

**IMPERIAL COUNTY EMPLOYEES'
RETIREMENT SYSTEM**

**DISABILITY RETIREMENT
POLICIES AND PROCEDURES #14**

June 17, 2020

ICERS

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IMPERIAL COUNTY EMPLOYEES' RETIREMENT SYSTEM

DISABILITY RETIREMENT POLICIES AND PROCEDURES

ARTICLE 1

GENERAL PROVISIONS; DEFINITIONS

Section 1 Scope and Citation.

These Disability Retirement Policies and Procedures of the Imperial County Employees' Retirement System (ICERS) govern the filing, proceedings, decisions and the review of decisions relating to an application for disability retirement for a member under the County Employees Retirement Law of 1937 (commencing at Gov. Code Sec. 31450), operative with respect to the officers and employees of the County of Imperial July 1, 1951, and this policy and procedure.

Section 2 Definitions.

Unless the context or subject matter requires otherwise, the following definitions shall apply:

- (a) 1937 Act means the County Employees Retirement Law of 1937 as provided by Title 3, Division 4, Part 3, Chapter 3 (commencing at Sec. 31450 of the Government Code) which apply to Imperial County, the Imperial County Court System, the Imperial County Board of Supervisors, the Imperial County Retirement System, the Imperial County Board of Retirement, the Local Agency Formation Commission (LAFCO), the Imperial County Transit Commission (ICTC), and their respective agents, and Members of the Imperial County Retirement System.
- (b) Applicant means the person or entity filing an application for disability retirement.
- (c) Board of Retirement means the Imperial County Board of Retirement.
- (d) County means Imperial County.
- (e) ICTC means the Imperial County Transportation Commission.
- (f) LAFCO means the Local Agency Formation Commission.
- (g) Superior Court means the Imperial County Superior Court System.
- (h) Day means calendar day.

(i) Department Head means the head of the County office or department in which a Member is or was last employed. The term "Department Head" includes a designated representative of a Department Head.

(j) Hearing Officer means a member of the State Bar of California or administrative law judge assigned by the Office of Administrative Hearings who is appointed by the Board of Retirement, or the state Office of Administrative Hearings at the Board's request, to preside at a de novo hearing on a disability retirement application.

(k) Holiday means all holidays specified in Government Code Sections 6700 and 6701, including Saturdays and Sundays, and any day in which County offices are closed. (Gov. Code Sec. 31525)

(l) Member means a member of the Imperial County Retirement System as provided by the 1937 Act or applicable law.

(m) Retirement Administrator means the Retirement Administrator of the Imperial County Employees Retirement System.

Section 3 Effective Date.

The provisions of this policy and procedure shall become effective the date they are approved by the Board of Retirement, and shall be applicable to all applications for disability retirement filed after the date of effectiveness, and, except as provided herein or by resolution or order of the Board of Retirement, and shall be applicable to all applications for disability retirement pending on the date this policy and procedure becomes effective.

Section 4 Resolution of Conflicting Provisions.

These sections are intended to conform to provisions and judicial rulings relating to the 1937 Act applying to County, Court System, ICERS, Members, LAFCO and ICTC. Such provisions and judicial rulings shall prevail in resolving any conflict between these policies and procedures and the 1937 Act.

Section 5 ICERS Location, Mailing Address and Telephone Number for Disability Retirement Matters.

The location, mailing address and telephone number of the administrative office of ICERS for disability retirement matters is:

Imperial County Employees' Retirement System (ICERS)
Disability Retirement Section
1221 W. State Street
El Centro, California 92243

Telephone: (442) 265-7550

Section 6 Captions and Citations.

Captions are inserted for convenience of reference only and do not define, describe or limit the scope of the intent of the provisions of these policies and procedures; statutory and judicial case citations within parentheses at or near the end of a section or subdivision are inserted for convenience of reference.

Section 7 Words Used in Present Tense.

Words used in these policies and procedures in the present tense include the future tense except where the context requires otherwise.

Section 8 Number and Gender.

As used herein and whenever required by the context, each number, both singular and plural, shall include all numbers, and each gender shall include all genders.

Section 9 May and Shall.

Whenever used herein, "may" is permissive and "shall" is mandatory.

Section 10 Penalties For Failure to Comply with Disability Retirement Policies and Procedures.

Failure of the Applicant to comply with these procedures may be treated as non-cooperation and may result in dismissal of the application with or without prejudice. Failure to comply includes, but is not limited to, failure to submit to medical examinations, failure to submit documents requested by ICERS, failure to cooperate in the formal hearing process, failure to follow any order of the Board or Hearing Officer, and failure to comply with the requirements set forth in these policies and procedures.

ARTICLE 2

CONFIDENTIAL RECORDS, CLOSED SESSIONS, COMMUNICATION WITH BOARD MEMBERS

Section 11 Confidential Records and Closed Sessions.

Unless the Member consents otherwise in writing, all documents, reports, including medical reports, and records, including applications, notices, orders, findings and decision relating to an application for disability retirement shall remain confidential and shall not be subject to public inspection. Unless the Member consents otherwise in writing, any hearing, presentation or consideration relating to an application for disability retirement shall be held in closed session. (Gov. Code Secs. 31532 and 54956.9)

Section 12 Communication with Board Members.

