be admitted if it is the sort of evidence on which responsible persons are accustomed to rely in the conduct of serious affairs, regardless of the existence of any common law or statutory rule which might make improper the admission of such evidence over objection in civil actions. Hearsay evidence may be used for the purpose of supplementing or explaining any direct evidence but shall not be sufficient in itself to support a finding unless it would be admissible over objection in civil actions.

11.6 Certified Copies

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

11.7 Cross-Examination of Physician

The right of cross-examination of a physician on the physician's written report shall be deemed waived and the report shall be considered direct non-hearsay evidence if the report has been filed with the Board in the form and manner required by Section 8.4 above and served upon the parties on or before the date set for filing the certifications required by Section 8.12 of these bylaws, unless the physician is produced as a witness at the hearing.

11.8 Medical Evidence from Applicant

The Board may require such proof, including one or more medical examinations at the expense of the member, as it deems necessary or the Board upon its own

motion may order a medical examination to determine the existence of the disability.

11.9 Subpoena Powers and Witness Fees

- (a) Subpoenas may be issued according to the Act. Subpoenas shall be requested through the Administrator who shall transmit the request to the Chairperson, Vice Chairperson or Secretary for written approval. Subpoenas issued shall be transmitted to the party requesting the subpoena, which party shall have the sole responsibility for serving and enforcing the subpoena.
- (b) A written motion to quash a subpoena may be made to the Board on one or more of the following grounds, which shall be clearly and fully stated in the motion:
 - (1) Compliance will be unduly burdensome or against public policy.
 - (2) The things subpoenaed are privileged by law.
 - (3) The things subpoenaed are irrelevant or unnecessary to the proceedings.
 - (4) The things subpoenaed have not been described with sufficient clarity to enable the witness to comply.

Before it commences or continues with the proceeding, the Board shall wholly or partially grant or deny the motion to quash.

- (c) Witness fees and per diem. For expert witnesses, the party making the request shall be responsible for all costs associated with the testimony. Witness per diem fees and mileage rates for subpoenaed witnesses shall be as established by the Board from time-to-time.

11.10 Rehearing Appeal

- (a) An applicant may petition for a rehearing before the Board in the event additional evidence, which was not reasonably available to the applicant at the time of filing the application, supports the disability retirement request. A petition for rehearing must be submitted within sixty (60) days after the notification to the applicant of the decision of the Board is mailed to the applicant by U.S. mail; first class postage prepaid.
- (b) Judicial Review – In those cases where a party or applicant is entitled to a judicial review of the proceedings before the Board of Retirement, the petition to the Court shall be filed within ninety (90) days from the date the notice of this Board's decision is mailed to the party or applicant or is delivered to the party or applicant. Where a timely petition for rehearing is filed as provided in (a) above, the time for filing an action seeking judicial review shall expire ninety (90) days after the Administrator mails (1) notice that the petition for rehearing is denied or (2) notice of the Board's decision following a rehearing, whichever occurs later.

SECTION 12. DISSOLUTION OF MARRIAGE OR REGISTERED DOMESTIC PARTNERSHIP

12.1 Community Property

Effective August 1, 1997, pursuant to Resolution N. 97-474 of the Board of Supervisors of San Joaquin County, the Administrator shall accept orders pertaining to the division of the community property interest in a member's account only if such orders are issued (1) by a court of competent jurisdiction, (2) in conformance with the provisions of Family Code Section 2610 and (3) in conformance with the provisions of Article 8.4 of the Act, commencing at Government Code Section 31685. The Administrator shall return orders which are not in conformance with these criteria to the parties for revision.

12.2 Nonmember Rights

A nonmember who, pursuant to an appropriate court order, elects to establish a separate account, as authorized by Article 8.4 of the Act, may exercise the rights of a member, except that (a) a nonmember is not eligible to apply for or receive a disability retirement allowance, (b) a nonmember's pre-retirement death benefits shall consist of return of the contributions and interest in the nonmember's account, and (c) a nonmember is not eligible to participate in the election of Board members.

Pursuant to Section 31685 (c), the nonmember is entitled to the following:

- (1) The right to a retirement allowance.
- (2) The right to a refund of accumulated retirement contributions.
- (3) The right to redeposit accumulated retirement contributions that are eligible for redeposit by the member.
- (4) The right to purchase service credit that is eligible for purchase by the member.
- (5) The right to designate a beneficiary to receive his or her accumulated contributions payable at the time of the nonmember's death.
- (6) The right to designate a beneficiary for any unpaid allowance payable at the time of the nonmember's death.

12.3 Election of Optional Allowances

A nonmember may retire pursuant to the provisions of the Act and may elect any of the optional allowances set forth in the Act, subject to the limitation by the Act.

12.4 Actuarial Equivalency

The Administrator is responsible for ascertaining that the combined benefits payable to the member and non-member are the actuarial equivalent of the value

of the benefit to which the member would have been eligible had no division of the community property interest occurred, per Government Code Section 31685.95.

12.5 Approval

All applications for nonmember benefits submitted pursuant to this section shall be subject to review and approval by the Board. The Administrator shall place such applications on the Board's agenda for ratification of staff's actions.

SECTION 13. AMENDMENTS

These bylaws may be amended at any regular meeting of the Board by an affirmative vote of at least 5 (five) members of the Board. The bylaws become effective when approved by the Board of Supervisors.