The Board of Retirement is the decision-maker for all disability retirement applications. As such, any ex parte communications between any Board member or their representatives and any interested parties or their representatives concerning the merits or substance of a disability retirement application are prohibited until all proceedings with respect to the application have been concluded. Violations of this rule shall be disclosed in advance of any Board discussion of the affected disability retirement application and may result in the Board member being found ineligible to either participate in any discussion regarding the application or to vote on the application.

For purposes of this section, the term "interested party" shall include the following: the Applicant, the Member, the Department Head, ICERS' Disability Attorney, the Hearing Officer and any of their representatives or counsel.

Nothing in this section precludes a Board member or their representative from responding to questions and inquiries from members or their counsel regarding procedural matters or the status of an application.

Notwithstanding the foregoing, the Retirement Administrator may designate any person, including ICERS' Disability Attorney, to present a summary of the application and a written recommendation to the Board of Retirement pursuant to Article 3, Section 13(a) and Article 8, Section 25(a)(4), provided that the written recommendation is provided to the Applicant following the Board meeting in which such recommendation is considered.

ARTICLE 3

RIGHT TO REPRESENTATION

Section 13 Applicant's Right to Representation; Substitution or Dismissal; Effect on Service of Notices.

(a) Representation of Parties. A party shall be entitled to be represented by an attorney or other representative of choice ("representative") at the party's expense at any stage of proceedings before the Board of Retirement. Neither the Applicant, the Member, nor their representative may be present during Board of Retirement deliberations or during closed session consideration of the disability retirement application unless the Applicant or Member has filed a request for hearing de novo or other motion and such matter is before the Board of Retirement. Notwithstanding anything in this section, representation of a party by a non-attorney during a hearing de novo is prohibited.

(b) Recognition of Representative. The representative shall be recognized by ICERS as the representative of a party only after:

(1) a written notice, dated and executed by the party, providing the name, address and telephone number of the representative is filed with the ICERS; or

(2) a representative is substituted or dismissed pursuant to the provisions of subdivision (c) of this section.

(c) Substitution or Dismissal of Representative. A representative may be changed at any time only as follows:

(1) upon the written consent, dated and executed, providing the name, address and telephone number of any new representative filed with ICERS, or

(2) upon the consent of both a party and the representative entered upon the minutes of the Board of Retirement, or

(3) upon order of the Board of Retirement, upon written application of either the party or the representative, after 15 days' notice from one to the other.

(d) Service of Notices on Applicant's Representative. Notwithstanding any other provisions of these policies and procedures, all notices shall be served on the party's representative and shall thereby constitute service on the party.

Section 14 Role of Legal Counsel.

In all disability matters, the Board of Retirement and ICERS shall be represented and advised by separate legal counsel. The General Counsel shall advise the Board and the Disability Attorney shall advise ICERS. The General Counsel and the Disability Attorney shall not engage in any ex parte communications regarding the merits or substance of any disability retirement application prior to the Board of Retirement's final decision on the application.

ICERS

ARTICLE 4

TIME

Section 15 Computation, Commencement and Extension of Time.

(a) Holidays Not Included. The time in which any act is to be done is computed by excluding the first day and including the last, unless the last day is a Holiday, and then it is also excluded.

(b) Determination of Time. If the last day for the performance of any act to be performed within a specified period of time is a Holiday, then such period is hereby extended to and including the next day which is not a Holiday.

(c) Commencement of Time; Extension of Time for Mailing. Any prescribed period of a notice and any right or duty to do any act or make any response within any prescribed period or on a date certain after the service of such notice ("the period") commences on the date the notice is served; but when such notice is served by mail or by certified mail - return receipt requested, the period shall be extended five (5) days if the place of address for service is within the state of California, ten (10) days if the place of address for service is outside the state of California but within the United States, and twenty (20) days if the place of address for service is outside the United States.

ARTICLE 5

NOTICE AND SERVICE

Section 16 Service of Notices and Papers; Change of Address; Proof of Service.

(a) Service of Notice and Papers. Notices and papers shall be served personally or by mail on each party or their representative.

(b) Change of Address. Until a written notice of change of address is filed with ICERS, all notices and papers served by ICERS by mail or by certified mail, return receipt requested, as allowed shall be served at the mailing address of the party or the party's representative as last filed in writing with ICERS.

(c) Method of Service by Mail; Completion of Service; Proof of Service.

(1) Method of Service by Mail. In case of service by mail or by certified mail, return receipt requested, the notice or other paper must be sent through the United States Postal Service, in a sealed envelope, with postage paid, addressed to the person on whom it is to be served at the person's mailing address.

(2) Completion of Service. The service by mail or by certified mail, return receipt requested, is complete at the time of deposit.

(d) Required Service of Proof of Service. Whenever a notice or paper is served on a party or parties, ICERS shall also serve a proof of service on the same date of service of the notice or paper.

ARTICLE 6

APPLICATIONS; REPORT; FEES; SERVICE RETIREMENT ALLOWANCE PENDING DECISION

Section 17 Documents Available Upon Request.

An application and copy of this policy and procedure are available upon request to ICERS.

Section 18 Complete Application Requirement; Filing Date; File Mark; Dismissal of Application Without Prejudice to Refile.

(a) Complete Application Requirement. Only complete applications will be accepted by ICERS. A complete application means all of the following:

- (1) all pages are intact and in order;
- (2) all questions are answered and all responses to such questions are legible;
- (3) the claim(s) for disability retirement is/are set forth in detail;
- (4) all medical reports and documents are attached and legible;
- (5) a least one medical report for each claimed disability, prepared within one year of the application filing date, stating the Member's condition is permanently incapacitating;
- (6) a copy of the Member's most recent job description (which is obtainable from the Employer's Human Resources Department);
- (7) Applicant has dated and signed the application under penalty of perjury in the presence of an ICERS disability staff representative or notary public licensed by the state of residence;
- (8) a completed and signed form Claim Against Third Parties is included;
- (9) the Notice of Representative portion is fully completed, dated and signed by the Applicant; and
- (10) the Release of Medical Information portion is fully completed, dated and signed by the Applicant.

(b) All complete applications shall be deemed filed as of the date a complete application is received by ICERS.

(c) Dismissal of Application Without Prejudice to Refile. Failure to file a complete application shall be grounds for non-acceptance of the application or dismissal of the application; however, a new application may be filed in accordance with the 1937 Act and this policy and procedure.

Section 19 Filing of Application; Complete, Incomplete, and Amended Applications.

(a) Filing of Complete Application; Ten (10) Day Service of Notice of Filing Complete Application. Within 10 days of the date of filing of an original complete application or as soon as is administratively feasible, ICERS shall serve the Member, Applicant, Department Head, and the Employer's Director of Human Resources with a copy of a notice of filing of complete application.

(b) Incomplete Application.

(1) Service of Notice of Receipt of Incomplete Application. Within 10 days of receipt by ICERS of an incomplete application or as soon as is administratively feasible, ICERS shall serve the Member, the Applicant, the Department Head and the Director of Human Resources a notice of receipt of incomplete application.

(2) Thirty (30) Days to File Complete Application. Within 30 days of the last date of service of the notice of receipt of incomplete application on the Member, Applicant, Department Head and the Director of Human Resources the Applicant shall submit to ICERS a complete application.

(A) Extension of Time to File. Notwithstanding the provisions of subdivision (b) (2) of this section, upon the filing of a written request for extension of time within the 30-day period, said request must state facts showing that a complete application cannot with the exercise of reasonable diligence be timely filed. The request must state the amount of additional time that is necessary for the filing of a complete application. The time for filing of a complete application may be extended by the Board of Retirement or the Retirement Administrator.

(3) Filing Date of Complete Application. Upon receipt by ICERS of a complete application within the 30-day period or within such other period as allowed by the Board of Retirement or Retirement Administrator, the complete application shall be considered filed as of the date of receipt by ICERS.

(4) Service of Notice of Filing Complete Application. Within 10 days of receipt by ICERS of a complete application or as soon as is administratively feasible, a notice of filing of complete application shall be served as provided herein. The notice of complete application shall inform the recipient that a copy of ICERS' Disability Policies and Procedures is available for review on ICERS' website.

(c) Amended Application.

(1) Any complete application may be amended as a matter of right within 90 days of filing the original application. The amended application must be in writing and signed by the Applicant.

(2) The Board of Retirement or the Retirement Administrator may grant leave to file an amended application after expiration of the 90-day period when all of the following apply:

(A) The Applicant has filed a written request for leave to file an amended application; and

(B) The request states facts showing that an amended application could not be timely filed with the exercise of reasonable diligence.

(3) Notice of Filing a Complete Application. Within ten (10) days of the filing of an amended application complying with this subdivision, or as soon as is administratively feasible, a notice of filing of complete application and a copy of these policies and procedures shall be served on the Member, the Applicant, the Department Head and the Director of Human Resources.

Section 20 Reports and Documents.

(a) Reports and Documents Prepared After Notice of Filing of Complete Application. Applicant shall submit to ICERS not later than 90 days after service of the notice of filing of complete application on the Member, the Applicant, the Department Head, and the Employer's Director of Human Resources, one copy of all reports, documents, and pre-existing reports or documents not included with the original application.

(b) Treatment of Late Filed Reports or Documents. Any report, document, pre-existing report or pre-existing document not filed in conformity with subdivision (b) of this section:

(1) may not be accepted by the Retirement Administrator for filing or be considered and admitted into evidence in support of the application, or

(2) if accepted for filing, may be considered in a way unfavorable to the Applicant and/or Member for whom the application is filed.

(c) Leave to File Late Reports or Documents. Notwithstanding the provisions of this section, a request for leave to file additional reports or documents may be filed which states facts showing that a report or document could not have been timely with the exercise of reasonable diligence. The request may be granted by the Board of Retirement or the Retirement Administrator.

Section 21 Costs of Report and Documents Filed by Applicant.

Applicant Responsible for Costs of Reports and Documents. Unless otherwise provided for in these policies and procedures, all costs incurred in preparation of the application and all costs incurred for any report or document shall be borne solely by the Applicant.

ICERS

ARTICLE 7

ICERS REQUESTED MEDICAL EXAMINATIONS; ADMINISTRATIVE EVALUATION; SUBPOENAS

Section 22 Medical Examination Paid by ICERS.

(a) Twenty (20) Days' Notice of Medical Examination. Unless a Member agrees to a shorter notice period, a 20-day written notice is required of any scheduled physical or psychiatric medical examination at a date, time and place designated by the Retirement Administrator.

(b) Costs for Medical Examination. ICERS shall pay all costs of the medical examination provided by subdivision (a) of this section and shall reimburse the Member for mileage at the County's rate of mileage reimbursement.

(c) No-Show Fee. The Member will pay any costs incurred as a result of the failure to attend the scheduled medical evaluation. Any fees incurred due to an untimely cancellation of an appointment shall be the responsibility of Applicant. Any waiver of fees will be determined by the Retirement Administrator.

(d) Unexpected Expenses. It shall be within the discretion of the Board of Retirement to consider and grant any written request of a Member who incurs unexpected expenses under the provisions of this section.

(e) Furnishing Member Copy of Report. Upon the Member's request, ICERS shall furnish the Member with a copy of any report prepared by the medical examiner pursuant to subdivision (a) of this section, but only after service of the notice of Board decision without hearing pursuant to Section 26 of these policies and procedures. Notwithstanding this subdivision, ICERS shall only furnish the Member's psychiatric medical reports to a treating physician designated by the Member in writing.

(f) Denial of Application for Failure to Submit to Examination. Failure of a Member to submit to a medical examination properly noticed under subdivision (a) of this section, without good cause, shall constitute grounds for denial of the application with or without prejudice or for considering such failure in a way unfavorable to the Applicant.

Section 23 Administrative Evaluation.

(a) Evaluation. A Member shall cooperatively meet with the Retirement Administrator, or his or her designee, to discuss the nature, extent and circumstance of matters relating to the application.

(b) Denial of Application for Failure to Cooperate. If a Member who has filed an application or for whom an application has been filed fails to comply with the provisions of subdivision (a) of this section without good cause, such failure shall constitute grounds for denial of the application with or without prejudice or for considering such failure in a way unfavorable to Applicant.

Section 24 Subpoenas.

(a) Issuance of Subpoenas. The Board of Retirement shall issue subpoenas and subpoenas duces tecum signed but otherwise in blank. The Retirement Administrator shall make such subpoenas and subpoenas duces tecum available upon request by any party to a proceeding pending before the Board of Retirement. The party requesting issuance of a subpoena shall complete the subpoena before service and shall be responsible for the cost of service of the subpoena and for any witness fees, including medical expert witness hourly fees and costs.

(b) Enforcement of Subpoena Power. Subpoena power shall be exercised and enforced in the same manner as the similar power granted the Board of Supervisors in Title 3, Division 2, Part 2, Chapter 1, Article 9 (commencing with Sec. 25170) of the Government Code; except that such power shall extend only to the matters within the jurisdiction of the Board of Retirement, and committees of the Board of Retirement shall not have the subpoena power.

(c) Signing of Subpoenas. The Chairman or Secretary of the Board of Retirement, the Retirement Administrator or their designee, a Hearing Officer or hearing officer shall sign subpoenas. (Gov. Code Sec. 31535).

(d) Oaths. Any Member of the Board of Retirement, the Hearing Officer, or any person otherwise empowered to issue subpoenas may administer oaths to, or take depositions from, witnesses before the Board of Retirement or referee. (Gov. Code Sec. 31535).

(e) Witness. A witness served with a subpoena or subpoena duces tecum shall attend at the date, time and place designated, with any papers under the control of the witness required by the subpoena, and answer all relevant and legal questions. The witness shall remain until discharged or until the testimony is closed. (Code of Civ. Proc. Sec. 2064).

(f) Failure to Comply with Subpoena or Subpoena Duces Tecum. In addition to any other provision provided by law or these policies and procedures, failure of any witness, including a physician or other expert witness, to comply with the provisions of subdivision (e) of this section shall be grounds for not admitting into evidence any statement, document, including medical report, or other evidence attributable to the witness or construing any statement, document or other evidence in a way unfavorable to such witness. (Gov. Code Sec. 31535).

(g) Deposition. Subpoenas and subpoenas duces tecum may be used for taking depositions from parties and witnesses at such times and locations designated by a party, which shall constitute taking such depositions before the Board of Retirement (Gov. Code Sec. 31535).

ICERS

ARTICLE 8

ADMINISTRATOR REVIEW AND RECOMMENDATIONS; BOARD DECISION WITHOUT HEARING; NOTICE

Section 25 Review and Recommendations of Retirement Administrator.

As soon as is administratively feasible following the more recent date of service of either the last date of service of the notice of filing of complete application or the notice of incomplete application, the Retirement Administrator or their designee shall do the following:

(a) Upon receipt of the filing of a complete application, the Retirement Administrator shall:

(1) investigate claims made in the application as the Retirement Administrator deems necessary and appropriate and pay any costs associated with the investigation;

(2) schedule and notice a physical and/or psychiatric evaluation as deemed necessary;

(3) upon written request of the Member, the Applicant, the Department Head or the Director of Human Resources, present the application and related documents and materials to the County Health Officer for review and written recommendation; and

(4) present to the Board of Retirement a summary of the application with a recommendation consisting of one or more of the following actions:

(A) approval of the application;

(B) denial of the application;

(C) approval of the disability application and denial of the job causation allegation;

(D) approval of any type of disability retirement for the Member;

(E) approval of a negotiated settlement of an application;

(F) further review and investigation of the application;

(G) setting the application for hearing before the Board of Retirement or Hearing Officer; or

(H) extension of the time allowed to file a complete application, report or document.

(b) The summary of the application and recommendation prepared by the Retirement Administrator for the Board of Retirement shall take place in closed session and shall not be disclosed to the Applicant or Member until after the Board of Retirement takes action on the proposed recommendation.

Section 26 Board of Retirement Decision Without Hearing.

(a) Decisions Without Hearing. After receipt and consideration of the summary of evidence and written recommendations of the Retirement Administrator, the Board of Retirement shall take action on the recommendation which may include the following:

- (1) Approve and adopt the Retirement Administrator's recommendation;
- (2) Remand the matter to staff with instructions for further investigation;
- (3) Remand the matter to the General Counsel with instructions to prepare written findings, or any other instructions deemed appropriate; or
- (4) Any other action the Board deems necessary based on the summary of evidence and Retirement Administrator' recommendation.

(b) Request for Hearing.

(1) Ten (10) Day Service of the Decision Without Hearing to Deny Application. Within 10 days of the date of decision, the Retirement Administrator shall serve the Member, Applicant, Department Head, and the Director of Human Resources the notice of decision, a blank request for hearing form.

(2) Final Decision Without Hearing; Forty-five (45) Day Period; Request for Hearing. The decision without hearing shall become final 45 days after the last date of service of the notice of decision served on the Member, Applicant, Department Head, and the Employer's Director of Human Resources unless within such 45 day period a party files with ICERS a request for hearing, or if the Board of Retirement on its own motion orders such action. A party who objects to a decision without hearing and who wishes to exhaust administrative remedies must request a hearing de novo as provided above.

(3) Effect of Timely Filed Request for Hearing. The timely filing of a request for hearing shall constitute an appeal of the decision without hearing and a request for an evidentiary hearing on the application before the Board of Retirement, de novo.

ARTICLE 9

HEARING DE NOVO PROCEDURES

Section 27 Right to Hearing De Novo; Definition of Parties.

Upon the receipt of a timely request for hearing de novo, any party shall be entitled to a hearing on the application at ICERS' expense. The hearing de novo shall be noticed, scheduled and held before a Hearing Officer. The appealing party shall be referred to as the Applicant. ICERS shall be referred to as the Respondent.

Section 28 Notice of Receipt of Request for Hearing De Novo, Retirement System's File.

Within 30 days of the timely filing of a request for hearing de novo, or as soon as is administratively feasible, Respondent shall serve the Member, the Applicant, the Department Head, and the Employer's Director of Human Resources a written notice of receipt of the request for hearing de novo, a copy of these disability policies and procedures, the name, address and telephone number of ICERS' counsel, and the name, address and telephone number of the Office of Administrative Hearings, or the Hearing Officer assigned to the matter. Respondent shall also serve the Member and the Applicant with an electronic copy of all medical records, reports and other documents in ICERS' file that may be introduced as evidence at the hearing.

Section 29 Petition for Automatic Re-Assignment of Hearing Officer.

Each party to a hearing shall be entitled to reassignment of the hearing to another Hearing Officer in accordance with this section. Each party shall be entitled to make only one such petition. Proceedings for such assignment shall be instituted by the making of a petition supported by a declaration under penalty of perjury in substantially the following form:

STATE OF CALIFORNIA)

SS

COUNTY OF IMPERIAL)

, declares under penalty of perjury: That (s)he is (a party) (an attorney or a party) to the above-named case. The affiant believes that (s)he cannot have a fair and impartial trial before the hearing officer to whom the case is assigned and requests reassignment of this hearing to another Hearing Officer.

I declare under penalty of perjury under the laws of the state of California that the foregoing is true and correct.

Executed on , at , California.

(Signature)

The declaration shall be filed not more than 10 days after the service of the notification of assignment of the Hearing Officer and shall be directed to the Retirement Administrator.

Section 30 Prehearing Statements.

(a) Applicant's Prehearing Statement. No later than 60 days after service of Notice of Receipt of Request for Hearing, the Applicant shall serve upon the Retirement Administrator and counsel for ICERS a prehearing statement containing the following:

- (1) A statement of the issues and the contentions of the Applicant;
- (2) A list and copies of all medical reports and depositions of medical witnesses on which the Applicant will rely at hearing;
- (3) A list and copies of all other documents or transcripts the Applicant intends to offer into evidence at the hearing;
- (4) The names, business addresses, and telephone numbers of any lay witnesses whose testimony the Applicant intends to present at the hearing, and a synopsis of each witnesses' expected testimony;
- (5) The names, business addresses, and telephone numbers of any medical witnesses the Applicant intends to call for oral testimony at hearing and a synopsis of each witnesses' expected testimony; and
- (6) A list and copies of any affidavits the party proposes to introduce into evidence.

(b) Respondent's Prehearing Statement. No later than 60 days from the date of service of the Applicant's prehearing statement, counsel for ICERS shall serve upon the Applicant and the Retirement Administrator a prehearing statement. The prehearing statement shall contain the following:

- (1) A statement of the issues and the contentions of ICERS;
- (2) A list and copies of all medical reports and depositions of medical witnesses on which ICERS will rely at hearing;
- (3) A list and copies of all other documents or transcripts ICERS intends to offer into evidence at the hearing;

- (4) The names, business addresses, and telephone numbers of any lay witnesses whose testimony ICERS intends to present at the hearing, and a synopsis of each witnesses' expected testimony;
- (5) The names, business addresses, and telephone numbers of any medical witnesses ICERS intends to call for oral testimony at hearing and a synopsis of each witnesses' expected testimony; and
- (6) A list and copies of any affidavits the party proposes to introduce into evidence.

Section 31 Extension of Time for Filing Prehearing Statement

Any party may request an extension of time to submit a prehearing statement upon showing good cause. A party requesting the extension of time to submit a prehearing statement shall direct the request in writing to the Hearing Officer or the Office of Administrative Hearings and all other parties to the hearing. The request shall state the reason the prehearing statement cannot be submitted within the prescribed time limit. An adverse party shall have 10 days in which to file a written opposition to the request. The Hearing Officer shall have the power to rule on such a request.

Section 32 Amended Applications

If at any time during the hearing de novo process, the Applicant alleges and offers medical proof that incapacity is the result of injury, illness or disease not listed in the application submitted to the Board, or, if listed, on which the Applicant submitted no medical evidence for the Board or Retirement's review when it considered the application, the hearing de novo shall be suspended, the allegation shall be treated as an amendment to the application and the matter shall be referred back to the Board of Retirement for determination. Upon service of notification of Board action on the application, the original hearing de novo shall resume. The Applicant shall have 60 days from service of the notice of Board action in which to serve an amended prehearing statement.

Section 33 Scheduling of Hearing Date; Notice of Hearing.

Within 20 days of the filing of ICERS's prehearing statement, Respondent shall submit the matter to the Hearing Officer or the Office of Administrative Hearings for the purpose of assigning a Hearing Officer and selecting the hearing date. The hearing date shall be within 120 days of the filing of Respondent's prehearing statement or at the earliest administratively feasible date. In selecting the hearing date, the Hearing Officer shall, if possible, select a date that is acceptable to the Applicant.

Upon selection of the hearing date by the Hearing Officer, Respondent shall notify all parties of the date, time and location of the hearing and the name and address of the person or entity assigned to be the Hearing Officer.

If the Applicant fails to respond to the Hearing Officer's reasonable requests to set a hearing date, Respondent may either set a hearing date or notify the Applicant that continued failure to respond to requests to set a hearing date may result in dismissal of the application.

Section 34 Prehearing Conferences

At the request of any party or on his or her motion, the Hearing Officer may order a prehearing conference for the purpose of resolving or clarifying disputed procedural issues, the admissibility of disputed evidence or any other hearing-related issues.

A mandatory prehearing conference shall be scheduled in cases where the Applicant is not represented by counsel. The mandatory prehearing conference shall be scheduled as soon as practicable after service of Respondent's prehearing statement.

Section 35 Subpoenas; Expert Witness Fees

Each party is responsible for obtaining and serving any subpoenas it deems necessary for the presentation of its evidence in accordance with Section 24 of these policies and procedures. Each party is responsible for any and all expert witness fees, including medical experts, for testimony obtained by subpoena issued under these policies and procedures.

Section 36 Continuances.

(a) Good Cause Requirement. Notwithstanding any other provision of this article, upon written request and for good cause shown, the Hearing Officer may continue any hearing. Any request for continuance shall be made at least 10 days in advance of the scheduled hearing date except when the basis for the continuance is not known 10 days in advance of the hearing.

(b) Costs Resulting from Continuance. An Applicant who requests and is granted a continuance shall be responsible for all costs incurred by ICERS as a result of such continuance, including, but not limited to, the costs of scheduling and canceling the services of a certified Court Reporter and/or expert witnesses.

Section 37 Reported and Recorded Hearing.

All hearings on an application shall be recorded by a certified Court Reporter paid by ICERS.

Section 38 Written Medical Reports as Evidence.

It is the policy of ICERS that production of medical evidence shall be in the form of written medical reports attached to the parties' prehearing statements. A written medical report bearing the signature of a medical witness may be admissible in evidence as the author's direct testimony and may support findings made by the Board or the Hearing Officer. Such medical reports shall not be inadmissible on the basis that they constitute hearsay, but each party shall have the right to cross-examine the authors of medical reports.

Section 39 Medical Witness Defined.

A medical witness is a person who by profession is a physician, surgeon, holding an M.D. or D.O. degree, psychologist, optometrist, dentist, podiatrist, or chiropractic practitioner, licensed by the State of California or by such other jurisdiction in which such person maintains his or her regular practice.

Section 40 Cross Examination Or Deposition Of Medical Experts

If a party wishes to cross-examine a medical expert who has prepared a written medical report to be offered by an opposing party at the time of hearing, or if a party wishes to depose such a physician prior to the hearing date, then the party wishing to cross-examine or depose such physician must serve a written request to do so upon all parties within 20 days of the date on which the party is served with the pre-hearing statement identifying the medical report and the physician to be cross-examined or deposed. A copy of the request to depose or cross-examine the physician must be served on all parties. The right to cross-examine or depose a medical witness on their written report is deemed waived if a party fails to make a timely request in accordance with this provision.

The party requesting to cross-examine or depose the expert shall pay the reasonable and customary hourly fee for the actual time consumed in the examination of that witness by any party attending the action or proceeding. The expert's fee shall be tendered by the requesting party along with the written request for cross-examination. If the requesting party fails to tender the medical expert's fee as required in this section, the expert shall not be required to appear at that time unless the parties stipulate otherwise.

Section 41 Late Submission of Medical Reports.

Submission of a medical report not previously attached to the party's prehearing statement may be allowed by the Hearing Officer upon a showing of good cause. The party requesting submission of such a medical report shall make the request to the Hearing Officer and send a copy of the request to counsel for ICERS and all other parties. The request shall state the reason the medical report was not timely produced.

Section 42 Witness Testimony In Lieu Of Personal Appearance At Hearing.

Parties may depose a witness in lieu of personal appearance at the hearing. The deposition of a witness on direct or cross-examination, in lieu of personal appearance at a hearing, shall take place at a reasonable time and place as requested by the witness and based on 20 days' notice to all parties. All depositions must be completed at least 15 days prior to the hearing. The Hearing Officer shall consider the transcript of the witness' testimony as part of the record in reaching the recommended decision. The party requesting the testimony in lieu of personal appearance shall bear the costs associated with the testimony.

Section 43 Conduct of Hearing Before the Hearing Officer.

Hearings before the Hearing Officer, shall be conducted according to the following procedures:

- (a) Each party may make an oral opening statement.
- (b) The Applicant will present their evidence first, followed by ICERS. Each party may then present its rebuttal evidence. The Applicant shall have the burden of proof on the application, except as otherwise expressly provided in applicable law.
- (c) Each party shall have these rights subject to compliance with all other applicable law and rules contained herein: to call and examine witnesses listed in that party's pre-hearing statement, telephonically or in person; to introduce exhibits listed in that party's pre-hearing statement, including reports and depositions of medical witnesses; to cross-examine opposing witnesses, telephonically or in person, on any matter relevant to the issues even though that matter was not covered in the direct examination; to impeach any witness, telephonically or in person, regardless of which party first called the witness to testify; and to rebut adverse evidence. If the Member does not testify, the Member may be called and examined by ICERS as if under cross-examination. The Member may testify telephonically or in person.

(d) Oral evidence, telephonically or in person, shall be taken only on oath or affirmation.

(e) Refusal of the Applicant or any other witness to submit to examination or to answer relevant questions shall be grounds for considering such questions, for the purposes of the hearing, to be answered unfavorably to that witness.

(f) The hearing need not be conducted according to technical rules of evidence. Any relevant evidence shall be admitted, consistent with the requirements of these rules, if it is 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. The rules of privilege shall be effective to the extent that they are otherwise required by statute to be recognized at the hearing. Irrelevant and unduly repetitious evidence shall be excluded.

(g) Failure to Appear and Testify. Failure without good cause of a Member or Applicant to appear at the hearing to submit to examination or to answer any relevant question shall constitute grounds for the Board of Retirement dismissing the application with prejudice or considering such failure in a way unfavorable to such Member or Applicant.

(h) Privilege. The rules of privilege shall be effective to the extent that they otherwise are required by statute to be recognized at the hearing.

(i) Hearsay evidence may be used for the purpose of supplementing or explaining other evidence but shall not be sufficient in itself to support a finding unless it would be admissible over objection in civil actions. This section shall not be applicable to written medical reports received into evidence pursuant to Art. 9 Section 37.

(j) Notwithstanding the provisions of this article, in reaching a decision official notice may be taken, either before or after submission of the case for decision, of any fact which may be judicially noticed by courts of the State of California.

(k) All hearings shall be conducted in the English language, except that of a party or witness who does not proficiently speak or understand the English language. A person who requests language assistance shall be provided an interpreter approved by the Board of Retirement or anyone conducting the proceedings. Unless otherwise expressly authorized by the Board of Retirement, the cost of providing the interpreter shall be paid by the party requesting the interpreter.

(l) Admissibility of Certified Copies of Government Records. Certified copies of the records or documents of any governmental agency, division or bureau shall be accepted as evidence in lieu of the original thereof.

(m) The disability retirement application and the administrative recommendation shall be admitted into evidence at the beginning of the hearing.

(n) At the conclusion of all evidence, each party may make an oral closing argument.

(o) Written closing arguments are not allowed. The Hearing Officer, in their discretion, may allow written closing arguments for the purpose of addressing a specific issue necessary to the resolution of the disability application. Written closing arguments shall not exceed 10 pages and shall be submitted to the Hearing Officer and the parties within 10 days of the close of the hearing.

(p) The record of the proceedings shall be closed and the matter submitted at the conclusion of the formal hearing, unless further documentary evidence or written closing argument is to be received. If such further evidence or argument is to be received, the Hearing Officer shall allow such time as deemed necessary for filing and serving copies on all parties. The record shall be closed and the matter deemed submitted upon such final filing or upon rulings on any objections to the evidence thus filed.

Section 44 Time And Place Of Hearings

Unless the parties and the Hearing Officer agree otherwise, a hearing shall be deemed set for one full day. Hearings which are not concluded by the end of the day, or whatever other time period to which there has been a stipulation shall be continued to the next agreeable hearing date which shall be no more than 30 days from the initial hearing date. When the hearing date and time have been selected, ICERS shall arrange for use of a hearing room and shall in writing notify the parties and the Hearing Officer of the date, time and place of the hearing.

ARTICLE 10

REFEREE'S FINDINGS AND RECOMMENDED DECISION

Section 45 Scope of Article.

This Article governs the proposed findings of fact and recommended decision of the Hearing Officer following a hearing de novo.

Section 46 Hearing Officer's Proposed Findings of Fact and Recommended Decision.

Within 45 days after the hearing is closed and the matter submitted, the Hearing Officer will serve a written Proposed Findings of Fact and Recommended Decision on the parties and the Retirement Administrator. The Proposed Findings and Recommended Decision shall include a summary of the evidence, proposed findings of fact, conclusions of law, and recommended decision.

Section 47 Objections to Hearing Officer's Proposed Findings of Fact and Recommended Decision; Response to Objections.

Any party objecting to the Hearing Officer's Proposed Findings of Fact and Recommended Decision must file written objections with ICERS no later than ten days after service of the Proposed Findings of Fact and Recommended Decision. The objecting party shall serve the written objections on all parties.

ICERS and any other parties may respond to the objections by filing and serving a written response on all other parties no later than 10 days after service of written objections. Any objections and the responses thereto received by ICERS shall be incorporated into the record to be considered by the Board.

Section 48 Board Consideration and Action on Hearing Officer's Proposed Findings of Fact and Recommended Decision.

The Board of Retirement will consider the Hearing Officer's Proposed Findings of Fact and Recommended Decision on a date, time and location noticed to all parties. Any party or their counsel may request the opportunity to make an oral presentation to the Board of Retirement. No new evidence or witness testimony may be heard or received by the Board of Retirement. The Board may:

(a) Approve and adopt the proposed findings of fact and the recommendations, or

(b) Require a transcript or summary of all the testimony, plus all other evidence received by the Hearing Officer. Upon the receipt thereof the Board of Retirement shall take such action as is indicated by such evidence, or

(c) Refer the matter back with or without instructions to the referee for further proceedings, or

(d) Set the matter for hearing before itself. At such hearing the Board of Retirement shall hear and decide the matter as if it had not been referred to the referee. (Gov. Code Sec. 31534)

Section 49 Notice of Decision.

The Board's decision on the Hearing Officer's Proposed Findings of Fact and Recommended Decision shall become final 30 days after the last date of service of the notice of decision served on the Member, the Applicant, the Department Head, and the Employer's Director of Human Resources.

Section 50 No Disability Retirement Benefits Paid Until Effective Date of Board Action.

No disability retirement benefit shall be paid by ICERS until the action, order or decision of the Board of Retirement becomes final unless ordered otherwise by the Board of Retirement.

ARTICLE 11

JUDICIAL REVIEW OF FINAL DECISIONS AND ORDERS; STATUTE OF LIMITATIONS

Section 51 Definition of Decision.

As used in this article, "decision" means a decision subject to judicial review governed by Section 1094.5 of the Code of Civil Procedure, suspending, demoting, or dismissing an officer or employee, revoking, or denying an application for any retirement benefit or allowance. (Code of Civil Procedure Section 1094.6(e))

Section 52 Record and Payment.

The complete record of the proceedings in which the decision is made shall be prepared by the Retirement Administrator upon written request, and shall be delivered to the party requesting such record within 90 days after the party has filed such request. The Retirement Administrator shall, within fifteen days of such request, notify the party of the estimated cost of the preparation of the requested record. The party requesting such record shall, within ten days of such notification, deposit with the Retirement Administrator an amount sufficient to cover the estimated cost. If during the preparation of the record it appears that additional costs will be incurred, the party requesting such record will be notified and shall deposit such additional amounts before the record will be completed. 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 Administrator shall prepare such record. Such record shall include the transcript of the proceedings, all pleadings, notices and orders, any proposed decision by a hearing officer, the final decision, all admitted exhibits, all rejected exhibits in the possession of the local agency which made the decision, all written evidence, and any other papers in the case. (Code of Civ. Proc., Sec. 1094.6(c))

Section 53 Required Notice.

In making a decision, the Board of Retirement shall provide notice to the party that the time within which judicial review must be sought is governed by this section. Upon giving notice of any decision, the Retirement Administrator shall include in the decision a statement substantially as follows:

The time within which judicial review of this decision must be sought is governed by the Code of Civil Procedure Section 1094.6, which has been made applicable to the Imperial County Board of Retirement by the resolution adopting its bylaws and regulations and policies and procedures. Any petition or other paper seeking judicial review must be filed in the appropriate court not later than the 90th day following the date on which this decision becomes final; however, if within 10 days

after the decision becomes final, a request for the record of the proceedings is filed and the required deposit in an amount sufficient to cover the estimated cost of preparation of such record is timely deposited, the time within which such petition may be filed in court is extended to not later than the 30th day following the date on which the record is either personally delivered or mailed to the party, or the party's representative or attorney of record, if the party has one. A written request for the preparation of the record of the proceedings shall be filed with:

Imperial County Employees' Retirement System (ICERS)
Retirement Administrator
Disability Retirement Division
1221 W. State Street
El Centro, California 92243

(Code of Civ. Proc., Sec. 1094.6)

ICERS

ARTICLE 12

MEDICAL EXAMINATION OF DISABILITY RETIREE; CANCELLATION OF DISABILITY BENEFITS AFTER EXAMINATION; REENTRY INTO SERVICE

Section 54 Definition of Disability Retiree.

Disability retiree means a person awarded a disability retirement under these policies and procedures.

Section 55 Medical Examination of Disability Retiree.

The Board of Retirement may require any disability retiree under age 55 to undergo medical examination. The examination shall be made by a physician or surgeon appointed by the Board of Retirement at the place of residence of the retiree or other place mutually agreed upon. Upon the basis of the examination, the Board of Retirement shall determine whether the disability retiree is still physically and/or mentally incapacitated for service in the position within the department of the Employer where the retiree was employed when retired for disability. (Gov. Code Sec. 31729)

Section 56 Cancellation of Benefits after Medical Examination; Reinstatement of Employment.

If the Board of Retirement determines that the retiree is not incapacitated and the Employer offers to reinstate the retiree, the retiree's allowance shall be canceled forthwith, and the retiree shall be reinstated in service pursuant to the regulations of the Employer for reemployment of personnel. (Gov. Code Sec. 31730)

Section 57 Refusal to Submit to Examination; Effect.

If any disability retiree under age 55 refuses to submit to a medical examination, the retiree's pension shall be discontinued until the withdrawal of such refusal, and if the refusal continues for one year, the retiree's allowance shall be canceled. (Gov. Code Sec. 31731)